

The Texas Education Agency (TEA) proposes new §61.1017, concerning maintenance of effort and equity for federal COVID-19 pandemic funds. The proposed new section would define the data sources TEA will use in calculating the increased funding authorized under Texas Education Code (TEC), §48.281, and establish limitations.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Federal statute and regulations require TEA to ensure that for fiscal year (FY) 2022 (school year 2021-2022) and FY 2023 (school year 2022-2023), high-need local educational agencies (LEAs) do not receive a year-over-year per-pupil reduction in state funding that is greater than the average per-pupil reduction, if applicable, across all LEAs in the state for either fiscal year. In addition, for FY 2022 and FY 2023, highest-poverty LEAs may not receive per-pupil funding lower than the per-pupil amount they received in FY 2019 (school year 2018-2019).

To implement the increase in funding authorized under TEC, §48.281, and comply with federal requirements, proposed new §61.1017 would specify prior year run identification numbers in the Foundation School Program (FSP) Summary of Finance (SOF) calculations. TEA will use (FY 2018-2019 SOF Run Identification (Run ID) District Planning Estimate (DPE) 34151 for funding and average daily attendance (ADA). FY 2019-2020 is not used in the calculations. FY 2020-2021 will use Run ID DPE 33254 for ADA and Run ID DPE 33729 for post-reduction funding. FY 2021-2022, FY 2022-2023, and FY 2023-2024 will use the final settle-up Run IDs for the calculations.

The increased funding requires review from both the Legislative Budget Board and the governor. Federal reporting requires specific calculations at a point in time.

TEC, §48.281, expires September 1, 2025.

**FISCAL IMPACT:** Mike Meyer, deputy commissioner for finance, has determined that there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal beyond what the authorizing statute requires.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to comply with TEC, §48.281, and federal requirements.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to specify the data sources for prior year calculations in the FSP SOF. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 16, 2022, and ends October 17, 2022. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on September 16, 2022. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §48.004, which specifies that the commissioner of education shall adopt rules that are necessary to implement and administer the Foundation School Program; and TEC, §48.281, which details the calculation of maintenance of effort and equity (MOE) for federal money related to the COVID-19 pandemic for school districts and open-enrollment charter schools. The funding is necessary to ensure compliance with requirements regarding MOE under the Coronavirus Response and Relief Supplemental Appropriation Act, Section 317.

CROSS REFERENCE TO STATUTE. The proposed new section implements Texas Education Code, §48.004 and §48.281.

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**§61.1017. Maintenance of Effort and Equity for Federal Money Related to the COVID-19 Pandemic.**

- (a) General provisions. This section implements Texas Education Code (TEC), §48.281 (Maintenance of Effort and Equity for Federal Money Related to COVID-19 Pandemic), which provides for increases in funding to school districts and open-enrollment charter schools as necessary to ensure compliance with requirements regarding maintenance of equity under Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260, reprinted in note, 20 U.S.C. Section 3401), Section 317; and American Rescue Plan Act of 2021 (Pub. L. No. 117-2, reprinted in note, 20 U.S.C. Section 3401), Section 2001. In accordance with TEC, §48.281, this section defines the data sources that the Texas Education Agency (TEA) will use in calculating the amount of the funding.
- (b) Definitions. The following terms have the following meanings when used in this section.
- (1) Average daily attendance (ADA)--This term has the meaning defined by TEC, §48.005(a). For the 2020-2021 school year, ADA will include adjustments related to the ADA hold harmless provided for that school year but will exclude any reduction in ADA arising from the application of the Elementary and Secondary School Emergency Relief funding toward the ADA hold harmless.
  - (2) Foundation School Program (FSP)--The program established under TEC, Chapters 46, 48, and 49, or any successor program of state-appropriated funding for school districts in Texas.
  - (3) Maintenance and operations (M&O) revenue--The total M&O revenue available to a school district for maintenance and operations under the FSP, including state aid and M&O tax collections net of any required recapture payments. For the 2020-2021 school year, total M&O revenue will include adjustments resulting from the reduction in ADA arising from the application of the Elementary and Secondary School Emergency Relief funding toward the ADA hold harmless.
  - (4) Summary of Finances (SOF)--The SOF report summarizes the total M&O revenue available to a school district or open-enrollment charter school under the FSP.

(c) Data sources for calculating M&O revenue per ADA for the 2018-2019, 2020-2021, 2021-2022, and 2022-2023 school years.

(1) M&O revenue and ADA for the 2018-2019 school year will use final data from the district planning estimate (DPE) column of SOF Run Identification (Run ID) 34151, subject to the limitation in subsection (d) of this section.

(2) M&O revenue and ADA for the 2020-2021 school year will use final data from the DPE column of SOF Run ID 33729 and 33254, respectively, subject to the limitation in subsection (d) of this section.

(3) M&O revenue and ADA for the 2021-2022 and 2022-2023 school years will use the most current data for each column of the SOF report, subject to the limitation in subsection (d) of this section.

(4) For the 2022-2023 school year only, for purposes of calculating a school district or open-enrollment charter school's 2022-2023 allotment under paragraph (3) of this subsection, M&O revenue for the 2021-2022 school year will also include the allotment under paragraph (3) of this subsection.

(d) Limitations on calculations.

(1) For purposes of calculating an allotment under this section, the prior year M&O revenue and ADA for the 2018-2019 and 2020-2021 school years will not be changed from the SOF Run IDs identified in subsection (c)(1) and (2) of this section.

(2) TEA will stop running calculations for the 2021-2022 school year after June 30, 2023, and the amounts that a school district or open-enrollment charter school would have received for the 2021-2022 school year under TEC, §48.281(a), will not be changed after that date.

(3) TEA will stop running calculations for the 2022-2023 school year after June 30, 2024, and the amounts that a school district or open-enrollment charter school would have received for the 2022-2023 school year under TEC, §48.281(a), will not be changed after that date.