

The Texas Education Agency (TEA) proposes new §61.1073, concerning counseling public school students. The proposed new rule would implement the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80 percent of the school counselor's total work time on duties that are components of a counseling program as required by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §33.006(d), as added by Senate Bill 179, 87th Texas Legislature, Regular Session, 2021, requires school districts to adopt a policy that requires a school counselor to spend at least 80 percent of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005. TEC, §33.006(h), requires each school district to annually assess the district's compliance with the policy regarding school counselors' work time, and, on request by the commissioner, provide a written copy of the assessment to TEA on or before a date specified by the commissioner.

Proposed new §61.1073 would implement TEC, §33.006(h). The new rule would require each district school counselor to track and document, using a district-standardized tracking tool, the time spent on work duties performed by the school counselor throughout a school year. The new rule would also identify the elements that district assessments must include and the documentation to be included in annual requests by TEA for district assessments.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and programs, 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 is required by statute.

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 by implementing the statutory requirement for assessment of school district compliance with policies requiring a school counselor to spend at least 80 percent of the school counselor's total work time on duties that are components of a counseling program.

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: Ms. Martinez 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 implementation of the statutory requirements for time spent by school counselors on duties that are components of a counseling program as outlined in state law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have a data and reporting impact for school districts randomly selected to submit information to TEA annually. Selected school districts will be required to provide a copy of the school district policy adopted under TEC, §33.006(d); all completed district-standardized tracking tools from the previous school year; the number of school counselors in the school district from the previous school year; the number of school counselors whose work is determined by the district to be in compliance with the school district policy adopted under TEC, §33.006(d); the percentage of school counselors in the school district whose work is determined by the district to be in compliance with the school district policy adopted under TEC, §33.006(d); and any other findings, conclusions, or analysis included in the annual assessment, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

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 November 4, 2022, and ends December 5, 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 November 4, 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), §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), as added by Senate Bill (SB) 179, 87th Texas Legislature, Regular Session, 2021, which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80 percent of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80 percent of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80 percent of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), as added by SB 179, 87th Texas Legislature, Regular Session, 2021, which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.005 and §33.006, as amended by Senate Bill 179, 87th Texas Legislature, Regular Session, 2021.

<rule>

§61.1073. Annual Assessment of School District Compliance.

- (a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
- (1) Comprehensive school counseling program--provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).
 - (2) Duties that are components of a counseling program--work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).

- (3) School counselor--the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).
- (4) School counselor's total work time--the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.
- (b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:

 - (1) include the following components:

 - (A) the total work time worked by the school counselor for the year;
 - (B) the total time spent on each of the following duties that are components of a counseling program developed under TEC, §33.005:

 - (i) provision of a guidance curriculum;
 - (ii) responsive services for students;
 - (iii) individual planning for students; and
 - (iv) system support;
 - (C) the total time spent on duties that are not components of a counseling program developed under TEC, §33.005; and
 - (D) a calculation of the percentage of work time spent on each component of a counseling program; and
 - (2) be maintained by the district in a format that can be made available to Texas Education Agency (TEA) upon request.
- (c) School districts shall annually assess the district's compliance with the policy adopted under TEC, §33.006(d). The assessment shall include:

 - (1) work time tracking documentation as described in subsection (b) of this section for each school counselor in the district;
 - (2) the number of school counselors whose work was in compliance with the district policy adopted under TEC, §33.006(d); and
 - (3) the percentage of school counselors in the district whose work was in compliance with the district policy adopted under TEC, §33.006(d).
- (d) The assessment described in subsection (c) of this section shall be maintained by the school district in a format that can be made available to TEA upon request.
- (e) Not later than October 15 of each year, TEA will request the following information from a randomly selected sample of school districts, with district responses required to be submitted to TEA not later than November 15 of each year in the format requested by TEA:

 - (1) a copy of the district policy adopted under TEC, §33.006(d);
 - (2) all completed district-standardized tracking tools from the previous school year;
 - (3) the number of school counselors in the district from the previous school year;
 - (4) the number of school counselors whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d);
 - (5) the percentage of school counselors in the district whose work is determined by the district to be in compliance with the district policy adopted under TEC, §33.006(d); and

(6) any other findings, conclusions, or analysis included in the annual assessment required by subsection (c) of this section, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).