

The Texas Education Agency (TEA) proposes amendments to §103.1209 and §103.1211, concerning mandatory school drills and active threat exercises. The proposed amendments would reorganize definitions and provide clarifications in §103.1209 and add requirements for certain active threat exercises in §103.1211.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 103.1209 requires that school districts and open-enrollment charter schools conduct emergency safety drills in accordance with Texas Education Code, §37.114.

The proposed amendment to §103.1209(b) would reorganize the definitions to distinguish between general terms, terms defining levels of exercises, and terms defining types of drills. The changes would ensure distinction between events that include persons role playing as active aggressors and circumstances designed to train for, assess, practice, and improve incident mitigation, prevention, preparedness, response, and recovery in a risk-free environment. Subsections (c)(4) and (5) and (d)(4) would be amended to clarify existing language.

Section 103.1211 defines the requirements a school district must meet if it elects to conduct active threat exercises.

The proposed amendment to §103.1211 would add new subsection (c) to delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, subsection (c)(2) would clarify that the notice requirements currently in rule apply to an operations-based, a functional, or a full-scale exercise.

Section 103.1211(c)(4)(A) would be amended to require that input from law enforcement personnel be solicited in the design of an operations-based, a functional, or a full-scale exercise.

New §103.1211(c)(5) would be added to ensure that operations-based, functional, or full-scale exercises are conducted during non-instructional time when non-participants are not present in a district facility. Further, subsection (c)(5)(A)-(C) would outline requirements for participants. More specifically, although student participation would be discouraged, age requirements would be detailed for students who receive an educational benefit by participating in an exercise, and all participants would be required to opt in rather than opt out of an exercise. In addition, subsection (c)(5)(D) would ensure that any exercise conducted is overseen by first responders or emergency management personnel.

New §103.1211(c)(6) would be added to ensure local education agencies conduct an after-action review of the exercise to determine the extent to which it achieved key planning objectives.

FISCAL IMPACT: Brooks Straub, deputy chief of staff for the office of school safety and security, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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 expand an existing regulation by adding requirements in §103.1211 for local education agencies to solicit input from law

enforcement personnel about the design of an operations-based, a functional, or a full-scale exercise; requiring that exercises be conducted during non-instructional time and providing additional requirements for participants; and adding requirements for an after-action review.

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 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. Straub 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 provide school districts with added clarification related to the level of exercises and drills conducted to enhance the safety and security of the overall campus community and delineate between discussion-based tabletop exercises and operations-based, functional, or full-scale exercises. Additionally, the proposal would provide guidance to conduct an exercise that ensures the physical and psychological safety of participants while simultaneously achieving key planning objectives. 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 June 23, 2023, and ends July 24, 2023. 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 June 23, 2023. 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 amendments are proposed under Texas Education Code (TEC), §37.114, which requires the commissioner of education to provide best practices for conducting emergency drills and exercises and to designate the number and type of mandatory school drills to be conducted each semester of the school year; and TEC, §37.1141, which provides guidelines before a school district may conduct an active threat exercise.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §37.114 and §37.1141.

<rule>

§103.1209. Mandatory School Drills.

- (a) Requirement. Each school district and open-enrollment charter school shall conduct emergency safety drills in accordance with Texas Education Code (TEC), §37.114. Drills do not include persons role playing as active aggressors or other simulated threats.
- (b) Definitions and related terms. The following words and terms related to drills and exercises, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. These definitions do not apply to an active threat exercise, which is defined in TEC, §37.1141, and associated rules, if any.
 - (1) General terms.

(A) ~~(1)~~ Active aggressor--An individual actively engaged in killing or attempting to kill people in a confined and populated area.

(B) ~~[(2)]~~ Drill--A set of procedures that test a single, specific operation or function. Drills do not include persons role playing as active aggressors or other simulated threats. Drill examples include evacuating for a fire or locking down from an internal threat.

~~[(3) — Evacuation drill — A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.]~~

(C) ~~[(4)]~~ Exercise--An instrument to train for, assess, practice, and improve performance in mitigation, prevention, preparedness, response, and recovery in a risk-free environment. While drills and exercises may overlap in some aspects, discussion-based and operation-based exercises are often more in depth and multi-faceted.

~~[(5) — Fire evacuation drill — A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.]~~

(2) Terms defining the level of exercise.

(A) ~~[(6)]~~ Full-scale exercise--Typically the most complex and resource-intensive type of exercise. It involves multiple agencies, organizations, and jurisdictions and validates many facets of preparedness. This exercise often includes many players operating under cooperative systems such as the Incident Command System (ICS) or Unified Command. Resources and staff are mobilized as needed. All actions are taken as if the emergency is real. A full-scale exercise is the most time-consuming activity in the exercise continuum and is a multiagency, multijurisdictional effort in which all resources are deployed. A full-scale exercise tests collaborations among the agencies and participants, public information systems, communication systems, and equipment. An Emergency Operations Center is established by either law enforcement or fire services, and the ICS is activated. Because of all the logistics and resources needed for a full-scale exercise, it often takes a year to plan and is not held often. Usually, a school district is not the organizer of such an exercise, but the district or school would play a critical role in both function and potential facility use.

(B) ~~[(7)]~~ Functional exercise--Designed to validate and evaluate capabilities, multiple functions and/or sub-functions, or interdependent groups of functions. A functional exercise is typically focused on exercising plans, policies, procedures, and staff members involved in management, direction, command, and control functions. It allows participants to practice their specific roles or functions in an emergency. This type of exercise is conducted in a realistic, real-time simulated environment and often includes simulators (individuals who assist with the facilitation of the exercise) and follows a master scenario events list that dictates additional information, occurrences, or activities that affect the exercise scenario.

~~[(8) — Lockdown drill — A response action schools take to secure interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.]~~

~~[(9) — Secure drill — A response action schools take to secure the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.]~~

(C) ~~[(10)]~~ Seminar exercise--A discussion-based exercise designed to orient participants to new or updated plans, policies, or procedures through informal discussions. Seminar exercises are often used to impart new information and formulate new ideas.

~~[(11) — Shelter in place for hazardous materials (hazmat) drill — A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms~~

without windows or to rooms that can be sealed. Examples of a shelter in place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.]

~~[(12) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.]~~

(D) ~~[(13)]~~ Tabletop exercise--A small group discussion that walks through a scenario and the courses of action a school will need to take before, during, and after an emergency to lessen the impact on the school community. Participants problem-solve together through a detailed discussion of roles, responsibilities, and anticipated courses of action. A tabletop exercise leverages a defined scenario to direct discussion and may need an experienced facilitator depending on the complexity and objectives of the exercise.

(E) ~~[(14)]~~ Workshop exercise--A type of discussion-based exercise focused on increased participant interaction and achieving or building a product (e.g., plans or policies). A workshop exercise is typically used to test new ideas, processes, or procedures; train groups in coordinated activities; and obtain consensus. A workshop exercise often uses breakout sessions to explore parts of an issue with smaller groups.

(3) Terms defining the type of drill.

(A) Evacuation drill--A response action schools take to quickly move students and staff from one place to another. The primary objective of an evacuation is to ensure that all staff, students, and visitors can quickly move away from the threat. Evacuation examples include a bomb threat or internal gas leak.

(B) Fire evacuation drill--A method of practicing how a building would be vacated in the event of a fire. The purpose of fire drills in buildings is to ensure that everyone knows how to exit safely as quickly as possible.

(C) Lockdown drill--A response action schools take to secure (close, latch, and lock) interior portions of school buildings and grounds during incidents that pose an immediate threat of violence inside the school. The primary objective is to quickly ensure all school students, staff, and visitors are secured away from immediate danger.

(D) Secure drill--A response action schools take to secure (close, latch, and lock) the perimeter of school buildings and grounds during incidents that pose a threat or hazard outside of the school building. This type of drill uses the security of the physical facility to act as protection to deny entry.

(E) Shelter-in-place for hazardous materials (hazmat) drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. Affected individuals may be required to move to rooms without windows or to rooms that can be sealed. Examples of a shelter-in-place for hazmat drill include train derailment with chemical release or smoke from a nearby fire.

(F) Shelter for severe weather drill--A response action schools take to quickly move students, staff, and visitors indoors, perhaps for an extended period of time, because it is safer inside the building than outside. For severe weather, depending on the type and/or threat level (watch versus warning), affected individuals may be required to move to rooms without windows on the lowest floor possible or to a weather shelter.

(c) Frequency. TEC, §37.114(2), requires the commissioner of education to designate the number of mandatory school drills to be conducted each semester of the school year, not to exceed eight drills each semester and sixteen drills for the entire school year. Neither this rule, nor the law, precludes a school district or an open-enrollment charter school from conducting more drills as deemed necessary and appropriate by the district or charter school. Following is the required minimum frequency of drills by type.

- (1) Secure drill--One per school year.
 - (2) Lockdown drill--Two per school year (once per semester).
 - (3) Evacuation drill--One per school year.
 - (4) Shelter-in-place [~~for hazmat~~] drill (for either severe weather or hazmat) --One per school year.
 - ~~[(5) Shelter for severe weather drill--One per school year.]~~
 - (5) [(6)] Fire evacuation drill--School districts and open-enrollment charter schools should consult with the local authority having jurisdiction (e.g., fire marshal) and comply with its requirements and recommendations [~~their local fire marshal and comply with their local fire marshal's requirements and recommendations~~]. If a district does not have a local authority [~~fire marshal~~], it shall conduct four per school year (two per semester).
- (d) Best practices for conducting drills and exercises. This subsection highlights best practices for conducting drills and exercises. For more information about best practices, refer to Texas School Safety Center guidance.
- (1) Drills and exercises should be designed and conducted in accordance with guidance and best practice resources provided by the Texas School Safety Center.
 - (2) Drill and exercise design should include purpose, goals, and objectives that are stated in plans for each type of drill. Purpose, goals, and objectives should be developed with input from all sectors of the school community. Input in planning should be sought from multiple stakeholder perspectives for each type of drill and exercise, including from:
 - (A) the district School Safety and Security Committee;
 - (B) first responders;
 - (C) mental and behavioral health professionals;
 - (D) students and families; and
 - (E) staff, including non-traditional teachers, coaches, trade instructors, custodians, and food service workers.
 - (3) Drill and exercise design elements should include:
 - (A) physical and psychological safety for all participants;
 - (B) planning in a trauma-informed manner to maximize learning and to minimize potential trauma for students and staff;
 - (C) providing advance notification of drills and exercises;
 - (D) planning for post-drill or after-action reviews of each drill and exercise; and
 - (E) ensuring drills and exercises are age and developmentally appropriate with the understanding that more complex drills and exercises will require a hierarchy of learning to achieve or obtain more advanced goals or objectives.
 - (4) Exercises are [~~tend to be~~] more complex than drills [~~and should be conducted in accordance with guidance and resources provided by the Texas School Safety Center. It is imperative that districts conduct exercises that match their experience and capabilities~~]. It is recommended that school systems [~~usually best to~~] start with discussion-based exercises and work up to operation-based exercises [~~over time~~]. Discussion-based exercises include seminar exercises, tabletop exercises, and workshop exercises. Operation-based exercises include functional exercises and full-scale exercises. Exercises can be used for:
 - (A) testing and validating policies, plans, procedures, training, equipment, and interagency agreements;
 - (B) clarifying and training personnel in roles and responsibilities;

- (C) improving interagency coordination and communications;
- (D) identifying gaps in resources;
- (E) improving individual performance; and
- (F) identifying opportunities for improvement.

§103.1211. Active Threat Exercises.

- (a) ~~An [Each local educational agency (LEA), which includes school districts and open enrollment charter schools, that elects to conduct an]~~ active threat exercise is ~~is~~ ^[is] defined as any exercise that includes a simulated active aggressor or an active shooter simulation ~~[shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section]~~ .
- (b) ~~[(1)]~~ Local education agencies (LEAs), which include school districts and open-enrollment charter schools, [LEAs] are not required to conduct active threat exercises.
- (c) An LEA that elects to conduct an active threat exercise shall do so in accordance with Texas Education Code (TEC), §37.1141, and this section. The LEA shall:
- (1) ~~[(2)]~~ [LEAs may] consider using a discussion-based tabletop exercise as defined in §103.1209 of this title (relating to Mandatory School Drills) to achieve the purpose, goals, and objectives of the exercise rather than using an operations-based, a functional, or a full-scale active threat exercise ; ~~[is]~~
 - ~~[(3)]~~ LEAs may consider conducting an active threat exercise during a non instructional time when nonparticipants are not present in the facility.]
- ~~[(b)]~~ Prior to conducting an active threat exercise, an LEA must:
- (2) ~~[(1)]~~ if conducting an operations-based, a functional, or a full-scale exercise, provide adequate notice of the exercise directly to individuals participating in the exercise, parents of students participating in the exercise, and all other individuals impacted by the exercise. Adequate notice of the active threat exercise shall also be posted through multiple distribution networks, including, but not limited to, the LEA's website and social media platforms.
 - (A) To be considered adequate notice, notice shall be provided and posted at least two weeks prior to the exercise.
 - (B) The notice shall include the following required elements specified in TEC, §37.1141(a)(1):
 - (i) the date on which the exercise will occur;
 - (ii) the content, form, and tone of the exercise; and
 - (iii) whether the exercise will include a live simulation that mimics or appears to be an actual shooting incident ; ~~[is]~~
 - (C) The notice shall be provided to parents in the parents' native language to the greatest extent practicable ; ~~[is]~~
 - (3) ~~[(2)]~~ make an audible announcement over the campus public address system immediately prior to the commencement of the exercise to signal the start of the exercise to the participants, noting that it is only an exercise and not a real emergency. The announcement must contain the elements specified in TEC, §37.1141(a)(2); and
 - (4) ~~[(3)]~~ ensure that the content of the exercise, which includes planning and execution of the exercise, addresses the following elements:
 - (A) input from multiple stakeholder perspectives in the design of the exercise , including law enforcement personnel ;

- (B) the physical and psychological safety of all participants before, during, and after the exercise, including:
 - (i) planning in a trauma-informed manner to minimize potential trauma for students, staff, and other participants;
 - (ii) the development and communication of a predetermined method for participants to withdraw from the exercise before or during the exercise; and
 - (iii) access to mental health supports before, during, and after the exercise; and
 - (C) the developmental appropriateness of the exercise, which includes a comprehensive perspective that supports the cognitive and emotional well-being of each individual and considers the impact that prior trauma, grief, and crisis experiences have had on a participant's development prior to the exercise. Developmental appropriateness considerations include the needs of special populations, including students with disabilities and emergent bilingual students ; [z]
- (5) conduct the exercise during non-instructional time when non-participants are not present in the facility. Additionally, the LEA must require that:
- (A) if a student participates in the exercise, which is discouraged, the student is in Grade 9 or higher and participates only if it provides the student with an educational benefit;
 - (B) all participants (students and staff) opt in rather than opt out of the exercise. A student participant must have written permission to opt in from the parent or guardian of the student;
 - (C) exercise participants be permitted to withdraw from the exercise at any time, before or during the exercise, using a predetermined method of withdrawal; and
 - (D) the exercise is organized, conducted, and overseen by law enforcement, first responders, or emergency management personnel. An LEA or one of its schools shall play a critical role in exercise coordination, overall function, and use of the facility; and
- (6) conduct an after-action review of the exercise to determine the extent to which the exercise achieved key planning objectives, to include ensuring:
- (A) incident command and control structures work as intended in accordance with the LEA's multihazard emergency operations plan;
 - (B) two-way communications work as intended with emergency first responders in accordance with the LEA's multihazard emergency operations plan; and
 - (C) emergency notification systems (e.g., voice calls, text messages, and email notifications) work as intended.
- (d) [(e)] In accordance with TEC, §37.1141(c), data regarding the efficacy and impact of an active threat exercise shall be collected and submitted to the Texas School Safety Center (TxSSC) using the methods developed by the TxSSC.