

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 49. EQUINE

4 TAC §49.5, §49.7

The Texas Animal Health Commission (commission) in a duly noticed meeting on April 30, 2024, adopted amendments to Title 4, Texas Administrative Code, Chapter 49 titled "Equine." Specifically, amendments are proposed to §49.5 regarding Piroplasmiasis: Testing, Identification of Infected Equine, and §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The amendments are adopted with nonsubstantive changes to the proposed text published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1381) and will be republished.

JUSTIFICATION FOR RULE ACTION

The commission adopts amendments to §49.5 which establishes testing and identification requirements of equine piroplasmiasis. Equine piroplasmiasis is a tick-borne protozoal infection of horses. At least one species of tick, *Amblyomma cajennense*, has proven capable of transmitting the blood parasite. This species of tick is endemic to South Texas and several other southern states. Also, the disease may be spread between horses by unsafe animal husbandry practices such as sharing needles or equipment that is contaminated with blood. This has brought about the disclosure that there is a distinct group of positive animals which are for the purpose of racing, either through sanctioned events or otherwise.

In 2011, the commission took action to safeguard Texas equine population by requiring all equine participating in racing events at a sanctioned racetrack facility to have a negative piroplasmiasis test. The requirement was put in place to ensure that the positive animals are disclosed as well as to protect other animals participating in such events. Since 2010, there has not been a disclosed piroplasmiasis positive thoroughbred horse participating in sanctioned racing. As such, the commission approved a temporary waiver of the requirement that thoroughbred horses be tested for piroplasmiasis prior to entering a racetrack facility licensed by the Texas Racing Commission on July 26, 2022.

The adopted amendments to §49.5 incorporate the thoroughbred testing requirement waiver. The adopted amendments also streamline the existing testing and identification requirements for ease of use and readability.

Additionally, the commission adopts amendments to §49.7 regarding Persons or Laboratories Performing Equine Infectious Anemia Tests. The section previously referred readers to an out-

dated section in the Code of Federal Regulations. The adopted amendment updates the citation.

HOW THE RULES WILL FUNCTION

Section 49.5 details the testing and identification requirements for equine piroplasmiasis. The amendments streamline the rule for readability. The amendments also formally incorporate the waiver of testing requirements for thoroughbreds as approved by the commission in the 413th Meeting on July 26, 2022, into commission rules. The amendments to not change any other testing or identification requirements.

Section 49.7 sets requirements for individuals or laboratories performing EIA tests. The amendments update the citation to the relevant section in the Code of Federal Regulations. The amendments to not change the existing requirement.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

The 30-day comment period ended April 7, 2024.

During this period, the commission did not receive any comments regarding the proposed rules.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products," the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved.

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests," the commission shall adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official equine infectious anemia test.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock," if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission.

No other statutes, articles, or codes are affected by the adoption of the proposed rules.

§49.5. *Piroplasmosis: Testing, Identification of Infected Equine.*

(a) Official Test. A complement fixation test (CFT) or competitive enzyme linked immunosorbent assay (cELISA) are the official tests for equine piroplasmosis.

(b) Authorization to conduct test. Only a test applied and reported by a laboratory approved by the commission will be considered an official test. Only samples collected by or under the direct supervision of an authorized veterinarian accompanied by a completed Equine Piroplasmosis Laboratory Test chart (form 10-07) will be accepted for official testing.

(c) Reactor. A reactor is any equine which discloses a positive reaction to the official test. The individual collecting the test sample must notify the equine's owner of the quarantine within 48 hours after receiving the results. Movement of all piroplasmosis positive equine and all equine epidemiologically determined to have been exposed to a piroplasmosis positive equine will be restricted. Retests of a reactor may only be performed by a representative of the commission.

(d) Official identification of reactors.

(1) A reactor must be identified with an implanted radio frequency microchip identification device that provides unique identification for each individual equine and complies with ISO 11784/11785 and one of the following methods as determined by the commission:

(A) The reactor may be identified with a branded letter "P" applied as a hot-iron brand, freeze-marking brand, hoof brand, or as approved by the commission. For a freeze or hot-iron brand, the "P" brand must be not less than two inches high and shall be applied to the left shoulder or left side of the neck of the reactor. For a hoof brand, the "P" brand must be applied to the front left hoof and reapplied as necessary to maintain visibility;

(B) Using an identification device or a unique tattoo, approved by the commission, that provides unique identification for each individual equine; or

(C) Using digital photographs sufficient to identify the individual equine.

(2) Reactors must be identified by an authorized veterinarian or representative of the commission within 10 days of the date the laboratory completes the test unless the equine is destroyed. Any equine destroyed prior to identification must be described in a written statement by the authorized veterinarian or other authorized personnel certifying to the destruction. This certification must be submitted to the commission within 10 days of the date the equine is destroyed.

(e) Equine entering a racetrack facility, with the exception of thoroughbred horses, must have a negative Piroplasmosis test within the past 12 months. A racetrack facility is grounds used to conduct live horse racing events and is not limited to facilities licensed by the Texas Racing Commission.

§49.7. *Persons or Laboratories Performing Equine Infectious Anemia Tests.*

A person or laboratory who performs an official equine infectious anemia test in the State of Texas must meet and be in compliance with the requirements found in Title 9 Code of Federal Regulations §71.22, which is entitled "Approval of laboratories to conduct official testing."

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2024.

TRD-202402018

Jeanine Coggeshall

General Counsel

Texas Animal Health Commission

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For further information, please call: (512) 839-0511



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 104. ACCELERATED INSTRUCTION

19 TAC §104.1001

The Texas Education Agency (TEA) adopts an amendment to §104.1001, concerning the accelerated instruction, modified teacher assignment, and accelerated learning committee. The amendment is adopted with changes to the proposed text as published in the February 16, 2024 issue of the *Texas Register* (49 TexReg 835) and will be republished. The adopted amendment implements House Bill (HB) 1416, 88th Texas Legislature, Regular Session, 2023, by providing approval criteria for instruction through products that use automated, computerized, or other augmented method; establishing school district or open-enrollment charter school waivers of accelerated instruction requirements; and clarifying supplemental instruction requirements for students repeating an entire course.

REASONED JUSTIFICATION: Section 104.1001 establishes the provision of accelerated instruction and related supports for students who have failed to perform satisfactorily on assessments required under Texas Education Code (TEC), §39.023. HB 1416, 88th Texas Legislature, Regular Session, 2023, changed the requirements for accelerated instruction by differentiating the required hours based on student performance, implementing the accelerated education plan, providing performance-based accelerated instruction waivers for qualifying school districts and open enrollment charter schools, and removing the ratio requirement for school districts and open enrollment charter schools using products that use automated, computerized, or other augmented method for providing supplemental instruction. The adopted amendment to §104.1001 implements HB 1416 as follows.

The term "supplemental accelerated instruction" has been changed throughout the rule. Where applicable, some uses of the term "accelerated instruction" as proposed were modified to "supplemental instruction" at adoption.

The requirements for accelerated instruction are modified in subsection (b)(1).

New subsection (b)(3) is added to clarify that school districts and open-enrollment charter schools cannot excuse students from receiving the required accelerated instruction because of the provisions of subsection (b)(2).

Subsection (c) is amended to modify the provisions related to required transportation for students attending accelerated instruction programs outside school hours.

New subsection (d)(1) and (2) is added to specify the hours of instruction that must be provided based on a student's per-

formance on an assessment instrument specified under TEC, §28.0211(a-1).

New subsection (e) is added to outline provisions related to accelerated education plans and notification of the plans to a student's parent or guardian.

Requirements for accelerated learning committees, including specific provisions for admission, review, and dismissal (ARD) committees serving as accelerated learning committees, are removed.

Based on public comment, proposed new subsection (g), related to waivers of accelerated instruction requirements, was removed to provide clarity.

New subsection (g), proposed as subsection (h), is added to allow for the provision of accelerated instruction by automated, computerized, or other augmented method. The new subsection describes this type of instruction; describes approval by TEA; lists school district and charter school responsibilities; and states that vendors seeking provider approval must follow the process established by TEA. At adoption, subsection (g) was modified to provide for the Ratio Waiver List. References to the acronym ACAM were replaced by references to products on the Ratio Waiver List. In addition, language was added to specify that products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction.

New subsection (h) is added to clarify that accelerated instruction waivers focus only on mathematics and reading. The new subsection describes the conditions that will enable schools to qualify for the accelerated instruction waiver and explains how school districts and charter schools will be notified if they are included on the waiver list and how they can apply for a waiver using the Accelerated Instruction Waiver under TEA Login (TEAL). At adoption, a reference was added to TEC, §28.0211(q), which allows the commissioner to waive requirements of accelerated instruction for a school district or an open-enrollment charter school under certain circumstances.

New subsection (i) is added to clarify that repeating a high school course in its entirety is the equivalent to grade retention, which would remove accelerated instruction requirements for students repeating an entire course at the high school level. At adoption, the definition of credit recovery was modified to specify that, for purposes of §104.1001, credit recovery means completing assignments in the case of failure or completing seat hours in the case of excessive absences.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 16, 2024, and ended March 18, 2024. Following is a summary of public comments received and agency responses.

Comment: Amplify and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, commented in support of the changes implemented by HB 1416, 88th Texas Legislature, Regular Session, 2023.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: The Texas Classroom Teachers Association (TCTA) supported separating the terms "supplemental" and "accelerated" instruction.

Response: The agency agrees that the separation of these terms clarifies that accelerated instruction helps students make grade-level progress and that supplemental instruction is one of two ways a school district or charter school can help accelerate students.

Comment: TCTA proposed that the phrase "and, if applicable, (a-4)" be removed from section (a).

Response: The agency disagrees. Supplemental instruction, as described by TEC, §28.0211(a-4), is included in accelerated instruction per TEC, §28.0211(a-1)(2).

Comment: TCTA proposed replacing accelerated instruction with supplemental instruction in subsection (d).

Response: The agency agrees and has amended the language in subsection (d) at adoption to reflect that the requirements in that subsection apply to supplemental instruction.

Comment: TCTA requested revising subsection (d) to clarify that supplemental instruction is one of two options for accelerating students.

Response: The agency agrees. The agency has amended language in subsection (d) at adoption to reflect that supplemental instruction is one of two options that will fulfill accelerated instruction requirements.

Comment: Texas Council of Administrators of Special Education (TCASE) stated that the proposed rule does not mention provisions for off-campus instructional placements nor requirements related to ARD meetings.

Response: The agency provides the following clarification. As mentioned in TEC, §28.0211(i), accelerated instruction participation and progress can be reviewed at the next annual review meeting for a student receiving special education services. As mentioned in TEC, §28.0211(i-1), the school district may choose to provide accelerated instruction to a student who is in a homebound or other off-campus instructional setting when the student returns to an on-campus instructional setting.

Comment: TPCSA requested that school districts and charter schools be allowed to select a product that uses an automated, computerized, or other augmented method for providing supplemental instruction in lieu of group instruction as long as they can demonstrate that the product results in improved student outcomes based on TEC, §28.0211(a-12).

Response: The agency disagrees. Statute states that a school district may use a service provider that is not on a list of service providers approved by TEA as long as the service provider provides face-to-face or virtual tutoring and abides by the four-to-one ratio requirement when providing supplemental instruction. Statute also provides for TEA to approve products that use an automated, computerized, or other augmented method for providing supplemental instruction that may be used in lieu of individual or group instruction if evidence indicates that the product is more effective than individual or group instruction and that the products on the approved list will be the only products that will waive ratio requirements for providing supplemental instruction.

Comment: Texas Public Charter Schools Association and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business,

DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, proposed clarifying the language related to the waivers for accelerated instruction by removing proposed subsection (g).

Response: The agency agrees. At adoption, subsection (g) has been removed and the language in subsection (i) has been modified.

Comment: A school district employee commented that credit recovery is more than seat hours for students who have previously failed a course and proposed removing the final statement in proposed subsection (j)(2).

Response: The agency disagrees. Credit recovery does not meet the statutory requirements for supplemental instruction since credit recovery allows a student to earn credit for a course he/she previously failed without having to retake the course in its entirety. However, the agency agrees there is a difference between credit recovery requirements after failing a course and credit recovery requirements after excessive absences, and subsection (j)(1) has been modified at adoption to reflect that the credit recovery definition in subsection (j)(1) is limited to the rule.

Comment: Amira applauded the fidelity-usage requirements for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency agrees that student outcomes improve significantly when students use a product with fidelity.

Comment: Amira and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define what qualifies as an automated, computerized, or other augmented method.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Subsection (g) has been modified at adoption to describe products that use an automated, computerized, or other augmented method for providing supplemental instruction as products that do not require live in-person or online educators to deliver primary mode of instruction.

Comment: Amplify, Amira, and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, requested that the rule define the approval criteria for products that use an automated, computerized, or other augmented method for providing supplemental instruction.

Response: The agency disagrees as statute does not require that this information be included in rule. However, the agency provides the following clarification. Products listed on the Ratio Waiver List described in subsection (g) must provide evidence indicating that the product is more effective than individual or group instruction. This evidence must reflect that high fidelity usage of the product yields higher student outcomes than students who did not use the product. This criterion will be provided in all communications and guidance regarding products waiving the four-to-one ratio requirement.

Comment: Texas 2036 and Texas 2036, on behalf of Commit, Greater Houston Partnership, Texas Business Leadership Council, Texas Association of Business, DFER Texas, The Education Trust in Texas, Dallas Afterschool, Good Reason Houston, Longview Chamber of Commerce, E3 Alliance, and Teach for America Texas, proposed that the agency create accelerated instruction waiver criteria that monitors discrepancies and ensures that qualifying students receive much needed support.

Response: The agency disagrees. The one-year accelerated instruction waiver requirements ensure that all students receive the support needed to be academically successful. Because school districts and charter schools must meet these requirements yearly, schools must ensure they continue to support all students even when the accelerated instruction waiver is in place.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §28.0211, as amended by House Bill 1416, 88th Texas Legislature, Regular Session, 2023, which requires that students are provided accelerated instruction each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8 or fails to perform satisfactorily on an end-of-course assessment instrument administered under TEC, §39.023(c).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §28.0211, as amended by HB 1416, 88th Texas Legislature, Regular Session, 2023.

§104.1001. Accelerated Instruction and Modified Teacher Assignment.

(a) Definition of accelerated instruction. For purposes of this chapter, "accelerated instruction" means instruction required under Texas Education Code (TEC), §28.0211(a-1) and, if applicable, (a-4).

(b) Requirements for accelerated instruction.

(1) Each time a student fails to perform satisfactorily on an assessment instrument administered under TEC, §39.023(a), in Grades 3-8, or on an end-of-course assessment instrument administered under TEC, §39.023(c), other than an assessment instrument developed or adopted based on alternative academic achievement standards, the school district or open-enrollment charter school the student attends shall provide to the student accelerated instruction in the applicable subject area during the subsequent summer or school year and, subject to TEC, §28.0211(a-7) and (a-8), either:

(A) allow the student to be assigned a classroom teacher who is certified as a master, exemplary, or recognized teacher under TEC, §21.3521, for the subsequent school year in the applicable subject area; or

(B) provide the student supplemental instruction under TEC, §28.0211(a-4).

(2) The superintendent of each school district and chief administrative officer of each open-enrollment charter school shall establish procedures to ensure that each eligible student who is absent or does not receive a test score for any test administration shall receive appropriate accelerated instruction as warranted on an individual student basis.

(3) Paragraph (2) of this subsection may not be used to excuse a student from appropriate accelerated instruction required by this subsection.

(c) Participation in accelerated instruction. Accelerated instruction may require a student to participate before or after normal school hours and may include participation at times of the year out-

side normal school operations. Each school district and open-enrollment charter school shall be responsible for providing transportation to students required to attend accelerated instruction programs if the programs occur outside of regular school hours, unless the school district or charter school does not operate, contract, or agree with another entity to operate a transportation system.

(1) In providing accelerated instruction, a school district or an open-enrollment charter school may not remove a student from recess or from the foundation or enrichment curriculum as defined in TEC, §28.002, except under circumstances for which a student enrolled in the same grade level who is not receiving accelerated instruction would be removed. The foundation curriculum includes English language arts, mathematics, science, and social studies. Courses in the enrichment curriculum include languages other than English; health, with emphasis on physical health, proper nutrition, and exercise; mental health, including instruction about mental health conditions, substance abuse, skills to manage emotions, establishing and maintaining positive relationships, and responsible decision making; suicide prevention; physical education; fine arts; career and technical education; technology applications; religious literature; and personal financial literacy.

(2) In the event that a school week is three or less instructional days, the school is exempt from meeting the requirement of meeting once per week for accelerated instruction.

(d) Content and delivery of supplemental instruction. Supplemental instruction shall be based on, but not limited to, targeted instruction in the essential knowledge and skills for the applicable grade levels and subject areas and be provided by a person with training in the applicable instructional materials for the supplemental instruction and under the oversight of the school district or open-enrollment charter school. Supplemental instruction shall be provided as outlined in TEC, §28.0211(a-4)(1) and (2), to a student individually or in a group of no more than four students, unless the parent or guardian of each student in the group authorizes a larger group. School districts and charter schools choosing to provide supplemental instruction to a student under subsection (b)(1)(B) of this section shall provide students who fail to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1):

(1) no less than 15 hours of supplemental instruction; or

(2) no less than 30 hours of supplemental instruction for students who scored Low Did Not Meet Grade Level as indicated by state-provided district-level data files or failed to perform satisfactorily on any Grade 3 assessment.

(e) Accelerated education plans. For each student who does not perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), for two or more consecutive school years in the same subject area, the school district or open-enrollment charter school the student attends shall develop an accelerated education plan as described by TEC, §28.0211(f), and provide the student at least 30 hours of supplemental instruction. A school district or charter school shall make a good faith attempt to provide to the parent or guardian of a student to whom TEC, §28.0211(b), applies a parent-teacher conference with the student's primary teacher at the start and end of the subsequent school year. At the conference, the school district or charter school shall provide the student's parent or guardian with:

(1) the notice required under TEC, §28.0211(a-14); and

(2) an explanation of:

(A) the accelerated instruction to which the student is entitled under this section; and

(B) the accelerated education plan that must be developed for the student under TEC, §28.0211(f), and the manner in which the parent or guardian may participate in developing the plan.

(f) Request for teacher assignment. In accordance with TEC, §28.0211(a-5), the parent or guardian of a student who fails to perform satisfactorily on an assessment instrument specified under TEC, §28.0211(a-1), may follow established school district or open-enrollment charter school processes to request that the student be assigned to a particular classroom teacher in the applicable subject area for the subsequent school year if more than one classroom teacher is available.

(g) Approval of Ratio Waiver List products using automated, computerized, or other augmented method. The Texas Education Agency (TEA) shall approve one or more products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency. Products on the Ratio Waiver List do not require live, in-person or online educators to deliver primary mode of instruction. TEA may approve a product under this subsection only if evidence indicates that the product is more effective than the individual or group instruction required under TEC, §28.0211(a-4)(6).

(1) For the purposes of this subsection, the Ratio Waiver List consists of products that use an automated, computerized, or other augmented method for providing accelerated instruction under TEC, §28.0211(a-1)(2), that may be used in lieu of some or all of the individual or group instruction required under TEC, §28.0211(a-4)(6), as appropriate for the applicable grade level and subject area and a student's academic deficiency.

(2) School districts and open-enrollment charter schools may provide accelerated instruction using a product on the Ratio Waiver List on the TEA website with information related to accelerated instruction. The 4:1 student-to-teacher ratio requirement in subsection (d) of this section does not apply to a school district or charter school using a listed product to provide accelerated instruction to its students.

(3) School districts and open-enrollment charter schools shall:

(A) notify the parent or guardian of the use of a product on the Ratio Waiver List for providing the required accelerated instruction;

(B) ensure that the required hours of supplemental instruction are completed prior to the subsequent State of Texas Assessments of Academic Readiness (STAAR®) administration;

(C) use a product on the Ratio Waiver List remotely, regardless of primary mode of instruction (i.e., in-person, virtual, or hybrid) only if the school district ensures that time spent by the student engaged in the product is aligned with approved product usage expectations documented by the school district;

(D) adhere to the product usage fidelity requirements by product as approved by TEA to waive ratio requirements. A school district not fulfilling usage fidelity with a product will be required to revert to the 4:1 ratio for supplemental instruction as specified in subsection (d) of this section; and

(E) be responsible for contracting and funding the selected vendors included on the TEA list of approved vendors.

(4) Entities seeking Ratio Waiver List vendor approval shall follow a process required by TEA.

(h) Accelerated instruction waivers. Under TEC, §28.0211(q), the commissioner of education may waive requirements of accelerated instruction for a school district or an open-enrollment charter school as outlined in this subsection.

(1) For the purposes of this subsection:

(A) "significantly below satisfactorily" is defined as achieving a performance level of Low Did Not Meet Grade Level on a STAAR® mathematics or reading administration;

(B) "satisfactorily" is defined as achieving a performance level of Approaches or better on a STAAR® mathematics or reading administration; and

(C) "educationally disadvantaged" is defined as being identified in the Texas Student Data System Public Education Information Management System (TSDS PEIMS) as being eligible to participate in the national free or reduced-price lunch program established under 42 U.S.C. §1751 et seq.

(2) Only those subject areas for which two consecutive years of assessment instrument distribution can be positively identified (i.e., mathematics and reading) for all students based on their grade level shall be considered in the determination of this waiver.

(3) A school district or an open-enrollment charter school shall be eligible for the one-year waiver if it meets all of the following conditions when reviewing the most recent available year of STAAR® data:

(A) 60% of total students eligible to receive accelerated instruction in mathematics and 60% of total students eligible to receive accelerated instruction in reading score satisfactorily on the applicable subject area assessment instrument;

(B) 60% of students eligible to receive accelerated instruction who scored significantly below satisfactorily in the prior year score satisfactorily on the applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students receiving accelerated instruction scored significantly below satisfactorily in the prior year; and

(C) at least 50% of students receiving special education services or qualifying as educationally disadvantaged who received accelerated instruction in mathematics and/or reading score satisfactorily on the subsequent applicable subject area assessment instrument(s). This condition is only applicable if at least 10 students who received accelerated instruction receive special education services or qualified as educationally disadvantaged.

(4) TEA shall generate a yearly report that identifies all school districts and open-enrollment charter schools that meet all applicable conditions and are consequently eligible for the one-year waiver.

(5) Eligible school districts and open-enrollment charter schools shall be notified via TEA communication pathways upon the publication of the annual list.

(6) Upon distribution of the annual notification, eligible school districts and open-enrollment charter schools shall have 45 days to apply for the waiver using the Accelerated Instruction Waiver under TEA Login (TEAL).

(7) The one-year waiver application shall contain the following at minimum:

(A) the school district or open-enrollment charter school's name;

(B) the signature of the school district's superintendent or the chief administrative officer of an open-enrollment charter school;

(C) documentation of the approval of the board of trustees or governing board, as applicable; and

(D) an explanation of how the school district or open-enrollment charter school will evaluate the impact of the waiver on student performance.

(i) Repeating a high school course.

(1) For the purpose of this subsection, credit recovery means completing a certain number of assignments to satisfy the course requirements after failure or a certain number of seat hours after excessive absences.

(2) For courses taken for high school credit, a student who is required to repeat any course in which the student was enrolled in during the previous school year and who is eligible for accelerated instruction for the current school year is exempt from accelerated instruction requirements for that specific course if that course is retaken in its entirety (i.e., to earn a full credit). However, a student who is participating in credit recovery is still required to receive accelerated instruction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2024.

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Cristina De La Fuente-Valadez

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For further information, please call: (512) 475-1497



CHAPTER 157. HEARINGS AND APPEALS

SUBCHAPTER D. INDEPENDENT HEARING EXAMINERS

19 TAC §157.41

The State Board of Education (SBOE) adopts an amendment to §157.41, concerning certification criteria for independent hearing examiners. The amendment is adopted without changes to the proposed text as published in the March 1, 2024 issue of the *Texas Register* (49 TexReg 1241) and will not be republished. The adopted amendment reduces the length of time an attorney must be licensed and engaged in full-time practice to be eligible to serve as an independent hearing examiner and expands the experience requirements to include family law, criminal law, and personal injury law.

REASONED JUSTIFICATION: Chapter 157, Subchapter D, addresses criteria for the certification of hearing examiners eligible to conduct hearings.

During the rule review required under Texas Government Code, §2001.039, the SBOE requested that Texas Education Agency (TEA) staff present an amendment to §157.41 to modify the experience requirements for hearing examiners.

Subsection (d)(2) is amended to require that an independent hearing examiner must not have had his or her license reprimanded, suspended, or revoked within the last three years.

Subsection (d)(3) and (4) is amended to reduce the requirements that an independent hearing examiner must have been licensed to practice law and engaged in the practice of law on a full-time basis from five years to three years.

Subsection (e) is amended to expand the experience requirements to include family law, criminal law, and personal injury law.

These changes will allow more attorneys to qualify as hearing examiners. In some areas of the state, there are not sufficient numbers of hearing examiners.

The SBOE approved the amendment for first reading and filing authorization at its February 2, 2024 meeting and for second reading and final adoption at its April 12, 2024 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date will allow independent hearing examiners to be selected using the modified requirements as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began March 1, 2024, and ended at 5:00 p.m. on April 1, 2024. The SBOE also provided an opportunity for registered oral and written comments at its April 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §21.252(a), which requires the State Board of Education to establish certification criteria for independent hearing examiners.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §21.252(a).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2024.

TRD-202402016

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 26, 2024

Proposal publication date: March 1, 2024

For further information, please call: (512) 475-1497



PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

The State Board for Educator Certification (SBEC) adopts the repeal of 19 Texas Administrative Code (TAC) §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new §§228.1, 228.2, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53,

228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123, concerning requirements for educator preparation programs (EPPs). The repeal of §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new §§228.1, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123 are adopted without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8100) and will not be republished. New §228.2 is adopted with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8100) and will be republished. The adopted repeals and new sections reorganize the chapter to allow for improved readability; implement legislation; include technical updates to remove outdated provisions specific to the Residency Certificate; and reflect stakeholder feedback to further strengthen the rules.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, establish the requirements for educator preparation programs (EPPs) in the preparation of candidates for Texas educator certification.

The adopted repeal of and new 19 TAC Chapter 228 was initially driven by the following three primary goals prescribed by the SBEC and were informed by extensive stakeholder input. (1) Reorganize the chapter to support enhanced organization and readability, including the creation of subchapters and sections and the streamlining of redundancy to make the rules clearer and more user-friendly. Creating subchapters and sections enable the SBEC to update, modify, or remove requirements as SBEC priorities change and to implement legislation effectively and efficiently. (2) Create a residency preparation route leading to an enhanced standard certificate to recognize programs who have implemented this quality preparation pathway and recognize candidates who have completed this extensive preparation. A residency preparation route is an option for EPPs and is NOT a requirement. To both recognize and hold EPPs accountable, adding this into rule is a priority of the SBEC. (3) Codify foundational components of the SBEC's Educator Preparation Framework (EPF), which contain additional research-based best practices prioritized by the field.

Throughout extensive engagement with stakeholders in the Chapter 228 redesign process, additional opportunities to elevate the quality of educator preparation were surfaced and integrated into the draft rule text presented to the SBEC at its September 2023 meeting. The adopted new rules reflect additional edits informed by stakeholder input.

The following is a description of adopted new 19 TAC Chapter 228.

Subchapter A. General Guidance

§228.1. General Provisions

Adopted new §228.1 provides an overview of the purpose and goals of educator preparation in Texas.

§228.2, Definitions.

Adopted new §228.2 includes definitions from the adopted repeal of §228.2, with the addition of definitions for *analysis*, *assignment start date*, *authentic school setting*, *clinical experience*, *completer*, *co-teaching*, *enactments*, *host teacher*, *performance task*, *representations*, and *residency*, and revised definitions for *campus supervisor*, *classroom teacher*, *clinical teaching*, *educator preparation program*, *cooperating teacher*, *field-based experiences*, *enhanced standard certificate*, *late hire*, and *standard certificate*.

The adopted new definition of *assignment start date* sets the point at which the teacher candidate's internship experience starts for the purpose of field supervision and ongoing support of candidates as required.

The adopted new definition of *clinical experience* provides a common term in which to categorize the supervised clinical requirement for each certificate class, including clinical teaching, internship, practicum, and residency.

The adopted new definition of *authentic school setting* establishes that a candidate cannot count professional development, extracurricular activities, workdays when students are not present, or before or after-school childcare or tutoring as field-based experiences, 30 hours of which are required as pre-requisites for an intern certificate, and that field-based experience hours are allowable in a summer school setting.

The adopted new definition of *completer* matches the definition in 19 TAC §229.2(10), Definitions, to create consistency between chapters of SBEC rules.

The adopted new definitions of *cooperating teacher*, *mentor and site supervisor* were streamlined to remove the qualifications and duties of these positions that appear in the adopted repeal of 19 TAC Chapter 228. The qualifications and duties are adopted in new §228.93, Cooperating Teacher Qualifications and Responsibilities, §228.97, Mentor Qualifications and Responsibilities, and §228.99, Site Supervisor Qualifications and Responsibilities, respectively. These adopted new sections increase clarity and ease of reference so that the public no longer has to go to §228.2 to find definitions for this critical information.

The adopted new definition of *entity* was updated with a more specific list of the types of entities that act as EPPs.

The adopted new definition of *educator preparation program* defines the role of an entity approved by the SBEC.

The adopted new definition of *field-based experiences* was updated to include the adopted new defined term *authentic school setting* and adds that field-based experiences include both observation and interaction and are an element of coursework.

The adopted new definition of *field supervisor* was modified to improve readability and clarity.

The adopted new definition of *school day* specifies that conference periods, lunch periods, professional development, and extracurricular activities do not count as part of the school day for purposes of determining the length of a clinical teaching or internship experience.

The adopted new definition of *late hire* specifies that after the 45th day before the first day of instruction, an individual must be both accepted into an EPP and hired for a teaching position at a school district.

Definitions are also adopted for the following five terms from the EPF: *analysis*, *co-teaching*, *enactments*, *performance task*, and *representations*. The additions offer clarity to EPPs and candidates around the intended meaning of the terms, how and when they are applied in preparation and practice, and relevance to improving quality practices in approved programs. The additional definitions provide a common language in the effective preparation of candidates for certification.

The adopted new definitions of *school day* and *school year* provide flexibility by aligning them with the school calendars of the campuses on which the candidates are completing the clinical experiences.

The adopted new definitions of *enhanced standard certificate* and *standard certificate* mirror definitions adopted in new §230.1, Definitions, and align with the inclusion of *intern certificate* and *probationary certificate*.

To implement the Residency preparation route, the adopted new language in §228.2, Definitions, amends the definition of *campus supervisor* to include residency candidates along with intern candidates, and adds definitions of *host teacher*, *residency*, and *co-teaching*, to standardize the meaning of those terms.

§228.4, Declared State of Disaster

Adopted new §228.4 provides continuity of EPP processes during a declared state of disaster.

§228.6, Implementation Date

Adopted new §228.6 confirms the repeal of Chapter 228 and the provisions of new Chapter 228 are effective September 1, 2024.

Subchapter B. Approval of Educator Preparation Programs

§228.11, New Entity Approval

Adopted new §228.11 identifies the requirements that must be met by an entity seeking approval from the SBEC as an EPP. The adopted new rule authorizes the Texas Education Agency (TEA) to develop and identify the approval components to be included in the application. TEA staff can revise EPP applications as needed to align with the TEC and TAC.

Adopted new §228.11(a) requires that entities seeking to become an EPP take part in a workshop conducted by TEA staff to familiarize the entity with the SBEC rules.

Adopted new §228.11(a)(2) creates a limitation that an entity seeking initial approval cannot apply to offer more than five certificate categories within one certificate class. This limitation allows an entity to focus on high-quality preparation and provides TEA staff time to review application materials more efficiently.

Adopted new §228.11(a)(3) requires that an entity seeking approval must demonstrate that it has the staff, knowledge, and expertise to support individuals in each certificate category and class requested.

Adopted new §228.11(d) establishes the timing of the post-approval site visit to occur after the first year in which the new EPP reports that it has completers.

Adopted new §228.11(f) requires an entity seeking approval to have at least one location in Texas that provides candidate's a face-to-face setting for interacting with EPP staff as necessary.

§228.13, Continuing Educator Preparation Program Approval.

Adopted new §228.13 establishes the timeframe for EPP reviews.

Adopted new §228.13(b) establishes the types of continuing approval reviews--an onsite visit involves TEA staff going to the EPP's location, while a desk review is conducted remotely.

Adopted new §228.13(c) establishes the components of the risk assessment with regard to alignment with requirements in TEC, §21.0454.

Adopted new §228.13(d) requires a continuing approval review when an EPP consolidates with another EPP. This allows TEA staff to identify whether the surviving EPP is adequately supporting the candidates and certificate categories that it received.

Adopted new §228.13(e) requires an EPP undergoing a continuing approval review to pay the required fees prior to the start of the review. This prevents EPPs from attempting to evade or indefinitely delay payment.

Adopted new Figure: 19 TAC §228.13(f) sets out the required evidence of compliance that EPPs must create, maintain, and present during the continuing approval review.

Adopted new §228.13(f) incorporates the requirement that an EPP retain documents demonstrating a candidate's eligibility for admission and completion of requirements for five years from the date the candidate completes or leaves the EPP. The additions to adopted new §228.13(f) also specify that the EPP will be scored on a rubric developed and published by TEA staff and provide that 80% of records reviewed by TEA staff must meet or exceed the requirements.

Adopted new §228.13(g) allows EPPs participating in a Continuing Approval Review pilot to use that pilot to meet the requirements of the five-year continuing approval review.

§228.15, Additional Approval.

Adopted new §228.15(b) sets out the requirements for an EPP seeking approval from the SBEC to offer the residency route to certification. It requires the EPP to complete an application outlining its compliance with the residency requirements established within Chapter 228 and Chapter 230, which would be reviewed by the TEA and approved by the SBEC, and requires a post-approval site visit demonstrating compliance with rules once the EPP produces residency completers. Adopted new §228.15(b)(1) adopts in rule a figure that describes evidence sources to evaluate and approve residency applications. EPPs will be scored for approval on a rubric developed and published by TEA staff.

Adopted new §228.15(c) requires EPPs to apply for new certification classes or categories, references the applications that EPPs must complete when seeking to offer a new certificate class or category, and adds language about the parameters that must be used by TEA staff to develop the applications. The adopted new language in §228.15(c)(4) requires that an EPP have an accreditation status of Accredited to add new certificate categories and/or classes.

§228.17, Limitations on Educator Preparation Program Amendment

Adopted new §228.17 establishes the process through which an EPP can amend its program.

§228.19, Contingency of Approval

Adopted new §228.19 specifies that approval of an entity is contingent on approval by other governing bodies, including the Texas Higher Education Coordinating Board, board of regents,

and school district boards of trustees, and that continuing approval is contingent on compliance with state and federal law.

Subchapter C. Administration and Governance of Educator Preparation Programs

The subchapter title was updated to more accurately reflect that the adopted new rules focus on both the administration and governance of EPPs.

§228.21, Program Consolidation or Closure

Adopted new §228.21 states that closure rules apply to an EPP regardless of whether the EPP is closing fully or eliminating certificate classes and regardless of whether the closure is voluntarily or due to SBEC action.

Adopted new §228.21(a)(1) replaces August 31 as the effective date for EPP closure with a more flexible requirement that specifies an effective date of at least 90 days and no more than 270 days after the date of notification of closure or consolidation. This allows programs to choose a closure date that gives them enough time to fulfill the obligations to candidates.

Adopted new §228.21(a)(2) requires the EPP legal authority to communicate with the TEA on a scheduled basis so that staff from the closing program can seek guidance concerning questions and problems that arise during the close out phase, which ultimately benefits candidates and past finishers.

The adopted new rule text in §228.21(a)(3) expands the EPP's obligation to notify candidates of its closure to include candidates who have been enrolled within the last five years and completers within the last five years. This adopted new requirement ensures that candidates who may still need support or paperwork from the closing EPP are able to learn what options are available.

Adopted new §228.21(a)(5) requires closing EPPs to identify other EPPs to provide test approval and standard certification recommendations for completers at the closing EPP and to provide candidates with all necessary documentation to expedite the candidates' transfer. This allows candidates in a closing EPP an easier transition to another EPP and certification.

§228.23, Change of Ownership and Name Change

Adopted new §228.23(d) sets an exception to the general rule that EPPs cannot change their names without a change in ownership to allow colleges and universities to change their names when the entire college or university changes its name. The purpose of the original prohibition on EPP name changes was to prevent EPPs from changing names frequently to confuse or mislead the public.

Adopted new §228.23(e) requires EPPs to report to the SBEC annually any names that the EPP had used "doing business as" during the previous year so that the SBEC can make that information available to the public. By providing this information to consumers, the SBEC allows the public to better understand the true identity and performance history of an EPP.

§228.25, Governance of Educator Preparation Programs

Adopted new §228.25 establishes expectations of how EPPs should govern themselves and collaborate with other entities (i.e., education service centers or local education agencies) to effectively support the preparation and certification of candidates.

Adopted new §228.25(b) includes a specific requirement for the membership of EPP advisory committees that the committee

include at least three of the types of interest groups listed in adopted new §228.25(a).

Adopted new §228.25(d) sets out requirements for EPPs approved to offer a residency program to convene key personnel quarterly to review teacher residency implementation data, including candidate performance, to make shared programmatic decisions and inform the continuous improvement of the residency program.

Subchapter D. Required Educator Coursework and Training

§228.31, Minimum Educator Preparation Program Obligations to All Candidates

Adopted new §228.31 establishes general guidelines around expectations of services and supports that EPPs shall provide to all candidates.

Adopted new §228.31(a) specifies by when late hires need to complete admission, coursework, training, and field-based experience requirements.

Adopted new §228.31(b) requires EPPs to identify a dismissal point in their exit policy at which inactive candidates are removed from the EPP and allows a university-based EPP to adopt the university policy for inactive students that must reapply for admission.

Adopted new §228.31(c) requires an EPP to use benchmarks and formal and informal assessment data to design and implement appropriate interventions when needed to ensure continued, effective preparation for certification and teacher candidate support.

Adopted new §228.31(d) requires that an EPP must ensure candidates are adequately prepared to take all certification exams and not just the content pedagogy exams. This additional clarification was inadvertently left off during the initial reorganization of the chapter.

Adopted new §228.31(e) requires an EPP to grant test approval for a completer. If a candidate has returned to the EPP five or more years after completing the program requirements, the EPP may require the candidate to complete additional coursework or training.

Adopted new §228.31(f) limits when an EPP can prepare a candidate and grant test approval for a certificate category other than the one for which the candidate was initially admitted to the program. The candidate must meet the requirements for admission in the new certificate category, the EPP must provide coursework and training to the candidate in the new certificate category, and the EPP must ensure that the candidate is adequately prepared for the certification examination in the new certificate category. This prevents programs from admitting a candidate in one certificate category and switching them to another category for which the candidate is unqualified or unprepared.

Adopted new §228.31(h) requires the EPP to ensure candidates complete all requirements of coursework, training, and the clinical experience before being identified as a completer and being recommended for standard certification, unless the candidate qualifies for an exemption in §228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates.

§228.33, Preparation Program Coursework and/or Training for All Certification Classes

Adopted new §228.33 establishes coursework and training requirements that EPPs must provide to ensure candidate preparedness for certification and readiness for assignments.

Adopted new §228.33(a) specifies that educator effectiveness must be measured in the candidate's assignment.

Adopted new §228.33(b) creates specific requirements for the coursework and training EPPs provide candidates, including performance-based activities, evaluative tools, and required demonstration of proficiency by candidates.

Adopted new §228.33(c) clarifies that all coursework and/or training must be completed before a candidate is marked a finisher and recommended for either the standard or new enhanced standard certificate.

§228.35, Substitution of Applicable Experience and Training

Adopted new §228.35 specifies that EPPs must develop and implement procedures to allow military-related and non-military related candidates to substitute portions of educator certification requirements with applicable experience and training.

Adopted new §228.35(c) provides rule text specific to candidates seeking test approval for the Deafblind Supplemental Early Childhood-Grade 12 certification and candidates who have previously completed coursework related to the field in a program approved to offer the Deafblind Supplemental Early Childhood-Grade 12 certification. The language also indicates that programs may require additional coursework for test approval.

§228.37, Coursework and Training for Classroom Teacher Candidate

Adopted new §228.37 establishes the minimum required clock-hours of coursework and/or training required for initial classroom teacher certification and the Trade and Industrial Workforce Training certificate.

§228.39, Intensive Pre-Service

Adopted new §228.39(a) establishes the requirements that an EPP must provide prior to issuing an intern certificate under the intensive pre-service.

Adopted new §228.39(b) establishes the requirements for a candidate coach under intensive pre-service.

Adopted new §228.39(c) establishes the requirements that a candidate must complete to be eligible for an intern certificate under pre-intensive service.

Adopted new §228.39(d) provides that a candidate participating in intensive pre-service will be eligible for a probationary certificate as prescribed in §230.37(f), Probationary Certificates.

§228.41, Pre-Service Coursework and Training for Classroom Teacher Candidates

Adopted new §228.41(a) was revised in response to stakeholder feedback, increasing the hours required for field-based experiences from 30 to 50.

Adopted new §228.41(b)(11) requires coursework on instructional planning techniques and inclusive practices for students with disabilities to implement House Bill (HB) 159, 87th Texas Legislature, Regular Session, 2021.

Adopted new §228.41(b)(12) requires coursework on the use of open education resource instructional materials approved by the

State Board of Education (SBOE) to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

A reference to "performance tasks" reflects the incorporation of the EPF and its use of performance tasks that support integration of authentic performance tasks throughout the curriculum, in particular during the first 150 hours, which are required before the intern certificate."

§228.43, Pre-Service Field-Based Experiences for Classroom Teacher Candidates

Adopted new §228.43 establishes parameters around field-based experiences and related reflections and increase the required number of interactive hours from 15 to 25 and technology-based hours from 15 to 25 in response to stakeholder feedback.

Adopted new §228.43(c)(2) provides examples of activities in which candidates may engage during interactive experiences. Flexibility for completion of technology-based hours was added to allow substitute teaching hours.

§228.45, Coursework and Training Requirements for Early Childhood: Prekindergarten-Grade 3 Certification

Adopted new §228.45 requires that coursework and training provided is based on concepts and themes in §228.45(a) and not just in §228.45(a)(1).

§228.47, Coursework and Training Requirements for Bilingual Special Education Certification

Adopted new §228.47 sets the requirements for EPPs of candidates in bilingual special education and implements HB 2256, 87th Texas Legislature, Regular Session, 2021.

§228.49, Coursework and Training Requirements for a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12

Adopted new §228.49 provides specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12 certificate.

§228.51, Coursework and Training for a Deafblind Supplemental: Early Childhood-Grade 12

Adopted new §228.51 provides specific language related to the minimum number of clock-hours of coursework and/or training requirements for EPPs offering and candidates who are seeking the Deafblind Supplemental: Early Childhood-Grade 12 certificate.

§228.53, Coursework and Training for Non-Teacher Candidates

Adopted new §228.53 establishes coursework and training requirements for certification areas other than classroom teacher and ensures consistency in candidates' preparation that is directly aligned with the educator standards.

§228.55, Late Hire Candidates

Adopted new §228.55 establishes flexibilities and responsibilities related to beginning employment later than originally anticipated for candidates, local employment agencies, and EPPs.

Adopted new §228.55(c) requires an EPP to deactivate a candidate's intern or probationary certificate if the candidate is a late hire and does not complete the required pre-internship coursework and training within 90 days of the start of the internship.

This incentivizes EPPs to ensure that their candidates receive the required training timely and prevent untrained educators from staying in Texas classrooms.

§228.57, Educator Preparation Curriculum

Adopted new §228.57 requires that the educator standards adopted by the SBEC serve as the curricular foundation for all educator preparation and, for each certificate, the curriculum must address the relevant Texas Essential Knowledge and Skills.

Adopted new §228.57(c) expands on the varied and rich types of instructional opportunities that EPPs shall support candidates in experiencing. This aligns with information in the EPF and reinforces the expectation that candidates are practicing, and receiving feedback on that practice, throughout the program and reinforces the connected relationship between coursework, practice, and coaching.

Adopted new §228.57(c)(8)(c) requires EPPs to teach candidates about assessing students who are receiving virtual instruction and about how to implement virtual learning curriculum to implement Senate Bill 226, 87th Texas Legislature, Regular Session, 2021.

Adopted new §228.57(10) requires coursework on the use of open education resource instructional materials approved by the SBOE for the subject area and grade level of the candidate's certification category and prohibits coursework on instructional materials that incorporated "three-cueing" into foundational skills reading instruction to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

Subchapter E. Educator Candidate Clinical Experiences

§228.61, Required Clinical Experiences

Adopted new §228.61 provides an overview of the clinical experience required for candidates prior to standard certification.

Adopted new §228.61(a) establishes clinical experience options for candidates seeking teacher certification (clinical teaching, internship, or residency) and includes an alternative residency certification route.

Adopted new §228.61(b) requires that teacher candidates participating in an internship experience a full range of professional responsibilities, including the start of the school year, and provides flexibility to utilize field-based experiences, as needed, to meet this requirement.

Adopted new §228.61(c) identifies the practicum requirement for candidates pursuing certification in non-teacher certificate classes and sets the minimum number of clock hours required for completion of a practicum.

§228.63, Locations for Required Clinical Experiences

Adopted new §228.63 establishes the limitations on the location in which a candidate can have an internship, a clinical teaching, or a practicum experience.

Adopted new §228.63(a) was updated from authentic school setting to in-person Prekindergarten-Grade 12 setting to restore the meaning that the candidate must be in an assignment that is in-person in a physical classroom and not in a distance learning or virtual learning classroom.

The requirement in adopted new §228.63(c)(2) was updated to add site supervisor and identifies that the candidate completing a practicum cannot be related to the site supervisor.

Adopted new §228.63 establishes "residency" as a clinical experience across subsections (a)-(g).

§228.65, *Residency*

Adopted new §228.65 requires that the residency clinical experience include programmatic requirements to issue an enhanced standard certificate and requires the program to provide candidates with one full school year of clinical teaching, to include in the first and last day of school, in a classroom with a qualified host teacher in the classroom teaching assignment(s) that matches the certification category sought by the candidate. It also requires that the residency include a minimum of 750 hours in total, with a minimum of 21 hours per week during a school week that does not include closures or disruptions, and the program must document reduced clinical experience hours during weeks with closures or disruptions (see adopted new §228.61(a)). Candidates must complete a minimum of 700 hours in the event of life events such as bereavement, illness, or FMLA.

Adopted new §228.65(b) requires that the instructional setting include one distinct field site, with some exceptions for candidates seeking more than one certification category, Early Childhood-Grade 12 certification, and/or a significant human resources concern, with a limit of two field placements. Exceptions require documentation from both the EPP and partner district. Additionally, it requires that a candidate is co-teaching as lead instructor for at least 400 hours of the residency program.

Adopted new §228.65(c) establishes the requirements for determining a candidate's readiness for teaching, including requiring the EPP to manage candidate progress toward mastery of educator standards through administration of performance gates at least twice per semester, totaling at least four times a year. It also requires field supervisors to be responsible for assessing and evaluating candidate progression through the program.

Adopted new §228.65(d) specifies the circumstances under which an EPP no longer needs to provide ongoing support to a candidate.

Adopted new §228.65(c) requires the EPP, the district personnel, and the candidate to inform one another of the candidate's departure for any of the reasons stated in adopted new §228.65(d).

Adopted new §228.65(f) establishes the requirements for a candidate's eligibility for an enhanced standard certificate, including the requirements for issuance in §230.39(b) and the requirements in adopted new §228.65(a)-(c). Additionally, it defines the requirement for candidates to meet a Proficient performance level for all pedagogical skill dimensions. The dimensions listed are the same as those in 19 TAC §150.1002, Assessment of Teacher Performance, with the addition of the Instruction Dimension 2.3: Communication.

Adopted new §228.65(g) defines the requirements for successful completion of a residency, including proficiency in the educator standards and a shared recommendation from the host teacher, field supervisor, and campus administrator. If there is no consensus on the recommendation, documentation of why the candidate is not being recommended for a certificate is required to be submitted to the candidate and the field supervisor, host teacher, and/or campus administrator.

§228.67, *Clinical Teaching*

Adopted new §228.67 includes language that reflects stakeholder feedback and clarifies the duration of clinical teaching in a uniform requirement of 490 hours (the equivalent of 70 days).

In adopted new §228.67(b), the abbreviated clinical teaching allowed for maternity leave was expanded to parental leave in the interest of shared parental responsibility.

Adopted new §228.67(c) provides guidance for candidates seeking certification in more than one subject area to complete clinical teaching and confirms EPP and LEA training responsibilities and supports to ensure candidate success.

Adopted new §228.67(d) requires EPPs to structure the clinical teaching assignment in such a manner that candidates are provided co-teaching opportunities and additional experiences to have greater responsibility for the instruction being provided over the course of the clinical teaching assignment. This directly aligns with the requirement for the residency certification pathway that explicitly includes co-teaching and a gradual release of responsibility.

Adopted new §228.67(g) specifies that only the certification of the candidate or the discharge, release, or withdrawal of the candidate from the EPP relieves the EPP of the duty to support the candidate during clinical teaching.

§228.69, *Clinical Teaching While Employed as Educational Aide*

Adopted new §228.69 aligns with the requirements for clinical teaching.

In adopted new §228.69(c), the clinical teaching requirement previously allowed for maternity leave was expanded to parental leave in recognition of shared parental responsibility.

§228.71, *Exceptions to Clinical Teaching Requirement*

Adopted new §228.71 establishes the process EPPs utilize if they are unable to support candidates through the clinical teaching process specified in adopted new §228.67, Clinical Teaching.

Adopted new §228.71(b) requires an EPP to request an exception to the clinical teaching requirement by September 15, which coincides with the existing requirement that an EPP submit a written report on the results of a clinical teaching exception by September 15.

Adopted new §228.71(c)(3) requires TEA staff to present the EPP's report to the SBEC to determine whether the exception should be renewed and requires EPPs approved for an exception before September 1, 2022, to submit a report to the TEA by September 1, 2024. This gives the SBEC an opportunity to decide whether to renew exceptions annually rather than continue indefinitely.

§228.73, *Internship*

Adopted new §228.73(a) requires EPPs to verify that a candidate participating in an internship hold an active intern or probationary certificate.

Adopted new §228.73(g)(5) requires EPPs to request deactivation of the certificate of a late-hire candidate that failed to meet training requirements in a timely manner to parallel the requirement in adopted new §228.55(c), Late Hire Candidates.

In adopted new §228.73(c), the abbreviated internship previously allowed for maternity leave was expanded to parental leave in recognition of shared parental responsibility.

§228.75, Clinical Experience for Candidate Seeking Certification as Teacher of Students with Visual

Impairments (TVI) Supplemental: Early Childhood-Grade 12

Adopted new §228.75 provides specific language related to the clinical teaching requirements for candidates seeking the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certification.

§228.77, Clinical Experience for Candidate Seeking Deafblind (DB) Supplemental: Early Childhood-Grade 12 Certification

Adopted new §228.77 provides specific language related to the clinical teaching requirements for candidates seeking the Deafblind Supplemental: Early Childhood-Grade 12 certification.

§228.79, Exemptions from Required Clinical Experiences for Classroom Teacher Candidates

Adopted new §228.79 includes residency in existing exemptions included in subsections (a) and (b) to exempt candidates pursuing classroom teacher certificates from required clinical experiences.

§228.81, Clinical Experience for Certification Other Than Classroom Teacher

Adopted new §228.81 establishes requirements for EPPs and candidates on completing clinical experience in certificate classes other than classroom teacher.

Adopted new §228.81(f) specifies that only the certification of the candidate, or the discharge, release, or withdrawal of the candidate from the EPP, would relieve the EPP of the duty to support the candidate during the practicum experience.

Specificity was added to adopted new §228.81(d)(1) to include feedback from the candidate's site supervisor, which is responsive to stakeholder feedback and mirrors similar requirements added for clinical teaching and internships.

Subchapter F. Support for Candidates During Required Clinical Experiences

§228.91, Mentors, Cooperating Teachers, Host Teachers and Site Supervisors

Adopted new §228.91(a) establishes the shared responsibility of the EPP and district/campus administrator to determine selection criteria and develop a shared selection process to assign mentors, cooperating teachers, host teachers, and site supervisors to candidates as appropriate.

Adopted new §228.91(b) specifies for teacher residencies that the EPP and district/campus administrator share responsibility to assign host teachers to candidates, by determining the selection criteria and development of a scoring rubric.

Adopted new §228.91(c) requires a mentor or site supervisor be assigned within three-weeks of the start date of an internship or practicum and that a candidate not remain in a placement without an assigned mentor or site supervisor for longer than three weeks.

Adopted new §228.91(d) provides provisions for cooperating teacher, mentor, host teacher, or site supervisor selection if there is not an individual that matches the criteria for qualification.

Adopted new §228.91(e) requires the EPP to provide research-based training to mentors, cooperating teachers, host teachers, and site supervisors. An education service center or district en-

tity may provide that training with proper documentation of evidence shown in Figure: 19 TAC §228.13(f).

§228.93, Cooperating Teacher Qualifications and Responsibilities

Adopted new §228.93(a)(3) updates the training provided to the cooperating teacher by the EPP to include co-teaching strategies. The window of time in which training must be provided was expanded to twelve weeks before or three weeks after the candidate assignment.

In adopted new §228.93(a)(4), "not assigned to the clinical teacher" parallels language to the similar requirement for mentor teacher qualifications.

§228.95, Host Teacher Qualifications and Responsibilities

Adopted new §228.95(a) defines the requirements for host teachers as at least three creditable years of teaching experience (19 TAC Chapter 153, Subchapter CC, Commissioner's Rules on Creditable Years of Teaching Experience), recognition as an accomplished teacher demonstrated by at least three years of teacher evaluations with a proficient or above proficient appraisal rating, evidence of student growth and achievement impact, and other dispositional criteria defined by the EPP and district/campus administration partnership. Host teachers are required to be trained by the EPP at least twice per school year on best practices in coaching, mentoring, and co-teaching, cannot already be assigned as a field supervisor, and are required to hold a valid certificate in the certification category of the residency assignment.

Adopted new §228.95(b) establishes the duties of a host teacher to include supporting the candidate's development in a co-teaching model that allows for gradual release of the candidate to lead instruction, providing feedback and support on key dimensions such as classroom management and assessment, and reporting the candidate's progress during collaboration with the field supervisor at least monthly.

§228.97, Mentor Qualifications and Responsibilities

Adopted new §228.97(a)(5) provides flexibility to the training requirement for mentor teachers by expanding the window of time of the training to twelve weeks before or three weeks after the candidate's assignment start date.

§228.99, Site Supervisor Qualifications and Responsibilities

Adopted new §228.99 sets out the qualifications and responsibilities of a site supervisor in a separate subsection for ease of reference. Section 228.99(a)(3) provides flexibility to the training requirement for site supervisors by expanding the window of time in which the EPP must provide the training from three weeks to within twelve weeks before or three weeks after the candidate's assignment start date. This flexibility allows for training to occur before the start of school if needed.

§228.101, Field Supervisor Qualifications and Responsibilities

Adopted new §228.101(a) identifies the field supervisor must be an accomplished educator with experience and certification in the class of certificate being pursued by the candidate observed and the appropriate training for the role of field supervisor.

Adopted new §228.101(a)(4) requires that field supervisors of residency candidates are trained annually by the EPP in coaching, candidate evaluation, and co-teaching strategies and participate in school and district trainings as determined by the part-

nership. All other qualifications remain consistent with field supervisor qualifications for all other candidates.

Adopted new §228.101(a)(8) and (9) establish that a field supervisor must hold a current certification in which supervision is provided or, at a minimum, a master's degree in the academic area or field related to the certification area being supervised and compliance with continuing professional education requirements in Chapter 232, Subchapter A, Certificate Renewal and Continuing Professional Education Requirements.

Adopted new §228.101(b)(1) requires the supervision of each candidate be conducted by a field supervisor that has been trained annually by the EPP and completes the TEA-approved field supervisor training every three years. Field supervisors that have previously completed the TEA-approved training must renew the training by September 1, 2026. Field supervisors that hold valid Texas Teacher Evaluation and Support System (T-TESS) certification do not need to complete the TEA-approved field supervisor training.

Adopted new §228.101(b)(5)(A) requires that, at a minimum, field supervisors must provide informal observations and ongoing coaching, informed by the areas identified for improvement in the formal post-observation conference, at least three times per semester for at least 15 minutes for candidates in clinical teaching, internships, and practicum assignments, and must include observation and feedback on targeted skills.

The language in adopted new §228.101(b)(5)(B) requires that the first informal observation must occur within the first six weeks of the clinical teaching or internship assignment and must be in person, while providing flexibility for the remainder of informal observations to be conducted in person or virtually.

Adopted new §228.101(b)(5)(C) establishes that all informal observations for practicums may be conducted virtually.

Adopted new §228.101(b)(6) requires the first two informal observations for late hire candidates to be conducted in person within the first eight weeks of the candidate's start date to ensure early responsive support for teacher candidates who are entering the classroom as a teacher of record with limited previous preparation.

Adopted new §228.101(b)(7) requires informal observations for candidates in residency assignments.

Adopted new §228.101(b)(9)-(12) requires that the field supervisor must collaborate with the candidate and cooperating teacher, mentor and campus supervisor, or site supervisor, as applicable throughout the clinical experience and defines quality and frequency of the collaboration to ensure candidates receive consistent support.

§228.103, Formal Observations for Candidates in Residency Assignments

Adopted new §228.103(a) requires the EPP to provide the first formal observation within the first six weeks of the residency assignment.

Adopted new §228.103(b) requires two in-person 45-minute formal observations per semester that include pre- and post-observation conference with the candidate.

§228.105, Formal Observations for All Candidates for Initial Classroom Teacher Certification

Adopted new §228.105 sets out the requirements for formal observations that apply to all classroom teacher certification candidates regardless of their certification route.

§228.107, Formal Observations for Candidates in Clinical Teaching Assignments

Adopted new §228.107 sets out the observation requirements that apply specifically to clinical teaching. The observation requirements align with the duration of clinical teaching in adopted new §228.67, Clinical Teaching.

§228.109, Formal Observations for Candidates in Internship Assignments

Adopted new §228.109 sets out the observation requirements that apply specifically to internships. In response to stakeholder feedback, the number of formal observations conducted for candidates holding Probationary certificates was increased from three to five.

§228.111, Formal Observations for Candidates Employed as Educational Aides

Adopted new §228.111 sets out the observation requirements that apply specifically to candidates seeking to complete their clinical teaching while working as educational aides. In response to stakeholder feedback, the number of formal observations conducted was increased from three to four.

§228.113, Support and Formal Observations for Candidates Seeking Certification as Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12

Adopted new §228.113 sets out the observation requirements that apply specifically to candidates seeking supplemental certification as a Teacher of Students with Visual Impairments (TVI) Supplemental: Early Childhood-Grade 12.

Adopted new §228.113(c)(3) provides specification regarding the pre- and post-observation activities that must be conducted relative to the observation.

§228.115, Support and Formal Observations for Candidates Seeking the Deafblind Supplemental: Early Childhood-Grade 12 Certification

Adopted new §228.115 sets out the observation requirements that apply specifically to candidates seeking supplemental certification as a teacher of Deafblind Supplemental: Early Childhood-Grade 12 certification.

§228.117, Support and Formal Observations for Candidates Other Than Classroom Teacher

Adopted new §228.117 establishes the requirements for EPPs supporting candidates seeking certificates other than classroom teacher during the candidates' practicums.

Adopted new §228.117(b)(3) provides specification regarding when the pre-observation and post-observation activities should be conducted relative to the observation.

Subchapter G. Complaints and Investigations

§228.121, Complaints and Investigations Procedures

Adopted new §228.121(d)(3)(B) requires the EPP to respond to requests for more information during a complaint's investigation within 10 business days.

Adopted new §228.121(d)(4)(D) requires TEA staff to provide written notice to the EPP under investigation when TEA staff closes an investigation.

§228.123, Educator Preparation Program Responsibilities for Candidate Complaints

Adopted new §228.123(a) establishes that an EPP must adopt and send to TEA staff a complaint procedure that requires the EPP to timely attempt to resolve complaints at the EPP level before a complaint is filed with TEA staff.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024, meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: Several commenters stated that the proposed changes in 19 TAC Chapter 228 provide flexibility to EPPs and implement the residency program, creating well-prepared teachers to enter Texas classrooms.

Response: The SBEC agrees. The addition of the residency pathway, the inclusion of additional support for teacher candidates, and the added flexibility for EPPs to implement the rules are all strengths of new 19 TAC Chapter 228.

Comment: An individual commented that field-based experience should be increased to 50 hours for programs offering a full year of student teaching and that the requirement to include the first and last day of instruction will create additional hurdles for both districts and university based EPPs.

Response: The SBEC disagrees. The repeal of and new 19 TAC Chapter 228 sets the floor for required training hours. The increase to 50 field-based experience (FBE) hours and the requirement to include FBE as part of instructional experiences is required of all teacher candidates so that all will have equitable and meaningful pre-service experiences regardless of their certification route or clinical experience model. The SBEC disagrees with removing the requirement for first and last day of instruction from the Residency requirements. Existing residency EPPs, district stakeholders, and former residents have all been clear and consistent that the value of having residents experience the first and last day of school outweighs initial planning challenges.

Comment: An individual opposed the revision to §228.101(b)(1) because it would be costly to the field supervisor and/or EPP and unnecessary. Additionally, the commenter suggested that it should not be a requirement to retrain supervisors in the Texas Teacher Evaluation and Support System (T-TESS) every three years since there is no requirement to utilize T-TESS when observing candidates. The commenter noted that their own EPP uses the National Institute for Excellence in Teaching Rubric and is already required to recertify every year. The commenter suggested that EPPs have the ability to retain a waiver to not have to retrain field supervisors every three years in T-TESS if they use their own reliable rubric of choice.

Response: The SBEC disagrees. The rule does not require retraining in T-TESS but rather to maintain an active T-TESS certification as one of the options for field supervisor training. Field supervisors also can complete TEA's Field Supervisor Training every three years if that is preferable to T-TESS. Standardizing the training for field supervisors and requiring the approved train-

ing be completed every three years maintains equity in the field and ensures that all educators acting in a field supervisory role are utilizing up-to-date methods and best practices according to the SBEC.

Comment: An individual opposed the proposed repeal of and new 19 TAC Chapter 228. The commenter stated that the residency pathway is inequitable because it provides an advantage to EPPs and candidates who can afford a residency option and to districts who can afford to pay residents. The commenter argued that many districts are at a loss as to how they can locate funds to compensate residents without funding from the legislature. The commenter also stated that some candidates may be unable to secure a residency that matches their certification being sought and that residency programs are costly to EPPs because they require additional compensation for field supervisors. The commenter expressed concern that candidates will be able to complete clinical experience in one semester and that the September 1, 2024, implementation date does not provide EPPs enough time to make adjustments to the proposed changes. The commenter also expressed concern that proposed changes are not being communicated well enough with school district stakeholders.

Response: The SBEC disagrees. Implementation of a Residency route is completely optional for EPPs and would only be implemented by EPPs who establish the structures and partnerships necessary to support the Residency pathway. EPPs who choose to offer Residency pathways would collaborate with their partnering districts to recruit and prepare candidates in the needed certificate categories. A variety of programs currently offer residency-like supports in diverse geographical and programmatic settings, and technical assistance has been made available to EPPs and partnership districts since 2022 to implement sustainably paid residency models. In addition, the current options that allow candidates to complete clinical teaching in one semester or across two semesters per individual EPP requirements will continue to be available to all candidates in new Chapter 228. In preparation for implementation of the new requirements, EPPs should begin working on quality updates ahead of the September 1, 2024, implementation date, but EPPs will not be accountable for demonstrating the updates in a 5-year continuing approval review until the 2025-2026 academic year.

Comment: An individual opposed several components of the proposed repeal of and new 19 TAC Chapter 228. The commenter stated that §228.101(b)(5) and §228.107(b) will increase field observation costs at The University of Texas at San Antonio (UTSA) from approximately \$237,000 to almost \$500,000, which the commenter considers an unfunded mandate because Texas university systems promised the Texas Legislature not to raise fees. The commenter stated that the required nine observations in fourteen weeks in two-assignment situations as proposed in §228.107 is excessive and will likely result in UTSA no longer placing all-grades candidates in two assignments. The commenter questioned whether the extra observations are more valuable than the multi-grade experience. The commenter suggested that §228.31 is bad for candidates and universities in a myriad of ways.

Response: The SBEC disagrees. Regarding informal observations: the requirement to conduct informal observations exists in the current Chapter 228 and, therefore, would presumably already be built into the EPP's budget. The revised Chapter 228 adds specificity to improve clarity related to the SBEC's prioritization of the critical role informal observation and coaching plays in

teacher development. Furthermore, multiple EPP stakeholders have shared that they either were already conducting the minimum number of required informal observations in alignment with the previous Chapter 228 guidance, or that—because of the flexible nature of the rule—they will be able to implement informal observations in a cost neutral way. Regarding all-grade candidates in two placement assignments, additional formal observations are required in the currently adopted version of 19 TAC Chapter 228 for teacher candidates who complete clinical experiences in more than one certificate category that cannot be observed concurrently in the same class period. Finally, much of the new 19 TAC §228.31, Minimum Educator Preparation Program Obligations to All Candidates, is already existing in the current version of Chapter 228. Updates to areas, such as the EPP exit policy and requirements for candidates who request changes to their certification area after admission, provide more definition to rules that previously were not clear to EPPs or transparent for candidates and districts.

Comment: An individual commented in favor of the proposed repeal of and new 19 TAC Chapter 228. The commenter advised that one of the barriers to the implementation of a residency program for EPPs are the current regulations under 19 TAC Chapter 228, and that the proposed changes will provide EPPs the flexibility to engage in residency models and will favor a more rigorous preparation pathway. The commenter believes that the proposed repeal will lead to teacher candidates entering the profession with greater experience and confidence, helping teaching students reach their full potential.

Response: The SBEC agrees. The addition of the residency pathway, the inclusion of additional support for teacher candidates, and the added flexibility for EPPs to implement the rules are all strengths of new 19 TAC Chapter 228.

Comment: An individual opposed the proposed changes and advocated for the inclusion of all activities during a school day (including professional development, tutoring, conference periods, and extracurricular activities) be included as clinical teaching hours.

Response: The SBEC disagrees. Clinical teachers can participate in all school activities; however, only those hours that meet the subject area and grade level requirements can count for actual clinical teaching. This ensures that the candidate has authentic opportunities to learn and practice within the core instructional setting where they will be serving as a teacher of record.

Comment: Multiple commenters agreed with additional support such as non-evaluative observation and feedback for novice teachers through informal observations and coaching by their field supervisors. Multiple commenters stated that providing targeted touchpoints and supports at the beginning of the year will help teacher—candidates build a relationship with their EPP and specifically with their assigned field supervisor, so they see them as a resource meant to support their growth as a novice teacher.

Response: The SBEC agrees. The addition of specificity related to informal observations will ensure that candidates receive coaching and development rather than just formal evaluation. Concentrating field supervisor / candidate interactions at the beginning of the year will foster a strong connection between the candidate and their field supervisor.

The SBOE took no action on the review of the repeal of 19 TAC §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, and 228.70 and new

§§228.1, 228.2, 228.4, 228.6, 228.11, 228.13, 228.15, 228.17, 228.19, 228.21, 228.23, 228.25, 228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57, 228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81, 228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117, 228.121, and 228.123 at the April 12, 2024, SBOE meeting.

19 TAC §§228.1, 228.2, 228.10, 228.15, 228.17, 228.20, 228.30, 228.33, 228.35, 228.40, 228.50, 228.60, 228.70

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set

risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441;

21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2024.

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For further information, please call: (512) 475-1497



SUBCHAPTER A. GENERAL GUIDANCE

19 TAC §§228.1, 228.2, 228.4, 228.6

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an

accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional

or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

§228.2. *Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Academic year**--If not referring to the academic year of a particular public, private, or charter school or institution of higher education (IHE), September 1 through August 31.

(2) **Accredited institution of higher education**--An IHE that, at the time it conferred the degree, was accredited or otherwise approved by an accrediting organization recognized by the Texas Higher Education Coordinating Board.

(3) **Alternative certification program**--An approved educator preparation program, delivered by entities described in §228.25(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree from an accredited IHE.

(4) **Analysis**--examining teaching and/or instructional resources (e.g., student work samples, a video of teaching practices) to recognize key teaching practices enacted in a variety of ways, build understanding of the practice through repeated review, develop a shared vision for a teacher practice, and compare their own practice for improvement.

(5) **Assignment start date**--For an internship, clinical teaching, or residency, the first day of instruction with students. For a non-teacher practicum experience, the first day of the window in which the candidate is authorized by the EPP to begin the practicum experience.

(6) **Authentic school setting**--For the purpose of field-based experiences, during the school day and the school year and including summer school; not to include professional development, extracurricular activities, workdays when students are not present, and before- or after-school childcare or tutoring.

(7) **Benchmarks**--Reference points throughout the preparation process where candidates are assessed for progress toward completing EPP requirements (e.g., admission, passing a specific course or courses, passing a certification exam, completing preservice requirements).

(8) **Campus supervisor**--A school administrator or designee responsible for the annual performance appraisal of an intern or a candidate pursuing a residency certificate.

(9) **Candidate**--An individual who has been formally or contingently admitted into an EPP; also referred to as an enrollee or participant.

(10) Candidate coach--A person as defined in §228.39(b)(1)-(3) of this title (relating to Intensive Pre-Service) who participates in a minimum of four observation/feedback coaching cycles provided by program supervisors, completes a Texas Education Agency (TEA)-approved observation training or has completed a minimum of 150 hours of observation/feedback training, and has current certification in the class in which supervision is provided.

(11) Certification category--A certificate type within a certification class, as described in Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(12) Certification class--A certificate, as described in §230.33 of this title (relating to Classes of Certificates), that has defined characteristics; may contain one or more certification categories, as described in Chapter 233 of this title.

(13) Classroom teacher--An educator who is employed by a school or district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide, a full-time administrator, or a substitute teacher.

(14) Clinical experience--A supervised educator assignment through an EPP at a public school accredited by the TEA or other school approved by the TEA for this purpose where candidates demonstrate proficiency in the standards for the certificate sought and that may lead to completion of a standard certificate. Clinical experience includes clinical teaching, internship, practicum, and residency.

(15) Clinical teaching--A supervised teacher assignment through an EPP in the classroom of a cooperating teacher at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(16) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited IHE is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, residency, and practicum are actual hours spent in the required educational activities and experiences.

(17) Contingency admission--Admission as described in §227.15 of this title (relating to Contingency Admission).

(18) Completer--A person who has met all the requirements of an approved EPP; also referred to as finisher. In applying this definition, the fact that a person has or has not been recommended for a standard certificate or passed a certification examination shall not be used as criteria for determining who is a completer.

(19) Cooperating teacher--For a clinical teacher candidate, an educator who is collaboratively assigned by the EPP and campus administrator who supports the candidate during the clinical teaching experience.

(20) Co-teaching--A practice in which two or more teachers share instructional responsibility for a single group of students to address specific content and related learning objectives through a variety of approaches that best support the students' learning needs.

(21) Educator--An individual who is required to hold a certificate issued under TEC, Chapter 21, Subchapter B.

(22) Educator preparation program--An entity that is approved by the SBEC to prepare and recommend candidates for certification in one or more educator certification classes.

(23) Enactments--Opportunities to engage teacher candidates in sheltered/protected practice to develop a skill through such examples as doing student work, role playing student interactions, coached lesson rehearsals, and peer run throughs of a proposed lesson. Candidates should have the opportunity to receive feedback on current practice and integrate feedback into future practices.

(24) Enhanced standard certificate--A type of certificate issued to an individual who has met all requirements as specified in §230.39(b) of this title (relating to Enhanced Standard Certificates) under the teacher class of certificates.

(25) Entity--The individual, corporation, partnership, IHE, public school or school district that is approved to deliver an EPP.

(26) Field-based experiences--Introductory experiences for a classroom teacher certification candidate, incorporated with preparation coursework that involve, at the minimum, reflective observation of and interaction with Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in an authentic school setting.

(27) Field supervisor--A currently certified educator, who preferably has advanced credentials, hired by the EPP to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(28) Formal admission--Admission as described in §227.17 of this title (relating to Formal Admission).

(29) Head Start Program--The federal program established under the Head Start Act (42 United States Code (USC), §9801 et seq.) and its subsequent amendments.

(30) Host teacher--for a teacher resident candidate, an educator who is jointly assigned by the EPP and the campus administrator who supports the candidate through co-teaching and coaching during their teacher residency field placement.

(31) Initial certification--The first Texas certificate in a class of certificate issued to an individual based on participation in an approved EPP.

(32) Intensive pre-service--An educator assignment supervised by an EPP accredited and approved by the SBEC prior to a candidate meeting the requirements for issuance of intern and probationary certificates.

(33) Intern certificate--A type of certificate as specified in §230.36 of this title (relating to Intern Certificates) that is issued to a candidate who has passed all required content pedagogy certification examinations and is completing requirements for initial certification through an approved EPP.

(34) Internship--A paid supervised classroom teacher assignment for one full school year at a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(35) Late hire--An individual who is both accepted into an EPP after the 45th day before the first day of instruction and hired for a teaching assignment by a school after the 45th day before the first day of instruction or after the school's academic year has begun.

(36) Long-term substitute--An individual that has served in place of a teacher of record in a classroom for at least 30 consecutive days; also referred to as a permanent substitute.

(37) Mentor--For an internship candidate, an educator who is employed as a classroom teacher on the candidate's campus and who is assigned to support the candidate during the internship experience.

(38) Pedagogy--The art and science of teaching that incorporates instructional methods that are developed from scientifically based research.

(39) Performance task--An assessment in which the teacher candidate applies learning and demonstrates a discrete set of skills, resulting in a tangible product or performance that serves as evidence of learning. The assessment must be evaluated using a standard rubric or set of criteria and must not include multiple-choice questions.

(40) Post-baccalaureate program--An EPP, delivered by an accredited IHE and approved by the SBEC to recommend candidates for certification, that is designed for individuals who already hold at least a bachelor's degree and are seeking an additional degree.

(41) Practicum--A supervised educator assignment at a public school accredited by the TEA or other school approved by the TEA for this purpose that is in a school setting in the particular class for which a certificate in a class other than classroom teacher is sought.

(42) Probationary certificate--A type of certificate as specified in §230.37 of this title (relating to Probationary Certificates) that is issued to a candidate who has passed all required certification examinations and is completing requirements for certification through an approved EPP.

(43) Representations--Artifacts and illustrations of instruction used to help teacher candidates see and analyze strong teaching practices. Representations expose teacher candidates to and build understanding of specific criteria of effective teacher practices, as well as deepen their content knowledge for teaching. May include teacher educator modeling, student work, videos and transcripts.

(44) Residency--A supervised educator assignment for an entire school year through a partnership between an EPP and a public school accredited by the TEA or other school approved by the TEA for this purpose that may lead to completion of an enhanced standard certificate.

(45) School day--Actual school attendance days during the regular academic school year, including a partial day that students attend school for instructional purposes as adopted by the district or governing body of the school, excluding weekends, holidays, summer school, etc. For the purpose of completing clinical experiences, the school day must be at least four hours, including intermissions and recesses, but not including lunch periods, professional development, or extracurricular activities.

(46) School year--The period of time starting with the first instructional day for students through the last instructional day for students as identified on the calendar of the campus or district for the school year in which the candidate is completing the clinical experience.

(47) Site supervisor--For a practicum candidate, an educator who is assigned collaboratively by the campus or district administrator and the EPP and who supports the candidate during the practicum experience.

(48) Standard certificate--A type of certificate issued to an individual who has met all requirements for a given class of certification, as specified in §230.33 of this title.

(49) Students with disabilities--A student who is eligible to participate in a school district's special education program under Texas Education Code, §29.003, is covered by Section 504, Rehabilitation Act of 1973 (29 USC Section 794), or is covered by the Individuals with Disabilities Education Act (20 USC Section 1400 et seq.).

(50) Substitute teacher--An individual that serves in place of a teacher of record in a classroom in an accredited public or private school.

(51) Teacher of record--An educator who is employed by a school or district and who teaches in an academic instructional setting or a career and technical instructional setting not less than an average of four hours each day and is responsible for evaluating student achievement and assigning grades.

(52) Texas Education Agency staff--Staff of the TEA assigned by the commissioner of education to perform the SBEC's administrative functions and services.

(53) Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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For further information, please call: (512) 475-1497



SUBCHAPTER B. APPROVAL OF EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.11, 228.13, 228.15, 228.17, 228.19

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements

for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate;

TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. ADMINISTRATION AND GOVERNANCE OF EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.21, 228.23, 228.25

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of

educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on

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CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

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For further information, please call: (512) 475-1497



SUBCHAPTER D. REQUIRED EDUCATOR COURSEWORK AND TRAINING

19 TAC §§228.31, 228.33, 228.35, 228.37, 228.39, 228.41, 228.43, 228.45, 228.47, 228.49, 228.51, 228.53, 228.55, 228.57

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that

the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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SUBCHAPTER E. EDUCATOR CANDIDATE CLINICAL EXPERIENCES

19 TAC §§228.61, 228.63, 228.65, 228.67, 228.69, 228.71, 228.73, 228.75, 228.77, 228.79, 228.81

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the

results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term

substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4); 21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; 21.0441; 21.0442(c); 21.0443; 21.045(a); 21.0452, 21.0453; 21.0454; 21.0455; 21.046(b)-(c); 21.048(a); 21.0485; 21.0487(c); 21.0489(c); §21.04891; 21.049(a); 21.0491; 21.050(a)-(c); and 21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023; and Texas Occupations Code, §55.007.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. SUPPORT FOR CANDIDATES DURING REQUIRED CLINICAL EXPERIENCES

19 TAC §§228.91, 228.93, 228.95, 228.97, 228.99, 228.101, 228.103, 228.105, 228.107, 228.109, 228.111, 228.113, 228.115, 228.117

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate,

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§21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 475-1497



SUBCHAPTER G. COMPLAINTS AND INVESTIGATIONS

19 TAC §228.121, §228.123

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §§21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; TEC, §21.041(b)(1), which requires

the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for the issuance and renewal of an educator certificate; TEC, §21.044, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the SBEC to propose rules specifying what each educator is expected to know and be able to do, particularly with regard to students with disabilities, establishing the training requirements a person must accomplish to obtain a certificate, or enter an internship, and specifying the minimum academic qualifications required for a certificate. It also sets requirements for training, coursework, and qualifications that the SBEC is required to include; TEC, §21.0441, which requires the SBEC to set admission requirements for candidates entering educator preparation programs (EPPs) and specifies certain requirements that must be included in the rules; TEC, §21.0442(c), which requires the SBEC to create an abbreviated EPP for a person seeking certification in trade and industrial workforce training with a minimum of 80 hours of classroom instruction in certain specified topics; TEC, §21.0443, which requires the SBEC to set standards for approval and renewal of approval for EPPs, sets certain requirements for approval and renewal, and requires that the SBEC review each program at least every five years; TEC, §21.045(a), which requires the SBEC to create an accountability system for EPPs based on the results of certification examinations, teacher appraisals, student achievement, compliance with the requirements for candidate support, and the results of a teacher satisfaction survey; TEC, §21.0452, which requires the SBEC to make information about EPPs available to the public through its internet website and gives the SBEC authority to require any person to give information to the Board for this purpose; TEC, §21.0453, which sets requirements for information that EPPs must provide candidates and gives the SBEC rulemaking authority to implement the provision and ensure that EPPs give candidates accurate information; TEC, §21.0454, which gives the SBEC rulemaking authority to set risk factors to determine the Board's priorities in conducting monitoring, inspections, and compliance audits and sets out certain factors that must be included among the factors; TEC, §21.0455, which gives the SBEC rulemaking authority to establish a process for a candidate for teacher certification to direct a complaint against an EPP to the agency, requires that EPPs notify candidates of the complaints process, states that the SBEC must post the complaint process on its website, and states that the SBEC has no authority to resolve disputes over contractual or commercial issues between programs and candidates; TEC, §21.046(b), which requires the SBEC to allow outstanding teachers to substitute approved experience and professional training for part of the educational requirements in lieu of classroom hours; TEC, §21.046(c), which requires the SBEC to ensure that principal candidates are of the highest caliber and that there is a multi-level screening process, along with assessment programs, and flexible internships to determine whether a candidate has the necessary skills for success; TEC, §21.048(a), which requires the SBEC to prescribe comprehensive certification examinations for each class of certificate issued by the Board; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in

an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.0487(c), which requires the SBEC to propose rules related to approval of educator preparation programs to offer the Junior Reserve Officer Training Corps (JROTC) teacher certification and to recognize applicable military training and experience and prior employment by a school district as a JROTC instructor to support completion of certification requirements; TEC, §21.0489(c), which sets out the requirements for Early Childhood certification; TEC, §21.04891, which sets out the requirements for the Bilingual Special Education certification; TEC, §21.049(a), which requires the SBEC to propose rules providing for educator preparation programs as an alternative for traditional preparation programs; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; TEC, §21.050(a), which requires an applicant for teacher certification to have a bachelor's degree in a relevant field; TEC, §21.050(b), which allows the Board to require additional credit hours for certification in bilingual education, English as a second language, early childhood education, or special education; TEC, §21.050(c), which exempts people who receive a bachelor's degree while receiving an exemption from tuition and fees under TEC, §54.363, from having to participate in field-based experiences or internships as a requirement for educator certification; and TEC, §21.051, as amended by HB 4545, 88th Texas Legislature, Regular Session, 2023, which requires that candidates complete at least 15 hours of field-based experiences in which the candidate is actively engaged in instructional or educational activities under supervision involving a diverse student population at a public-school campus or an approved private school, allows 15 hours of experience as a long-term substitute to count as field-based experience, and gives the SBEC rulemaking authority related to field-based experiences; and Texas Occupations Code, §55.007, which requires all state agencies that issue licenses or certifications to credit military experience toward the requirements for the license or certification.

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The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §230.21(e) is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 17, 2024, issue of the Texas Register.)

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §§230.1, 230.21, 230.31, 230.101, and 230.105, and new §230.39, concerning professional educator preparation and certification. The amendments to §§230.1, 230.31, 230.101, and 230.105 and new §230.39 are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8137) and will not be republished. The amendment to §230.21 is adopted with changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8137) and will be republished. The adopted revisions redefine *pilot exam*; specify the timeline by which a passing score on a certification exam can be used for certification purposes; decrease the number of days to request a test limit waiver after an unsuccessful examination attempt; update the figure specifying the required pedagogy and content pedagogy certification exams for issuance of the probationary or standard certificate; remove certificate categories and examinations that are no longer operational; establish an Enhanced Standard certificate and fees for the teacher residency preparation route specified in adopted new 19 TAC Chapter 228, Requirements for Educator Preparation Programs; and update the list of ineligible certification by examination certificates to include the new Deafblind: Early Childhood-Grade 12 certificate. The adopted revisions also include technical edits to comply with Texas Register formatting and style requirements.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 230, Subchapter A, General Provisions, specify the general guidelines regarding professional educator preparation and certification. The SBEC rules in 19 TAC Chapter 230, Subchapter C, Assessment of Educators, specify the testing requirements for initial certification and for additional certificates based on examination. The SBEC rules in 19 TAC Chapter 230, Subchapter D, Types and Classes of Certificates Issued, define the types, classes, and issuance requirements for certificates. The SBEC rules in 19 TAC Chapter 230, Subchapter G, Certificate Issuance Procedures, specify appropriate procedures for the issuance of educator certificates. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

The following is a description of the adopted revisions to 19 TAC Chapter 230, Subchapters A, C, D, and G. The adopted revisions are reflective of the broader certification redesign efforts the SBEC has led since 2017 to develop rigorous and relevant certification exams in alignment with their statutory charge in Texas Education Code (TEC), §21.031, Purpose, to "ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state;" are responsive to associated rulemaking in the adopted repeal of and new 19 TAC Chapter 228, Requirements for Educator Preparation Programs, to implement a teacher residency preparation route and associated certificate; and implement House Bill (HB) 2256, 87th Texas Legislature, Regular Session, 2021.

Subchapter A. General Provisions

Adopted Amendment to 19 TAC §230.1

The adopted amendment adds §230.1(13) to define *enhanced standard certificate* to implement the certificate for the residency preparation route included in the 19 TAC Chapter 228 adoption. The adopted amendment to §230.1(18) amends the definition for *pilot exam*. This adopted amendment allows the SBEC to annually review, pilot, and collect data for certification exams to examine the impact of the exam's implementation on Texas candidates. The adopted amendment to §230.1(12) aligns the definition for *educator preparation program (EPP)* with 19 TAC Chapter 228 and Chapter 229, Accountability System for Educator Preparation Programs. Additional technical edits renumber the definitions to accommodate the addition of §230.1(13) and apply style requirements to cross references to statute, where applicable.

Subchapter C. Assessment of Educators

Adopted Amendment to 19 TAC §230.21(a)(3)(A)

The adopted amendment to §230.21(a)(3)(A) provides technical edits to align with the titles of §232.17 and §232.19.

Adopted Amendment to 19 TAC §230.21(a)(5)(D)

The adopted amendment to 19 TAC §230.21(a)(5)(D)(i) decreases the number of days a candidate can request a waiver after their fourth retake from 45 to 30 calendar days. The adopted amendment strikes 19 TAC §230.21(a)(5)(D)(ii) to remove the required delay before a candidate can reapply for a test limit waiver if the candidate's initial application was denied. This change allows candidates to become certified sooner if they are able to pass the examination on their next attempt.

Adopted Amendment to 19 TAC §230.21(e)

The adopted amendment to §230.21(e) updates the testing requirements for educator certification indicated in Figure: 19 TAC §230.21(e).

The adopted amendment to §230.21(e) specifies that for issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination under Figure: 19 TAC §230.21(e) for any one of the certificates sought. This change allows for educators to be issued probationary or standard certificates in more than one certification category by passing only one pedagogy certification exam. The rule had required that for issuance of each individual certificate, educators must take and pass the aligned pedagogy exam, which meant that educators pursuing certification in two certification categories through completion of the edTPA are required to take two edTPA certification exams. This change aligns with feedback from EPPs participating in the edTPA pilot that expressed concern about the expense and duplicative effort caused by the current rule.

Update to Figure Titles and Content Pedagogy Exam Requirements

The adopted amendment to Figure: 19 TAC §230.21(e) updates the column title from "Pedagogical Requirement(s)" to "Required Pedagogy Test(s)" to align the language of the title to the other test column in the figure, "Required Content Pedagogy Test(s)."

Published in the Adopted Rules section of this issue, the SBEC adopted amendments to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, that create six new classroom teacher certificate categories: Core/Special Education with the

Science of Teaching Reading/Special Education: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6; Core with the Science of Teaching Reading: Early Childhood-Grade 6; and Bilingual Special Education Supplemental: Early Childhood-Grade 12.

The adopted amendment to Figure: 19 TAC §230.21(e) adds certification exams, which are in development for the certification fields. The adopted amendment creates examinations for the Core with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; and Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and sets out a timeline for test development that matches the timeline for certificate issuance in the adopted amendments to 19 TAC Chapter 233 to begin no earlier than September 1, 2027.

The adopted amendment creates examinations for the Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6 and the Core/English as a Second Language with the Science of Teaching Reading: Early Childhood-Grade 6 certificates and sets out a timeline for test development that matches the timeline for the certificate issuance in the adopted amendments to 19 TAC Chapter 233 to begin no earlier than September 1, 2028.

The adopted set of Core: Early Childhood-Grade 6 certification exams aim to streamline exam content in the elementary grade band, removing the Fine Arts/Health/Physical Education subtest from the base Core Subjects assessment and adopting a set of redesigned assessments that integrate additional content areas, including English as a second language (ESL), special education, and bilingual education, with the goal of reducing the overall number of exams educators are required to take for certification. These redesigned exams are also informed by the redesign of 19 TAC Chapter 235, Classroom Teacher Certification Standards, pedagogy and English language arts and reading (ELAR) and math content pedagogy standards currently under development at the direction of the SBEC.

Finally, the adopted amendment establishes the required examinations for the Bilingual Special Education Supplemental: Spanish certificate, as required in HB 2256, 87th Texas Legislature, Regular Session, 2021. Based on stakeholder input, the certificate focuses specifically on Spanish language bilingual education and requires candidates to demonstrate proficiency in the adopted 187 Bilingual Special Education Texas Examinations of Educator Standards (TExES), which will be operational beginning September 2027, and the adopted 165 Bilingual Educator Spanish Supplemental TExES, which will be operational beginning September 2026.

Similarly, the adopted amendment to the figure specifies the exam requirements for the certificates recently adopted by the SBEC, including the Special Education Specialist: Early Childhood-Grade 12 and Deafblind: Early Childhood-Grade 12, which will be operational for candidates on September 1, 2025, to align with the initial issuance dates for the new certificates. When operational, the tests and certificates will replace the Special Education: Early Childhood-Grade 12 and Special Education Supplemental certificates. Therefore, the adopted amendment sets

August 31, 2025, as the last operational date for the Special Education: Early Childhood-Grade 12 exam.

The SBEC adopted updates to 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, to include the creation of a certification category, Tamil: Early Childhood-Grade 12, and the adopted amendment to Figure: 19 TAC §230.21(e) adds a certification exam for Tamil: Early Childhood-Grade 12. The exam will become operational for candidates on September 1, 2025, to align with the date for issuance of the certificate in 19 TAC Chapter 233.

The adopted amendment to Figure: 19 TAC §230.21(e) also adds the last operational date of August 31, 2024, for the following exams: English Language Arts and Reading 7-12 and Physical Education EC-12. These examinations are being replaced with updated exams, and the adopted amendment adds a first operational date of September 1, 2024, for English Language Arts and Reading 7-12 and Physical Education EC-12.

The adopted amendment to Figure: 19 TAC §230.21(e) adds an implementation timeline of no earlier than September 1, 2027, for the following exams: Reading Specialist EC-12 and School Librarian EC-12. These exams are necessary due to updates to the educator standards for the certificates in 19 TAC Chapter 239, Student Services Certificates. The timeline aligns with the test development timeline.

The adopted amendment to Figure: 19 TAC §230.21(e) also transitions to a new content pedagogy exam for Health: Early Childhood-Grade 12 on September 1, 2024. This amendment updates the exam based on current Texas Essential Knowledge and Skills and adds the last operational date of August 31, 2024, for the current Health: Early Childhood-Grade 12 exam.

Updates to Pedagogy Exam Requirements

The adopted amendment to Figure: 19 TAC §230.21(e) strikes "pilot exam" for all edTPA exams to indicate that the exams would no longer be considered pilot exams under adopted §230.1(18) and would be fully operational. The adopted changes maintain the current flexibility that provides a choice of either the Pedagogy and Professional Responsibilities (PPR) TEXES or the edTPA as a required pedagogy exam while ensuring that EPPs are held accountable for candidate performance on both exam options via the Accountability System for Educator Preparation (ASEP) by removing the "pilot" label from the edTPA.

EPP and Candidate Choice in edTPA Exams

The adopted amendment to Figure: 19 TAC §230.21(e) adds the 2151 edTPA: Career and Technical Education exam as a pedagogy exam option for the following certificates beginning on September 1, 2024: Technology Education: Grades 6-12; Family and Consumer Sciences, Composite: Grades 6-12; Human Development and Family Studies: Grades 8-12; Hospitality, Nutrition, and Food Sciences: Grades 8-12; Agriculture, Food, and Natural Resources: Grades 6-12; Business and Finance: Grades 6-12; and Marketing: Grades 6-12. This adopted amendment provides flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context if the EPP chose to require candidates to take the edTPA rather than the PPR for Trade and Industrial Education exam.

For the Core Subjects with the Science of Teaching Reading (STR): Early Childhood-Grade 6 certificate, the adopted amendment to Figure: 19 TAC §230.21(e) adds the following eight edTPA exams as pedagogy exam options in addition to the existing 2110 edTPA: Elementary Education: Literacy with

Mathematics Task 4 exam, beginning on September 1, 2024: 2001 edTPA: Elementary Literacy; 2002 edTPA: Elementary Mathematics; 2149 edTPA Elementary Education: Mathematics with Literacy Task 4; 2014 edTPA: Early Childhood Education; 2016 edTPA: Middle Childhood Mathematics; 2017 edTPA: Middle Childhood Science; 2018 edTPA: Middle Childhood English Language Arts; and 2019 edTPA: Middle Childhood History/Social Studies. The addition to the edTPA exams for certification in Core Subjects with STR: Early Childhood-Grade 6 provides flexibility for EPPs and candidates to select the edTPA exam that best aligns with their given instructional context from the permitted exams. For example, a candidate teaching in a fourth-grade science classroom would have the option to take the edTPA: Middle Childhood Science exam. This change is informed by feedback from EPPs participating in the edTPA pilot, that the requirements of the edTPA Elementary Education: Literacy with Mathematics Task 4 were difficult to meet given the candidate's classroom setting. This change allows flexible options for strong alignment between the classroom setting and edTPA exam for certification. Additionally, the adopted edTPA exam options allow candidates to choose a 15-rubric exam, such as for edTPA Elementary Literacy, which is less than the 18-rubric edTPA Elementary Education: Literacy with Mathematics Task 4 exam. This change reduces the overall number of tasks that elementary candidates would be required to complete in the submission of their edTPA portfolio.

Alternatives to edTPA for CTE and Junior Reserve Officers' Training Corps (JROTC) Candidates

The adopted amendment to Figure: 19 TAC §230.21(e) adds the option for candidates seeking CTE certificates to take the 370 Pedagogy and Professional Responsibilities for Trade and Industrial Education 6-12 TExES exam. The adopted implementation date is September 1, 2024.

The adopted amendment to Figure: 19 TAC §230.21(e) updates the content pedagogy exam requirement for the Junior Reserve Officer Training Corps (JROTC): Grades 6-12 certificate to be the 370 Pedagogy and Professional Responsibilities (PPR) for Trade and Industrial Education 6-12 TExES exam. There is no specific edTPA exam for JROTC certification, but the requirements for the certification field align with the requirements for trade and industrial education fields as these candidates can attain certification based on a certificate issued by one of the military branches. The 370 PPR for Trade and Industrial Education 6-12 exam is the most appropriately aligned pedagogy exam for JROTC.

Remove Retired Exams and Certificates

The adopted amendment to Figure: 19 TAC §230.21(e) also removes the following retired certificates and their associated exam requirements: Core Subjects: Early Childhood-Grade 6; Core Subjects: Grades 4-8; English Language Arts and Reading: Grades 4-8; and English Language Arts and Reading/Social Studies: Grades 4-8. Each of the certificates was discontinued and replaced by the new certificate name including "with the Science of Teaching Reading" and the required examinations in October 2020.

The adopted amendment to Figure: 19 TAC §230.21(e) strikes the following retired certification exams: 270 Pedagogy and Professional Responsibilities for Trade and Industrial 6-12; 153 Educational Diagnostician EC-12; 152 School Counselor EC-12; 117 English Language Arts and Reading: Grades 4-8; and 291 Core Subjects: EC-6.

Technical Edits

The adopted amendment to Figure: 19 TAC §230.21(e) removes the section headers labeled "Certification Type (continued)" to support streamlining and readability of the figure.

Adopted Amendment to 19 TAC §230.21(f)

The adopted amendment to §230.21(f) clarifies that a passing score on a certification exam can be used for certification for up to one year after the last operational date of the exam. This amendment provides clarity to the field on the last date that an educator may be recommended for certification with a passing score on an exam that is no longer operational.

Subchapter D. Types and Classes of Certificates Issued

Adopted Amendment to 19 TAC §230.31

The adopted amendment to §230.31 adds §230.31(a)(9), which includes the enhanced standard certificate to the types of certificates issued by the SBEC. Additionally, adopted new §230.31(e) creates an implementation date of September 1, 2024, for the issuance of the enhanced standard certificate; establishes that the certificate type is only issued for the teacher class of certificates, is valid for five years, and is subject to renewal; and requires individuals to meet requirements as specified in adopted new §230.39, Enhanced Standard Certificates.

Adopted New 19 TAC §230.39

Adopted new §230.39 describes the requirements for issuance of an enhanced standard certificate upon successful completion of a teacher residency, as prescribed in the 19 TAC Chapter 228 adoption and includes the requirements for renewal of the certificate.

Subchapter G. Certificate Issuance Procedures

Adopted Amendment to 19 TAC §230.101(a)

The adopted amendment to §230.101(a) adds the fee for the enhanced standard certificate in §230.101(a)(3) and the fee for on-time renewal in renumbered §230.101(a)(16).

Technical edits were also made in cross references to statute, where applicable, to implement style requirements.

Adopted Amendment to 19 TAC §230.105

The adopted amendment to §230.105 adds the Deafblind Supplemental: Early Childhood-Grade 12 certificate to the list of certificates that are not eligible for certification by examination in §230.105(4) and renumbers subsequent provisions to §230.105(5) and (6). This amendment emphasizes the specialized skills, knowledge, and training required to receive the Deafblind Supplemental: Early Childhood-Grade 12 certificate and aligns with statutory requirements in TEC, §21.0485. The adopted amendment to §230.105 adds the enhanced standard certificate to the types of certificates a teacher may hold to be eligible to add an additional certificate via the certification by examination route.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: A representative from the Texas Coalition of Educator Preparation commented in support of revisions to §230.1(18) and §230.21(e) of 19 TAC Chapter 230, Professional Educator Preparation and Certification, stating that the proposed revisions would allow for the expanded choice of exam instruments, allowing programs and candidates to choose an instrument that best met their programmatic needs. The commenter also commented in opposition to requiring a performance assessment as a certification exam, stating that performance assessments are appropriate only as formative tools to be embedded within program requirements.

Response: The SBEC agrees and disagrees. The SBEC agrees that the proposed update to the definition of pilot exam and the inclusion of a Texas-specific performance assessment would provide candidates and programs additional pedagogy exam options to meet their specific programmatic needs. The SBEC disagrees with the statement that performance assessments are appropriate only as formative tools. Performance assessments are appropriate for use as certification exams, and the SBEC is statutorily required to prescribe comprehensive examinations. The SBEC currently requires a performance assessment as a summative assessment for Principal as Instructional Leader certification.

Comment: A representative from Educate Texas commented in support of proposed new §230.39 commending the emphasis on hands-on, practice-based training and the differentiated residency preparation route and enhanced standard certificate. The commenter stated that the enhanced standard certificate would provide a clear signal to hiring districts about the additional practical preparation candidates received and their readiness to teach. The commenter stated that many Texas programs have been leading the way in implementing innovative residency models and the proposed new rule ensures more students have access to these types of opportunities.

Response: The SBEC agrees. The new Enhanced Standard certificate would distinguish candidates who successfully completed the residency preparation route and provide meaningful information to hiring districts.

Comment: An individual commented on proposed new §230.39, stating that a residency certificate should be approached with caution. The commenter stated that the success of the residency certificate would hinge on adequate funding, that the financial aspect would pose challenges for smaller rural schools, and that there would need to be standardization in terms of financial commitment from districts. The commenter stated that it would be crucial to emphasize the need for financial support from the TEA and State Board of Education (SBOE), stating that EPPs and districts would incur costs in implementing the residency model, which TEA and the SBOE should support.

Response: The SBEC disagrees. Implementation of the Residency Route associated with the Enhanced Standard certificate is completely optional for EPPs and would only be implemented by EPPs that establish the structures and partnerships necessary to support the Residency pathway leading to issuance of the certificate. EPPs that choose to offer Residency pathways would collaborate with their partnering districts to recruit and prepare candidates in the needed certificate categories. A variety of programs currently offer residency-like support in diverse geographical and programmatic settings and have done so for years without additional state funding sources. In addition, TEA has made technical assistance available to EPPs and partnership districts since 2022 to implement sustainably paid residency models.

Comment: An individual commented in opposition to the removal of the two-year classroom teaching requirement for certification as a school counselor, requesting the following proposed language be added to rule.

(a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately prior to application; (2) completes a mentorship under a certified school counselor for an entire school year; or (3) completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.

Response: The SBEC neither agrees nor disagrees. The public comment is outside the scope of the proposed rulemaking, as counselor requirements are included in 19 TAC Chapter 239, Student Services Certificates. The SBEC was directed to begin the rulemaking process in separate SBEC rulemaking to implement the change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with Senate Bill 798, 88th Texas Legislature, Regular Session, 2023.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §230.1

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, which may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and TEC, §22.082, which requires SBEC to subscribe to the criminal history clear-

inghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code, §54.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401888

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Director, Rulemaking

State Board for Educator Certification

Effective date: May 19, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 475-1497

SUBCHAPTER C. ASSESSMENT OF EDUCATORS

19 TAC §230.21

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which

states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

§230.21. *Educator Assessment.*

(a) A candidate seeking certification as an educator must pass the examination(s) required by Texas Education Code (TEC), §21.048, and the State Board for Educator Certification (SBEC) in §233.1(e) of this title (relating to General Authority) and shall not retake an examination more than four times, unless the limitation is waived for good cause. The burden of proof shall be upon the candidate to demonstrate good cause.

(1) For the purposes of the retake limitation described by TEC, §21.048, an examination retake is defined as a second or subsequent attempt to pass any examination required for the issuance of a certificate, including an individual core subject examination that is part of the overall examination required for the issuance of a Core Subjects certificate as described in §233.2 of this title (relating to Early Childhood; Core Subjects).

(A) A canceled examination score is not considered an examination retake.

(B) An examination taken by an educator during a pilot period is not considered part of an educator's five-time test attempt limit.

(C) Pursuant to TEC, §21.0491(d), the limit on number of test attempts does not apply to the trade and industrial workforce training certificate examination prescribed by the SBEC.

(D) A candidate who fails a computer- or paper-based examination cannot retake the examination before 30 days have elapsed following the candidate's last attempt to pass the examination.

(2) Good cause is:

(A) the candidate's highest score on an examination is within one conditional standard error of measurement (CSEM) of passing, and the candidate has completed 50 clock-hours of educational activities. CSEMs will be published annually on the Texas Education Agency (TEA) website;

(B) the candidate's highest score on an examination is within two CSEMs of passing, and the candidate has completed 100 clock-hours of educational activities;

(C) the candidate's highest score on an examination is within three CSEMs of passing, and the candidate has completed 150 clock-hours of educational activities;

(D) the candidate's highest score on an examination is not within three CSEMs of passing, and the candidate has completed 200 clock-hours of educational activities;

(E) if the candidate needs a waiver for more than one of the individual core subject examinations that are part of the overall examination required for the issuance of a Core Subjects certificate, the candidate has completed the number of clock-hours of educational activities required for each individual core subject examination as described in subparagraphs (A)-(D) of this paragraph up to a maximum of 300 clock-hours. The number of clock-hours for each examination may be divided equally based on the number of examinations in the waiver request, but the number of clock-hours for an examination shall not be less than 50; or

(F) if a CSEM is not appropriate for an examination, the TEA staff will identify individuals who are familiar and knowledgeable with the examination content to review the candidate's performance on the five most recent examinations, identify the deficit competency or competencies, and determine the number of clock-hours of educational activities required.

(3) Educational activities are defined as:

(A) institutes, workshops, seminars, conferences, interactive distance learning, video conferencing, online activities, undergraduate courses, graduate courses, training programs, in-service, or staff development given by an approved continuing professional education provider or sponsor, pursuant to §232.17 of this title (relating to Pre-Approved Continuing Professional Education Provider or Sponsor) and §232.19 of this title (relating to Approval of Private Companies, Private Entities, and Individuals as Continuing Professional Education Providers), or an approved educator preparation program (EPP), pursuant to Chapter 228, Subchapter B, of this title (relating to Approval of Educator Preparation Programs); and

(B) being directly related to the knowledge and skills included in the certification examination competency or competencies in which the candidate answered less than 70 percent of competency questions correctly. The formula for identifying a deficit competency is the combined total of correct answers for each competency on the five most recent examinations divided by the combined total of questions for each competency on the five most recent examinations.

(4) Documentation of educational activities that a candidate must submit includes:

(A) the provider, sponsor, or program's name, address, telephone number, and email address. The TEA staff may contact the provider, sponsor, or program to verify an educational activity;

(B) the name of the educational activity (e.g., course title, course number);

(C) the competency or competencies addressed by the educational activity as determined by the formula described in paragraph (3)(B) of this subsection;

(D) the provider, sponsor, or program's description of the educational activity (e.g., syllabus, course outline, program of study); and

(E) the provider, sponsor, or program's written verification of the candidate's completion of the educational activity (e.g., transcript, certificate of completion). The written verification must include:

(i) the provider, sponsor, or program's name;

(ii) the candidate's name;

- (iii) the name of the educational activity;
- (iv) the date(s) of the educational activity; and

(v) the number of clock-hours completed for the educational activity. Clock-hours completed before the most recent examination attempt or after a request for a waiver is submitted shall not be included. One semester credit hour earned at an accredited institution of higher education is equivalent to 15 clock-hours.

(5) To request a waiver of the limitation, a candidate must meet the following conditions:

(A) the candidate is otherwise eligible to take an examination. A candidate seeking a certificate based on completion of an EPP must have the approval of an EPP to request a waiver;

(B) beginning September 1, 2016, the candidate pays the non-refundable waiver request fee of \$160;

(C) the candidate requests the waiver of the limitation in writing on forms developed by the TEA staff; and

(D) the request for the waiver is postmarked not earlier than:

(i) 30 calendar days after an unsuccessful attempt at the fourth retake of an examination as defined in TEC, §21.048; or

(ii) 90 calendar days after the date of the most recent unsuccessful examination attempt that was the result of the most recently approved request for waiver of the limitation.

(6) The TEA staff shall administratively approve each application that meets the criteria specified in paragraphs (2)-(5) of this subsection.

(7) An applicant who does not meet the criteria in paragraphs (2)-(5) of this subsection may appeal to the SBEC for a final determination of good cause. A determination by the SBEC is final and may not be appealed.

(b) A candidate seeking a standard certificate as an educator based on completion of an approved EPP may take the appropriate certification examination(s) required by subsection (a) of this section only at such time as the EPP determines the candidate's readiness to take the examinations, or upon successful completion of the EPP, whichever comes first.

(c) The holder of a lifetime Texas certificate effective before February 1, 1986, must pass examinations prescribed by the SBEC to be eligible for continued certification, unless the individual has passed the Texas Examination of Current Administrators and Teachers (TECAT).

(d) The commissioner of education approves the satisfactory level of performance required for certification examinations, and the SBEC approves a schedule of examination fees and a plan for administering the examinations.

(e) The appropriate examination(s) required for certification are specified in the figure provided in this subsection. For issuance of a probationary or standard certificate in more than one certification category, a candidate must pass the appropriate pedagogy examination specified in the figure provided in this subsection for any one of the certificates sought.

Figure: 19 TAC §230.21(e)

(f) Scores from examinations required under this title must be made available to the examinee, the TEA staff, and, if appropriate, the EPP from which the examinee will seek a recommendation for certification. Candidates may use passing scores on an examination required

under this section for certification if the candidate is recommended for certification up to one year after the last operational date for the examination as prescribed in Figure: 19 TAC §230.21(e).

(g) The following provisions concern ethical obligations relating to examinations.

(1) An educator or candidate who participates in the development, design, construction, review, field testing, scoring, or validation of an examination shall not reveal or cause to be revealed the contents of the examination to any other person.

(2) An educator or candidate who administers an examination shall not:

(A) allow or cause an unauthorized person to view any part of the examination;

(B) copy, reproduce, or cause to be copied or reproduced any part of the examination;

(C) reveal or cause to be revealed the contents of the examination;

(D) correct, alter, or cause to be corrected or altered any response to a test item contained in the examination;

(E) provide assistance with any response to a test item contained in the examination or cause assistance to be provided; or

(F) deviate from the rules governing administration of the examination.

(3) An educator or candidate who is an examinee shall not:

(A) copy, reproduce, or cause to be copied or reproduced any test item contained in the examination;

(B) provide assistance with any response to a test item contained in the examination, or cause assistance to be provided;

(C) solicit or accept assistance with any response to a test item contained in the examination;

(D) deviate from the rules governing administration of the examination; or

(E) otherwise engage in conduct that amounts to cheating, deception, or fraud.

(4) An educator, candidate, or other test taker shall not:

(A) solicit information about the contents of test items on an examination that the educator, candidate, or other test taker has not already taken from an individual who has had access to those items, or offer information about the contents of specific test items on an examination to individuals who have not yet taken the examination;

(B) fail to pay all test costs and fees as required by this chapter or the testing vendor; or

(C) otherwise engage in conduct that amounts to violations of test security or confidentiality integrity, including cheating, deception, or fraud.

(5) A person who violates this subsection is subject to:

(A) sanction, including, but not limited to, disallowance and exclusion from future examinations either in perpetuity or for a period of time that serves the best interests of the education profession, in accordance with the provisions of TEC, §21.041(b)(7), and Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases); and/or

(B) denial of certification in accordance with the provisions of TEC, §21.041(b)(7), and Chapter 249 of this title; and/or

(C) voiding of a score from an examination in which a violation specified in this subsection occurred as well as a loss of a test attempt for purposes of the retake limit in subsection (a) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



SUBCHAPTER D. TYPES AND CLASSES OF CERTIFICATES ISSUED

19 TAC §230.31

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires

SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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19 TAC §230.39

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework

completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

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SUBCHAPTER G. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.101, §230.105

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.041(b)(1), (2), and (4), which require the State Board for Educator Certification (SBEC) to propose rules that provide for the regulation of educators and the general administration of TEC, Chapter 21, Subchapter B, in a manner consistent with TEC, Chapter 21, Subchapter B; specify the classes of educator certificates to be issued, including emergency certificates; and specify the requirements for the issuance and renewal of an educator certificate; TEC, §§21.044(a)-(f), which requires SBEC to make rules specifying what each educator is expected to know and be able to do, establishing training requirements that a candidate must accomplish to attain a certificate, and setting out the minimum academic qualifications required for certification. It also specifies certain required training and minimum academic qualifications for certification; TEC, §21.048, which states the SBEC shall propose rules prescribing comprehensive examinations for each class of certificate issued by the board that includes not requiring more than 45 days elapsing between examination retakes and that starting January 1, 2021, all candidates teaching prekindergarten through grade six must demonstrate proficiency in the science of teaching reading on a certification examination; TEC, §21.0485, which states that to be eligible for certification to teach students with visual impairments, a person must complete all coursework required for that certification in an approved EPP or alternative EPP, perform satisfactorily on required certification exams, and satisfy other requirements

established by the SBEC; TEC, §21.050(a), which states a person who applies for a teaching certificate must possess a bachelor's degree; TEC, §21.050(b), which states the SBEC shall provide for a minimum number of semester credit hours of field-based experience or internship; TEC, §21.050(c), which states a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; TEC, §22.082, which requires SBEC to subscribe to the criminal history clearinghouse as provided by Texas Government Code, §411.0845, and may obtain any law enforcement or criminal history records that relate to a specific applicant for or holder of a certificate issued under Chapter 21, Subchapter B; and Texas Occupations Code, §54.003, which states a licensing authority shall provide accommodations and eligibility criteria for examinees diagnosed as having dyslexia.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.041(b)(1), (2), and (4); 21.044(a)-(f); 21.048; 21.0485; 21.050; 22.082; and Texas Occupations Code (TOC) §54.003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §233.2, §233.8

The State Board for Educator Certification (SBEC) adopts amendments to 19 Texas Administrative Code (TAC) §233.2 and §233.8, concerning categories of classroom teaching certificates. The amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8150) and will not be republished. The adopted amendments to 19 TAC §233.2, Early Childhood; Core Subjects, adds five new core subjects-related certificates, and the adopted amendment to 19 TAC §233.8, Special Education, adds a new Bilingual Special Education Supplemental certificate.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates, establish separate certificate categories within the certificate class for the classroom teacher. These categories identify the content area or special population the holder may teach, the grade levels the holder may teach, and the earliest date the certificate may be issued.

Following is a description of the adopted amendments.

§233.2. *Early Childhood; Core Subjects.*

The adopted amendment in §233.2 adds the following five new certificates as new subsections (d)-(h): Core/Fine Arts/Physical Education/Health with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6; Core/Bilingual Education Spanish with the Science of Teaching Reading: Early Childhood-Grade 6; Core/English as a Second Language Supplemental with the Science of Teaching Reading: Early Childhood-Grade 6; and Core with the Science of Teaching Reading: Early Childhood-Grade 6.

The SBEC adopts the creation of these new certificates in response to stakeholder feedback and a longstanding goal to consolidate the total number of examinations individuals must take to become certified in various high-needs areas.

§233.8. *Special Education.*

The adopted amendment in §233.8 adds the Bilingual Special Education Supplemental certificate as new subsection (a) to ensure there are teachers with special training in providing instruction to students of limited English proficiency with disabilities. To qualify for issuance of the Bilingual Special Education Supplemental certificate, individuals must complete an EPP, pass a certification examination, and successfully complete any other requirements prescribed by the SBEC.

The SBEC deleted former §233.8(a), Core Subjects with Science of Teaching Reading/Special Education: Early Childhood-Grade 6, because the certificate is replaced by adopted new §233.2(e), Core/Special Education with the Science of Teaching Reading: Early Childhood-Grade 6.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education (SBOE) took no action on the review of the amendments to §233.2 and §233.8 at the April 12, 2024 SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, includ-

ing emergency certificates; TEC, §21.041(b)(3), which requires the SBEC to propose rules that specify the period for which each class of educator certificate is valid; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; TEC, §21.041(b)(6), which requires the SBEC to propose rules that provide for special or restricted certification of educators, including certification of instructors of American Sign Language; TEC, §21.044(e), which provides the requirements that SBEC rules must specify for a person to obtain a certificate to teach a health science technology education course; TEC, §21.044(f), which provides that SBEC rules for obtaining a certificate to teach a health science technology education course shall not specify that a person must have a bachelor's degree or establish any other credential or teaching experience requirements that exceed the requirements under TEC, §21.044(e); TEC, §21.0442, which requires the SBEC to create an abbreviated educator preparation program (EPP) for trade and industrial workforce training; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC. TEC, §21.048(a), also specifies that the commissioner of education shall determine the satisfactory level of performance required for each certification examination and require a satisfactory level of examination performance in each core subject covered by the generalist certification examination; TEC, §21.048(a-2), which requires the SBEC to adopt rules to require individuals teaching any grade level from Prekindergarten-Grade 6 to demonstrate proficiency in the science of teaching reading; TEC, §21.0487, which requires the SBEC to establish a standard Junior Reserve Officer Training Corps teaching certificate; TEC, §21.0489, which requires the SBEC to create a Prekindergarten-Grade 3 certificate; TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate; TEC, §21.0491, which requires the SBEC to create a probationary and standard trade and industrial workforce training certificate; and TEC, §22.0831(f)(1) and (2), which state the SBEC may propose rules regarding the deadline for the national criminal history check and implement sanctions for persons failing to comply with the requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1)-(4) and (6); 21.044(e) and (f); 21.0442; 21.048(a) and (a-2); 21.0487; 21.0489; 21.04891; 21.0491; and 22.0831(f).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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For further information, please call: (512) 475-1497



CHAPTER 239. STUDENT SERVICES
CERTIFICATES

SUBCHAPTER A. SCHOOL COUNSELOR CERTIFICATE

19 TAC §239.20

The State Board for Educator Certification (SBEC) adopts an amendment to 19 Texas Administrative Code (TAC) §239.20, concerning requirements for the issuance of the standard school counselor certificate. The amendment is adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8152) and will not be republished. The adopted amendment implements the statutory requirement of Senate Bill (SB) 798, 88th Texas Legislature, Regular Session, 2023, and updates the certificate issuance rules to remove the requirement that an individual must have two years of classroom teaching experience to receive a school counselor certificate.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 239, Student Services Certificates, Subchapter A, School Counselor Certificate, establish requirements for minimum admission, preparation, standards, certificate issuance, renewal, and transition and implementation dates for the school counselor certificate. These requirements ensure educators are qualified and professionally prepared to instruct the schoolchildren of Texas.

SB 798, 88th Texas Legislature, Regular Session, 2023, Requirements

SB 798, 88th Texas Legislature, Regular Session, 2023, took effect on September 1, 2023, and requires the SBEC to propose rules not later than January 1, 2024, to remove the requirement that a candidate for school counselor certification must have experience as a classroom teacher. The adopted amendment complies with the deadline given in legislation to initiate SBEC rulemaking.

Following is a description of the adopted amendment to 19 TAC Chapter 239, Subchapter A, §239.20, that updates the school counselor certificate issuance rule and implements the provisions of SB 798.

§239.20. Requirements for the Issuance of the School Counselor Certificate.

The adopted amendment to 19 TAC §239.20(4) strikes the text in its entirety and complies with provisions in SB 798 to remove the requirement of two creditable years of teaching experience as a classroom teacher as a condition for issuance of the school counselor certificate. Additional minor technical edits were made to reflect the deletion of this requirement.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began December 29, 2023, and ended January 29, 2024. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the February 16, 2024 meeting's public comment period in accordance with the SBEC board operating policies and procedures. The following public comments were received on the proposal.

Comment: Many individuals, including the Texas School Counselor Association, Texas Counseling Association, and current and retired school counselors, opposed the removal of the two-year classroom teaching requirement for certification as a school counselor. Among the individuals, the prevalent suggested rule change to 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, was as follows:

(a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately prior to application; (2) completes a mentorship under a certified school counselor for an entire school year; or (3) completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.

Numerous individuals stated that their time as classroom teachers was crucial to their success as school counselors and that the proposal to eliminate the two-year classroom teaching requirement for the school counseling certificate would be detrimental to the success of school counselors. The individuals presented several points in support of this opinion, including that school counselors are often in classrooms delivering lessons to students and must be familiar with classroom management, the basics of how a classroom works, and how to plan and deliver effective, engaging, and age-appropriate instruction. Several individuals also stated that being a classroom teacher for at least two years gives school counselors the unique opportunity to understand the dynamics and issues that students and teachers face in a school setting and can, therefore, better serve their campus population. One individual suggested that the two-year teaching requirement should be increased to five years.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023.

Comment: Several individuals shared dismay that the legislature removed the two-year classroom teaching qualification and recommended that the language in 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, be revised to include a mentorship requirement of one year for prospective school counseling certification candidates in order to ensure that school counselor certificate holders without classroom experience are adequately prepared to meet the demands of the position.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023. Any additional feedback on these rules that is not contradictory to the intent of SB 798 could be considered in the future following completion of the current rulemaking process.

Comment: An individual commented in support of removing the two-year classroom teaching requirement from 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, but recommended that language be added to provide for additional training to provide counseling services to Kindergarten-Grade 12 students. The commenter requested the addition of the following language in lieu of the two-year classroom teaching requirement:

That to be a school counselor, the person: (a) completed a minimum 48-hour master's degree in school counseling; or (b) completed a minimum 48-hour master's degree in counseling and: (1) has been licensed or certified as a school counselor in good standing in another state for at least two years immediately

prior to application; (2) completes a mentorship under a certified school counselor for an entire school year, completes a graduate non-degreed program of study in school counseling that aligns with the Texas Model for Comprehensive School Counseling Programs and is approved by the State Board for Educator Certification.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023. Any additional feedback on these rules that is not contradictory to the intent of SB 798 could be considered in the future following completion of the current rulemaking process.

Comment: An individual commented in support of removing the two-year teaching requirement for school counselors from 19 TAC §239.20, Requirements for Issuance of the Standard School Counselor Certificate, because it will create more opportunities for those seeking to work in schools.

Response: The SBEC neither agrees nor disagrees. The SBEC was directed to begin the rulemaking process to implement this change in requirements to issue the school counselor certificate no later than January 1, 2024, to comply with SB 798, 88th Texas Legislature, Regular Session, 2023.

Comment: An individual commented that they would like to see counselors (licensed professional counselors) have a pathway to add a school counseling certification through the licensing board or university programs.

Response: This comment is outside the scope of the required rulemaking to implement SB 798, 88th Texas Legislature, Regular Session, 2023.

The State Board of Education (SBOE) took no action on the review of the amendment to §239.20 at the April 12, 2024 SBOE meeting.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §21.031(a), which charges the State Board for Educator Certification (SBEC) with regulating and overseeing all aspects of the certification, continuing education, and standards of conduct for public school educators; TEC, §21.040(2), which states that the SBEC shall, for each class of educator certificate, appoint an advisory committee composed of members of that class to recommend standards for that class to the board; TEC, §21.041(a), which authorizes the SBEC to adopt rules as necessary to implement its procedures; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2)-(4), which require the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; the period for which each class of educator certificate is valid; and the requirements for issuance and renewal of an educator certificate; TEC, §21.041(b)(5), which requires the SBEC to provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to §21.052; TEC, §21.041(b)(9), which requires the SBEC to provide for continuing education requirements; TEC, §21.044(a)(2), which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; TEC, §21.0462,

as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023, which prohibits requiring candidates have experience as a classroom teacher; TEC, §21.048(a), which requires the SBEC to propose rules prescribing comprehensive examinations for each class of certificate issued by the SBEC and requires the commissioner of education to determine the satisfactory level of performance required for each certification examination and each core subject covered by the generalist certification examination; TEC, §21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023, which requires classroom teachers, principals, and school counselors to earn continuing professional education units in specific areas and directs the SBEC to propose rules relating to continuing professional education courses and programs for educators; and TEC, §22.0831(f), which states the board may propose rules to implement this section, including rules establishing: (1) deadlines for a person to submit fingerprints and photographs in compliance with this section; and (2) sanctions for a person's failure to comply with the requirements of this section, including suspension or revocation of a certificate or refusal to issue a certificate.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§21.031(a); 21.040(2); 21.041(a), (b)(1)-(5), and (9); 21.044(a)(2); 21.0462, as added by Senate Bill 798, 88th Texas Legislature, Regular Session, 2023; 21.048(a); 21.054, as amended by House Bill 2929, 88th Texas Legislature, Regular Session, 2023; and 22.0831(f).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

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For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 101. DENTAL LICENSURE

22 TAC §101.6

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.6, concerning dental licensing for military service members, military veterans, and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1842), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, this amendment requires the board to process a military service member, military spouse, or military veteran's applica-

tion for alternative licensing within 30 days from receipt of the application and to issue a license to a qualified applicant. Additionally, the amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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Proposal publication date: March 22, 2024
For further information, please call: (512) 305-8910



22 TAC §101.14

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §101.14, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1843), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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For further information, please call: (512) 305-8910



CHAPTER 102. FEES

22 TAC §102.1

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §102.1, concerning fees. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1845), and will not be republished.

The adopted amendment implements Section 257.002(c) - (c-1) of the Texas Occupations Code by requiring licensees whose license is expired for 90 days or less to pay a renewal fee that is equal to 1 1/2 times the normally required renewal fee, and whose license is expired for more than 90 days but less than one year to pay a renewal fee that is equal to two times the normally required renewal fee.

The adopted amendment requires dental hygienists to pay a fee to apply for a local infiltration anesthesia certificate in accordance with Sections 258.001 and 262.002 of the Texas Occupations Code, and 22 TAC §115.10.

The adopted amendment requires registered dental assistants to pay a fee to reactivate a retired registration, and to reinstate a cancelled registration, in accordance with 22 TAC §114.8 and §114.13.

The adopted amendment changes the Texas Online fee to implement the Fiscal Year 2024 Texas.gov Fee Schedule. The updated fees were lower resulting in an overall smaller fee.

The adopted amendment changes the National Practitioner Data Bank (NPDB) fee to implement the NPDB's increased continuous query fee from \$2.00 to \$2.50.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety, and Texas Occupations Code §254.004, which directs the Board to establish reasonable and necessary fees sufficient to cover the cost of administering the Board's duties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lauren Studdard
General Counsel
State Board of Dental Examiners
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CHAPTER 103. DENTAL HYGIENE LICENSURE

22 TAC §103.10

The State Board of Dental Examiners (Board) adopts amendments to 22 TAC §103.10, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1846), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the licensure and issue an authorization to practice recognizing the licensure within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 114. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL ASSISTANTS

22 TAC §114.5

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §114.5, concerning coronal polishing requirements for dental assistants. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1847), and will not be republished.

The intent of the adopted amendment is (1) to make it easier for dental assistants who have completed their training at a CODA-accredited program to begin coronal polishing without having to wait on gaining one year of work experience, and (2) to reduce the work experience requirement from two years to one year for dental assistants who did not graduate from a CODA-accredited program. Accordingly, the adopted amendment removes the work experience requirement for a dental assistant who graduated from a CODA-accredited program, and requires one-year work experience for a dental assistant who has not graduated from a CODA-accredited program before the dental assistant can apply to a CODA-accredited program to obtain coronal polishing education.

The following is a summary of the written comments the Board received, and the Board's responses:

The Texas Dental Hygienists' Association (TDHA) provided a written comment in opposition of adoption of the rule as proposed. TDHA attests the proposed changes will allow a non-CODA dental assistant with at least one-year experience to perform coronal polishing on a live patient. This length of time is less than that of a dental hygiene student enrolled in an accredited dental hygiene program, who must obtain two or more years of education prior to being able to perform coronal polishing. Additionally, one-year experience does not allow a dental assistant to acquire knowledge on such things as the principles of coronal polishing, intraoral anatomy, indications, contraindications, and complications associated with improper coronal polishing, infection control procedures, and jurisprudence related to coronal polishing. The Board disagrees with this comment because non-CODA dental assistants will need to complete an 8-hour course in accordance with subsection (c)(2) of this rule before they can perform coronal polishing on patients. No changes were made to this rule as a result of the comment.

The Texas Academy of Pediatric Dentistry (TAPD) provided a written comment in support of adoption of the rule as proposed. The TAPD supports the Board's recommendation to continue the eight-hour clinical and didactic education requirements in coronal polishing for dental assistants who obtain one year of experience. TAPD does not believe that reducing the work experience requirement of a dental assistant performing coronal polishing will harm patients, and 82% of its members agree the experience requirement for a dental assistant to perform coronal polishing should be reduced from the current two-year requirement. TAPD would like to continue working with the Board to revise this rule, including expanding the ways dental assistants can obtain coronal polishing education. Finding courses that provide coronal polishing education is difficult for Texans who do not live in areas where there is a dental school, dental hygiene school or dental assisting program. Expanding who can teach a coronal polishing education course to include dentists who have com-

pleted teaching training modules approved by the TSBDE will allow greater access to coronal polishing education. No changes were made to this rule as a result of the comment.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of adoption of the rule as proposed. No changes were made to this rule as a result of the comment.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes were made to this rule as a result of the comment.

Cathy Nobles, RDH provided a written comment in opposition of adoption of the rule as proposed. She does not believe dental assistants with less than two years of experience would be ready to coronal polish patients. She asks: Is coronal polishing included in the curriculum in the CODA-accredited assisting classes? Or would those graduates of the one-year CODA accredited schools still have to take the coronal polishing class upon graduation? She states if they do not have polishing included in the curriculum, they would not be wasting what they learned by staying on the two-year waiting period. The Board made no changes to this rule as a result of this comment because a CODA-accredited school is required to follow the requirements set by the Board. Since this rule requires coronal polishing education, coronal polishing will be included in the CODA-accredited school's curriculum.

Prashant Harjai (Program Manager, HCC Coleman College for Health Sciences) provided a written comment, but did not indicate whether he supported or opposed adoption of the rule as proposed. Rather, he asked whether the proposed changes in this rule will also be implemented to the pit and fissure sealant requirements for dental assistants. He states implementing the same changes to the pit and fissure sealant rule may make it easier to track the eligibility and scope of practice requirements for dental assistants, unless the Board anticipates that it may negatively impact the health and safety of patients. The Board anticipates that it will review board rule 22 TAC §114.3, which pertains to dental assistants applying pit and fissure sealants, to determine whether to implement the same changes that were proposed in this rule. No changes were made to this rule as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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22 TAC §114.7

The State Board of Dental Examiners (Board) adopts this amendment to 22 TAC §114.7, concerning exemption from licensure for certain military service members and military spouses. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1848), and will not be republished.

The purpose of the adoption is to implement Senate Bill (S.B.) 422, 88th Legislature, Regular Session (2023), which amended Texas Occupations Code Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. Specifically, the adopted amendment includes "military service members" in the title and makes the rule applicable to military service members in addition to military spouses. The adopted amendment also adds a requirement that the Board verify the registration and issue an authorization to practice recognizing the registration within 30 days of the date a military service member or military spouse submits the information required by the rule. The adopted amendment further provides that, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation until the third anniversary of the date the spouse received the authorization to practice. Additionally, the adopted amendment includes language to specify that this rule does not modify or alter rights that may be provided under federal law, and corrects clerical errors.

No comments were received regarding adoption of this rule.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with state laws relating to the practice of dentistry to protect the public health and safety.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 115. EXTENSION OF DUTIES OF AUXILIARY PERSONNEL--DENTAL HYGIENE 22 TAC §115.10

The State Board of Dental Examiners (Board) adopts new rule 22 TAC §115.10, concerning the administration of local infiltration anesthesia by a dental hygienist. The adopted new rule pertains to the certification and standards for the administration of a local anesthetic agent by a dental hygienist as set out in House Bill 3824 of the 88th Texas Legislature, Regular Session (2023), and codified at Sections 258.001 and 262.002 of the Texas Occupations Code. This rule is adopted with no changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1850), and will not be republished.

This rule was initially published in the December 15, 2023, issue of the *Texas Register*. As a result of stakeholder feedback, the Board voted to re-propose this rule with changes at its February 16, 2024 meeting. The re-proposal was published in the March 22, 2024, issue of the *Texas Register*.

The following is a summary of the written comments the Board received, and the Board's responses:

The Texas Dental Hygienists' Association (TDHA) provided a written comment in support of adoption of the rule as proposed. No changes to this rule were made as a result of the comment.

The Texas Dental Association (TDA) provided a written comment in support of adoption of the rule as proposed. No changes to this rule were made as a result of the comment.

The Texas Society of Periodontists (TSP) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request to lower the required amount of continuing education hours from 6 hours to 4 hours every two years. The Board lowered the amount of required continuing education hours to 2 hours every two years. Additionally, the continuing education requirement is in addition to any additional courses required for licensure.

The Texas Academy of General Dentistry (TAGD) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request (1) to lower the required amount of continuing education hours from 6 hours to 2 hours every two years, and (2) that the rule use the same "direct supervision" definition found in board rule 22 TAC §115.1, but to also include that a hygienist should be required to make the dentist aware of any changes in the patient's condition while undergoing a procedure. The Board agreed to lower the amount of required continuing education hours to 2 hours every two years. Additionally, the continuing education requirement is in addition to any additional courses required for licensure. The Board agreed to include a definition of "direct supervision", however the Board decided to mirror the definition found in board rule 22 TAC §110.1(7) and the language in Section 258.001(5)(B).

The Texas Society of Anesthesiologists (TSA) provided a written comment in support of adoption of the rule as initially proposed in the December 15, 2023, issue of the *Texas Register* with a request that the rule use the same "direct supervision" definition found in board rule 22 TAC §110.1(7). The Board agreed, and implemented the request by mirroring the definition found in 22 TAC §110.1(7) and the language in Section 258.001(5)(B).

One commenter provided a written comment, but did not indicate whether he supported or opposed adoption of the rule as proposed. Rather, he asked the following questions: (1) Will the provider be required to submit the course to the Board for review and approval? (2) Will the provider be required to submit the course to approvers specified by the Board for review and approval? or (3) Will there be other guidelines for course approval? The Board will not need to approve any courses because the rule requires a CODA-approved program and/or a substantially equivalent education with three years of practice. No changes to this rule were made as a result of the comment.

This rule is adopted under Texas Occupations Code §254.001(a), which gives the Board authority to adopt rules necessary to perform its duties and ensure compliance with

state laws relating to the practice of dentistry to protect the public health and safety; and Texas Occupations Code §254.004, which give the Board authority to establish reasonable and necessary fees.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 88. STATE LONG-TERM CARE OMBUDSMAN PROGRAM

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §§88.2, 88.101, 88.102, 88.104, 88.105, 88.201, 88.305, 88.307, 88.403, 88.404, 88.406, and 88.501; new §§88.106, 88.107, 88.202, 88.405, 88.407, 88.408, 88.409, 88.601, 88.602, and 88.603; and the repeal of §§88.309, 88.405, and 88.407.

The amendments to §§88.101, 88.305, 88.307, new §§88.106, 88.107, 88.202, 88.405, 88.407, 88.409, 88.601, 88.602, and 88.603, and repeal of §§88.309, 88.405, and 88.407 are adopted without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466). These rules will not be republished.

The amendments to §§88.2, 88.102, 88.104, 88.105, 88.201, 88.403, 88.404, 88.406, and 88.501, and new §88.408, are adopted with changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The State Long-Term Care Ombudsman Program (Ombudsman Program) is a federally and state funded program authorized by §711 and §712 of the Older Americans Act (Title 42 United States Code §3058f and §3058g). The Ombudsman Program protects and advocates for the health, safety, welfare, and rights of residents of nursing facilities and assisted living facilities.

The adopted rules implement a recent change to §306(a)(9) of the Older Americans Act regarding the minimum expenditure an Area Agency on Aging must make under its area plan in carrying out the Ombudsman Program. The adopted rules also provide that, at the discretion of the State Ombudsman, certain state general revenue funds allocated for Ombudsman Program functions may not be included in determining the amount of funds spent to meet this expenditure requirement to ensure that a larger amount of funds is used for the Ombudsman Program.

In response to a public comment, the adopted rules add a nursing facility component to the funding formula for allocation of state general revenue funds to allow for a more equitable distribution of funds to host agencies.

The adopted rules address Title 45, Code of Federal Regulations (45 CFR), §1324.19(b)(7) regarding a certified ombudsman's referral of a complaint about actions of a resident's legally authorized representative to the appropriate agency for investigation. The rules address 45 CFR §1324.11(e) and §1324.19(b) regarding documentation of consent.

The adopted rules address a requirement in 45 CFR §1324.11(e)(2), regarding the Office of the State Long-Term Care Ombudsman (the Office) and a certified ombudsman obtaining a copy of a record from a long-term care (LTC) facility upon request.

The adopted rules include the term "informed consent," including a description of how informed consent may be given, to be consistent with 45 CFR Part 1324.

In response to a public comment, the adopted rules add a definition of "incident report" to clarify the meaning of the term.

The adopted rules require a certified ombudsman to, at the request of an LTC facility, provide a completed HHSC form to the facility at the time the certified ombudsman is requesting access to a confidential record concerning a facility resident to help ensure a record of the request for access exists.

The adopted rules require a host agency to submit a plan of correction to the Office for review and approval by the Office if, as the result of a desk review, the Office sends a written report containing a finding to the host agency and local ombudsman entity.

The adopted rules describe the actions taken if the Office determines that a host agency is not in compliance with Chapter 88, Subchapter E and the determination is not based on onsite monitoring or a desk review.

The adopted rules describe the sanctions that may be imposed on a host agency if the host agency does not complete an action in accordance with an approved plan of correction or an approved modified plan of correction resulting from onsite monitoring, a desk review, or a determination of non-compliance not based on onsite monitoring or a desk review.

The adopted rules include additional performance measures that relate to current Ombudsman Program requirements so that the Office can more thoroughly monitor the progress of a local ombudsman entity's compliance with the requirements. In addition, the adopted rules remove a performance measure regarding the number of assisted living facilities that will receive at least one visit by a certified ombudsman. This performance measure is being removed because it is not as meaningful a marker of compliance as the performance measure regarding the number of visits to assisted living facilities by certified ombudsmen that will occur during a federal fiscal year.

The adopted rules remove the process that allows a host agency to request that an approved performance measure projection be revised. This process was established by the HHSC Office of Area Agencies on Aging and is being removed because the process is no longer in place.

The adopted rules change the term "state fiscal year" to "federal fiscal year" to make time periods consistent and to make compliance with requirements related to the time periods less compli-

cated. The adopted rules increase the variance that measures whether a local ombudsman entity is in compliance with certain performance measures and performance measure projections. This increase in variance will help compensate for unforeseen circumstances that hinder compliance by a local ombudsman entity.

The adopted rules include a process for the submission of a grievance about the performance of the State Ombudsman or a representative of the Office who is an employee or volunteer of HHSC.

The adopted rules change the timeframe by which a local ombudsman entity must enter information about activities and casework into the ombudsman database to help ensure the accuracy and completeness of the information entered.

The adopted rules incorporate current policies and procedures related to the Ombudsman Program, including the submission and review of an Ombudsman Staffing Plan form and not reimbursing a host agency if the form is not approved by the Office, and the process for investigating a complaint about the conduct of a legally authorized representative. In response to a public comment, the adopted rules incorporate the process for documentation of consent related to accessing a resident record, and investigating a complaint, including disclosing confidential information to investigate the complaint.

The adopted rules restructure and reorganize some rules to consolidate subject matter. The adopted rules repeal several rules and replace them with new rules.

COMMENTS

The 31-day comment period ended March 4, 2024.

During this period, HHSC received comments from nine commenters, including a representative of the North Central Texas Council of Governments, Texas Caregivers for Compromise, Texas Assisted Living Association, Capital Area Council of Governments, Leading Age of Texas, South East Texas Council of Governments, the Dallas County local ombudsman entity, family member advocates, and a nursing facility resident. A summary of comments relating to the rules and HHSC responses follows.

Comment: Commenters expressed support for the Ombudsman Program and the proposed rules. Commenters expressed support for several amendments and additions to the definitions in §88.2; the amendments to the description of the records a representative of the Office has access to and a representative of the Office's access to obtain a copy of a record in §88.201; the process for an LTC facility, upon request, to receive a form confirming the certified ombudsman's consent to access a confidential record in §88.202; and a certified ombudsman's requirement to comply with the Ombudsman Policies and Procedures Manual (OPPM) regarding complaints of abuse, neglect, or exploitation in §88.305. Commenters also expressed support for changes made to make the rules to make consistent with federal law and regulations and for changes made for reorganization and clean-up purposes.

Response: HHSC appreciates the support.

Comment: Two commenters suggested that certain new policies in the rules be included in the OPPM rather than in Texas Administrative Code (TAC). One commenter expressed concern that describing requirements in TAC will limit the ability of the State Ombudsman to make changes to the requirements.

Response: HHSC did not make changes to the rules in response to this comment. The commenters did not specify which policies they suggest be included in the OPPM instead of the rules. The amendments and new rules in Chapter 88 address or clarify topics and processes currently in the rules.

Comment: One commenter stated that "informed consent" has a specific meaning within federal regulations other than those related to the Ombudsman Program and recommended that if this term is needed in the rules, it should be defined in the rules.

Response: HHSC declines to make changes in response to this comment. The rules include the term "informed consent" in various sections and define the term in §88.2(16), renumbered as §88.2(17), to be consistent with 45 CFR Part 1324.

Comment: Two commenters requested amending the definition of "informed consent" in §88.2(16), renumbered as §88.2(17), by adding language to identify the action the person is consenting to.

Response: HHSC declines to make the requested change because the rules include a description of the action that the person is consenting to when this term is used. For example, in §88.201(c) informed consent allows a certified ombudsman to access a resident's records. In §88.305(b), informed consent allows a certified ombudsman to investigate a complaint regarding a resident.

Comment: One commenter requested that, based on federal regulations, the rules be revised to allow informed consent to be communicated in writing, orally, visually, or through the use of auxiliary aids and services and to require informed consent to be documented by an ombudsman.

Response: HHSC agrees with the commenter and revised the definition of "informed consent" in §88.2(16), renumbered as §88.2(17), to provide that informed consent may be communicated in writing, orally, visually, or through the use of auxiliary aids and services. Section 88.305(b)(1)(D)(iv) requires a certified ombudsman to document information about consent obtained to investigate a complaint. Although §620(f) of the OPPM requires a certified ombudsman to document consent for a certified ombudsman to access a resident record and disclose confidential information, HHSC revised rules in Chapter 88 to include these requirements. Specifically, HHSC revised §88.201 to add a new subsection (e) to require a certified ombudsman to document information about consent obtained to access a resident record and revised §88.305(b)(2) to add new subparagraph (E) and §88.305(b)(3) to add new subparagraph (G) to require a certified ombudsman to document information about consent to disclose confidential information to investigate a complaint.

Comment: One commenter recommended including a person who was an applicant for a position at an LTC facility in the definition of an "individual conflict of interest" in §88.2(18). The commenter expressed concern that this person, if later hired as an ombudsman for the LTC facility, could retaliate or harass the person hired for the facility position.

Response: HHSC declines to make the requested change. The definition of an "individual conflict of interest" in §88.2(18) is based on 45 CFR §1324.21(c). Further, the situation presented by the commenter does not constitute a conflict of interest but may be a performance concern that should be brought to the attention of the certified ombudsman's supervisor.

Comment: One commenter requested that, in §88.104(d), the notification from the Office to the local ombudsman entity and host agency of a decision to remove the designation of a local ombudsman entity include the rationale for the decision.

Response: HHSC agrees with the comment and revised §88.104(d) to provide that the Office includes the reasons for the decision to remove the designation of a local ombudsman entity in the written notification of the decision to the local ombudsman entity and host agency.

Comment: Two commenters requested that §88.105(b)(3) be revised to include the number of nursing facilities in the ombudsman service area and in the ombudsman service area located in a rural area as factors upon which state funding for a host agency is based. One commenter explained that the current formula disadvantages regions without assisted living facilities. The other commenter explained that since the rule allows state funds to be used for both nursing facilities and assisted living facilities, the funding formula should have a factor for both settings.

Response: HHSC agrees with the commenters and revised §88.105(b)(3)(A) and (B) to include the number of nursing facilities in the ombudsman service area and the number of nursing facilities in the ombudsman service area located in a rural area as factors upon which state general revenue funding for a host agency is based.

Comment: One commenter requested that §88.105(b) be revised to provide that host agencies are allocated federal funding under Title VII and Title III-B of the Older Americans Act in the amounts required to fulfill the minimum expenditure requirements in §88.405(e) and §88.406(a). The commenter also requested that §88.105(b) be revised to provide that host agencies are allocated any additional Title VII funding and state general revenue needed to provide additional ombudsman services beyond what the minimum expenditure requirements would accomplish.

Response: HHSC declines to make changes in response to this comment because the requested change requires additional analysis and stakeholder input.

Comment: One commenter requested that HHSC allow state general revenue funds described in §88.105(b)(3) that are restricted for use in assisted living facilities to be used for ombudsman functions performed in assisted living facilities and nursing facilities.

Response: HHSC declines to make the changes in response to this comment. Prior to the effective date of these rules, the Office prohibited host agencies from using state general revenue funding described in §88.105(b)(3) for the performance of ombudsman program functions in nursing facilities. Beginning the effective date of these rules, host agencies may use state general revenue funds for the performance of ombudsman program functions in nursing facilities and assisted living facilities. The Office informed host agency representatives of this change during a Texas Association of Regional Councils Meeting in September 2023 and will issue a memo with more specific information to all host agencies in September 2024.

Comment: One commenter expressed opposition to §88.106(g) and §88.107(g), which allow HHSC to impose a level two or level three sanction if a host agency or local ombudsman entity does not complete an action in accordance with an approved plan of correction. The commenter was concerned that allowing HHSC to sanction a host agency by restricting the host agency's

ability to draw down administrative funds would impact the host agency's ability to provide services. Also, the commenter stated that administrative funds cannot be used for the Ombudsman Program and, therefore, a sanction restricting a host agency's ability to draw on administrative funds could decimate Title-III community based-services on the basis of unrelated Ombudsman Program issues. The commenter indicated that failure of the local ombudsman entity to comply with a plan of correction should be addressed by the Office, not the host agency. The commenter recommended that HHSC not be allowed to impose sanctions but instead remove the designation of a local ombudsman entity for failing to complete an action in accordance with an approved plan of correction.

Response: HHSC declines to make changes in response to the comment. HHSC is authorized under 26 TAC §213.5 to impose sanctions for failure of a host agency to complete an action in accordance with an approved plan of correction. The provisions in §88.106(g) and §88.107(g) allowing HHSC to impose a level two or level three sanction for such failure are a clarification of current HHSC authority in 26 TAC §213.5. Removing HHSC authority in 26 TAC §213.5 to impose sanctions for failure of a host agency to complete an action in accordance with an approved plan of correction is outside the scope of this rule project. The position of HHSC is that removal of a local ombudsman entity's designation is a more severe penalty than imposition of a level two or level three sanction. Removal of a local ombudsman entity's designation prevents the local ombudsman entity from providing any Ombudsman Program services and results in residents of long-term facilities in the local ombudsman entity's service area being deprived of certified ombudsman assistance. In addition, while the Office has programmatic oversight of the Ombudsman Program, 45 CFR §1324.17(a) provides that the host agency is responsible for personnel management. Because the issues that may result in sanctions relate to personnel performance, the host agency is responsible for resolving these issues. Host agencies are allowed a percentage of allocated funds for administrative costs and these funds may be used to support the Ombudsman Program.

Comment: One commenter recommended including in §88.107(i) the timeframe for which the Office will provide technical assistance to a local ombudsmen entity or host agency related to a plan of correction.

Response: HHSC declines to make this requested change because the amount of time the Office needs to provide technical assistance to a local ombudsmen entity or host agency will vary depending on the request.

Comment: One commenter recommended revising §88.201(c)(1) to remove a reference to an incident report as an example of resident record that a certified ombudsman may access from an LTC facility and prevent a certified ombudsman from obtaining an incident report from an LTC facility. The commenter expressed concern that an incident report is not defined in the rules and that the term "incident report" could refer to a variety of documents. The commenter stated that a certified ombudsman's access to incident reports is not included in federal regulations or statute. The commenter asserted that incident reports are quality assurance documents and, therefore, are exempted from disclosure requirements. The commenter further expressed concern that an incident report may include information about a resident other than the resident who gave consent to the certified ombudsman to obtain the report. The commenter stated that, to obtain information about

an incident at an LTC facility, a certified ombudsman should request HHSC Form 3613-A from HHSC Long-term Care Regulation because LTC facilities report incidents to HHSC on that form. The commenter stated that certified ombudsmen accessing incident reports is irresponsible as it encourages certified ombudsmen to involve themselves in lawsuits.

Response: HHSC agrees with the commenter's suggestion to define "incident report" and has added a definition of "incident report" to §88.2, based on the definition of "incident" in §554.101(53). HHSC declines to revise §88.201(c)(1) to prevent a certified ombudsman from obtaining an incident report from an LTC facility or remove a reference to an incident report as an example of resident record that an ombudsman may access from an LTC facility. The provision in §88.201(c)(1) allowing the State Ombudsman and a certified ombudsman immediate access to all medical, social, and other records relating to a resident, regardless of format if certain criteria are met, is based on the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2). An incident report is a record relating to a resident. HHSC disagrees with the commenter's statement that incident reports are quality assurance documents and, therefore, are not subject to disclosure. Based on the state court decision of *Parkview Nursing and Rehabilitation Center v. Texas Department of Aging and Disability Services*, 03-11-00480-CV (Tex. App. 2014), an incident report may be reviewed by a quality assessment and assurance committee, but it is not created by or a product of the committee and, therefore, is not a record of the committee.

Regarding the commenter's concern that an incident report may include information about a resident other than the resident who gave consent to the certified ombudsman to obtain the report, an LTC facility may redact the name and information of any resident for whom the certified ombudsman does not have consent. Regarding the commenter's concern that the certified ombudsman would be encouraged to become involved in a lawsuit by obtaining an incident report, ombudsmen are rarely involved in lawsuits but, a certified ombudsman's responsibility to investigate and resolve complaints is not preempted by a potential involvement in litigation.

Comment: Several commenters expressed support for a certified ombudsman's access to incident reports in §88.201(c)(1). These commenters expressed opposition to any changes that would make resident records less available to a certified ombudsman. The commenters said that a certified ombudsman's access to an incident report is not a new provision in the rules. Two commenters asserted that the state has the ability to create more specific rules than what is in federal regulation. These commenters stated that they have experience with an LTC facility withholding records and concern that removal of the term "incident report" will allow LTC facilities to attempt to withhold records.

Response: HHSC appreciates the statement of support for a certified ombudsman to access an incident report.

Comment: Several commenters expressed concerns regarding the requirement in §88.202 for a certified ombudsman, upon request, to provide a form to an LTC facility confirming the certified ombudsman's consent to access a confidential resident record. One commenter stated that the form should only be used to document an ombudsman's access to a resident record, including an incident report. Two commenters expressed concern that the HHSC form would require a witness, certification, notary, or third-party notification or approval by an administrator or corpo-

rate office and impede a certified ombudsman's investigation. One commenter stated that facilities will need to be trained on the new form.

Response: HHSC did not make changes to the rules in response to these comments. The requirement in §88.202 was added to help to ensure a record of the request for access exists when a certified ombudsman provides a form to an LTC facility, upon request, at the time the certified ombudsman is requesting access to a confidential record concerning a resident. The Office will create a simple form for a certified ombudsman to use. The form will not require a witness, notary, or third-party notification. As provided by §88.202, the form is provided only when requesting access to a confidential record of a resident. Completing the form will not delay or impede a certified ombudsman's investigation. HHSC plans to provide training to LTC facilities on the requirement regarding the form in §88.202.

Comment: One commenter requested that §88.305(b)(2)(F), renumbered as §88.305(b)(2)(G), be revised to allow plans of action for complaint resolution to be shared with LTC facilities, upon request by a facility, and that the shared plans of action not contain information identifying a complainant.

Response: HHSC declines to make the requested change. A plan of action to resolve a complaint required by §88.305(b)(2)(F), renumbered as §88.305(b)(2)(G), is a confidential Ombudsman Program record and may only be disclosed to an LTC facility in accordance with §88.305(b).

Comment: One commenter requested that §88.305(b)(3)(G) be revised to require a certified ombudsman to inform the resident or legally authorized representative of the option to report a potential crime to the appropriate regulatory or law enforcement agency.

Response: HHSC did not make changes in response to this comment. HHSC declines to require ombudsmen to routinely determine if a complaint relates to a potential crime because certified ombudsmen may not have the knowledge base to make that determination.

Comment: One commenter requested that HHSC revise §88.305(b)(5)(A)(ii) to require a certified ombudsman to report the resolution of a complaint to HHSC and the LTC facility.

Response: HHSC declines to make the requested change. Complaint resolution information is a confidential ombudsman program record and may only be disclosed to an LTC facility in accordance with consent and disclosure requirements.

Comment: One commenter requested that HHSC revise §88.405(a)(5) to require a certified ombudsman to report the number of complaints that did not result in regulatory violations or violations of law.

Response: HHSC declines to make a change in response to this comment. Section 88.405 addresses performance measures for local ombudsman entities and subsection (a)(5) of that section is a performance measure for a local ombudsman entity to comply with the complaint response requirements described in §88.305(a)(3) and §88.305(c)(2). Requiring a local ombudsman entity to report the number of complaints that did not result in regulatory violations or violations of law is not a performance measure.

Comment: One commenter requested that HHSC revise §88.405(a)(3) and (4) to allow host agencies to develop their own performance measure regarding number of visits to LTC fa-

ilities instead of complying with the minimum visit requirements in the OPPM. The commenter stated that the Ombudsman Program is the only Older Americans Act program in Texas that has performance measures not based on funding and that performance measures should be based on the amount of funding provided to a host agency. The commenter expressed concern that the minimum visit requirements in the OPPM prevent a host agency from complying with §88.405(b) to develop their own projections for the performance measures in §88.405(a)(3) and (4) regarding visits to LTC facilities.

Response: HHSC declines to make changes in response to this comment. The performance measures in §88.405(a)(3) and (4) are indirectly based on the funding a host agency receives. The performance measure regarding number of required visits is based on the number of LTC facilities in a host agency's service area and the funding allocated to a host agency is based on the number of LTC facilities in a host agency service area. In addition, §88.405(b) requires a host agency to develop its own projection for the performance measures §88.405(a)(1) and (2) but does not require a host agency to develop a projection for the performance measures in §88.405(a)(3) and (4) because those performance measures are established in the OPPM.

Comment: One commenter requested that HHSC revise §88.405(b) to include the Office of the Area Agencies on Aging (OAAA) in the approval of projections of performance measures developed by the host agency to provide consistency in the review and approval of a host agency's performance measure projections for all Older Americans Act services. Also, the commenter requested that §88.405(b) be revised to give host agencies the opportunity to appeal a rejection of a performance measure projection to the OAAA.

Response: HHSC declines to make a change in response to the comment. The State Ombudsman's authority to approve or not approve a host agency's performance measure projects is based on 45 CFR §1324.13 and §1324.11(e)(1)(iii), which gives the State Ombudsman the responsibility to establish standards for the administration of the Ombudsman Program, including monitoring the performance of the local ombudsman entities.

Comment: One commenter requested that HHSC revise §88.406(a) to allow HHSC to waive, as needed, the requirement that a host agency must, for the Ombudsman Program, expend for a federal fiscal year at least the amount of federal funds expended as required by the Older Americans Act, §306(a)(9). Further, the commenter requested that HHSC revise §88.405(e) to allow a variance of minus 10 percent of the performance measure in §88.405(a)(7) regarding the minimum expenditure requirement.

Response: HHSC declines to make changes in response to this comment. The minimum expenditure requirement in §88.406(a) implements §306(a)(9) of the Older Americans Act, which requires an Area Agency on Aging's (AAA) (host agency's) area plan to provide an assurance that, in carrying out the State Long-Term Care Ombudsman program, the AAA (host agency) will expend not less than the total amount of funds appropriated under this Act and expended by the AAA (host agency) in fiscal year 2019 in carrying out such a program. The Older Americans Act does not allow for any exceptions to the requirement in §306(a)(9).

Comment: One commenter asked for clarification regarding 45 CFR §1321.9(c)(2)(vii)(A).

Response: The federal regulation at 45 CFR §1321.9(c)(2)(vii)(A) concerns Ombudsman Program minimum expenditure requirements for a state agency and is outside the scope of this rule project.

Comment: One commenter requested that HHSC revise §88.406(a) to either allow flexibility for state funding to be counted toward the amount of funds expended for the Ombudsman Program for a federal fiscal year or to include the new language in 45 CFR §1321.9(c)(2)(vii)(A) regarding minimum expenditures by state agencies. Further, the commenter suggested that §88.406(a) be revised to replace the year 2019 with a reference to §306(a)(9) of the Older Americans Act.

Response: HHSC agrees with the commenter and revised §88.406(a) to provide that the State Ombudsman has discretion to determine an amount of state general revenue funds that may be included to meet the minimum expenditure requirement. Further, HHSC revised §88.406 to use a reference to the Older Americans Act §306(a)(9) instead of the specific federal fiscal year.

Comment: One commenter suggested rewording §88.408(a)(2)(A) because the language requires a grammatical change.

Response: HHSC declines to make the requested change. Section 88.408(a)(2)(A) is grammatically correct and provides that "A host agency must not retaliate against the State Ombudsman or a representative of the Office with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office."

In addition to the changes made to the rules in response to comments, HHSC made changes to the rules that are not in response to comments. HHSC revised the definition of "individual conflict of interest" in §88.2(17)(B), renumbered as §88.2(18)(B), to provide that a conflict of interest may include a person having an ownership or investment interest in "an association of LTC facilities, HCSSAs, or DAHS facilities" in addition to having an ownership or investment interest in an LTC facility, a HCSSA, a DAHS facility. HHSC revised the definition in §88.2(17)(C), renumbered as §88.2(18)(C), to provide that a conflict of interest may include a person managing or being employed in "an association of LTC facilities, HCSSAs, or DAHS facilities" in addition to managing or being employed in an LTC facility, a HCSSA, a DAHS facility. HHSC revised the definition in §88.2(17)(L), renumbered as §88.2(18)(M), to provide that a conflict of interest may include a person "having management responsibility for, or operating under the supervision of, a person with management responsibility for adult protective services, as described in Texas Human Resources Code, Chapter 48." These changes were made to be consistent with §712(f)(1)(C)(iii) of the Older Americans Act and 45 CFR §1324.21(c).

SUBCHAPTER A. PURPOSE AND DEFINITIONS

26 TAC §88.2

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas

Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise.

- (1) Business day--Any day except a Saturday, Sunday, or legal holiday listed in Texas Government Code, §662.021.
- (2) Certified ombudsman--A staff ombudsman or a volunteer ombudsman.
- (3) CFR--Code of Federal Regulations.
- (4) Complainant--A person who makes a complaint.
- (5) Complaint--A statement of dissatisfaction or concern made by or on behalf of a resident, that relates to action, inaction, or a decision by any of the following entities or persons, that may adversely affect the health, safety, welfare, or rights of the resident:
 - (A) a long-term care (LTC) facility or LTC facility staff;
 - (B) a governmental entity, including a health and human services agency; or
 - (C) any other person who provides care or makes decisions related to a resident.
- (6) DAHS facility--A day activity and health services facility. A facility licensed in accordance with Texas Human Resources Code, Chapter 103.
- (7) Day--A calendar day.
- (8) Federal fiscal year--A 12-month period of time from October 1 through September 30.
- (9) Governmental entity--An entity that is:
 - (A) a state agency;
 - (B) a district, authority, county, municipality, regional planning commission, or other political subdivision of the state; or
 - (C) an institution of higher education, as defined in Texas Education Code, §61.003.
- (10) Grievance--A statement of dissatisfaction or concern regarding a representative of the Office of the State Long-Term Care Ombudsman (Office) or the State Ombudsman and the performance of their functions, responsibilities, and duties described in 45 CFR §1324.13, 45 CFR §1324.19, and this chapter.
- (11) Grievant--A person who makes a grievance.
- (12) HCSSA--Home and community support services agency. An entity licensed in accordance with Texas Health and Safety Code Chapter 142.
- (13) HHSC--The Texas Health and Human Services Commission or its designee.
- (14) Host agency--A governmental entity or nonprofit organization that contracts with HHSC to ensure that the local ombudsman entity implements the State Long-Term Care Ombudsman Program (Ombudsman Program) in an ombudsman service area.
- (15) Incident report--A document created by an LTC facility about an abnormal event involving a resident, including an accident or injury.

(16) Immediate family member--A member of the same household or a relative with whom there is a close personal or significant financial relationship.

(17) Informed consent--Consent from a resident or legally authorized representative after the State Ombudsman or a representative of the Office explains the options for ombudsman action and possible outcomes of such options in a manner and language in which the resident or legally authorized representative understands, as determined by the State Ombudsman or a representative of the Office. Informed consent may be communicated in writing, orally, visually, or through the use of auxiliary aids and services.

(18) Individual conflict of interest--A situation in which a person is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes a person:

(A) having direct involvement in the licensing, surveying, or certification of an LTC facility, a HCSSA, a DAHS facility, a nursing facility administrator, or a nurse aide;

(B) having ownership or investment interest (represented by equity, debt, or other financial relationship) in an LTC facility, a HCSSA, a DAHS facility, or an association of LTC facilities, HCSSAs, or DAHS facilities;

(C) managing or being employed in an LTC facility, a HCSSA, a DAHS facility, or an association of LTC facilities, HCSSAs, or DAHS facilities;

(D) being employed by an LTC facility within the 12 months before performing functions of the Ombudsman Program;

(E) accepting gifts, gratuities, or other consideration from an LTC facility or from a resident of such an LTC facility or the resident's family;

(F) accepting money or any other consideration from anyone other than the local ombudsman entity or host agency for performing functions of the Ombudsman Program;

(G) receiving or having the right to receive, directly or indirectly, remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of an LTC facility, a HCSSA, or a DAHS facility;

(H) being involved in PASRR screenings for LTC facility placements other than responding to a complaint made to the Ombudsman Program;

(I) determining eligibility regarding Medicaid or other public benefits for residents;

(J) being employed by a managed care organization that provides services to residents;

(K) serving as a representative of the Office for an LTC facility in the ombudsman service area and in which a relative of the representative resides or works;

(L) acting as a decision-maker or legally authorized representative for a resident in the ombudsman service area;

(M) having management responsibility for, or operating under the supervision of, a person with management responsibility for adult protective services as described in Texas Human Resources Code, Chapter 48;

(N) being a resident;

(O) being a member of a board or council that represents the interests of an LTC facility; or

(P) having an immediate family member who meets any of the descriptions in subparagraphs (A) - (O) of this paragraph.

(19) Legally authorized representative--A person authorized by law to act on behalf of another person with regard to a matter described in this chapter, including:

(A) a parent, guardian, or managing conservator of a minor;

(B) the guardian of an adult;

(C) an agent to whom authority to make health care decisions is delegated under a medical power of attorney or durable power of attorney in accordance with state law; or

(D) the representative of a deceased person.

(20) Local ombudsman entity--One of the following:

(A) an identifiable unit of a host agency that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the host agency; and

(ii) implements the Ombudsman Program in an ombudsman service area; or

(B) an identifiable unit of a governmental entity or nonprofit organization that:

(i) consists of representatives of the Office who are employees, independent contractors, or volunteers of the governmental entity or nonprofit organization; and

(ii) contracts with a host agency to implement the Ombudsman Program in an ombudsman service area.

(21) LTC facility--Long-term care facility. A nursing facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 242, and or an assisted living facility licensed or required to be licensed in accordance with Texas Health and Safety Code, Chapter 247.

(22) Managing local ombudsman--A person who:

(A) is certified as a staff ombudsman to serve as a managing local ombudsman in accordance with §88.102 of this chapter (relating to Certification of an Ombudsman); and

(B) works with a host agency and the Office to oversee the implementation of the Ombudsman Program in an ombudsman service area.

(23) Office--The Office of the State Long-Term Care Ombudsman. An organizational unit within HHSC that:

(A) is headed by the State Ombudsman;

(B) consists of representatives of the Office who are employees of HHSC; and

(C) oversees the statewide implementation of the Ombudsman Program.

(24) Older Americans Act--A federal law (Title 42, United States Code, §3011 et seq.) that establishes and funds a comprehensive service system for persons 60 years of age or older and certain caregivers and family members of persons 60 years of age or older.

(25) Ombudsman database--The statewide reporting system required by §712(c) of the Older Americans Act that is a web-based application in which Ombudsman Program data is entered, stored, maintained, and analyzed.

(26) Ombudsman intern--A person who is being trained to be a volunteer ombudsman in accordance with the Ombudsman Certification Training Manual but has not been certified as a volunteer ombudsman.

(27) Ombudsman Program--The State Long-Term Care Ombudsman Program as defined in 45 CFR §1324.1. The program through which the functions of the Office are carried out by the State Ombudsman and representatives of the Office.

(28) Ombudsman Program records--The files, records, and other information created or maintained by the State Ombudsman or a representative of the Office in the performance of functions of the Ombudsman Program, including:

- (A) information relating to complaint investigations;
- (B) emails and documentation of phone conversations;
- (C) documentation related to the budget and expenditures for the Ombudsman Program; and
- (D) information contained in the ombudsman database.

(29) Ombudsman service area--The county or counties, specified in the contract between HHSC and a host agency, in which the local ombudsman entity performs functions of the Ombudsman Program.

(30) Organizational conflict of interest-- A situation in which an organization is involved in multiple interests, financial or otherwise, that could affect the effectiveness and credibility of the Ombudsman Program and includes an organization:

- (A) having any ownership, operational, or investment interest in, or receiving grants or donations from, an LTC facility;
- (B) being an association of LTC facilities or an affiliate of such an association;
- (C) having responsibility for licensing, surveying, or certifying LTC facilities;
- (D) having a governing board member with an ownership, investment, or employment interest in an LTC facility;
- (E) providing long-term care to residents of LTC facilities, including the provision of personnel for LTC facilities or the operation of programs that control access to, or services of, LTC facilities;
- (F) providing long-term care coordination or case management for residents of LTC facilities;
- (G) setting reimbursement rates for LTC facilities;
- (H) providing adult protective services, as described in Texas Human Resources Code, Chapter 48;
- (I) determining eligibility regarding Medicaid or other public benefits for residents of LTC facilities;
- (J) conducting PASRR screening for LTC facility placements;
- (K) making decisions regarding admission of residents to, or discharge of residents from, LTC facilities; or
- (L) providing guardianship, conservatorship, or other fiduciary or surrogate decision-making services for residents of LTC facilities.

(31) PASRR--Preadmission Screening and Resident Review. A review performed in accordance with 42 CFR Part 483, Subpart C.

(32) Private and unimpeded access--Has the following meanings:

(A) as used in §88.201(a)(1) of this chapter (relating to Access to Facilities, Residents, and Resident Records), access to enter an LTC facility without interference or obstruction from facility employees, volunteers, or contractors; and

(B) as used in §88.201(a)(2) of this chapter, access to communicate with a resident outside of the hearing and view of other persons without interference or obstruction from facility employees, volunteers, or contractors.

(33) Representative of the Office--A staff ombudsman, volunteer ombudsman, or ombudsman intern.

(34) Resident--A person of any age who resides in an LTC facility.

(35) Resident representative--A person chosen by a resident, through formal or informal means, to act on behalf of the resident to:

- (A) support the resident in decision-making;
- (B) access medical, social, or other personal information of the resident;
- (C) manage financial matters; or
- (D) receive notifications.

(36) Staff ombudsman--A person who meets the following criteria, including a managing local ombudsman:

(A) is certified as a staff ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

- (C) is an employee or independent contractor of:
- (i) a host agency;
 - (ii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section; or
 - (iii) HHSC.

(37) State Ombudsman--The State Long-term Care Ombudsman, as defined in 45 CFR §1324.1. The person who heads the Office and performs the functions, responsibilities, and duties described in §88.101 of this chapter (relating to Responsibilities of the State Ombudsman and the Office).

(38) Volunteer ombudsman--A person who:

(A) is certified as a volunteer ombudsman in accordance with §88.102 of this chapter;

(B) performs functions of the Ombudsman Program; and

- (C) is not an employee or independent contractor of:
- (i) HHSC;
 - (ii) a host agency; or
 - (iii) a governmental entity or nonprofit organization that contracts with a host agency, as described in paragraph (16)(B) of this section.

(39) Willfully interfere--To act or not act to intentionally prevent, interfere with, or impede or to attempt to intentionally prevent, interfere with, or impede.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. ESTABLISHMENT OF THE OFFICE

26 TAC §§88.101, 88.102, 88.104 - 88.107

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.102. *Certification of an Ombudsman.*

(a) The State Ombudsman initially certifies a person described in §88.2(36)(C)(i) or (ii) of this chapter (relating to Definitions) as a staff ombudsman, other than a managing local ombudsman, if:

(1) the person has one of the following:

(A) a bachelor's or advanced degree from an accredited college or university; or

(B) a high school diploma or a certificate recognized by the state in which it was issued as the equivalent of a high school diploma and at least four years of one, or a combination, of the following:

(i) paid experience in a social, behavioral, health, or human service field; or

(ii) experience as a certified ombudsman;

(2) the person has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(3) the person:

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied, as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity);

(4) the person successfully completes the certification training provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(5) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(a) of this chapter (relating to Requirements to Recommend Certification as an Ombudsman).

(b) The State Ombudsman initially certifies a person as a staff ombudsman to serve as the managing local ombudsman if:

(1) the person meets the criteria in subsection (a)(1) - (3) of this section;

(2) the person successfully completes certification training provided by the Office; and

(3) the person demonstrates competency to serve as a managing local ombudsman.

(c) The State Ombudsman initially certifies a person as a volunteer ombudsman if:

(1) the person meets the criteria in subsection (a)(2) - (4) of this section;

(2) the local ombudsman entity recommends to the Office, using HHSC form "Certified Ombudsman Application," that the person be approved as a certified ombudsman in accordance with §88.301(b) of this chapter; and

(3) the person successfully completes an internship in accordance with the Ombudsman Policies and Procedures Manual.

(d) The State Ombudsman initially certifies a person to be a staff ombudsman or volunteer ombudsman by signing HHSC form "Certified Ombudsman Application."

(e) The State Ombudsman certifies a person to be a staff ombudsman or volunteer ombudsman for a period of two years. After initial certification, the Office renews the certification of a staff ombudsman or volunteer ombudsman if:

(1) for a staff ombudsman, the staff ombudsman:

(A) meets the requirements in subsection (a)(1) - (3) of this section;

(B) completes continuing education provided by the Office; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual; and

(2) for a volunteer ombudsman, the volunteer ombudsman:

(A) meets the requirements in subsection (a)(2) and (3) of this section;

(B) completes continuing education provided by the local ombudsman entity in accordance with the Ombudsman Policies and Procedures Manual; and

(C) demonstrates compliance with the Ombudsman Certification Training Manual and the Ombudsman Policies and Procedures Manual.

(f) The State Ombudsman certifies a person described in §88.2(36)(C)(iii) of this chapter as a staff ombudsman if the person:

(1) has not been convicted of an offense listed under Texas Health and Safety Code §250.006 during the time periods set forth in

Texas Health and Safety Code §250.006, according to a criminal history record of the person obtained by the Office from the Texas Department of Public Safety;

(2) meets one of the following;

(A) does not have an individual conflict of interest according to HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" completed by the person; or

(B) has an individual conflict of interest that has been remedied by the State Ombudsman; and

(3) successfully completes the certification training provided by the Office.

§88.104. *Designation of a Local Ombudsman Entity.*

(a) The State Ombudsman may designate a local ombudsman entity to perform the functions of the Ombudsman Program in an ombudsman service area.

(b) The State Ombudsman does not designate a local ombudsman entity if the host agency or a governmental entity or nonprofit organization contracting with the host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions):

(1) has an organizational conflict of interest described in §88.2(30)(A) - (C) of this chapter; or

(2) has an organizational conflict of interest described in §88.2(30)(D) - (L) of this chapter that has not been removed or remedied as approved by the State Ombudsman in accordance with §88.403(d) of this chapter (relating to Conflicts of Interest Regarding a Host Agency).

(c) The State Ombudsman may remove the designation of a local ombudsman entity if:

(1) the host agency or local ombudsman entity has policies, procedures, or practices that the State Ombudsman determines to be in conflict with the laws, rules, policies, or procedures governing the Ombudsman Program; or

(2) the host agency or local ombudsman entity fails to comply with the requirements of this chapter including:

(A) not removing or remedying an organizational or individual conflict of interest as described in §88.303 of this chapter (relating to Individual Conflicts of Interest Regarding a Local Ombudsman Entity) and §88.403 of this chapter;

(B) not submitting:

(i) a written plan of correction required by:

(I) §88.106(d) of this subchapter (relating to On-site Monitoring of a Local Ombudsman Entity and a Host Agency);

(II) §88.107(d) of this subchapter (relating to Desk Review Monitoring of a Local Ombudsman Entity); and

(III) §88.409(b) of this chapter (relating to Non-compliance by a Host Agency); or

(ii) a modified written plan of correction required by:

(I) §88.106(e) of this subchapter;

(II) §88.107(e) of this subchapter; and

(III) §88.409(c) of this chapter; or

(C) not completing actions in accordance with an approved plan of correction or an approved modified plan of correction as required by:

(i) §88.106(d) of this subchapter;

(ii) §88.107(d) of this subchapter; and

(iii) §88.409(b) of this chapter.

(d) If the State Ombudsman removes the designation of a local ombudsman entity, the Office notifies the local ombudsman entity and host agency, in writing, of the decision to remove the designation and includes the reasons for the decision in the notification.

(e) A host agency may request reconsideration of the State Ombudsman's decision to remove the designation of the local ombudsman entity. To request a reconsideration of the decision, the host agency must, within 10 days after receiving the notification of removal of the designation, submit a written request for reconsideration and additional information supporting the request to the State Ombudsman.

(f) If the removal of designation of a local ombudsman entity results in termination of the contract between HHSC and the host agency, the host agency may appeal the termination in accordance with §213.7 of this title (relating to Appeal Procedures for Area Agency on Aging Contractors).

§88.105. *Fiscal Management of a Local Ombudsman Entity.*

(a) The State Ombudsman:

(1) determines the use of the federal and state funds appropriated for the operation of the Office;

(2) approves the allocation of federal and state funds to a host agency for the operation of the Ombudsman Program in accordance with subsection (b) of this section; and

(3) determines that Ombudsman Program budgets and expenditures are for an appropriate amount and relate to functions of the Ombudsman Program.

(b) The State Ombudsman distributes funds through the HHSC Office of the Area Agencies on Aging to a host agency for the operation of the Ombudsman Program in accordance with the Older Americans Act, §712(a)(2). Annually, a host agency is allocated:

(1) a base amount of \$3,000 from federal funds appropriated or otherwise available for the Ombudsman Program;

(2) additional federal funds:

(A) 75 percent of which is based on the licensed capacity of nursing facilities in the ombudsman service area; and

(B) 25 percent of which is based on the number of certified ombudsmen in the ombudsman service area who actively performed functions of the Ombudsman Program during the previous federal fiscal year; and

(3) state general revenue funds for the performance of Ombudsman Program functions based on the following factors:

(A) the number of assisted living facilities and nursing facilities in the ombudsman service area on or about July 1 of each year;

(B) the number of assisted living facilities and nursing facilities in the ombudsman service area located in a rural area, as determined by the State Ombudsman, on or about July 1 of each year; and

(C) the type and licensed capacity of assisted living facilities in the ombudsman service area on or about July 1 of each year.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-4281



SUBCHAPTER C. ACCESS BY THE STATE OMBUDSMAN AND REPRESENTATIVES OF THE OFFICE

26 TAC §88.201, §88.202

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.201. *Access to Facilities, Residents, and Resident Records.*

(a) The State Ombudsman and a representative of the Office have:

(1) immediate, private, and unimpeded access to enter an LTC facility, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(i):

(A) at any time during a facility's regular business hours or regular visiting hours; and

(B) at a time other than regular business hours or visiting hours, if the State Ombudsman or a certified ombudsman determines access may be required by the circumstances to be investigated;

(2) immediate, private, and unimpeded access to a resident, in accordance with the Older Americans Act, §712(b)(1)(A) and 45 CFR §1324.11(e)(2)(ii); and

(3) access to the name and contact information of a resident representative, if any, when the State Ombudsman or representative of the Office determines the information is needed to perform functions of the Ombudsman Program, in accordance with 45 CFR §1324.11(e)(2)(iii).

(b) Disclosure of information by the State Ombudsman or a representative of the Office related to any complaint, including a description of the circumstances to be investigated, is subject to requirements in the Ombudsman Policies and Procedures Manual related to disclosure of confidential information.

(c) The State Ombudsman and a certified ombudsman have immediate access:

(1) in accordance with the Older Americans Act, §712(b)(1)(B) and 45 CFR §1324.11(e)(2), to all medical, social, and

other records relating to a resident regardless of format, including an incident report involving the resident, if:

(A) in accordance with 45 CFR §1324.11(e)(2)(iv)(A) or (B), the State Ombudsman or certified ombudsman has the informed consent of the resident or legally authorized representative;

(B) in accordance with the Older Americans Act, §712(b)(1)(B)(i)(II), the resident is unable to communicate informed consent to access and has no legally authorized representative; or

(C) in accordance with 45 CFR §1324.11(e)(2)(iv)(C), such access is necessary to investigate a complaint and the following occurs:

(i) the resident's legally authorized representative refuses to give consent to access the medical, social, and other records;

(ii) the State Ombudsman or certified ombudsman has reasonable cause to believe that the legally authorized representative is not acting in the best interests of the resident; and

(iii) if it is the certified ombudsman seeking access to the medical, social, and other records the certified ombudsman obtains the approval of the State Ombudsman to access the medical, social, and other records, without the legally authorized representative's consent; and

(2) in accordance with 45 CFR §1324.11(e)(2)(v), to the administrative records, policies, and documents of an LTC facility to which the residents or general public have access.

(d) In accordance with 45 CFR §1324.11(e)(2), access by the State Ombudsman and a certified ombudsman to a record, as described in subsection (c) of this section, includes obtaining a copy of the record upon request.

(e) In accordance with the Ombudsman Policies and Procedures Manual, a certified ombudsman must document one of the following in the ombudsman database:

(1) whether a resident who is able to communicate informed consent communicated informed consent for the ombudsman to access a record described in subsection (c)(1) of this section;

(2) whether the legally authorized representative communicated informed consent to access a record described in subsection (c)(1) of this section;

(3) whether the certified ombudsman has authority to access a record described in subsection (c)(1) of this section without consent because the resident is unable to communicate informed consent and does not have a legally authorized representative; or

(4) whether the State Ombudsman has given approval to access a record described in subsection (c)(1) of this section accordance with subsection (c)(1)(C) of this section.

(f) The rules adopted under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 CFR Part 160 and 45 CFR Part 164, subparts A and E, do not preclude an LTC facility from releasing protected health information or other identifying information regarding a resident to the State Ombudsman or a certified ombudsman if the requirements of subsections (a)(3) and (c) of this section are otherwise met. The State Ombudsman and a certified ombudsman are each a "health oversight agency" as that phrase is defined in 45 CFR §164.501.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER D. REQUIREMENTS OF A LOCAL OMBUDSMAN ENTITY

26 TAC §§88.305, §§88.307

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Chief Counsel

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26 TAC §88.309

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. REQUIREMENTS OF A HOST AGENCY

26 TAC §§88.403 - 88.409

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.403. *Conflicts of Interest Regarding a Host Agency.*

(a) If a host agency, or a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), has an organizational conflict of interest, the host agency must, within 30 days after identifying the conflict of interest:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to:

(A) remove a conflict of interest described in §88.2(30)(A) - (C) of this chapter (relating to Definitions); and

(B) remove or remedy a conflict of interest described in §88.2(30)(D) - (L) of this chapter; and

(2) submit the completed form to the Office.

(b) A host agency must ensure that HHSC form "Individual Conflict of Interest Screening of a Representative of the Office," is completed by a managing local ombudsman:

(1) at least once a year; and

(2) if the host agency identifies an individual conflict of interest involving the managing local ombudsman.

(c) Within five business days after identifying an individual conflict of interest regarding a managing local ombudsman, the host agency must:

(1) complete HHSC form "Conflict of Interest Identification, Removal, and Remedy," including a recommended action to remove or remedy the conflict of interest; and

(2) submit the completed form to the Office.

(d) If the Office receives a completed form described in subsection (a) or (c) of this section, the State Ombudsman reviews the form and approves, modifies, or rejects the recommended action to remove or remedy the conflict of interest.

(1) If it is not possible to remove or remedy an organizational conflict of interest of the host agency, the State Ombudsman removes the designation of the local ombudsman entity, as described in §88.104(c)(2)(A) of this chapter (relating to Designation of a Local Ombudsman Entity).

(2) If it is not possible to remove or remedy an individual conflict of interest of the managing local ombudsman, the State Ombudsman refuses to initially certify or terminates certification of the managing local ombudsman as described in §88.103(a)(2) and (d)(4) of this chapter (relating to Refusal, Suspension, and Termination of Certification of an Ombudsman).

§88.404. *Provision of Records to the Office, Disclosure of Confidential Information, and Allegations of Abuse, Neglect, or Exploitation.*

(a) In accordance with the Older Americans Act, §712(d)(2)(A) and 45 CFR §1324.13(e)(1), the State Ombudsman has the sole authority to make determinations concerning the disclosure of confidential information, as described in §88.304(a) of this chapter (relating to Disclosure of Confidential Information, Exclusion from Reporting Requirements Regarding Abuse, Neglect, and Exploitation, and Provision of Records to the Office).

(b) A request to disclose written confidential information is responded to in accordance with this subsection.

(1) If a person who is not a representative of the Office but works for a host agency or governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), receives a request to disclose written confidential information, as described in §88.304(a) of this chapter, the host agency must ensure that the State Ombudsman is immediately:

- (A) notified of the request; and
- (B) provided any communication from the requestor.

(2) If the State Ombudsman receives a request to disclose written confidential information, the State Ombudsman:

- (A) sends written acknowledgement of receipt of the request to the host agency;
- (B) reviews the request and responds to the requestor within a time frame required by applicable state or federal law; and
- (C) sends a copy of the response to the host agency.

(c) A host agency must ensure that, except as provided in 45 CFR §1324.19(b)(5) - (8), a representative of the Office is not required to report allegations of abuse, neglect, or exploitation under state law, including Texas Human Resources Code, Chapter 48, without appropriate consent or court order.

(d) A host agency must, at the request of the Office, immediately provide Ombudsman Program records that do not contain confidential information, such as timesheets and evidence supporting mileage reimbursement for representatives of the Office, to the Office.

§88.406. *Requirements Regarding Expenditures for the Ombudsman Program.*

(a) A host agency must, for the Ombudsman Program implemented by a local ombudsman entity, expend for a federal fiscal year at least the amount of federal funds expended as required by the Older Americans Act, §306(a)(9). In determining the amount of funds expended, the host agency may include all funds except, in the discretion of the State Ombudsman, an amount of state general revenue funds allocated to the host agency described in §88.105(b)(3) of this chapter (relating to Fiscal Management of a Local Ombudsman Entity). The State Ombudsman will notify host agencies of the specific amount of state general revenue funds to be excepted from the determination of funds expended by a communication published on the Long-Term Care Ombudsman website.

(b) A function of the Ombudsman Program performed by a local ombudsman entity that is paid for with funds allocated by HHSC

must be an allowable activity in accordance with the Ombudsman Policies and Procedures Manual.

(c) A purchase of a service, material, equipment, or good by a host agency for the Ombudsman Program implemented by a local ombudsman entity with funds allocated by HHSC must meet the criteria described in 45 CFR Part 75.

§88.408. *Prohibition of Interference and Retaliation by a Host Agency.*

(a) A host agency must not:

(1) willfully interfere with the State Ombudsman or a representative of the Office performing any of the functions of the Ombudsman Program, which includes:

(A) prohibiting a representative of the Office from:

(i) commenting or recommending changes, as described in §88.302(a)(1)(F) of this chapter (relating to Requirement to Ensure a Representative of the Office Performs Functions of the Ombudsman Program);

(ii) submitting comments to the Office regarding proposed legislation; or

(iii) responding to a question from a legislator or the media regarding a problem that pertains to an LTC facility or service, or to the health, safety, welfare, and rights of residents; and

(B) requiring a representative of the Office to obtain approval from the host agency before submitting testimony at a legislative hearing;

(2) retaliate against the State Ombudsman or a representative of the Office:

(A) with respect to a resident, employee of an LTC facility, or other person filing a complaint with, providing information to, or otherwise cooperating with, a representative of the Office; or

(B) for performance of the functions, responsibilities, or duties described in 45 CFR §1324.13 and §1324.19 and this chapter; or

(3) have personnel policies or practices that prohibit a representative of the Office from performing the functions of the Ombudsman Program or from adhering to the requirements of the Older Americans Act, §712.

(b) A host agency must ensure that a governmental entity or nonprofit organization contracting with a host agency, as described in §88.2(20)(B) of this chapter (relating to Definitions), complies with subsection (a) of this section as if the entity or organization is a host agency.

(c) A host agency may require a representative of the Office to notify the host agency of:

(1) comments or recommendations made in accordance with §88.302(a)(1)(F) of this chapter; and

(2) subject to disclosure requirements in §88.304 of this chapter (relating to Disclosure of Confidential Information; Exclusion from Reporting Requirements Regarding Abuse, Neglect, or Exploitation; and Provision of Records to the Office):

(A) information being sent to a legislator or the media regarding a problem or concern about a resident or a recommendation related to the problem or concern, as described in §88.302(a)(2)(A)(ii) of this chapter; and

(B) a response to a request for information from a legislator or the media, as described in §88.302(a)(2)(C) of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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26 TAC §88.405, §88.407

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. REQUIREMENTS OF HHSC

26 TAC §88.501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

§88.501. HHSC Responsibilities Regarding Individual Conflicts of Interest.

(a) For purposes of determining if the State Ombudsman or a representative of the Office has an individual conflict of interest, the state of Texas is the ombudsman service area.

(b) HHSC requires an applicant for the position of State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" to identify an individual conflict of interest of the applicant.

(c) HHSC requires the State Ombudsman to complete HHSC form "Individual Conflict of Interest Screening of a Representative of the Office" on or about January 15th of each year and if the State Ombudsman identifies an individual conflict of interest.

(d) The Executive Commissioner or designee reviews a form completed by an applicant or the State Ombudsman as described in subsection (b) or (c) of this section to determine if an identified conflict of interest can be removed or remedied.

(e) Except as provided in subsection (f) of this section, HHSC does not employ the State Ombudsman or a representative of the Office who has an individual conflict of interest.

(f) HHSC may employ the State Ombudsman or a representative of the Office who has an individual conflict of interest described in §88.2(17)(K), (L), or (O) of this chapter (relating to Definitions) if:

(1) the Executive Commissioner or designee approves a remedy for the conflict of interest of the State Ombudsman; or

(2) the State Ombudsman approves a remedy for the conflict of interest of a representative of the Office.

(g) HHSC ensures that no person involved in selecting or terminating the State Ombudsman has an individual conflict of interest.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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SUBCHAPTER G. GRIEVANCES

26 TAC §§88.601 - 88.603

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Human Resources Code §101A.051, which provides that the HHSC Executive Commissioner shall adopt rules regarding the administration by HHSC of programs and services for older individuals.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER V. COORDINATION OF BENEFITS

28 TAC §§3.3502, 3.3503, 3.3510

The commissioner of insurance adopts amendments to 28 TAC §§3.3502, 3.3503, and 3.3510, concerning the applicability of coordination of benefits (COB) to vision and eye care plans. The amendments implement Senate Bill 861, 88th Legislature, 2023, and Senate Bill 1367, 83rd Legislature, 2013. The amendments are adopted without changes to the proposed text published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 626). Figure: 28 TAC §3.3510(d) was republished for consistency and clarity in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1315) without markup and with all proposed changes incorporated. The sections will not be republished.

REASONED JUSTIFICATION. The amendments are necessary to enact changes in accordance with SB 1367, which abolished the Texas Health Insurance Pool, and SB 861, which specified COB requirements for vision benefit plans under Insurance Code Chapter 1203, Subchapter C. SB 861 set out provisions for the coordination of vision and eye care benefits. It also specified the responsibilities of the primary and secondary issuers of an applicable health or vision benefit plan for an enrollee who is covered by at least two different health or vision benefit plans that provide the enrollee coverage for the same vision or medical eye care services, procedures, or products.

The amendments to the sections are described in the following paragraphs.

Section 3.3502. To implement SB 861, an amendment to §3.3502 expands the applicability of the subchapter to include individual and group health benefit plans or vision benefit plans, as described by Insurance Code Chapter 1203, Subchapter C, by adding new subsection (a)(6) listing such plans.

A nonsubstantive amendment relocates an exclusion addressing disability income protection coverage exclusion, removing it from subsection (a)(1) and addressing it with new text in (b)(1). Another amendment to subsection (a)(1) adds the title of Chapter 1251. And the acronym "(HMO)" is added to subsection (a)(2).

An amendment also removes a reference in subsection (b)(1) to the Texas Health Insurance Pool. The Texas Health Insurance Pool was dissolved by SB 1367, effective September 1, 2015.

Subsections (c) - (f) are also eliminated. The dates specified in these subsections have passed, and the transition period they

establish is no longer needed. Existing subsection (g) is redesignated as new subsection (c).

Section 3.3503. To implement SB 861, the definition of "plan" under §3.3503(15) is expanded to include vision plans. An amendment to paragraph (15)(A)(iii) adds the terms "self-funded" and "self-insured" in parentheses to clarify the types of arrangements that are included in the definition. A nonsubstantive amendment to paragraph (15)(B) conforms to the changes made in §3.3502 by replacing the reference to the Texas Health Insurance Pool with a clarification of the exclusion of disability income protection coverage. An Insurance Code reference is also added to paragraph (15)(B)(v).

Section 3.3510. Amendments to Figure: 28 TAC §3.3510(d) update the definition of "plan" to add a reference to vision coverage and remove a reference to the Texas Health Insurance Pool, consistent with changes made in §3.3502 and §3.3503. These changes ensure the model COB contract provisions are consistent with the rules. Use of the model COB contract provisions contained in Figure: 28 TAC §3.3510(d) is optional. Issuers may use the model COB provisions or make nonsubstantive changes to the provisions, as long as the contract provisions accurately reflect the COB rules. TDI also makes nonsubstantive amendments to Figure: 28 TAC §3.3510(e) to update the model COB notice to use more plain language and make the information easier for consumers to understand. The model COB notice is a resource for health benefit plan issuers. The notice provides a summary of the most common COB circumstances and does not replace or change the contract provisions.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on March 11, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts the amendments to §§3.3502, 3.3503, and 3.3510 under Insurance Code §1203.107 and §36.001.

Insurance Code §1203.107 provides that the commissioner may adopt rules necessary to implement Chapter 1203, Subchapter C.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jessica Barta

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6555



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.15

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.15 relating to Optional Dental Benefits Plan, of Subchapter A, Chapter 41, Title 34, Part 3, of the Texas Administrative Code without changes to the proposed text as originally published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1701). The rule will not be republished.

REASONED JUSTIFICATION

TRS adopts new §41.15 to administer and implement new §1575.1601 of the Insurance Code which was introduced and enacted by Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new §1575.1601, concerning Group Benefits for Dental and Vision Care, which requires the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for dental care.

New §41.15 establishes the rules that will apply to the optional dental benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

COMMENTS

No comments on the proposed adoption were received.

STATUTORY AUTHORITY

New §41.15 is being adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Government Code, which governs the administration of TRS; §825.102 of the Government Code, which authorizes the Board of Trustees to adopt rules for the transaction of the business of the board, and Senate Bill (S.B.) 1854 as enrolled by the 88th Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

CROSS-REFERENCE TO STATUTE

New §41.15 implements Insurance Code §1575.1601, concerning Group Benefits for Dental and Vision Care.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2024.

TRD-202402001

Don Green

Chief Financial Officer

Teacher Retirement System of Texas

Effective date: May 26, 2024

Proposal publication date: March 15, 2024

For further information, please call: (512) 542-3528



34 TAC §41.16

The Board of Trustees of the Teacher Retirement System of Texas (TRS) adopts new §41.16 relating to Optional Vision Benefits Plan, of Subchapter A, Chapter 41, in Title 34, Part 3, of the Texas Administrative Code without changes to the proposed text as originally published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1703). The rule will not be republished.

REASONED JUSTIFICATION

TRS adopts new §41.16 to administer and implement new §1575.1601 of the Insurance Code which was introduced and enacted by Senate Bill (S.B.) 1854, 88th Legislature, Regular Session, 2023.

S.B. 1854 amended Chapter 1575 of the Insurance Code (TRS-Care) by adding a new § 1575.1601, concerning Group Benefits for Dental and Vision Care, which requires the Board of Trustees ("the trustee") to establish or contract for and make available under the group program an optional plan that provides coverage for vision care.

New §41.16 establishes the rules that will apply to the optional vision benefits plan, including eligibility terms, definition of the plan year, enrollment and disenrollment terms, payment of contributions towards coverage, effective dates of coverage, expulsion for fraud, and competitive bidding.

COMMENTS

No comments on the proposed adoption were received.

STATUTORY AUTHORITY

New §41.16 is being adopted under the authority of Chapter 1575, Insurance Code, which establishes the Texas Public School Retired Employees Group Benefits Act (TRS-Care), §1575.052, which allows the trustee to adopt rules, plans, procedures, and orders reasonably necessary to implement Chapter 1575; Chapter 825, Government Code, which governs the administration of TRS; §825.102 of the Government Code, which authorizes the Board of Trustees to adopt rules for the transaction of the business of the board, and Senate Bill (S.B.) 1854 as enrolled by the 88th Legislature, Regular Session, on May 26, 2023 and effective on September 1, 2023.

CROSS-REFERENCE TO STATUTE

New §41.16 implements Insurance Code §1575.1601 concerning Group Benefits for Dental and Vision Care.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2024.

TRD-202402002

Don Green
Chief Financial Officer
Teacher Retirement System of Texas
Effective date: May 26, 2024
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For further information, please call: (512) 542-3528



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

37 TAC §651.7

The Texas Forensic Science Commission (Commission) adopts an amendment to rule 37 Texas Administrative Code §651.7 without changes to the text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 843) to exempt from accreditation requirements any College of American Pathologist (CAP)-accredited testing or Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services (SAMHSA/HHS)-certified testing limited to analysis of urine testing. The exemption is limited to testing for approved classes of drugs on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other government agency. The results of such testing are subsequently entered into evidence in an action to revise or revoke the terms of an individual's bail, bond, community supervision, or parole. The amendments are necessary to reflect a rule adoption made by the Commission at its April 26, 2024 quarterly meeting.

Reasoned Justification for Rule. The current exemption in §651.7(a)(17) does not expressly include bail or bond testing on human specimens conducted by or under contract with a community supervision or corrections department of a county or municipality, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, or any other governmental agency where the results of such testing are subsequently entered into evidence in an action to revise or revoke terms of probation or parole. The current rule only states that the exemption applies to community supervision or parole. The current rule does not state that the rule exemption applies to scenarios where such testing is used for pretrial diversion or intervention purposes. The rule amendments clarify for criminal justice stakeholders that the exemption applies in the context of pretrial diversion or intervention, too, which was the original intent of the rulemaking.

Summary of Comments. The public comment period on the rule proposal began on February 16, 2023 and ended on March 18, 2024. No comments were received.

Statutory Authority. The amendments are made in accordance with the Commission's accreditation authority under Code of Criminal Procedure, Art. 38.35(a)(4)(D), which addresses

examinations or tests that do not fall within the definition of forensic analysis, and the Commission's rulemaking authority under Art. 38.01 § 3-a, which directs the Commission to adopt rules necessary to implement Code of Criminal Procedure, Art. 38.01.

Cross reference to statute. Code of Criminal Procedure Art. 38.01 and Code of Criminal Procedure, Art. 38.35(a)(4)(D).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 1, 2024.

TRD-202401934
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Effective date: May 21, 2024
Proposal publication date: February 16, 2024
For further information, please call: (512) 936-0661



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners adopts amendments to 40 Texas Administrative Code §367.1, Continuing Education; §367.2, Categories of Education; and §367.3, Continuing Education Audit. The amendments are adopted to revise current continuing education requirements, including to update requirements and assist the board in ensuring that continuing education activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy. The amendments are also adopted to enhance the clarity of the requirements contained in and the general consistency of the chapter, to further refine the requirements for continuing education activities to ensure that relevant documentation is required and that licensees have complied with continuing education requirements, and to ensure that continuing education documentation is adequately retained. In tandem with the changes, the general structure of the sections has been reorganized for clarity. The amendments to §367.1 is adopted without changes and the amendments to §367.2 and §367.3 are adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 996). The amendments will be republished. The changes are to add "for" to §367.2(b)(5)((B)(i) before "each hour" and "the" to §367.3.(c) before "expiration month."

The amendments to the sections include changes to redefine acceptable continuing education activities. The revisions enumerate two general types of acceptable activities, which are eligible for continuing education credit: those that are pre-approved for continuing education credit and other activities that meet further requirements in Chapter 367, Continuing Education, of the board

rules. These two types of activities generally correspond to those that are currently eligible for continuing education credit.

The amendments to §367.1, Continuing Education, relocate and centralize general continuing education requirements in the section for the two subtypes of pre-approved continuing education activities, which include up to two hours of a human trafficking training course approved by the Texas Health and Human Services Commission (HHSC) and activities approved or offered by the American Occupational Therapy Association (AOTA) or the Texas Occupational Therapy Association (TOTA). These preapproved activities are those that currently exist in the chapter. For clarification, the amendments also add information that addresses the conversion of AOTA continuing education units to hours or contact hours, as licensees attest to their continuing education in terms of hours or contact hours when renewing, and add clarifying information concerning documentation requirements for a required human trafficking training course. The amendments also relocate information from §367.3, Continuing Education Audit, concerning general documentation requirements to §367.1 so such is collocated with the requirements for the preapproved activities described therein. Furthermore, the amendments include the addition of a provision noting that a human trafficking training course approved or offered by AOTA or TOTA may not be used to satisfy the human trafficking training requirement unless it is also approved by the Texas Health and Human Services Commission, as described under that subsection. This addition reinforces requirements concerning the human trafficking training requirements in the current section.

The amendments to the chapter, concomitantly include revisions that revise the requirements for those activities that fall under this second type of acceptable continuing education, namely, other acceptable activities, which are not preapproved, but that meet further requirements of the chapter and may be counted for continuing education. The amendments concentrate the requirements specific to this type of continuing education in the renamed §367.2, Other Acceptable Activities, and the opening provision of the amended §367.2 clarifies that activities that are pre-approved do not need to meet the additional requirements contained in the section.

The amendments to §367.2 revise the criteria for the content that these other acceptable activities must concern and revise the activities considered unacceptable for continuing education. Such changes will help to ensure that professional development activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy.

The amendments to the section also clarify that these activities must fall under the acceptable categories of continuing education, which include varied categories such as those related to courses, the supervision of students completing their occupational therapy education, the publication of materials, and other activity types.

The revised §367.2 contains the same categories of continuing education as currently contained in the section. The current board rules, likewise, include that such activities must concern acceptable content, described in the current rules under the definition of continuing education, not be an unacceptable activity, and fall under such categories of activities, though related revisions have been made to these requirements in the amendments.

The requirements for the categories of education in §367.2 have also been revised for clarification and to clean up the text and increase its consistency.

The amendments to §367.2, for example, include the restructuring of the category concerning the supervision of students to clarify the requirements of the category, in general, and to include an hourly breakdown of possible CE credit for certain types of supervision, rather than just expressing such in terms of weeks.

Like the amendments to §367.1, Continuing Education, the amendments to §367.2 also include for clarification the relocation of certain information concerning documentation from §367.3, Continuing Education, to those areas of the section that concern the corresponding activity types.

The amendments to §367.2 include further changes to certain categories to ensure that relevant documentation is required and contains necessary identifying information, such as that related to names of licensees and information concerning providers, and that licensees have complied with requirements. Such changes, for example, include adding language that ensures that the section articulates that documentation of fieldwork supervision identify the licensee by name and include information concerning the authorized signer, information that already typically appears on such documentation, and that when a supervisor shares a student with another individual, the supervisor include an attestation addressing the dates of supervision provided.

The amendments to the section also include the removal of the category concerning the AOTA Benchmark as access to the activity has been indefinitely suspended by AOTA.

The amendments to §367.3, Continuing Education, in addition to, as noted, relocating for clarity certain information from the section to other sections of the chapter, also include further changes to increase the retention period for continuing education documentation. Increasing the retention period will help ensure that licensees are required to retain documentation for a sufficient period of time that may substantiate, when applicable, that specific activities were not counted more frequently than allowed by board rules.

Public comment from CE Broker by Propelus was received regarding the proposed amendments. CE Broker was neither for nor against the adoption and addressed what it referred to as the modernization of audit processes nationwide and in Texas. CE Broker urged the Board to modernize continuing education processes, including by digitizing continuing education audits, and noted that licensees do not deserve to be penalized for misunderstanding requirements, losing a certificate, or missing a notice letter in the mail related to an audit.

The Board disagrees with CE Broker's comment. The Board's audit process is designed to assess the CE compliance of licensees specifically with regard to Chapter 367 of the Board Rules. Licensees may select CE activities from a number of categories, including from a category concerning courses, and may take courses from any provider, provided such meet requirements. Licensees are responsible for retaining the required documentation of their CE activities and ensuring such meets the requirements for the specific category of CE under which such fall. The Board's audit process is adaptable and does not restrict licensees to submitting their documentation through a specific external entity or in a specific manner. The audit process is almost entirely paperless, allowing licensees to submit by paper items as needed, which are then subsequently digitized. The agency contacts licensees through a variety of means, reduc-

ing the likelihood of missing an audit notice letter. Further, the agency gives licensees an opportunity to respond before initiating any disciplinary action. The Board strives to implement a CE process that is modernized, adaptable, and customized to its specific licensing population and regulations.

The amendments are adopted under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and adopted under Texas Occupations Code §454.254, Mandatory Continuing Education, which authorizes the Board to assess the continuing education needs of license holders, establish a minimum number of hours of continuing education required to renew a license, and develop a process to evaluate and approve continuing education courses.

No other statutes, articles, or codes are affected by these amendments.

§367.2. *Other Acceptable Activities.*

(a) Except for the pre-approved activities described under §367.1(d)(1) of this title (relating to Continuing Education), in order to be eligible for continuing education, activities must meet the following requirements.

(1) **Acceptable Content.** Activities must be professional development activities that ensure the health, safety, and welfare of the public and directly concern the maintenance or enhancement of knowledge and proficiencies relevant to occupational therapy practice or the pedagogy, education, ethics, or theory development of occupational therapy.

(2) **Categories of Activities.** Activities must fall under one or more of the categories described under subsection (b) of this section (relating to Categories of Other Acceptable Activities).

(3) **Unacceptable Activities.** Activities may not be unacceptable activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(B) Business meetings.

(C) Exhibit hall attendance.

(D) Activities that provide information about the work setting's philosophy, policies, or procedures or educate employees about a specific work setting.

(E) Activities that concern business development, general professional behaviors/standards, or customer service.

(F) Activities that concern the self-promotion of the provider's or licensee's programs, products, or services.

(G) Activities that concern general topics such as social work; defensive driving; water safety; team building; Graduate Record Examinations (GRE)®, Graduate Management Admissions Test™ (GMAT), and Medical College Admission Test® (MCAT) preparation; general foreign languages; disposal of hazardous waste; patient privacy/rights or abuse of patients; cardiopulmonary resuscitation (CPR); First Aid; Health Insurance Portability and Accountability Act (HIPAA); and Family Educational Rights and Privacy Act (FERPA).

(b) **Categories of Other Acceptable Activities.**

(1) **Formal Academic Courses from an Occupational Therapy Program.**

(A) Completion of course work at or through an accredited college or university. No maximum. 3 contact hours for each credit hour of a course with a grade of A, B, C, or P (Pass). Examples: A 3 credit course counts for 9 contact hours and a 4 credit course counts for 12 contact hours. Documentation shall include a transcript from the accredited college or university. Documentation must include the name of the licensee, accredited college or university, and program and the titles, number of credit hours, and dates of the courses. When semesters are listed on the documentation instead of dates, it must be accompanied by documentation from the accredited college or university showing the dates of the semesters.

(B) Development of a course or courses at or through an accredited college or university may be counted for up to a maximum of 10 contact hours. Documentation shall include a letter from the Program Director that attests to the licensee's development of the course and includes the name of the school, academic program, and course and the name and signature of the Program Director, and an attestation by the licensee of the dates and duration of the development activities completed.

(2) **Courses or Training Programs.** CE credit may be earned for in-service educational programs, training programs, institutes, seminars, workshops, facility-based courses, internet-based courses, conference sessions, and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation shall include a certificate of completion, letter of verification, transcript, or sign-in/attendance sheet. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the activity. When the documentation lists a unit of credit other than hours or contact hours, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(3) **Development of Publications or Software, or Grant/Research Activities.** Documentation shall include an attestation by the licensee of the dates and duration of the development or grant/research activities completed. For publications/software, documentation shall also include a copy of the actual publication/software or a letter of verification documenting acceptance for publication or distribution. For grant/research proposals, documentation shall also include the title page and receipt of proposal.

(A) **Scholarly Works in Peer-Reviewed Journals.**

(i) Primary or second author, up to a maximum of 15 contact hours.

(ii) Other author, consultant, reviewer, or editor, up to a maximum of 5 contact hours.

(B) **Grant or Research Proposals Accepted for Consideration.**

(i) Principal investigator or co-principal investigator, up to a maximum of 10 contact hours.

(ii) Consultant or reviewer, up to a maximum of 4 contact hours.

(C) **Books.**

(i) Primary author or book editor, up to a maximum of 15 contact hours.

(ii) Second or other author, up to a maximum of 7 contact hours.

(iii) Consultant or reviewer, up to a maximum of 5 contact hours.

(D) Book Chapters or Monographs.

(i) Primary author, up to a maximum of 7 contact hours.

(ii) Second or other author, consultant, reviewer, or editor, up to a maximum of 2 contact hours.

(E) Author, Consultant, Reviewer, or Editor of other Practice Related Publications such as Newsletters, Blogs, and Trade Magazines. Up to a maximum of 2 contact hours.

(F) Developer of Practice Related or Instructional Software Designed to Advance the Professional Skills of Others (not for proprietary use). Up to a maximum of 15 contact hours.

(4) Presentations by Licensee. Documentation shall include verification of presentation and must identify the presenter by name and include the date, title, and number of hours of the presentation; the type of presentation (e.g., 2 hour poster, 3 hour workshop); the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Any presentation may be counted only once.

(A) Professional Presentations, e.g. in-services, workshops, institutes. Hour for hour credit. Up to a maximum of 10 contact hours.

(B) Community/Service Organization Presentations. Hour for hour credit. Up to a maximum of 10 contact hours.

(C) The development of professional presentations and community/service organization presentations may be counted toward the maximum credit available for the presentation type. Documentation shall include an attestation by the licensee of the development activities completed, including the date and duration of each. The development of any presentation may be counted only once.

(5) Supervision of Students completing an Accredited Educational Program or Re-Entry Course. Up to a maximum of 10 contact hours may be earned for student supervision per renewal period.

(A) Fieldwork Level 1 and 2 Supervision.

(i) Supervision of Level 1 Fieldwork Students. Up to a maximum of .025 contact hours may be earned for each hour of supervision provided to a student. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Supervision of Level 2 Fieldwork Students.

(I) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 6 contact hours for 8 weeks or 9 contact hours for 12 weeks of supervision provided to a student.

(II) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student and school; level of fieldwork; dates of fieldwork, in addition to total hours for Level 1 students; the name of the authorized signer; and either the signature of the authorized signer or

the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

(B) Student Project Supervision.

(i) Up to a maximum of .025 contact hours may be earned for each hour of supervision provided to a student completing a supervised project for the accredited educational program. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Documentation shall include the following:

(I) verification provided by the school. The documentation must identify the licensee by name and include the name of the student, school, and academic program; dates of the semester for which the project was completed; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(C) Supervision of Students completing Fieldwork for a Re-Entry Course through an Accredited College or University.

(i) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 3 contact hours for 4 weeks or 6 contact hours for 8 weeks of supervision provided to a student.

(ii) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student, school, and re-entry program; the dates and total hours of the fieldwork; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

(6) Mentorship.

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee. 1 contact hour may be earned for each 3 hours spent on activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact hours.

(D) Participation as Mentor. 1 contact hour may be earned for each 5 hours spent on activities as a mentor up to a maximum of 10 contact hours.

(7) Volunteer Activities for Published Outcomes. CE credit may be earned for participation in volunteer activities related to occupational therapy, including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT, for the purpose of tangible, published outcomes, not for proprietary use, such as official documents, publications, and official reports. Up to a maximum of 10 contact hours. Documentation shall include an attestation by the licensee of the activities, including the date and duration of each, in addition to a copy of the actual publication or official document/report that reflects the licensee's name or verification from the entity attesting to the individual's contribution. A verification must include the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included.

(8) NBCOT Navigator® Activities. CE credit may be earned for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour. No maximum. Documentation is a certificate of completion or letter of verification. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours, contact hours, or CAUs awarded for the activity. When the documentation lists a unit of credit other than hours, contact hours, or CAUs, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from NBCOT noting the equivalence of the units or credits in terms of hours or contact hours. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

(9) Independent Studies. Up to a maximum of 10 contact hours may be earned for the completion of independent studies of published materials. Hour for hour credit on the completion of objective-based activities comprised of the listening to or the reading or viewing of materials. Documentation shall include a study plan outlining the specific goals and objectives of the study and an activity log corresponding to such with the dates and hours spent on each objective-based activity; the titles, publication dates, and media types (ex: journal article, book, video) of the materials; a synopsis of the materials and their implications for occupational therapy; and a final evaluation of the outcomes of the study.

(10) Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

§367.3. *Continuing Education Audit.*

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to the Board appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for auditing purposes for

four years from the end of the expiration month of the corresponding renewal period or for a late renewal or a restoration, for four years from the end of the month when the late renewal or restoration was completed.

(d) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2024.

TRD-202402024

Ralph A. Harper

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: June 1, 2024

Proposal publication date: February 23, 2024

For further information, please call: (512) 305-6900



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §702.223

The Department of Family and Protective Services (DFPS) adopts new §702.223 in the Texas Administrative Code, Title 40, Part 19, Chapter 702, Subchapter B, relating to Agency Records and Information. The new rule is adopted without changes to the proposed text published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2052) and will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule §702.223 is required by House Bill 63 of the Texas 88th Regular legislative session (2023) and directs DFPS to adopt rules concerning employee access to the identity of an individual who reports child abuse and neglect.

Under adopted rule §702.223, only certain DFPS and SSCC employees are allowed access to the identity of an individual who makes a report of child abuse or neglect. Subsection (a)(1) allows access to a reporter's identity if the employee is directly involved with an investigation, case, or other process involving the child who is the subject of the report or the child's parent or the person who has legal custody of the child. Subsection (a)(2) allows access to a reporter's identity if the employee supervises, directly or indirectly an employee described in subsection (a)(1) of this section. Lastly, Subsection (a)(3) allows access to a reporter's identity if the employee has a legitimate professional interest in an investigation, case, or other process involving the child who is the subject of the report or the child's parent or other person who has legal custody of the child that requires access to the reporter's identity. Subsection (b) defines that "other process" includes but is not limited to quality assurance, locating a missing child, new and ongoing training of DFPS or SSCC staff, and necessary technical support to maintain or update the case

management system. Finally, under subsection (c) a reporter's identity is confidential and may only be disclosed if waived in writing by the individual making the report, as provided by Texas Family Code §261.201, or to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

COMMENTS

The 30-day comment period ended April 28, 2024. During this period, DFPS did not receive any comments regarding the new rule.

STATUTORY AUTHORITY

The new rule §702.223 is authorized pursuant to Texas Human Resources Code §40.027, which provides that the DFPS Commissioner shall adopt rules for the operation and provision of services by the agency, and pursuant to Texas Family Code §261.201(n), which directs DFPS to adopt rules concerning employee access to the identity of a reporter who makes a report of child abuse or neglect.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2024.

TRD-202401970

Quyona Gregg

Senior Policy Advisor

Department of Family and Protective Services

Effective date: May 22, 2024

Proposal publication date: March 29, 2024

For further information, please call: (512) 929-6633



CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

SUBCHAPTER A. INVESTIGATIONS

DIVISION 1. INTAKE, INVESTIGATION AND ASSESSMENT

40 TAC §707.489

The Department of Family and Protective Services (DFPS) adopts amendments to 40 TAC §707.489, relating to Child Protective Services Intake, Investigation, and Assessment. The amendments are adopted without changes to the proposed text published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2054), and will not be republished.

BACKGROUND AND JUSTIFICATION

The new rule section §707.489(c)(1)(D) is required by House Bill 63 of the Texas 88th Regular legislative session (2023) and clarifies that investigation tasks performed on anonymous reports pursuant to Texas Family Code §261.304(a) are only those reports that are referred to DFPS by local or state law enforcement.

Adopted rule section 707.489(c)(1)(D) clarifies that tasks performed on anonymous reports pursuant to Texas Family Code §261.304(a) are those reports that are referred to DFPS by local or state law enforcement.

COMMENTS

The 30-day comment period ended April 28, 2024. During this period, DFPS did not receive any comments regarding the new rule amendment.

STATUTORY AUTHORITY

The new amendment to section 707.489(c)(1)(D) is authorized pursuant to Texas Human Resources Code §40.027.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2024.

TRD-202401971

Quyona Gregg

Senior Policy Attorney

Department of Family and Protective Services

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For further information, please call: (512) 929-6633



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 811, relating to Choices:

Subchapter A. General Provisions, §§811.1 - 811.5

Subchapter B. Choices Services Responsibilities, §§811.11, 811.13, and 811.14

Subchapter C. Choices Services, §811.22 and §811.30

Subchapter D. Choices Activities, §811.50

Subchapter E. Support Services and Other Initiatives, §811.65 and §811.66

Amended §§811.1 - 811.5, 811.11, 811.13, 811.14, 811.22, 811.30, 811.50, 811.65, and 811.66 are adopted without changes to the proposal, as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1443), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 811 rule change is to update rule language to conform with present terminology, update definitions to conform with federal statute and regulations under the Social Security Act and Title 45 of the Code of Federal Regulations (CFR), and update Temporary Assistance for Needy Families (TANF) purpose statements to conform with federal regulations.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§811.1. Purpose and Goal

Section 811.1(a)(3) updates one of the TANF purposes to align with current language found in Title IV, Social Security Act, §401.

Section 811.1(c) is amended to change "Texas Workforce Commission" to "Agency."

§811.2. Definitions

Section 811.2(18) amends the definition of secondary school to replace "GED" with "high school equivalency."

Section 811.2(20) is amended to replace "TWIST" with "the TWC case management system. The TWIST case management system is being replaced."

Section 811.2(23) is amended to align the definition of "Work-eligible individual" with the definition of "Work-eligible individual" in CFR Title 45, Subtitle B, Chapter II, Part 261.

Section 811.2(26)(D), is amended to replace "GED" with "high school equivalency."

§811.3. Choices Service Strategy

Section 811.3(b)(2)(B) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.4. Policies, Memoranda of Understanding, and Procedures

Section 811.4(b)(1) is amended to refer to the current eligible training system and Chapter 840 of this title.

Section 811.4(d)(1) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

§811.5. Documentation, Verification, and Supervision of Work Activities

Section 811.5(a), (c), and (d) are amended to replace "TWIST" with "the TWC case management system."

Section 811.5(d) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

TWC adopts the following amendments to Subchapter B:

§811.11. Board Responsibilities

Section 811.11(a) is amended to change "One-Stop Service Delivery Network" to "One-Stop Service Delivery System."

Section 811.11(f) and (h) are amended to replace "TWIST" with "the TWC case management system."

§811.13. Responsibilities of Choices Participants

Section 811.13(c)(3) is amended to change "Commission's" to "Agency's."

§811.14. Noncooperation

Section 811.14(e) is amended to replace "TWIST" with "the TWC case management system."

SUBCHAPTER C. CHOICES SERVICES

TWC adopts the following amendments to Subchapter C:

§811.22. Assessment

Section 811.22(a)(1)(B) and (e) are amended to replace "GED" with "high school equivalency."

Section 811.22(b)(5) changes "substance abuse" to "substance use that impairs daily life" to align with the new universal needs assessment provided in the new case management system.

Section 811.22(e)(1)(B) is amended to replace "literacy level" with "functional educational level" to align with Human Resources Code, Title 2, Subtitle C, Chapter 31, Subchapter A, Section 31.0065(f)(1).

§811.30. Special Provisions for Teen Heads of Household

Section 811.30(a) and (b) are amended to replace "GED" with "high school equivalency."

SUBCHAPTER D. CHOICES ACTIVITIES

TWC proposes the following amendments to Subchapter D:

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential

Section 811.50 is amended to rename the section "Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a High School Equivalency Credential."

Section 811.50(a) is amended to replace "GED" with "high school equivalency."

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

TWC adopts the following amendments to Subchapter E:

§811.65. Wheels to Work

Section 811.65(a) is amended to change "Commission" to "Agency."

§811.66. General Educational Development Credential Testing Payments

Section 811.66 is amended to rename the section "High School Equivalency Credential Testing Payments."

Section 811.66 is amended to replace "GED" with "high school equivalency."

PART III. PUBLIC COMMENTS

The public comment period closed on April 8, 2024. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.5

PART IV. STATUTORY AUTHORITY

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2024.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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**SUBCHAPTER B. CHOICES SERVICES
RESPONSIBILITIES**

40 TAC §§811.11, 811.13, 811.14

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 850-8356

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.22, §811.30

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman
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For further information, please call: (512) 850-8356

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SUBCHAPTER D. CHOICES ACTIVITIES

40 TAC §811.50

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule makes changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman
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For further information, please call: (512) 850-8356

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**SUBCHAPTER E. SUPPORT SERVICES AND
OTHER INITIATIVES**

40 TAC §§811.65, §811.66

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules make changes to the implementation of the Temporary Assistance for Needy Families and Choices programs to conform with statute and regulations under Title IV, Social Security Act, and Title 45, CFR.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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**CHAPTER 843. JOB MATCHING SERVICES
SUBCHAPTER A. GENERAL PROVISIONS**

40 TAC §843.2

The Texas Workforce Commission (TWC) adopts amendments to the following section of Chapter 843, relating to Job Matching Services:

Subchapter A. General Provisions, §843.2

Amended §843.2 is adopted without changes to the proposal, as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1452), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 843 rule change is to amend references to "Veteran Preference for Public Employment" to "Military Employment Preference" in accordance with changes to Texas Government Code Chapters 656 and 657 resulting from the passage of Senate Bill (SB) 1376 by the 88th Texas Legislature, Regular Session (2023).

SB 1376 expands the categories of eligibility for military employment preference, formerly known as "veterans preference." The expanded eligibility provides military employment preference to spouses of active members of the United States armed forces or Texas National Guard, as well as spouses of veterans where the spouse is the primary source of income for the household.

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has conducted a rule review of Chapter 843, Job Matching Services, and any changes are described in Part II of this preamble.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§843.2. Public Employer Requirements Regarding Veterans Preference

Section 843.2 is amended to change "veterans preferences" to "military employment preferences." The section title is also

amended to change Public Employer Requirements Regarding Veterans Preference to Public Employer Requirements Regarding Military Employment Preference.

TWC hereby certifies that the rules have been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART III. PUBLIC COMMENTS

The public comment period closed on April 8, 2024. No comments were received.

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Government Code §657.009(c), which provides TWC with the specific authority to adopt rules to facilitate the exchange of employment information between state agencies and individuals entitled to military preference; and

--Texas Labor Code §301.0015 and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules implement changes made to Texas Government Code Chapters 656 and 657 by SB 1376 of the 88th Texas Legislature, Regular Session (2023).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 30, 2024.

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Les Trobman

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For further information, please call: (512) 850-8356

