

# 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 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 55. CHILD SUPPORT ENFORCEMENT

#### SUBCHAPTER H. LICENSE SUSPENSION

##### 1 TAC §55.205

The Office of the Attorney General (OAG) Child Support Division adopts amended 1 TAC §55.205(d) which addresses the method of service of notice of an administrative petition to suspend license pursuant to Texas Family Code §232.006. The rule is adopted without changes to the proposed text as published for comment in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3443). The rule will not be republished.

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

This rule amends §55.205(d) regarding notice of an administrative petition to suspend license. The Legislature, in the 80th Regular Session (2007), added subsection (b)(1) to Texas Family Code §232.006 (S.B. 228), regarding a second method of service in license suspension actions. The first method of notice was "as in civil cases generally." Tex. Fam. Code §232.006(b)(2). The second method authorized that if a party has been ordered under Chapter 105 to provide their current address, notice of license suspension actions may be served by first class mailing. Texas Family Code §232.006(b)(1). This new rule aligns the Texas Administrative Code with the existing Texas Family Code provision, which authorizes service by mail in qualifying cases.

#### SECTION SUMMARY

Section 55.205(d), titled "Initiating a Proceeding," is amended to replace the current reference to Texas Rule of Civil Procedure Rule 106 with a new reference to Texas Family Code §232.006 for obtaining service of the notice on the obligor in an action to suspend a license.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Ruth Anne Thornton, Director of Child Support (IV-D Director), has determined that for the first five-year period the new rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

#### PUBLIC BENEFIT AND COST NOTE

Ms. Thornton has also determined that for each year of the first five years the new rule is in effect, the public will benefit from clarification of the process for notice of an administrative petition

to suspend license and unity in both the Texas Family Code and Texas Administrative Code. In addition, for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

#### IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

Ms. Thornton has determined that the new rule does not have an impact on local employment or economies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Ms. Thornton has determined there will not be an effect on small businesses, micro-businesses, and rural communities required to comply with the amendment as proposed. Therefore, no regulatory flexibility analysis is required under Texas Government Code §2006.002.

#### TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the new rule, and it does not restrict, limit, or impose a burden on an owner's rights to his or her private real property which would otherwise exist in the absence of government action. As a result, the new rule does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the OAG has prepared the following government growth impact statement. During the first five years the new rule would be in effect, the proposed rule:

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

#### PUBLIC COMMENT

The rule proposal was published in the June 30, 2023 issue of the *Texas Register* (48 TexReg 3443). The deadline for public comment was July 30, 2023. The OAG did not receive any comments from interested parties on the rule proposal during the 30-day public comment period.

#### STATUTORY AUTHORITY

The OAG adopts amended 1 TAC §55.205(d) under the authority of Texas Family Code §§231.001, 231.003, 232.016. Section 231.001 designates the OAG as the state's Title IV-D agency. Section 231.003 authorizes the Title IV-D agency by rule to promulgate forms and procedures for the implementation of Title IV-D services. Section 232.016 authorizes the Title IV-D agency by rule to promulgate forms and procedures for the implementation of Chapter 232, Suspension of License.

#### CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

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 September 6, 2023.

TRD-202303248

Austin Kinghorn

General Counsel

Office of the Attorney General

Effective date: September 26, 2023

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For further information, please call: (800) 252-8014



## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

##### SUBCHAPTER K. MAINTENANCE PROGRAM

###### 4 TAC §3.702, §3.705

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 3, Subchapter K, §3.702, concerning West Texas Maintenance Area, and §3.705, concerning East Texas Maintenance Area, without changes to the proposed text, as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3446). These rules will not be republished.

The amendment to §3.702 updates the status of the West Texas Maintenance Area from functionally eradicated to eradicated, as currently reflected in Title 4, Part 1, Chapter 20, §20.14, concerning Eradicated Areas.

The amendment to §3.705 revises the status of the East Texas Maintenance Area from functionally eradicated to eradicated. The amendment corresponds to adopted amendments to Title 4, Part 1, Chapter 20, §20.13, concerning Functionally Eradicated

Areas and §20.14, concerning Eradicated Areas. Those amendments change the status of two of the four Boll Weevil Eradication Zones in the East Texas Maintenance Area from functionally eradicated to eradicated; therefore, the entire maintenance area has been declared eradicated.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Section 74.120 of the Texas Agriculture Code (Code), which allows the Department to adopt rules as necessary to carry out the purposes of Chapter 74, and Section 74.204 of the Code, which allows the Department to adopt rules to implement and a boll weevil maintenance program under Chapter 74, Subchapter F of the Code.

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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TRD-202303262

Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



## CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

### SUBCHAPTER L. PECAN WEEVIL QUARANTINE

#### 4 TAC §19.121, §19.123

The Texas Department of Agriculture Department (Department) adopts amendments to Texas Administrative Code, Title 4, Part 1, Chapter 19, Subchapter L, §19.121 concerning Quarantined Areas and §19.123 concerning Restrictions. This is without changes to the proposed text, as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3447). These rules will not be republished.

The Department identified the need for the proposed amendments during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption for which can be found in the Review of Agency Rules section of the June 30, 2023, issue of the *Texas Register* (48 TexReg 3524).

The amendments to §19.121 add Lea and Otero Counties of New Mexico to the list of quarantined areas for pecan weevil to create consistency with New Mexico's interior pecan weevil quarantine rule (21.17.36.8, New Mexico Administrative Code (NMAC)), which designates Lea and Otero Counties as quarantined areas in addition to Eddy and Chaves Counties.

The amendments also add Pecos County to the list of pecan weevil free areas in Texas not subject to quarantine. The addition of Pecos County has been requested by the Texas Pecan Board after a program administered by the Pecos County Extension agent showed that weevil trap counts in 2021 and 2022 yielded zero catch of pecan weevil.

The amendments to §19.123 change the methods to treat pecans for pecan weevil in order to align pecan treatment methods in Texas with those outlined in New Mexico's interior (21.17.36.11 NMAC) and exterior (21.17.28.11 NMAC) pecan weevil quarantined rules. Given the interstate commerce of the pecan industry in Texas and New Mexico, the Department has determined that these methods would be more effective at countering the spread of pecan weevils and benefit pecan producers.

The Department received no comments regarding the proposed amendments.

The amendments are adopted under Chapter 71 of the Texas Agriculture Code, which allows the Department to adopt rules necessary to administer that 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.

Filed with the Office of the Secretary of State on September 6, 2023.

TRD-202303264

Susan Maldonado

General Counsel

Texas Department of Agriculture

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## CHAPTER 20. COTTON PEST CONTROL

### SUBCHAPTER B. QUARANTINE REQUIREMENTS

#### 4 TAC §20.13, §20.14

The Texas Department of Agriculture (Department) adopts amendments to the Texas Administrative Code, Title 4, Part 1, Chapter 20, Subchapter B, §20.13, concerning Functionally Eradicated Areas and §20.14, concerning Eradicated Areas, without changes to the proposed text as published in the June 30, 2023, issue of the *Texas Register* (48 TexReg 3448). These rules will not be republished.

The amendments are the result of a request from the Texas Boll Weevil Eradication Foundation (Foundation) to change the status of the Upper Coastal Bend (UCB) and South Texas Winter Garden (STWG) Boll Weevil Eradication Zones from functionally eradicated areas to eradicated areas.

This request followed a recommendation from the Foundation's Technical Advisory Committee (Committee) to the Foundation's Board of Directors (Board). The Committee based its recommendation on its evaluation of data concerning the presence of boll weevils in the two zones to determine if they qualified for a change in quarantine status. The Committee's evaluation was based on the criteria for an "eradicated area" contained in §20.1.

The Committee's data consisted of weevil counts in traps placed in cotton fields in the two zones. Each year, traps are placed around cotton fields in each zone at certain densities recommended by the Committee. In 2022, no weevils were captured in the two zones. No weevils have been captured in the UCB

and STWG since 2010 and 2020, respectively. Also, Foundation staff conducted observations in cotton fields in the two zones and found no evidence of weevil damage or reproduction. In addition, the Foundation did not receive any reporting on boll weevil punctures or activity from consultants or Texas A&M AgriLife Extension Service personnel during these time periods.

The Committee presented its recommendation at the Board's meeting on November 9, 2022, which the Board accepted. On May 10, 2023, the National Cotton Council, which describes itself as the central organization for the United States' cotton industry, sent the Department a letter supporting the Foundation's recommendation.

The amendments to §20.13 remove the UCB and STWG Boll Weevil Eradication Zones from the list of functionally eradicated areas.

The amendments to §20.14 replace the Northern Blacklands (NBL) Boll Weevil and Southern Blacklands (SBL) Eradication Zones with the East Texas Maintenance Area. With the addition of the UCB and STWG to the list of eradicated areas, all four eradication zones within the East Texas Maintenance Area, including the UCB and STWG Boll Weevil Eradication Zones, have eradicated status. Adding the East Texas Maintenance Area as opposed to adding more of its constituent eradication zones would simplify the rule's language. The amendments also make editorial changes for clarity.

The Department received no comments regarding the proposed amendments.

The amendments are adopted under Section 74.006 of the Texas Agriculture Code (Code), which provides the Department with the authority to adopt rules as necessary for the effective enforcement and administration of the cotton pest control program and Section 74.004 of the Code, which provides the Department with the authority to establish regulated areas, dates, and appropriate methods of destruction of cotton stalks, other cotton parts, and products of host plants for cotton pests.

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 September 6, 2023.

TRD-202303263

Susan Maldonado

General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-6591



## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 24. TEXAS BOOTSTRAP LOAN PROGRAM RULE

#### 10 TAC §§24.1, 24.2, 24.10

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 24, §§24.1, 24.2 and 24.10 without changes to the proposed text as published in the July 21, 2023, issue of the *Texas Register* (48 TexReg 3967). The rule will not be republished. The rule amendments update the income limits for the Texas Bootstrap Loan Program to conform to updated statutory requirements arising from H.B. 1472 passed during the 88th regular legislative session and signed into law by Governor Abbott on June 6, 2023.

**FISCAL NOTE.** Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the amendment to the rule is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Mr. Wilkinson also has determined that, for the first five years the amendment would be in effect:

1. The adopted amendment to the rule will not create or eliminate a government program;
2. The adopted amendment to the rule will not require a change in the number of employees of the Department;
3. The adopted amendment to the rule will not require additional future legislative appropriations;
4. The adopted amendment to the rule will result in neither an increase nor a decrease in fees paid to the Department;
5. The adopted amendment to the rule will not create a new regulation;
6. The adopted amendment to the rule will not repeal an existing regulation;
7. The adopted amendment to the rule will not increase or decrease the number of individuals subject to the rule's applicability; and
8. The adopted amendment to the rule will neither positively nor negatively affect this state's economy.

**PUBLIC BENEFIT/COST NOTE.** Mr. Wilkinson also has determined that, for each year of the first five years the amendment to the rule is in effect, the public benefit anticipated as a result of the action will be conformance to statutory requirements. There will not be any economic cost to any individual required to comply with the amendment.

**ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES.** The Department has determined that there will be no economic effect on small or micro-businesses or rural communities.

**SUMMARY OF PUBLIC COMMENT.** Public comment was accepted from July 14, 2023, to August 18, 2023. No comment was received.

**STATUTORY AUTHORITY.** The adopted amendment is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amendment affects no other code, article, or statute.

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 September 11, 2023.

TRD-202303341

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: October 1, 2023

Proposal publication date: July 21, 2023

For further information, please call: (512) 475-3959

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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 129. STUDENT ATTENDANCE**

**SUBCHAPTER AA. COMMISSIONER'S**

**RULES**

**19 TAC §129.1025**

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning the student attendance accounting handbook. The amendment is adopted without changes to the proposed text as published in the June 16, 2023 issue of the *Texas Register* (48 TexReg 3023) and will not be republished; however, the handbook adopted by reference in the rule includes changes at adoption. The adopted amendment adopts by reference the *2023-2024 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

**REASONED JUSTIFICATION:** TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to §129.1025 adopts by reference the student attendance accounting handbook for the 2023-2024 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2023-2024 Student Attendance Accounting Handbook* include the following.

*Section 1, Overview*

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data

through the Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The following changes implement reporting requirements for attendance and funding.

Language was deleted that references reporting attendance through TSDS PEIMS, the term "minutes" being interchangeable with "days," school days being converted to minutes, the repeal of the seven-hour school day requirement, and early release waivers being rescinded.

Language referring to the footnote was revised to show §129.1025.

Language referring to the electronic Word version of the handbook was deleted.

### *Section 3, General Attendance Requirements*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language was revised to state that Code 0 will be used for a nonresident student who is charged tuition for the purpose of reducing local revenue.

Language was revised to state that the time spent in a course for which the student has already received credit does not count as instructional time for purposes of the two-through-four-hour-rule.

Language was revised to state that a homeless student is entitled to enroll in any public school that non-homeless students who live in the attendance area in which the child or youth is actually living are eligible to attend.

Language was revised to state that school districts can learn more on the responsibilities associated with homeless students on the Texas Education for Homeless Children and Youth Program webpage.

Language was revised to state that information on secondary school completion and dropouts in Texas public schools is available on the TEA Completion, Graduation and Dropout webpage for the current definition of "dropout."

Language was revised to state that once withdrawn, a student in Grade 7-12 must be reported as a school leaver on the 40203 School Leaver Extension and could be considered a dropout according to the C162 Leaver Reason Code table of the Texas Education Data Standards (TEDS).

The footnote showing 19 TAC §129.21(i)(1) was deleted.

Language was added to state that Section 504 regulations and Individual with Disabilities Education Act (IDEA) protect the rights of students with disabilities. Absences should be monitored, and Section 504 committee meetings and admission, review, and dismissal (ARD) committee meetings should be convened, as needed, to proactively prevent truancy and possibly revise Section 504 plans. The footnote was revised to show 19 TAC §129.1043.

Language was revised to include psychological reasons as a criterion for a student to be served through the general education homebound (GEH) program. A referral under Section 504 should be considered to determine eligibility for homebound students with a suspected disability. If the student is already eligible under Section 504, a Section 504 meeting must be held to discuss potential homebound eligibility.

Language was revised to state that Section 504 policies and procedures for committee membership must be followed for Section 504 eligible students and that the GEH committee/Section 504 committee reviews the necessity for, types of, and duration of instruction based on information from the student's licensed physician.

Language was revised to include the Section 504 committee in documentation responsibilities.

Language was revised to include the Section 504 committee in determining the transition process from GEH to the classroom setting.

Language was revised to state that TEDS is the reference point for information on number of school days in the calendar.

Language was revised to state that low attendance day waivers requested for the district or campus must include the prior year's attendance report showing the overall attendance rate. For a new campus or a campus that existed as two separate campuses the prior year, the overall average attendance rate for the district as a whole must be used.

Language was revised to show that information on missed school day or low attendance day waivers can be found on <http://tealprod.tea.state.tx.us/waiversreports/tea.waiversreports.web>.

Language in the table showing situations leading to school closures due to bad weather or student health and safety was revised to state that a charter school's student attendance accounting software calendar must be adjusted according to TEA policy listed in the table prior to generating and submitting the Six-Week District Summary Attendance report in the FSP System.

Language in the table showing situations leading to school closures due to bad weather or student health and safety was revised to state that a local educational agency (LEA) should locally track the minutes that it actually served students on a non-instructional day for auditing purposes.

Language was revised to state that for the purposes of calculating state funding, the state funding calendar year begins the fourth Monday in August unless a district is designated as a year-round system or is a district of innovation that changes its start date.

Language relating to summer school and state funding was deleted.

Language was revised to state that districts with year-round programs with tracks ending later than June 20, 2024, may delay PEIMS submission until August 15, 2024, or two weeks after the latest year-round track, but resubmissions made after August 15 will not be processed. Corrections made after August 15, 2024, will be addressed by the State Funding Division.

Language was revised in examples relating to prekindergarten (pre-K) programs to include that the ARD committee identifies that the student has special needs and places the student in a self-contained early childhood special education (ECSE) classroom for a three-hour afternoon session.

Language was revised in an example relating to a student who is auditorily impaired attending a regional day school program for the deaf in a neighboring school district. The average daily attendance (ADA) eligibility code for this student is 3 - Eligible Transfer Student Full-Day. The student is also reported as a

transfer student on the 40110 Student School Association Extension.

Language was revised in an example to state that if a district provides less than 2,100 waiver minutes for actual staff development, the instructional track will need to contain additional minutes of operation and that if a charter school provides less than five waiver days for actual staff development, the instructional track will need to contain additional days of operation.

In response to public comment, Section 3.2.1.1 was modified at adoption to include the incorporation of TEC, §49.204.

In response to public comment, Section 3.2.1.5.3 was modified at adoption to include updates to the chart.

In response to public comment, Section 3.2.1.6 was modified at adoption to include updates to the chart.

In response to public comment, Section 3.2.2.2.1 was modified at adoption to reflect a parent's right to request that a student repeat a high school course per House Bill (HB) 3803, 88th Texas Legislature, Regular Session, 2023.

In response to public comment, Section 3.3.2 was modified at adoption to include the incorporation of 34 Code of Federal Regulations(CFR), §99.34.

In response to public comment, Section 3.6.3 was modified at adoption to include updates that a note from the parent is sufficient per HB 1212, 88th Texas Legislature, Regular Session, 2023; that students may be excused for the purposes of visiting a professional workplace per Senate Bill (SB) 68, 88th Texas Legislature, Regular Session, 2023; that parents may request transfers per HB 1959 and HB 2892, 88th Texas Legislature, Regular Session, 2023; and that residency for military families may be established in ninety days per SB 1008, 88th Texas Legislature, Regular Session, 2023. A local LEA form may be submitted in lieu of medical discharge papers.

In response to public comment, Section 3.8.5 was modified at adoption by removing the 5% low attendance waiver when a student is served through remote conferencing.

#### *Section 4, Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner of education to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

Language was revised to state that the term "special education services" includes related services.

Language was revised to state that when a student moves from one district to another within the state in the same school year and either the parent or previous district verifies that the student had an individualized education program (IEP) that was in effect, the district must meet the requirements of 34 CFR, §300.323, regarding the provision of special education services.

Language was revised to state that the admission, review, and dismissal (ARD) committee's verification process means the new district has received a copy of the student's IEP that was in effect in the previous district.

Language was revised to state that when a student transfers from a school district in another state in the same school year

and the parent or previous district verifies that the student had an IEP that was in effect in the previous district, the new school district must meet the requirements of 34 CFR, §300.323(f).

Language was revised to state that, if the parents or in- or out-of-state district verifies before the new school year begins that the student had an IEP that was in effect in the previous district, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year.

Language was added to state that if the student's eligibility for special education and related services cannot be verified before the start of the new school year, then the timelines for a student who transfers during the school year from an in-state or out-of-state district will be applicable to the location of the student's previous district.

Language was revised to state that if the new district wishes to convene an ARD meeting to consider revision to the student's IEP before the beginning of the school year, the new district must determine whether the parents will agree to waive the five-school-day notice. If the parents agree, the new district must make every reasonable effort to hold the ARD meeting prior to the first day of the new school year. Verification means the new district has received a copy of the student's IEP that was in effect in the previous district.

Language was revised to state if an ARD committee determines that a private or home school student three or four years of age is eligible for special education and related services, the parent may enroll the student in public school, "dual enroll" the student, or decline to have the student enroll in public school.

Language was revised to state that if an ARD committee determines that a private or home school student 5 through 21 years of age is eligible for special education and related services, the parent may enroll the student full time in public school.

Language was revised to state that to be placed in the special education homebound instructional setting with a code 0, the student must have a medical or psychological condition that is documented by a physician licensed to practice in the United States.

Language was revised to state that the teacher serving a student ("homebound teacher") while the student is in the special education homebound setting must be a certified special education teacher.

Language was revised to state that TEA will phase out references to Program for Children with Disabilities in this and other TEA publications beginning with the 2024-2025 school year. Instead, children aged three through five who qualify for special education and related services will receive services through ECSE.

Language was revised to state that to receive ECSE services, a child aged three through five years must meet the same eligibility requirements as other students receiving special education services.

Language was revised to state that a student who is not eligible for free pre-K may be served in the pre-K classroom if the ARD committee determines that this is the appropriate setting based on the student's IEP.

Language was revised in the coding chart to include eligibility and ineligibility for free pre-K.

Language was revised in the coding chart for ESCE services to state that an eligible student must be provided special education services beginning on the third birthday of the student.

Language was revised to state that if an ARD committee determines that a private or home school student aged three or four years is eligible for special education and related services, the parent may enroll the student only in the public school, "dual enroll" the student, or decline to have the student enroll in public school.

Language was revised to state that only a district that operates an early childhood intervention (ECI) program through a contract with the Texas Health and Human Services Commission may code an infant with this instructional setting code.

Language was revised to state that the Texas Health and Human Services Commission will operate an ECI program that provides early intervention services for infants through age two and code an infant with an ECI instruction setting code.

Language was revised to state that a district will be funded for any extended school year services it provides for students receiving special education services beyond the regular school year during a period such as winter, spring, or summer break.

Language was revised to state that the federal term "highly qualified teacher status" no longer applies.

Language was revised in examples relating to students who receive special education and related services and medical or psychological conditions that prevent the student from attending school.

Language was revised to state that a four-year-old student with a disability who is eligible for the free pre-K program and ECSE services receives special education and related services, including speech therapy, in the pre-K classroom for three hours five days a week.

Language was revised to state that a student on an elementary campus spends 145 minutes out of 300 instructional minutes in the special education classroom and receives 30 minutes a week (an average of six minutes/day) of speech (or any related service).

Language was revised in an example to include students receiving special education services.

Language was revised in an example relating to speech therapy Indicator Code 1 to state that the student is ineligible for free pre-K but is eligible for the special education services the student receives.

Language referring to an example on excess contact hours was revised to state that a student attends six career and technical education (CTE) classes that have been determined to meet CTE code V1 (see 5.5 CTE (Contact Hour) Codes) and speech therapy (0.25 contact hour multiplier) for a total of 6.25 contact hours a day.

Language referring to the calculation of excess contact hours example was deleted.

In response to public comment, Section 4.3.3 was modified at adoption to reflect the requirement that a student must be evaluated within 20 school days to align with recently adopted rules updating the special-education-related procedures for student transfers to the district.

In response to public comment, Section 4.18.5 was modified at adoption to reflect examples to instructional setting codes 41 and 42.

#### *Section 5, Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for CTE in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

Language was revised to state that campuses report the students enrolled on the TEA-designated Pathways in Technology Early College High School (P-TECH) campus in TSDS PEIMS submissions 1 and 3 using the data element P-TECH-INDICATOR-CODE (E1612). Campuses report the students enrolled on a New Tech Network campus in TSDS PEIMS submissions 1 and 3 using the data element NEW-TECH-INDICATOR-CODE (E1647).

Language was revised to state that appropriate staff members need to review students' schedules as courses are added or dropped in the enrollment of CTE courses.

Language was revised to state that a student enrolled in a CTE course should be reported on the TSDS PEIMS 42401 Special Programs Reporting Period Attendance Extension with the CTE SERVICE-ID and the eligible days.

Language was revised to state that to receive CTE weighted funding, course periods are required to be a minimum of 45 minutes in length. Three contact hours (V3) is the maximum an LEA may claim for a single course.

Language was revised to state that a student who is auditing a CTE course and taking no other CTE courses for credit should not have CTE eligible days present on the 42401 Special Programs Reporting Period Attendance Extension.

Language was revised to state that to receive CTE weighted funding, course periods are required to average a minimum of 45 minutes in length.

Language was revised to state that when computing the Campus Summary Report (2.3.2 Campus Summary Reports), LEA personnel must determine the CTE V-code to assign to a student's CTE course separately based on the CTE course's average minutes per eligible school day.

Language was revised to state that eligible CTE days are the number of student instructional days in an LEA's calendar. The number of eligible CTE days varies among districts.

Language was revised to state that class periods are required to be a minimum of 45 minutes in length.

Language was revised to state that practicum courses and other two-credit or three-credit courses may be used as laboratory-based, paid, or unpaid work experience for students. Class periods are required to be a minimum of 45 minutes in length.

Language was added to state that class periods are required to be a minimum of 45 minutes in length.

Language was revised to state that for students who do not complete the course, the LEA will still receive contact hours for the days the student was enrolled and present. The LEA should report the 42410 Special Programs Reporting Period Attendance

Extension with eligible days present for the time the student was in the course.

Language in examples citing different situations was revised to show the CTE course service-ID with a note to refer to the table on CTE (contact hour) codes for average CTE minutes per day.

In response to public comment, Section 5.5 was modified at adoption to include language clarifying the 45-minute CTE class time requirement on LEA-planned shortened schedules.

In response to public comment, Section 5.12.3 was modified at adoption to correct the course name to Medical Microbiology.

#### *Section 6, Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was revised to state that if students are served by multiple programs, the provisions of each applicable program should be reviewed and applied.

Language was revised to state that in PEIMS, the terms "emergent bilingual (EB)" and "English learner (EL)" are bridged as EB/EL.

Language was revised to state that the term "district" includes all school districts, public open-enrollment charter schools, and districts of innovation.

Language was revised to state that a student will be identified as EB if the student is not English proficient, or the student's disabilities are so severe that the English language proficiency assessment cannot be administered.

Language was revised to state that the district personnel must not assign the student a bilingual or English as a second language (ESL) program type code in the attendance accounting system until parental consent is received.

Language was revised to state that the language proficiency assessment committee (LPAC) convenes to analyze the student records from the sending district, determine whether the student was previously identified as EB, recommend continuation of program services, as appropriate, and ensure that documented parental approval for current program participation has been obtained.

Language referring to the heading of a section was revised to read Initial Program Placement/Eligibility.

Language was revised to state that EB students and non-EB students participating in a dual language immersion one-way and served through an alternative language program do not generate the additional 0.05 weighted funding.

Language was revised to state that funding is generated when a student is identified as an EB student and is being served in a bilingual or ESL program with parental approval.

Language in the chart showing teacher certification requirements was revised to include the term bilingual education.

Language was revised to note that EB students served through an alternative language program do generate bilingual education allotment funds at the basic allotment for EB students (0.1).

Language was revised to state that district personnel, while reporting eligible days present, must identify each student who is participating in a bilingual education program, an ESL program, or an alternative language program (ALP) and who is eligible for funding with the appropriate bilingual, ESL, or ALP type code in the attendance accounting system.

Language was revised to state that the Emergent Bilingual Student Reclassification Criteria Chart can be located on the TEA Bilingual and English as a Second Language Education Programs web page.

Language was revised to state that, in alignment with the goals of dual language immersion programs, the LPAC will likely recommend that the English proficient student continue in the dual language immersion program with parental approval.

Language was revised to state that the EB indicator codes of F and S are used to reflect the first and second years of monitoring.

Language relating to the footnote was revised to show that to find the appropriate code to use, district personnel should consult the program type code tables available at [https://www.texasstudentdatasystem.org/TSDS/TEDS/Texas\\_Education\\_Data\\_Standards](https://www.texasstudentdatasystem.org/TSDS/TEDS/Texas_Education_Data_Standards), then search for the C175 code table for bilingual program type codes and the C176 code table for ESL program type codes.

Language was revised to note that the LPAC records retention schedule is cessation of services (ending at reclassification) plus five years (including the two years of monitoring).

#### *Section 7, Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for pre-K programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for prekindergarten to account for attendance and funding.

Language was revised to include the term home language survey (HLS). The HLS is administered in English and the home language. For students of other language groups, the HLS is translated into the home language whenever possible.

Language was revised to state that a child who is considered a migratory child is automatically eligible for pre-K based on being educationally disadvantaged.

Language was added to state that a student is eligible on the basis of homelessness if the district's local McKinney-Vento liaison identifies the student as homeless, regardless of the residence of the child, of either parent of the child, or of the child's guardian or other person having lawful control of the child.

In response to public comment, Section 7.2 was modified at adoption to clarify that LEAs may begin communication regarding pre-K as early as January 1.

In response to public comment, Section 7.2.6 was modified at adoption to clarify that foster care is limited to U.S. territories.

#### *Section 9, Pregnancy-Related Services (PRS)*



TEC, Chapter 48, including §48.104, authorizes funding for students who are pregnant under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for pregnancy-related services (PRS) to account for attendance and funding.

Language was revised to note that students may also be eligible for Section 504 services (regardless of the LEA having a PRS program) due to a suspected disability relating to pregnancy such as having gestational diabetes.

Language was revised that for a baby recovery period, a note from a medical practitioner stating the infant's need for hospital confinement is needed.

Language was revised to state that the time spent on campus receiving temporary, limited support services or taking required state assessments must not count as any part of the number of hours served as compensatory education home instruction (CEHI) for eligible days present.

Language was revised to state that if a district has a PRS program, it must provide access to the services offered through the PRS program to students who already receive special education and related services and who become pregnant.

Language was revised to state that a pregnant student's ARD committee must meet as necessary to address any changes in the student's needs, and a student receiving special education services who qualifies for PRS may also receive homebound instruction on campus if the district has an approved on-campus instruction waiver. A certified teacher, nurse, counselor, or social worker must provide the additional hours of PRS support services for a student who receives special education services.

Language was revised to state that a student being administered standardized, six-weeks, semester, or final exams or required state assessments while at home is limited to earning one day present for a minimum of one hour or more of testing in one calendar day.

Language was revised to show that a student receiving CEHI who returns to her campus to take required state assessments may need to have a medical release from a licensed medical practitioner. Language also states that more information is provided in Section 9.11, Returning to Campus for Support Services or Testing.

Language was revised to state that when the break-in-service option is used, documentation by a licensed medical professional stating that the infant needs to remain in the hospital and information collected by campus officials is required.

Language was revised to state that when a student who receives special education services is served through the PRS program, both PRS and special education documentation is required.

Language was revised to state that when serving a student who receives special education services, the district is not required to maintain the special education and PRS records in the same file.

Language in an example was revised to include students who receive special education services.

In response to public comment, Section 9.2.3 was modified at adoption to remove language that specifically applied to the 2022-2023 school year.

#### *Section 10, Alternative Education Programs*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was revised to state that regardless of the setting in which a student is served, the student's attendance must be reported according to the traditional rules of the standardized attendance accounting system required by the TEDS.

Language was revised to state that the TEDS must be referred to for information on how a district should handle disciplinary removals and report disciplinary-removal information.

Language was added to note that a partial day of out-of-school suspension is counted as a full day when reported in TSDS PEIMS.

#### *Section 11, Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language from the college credit program table referring to the ECHS row and other considerations column was deleted.

Language was revised to state that a public junior college, college, or university may offer a course in which a high school student may enroll and for which the student may receive both high school and college credit.

Language was revised to note that TAC rules for ECHS and P-TECH programs prohibit requiring a student enrolled in an ECHS course for high school graduation credit to pay for tuition, fees, or required textbooks.

Language was revised to state the student eligibility requirements specific to academic dual credit courses for high school students.

Language was revised to state that a high school student is eligible to enroll in a dual credit course if he or she demonstrates college readiness by achieving the minimum passing standards and is exempt under the provisions of the Texas Success Initiative.

Language stated in the table on student eligibility for dual credit courses was deleted.

Language was revised to show the footnote referring to 19 TAC §4.85.

Language related to minimum passing standards was revised in the table on student eligibility for dual credit courses to demonstrate dual credit eligibility.

Language was revised to state that a high school student is eligible to enroll in workforce education dual credit courses contained in a postsecondary Level 1 certificate program or a program leading to a credential of less than a Level 1 certificate at a public junior college or public technical institute and is not

required to provide demonstration of college readiness or dual credit enrollment eligibility.

Language was revised to state that a high school student is eligible to enroll in workforce education dual credit courses contained in a postsecondary Level 2 certificate or applied associate degree program under the conditions stated in 19 TAC §4.85.

Language was revised to state that a student enrolled in a TEA-designated ECHS or P-TECH program may enroll in dual credit courses if the student demonstrates college readiness by achieving the minimum passing standard(s) on a qualifying assessment instrument or has demonstrated dual credit eligibility.

Language was revised to state that beginning in the 2023-2024 school year, participating campuses are eligible for up to five days of Additional Days School Year (ADSY) waivers for missed instructional days throughout the year due to weather, health, or safety reasons. LEAs that wish to request one or more ADSY waiver days must submit that request through the TEA waiver system under the ADSY waiver. If an LEA applies for and receives a missed school day waiver, the day(s) will count toward the 180-day total.

Language was revised to state that each campus participating in ADSY must indicate their intent in the TSDS PEIMS Summer submission (due in June) along with their calendar reporting to ensure the campus meets the 180-day requirement.

Language was revised to state that a child of a military family who moves to a district from another member state and satisfactorily completed a particular grade level in a public school in the sending state is entitled to enroll in the next highest grade level.

In response to public comment, Section 11.6.4 was modified at adoption to allow for Optional Flexible School Day Program participation through a remote or hybrid dropout recovery education program per SB 1647, 88th Texas Legislature, Regular Session, 2023.

#### *Section 12, Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for the TXVSN to account for attendance and funding.

Language was revised in the additional TXVSN requirements and information to state that a student is not entitled to any rights, privileges, activities, or services available to a student enrolled in a public school, other than the right to receive the appropriate unit of credit for completing an electronic course.

Language was revised in an example to state that a student who is scheduled for and receiving instruction in traditional classes for 55 minutes each day and is enrolled in two TXVSN courses for Grades 9-12 is reported with an ADA eligibility code of 2.

Language was revised to state that to meet a requirement of remote conferencing, a student is unable to attend school because of a temporary medical or psychological condition.

Language was revised to state that to meet a requirement of remote conferencing, a student's temporary medical or psychological condition is documented by a physician licensed to practice in the United States.

Language was revised to state that a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period if the documented temporary medical or psychological condition persists.

Language was revised to state that if the school district provides instruction through remote conferencing to a student who is eligible for special education and related services for all or part of the school day, the district may count that instruction as classroom time for FSP funding purposes, including in the calculation of contact hours.

Language was revised to state that if a remote conferencing waiver is approved, funding for days extended beyond the 20 days may be retroactively claimed beginning on the 21st day, and proof of an approved waiver must be available for audit for students receiving special education and related services.

Language was revised to state that if the waiver is granted, funding may be claimed beginning on the date remote homebound services began for regular education students. These waivers will only be granted in extremely severe medical or psychological circumstances, and a waiver must be submitted for each individual student.

Language was revised to state that if the waiver is approved, funding may be claimed beginning on the date the ARD committee determined that remote homebound services began for students receiving special education and related services. These waivers will only be granted in extremely severe medical or psychological circumstances, and a waiver must be submitted for each individual student.

In response to public comment, Section 12.3.1 was modified at adoption to remove a campus's ability to serve a regular education student in remote conferencing for 20 days without a waiver.

In response to public comment, Section 12.3.2 was modified at adoption to remove a campus's ability to serve a special education student in remote conferencing for 20 days without a waiver.

#### *Section 13, Appendix: Average Daily Attendance (ADA) and Funding*

Language was revised to state that days in attendance are the total number of days that a student was in attendance (present at the designated attendance-taking time or absent for a purpose described by 19 TAC §129.1025) during a specific period (for example, a 180-day school year) while that student was eligible to generate funding (in membership).

Language was revised to state that a student who receives special education and related services is assigned one of 12 special education instructional settings, each with a varying weight (from 1.15 to 5.0) that is based on the duration of the daily service provided and the location of the instruction.

Language was revised to state that each CTE course must be reviewed separately to determine the average minutes per day students attend that course. To receive CTE weighted funding, course periods are required to be a minimum of 45 minutes in length. Three contact hours is the maximum an LEA may claim for a single course.

#### *Glossary*

Language was revised to note that career cluster refers to one of the 14 career clusters around which CTE programs of study are organized.

Language was revised to state that center-based instruction is a setting code for a student who is provided early intervention services through the ECI program operated through the Texas Health and Human Services Commission.

Language was revised to state that an English proficient student is a student who was previously identified as an EB student, has met reclassification criteria, and is no longer identified as an EB student.

Language was revised to state that GEH students must be confined for medical or psychological reasons only and be expected to be confined for a minimum of four weeks (which need not be consecutive).

Language was revised to state that home-based instruction is the setting for providing early intervention services through ECI programs operated through the Texas Health and Human Services Commission in the home of the client.

Language was added to state that a migratory child is a child or youth who made a qualifying move in the preceding 36 months. Qualifying moves are stated as a migratory agricultural worker or a migratory fisher or with, or to join, a parent or spouse who is a migratory agricultural worker or a migratory fisher.

Language was revised to state that the original entry date refers to the initial date that a student is physically present at the official attendance time.

Language was revised to state that the reentry date refers to the initial date a student physically returns and is counted present at the official attendance time after a prior withdrawal. The reentry date applies to both regular school and special programs.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began June 16, 2023, and ended July 17, 2023. Following is a summary of the public comments received and agency responses.

**Comment:** A PEIMS coordinator and an ESC representative asked for clarification on the last part of Section 3.2.1.1, regarding a nonresident student who is charged tuition for the purposes of reducing local revenue, and asked if this was referring to charging tuition for the purpose of reducing local revenue.

**Response:** The agency agrees and has provided the following clarification at adoption to include a footnote in Section 3.2.1.5.3 to TEC, §49.204, which specifies that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

**Comment:** An ESC representative commented that if students typically attend for 2 to 4 hours daily and are considered in membership, it appears that an ineligible ADA Code 4 or 5 would be more appropriate.

**Response:** The agency agrees, and the SAAH was updated at adoption to reflect this change in the appropriate chart in Section 3.2.1.6.

**Comment:** A PEIMS coordinator commented that the chart in Section 7.5 should align with the chart in Section 3.2.1.5.3.

**Response:** The agency agrees, and the SAAH was updated at adoption to reflect this change by updating the chart in Section 3.2.1.5.3 to align with the chart in Section 7.5.

**Comment:** A PEIMS coordinator commented that the chart in Section 7.5 should align with the chart in Section 3.2.1.6.

**Response:** The agency agrees, and the SAAH was updated at adoption to reflect this change by updating the chart in Section 3.2.1.6 to align with the chart in Section 7.5.

**Comment:** An ESC representative commented that it would be helpful to have an ADA code for ineligible transfer pre-K students for teachers' children who transfer into a district and do not qualify for pre-K.

**Response:** The agency disagrees as tracking LEA employees' ineligible pre-K students should be done locally.

**Comment:** A PEIMS coordinator commented that clarification is needed in Section 3.4.3 - Students Whose Whereabouts are Unknown - regarding parents still living in the district.

**Response:** The agency disagrees as the rule is student-focused and not applicable to parents/guardians.

**Comment:** A PEIMS coordinator commented that an addition to Section 3.6.3 may be needed to clarify that the documentation from a health care professional should be provided when students return to school after an illness or related treatment to clarify confusion caused by the phrase "anticipated period" in the current SAAH.

**Response:** The agency agrees, and edits have been made at adoption to the SAAH to include updates that a note from the parent is sufficient per HB 1212, 88th Texas Legislature, Regular Session, 2023.

**Comment:** An administrator commented that SAAH formatting could be organized differently.

**Response:** The agency agrees and will continue to consider how to organize content in future revisions of the SAAH.

**Comment:** An administrator commented that in reviewing that proposed 2023-2024 SAAH, several bills from the 88th Texas Legislature, Regular Session, 2023, were missing.

**Response:** The agency agrees and has updated the SAAH in Section 3 to include HB 1212, SB 68, HB 2892, HB 1959, HB 1008, and HB 3803 from the 88th Texas Legislature, Regular Session, 2023.

**Comment:** A registrar requested clarification regarding when districts can request and send records via the Texas Records Exchange.

**Response:** The agency agrees that clarification is necessary, and the SAAH was updated at adoption to include a footnote in Section 3.3.2 to 34 Code of Federal Regulations, §99.34.

**Comment:** An individual questioned if an alternative form may be used in lieu of medical discharge paperwork and if a family may submit the required information through a district-created form.

**Response:** The agency agrees, and Section 3.6.3 of the SAAH was updated at adoption to include updates that a note from the parent is sufficient per HB 1212 and that a local LEA form may be submitted in lieu of medical discharge papers.

**Comment:** A PEIMS coordinator inquired how TEC, §28.0212, would be addressed in the SAAH after passage of HB 3803, 88th Texas Legislature, Regular Session, 2023.

**Response:** The agency agrees, and Section 3.2.2.2.1 of the SAAH has been updated at adoption to reflect a parent's right

to request that a student repeat a high school course per HB 3803.

Comment: A special education director commented that requirements in Section 4.17 pose challenges in finding certified staff who meet requirements for providing instruction in core academic subjects and grade levels.

Response: The agency disagrees that changes are necessary as these requirements are specified in 19 TAC §231.701, Special Education Teacher.

Comment: A PEIMS coordinator commented that the SAAH should specify that Extended School Year (ESY) services should be provided within the same LEA where the student was enrolled at the end of the regular school year.

Response: The agency disagrees as there may be instances where students register for enrollment in a new district over the summer and ESY would be implemented by the new district.

Comment: A director of data integrity commented that a new ADA code should be created to allow for funding for students with disabilities who are enrolled outside of the LEA (e.g., private school) but must still be served by the LEA.

Response: The agency disagrees. Students with disabilities who are enrolled in private schools are provided equitable services, which LEAs allocate for in their Individuals with Disabilities Education Act (IDEA)-B grant funds.

Comment: A representative from Disability Rights Texas commented that the proposed 2023-2024 SAAH requires more clarification on how dyslexia instruction affects special education instructional settings and student attendance arrangements.

Response: The agency agrees, and Section 4.18.5 of the SAAH was updated to reflect examples to instructional setting codes 41 and 42.

Comment: A representative from the Texas Council of Administrators of Special Education commented that the proposed changes in Section 4.3.3 do not align with recently adopted rules updating the special education-related procedures for student transfers to the district.

Response: The agency agrees, and the SAAH was updated at adoption to reflect the requirement that a student must be evaluated within 20 school days to align with recently adopted rules updating the special-education-related procedures for student transfers to the district.

Comment: A CTE director commented that Section 5.12.3 should be updated to reflect the correct course name for the Service Identification Number used in the example.

Response: The agency agrees, and the SAAH was updated at adoption to correct the course name to Medical Microbiology.

Comment: A director of instructional programs commented that Section 5 of the SAAH has lacked consistency with rule guidance regarding weighted program funding.

Response: The agency disagrees as CTE funding has always been based on ADA.

Comment: A PEIMS coordinator commented that Section 5.5 should give more guidance to LEAs when they have a planned shortened school day where CTE courses may not meet for 45 minutes.

Response: The agency agrees and has updated the SAAH at adoption to include language clarifying the 45-minute CTE class time requirement on LEA-planned shortened schedules.

Comment: An educator questioned if the SAAH could be updated to allow for a teacher's site visit to the workplaces of students participating in career preparation/practicum courses to be virtual.

Response: The agency disagrees. If a student is expected to physically be on the job site, then the teacher is required to make physical job site visits.

Comment: North East Independent School District commented that a revision should be made allowing for an average of 45-minute CTE courses so that academic intervention time may be served during the week.

Response: The agency disagrees. HB 4545, 87th Texas Legislature, Regular Session, 2021, and TEC, §28.002(a)(2)(E), do not allow for time to be pulled from CTE courses for academic intervention. Time must be provided in addition to the instruction normally provided to students in the grade level in which the student is enrolled.

Comment: A PEIMS coordinator commented that section 7.2.6 should clarify "territories" be "U.S. territories."

Response: The agency agrees, and the SAAH was updated at adoption to clarify that foster care is limited to U.S. territories.

Comment: A chief regional impact officer commented that the agency should consider a date earlier than April 1, such as January 1, to collect preliminary pre-K pre-registration information.

Response: The agency agrees, and Section 7.2 of the SAAH was updated at adoption to clarify that LEAs may begin communication regarding pre-K as early as January 1.

Comment: A counselor commented that Section 9.2.3 should be updated to remove language specific to the 2021-2022 school year.

Response: The agency agrees, and the SAAH was updated at adoption to remove language that specifically applied to the 2021-2022 school year.

Comment: An administrator commented that the SAAH needs to be updated to reflect SB 1647, 88th Texas Legislature, Regular Session, 2023, that allows for remote and hybrid dropout recovery programs.

Response: The agency agrees, and Section 11.6.4 of the SAAH has been updated at adoption to allow for Optional Flexible School Day Program participation through a remote or hybrid dropout recovery education program per SB 1647.

Comment: A Texas parent commented that remote conferencing should return to needing a waiver at the onset and not after 20 days.

Response: The agency agrees, and Sections 12.3.1 and 12.3.2 of the SAAH were updated at adoption to remove a campus's ability to serve a regular education student or a special education student in remote conferencing for 20 days without a waiver.

Comment: A school district employee questioned the sustainability of the low-attendance waiver at 5% and asked that the agency return to a 10% threshold.

Response: The agency agrees, and Section 3.8.1.5 of the SAAH was updated at adoption to remove the 5% low attendance waiver when a student is served through remote conferencing.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.001, as amended by Senate Bill (SB) 1008, 88th Texas Legislature, Regular Session, 2023, which states that a school district must allow for an active duty member of the armed forces of the United States to be allowed 90 days to provide proof of residency; TEC, §25.0344, as added by House Bill (HB) 1959 and HB 2892, 88th Texas Legislature, Regular Session, 2023, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, as amended by HB 1212 and SB 68, 88th Texas Legislature, Regular Session, 2023, which provides reasons for which a school district shall excuse a student from attending school; TEC, §28.02124, as amended by HB 3803, 88th Texas Legislature, Regular Session, 2023, which states that a parent may request that a student repeat a course for high school credit; TEC, §29.081, as amended by SB 1647, 88th Texas Legislature, Regular Session, 2023, which states that attendance accounting and Foundation School Program funding for Optional Flexible School Day Program participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance

is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section. Subsections (m-1) and (m-2) address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in average daily attendance in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving nonresident students who transfer to the district and are educated by the district but who are not charged tuition.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.0344, as added by House Bill (HB) 1959 and HB 2892, 88th Texas Legislature, Regular Session, 2023; 25.081; 25.0812; 25.087,

as amended by HB 1212 and Senate Bill (SB) 68, 88th Texas Legislature, Regular Session, 2023; 28.02124, as amended by HB 3803, 88th Texas Legislature, Regular Session, 2023; 29.081, as amended by SB 1647, 88th Texas Legislature, Regular Session, 2023; 25.001, as added by SB 1008, 88th Texas Legislature, Regular Session, 2023; 29.0822; 30A.153; 48.004; 48.005; 48.102; 48.103; 48.104; 48.105; 48.106; 48.108; and 49.204.

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 September 7, 2023.

TRD-202303267

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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



## TITLE 22. EXAMINING BOARDS

### PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

#### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES

##### SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

###### 22 TAC §851.21

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.21 Licensing Requirements - Examinations. This amendment is adopted as published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3389) and will not be republished.

The adopted amendment to 22 TAC §851.21 amends the examination process and procedures to sit for the examinations and removes language that references a form that is no longer required.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in 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.

Filed with the Office of the Secretary of State on September 6, 2023.

TRD-202303244

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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Proposal publication date: June 23, 2023

For further information, please call: (512) 936-4428



###### 22 TAC §851.22

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.22 Waivers and Substitutions: Policy, Procedures, and Criteria. This amendment is adopted as published in the June 23, 2023, issue of the *Texas Register* (48 TexReg 3392) and will not be republished.

The adopted amendment to 22 TAC §851.22 describes the relevant work experience requirement, removes language that may have been interpreted as the Board evaluating an applicant's "good and ethical" character, and adds clarity and consistent language relating to continuing education used throughout the policy.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state and §1002.259, which authorizes the Board to waive any requirement for licensure except for the payment of required 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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Rene Truan

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 1. GENERAL ADMINISTRATION

##### SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

###### 28 TAC §1.502

The commissioner of insurance adopts amendments to 28 TAC §1.502, concerning licensing persons with criminal history. These amendments update the section for consistency

with Occupations Code §§53.021, 53.022, and 53.023. The amendments are adopted without changes to the proposed text published in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2316). The rule will not be republished.

**REASONED JUSTIFICATION.** House Bill 1342, 86th Legislature, 2019, amended Occupations Code §§53.021, 53.022, and 53.023, which contain factors to be considered by licensing agencies when contemplating how a criminal conviction relates to a licensed occupation. Section 1.502 incorporates elements of Occupations Code §§53.021, 53.022, and 53.023 regarding offenses and criteria to consider when licensing an individual with a criminal background.

In addition, the adopted amendments update the list of criminal offenses considered under §1.502 to reflect changes in the Code of Criminal Procedure and the Penal Code since the rule was last amended in 2010, and it makes additional updates to the section based on practical experience under the current text of the section.

The adopted amendments are described in the following paragraphs.

Section 1.502(a) - (c). The adoption makes nonsubstantive changes to the text for plain language purposes and to correct capitalization.

Section 1.502(d). The adoption amends subsection (d) to address factors currently included in subsections (f) and (g) of the section.

New text is also included in subsection (d) to address Code of Criminal Procedure provisions cited by Occupations Code §53.021 for which the department may refuse to issue an original license or revoke, suspend, or refuse to renew.

Section 1.502(e). The adoption adds new subsection (e), stating that the department will consider the factors specified in Occupations Code §53.022 and §53.023 in determining whether to issue an original license or authorization or revoke, suspend, or refuse to renew a license or authorization. This text replaces text in current subsection (h), which addresses the factors in Occupations Code §53.022 and §53.023 by listing them.

The subsections that follow new subsection (e) are redesignated as appropriate to reflect the addition of the new section.

Section 1.502(f). The former subsection (e), redesignated as subsection (f), provides a non-inclusive list of crimes the department considers to be of such serious nature that they are directly related to the duties and responsibilities of the licensed occupation or of prime importance in determining fitness for licensure or authorization.

Adopted amendments to paragraph (2) clarify that the criminal violations considered under subsection (f)(2) include offenses pertaining to the financial industry or business of insurance under any state or federal law or any law of a foreign country or the Uniform Code of Military Justice. The amendments also add a non-inclusive list of five criminal violations specifically contemplated by the paragraph.

Adopted amendments to paragraph (4) add clarifying language and reorganize the offenses listed in the paragraph to track the numeric order of the Penal Code chapters and sections in which they are addressed. Amendments also insert references to additional offenses in the Penal Code for which the department may revoke, suspend, or refuse to issue or renew a license or authorization.

Finally, amendments add new paragraphs (5) - (8) to clarify that the crimes that the department considers in determining fitness for licensure or authorization include any offense described by the Code of Criminal Procedure Article 42A.054; sexually violent offenses as defined by Code of Criminal Procedure Article 62.001; any attempt or conspiracy to commit any offense listed in §1.502 as described by the Penal Code; and any offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under §1.502.

Section 1.502(f) - (h). Adopted amendments delete the former subsections (f) - (h) because the provisions in these subsections are addressed in adopted amendments to subsections (d) and (e).

Section 1.502(g). Former subsection (i) is redesignated as subsection (g). In addition, the word "shall" is replaced with "will."

Section 1.502(h). Former subsection (j) is redesignated as subsection (h). In addition, the word "shall" is replaced with "will."

Section 1.502(i). Former subsection (k) is redesignated as subsection (i).

The adoption also includes additional nonsubstantive text changes for style and grammar, for consistency with current department rule drafting preferences.

**SUMMARY OF COMMENTS.** The department did not receive any comments on the proposed amendments.

**STATUTORY AUTHORITY.** The commissioner adopts the amendments to 28 TAC §1.502 under Occupations Code §§53.021, 53.022, 53.023, and 53.025 and Insurance Code §36.001.

Occupations Code §53.021 states grounds on which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination.

Occupations Code §53.022 provides factors that a licensing authority must consider in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.023 provides additional factors that a licensing authority must consider in determining whether to take an action authorized by Occupations Code §53.021 if it determines that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation.

Occupations Code §53.025 requires a licensing authority to issue guidelines relating to the practice of the licensing authority under Occupations Code Chapter 53. The guidelines must state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department 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.

Filed with the Office of the Secretary of State on September 6, 2023.

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Jessica Barta

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For further information, please call: (512) 676-6555



## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD**

#### **CHAPTER 519. TECHNICAL ASSISTANCE SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM**

##### **31 TAC §519.8**

The Texas State Soil and Water Conservation District Board adopts an amendment to the existing rule Title 31, Part 17, Subchapter A, Section 519.8, which limits the maximum pay

for district employees. The agency is removing the amount from the rule and basing the amount on a routine State Board decision every biennium. This rule amendment is adopted without changes to the proposed text as published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4242) and will not be republished.

No public comments were received.

The amendment is adopted under the Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules necessary for performing its functions under the Agriculture Code. No other statutes, articles, or codes are affected by this amendment.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 8, 2023.

TRD-202303298

Heather Bounds

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Texas State Soil and Water Conservation Board

Earliest possible date of adoption: September 28, 2023

For further information, please call: (254) 778-8741

