

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by TEA in 19 TAC Chapter 102 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning Early Childhood Education Programs; Subchapter CC, Commissioner's Rules Concerning Coordinated Health Programs; Subchapter DD, Commissioner's Rules Concerning the Texas Accelerated Science Achievement Program Grant; Subchapter EE, Commissioner's Rules Concerning Pilot Programs; Subchapter FF, Commissioner's Rules Concerning Educator Award Programs; Subchapter GG, Commissioner's Rules Concerning College and Career Readiness School Models; Subchapter HH, Commissioner's Rules Concerning the Texas Adolescent Literacy Academies; Subchapter II, Commissioner's Rules Concerning Texas High Performance Schools Consortium; Subchapter JJ, Commissioner's Rules Concerning Innovation District; Subchapter KK, Commissioner's Rules Concerning Compliance Investigations in Connection with State-Funded Education Program Grant; and Subchapter LL, Commissioner's Rules Concerning Innovative Instructional Programs.

Subchapter BB, Commissioner's Rules Concerning Master Teacher Grant Programs, is not subject to review since the rules will be repealed. House Bill 3, 86th Texas Legislature, 2019, repealed Texas Education Code (TEC), §§21.410-21.413, which provided rulemaking authority for the rules. In addition, §102.1053, Mathematics Instructional Coaches Pilot Program, in Subchapter CC is not subject to review since the rule will be repealed. Senate Bill 1267, 87th Texas Legislature, Regular Session, 2021, repealed TEC, §21.4541, which provided rulemaking authority for the rule.

As required by the Texas Government Code, §2001.039, TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 102, Subchapter AA; Subchapter CC, §§102.1051 and 102.1055-102.1058; and Subchapters DD-LL, continue to exist.

The public comment period on the review of 19 TAC Chapter 102, Subchapter AA; Subchapter CC, §§102.1051 and 102.1055-102.1058; and Subchapters DD-LL, begins August 20, 2021, and ends September 20, 2021. A form for submitting public comments on the proposed rule review is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/commissioner-rules-tac/commissioner-of-education-rule-review>.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: August 11, 2021

Adopted Rule Reviews

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 227, Provisions for Educator Preparation Candidates, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 227 in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425).

Relating to the review of 19 TAC Chapter 227, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comments received on the proposal and the responses.

Comment: Teach Plus Texas commented in support of the proposed review of 19 TAC Chapter 227, stating that the reasons for adoption of the rule continue to exist.

Response: The SBEC agrees.

Comment: Texas State University commented neither in support nor against the proposed review of 19 TAC Chapter 227, but rather stated that the rules related to incoming class grade point averages (GPAs) in 19 TAC §227.19 and the rules relating to educator preparation program (EPP) applicant admission GPAs in 19 TAC §227.10(a)(3) are in conflict because an individual can be admitted to an EPP under 19 TAC §227.10(a)(3) with a 2.5 GPA, which is lower than the overall 3.0 GPA required for the incoming class as a whole under 19 TAC §227.19. In addition, the commenter stated that the requirement in 19 TAC §227.19 should be removed, citing a research study that states that GPA requirements for undergraduate teacher candidates do not predict most short- and long-term outcomes that reflect teacher quality and effectiveness and that GPA average requirements reduce the number of teacher candidates.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking. To provide clarification, Texas Education Code, §21.0441(a) and §21.0441(c), require that the SBEC implement rules that set a minimum GPA of at least a 2.5 for applicant admission into an EPP and that set an overall GPA of at least a 3.0 for an incoming class admitted by an EPP. Furthermore, the provisions are not in conflict because an individual member of the incoming class with a 2.5

GPA can be offset by another member of the incoming class with a 3.5 GPA to create an incoming class average 3.0 GPA, thereby meeting the requirements of rule and statute.

This concludes the review of 19 TAC Chapter 227.

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Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: August 9, 2021



The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 228, Requirements for Educator Preparation Programs, pursuant to the Texas Government Code (TGC), §2001.039. The SBEC proposed the review of 19 TAC Chapter 228 in the May 28, 2021, issue of the *Texas Register* (46 TexReg 3425).

Relating to the review of 19 TAC Chapter 228, the SBEC finds that the reasons for the adoption continue to exist and readopts the rules. The following is a summary of the public comments received on the proposal and the responses.

Comment: Teach Plus Texas commented in support of the proposed review of 19 TAC Chapter 228, stating that the reasons for adoption of the rule continue to exist. Teach Plus Texas also provided a summary of a recent survey results from Texas teachers related to educator preparation clinical experiences and a set of recommended modifications to the rules based on these results. Teach Plus Texas recommended that educator preparation programs (EPPs) ensure candidates start their clinical experiences early in their programs and across a variety of settings where they are supported by effective, experienced, and committed mentor teachers, provide improved offerings for developing candidates' data-driven practice and technology integration skills, and ensure that candidates are prepared to demonstrate cultural competency and teach special populations.

Response: The SBEC agrees. The Texas Education Agency (TEA) staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

Comment: One individual commented neither in support nor against the proposed review of 19 TAC Chapter 228, but rather stated that EPPs are not allowed to provide courses virtually and that this should be reconsidered, given the impact of COVID-19. The commenter requested that the rule be amended to allow for a percentage of instruction to be facilitated via a virtual platform.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking. To provide clarification, current 19 TAC §228.35(a)(6) allows for EPPs to offer coursework and training online and requires programs to meet or to make progress toward meeting criteria set for accreditation, quality assurance, and/or compliance of the online program through an approved entity.

Comment: One individual commented neither in support nor against the proposed review of 19 TAC Chapter 228, but rather stated that the provisions for periodic formal observations in 19 TAC §228.35(g) and (h) are unworkable when year-long candidates are out of their clinical teaching or practicum during the summer or when the field experience extends across two semesters. The commenter stated that while the rules are well-intended, measuring and enforcing the current rules related to the spacing of observations is problematic.

Response: The SBEC disagrees. The comment is outside the scope of the proposed rulemaking, however, TEA staff will consider this feedback for future rulemaking under the jurisdiction of the SBEC.

This concludes the review of 19 TAC Chapter 228.

TRD-202103096

Cristina De La Fuente-Valadez

Director, Rulemaking

State Board for Educator Certification

Filed: August 9, 2021



Texas Board of Nursing

Title 22, Part 11

In accordance with the Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapters contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2019 rule review plan adopted by the Board at its July 2018 meeting.

Chapter 213. Practice and Procedure, §§213.1 - 213.35

Chapter 214. Vocational Nursing Education, §§214.1 - 214.13

Chapter 215. Professional Nursing Education, §§215.1 - 215.13

Chapter 216. Continuing Competency, §§216.1 - 216.11

Chapter 221. Advanced Practice Nurses, §§221.1 - 221.17

Chapter 222. Advanced Practice Registered Nurses with Prescriptive Authority, §§222.1 - 222.10

The notice for Chapters 213, 216, and 221 appeared in the December 11, 2020, issue of the *Texas Register* (45 TexReg 8885). The notice for Chapters 214, 215, and 222 appeared in the June 11, 2021, issue of the *Texas Register* (46 TexReg 3621).

The Board did not receive any public comments on the published rule reviews. During the rule review period for Chapter 221, however, the Board proposed and adopted substantive amendments to §221.14, relating to *Nurse-Midwives Providing Controlled Substances*, for consistency with statutory requirements. The re-adoption of Chapter 221 in this adoption order includes the most recent substantive rule amendments to §221.14 adopted by the Board and published in the *Texas Register* on August 20, 2021. Further, during the rule review period for Chapters 214 and 215, the Board received a notice from the Regulatory Compliance Division of the Office of the Governor that it would be reviewing §§214.3, 214.6, 214.7, 215.3, 215.6, and 215.7 pursuant to its statutory mandates. Therefore, the Board will not be re-adopting those sections in this adoption order.

With regard to §§213.1 - 213.35; 214.1, 214.2, 214.4, 214.5, 214.8 - 214.13; 215.1, 215.2, 215.4, 215.5, 215.8 - 215.13; 216.1 - 216.11; 221.1 - 221.17; and 222.1 - 222.10, the Board has completed its review and has determined that the reasons for originally adopting these rules continue to exist. These rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that these rules are not obsolete, reflect current legal and policy considerations and current procedures and practices of the Board, and that these rules are in compliance with the Texas Administrative Procedure Act.

The Board, therefore, re-adopts §§213.1 - 213.35; 214.1, 214.2, 214.4, 214.5, 214.8 - 214.13; 215.1, 215.2, 215.4, 215.5, 215.8 - 215.13; 216.1

- 216.11; 221.1 - 221.17; and 222.1 - 222.10, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

TRD-202103066

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Texas Board of Nursing
Filed: August 5, 2021



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

Chapters 160, 165, 166, and 180

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its rule review of 28 Texas Administrative Code Chapters 160, 165, 166, and 180 in their entirety. DWC conducted the rule review under Texas Government Code §2001.039.

Notice of the review was published in the May 14, 2021, issue of the *Texas Register* (46 TexReg 3147). There was no request for a public hearing.

The comment period ended June 14, 2021. DWC received four comments.

The first comment was from the Office of Fletcher Caldwell, P.C. (Fletcher Caldwell), which supported readopting the chapters. Fletcher Caldwell suggested recodifying or readopting 28 TAC §180.1(4) to ensure a physician who performs a peer review or utilization review is in the same specialty as the physician who requested the medical service.

The second comment was from Robert Wolin, who suggested amending 28 TAC §180.25(a-d) to add new language and delete other language to:

-- conform the rule to federal statute;

-- conform the rule to certain Office of the Inspector General standards; and

-- remove undefined terms

The third comment was from the Office of Injured Employee Counsel (OIEC), which suggested readopting Chapters 160 and 180 with amendments to:

-- add an administrative penalty for failing to file a report;

-- mandate investigation of all complaints;

-- provide for an additional administrative penalty; and

-- move peer review language to a separate section entirely.

The fourth comment was from American Property Casualty Insurance Association, which suggested repealing or amending Chapter 166 to permit large, sophisticated policyholders that maintain their own accident prevention services or procure them from third parties to prospectively decline all such services from their workers' compensation insurer.

As a result of the rule review, DWC finds that the reasons for initially adopting the rules in 28 TAC Chapters 160, 165, 166, and 180 continue to exist and readopts these rules in accordance with the requirements of Texas Government Code §2001.039.

TRD-202103087

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Texas Department of Insurance, Division of Workers' Compensation
Filed: August 9, 2021

