ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 14. HANDLING AND MARKETING OF PERISHABLE COMMODITIES

The Texas Department of Agriculture (Department) adopts amendments to Texas Administrative Code, Title 4, Chapter 14 (Perishable Commodities Handling and Marketing Program), Subchapter A (General Provisions), §14.1 (Definitions), §14.2 (Citrus Proof of Ownership), §14.3 (Fees), and §14.4 (Cancellation of License); Subchapter B (Produce Recovery Fund Claims), §14.10 (Claims Against the Fund), §14.11 (Determination on Claims by the Department), §14.12 (Filing of Notice of Protest; Appeal to the Board), §14.13 (Payment of Claims from the Fund), and §14.14 (Reimbursement to the Fund); and Subchapter C (Produce Recovery Fund Board), §14.20 (Purpose and Scope), §14.21 (Duties of the Board and the Department), §14.22 (Meetings), §14.23 (Conduct of Hearings of the Produce Recovery Fund Board), §14.24 (The Board's Final Determination), §14.25 (Motion for Rehearing), and §14.26 (Appeals). The Department identified the need for the amendments during its rule review conducted pursuant to Texas Government Code §2001.039. The amendments to §§14.1 - 14.4, 14.11 - 14.14, and 14.20 - 14.26 are adopted without changes to the proposed text as published in the June 20, 2025 issue of the *Texas Register* (50 TexReg 3609) and will not be republished. The amendment to §14.10 is adopted with a change to fix a minor typographical error to the proposed text as published in the June 20, 2025 issue of the *Texas Register* (50 TexReg 3609) and will be republished.

The adopted amendment to the title of this rule chapter replaces the current title of this chapter with "Handling and Marketing of Perishable Commodities" with the name of the Department's related program and the title of Chapter 101 of the Texas Agriculture Code (Code) for consistency.

The adopted amendments to §14.1 include a definition for the "Administrative Procedure Act" to account for its frequency in this chapter, remove a definition for "agent" due to its infrequency in this chapter, update a reference in the definition for the "Open Meetings Act," add language to the definition for "claim" to specify against whom claims can be filed, and add a citation to the Code to the definition of "perishable commodity" to denote the statutory source of its definition.

The adopted amendment to §14.2 replaces the term "licensee" with "license holder" to conform with the language in use in Code, Chapter 103.

The adopted amendments to §14.3 add language specifying those agents who require identification cards.

The adopted amendments to §14.4 specify a reference to the Department's general rules of procedure outlines in Chapter 1, Subchapter A of this title and change a reference to Chapter 2001 of the Texas Government Code to account for its proposed definition in §14.1.

The adopted amendments to §14.10 remove subsection (e) to become new subsection (d) §14.10 as its provisions fit more appropriately with those of §14.14, remove an outdated provision addressing claims prior to September 1, 2009, remove unnecessary language precluding the filing of out-of-state claims, and add a reference to §14.3 to specify claim-filing fees.

The adopted amendments to §14.11 change references to this chapter from "title" to "chapter," as the latter term is generally used throughout Title 4, update a reference to Chapter 1, Sub-chapter A of this title, change "recommendation" to "proposal for decision" as the former is used throughout this chapter and Chapter 1, Subchapter A of this title, make "Deputy Commissioner" lower-case as "Commissioner" is made lower-case throughout this chapter, and replace general references to "agency" with "department."

The adopted amendments to §14.12 change the term "person" to "party" as the former is used within the context of a hearing and in Chapter 103 of the Code, make "proposal for decision" lower-case to be the same as its occurrences in the Department's rules of procedure in Chapter 1, Subchapter A of this title and Chapter 2001 of the Texas Government Code (the Administrative Procedure Act), and replace general references to "agency" with "department."

The adopted amendments to §14.13 remove an outdated subsection outlining payments for claims prior to September 1, 2009; remove an obsolete subsection limiting total payments on claims against a single entity to $85,000 as its statutory analogue, former Subsection 103.008(c) of the Code, was removed in 2009; and remove a reference to its restrictions on claim payments and replace it with the applicable statutory authority in Chapter 103 of the Code.

The adopted amendments to §14.14 add subsection (e) of §14.10 as new subsection (d) as its provisions relate more appropriately with those of §14.14 and replace the term "working days" with "business days" as the former is the more prevalent term.

The adopted amendments to §14.20 update a reference to Chapter 1, Subchapter A of this title.

The adopted amendments to §14.22 remove unnecessary language addressing requirements of the Open Meetings Act and

remove an incorrect provision on notice of Board meetings being published in the *Texas Register.*

The adopted amendments to §14.23 update Department contact information for prehearing motions and exhibit requests, specify that requests to the Department for hearing related information must be written, and replace the term "working days" with "business days" as the former is the more prevalent term.

The adopted amendments to §14.25 require motions for re-hearing to be sent to opposing parties and Board rulings on these motions to be made in accordance with Section 2001.146 of the Texas Government Code and update Department contact information.

The adopted amendments to §14.26 make a grammatical change to the reference to "board" to be consistent with usage in Code, Chapter 103 and clarify the legal authority cited.

In addition, "Board," "Fund," and "Chairman" are made lower case throughout these rules to align with their occurrences in Chapter 103 of the Code. Likewise, "licensee" and "complaining party" are changed to "license holder" and "aggrieved party" throughout these rules because the latter terms are use in Chapter 103. Also, adopted amendments also reflect editorial changes throughout these rules to correct grammar, remove superfluous or outdated language, and improve the rules' readability.

The Department did not receive any public comments concerning the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§14.1 - 14.4

The amendments are adopted under the Department's authority in Section 12.016 of the Texas Agriculture Code (Code), which authorizes the Department to adopt rules to administer its powers and duties under the Code; such powers and duties include Code, Section 101.006, the requirement that the Department set fees for licensure to handle perishable commodities by rule; Code, Section 101.010, which requires the Department to set fees for identification cards for agents of license holders who either transport or buy perishable commodities; Code, Section 103.005, which also requires the Department to set fees for filing claims against the Produce Recovery Fund (Fund); Code, Section 103.009, which further requires the Department to issue orders canceling licenses and to deny issuing new licenses or renewing licenses for license holders or those required to be licensed to handle perishable commodities who, following payments from the Fund against them, neither pays nor agrees to pay either the Fund or the aggrieved party; Code, Section 103.011, which requires the Department to set an annual fee for those licensed under Code, Chapter 101; and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

Chapters 101 and 103 of the Texas Agriculture Code are affected by the adoption.

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 November 25, 2025.

TRD-202504331
Susan Maldonado
General Counsel
Texas Department of Agriculture
Effective date: December 15, 2025
Proposal publication date: June 20, 2025
For further information, please call: (512) 463-3559

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SUBCHAPTER B. PRODUCE RECOVERY FUND CLAIMS

4 TAC §§14.10 - 14.14

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are proposed under Code, Section 103.009, which requires the Department to set schedules for reimbursements to the Fund and payments to aggrieved parties following Department payments from the Fund and Code, Section 103.012, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

Chapters 101 and 103 of the Texas Agriculture Code are affected by the adoption.

§14.10. Claims Against the Fund.

(a) What claims can be filed. Only claims against a license holder or a person required to be licensed for loss or damages due to a violation of the terms or conditions of a contract for the sale of perishable commodities grown in Texas may be filed.

(b) Claims filed under the Perishable Agriculture Commodities Act that are accepted as formal complaints and adjudicated by the United States Department of Agriculture, or claims for which an aggrieved party has filed suit in a court of competent jurisdiction shall not be accepted.

(c) How to file. A claim shall be filed with the department on a prescribed complaint form and shall be accompanied by the fee required by §14.3 of this chapter (relating to Fees). The date of postmark, if mailed, or the date the complaint and fee are received by the department, if hand-delivered, shall be the date the claim is deemed filed.

(d) Statute of Limitations. A claim shall be barred if it is filed later than two years from the date the payment was due.

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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Susan Maldonado
General Counsel
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For further information, please call: (512) 463-3559

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SUBCHAPTER C. PRODUCE RECOVERY FUND BOARD

4 TAC §§14.20 - 14.26

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are proposed under Section 103.012 of the Texas Agriculture Code, which requires the Department, with the advice of the Board, to adopt rules related to payment of claims from the Fund.

Chapters 101 and 103 of the Texas Agriculture Code are affected by the adoption.

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

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For further information, please call: (512) 463-3559

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

SUBCHAPTER O. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

26 TAC §744.3409

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §744.3409, concerning Personal Flotation Device (PFD) Requirements.

Amended §744.3409 is adopted without changes to the proposed text as published in the September 19, 2025, issue of the *Texas Register* (50 TexReg 6199). This rule will not be republished.

BACKGROUND AND JUSTIFICATION

The amendment is in response to a petition for rulemaking and is necessary to update current rule language related to United States Coast Guard approved personal flotation devices (PFDs) to reflect changes to buoyancy labeling. Accordingly, HHSC Child Care Regulation (CCR) is adopting an amendment to add an option to a rule that requires an operation to provide a child who accesses a swimming pool with a United States Coast Guard approved PFD that has a rating of Type I, II, or III, or a buoyancy level of 70 or above.

COMMENTS

The 21-day comment period ended October 10, 2025.

During this period, HHSC received comments regarding the proposed rule from one commenter representing an after-school program, Gingerbread After-School Programs. A summary of comments relating to the rule and HHSC's responses follows.

Comment: One commenter stated that the rule does not distinguish between operations that offer swimming programs and those that do not offer swimming programs. The commenter stated that this lack of clarification could lead someone to interpret that the rule applies to all operations, regardless of whether they provide swimming activities. The commenter recommended the rule be updated to state that it only applies to operations that have a pool on site, offer swimming programs, or take field trips to swimming programs arranged by the operation.

Response: HHSC disagrees with the commenter and declines to revise the rule. HHSC only regulates activities that take place on the premises of an operation or that an operation offers as part of the programming. Therefore, there is no need to update the rule because HHSC would not regulate water or swimming activities that occur outside of the child care program.

Comment: One commenter stated the language in the rule that says an operation must provide a PFD to a child could lead a parent to interpret that the operation, not the parent, is responsible for purchasing PFDs for a child in care. The commenter stated that if the operation is responsible for providing PFDs this would cause undue financial hardship for the provider.

Response: HHSC disagrees with the commenter and declines to revise the rule. The requirement that the operation provide a PFD is consistent with Texas Health and Safety Code §341.0646. In addition, the current rule already requires that an operation provide a child with a PFD. Therefore, the amended rule does not impose an additional requirement or cost on the operation. The Technical Assistance (TA) box that follows the rule in the minimum standards publication includes links to resources that provide PFDs at no cost. Additionally, the TA box includes clarification that the rule does not preclude a child's parent from giving the operation a PFD for the child to use if it meets the requirements in the rule.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

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 December 1, 2025.

TRD-202504355
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: December 21, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 438-3269

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER E. EDUCATION SAVINGS ACCOUNT PROGRAM

34 TAC §§16.401 - 16.410

The Comptroller of Public Accounts adopts new §16.401, concerning definitions; §16.402, concerning certified educational assistance organizations; §16.403, concerning program participation; §16.404, concerning education service providers and vendors of educational products; §16.405, concerning suspension of program participation; §16.406, concerning approved education-related expenses; §16.407, concerning program administration; §16.408, concerning program participant, provider, and vendor autonomy; §16.409, concerning appeals; and §16.410, concerning notice, with changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5430). The rules will be republished. The new rules will be located in Texas Administrative Code, Title 34, Part 1, Chapter 16, new Subchapter E (Education Savings Account Program).

These new sections address the standards for the new education savings account program created by Senate Bill 2, 89th Legislature, R.S., 2025.

Section 16.401 provides definitions.

Section 16.402 addresses certified educational assistance organizations.

Section 16.403 addresses program participation.

Section 16.404 addresses education service providers and vendors of educational products.

Section 16.405 addresses suspension of program participation.

Section 16.406 describes approved education-related expenses.

Section 16.407 addresses program administration.

Section 16.408 addresses program participant, provider, and vendor autonomy.

Section 16.409 addresses appeals of decisions made by the program.

Section 16.410 addresses required notices and service of notice.

The comptroller held a public hearing on September 30, 2025, regarding the adoption of §§16.401 - 16.410, pursuant to Government Code, §2001.029.

The comptroller received approximately 300 comments regarding adoption of the proposed rules.

Commenters who generally approve of the rules, but suggested changes include American Federation of Children ("AFC"); Association of Texas Professional Educators ("ATPE"); Outschool Inc. ("Outschool"); Texas Catholic Conference of Bishops ("TCCB"); Texas Conservative Coalition Research Institute ("TCCRI"); Texas Home School Coalition ("THSC"); Texas Private Schools Association ("TPSA"); Texas Public Policy Foundation ("TPPF"); and yes. every kid. foundation ("Every Kid").

Commenters who oppose the rules include Texas American Federation of Teachers ("AFT"), who strongly opposes the program but also suggested changes, and Every Texan who expressed general dissatisfaction with the rules, believing they fail to provide effective oversight of the program and that they do not contain adequate reporting mechanisms to understand how state dollars are spent. The comptroller also received approval and opposition to the program generally from multiple individuals.

The comptroller also received comments from the following organizations, interest groups, and individuals: Abraham's Seed Day Care ("Abraham's"); Allstars Learning Center ("Allstars"); Angels Care & Learning Center ("Angels Care"); The Arc of Texas ("Arc"); Ascension DePaul Services ("Ascension"); Association for Early Learning Leaders ("AELL"); At-Home Tutoring Services ("At-Home"); Atelier Preescolar ("Atelier"); Austin Montessori School ("AMC"); Autism Society of Texas ("Autism Society"); Bella Gardens Early Learning Center ("Bella Gardens"); Belton Education Station ("Belton"); Bright Beginnings; Bright Horizons; Cantera Montessori School ("Cantera"); Care Connect Solutions ("CCS"); CareerPath to Brilliance & Life Skills Coaching ("CareerPath"); Carson Academy of Kingdom Excellence ("CAKE"); Child Care Associates ("CCA"); Children at Risk; Children's Safari Private School ("Children's Safari"); Choose to Succeed ("CtS"); Cielito Lindo Spanish Immersion Preschool ("Cielito"); Classic Learning Initiatives ("CLI"); CollegeBoard; Colyandro Public Affairs ("Colyandro"); Creative Care Children's School ("Creative Care"); Creative Connections Children's Center ("CCCC"); Denton City County Day School ("DCCDS"); Developmental Childcare Center ("DCC"); Disability Rights Texas ("DRTx"); Dunkin Academy ("Dunkin"); Early Care and Education Consortium and, through a brief prepared on its behalf, Brownstein, Hyatt, Farber, Schreck, LLP ("ECEC"); Early Matters Great Austin and Early Matters Texas (together, "Early Matters"); Education Connection Preschool ("Education Connection"); Educational First Steps ("EFS"); EdTrust in Texas ("EdTrust"); El Paso Community Foundation ("EPCF"); Endless Discoveries Child Development Center ("Endless"); Extraordinary Education Family Learning Centers ("EEFLC"); Every Little Blessing Preschool ("Blessing"); Fractal Education Group ("Fractal"); FLIP Childcare & Learning Center ("FLIP"); Family Compass; First Day PR and Education Service Provider Coalition (together, "First Day"); Footprints Learning Academy ("Footprints"); Foundation for Excellence in Education ("ExcelinEd"); Future Scholars 24hr Childcare ("Future Scholars"); George W. Bush Policy Institute ("Bush Institute"); Good Reason Houston ("GRH"); Good Shepherd Temple of Praise ("GStop"); Grandparents for Public Schools ("Grandparents"); Happy Tree Child Development Center ("Happy Tree"); The

Heritage Foundation ("Heritage"); Hope Cottage ("Hope"); Intercultural Development Research Association ("IDRA"); International Kids Academy ("Kids Academy"); Interplay Learning Inc. ("Interplay"); June Shelton School & Evaluation Center ("Shelton"); Jupiter House Preschool ("Jupiter House"); KaiPod Learning ("KaiPod"); Kids Company Academy Learning Center ("Kids Co."); Kids Concepts; Kids R Kids of Cinco Ranch and Kids R Kids of Rosenberg (together, "Kids R Kids"); KidsPark; KinderCare Learning Companies ("KinderCare"); LakeCreek Montessori International School ("LakeCreek"); Learning Care Group ("LCG"); The Learning Experience and The Learning Center - Dallas (Frankford) (together, "TLE"); Liberty Learning Academy ("Liberty"); The Little School; Lumin Education ("Lumin"); Magnolia Preparatory Academy ("Magnolia"); Marion Childcare University ("Marion"); Mastercard; Maternal Health Equity Collaborative ("MHEC"); McGraw-Hill Inc. ("McGraw Hill"); Metrocrest Chamber of Commerce ("Metrocrest"); The Miles Foundation; Montessori Children's House and School ("MCHS"); Montessori Institute of North Texas ("MINT"); NAACP Legal Defense Fund ("LDF"); Neighborhood Preschools Network ("NPN"); The Nest Schools ("Nest"); Next Generation School ("Next Generation"); North Texas Early Education Alliance ("NTEEA"); Oak Creek Academy ("Oak Creek"); Open Door Preschool ("Open Door"); Our Schools Our Democracy ("OSOD"); Penn Foster Group ("Penn Foster"); Pines Montessori School ("Pines"); Post Oak School ("Post Oak"); PreK Today; Primer Microschools ("Primer"); Prince of Peace Catholic School ("Prince"); Q&A Preschools ("Q&A"); Rainbow Connection Learning Center ("Rainbow"); Ready Set Jump Childcare Learning Center ("Ready Set"); Representative Trent Ashby; Representative Brad Buckley; Respite Care of San Antonio ("Respite"); Robindell Private School ("Robindell"); The R.O.C.K. Early Learning Center ("ROCK"); Schenider Education & Employment Law ("Schneider"); Senator Brandon Creighton; Sharp Academy ("Sharp"); Southampton Montressori School ("Southampton"); Southern Education Foundation ("SEF"); Steady Steps Daycare ("Steady Steps"); Success by 6 Coalition- Austin/Travis County and Success by 6 Coalition - Williamson County (together, "SX6"); TechNet; Texas Association of Business ("TAB"); Texas Association of School Boards ("TASB"); Texas Council for Developmental Disabilities ("TCDD"); Texas Council of Administrators of Special Education ("TCASE"); Texas Licensed Child Care Association ("TLCCA"); Texas Parent to Parent ("TxP2P"); Texas Pediatric Society ("TPS"); Texas Public Charter Schools Association ("TPCSA"); Texas School Venture Fund ("TSVF"); Texas State Teachers Association ("TSTA"); Texas 2036; Trinity School of Midland ("Trinity"); United Way of Greater Austin and United Way of Metropolitan Dallas (together, "United Way"); Vogel Alcove ("Vogel"); White Rock Montessori ("White Rock"); Work Texas; Your Little Legacy ("Legacy"); 2T Childcare Corporation ("2T"); and three private prekindergarten providers that were not identified.

The comptroller received comments regarding the adoption of the proposed rules from Big Blue Marble Academy, Big Blue Marble Academy -- Allen, Big Blue Marble Academy -- Friendswood, Big Blue Marble Academy -- Katy, Big Blue Marble Academy -- McKinney, and Big Blue Marble Academy -- The Woodlands (collectively, "BBMA").

The comptroller received comments regarding the adoption of the proposed rules from Celebree School of Austin, Celebree School of Dallas Arts District, Celebree School of Harvest Green, Celebree School of Katy at Tamarron, Celebree School of Leander at Crystal Falls, and Celebree School of The Woodlands (collectively, "Celebree").

The comptroller received comments regarding the adoption of the proposed rules from Children's Lighthouse of Katy -- WoodCreek Reserve, Children's Lighthouse of Keller -- Fort Worth, Children's Lighthouse of Montgomery -- Woodforest, Children's Lighthouse of Richmond -- Grand Mission, Children's Lighthouse of Sugar Land -- Imperial, and Children's Lighthouse of The Woodlands -- Creekside (collectively, "Children's Lighthouse").

The comptroller received comments regarding the adoption of the proposed rules from The Goddard School, The Goddard School of Allen, The Goddard School of Celina, The Goddard School of Champions, The Goddard School of Cinco Village Center, The Goddard School of Cypress, The Goddard School of Cypress (Bridgeland), The Goddard School of Dallas (Lake Highlands), The Goddard School of Friendswood, The Goddard School of Georgetown, The Goddard School of Haslet, The Goddard School of Justin, The Goddard School of Katy at Ranch Point, The Goddard School of Katy at Westridge Creek, The Goddard School of Lakeway, The Goddard School of League City, The Goddard School of Leander, The Goddard School of Pearland, The Goddard School of Pflugerville, The Goddard School of San Antonio, The Goddard School of Spring, The Goddard School of Sienna, and The Goddard School of Tomball (collectively, "Goddard").

The comptroller received comments regarding the adoption of the proposed rules from Ivy Kids Early Learning Center, Ivy Kids Hobbs, Ivy Kids of Barker Cypress, Ivy Kids of Cypress Creeks Lakes, and Ivy Kids of Marvel (collectively, "Ivy Kids").

The comptroller received comments regarding the adoption of the proposed rules from Kiddie Academy Educational Child Care, Kiddie Academy of Aliana, Kiddie Academy of Alliance, Kiddie Academy of Atascocita, Kiddie Academy of Bryan, Kiddie Academy of Canyon Springs, Kiddie Academy of Clear Lake, Kiddie Academy of College Station, Kiddie Academy of Cypress, Kiddie Academy of Cypresswood, Kiddie Academy of Firewheel, Kiddie Academy of Humble, Kiddie of Lakes of Savannah, Kiddie Academy of Magnolia, and Kiddie Academy of Woodforest (collectively, "Kiddie Academy").

The comptroller received comments regarding the adoption of the proposed rules from The Pillars Christian Learning Centers, The Pillars: Boerne Stage, and The Pillars: Mountain Peak (collectively, "Pillars").

The comptroller received comments regarding the adoption of the proposed rules from Primrose Schools, Primrose School at Balmoral, Primrose School at Cibolo Canyons, Primrose School at Crossroads Park, Primrose School at Fall Creek, Primrose School at the Galleria, Primrose School at Greenway Plaza, Primrose School at Lake Shore, Primrose School at Sonoma Ranch, Primrose School at Summerwood, Primrose School of Atascocita, Primrose School of Austin at Mueller, Primrose School of Barker-Cypress, Primrose School of Bee Cave, Primrose School of Bridgeland, Primrose School of Cedar Park West, Primrose School of Champions, Primrose School of Cinco Ranch, Primrose School of Clear Lake, Primrose School of College Station, Primrose School of Conroe, Primrose School of Copperfield, Primrose School of Cypress Springs, Primrose School of Eagle Springs, Primrose School of Easton Park, Primrose School of Eldridge Parkway, Primrose School of First Colony, Primrose School of Four Points, Primrose

School of Friendswood, Primrose School of Garden Oaks, Primrose School of Greatwood, Primrose School of Kelliwood, Primrose School of Kingwood, Primrose School of Kingwood at Oakhurst, Primrose School of League City at South Shore, Primrose School of League City at Victory Lakes, Primrose School of Midland, Primrose School of North Mason Creek, Primrose School of Pearland, Primrose School of Pearland Parkway, Primrose School of Round Rock at Forest Creek, Primrose School of Round Rock North, Primrose School of Sienna, Primrose School of Sugar Land, Primrose School of Tomball, Primrose School of Upper Kirby, Primrose School of Vista Ridge, Primrose School of West Cinco Ranch, Primrose School of Waterside Estates, Primrose School of West Lake Hills, Primrose School of West Pearland, and Primrose School of Westchase District (collectively, "Primrose").

While the comptroller does not list individual commenters by name, the comptroller thanks every individual commenter as well as every organization for the suggestions, information, and legal arguments. This office appreciates the time and resources devoted to drafting and submitting the written and oral comments. This assistance helped make the rules more effective.

CtS and Primer request the "campus" definition in proposed §16.401(4) be modified to make clear that a lease satisfies the requirement for "control" and that such control is required only during school hours. The comptroller believes that a school's lease of premises that are limited to school hours constitutes control sufficient to meet the definition's requirement for ownership or control. The comptroller therefore declines to make changes to the proposed rule.

Schneider requests expanding the "campus" definition in proposed §16.401(4) to include a virtual campus to enable wholly virtual private schools to qualify. Schneider states that the Texas Private School Accreditation Commission's ("TEPSAC") policies require online schools to have an established physical administrative location and to meet all accreditation standards for quality. Schneider cites the University of Texas at Austin's online high school and the Texas Tech University K-12 online school as examples of successful accredited online schools. First Day requests the "campus" definition clarify that private schools with multiple campuses do not need to qualify each campus individually. Primer requests removal of the "reasonably contiguous geographic area" requirement, arguing that it would prevent an approved private school from operating multiple campuses. Primer also suggests replacing the term "institution of learning" with "private school" for consistency. The comptroller agrees with these comments and implements the suggestions by adopting the "campus" definition and adopting §16.404 with changes, and addressing the location requirement separately by adding a "located in this state" definition.

Penn Foster requests the comptroller expand the "education service provider" definition to include out-of-state, online providers that qualify as private schools under proposed §16.404(c) and are accredited by the Distance Education Accrediting Commission ("DEAC"). The comptroller disagrees because the suggested change conflicts with the accreditation requirement in Education Code, §29.358(b)(2), and declines to change the rule in response to this comment.

DRTx requests that "licensed physician" be added to the "education service provider" definition because it is listed in the "educational therapies" definition. Because the rules are adopted with an updated "education service provider" definition, this addition is no longer needed. The comptroller declines to change the rule based on this comment.

TASB requests adding certified educational assistance organizations ("CEAOs") to the list of entities to which the "good standing" definition in proposed §16.401(10) applies. TASB cites 19 TAC §100.1017 as a suggested minimum standard. TASB also recommends that CEAOs adopt conflict of interest provisions that include prohibitions of close ties with entities that benefit from program funds and suggests enforcement by requiring a notarized disclosure form. The comptroller disagrees because CEAOs are subject to more detailed standards under the Education Code and their contract with the state. Therefore, the comptroller declines to change the rule based on this comment.

Interplay requests "industry-based credential" definition be expanded to include employer-adopted educational programs including pre-apprenticeships, apprenticeships and related technical instruction and argues that employer-endorsed training ensures timely recognition of credentials with demonstrated labor-market value as opposed to the five-year industry-based credential cycle. Every Kid and First Day request the definition include credentials recognized by certifying bodies other than the Texas Education Agency ("TEA"). Every Kid also noted that TEA's industry-based credential list may lag behind emerging, in-demand certifications. These suggested changes conflict with Education Code, §29.359(a)(1)(D) which explicitly requires the training program be approved by TEA. Some programs, however, may qualify if they meet the requirements for a vendor of an online educational course or program. The comptroller declines to change the rule in response to this comment.

Every Kid, First Day, Outschool, the Miles Foundation, and TCCRI request the comptroller remove the for-credit requirement from the "online educational course" definition to allow online courses for supplemental education, such as math or reading support, or electives that are not offered for credit. The comptroller agrees and adopts the "online educational course or program" definition without the for-credit requirement.

TASB requests limiting the "online educational course" definition to synchronous instruction only. TASB states that Senate Bill 569, 89th Legislature, R.S., 2025 defines "virtual course" as expressly including synchronous and asynchronous delivery and argues that Senate Bill 2's failure to define online educational courses to include asynchronous delivery means asynchronous delivery is not allowed. The comptroller notes that Senate Bill 2 did not include an online educational course definition and is silent on synchronous and asynchronous delivery. The legislature's inclusion of details addressing synchronous and asynchronous virtual instruction in Senate Bill 569 demonstrates the legislature can add such provisions but chose to omit them in Senate Bill 2. The comptroller declines to change the rule based on this comment.

Several individuals commented on the "total annual income" definition in proposed §16.401(22). One individual suggests changing the definition to specifically address self-employed individuals because self-employment tax and self-employed health insurance are deducted after calculating "total income." For other households, the equivalent expenses are excluded from the term "total income." Another individual encourages using adjusted gross income ("AGI") to measure "total annual income" because it allows deductions like retirement contributions and student loan interest, because other programs, such as the Free Application for Federal Student Aid, use AGI, and it is already calculated on every return. Another individual

requests clarifying the definition to include asset-based means testing to prevent high-net-worth families qualifying solely due to a lack of taxable income. The comptroller agrees that self-employed individuals should be treated equitably with others and that the use of AGI, rather than "total income," accomplishes this intent. The comptroller appreciates commenters' desire to protect program resources but the statute does not authorize an asset-based means test. Therefore, the comptroller adopts the "total annual income" definition with changes to use AGI, but declines to impose an asset-based means test.

Several commenters addressed the "tuition and fees' definition. Every Kid, ExcelinEd, First Day, and the Miles Foundation state the definition is too restrictive and request that it cover all mandatory fees and to specifically list technology fees. TASB requests that the definition state whether late fees, penalties, or parent contributions in lieu of volunteer hours are included to ensure consistent application across schools. Trinity requests the rule clarify whether mandatory tuition refund insurance is included. The comptroller agrees that a private school's technology fee meets the definition, but under the Code Construction Act, adding "but not limited to" after "including" is unnecessary. The comptroller agrees the definition may be too restrictive and adds course specific fees because not every private school student participates in the school's band or sports teams. But because the program cannot pay fees that are not educational expenses, such as tuition refund insurance, the comptroller adopts a "tuition and fees" definition that excludes non-education related expenses.

McGraw Hill suggests adding an "instructional materials" definition to proposed §16.401 that clarifies which products and services are eligible educational expenses, specifically regarding digital products. The comptroller agrees that clarifying that digital materials qualify as approved education-related expenses would provide certainty to program participants and adopts §16.401 with an "instructional materials" definition to clarify the scope of the term, renumbering subsequent paragraphs as necessary.

TASB suggests adding a "public school" definition to proposed §16.401 so that the term always includes open-enrollment charter schools consistently throughout the rules. The comptroller declines to change the rule based on this comment because the term is used appropriately in each context.

TASB also suggests adding a "teaching service" definition to proposed §16.401 to clarify which types of programs qualify, such as private music instruction and sports leagues not affiliated with an approved private school. A definition is unnecessary because proposed §16.404 establishes parameters by specifying the requirements a teaching service employee must meet. The comptroller declines to revise the rule based on this comment.

In the context of §16.402, several commenters request that the rules restrict foreign participation in the program. Rep. Ashby requests that all administrative, customer service, and technical support functions be conducted exclusively within the United States, all data centers used to store, process, or transmit Texas taxpayer information be located within the United States, all full-time personnel directly responsible for executing the program be U.S.-based and perform their duties within the United States, and that CEAOs not hold, or have ever held, financial interests, investments, or ownership ties with hostile nations identified by the U.S. government or the state of Texas. TAB and TechNet suggest avoiding regulations that would require data centers to be located within the United States or that would prohibit foreign ownership or investment in CEAOs, stating such regulations would be outside the scope of the legislation, can be difficult to track, and would strain U.S. based companies seeking to be a CEAO. TAB and TechNet suggest existing procurement processes address these issues. The comptroller notes that in addition to requirements under proposed §16.402, the CEAO is contractually required to ensure the program's data as well as point of access to the program's data remain located within the continental United States. Comptroller contract procedures include checking the prohibited vendors list authorized by Executive Order No. 13224 and checking the United States Department of Commerce's foreign adversaries list and other databases described in Governor Abbott's Hardening of State Government executive order. The recently signed contract also requires the CEAO to certify that neither it, nor its holding companies or subsidiaries are listed in the databases described in Governor Abbott's order. The comptroller agrees with Rep. Ashby on the importance of these precautions and believes the contractual protections reflect current best practices, making changes to the rule unnecessary.

IDRA asks that a CEAO comply with federal and state privacy and confidentiality laws, including the Family Educational Rights and Privacy Act, given the sensitive nature of participant information that will be received, particularly regarding documents establishing that a child is lawfully present in the United States. One individual requests that the proposed rules clarify how student privacy and financial data will be protected under the Texas Public Information Act. Education Code, §29.369 addresses these issues and mandates the confidentiality of student records, and Education Code, §29.369(d), which provides that student records "held by the comptroller or a CEAO {are} confidential and not subject to disclosure under Chapter 552, Government Code." In addition, Education Code, §29.369(b) prohibits a CEAO from retaining certain student records longer than necessary to validate eligibility and Education Code, §29.371(b)(2) requires compliance with federal laws regarding the confidentiality of student records. Therefore, the comptroller declines to change the rule based on this comment.

TSTA suggests that §16.402 should specify details for determining the cost of providing CEAO services to prevent inflated costs. The comptroller notes that the rule proposal does not cover the subject of CEAO compensation, and the contract sufficiently covers this issue. Therefore, the comptroller declines to change the rule based on this comment.

Every Kid requests that proposed §16.402(b) be amended by inserting "designated" before "certified educational assistance organization." The comptroller declines to make this change because it is not necessary in this context.

Every Kid also requests that §16.402 explicitly prohibit the comptroller from certifying only one educational assistance organization unless no other qualified applicants exist. This conflicts with Education Code, §29.354(d) that permits the comptroller to certify not more than five educational assistance organizations. The comptroller therefore declines to change the rule based on this comment.

Every Kid suggests the rules require CEAOs to have continuity-of-operations plans for staffing shortages, cyber incidents, and disaster response. They suggest requiring CEAOs to submit monthly summaries of prioritization decisions and face corrective action for errors. The comptroller believes these matters are best addressed in the organization's contract and declines to change the rule based on this comment.

The comptroller received several comments regarding the governance of CEAOs in proposed §16.402. Every Texan, Grandparents, and two individual commenters requested that CEAOs be subject to the same governance and oversight rules as a state agency with explicit guidance to comply with Government Code, Title 10, Subtitle F (State and Local Contracts and Fund Management). Grandparents points to "corrupt practices and poor outcomes" experienced by other states in implementing similar programs and suggests that CEAOs, the board members, and their employees be prohibited from having close ties to organizations that would directly benefit from the program. One individual commenter further asks that program funds be kept in separate fiduciary accounts and that CEAOs post collateral equal to or exceeding the balance of program funds being held. The other individual commenter asks that program funds be placed in segregated fiduciary accounts at qualified banks, backed by collateral equal to or exceeding the balance of program funds being held, and subject to monthly CEAO reporting, fund reconciliations, and independent audits. The commenter believes these protections are necessary to avoid potential CEAO insolvency, diversion of funds, or outright fraud. Because these comments are outside the scope of the proposed rules and the concerns are sufficiently addressed by statute and contract, no changes are made in response to these comments.

TASB commented on the cybersecurity requirements for CEAOs in proposed §16.402(a)(4). TASB noted that, while Education Code, §29.354(c) directs the comptroller to establish such requirements consistent with Government Code, §2054.5181, House Bill 150, 89th Legislature, R.S., 2025, amended this section of the code, transferring existing powers and duties related to cybersecurity from the Texas Department of Information Resources to the newly created Texas Cyber Command, and redesignated pertinent sections to Government Code, Chapter 2063. TASB recommends clarifying that the cybersecurity requirements will align with the best practices and guidance established by the Texas Cyber Command and specifying the consequences if a CEAO experiences a data breach or other cybersecurity incident and is found not to have followed these requirements. The comptroller notes that under the Code Construction Act, a reference to any part of a statute applies to all reenactments, revisions, or amendments of the statute unless expressly provided otherwise, and notes the contract covers consequences for noncompliance. The comptroller agrees to update the statutory reference in §16.402(a)(4), and to avoid needing future rule amendments to update the statutory reference, it will generally reference best practices developed under state law.

TASB also suggested that even though §16.402 broadly requires the CEAO to comply with statutory program requirements, the public should have details on the process for verifying that accounts are only used for approved education-related expenses. Because of the protections that §16.402 and the CEAO's contract provide, the comptroller declines to revise the rule based on this comment.

Two individual commenters suggested that proposed §16.403(a)(1) and (2) be clarified that they apply to the year in which the child would use program funds rather than the child's current situation at the time they apply. The comptroller agrees that these eligibility criteria refer to the school year in which the child would be enrolled in the program and adopts §16.403(a) with this change.

Four individual commenters requested that early-college residential high school students, such as those enrolled in the Texas Academy of Mathematics and Science at the University of North Texas ("TAMS"), be eligible to receive program funds. They argue TAMS' exceptional students are unfairly excluded and state education savings account programs in other states allow for "early-college or dual-enrollment students." Adding TAMS and TAMS students to the program would conflict with program statutory requirements. Unlike Senate Bill 2 requirements for private schools, Senate Bill 2 does not require a higher education provider to administer annual assessments and does not require participants enrolled only with a higher education provider to share assessment results with the CEAO. The comptroller notes that while Education Code, §105.301 provides Foundation School Program ("FSP") allotments for each TAMS student, the enabling statute for the program does not address this unique scenario by explicitly prohibiting FSP funding overlap with higher education providers as it does for public schools and open-enrollment charter schools. The Fiscal Note for Senate Bill 2 likewise did not contemplate this scenario, assuming public school students who enroll in the program would attend private school and generate FSP savings. While TAMS is an innovative and valuable program, the statute does not authorize program accounts for TAMS students and the comptroller declines to change the rule based on these comments.

First Day and Every Kid suggest amending proposed §16.403(b) by changing "the" designated CEAO to "a" designated CEAO, which would mirror Education Code, §29.355(d) and avoid limiting the program to a single CEAO. In the context of §16.403(b), "the" designated CEAO is the appropriate term because if there are multiple CEAOs, designated refers to the CEAO the applicant chooses, and thus the comptroller declines to change the rule based on this comment.

ExcelinEd, Every Kid, First Day, and the Miles Foundation suggest revising §16.403(b) to permit a child's eligibility to be verified through either parent submissions or electronic data sources. The comptroller agrees that electronic verification using existing databases expedites the approval process and increases the reliability of such information and adopts the rule to confirm electronic verification may substitute for parent submission of documentation of a child's eligibility.

An individual commenter complained that only legal experts and well-educated families will be able to complete the application and provide necessary documents. The comptroller appreciates the importance of clear, easy to understand guidance during all phases of participation, including the application process, but makes no changes to the rule in response to this comment.

IDRA and many individuals suggest that §16.403(b)(1) be revised to list the acceptable documents to prove lawful admission, stating that families need clear guidance and, from one commenter, that lawful admission is a wide range of different types of scenarios. Commenters argue that without this, eligible children could be unfairly excluded. The comptroller notes that §16.403(b)(1) provides a list that is not exhaustive and does not preclude the submission of other documents. However, the comptroller adopts the rule with changes to add additional documents the program may accept.

The comptroller received several comments regarding the documents that could be submitted to prove total annual income under proposed §16.403(b)(3). TASB suggests listing what will be accepted, such as recent pay stubs or an affidavit when tax returns are unavailable, rather than leaving it open to someone

else's interpretation of acceptable proof. One individual suggested using 2024 W-2 forms to verify total annual income for the 2026-27 school year. First Day suggests permitting the use of a comptroller-authorized third-party income verification platform or other documents to prove total annual income, citing problems with Utah's program where income has changed significantly since the last tax return. The comptroller notes §16.403(b)(3) suggests an Internal Revenue Service federal tax return transcript as an example of a document acceptable to prove total annual income but does not preclude the submission of other documents as approved by the comptroller. The comptroller agrees that alternative documents or data will be required for families who have not filed federal tax returns and notes that estimates will be required to compare the equivalent of AGI. The comptroller adopts §16.403(b) to clarify authority to use electronic verification and to provide additional examples of data or documentation the program may use to determine and verify income, and makes conforming changes to the "total annual income" definition.

TASB recommends revising proposed §16.403(b)(4)(C) to prohibit the resale of items purchased with program funds at least for the entire period a participant is in the program, for consistency with Senate Bill 2. The comptroller agrees. TASB also suggests clarifying the consequences of a violation. The consequences are described in proposed §16.405. The comptroller therefore adopts the rule with changes based on this comment to align with the statute, but declines to change the rule to address the consequences of selling items separately from other types of violations.

TCCB and TPSA commented on proposed §16.403(b)(4)(D). These commenters state that the proposed rule places an additional requirement on private schools beyond the requirements of Education Code, §29.357(2) because it permits a parent to instruct a private school to release the results of a child's assessment instrument to a CEAO. The comptroller agrees and revises the rule based on this comment to be consistent with the statutory options.

TCCB and TPSA also suggest that the reference to "accommodations and exemptions provided under Education Code, Chapter 39, Subchapter B" in proposed §16.403(b)(4)(D) be clarified to apply to a private school only if the school decides to use state of Texas mandated testing on special needs students and be clarified to not require private schools to offer additional accommodation to all special needs students. While Education Code, §29.358(b)(2)(B) requires private schools to administer an assessment instrument, the comptroller agrees that the statute does not require a private school to provide accommodations for a child with a disability and that Education Code, §29.368 prohibits the state from requiring the provision of such accommodations. The comptroller adopts §16.403(b)(4)(D) with revisions to reference the statutory assessment requirement generally and remove unnecessary text that will, to the extent applicable, be incorporated by the reference.

TASB recommends revising proposed §16.403(b)(4)(D) to clarify the process CEAOs must use to confirm compliance with the requirement to administer an annual assessment instrument, including where assessments may be administered, the deadlines for both administering the test and submitting results, whether at-home testing is permitted by virtual schools and, if so, what safeguards will be required. TASB also suggests rules that specify enforcement mechanisms for noncompliance. The CEAO's responsibility for obtaining documents necessary to establish a child's eligibility to participate in the program is addressed in the CEAO's contract, and enforcement of participant noncompliance is addressed in §16.405. Further, §16.403(b)(4) requires that a participating parent submit assessment results under "an agreement and certification under penalty of perjury." Therefore, the comptroller declines to change the rule based on this comment.

TASB suggests adding a comma after the word "provider" to clarify the following passage in proposed §16.403(b)(4)(D): "for a participating child in grades 3 through 12 enrolled in a private school that is an approved education service provider, and subject to the accommodations and exemptions under Education Code, Chapter 39, Subchapter B…" Based on another comment, the comptroller revises §16.403(b)(4)(D), rendering this change unnecessary.

TASB also suggests that §16.403(b)(4)(D) be revised to require that, beginning with the 2027-2028 school year, participants enrolled in private school take one of the Texas Education Agency's approved norm-referenced assessments provided by House Bill 8, 89th Legislature, 2d C.S., 2025, if the children do not take the state assessment instrument. TASB states this will promote fairness and consistency and will be a more reliable and comparable measure across student populations. This suggestion conflicts with Education Code, §29.358(b)(2)(B), which authorizes private schools to administer either "a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Subchapter B, Chapter 39." The comptroller declines to change the rule based on this comment.

The comptroller received several comments regarding the proof necessary for a child to be considered a "child with a disability" for prioritization under Education Code, §29.356 and proposed §16.403(b)(5). Autism Society, DRTx, and TCDD agree with the "child with a disability" definition in proposed §16.401(6), but do not believe the term is used consistently in the context of prioritization and throughout the rules. For example, TCDD notes that while they agree with the "child with a disability" definition, appreciating that the definition in Senate Bill 2 mirrors both federal law (Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1401(3)) and state law (Education Code, §29.003), they state that nothing in the statute authorizing the program provides a separate "child with a disability" definition for prioritization purposes. Consequently, TCDD, and the other commenters, request the elimination of alternative evidence of eligibility. Arc, Autism Society, DRTx, TCASE, TCDD, TPS, and TxP2P disagree with allowing medical or social security documentation to determine eligibility for children with a disability when prioritizing applicants for available positions. They explain that a medical disability diagnosis is not equivalent to a school's special education eligibility determination and state that the proposed rule conflicts with 19 TAC §89.1040, which establishes the eligibility criteria. They further argue that an Admission, Review, and Dismissal committee ("ARD") determination granting an individualized education program ("IEP") is a definitional component of "children with a disability" under state law. They argue the rule conflicts with the Education Code definition, will create confusion, inequities, and unintended competition with students with IEPs. They believe this will effectively reduce resources available for students who need special education resources. TCASE argues the proposed rule uses different standards for prioritization and for funding calculations which could confuse parents who meet one but not the other. TPS also disagrees with the diagnosis terminology, indicating that the terms are overbroad, and risk being misapplied. TxP2P provided examples of the disconnects that can occur: the commenter has quadriplegia, a phys-

ical disability, but would require a diagnosis of "orthopedic impairment" to receive the actual services necessary to address her needs; children with multiple handicaps, such as deaf-blind students, would either be labeled as deaf or blind under the standards the proposed rule allows, impacting their ability to participate in the program; a child without a disability has a friendly doctor prescribe shoe inserts that result in the student being fraudulently prioritized. Prince states concern with accepting letters from licensed physicians based on experience with some doctors being "very liberal" when diagnosing learning disabilities. An individual commenter disagreed with the licensed physician requirement as an unnecessary step because many learning disabilities, including her child's dyslexia, are diagnosed by educational diagnosticians. A former Fort Bend school board member commented that in recent years, several school districts were under review for systemic non-compliance with special education regulations, including Fort Bend ISD that, at the time, had over 2,000 students with delinquent evaluations and reevaluations. Arc, Autism Society, DRTx, TCASE, TCDD, TPS, and TxP2P suggest the rule should require an IEP to prioritize an applicant as a child with a disability. TCDD also believes that reliance on documentation other than an IEP could dilute the limited number of program spots available and misallocate priority because not having a single, consistent standard could allow children without a disability receiving priority in any lottery that takes place. TPS believes asking pediatricians to provide disability diagnoses places an unfair burden on general practitioners who lack the expertise to fully evaluate the educational impacts of a disability; tying financial stakes to such determinations could escalate parental pressure, strain clinical interactions, and erode the trust in the physician-family relationship. Another likely result would be referrals to developmental pediatricians, child psychiatrists, and other specialists who are already an extremely scarce resource in Texas. Sharp disagrees with the IEP requirement, and states the rules should accept an official diagnostic evaluation report from someone qualified to conduct an independent educational evaluation under 34. C.F.R. §300.502 (IDEA), both for prioritization and for additional funding. Sharp notes that many private school students do not have an IEP, but have an official diagnostic evaluation report "administered by trained personnel and in conformance with the instructions provided by the producer of the evaluation materials" from a private evaluation center such as the Scottish Rite Centers. In fact, Sharp states, public schools must consider evaluations from a private provider in developing an IEP for a child with a disability. Parents of private school students, Sharp argues, should not be forced to become dependent on the public school system for any reason to apply for education savings accounts ("ESAs"). Furthermore, Sharp argues that the time necessary to obtain an IEP from a public school, at least for the first year of program operations, is extremely tight and many applicants may not be able to secure an IEP in the time remaining before the application period begins. Sharp notes that an IEP is not required to secure accommodations for the ACT, SAT, MCAT, LSAT, Medical Board Exam, Bar Exam, EMT Certification, trade schools, and universities. TCBB and TPSA state that most special needs evaluations are done by educational diagnosticians or psychologists and provides a list of specific types of professionals. TCBB and TSTA agree with the rule's allowance of any IEP from a district, including older IEPs, for prioritization, noting the open time frame is helpful because school districts will see an increase in evaluation requests this fall. AFC, Oak Creek, and TPPF requested the acceptance of IEPs issued by school districts in other states in the context of funding as discussed below. The comptroller appreciates these comments and insights and agrees the rule can better align with state and federal guidance in its requirements to prove eligibility for prioritization. The comptroller disagrees that an IEP is required to meet the statutory definition of child with a disability. Education Code, §29.003(b) provides that a student is eligible for special education if the student has certain impairments or disabilities that cause the child to need special education. While Education Code, §29.3615 requires school districts to evaluate students and develop IEPs for the purpose of participation in the program and Education Code, §29.361 requires an IEP for any increase in funding for participants, the application process is distinct from participation. Education Code, §29.356 does not require an IEP for application prioritization, and Education Code, §29.3615 does not state the application process is a purpose of an IEP requested under that section. The rule will not require an IEP for prioritization. The comptroller agrees with the suggestion to reference a regulation that will incorporate the types of people qualified to evaluate students under IDEA. The comptroller believes a reference to 19 TAC §89.1040 best aligns the rule with state and federal law that addresses eligibility for special education. In response to these comments, the comptroller adopts §16.403(b)(5) with changes to reference 19 TAC §89.1040 and requires submission of evidence in a comptroller-prescribed format that is signed by one or more licensed professionals qualified to attest the child meets the applicable definition. Because a Full and Individual and Initial Evaluation ("FIIE") prepared through a public school in compliance with 19 TAC §89.1040 is prepared by the appropriate licensed professionals, including educational diagnosticians, and because an IEP issued by an out of state school district is prepared by the appropriate licensed professionals using appropriate eligibility criteria under IDEA, §16.403(b)(5) will also allow, for prioritization purposes, submission or verification of an FIIE if it determines the child meets the applicable definition, or submission and verification of an out of state IEP.

Prince suggests that if the rule allows a licensed physician's written diagnosis as proof of disability, §16.403 should include a cap on the percentage of program funds that can be spent on children with a disability whose household's total annual income is at or below 500% of the federal poverty guidelines. This change would conflict with Education Code, §29.356, and the comptroller declines to change the rule based on this comment.

Every Kid, ExcelinEd, and First Day suggest that proposed §16.403(c) be revised to clarify that returning participants in the program need not reapply and that continued participation only requires a notice of intent. One individual commenter suggests that participants should be required to reapply each year to reverify eligibility, ensuring children with the greatest need are truly prioritized and later applicants with more need are not excluded from the program because they did not "win the lottery." The comptroller agrees with commenters who state the statute prohibits requiring a program participant in good standing to resubmit an application for continued participation in the program, but notes the program may require a participating parent to submit annual notice regarding the parent's intent to continue participating in the program. For program efficiency and to the extent needed, the program may use the notice of intent process to also confirm good standing but the program will not require new applications. The comptroller adopts the rule with clarification that reapplication will not be required.

TASB suggests that §16.403 be clarified to provide how the comptroller will verify disability and income status for children who have never been in public school because the Texas

Education Agency will not have records to verify disability or income status and suggests clarifying how determinations will be made and provides an example of requiring information from parents or the CEAO. The comptroller notes that proposed §16.403(b)(3) and (5) describe the types of information required, and that information may supplement the Texas Education Agency's information. Further, students who have never attended public school may obtain an IEP, including evaluations for students under five years of age. The comptroller declines to change the rule based on this comment.

The comptroller received several comments requesting that the prioritization categories described in proposed §16.403(e), adopted as §16.403(f), be revised. One individual suggests that a family of six should have a higher salary cutoff than a family with fewer children. The comptroller notes that the federal poverty guidelines account for the size of a family. Several individual commenters request that the program be expanded to include all families, regardless of income level. Two individual commenters suggest dividing the category described in §16.403(f)(2)(D) between children with disabilities and children without disabilities so that higher priority can be given to families in this income range that have children with disabilities. One individual suggests that prioritization be given to gifted children. TxP2P asks that prioritization for private school students, children with disabilities, and homeschooled students be further delineated to protect against overlap and ensure integrity in the process. These suggestions to change the lottery conflict with Education Code, §29.356(b), which sets the prioritization categories and does not authorize the comptroller to deviate from those categories as commenters request. Therefore, the comptroller declines to revise the rule based on these comments.

One individual suggested proposed §16.403 be revised to expand the 20% funding cap currently allotted to families with a total annual income above 500% of the federal poverty guidelines or to add a sliding scale to make some level of support accessible to more families. This suggestion conflicts with Education Code, §29.3521(d), which requires that program funds spent on this category of participants, described in Education Code, §29.356(b)(2)(D), not exceed 20% of the money appropriated from the program fund for that school year. Therefore, the comptroller declines to change the rule based on this comment.

The comptroller received several comments regarding the waitlist referenced in §16.403(g). AFC, Every Kid, ExcelinEd, First Day, TPPF, and TCCRI suggest that waitlisted children be permitted to remain on the waitlist without re-applying each year. First Day argues the requirement has a chilling effect for waitlist families. TPPF and AFC argue that reapplying annually will unduly burden parents, especially low-income and special-needs families. TPPF and AFC state families should not lose their place in line because it is unfair and creates uncertainty, and argues resetting the waiting list annually will discourage families from reapplying, understate true interest in the program, and weaken the case for increased appropriations by reducing the legislative appropriation request under Education Code, §29.3521(a). They argue that requiring new applications every year for waitlisted applicants puts an undue burden on families and program management. TPPF and AFC also ask that parents be notified of their placement on the waiting list. Education Code, §29.356(b) does not differentiate between new applicants and children on the waiting list. The waiting list cannot place lower tiered waitlisted applicants above higher tiered new applicants. And within each tier, prioritizing waitlisted applications over new applications would disadvantage younger applicants who were not yet eligible to apply in earlier years. Therefore, all children not previously admitted for participation in the program, including children on the waiting list, must be evaluated to determine continued qualification for the program and the proper prioritization category. The comptroller understands, however, that a waitlisted child will have already submitted information that has not changed. The comptroller adopts §16.403(g) with changes to allow that a waitlisted child may update or supplement their existing application, rather than beginning the process anew.

Every Kid and First Day suggest giving a clear deadline, such as 30 calendar days, to children admitted from the waiting list under §16.403(g), by which they must accept admission to the program or forfeit admission. First Day explains that timeframes motivate movement and ensure funds aren't caught in limbo. Every Kid argues the lack of a deadline will delay the opportunity for other children to participate. The comptroller agrees that a deadline to accept admission to the program, whether from the waiting list or not, benefits the program but without a year of experience, declines to predict appropriate time periods. The comptroller adopts the rule with changes to allow but not prescribe a waiting list response deadline.

TASB suggests revising proposed §16.403 to state whether multiple withdrawals will impact future eligibility and to add limitations on repeated entries and exits from the program. These suggestions conflict with Education Code, §29.356(b)(1)(C), which places such students at the bottom of the prioritization hierarchy. Therefore, the comptroller declines to change the rule based on this comment.

Every Kid suggests that proposed §16.404 be revised to explicitly prohibit subjective review of the educational quality of content purchased with program funds. Education Code, §29.368 provides for the autonomy of program participants, providers, and vendors. The comptroller notes that the proposed rule adequately addresses the issue of autonomy consistent with the statutory requirements and declines to change the rule based on this comment.

One individual requests the explicit inclusion of a licensed specialist in school psychology ("LSSPs") as approved education service providers by adding LSSPs to the list of approved providers under §16.401(8) and §16.404(i). The commenter explains that 22 TAC §465.38 prohibits LSSPs from providing any psychological services in any context or capacity outside of a public or private school, and provides background information about the LSSP license. Education Code, § 29.358 provides the list of providers and vendors the legislature deemed eligible to participate in the program. While an LSSP may meet the requirements for a therapist under Education Code, §29.358, the statute does not grant authority for the program to negate 22 TAC §465.38. The comptroller declines to change the rule in response to this comment.

This individual commenter also suggests that the comptroller should coordinate with the Texas Behavioral Health Executive Council to address the current restriction in 22 TAC §465.38 that prevents LSSPs from providing services outside traditional school settings. This comment is outside the scope of the proposed rules, and thus the comptroller declines to make changes based on this comment.

CtS and Primer recommend revising the approval process described in proposed §16.404 to permit providers who do not yet

meet statutory requirements to fully participate in the program pending final approval, so long as they are acting in good faith and pursuing approval in accordance with the law. The commenters contend that the comptroller may not require a private school to achieve accreditation, administer qualifying assessments, and continuously operate a campus for two school years in order to attain preapproval and participate in the program. The Miles Foundation suggests changing §16.407(f)(2) to recognize a distinction between approval and preapproval, stating it will enable less affluent families to choose from a broader range of school options. CtS suggests the program preapprove schools that show candidacy for accreditation because schools focused on low income students cannot open new Texas campuses and rely on parent-paid tuition prior to participation in the program. These suggestions conflict with Education Code, §29.358. The statute does not define approved or preapproved. We interpret the terms to be interchangeable in most contexts because our interpretation must be the one that is "most consistent with the context of the statutory scheme." *Sw. Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 405 (Tex. 2016). Throughout Education Code, Chapter 29, Subchapter J, the legislature grants authority related to preapproved education service providers and preapproved vendors of educational products or services and does not separately provide similar authority for approved providers and vendors. For example, Education Code, §29.359(a) authorizes parents to initiate payments to preapproved providers and vendors, but does not authorize payments to approved providers and vendors. And interpreting approved and preapproved to have different meanings would cause the second sentence of Education Code, §29.358(d) to prevent any entity from being in an *approved* category. Thus, under Education Code, §29.358(b)(2), the comptroller may not approve a private school if the school fails to demonstrate accreditation, annual administration of an assessment instrument, and continuous operation of a campus for at least two school years. Because the comptroller does not have discretion to deviate from the statutory requirements for accepting private schools into the program, the comptroller declines to make changes based on these comments.

TCCB and TPSA request that proposed §16.404(a)(1) be revised, consistent with Education Code, §29.358(c), to provide that private schools need only to be located within the state rather than registered to do business in the state. The comptroller agrees that only vendors of educational products must be registered to do business within the state and adopts the rule with revisions to clarify that education service providers be located in the state and vendors be registered to do business.

TCCB and TPSA also request that §16.404(a)(4)(B) be revised because schools may have different standard tuition amounts for categories of students for reasons other than participation in this program, such as grade levels. They suggest the rule should recognize that schools can have different standard tuition amounts for categories of students other than ESA students. The comptroller agrees and adopts the rule with new subsection (b) to clarify that this practice is allowed if unrelated to program participation, and re-letters the remaining subsections.

First Day, TCCB, and TPSA suggest that §16.404(a)(4)(C) be revised to permit a private school to charge tuition for the full year if the child leaves the school early and permit private schools to enforce private contracts for private payments in accordance with their established admission policies. The comptroller agrees that private contracts between a former student and a private school are outside the scope of Senate Bill 2 and therefore adopts the rule clarifying that it applies only to the receipt of program funds.

One individual commenter suggests that the comptroller should have claw back authority under proposed §16.404 if private schools are not using program funds for student academics or directly related services to support the student. The comptroller appreciates and shares the concerns to safeguard program funds but believes that existing provisions provide those safeguards. As implemented by proposed §16.405, Education Code, §29.3585(a)(2) authorizes the comptroller to suspend an education service provider that fails to remain in good standing by non-compliance with a program requirement, and Education Code, §29.3585(c)(3) authorizes the comptroller to direct a suspended provider to take corrective action to comply with program requirements. Because these provisions address the misuse of program funds, the comptroller declines to change the rule based on this comment.

The comptroller received a comment regarding §16.404(a)(4)(F), which requires education service providers and vendors of educational products to prevent interactions between children and "any individual who is required to be discharged or refused to be hired by a school district under Education Code, §22.085, included in the registry under Education Code, §22.092, or has engaged in misconduct described by Education Code, §22.093(c)(1)." TCCB and TPSA suggest that §16.404(a)(4)(F) be revised to either limit provider responsibility to preventing the listed categories of individuals from interacting with any participating child while on campus or at school sponsored activities because schools cannot control how people interact with a participating child when at home, church, or elsewhere, or to simply prevent schools from employing the listed categories of individuals. The comptroller notes that these statutory references were renumbered and amended by Senate Bill 571, 89th Legislature, R.S., 2025 and, under the Code Construction Act, a reference to any part of a statute applies to all reenactments, revisions or amendments of the statute unless expressly provided otherwise. To avoid confusion, the comptroller adopts the rule using the statutory language and clarifying it applies to interaction by reason of employment, and removing text that applies specifically to tutors, therapists, and teaching service employees.

TCCB and TPSA also suggest adding a "program transaction" definition to §16.404(a)(4)(G), which requires education service providers and vendors of educational products to comply with the audit requirements of Education Code, §29.363 by providing to a private entity under contract with the comptroller or to the state auditor information or documentation related to a program transaction. The commenters request that a definition of "program transaction" should exclude a school's financial aid program awards and any other non-program transactions from the auditing process. The commenters suggest defining "program transaction" to include only a transaction paid by a program account and exclude any private non-program payment. The comptroller appreciates the commenters' desire to limit program audits to program-related information, but the comptroller believes that the term "program transaction" necessarily excludes any non-program transactions. Therefore, the comptroller declines to change the rule based on this comment.

TSTA suggests revising proposed §16.404 to require in-state presence for approved providers, specifically clarifying the eligibility of out-of-state virtual providers and charter operators because state law requires charter schools be non-profit. TSTA is concerned that out of state for-profit charter operators could qualify to provide virtual educational services through the program. TSTA also suggested the rules include requirements

for physical presence and employment of personnel located in Texas. The comptroller agrees that Education Code, §29.358(c) requires education service providers to be located in the state, and requires vendors of educational products and services to be registered to do business in this state. The comptroller adopts the rule with revisions to clarify that vendors be registered to do business in this state, and to require a physical presence in the state for education service providers.

The comptroller received many comments on the qualification requirements for private schools under §16.404(d) and regarding the rules generally. IDRA, LDF, TSTA, SEF, and many other commenters request the comptroller add rules that include federal and state education, non-discrimination, and equal opportunity protections for participants, including rules that prohibit discrimination based on race, ethnicity, socioeconomic status, religious beliefs, language, special education needs, or disability status. SEF's suggestion includes requiring private schools to provide special education services. LDF further requests the addition of rules that sanction violations and rules that remind private schools that hair discrimination is not permitted. Commenters cite numerous federal and state constitutional and statutory provisions, including the Americans with Disabilities Act, §504 of the Rehabilitation Act of 1974, and Education Code, §1.002, and argue they apply because the program uses state funds. LDF also argues that without these additions, the program would perpetuate segregation. These suggestions are outside the scope of the proposed rules. Such additions are not a logical outgrowth of the proposal and would materially alter the issues raised in the proposed rules. Such an adoption would deprive affected parties of fair notice and the opportunity for meaningful and informed participation in the rulemaking process. *See Tex. Workers' Comp. Comm'n v. Patient Advocates*, 136 S.W.3d 643 (Tex. 2004). The comptroller declines to change the rules in response to these comments.

Primer commented that Education Code, §29.358(b) uses the term "shall" rather than "may" and requests §16.404 also use "shall" rather than "may." The comptroller agrees and adopts the rule with changes to better align with the statute.

TASB suggests that proposed §16.404 address what happens if a private school loses accreditation or closes mid-year and whether, in such a circumstance, the student's account will be adjusted or refunded and how the amount will be calculated. A private school that can no longer demonstrate accreditation, as required by Education Code, §29.358(b)(2)(A), is subject to suspension and removal under Education Code, §29.3585. Education Code, §29.3585(b) prohibits payments from a program participant's account to a suspended provider or vendor. The comptroller appreciates the commenter's concerns but believes that these provisions sufficiently address the issue. The comptroller therefore declines to change the rule based on this comment.

CAKE asks about possible plans for the comptroller to issue accreditations directly to private schools under certain conditions. At this time, the Education Code does not authorize such accreditations, and thus the comptroller declines to make a change to the proposed rule based on this comment.

One individual commenter suggests that accreditation should not be required for private schools under §16.404(d) and that schools should be permitted to demonstrate quality and accountability in other ways. Under Education Code, §29.358(b)(2)(A), a private school must demonstrate accreditation by an organization recognized by TEPSAC or the Texas Education Agency. The comptroller therefore declines to change the rule based on this comment.

The comptroller received several comments related to the requirement in §16.404(d)(2) that a private school must submit proof of annual administration of an assessment instrument to participating children in grades 3 through 12. CLI suggests that §16.404(d)(2) be revised to say: "annual administration of one or more assessment instruments to participating children in grades 3 through 12." CLI states Texas private schools are unsure whether requiring "annual administration of an assessment instrument" will prevent private schools from administering more than one assessment instrument. CLI cites case law and the Code Construction Act, Government Code, §311.012(b), to explain that, when construing the code, the singular includes the plural and the plural includes the singular. The comptroller agrees with CLI's interpretation, but declines to change the rule because the Code Construction Act makes it unnecessary. The program can resolve any confusion outside of the rulemaking process.

Shelton asks various questions regarding annual assessment instruments. The comptroller cannot provide general guidance of this nature and declines to change the rule based on these comments.

CareerPath and three individuals suggest that, with respect to the requirement to administer nationally norm-referenced tests or state-approved assessments in §16.404(d)(2), the rule should provide exemptions or alternative accountability options for schools serving profoundly disabled students and, as an alternative, allow functional, developmental, or individualized assessments aligned with a student's IEP or care plan. One commenter notes that for her child, "quality of life, independence, and communication improvements are as important, if not more important, than traditional academic gains" and cannot be adequately measured by a standardized assessment. Another commenter expresses concern that "some of the most vulnerable children in our state may be left behind." Education Code, §29.358(b)(2)(B) requires private schools to administer "a nationally norm-referenced assessment instrument or the appropriate assessment instrument required under Subchapter B, Chapter 39." While the comptroller believes that the statute does not require a private school to provide accommodations for a child with a disability and that Education Code, §29.368 prohibits the state from requiring the provision of such accommodations, the comptroller also believes that Education Code, Chapter 39, Subchapter B permits alternative assessments to be administered in the case of a child with a disability based on the IEP. Further, the statute does not limit a private school's discretion to choose a nationally norm-referenced assessment instrument. Considering the applicable statutory provisions, the comptroller declines to revise the rule based on these comments.

SEF requests that §16.404(d) require participating private schools to administer the same state standardized tests, at the same time and in the same general manner as public schools, such that a meaningful understanding of participating students' academic achievement compared with their public school counterparts can be attained. SEF argues a meaningful benchmark is needed to compare how students performed before the program and to compare students with their public school counterparts. This suggestion conflicts with Education Code, §29.358(b)(2)(B), which explicitly allows private schools to choose a nationally norm-referenced assessment instrument

or the appropriate assessment instrument required under Education Code, Chapter 39, Subchapter B. Because statute does not require private schools to administer the same assessments as public schools, the comptroller declines to change the rule based on this comment.

The comptroller received several individual comments regarding the continuous operation of a campus for at least two-years under §16.404(d)(3), particularly with respect to the relocation or expansion of private school operations within the state or into Texas from another state. CtS, Every Kid, ExcelinEd, First Day, and Primer suggest revisions to explicitly permit an out-of-state provider to meet this requirement based on continuous operation of a campus outside the state for two years. ExcelinEd argues that allowing out-of-state campuses will preserve basic standards of private school quality while not artificially restricting the supply of available options. Primer suggests the rule as proposed could be interpreted to require a private school to be headquartered in this state and suggests the rule instead require campuses to be located in this state. Schneider is concerned that the campus definition could be misinterpreted to require each new campus of an already approved private school to operate two years before serving program participants, and argues this requirement is not statutorily required, would impede established schools that are growing to meet student demand, and is made unnecessary by other statutory requirements. Schneider notes the statute limits eligibility to in-state private schools, ensuring local presence and oversight, and suggests that an approved private school should be allowed to open new campuses under the same management and oversight without needing to reapply. One individual commenter asks whether "operation" means "accredited." While Education Code, §29.358(b)(2)(C) requires a private school applying to participate in the program to have continuously operated a campus for at least two school years before applying (whether approved by TEPSAC or the Texas Education Agency or not), the comptroller agrees the statute does not require the qualifying campus to be located in Texas. The comptroller adopts the rule with clarifying changes to confirm that a school may operate more than one campus, that any one of the school's campuses may be used to meet this condition, and that the qualifying campus does not need to be located in Texas. The comptroller adopts §16.404(d) with revisions and adds new subsection (e), appropriately re-lettering subsequent subsections, to make these clarifications.

KaiPod asks whether a new locally-owned school in its network can meet the accreditation requirements based on its affiliation with accredited out-of-state campuses and asks if the rules envision a type of legal agreement or partnership structure to meet the requirements of §16.404(d)(3). For example, where an individual private school operated by a local owner is part of an affiliated network of schools with a shared educational philosophy, aligned practices, and oversight, KaiPod asks whether accreditation and continuous operation of an affiliate school satisfies the accreditation and two-year operation requirement for an applying school. The comptroller acknowledges that a school operating as a single, legal entity with multiple campuses may fulfill the two-year operation requirement with any one of the campuses it operates. The comptroller declines to address this specific fact scenario in the rule, but, as discussed in the above paragraph, adopts §16.404(d) with revisions and adds new subsection (e), to provide additional clarity.

One commenter suggests that a school that has operated for the requisite two-year period under an accreditation not approved by either TEPSAC or the Texas Education Agency be approved to participate in the program during the pendency of the required accreditation. Every Kid suggests approving such schools if they have a provisional pathway as determined by the agency for schools actively seeking accreditation. Education Code, §29.358(b)(2) requires a private school be accredited by an organization recognized by either TEPSAC or the agency; the statute does not permit alternate accrediting bodies, nor does it permit participation in the program during the accreditation process. Therefore, the comptroller declines to change the rule based on this comment.

The comptroller received requests from Every Kid, ExcelinEd, First Day, and TCPSA regarding the public school approval requirements under §16.404(f). Specifically, commenters request that confirmation of accreditation status from the Texas Education Agency be verified based on the agency's electronic database information, rather than documentation the public school submits. ExcelinEd also suggests allowing a public school to attest that participating children will not be counted towards the district's or school's average daily attendance, rather than provide documentation. First Day states requiring duplicative paperwork on accreditation and average daily attendance could discourage participation by these schools. The comptroller agrees that electronic verification expedites the approval process and adopts the rule with clarifying changes to confirm the acceptability of electronic verification of the accreditation status of public schools but declines to require only an attestation from a public school.

The comptroller received comments regarding the approval of private prekindergarten and kindergarten services under §16.404(h). ECEC requests revising the rules to clarify that such providers are considered "private schools" under proposed §16.407(b) and are not subject to the $2,000 funding cap. ECEC states that "any family enrolling their child at a qualified pre-kindergarten or kindergarten provider must be eligible for the full ESA amount." Atelier states that applying the cap to these providers prevents them from accessing up to $30,000 in special education support and goes against the legislative intent. The comptroller notes that statutory limitations, including Education Code, §29.355(a)(2)(B) require prekindergarten children to meet eligibility requirements in Education Code, §29.153. Rep. Buckley, one of the authors of the legislation establishing the program, concurs, commenting that it was his intent that students eligible to participate in a prekindergarten program under Education Code, §29.355 and §29.153 and attending a private prekindergarten accredited under Education Code, §29.171 receive "85 percent of the estimated statewide average amount of state and local funding per student in average daily attendance." The comptroller does not define such providers to be "private schools" but agrees the $2,000 funding cap should not apply and adopts §16.403(b) to clarify the children who are eligible to participate in the program as prekindergarten students under Education Code, §29.153 and adopts §16.404(h) and §16.407(b) with changes to clarify that a prekindergarten or kindergarten provider accredited under Education Code, §29.171 will be eligible to receive program payments for tuition and fees for prekindergarten and kindergarten educational services and clarifying that a private school qualifying under Education Code, §29.358(b)(2) may receive tuition and fees for kindergarten participants. However, the comptroller also notes that the purpose of the program is to provide educational options to parents rather than childcare services and, to align with statutory authority, adopts conforming changes to limit the use of funds to the portion of services that would be eligible

for Foundation School Program Funding if provided under a contract with a school district.

Kiddie Academy of Magnolia expresses concern that Senate Bill 2 requires participating prekindergarten providers to obtain certain certifications dependent on state programs, such as the Texas Workforce Commission Child Care Services program and Texas Rising Star, stating both are experiencing extreme backlogs. The rule does not require a private provider of a prekindergarten or kindergarten program to obtain TWC certification. The rule references the requirements of Education Code, §29.171 which contains a list of acceptable ways to demonstrate meeting the required standards. Prekindergarten partnerships with school districts provide public school funding for the pre-kindergarten portion of the day, and TWC's CCS program may pay for the care some children receive before and after the pre-k class. Program accounts may only be used to pay fees for the pre-kindergarten portion of the day, and the program only addresses qualifications for that part of the day.

The comptroller received many comments regarding the accreditation requirements for prekindergarten providers under §16.404(h). AELL, AMC, Angels Care, Atelier, Bella Gardens, Cantera, Creative Care, EFS, Fractal, Kiddie Academy, Lake-Creek, Lumin, MCHS, MINT, Pines, Post Oak, Southampton, TLCCA, White Rock, and many individuals requested that the comptroller accept accreditations under §16.404(f) for the following organizations: American Montessori Society ("AMS"), Association Montessori International/USA ("AMI"), Cognia, the International Montessori Council ("IMC"), National Administrator Credential ("NAC"), National Association for the Education of Young Children ("NAEYC"), National Early Childhood Program Accreditation ("NECPA"), and Texas Rising Star ("TRS"). The commenters argue that providers with these certifications meet thresholds that demonstrate the schools' commitment to providing high-quality early education, developing young minds and improving the strength of the Texas workforce and preparing the state for the 21st century. Commenters note that Montessori schools have a long history of accrediting schools and credentialing teachers and that their inclusion supports high-quality, proven educational models for over 55,000 Texas families. One commenter suggests the process to become credentialed as a Montessori teacher is at least as rigorous as the standard required to obtain a teaching certificate in Texas. Another points to studies that show "Montessori students demonstrate stronger executive functioning, higher levels of independence, and improved critical thinking skills compared to peers in traditional settings." According to Education Code, §29.358(b)(6), Education Code, §29.171 governs the accreditation requirements for private prekindergarten and kindergarten providers. A provider with a TRS certification of three-stars or higher meets the standard necessary to be approved as a provider for the program, as does a provider with AMS, Cognia, NAC, NAEYC, or NECPA certification. Accreditations under by AMI and IMC, however, do not currently meet the requirements of Education Code, §29.171. Because Education Code, §29.171 already specifies the acceptable accrediting organizations for prekindergarten and kindergarten providers, the comptroller declines to change the rule based on these comments.

The comptroller received comments regarding the approval of tutors, therapists, and employees of a teaching service under §16.404(i). First Day and Outschool both request that the phrase "located in this state" be replaced by "that is located in this state." The comptroller notes that the statute requires education service providers be located in this state but not vendors of educational products or services. The comptroller adopts §16.401 and §16.404 with revisions to clarify that a tutor, therapist, or employee of a teaching service is a vendor and does not need to be located in this state.

Every Kid, ExcelinEd, and First Day request that §16.404(i) be revised to specify that the documentation necessary to validate the qualification requirements for tutors, therapists, and employees of a teaching service be verified by the comptroller using existing state or national databases, rather than being submitted to the comptroller by the applicant. Although Education Code, §29.358(b)(4) places the onus on the applicant to prove the tutor, therapist, or employee of a teaching service meets the requirements to be approved as a vendor, the comptroller agrees that electronic verification expedites the approval process. The comptroller adopts §16.404 with changes to allow but not require electronic verification for tutors, therapists and teaching services.

TCCB and TPSA commented that the interagency reportable conduct search engine under Health and Safety Code, Chapter 810 will not be available for use until the summer of 2026. The commenters request that the Texas Education Agency's do-not-hire registry maintained under Education Code, §22.092 be utilized for such verifications during the interim. The comptroller agrees with the commenters that the protection of children participating in the program is of utmost importance. Because compliance with the statutory requirement to use the new search engine will be impossible until it is operational, because the legislature clearly intended that participating private schools conduct these important screenings, and because the legislature authorizes the use of the Texas Education Agency's do-not-hire registry for other types of vendors, the comptroller adopts the rule with changes to allow private schools to comply by using the do-not-hire registry until the new registry is available.

The comptroller received six comments regarding the qualification requirements for a tutor or employee of a teaching service under §16.404(i)(3). At-Home requests that the term "educator" be extended to specifically include a teacher or tutor and requests that the rule permit the approval of persons employed by or independently contracted by a duly-accredited school or higher education provider. At-Home points out the rule differs from the statutory wording and its summary use of the term educator unintentionally incorporates a definition only applicable to public school educators. Education Code, §29.358(b)(4)(A)(i) concerning public or private school employees uses the term "educator" and the phrase "employed by," and Education Code, §29.358(b)(4)(A)(iii) concerning higher education provider employees speaks in terms of a teacher or tutor and uses the phrase "employed in." The comptroller agrees that these distinctions in the legislation are significant. The comptroller therefore adopts the rule with changes to use the statutory language.

EEFLC and First Day request that the qualifications for a tutor or employee of a teaching service include individuals with a current or expired teaching certificate, instructional accreditation, or another professional license or accreditation in the individual's subject area of instruction. EEFLC notes that both public and private schools may hire teachers without certifications and believes it is unfair to hold homeschool instructors to a higher standard. The comptroller notes that Education Code, §29.358(b)(4)(A)(ii) permits the approval of a tutor or employee of a teaching service who holds a relevant license or accreditation. The term "holds" implies that the possession of an active license or accreditation. Therefore, the comptroller adopts the rule with changes to al-

low for the approval of tutors and employees to the extent that the applicant holds an active teaching license or instructional accreditation in their subject area.

EEFLC also requests that tutors who work in a teaching service or co-op arrangement be permitted to perform their own criminal history review the way that a private school is permitted to conduct their own reviews. EEFLC says this "creates an undue and invasive burden on private teachers and family-run cooperatives and could discourage participation," and they ask for equal treatment with private schools. With respect to this same provision, TASB requests that the statutory references in §16.404 be revised to reflect the recodification of those sections by Senate Bill 571. The comptroller notes that under the Code Construction Act, a reference to any part of a statute applies to all reenactments, revisions, or amendments of the statute unless expressly provided otherwise. Education Code, §29.358(b)(4)(B) requires that any tutor, therapist, or employee of a teaching service provide to the program a third-party criminal history review or allow the program to conduct such a review. As the commenter notes, Education Code, §29.358(b)(2) related to the qualifications for private schools does not contain a comparable provision. However, Education Code, §29.358(b)(4) relates to tutors, therapists, and employees of a teaching service and does not require such providers to: receive TEPSAC or Texas Education Agency approved accreditation; operate a campus for two school years; be located in the state; or conduct annual assessments and share the assessment results with the program. Based on the statutory requirements, it is not possible to treat tutors, therapists, and employees of a teaching service the same as private schools in many respects, but the comptroller does not intend to place an unnecessary burden on any provider or vendor. Therefore, the comptroller adopts §16.404 with revisions to align requirements placed on providers and vendors to the extent feasible.

One individual commenter asks that the qualification requirements be relaxed to include subject-matter experts without formal credentials used by small, parent-led groups. The comptroller understands that the needs of and resources available to small groups differ from that of larger groups but is bound by Education Code, §29.358. Therefore, the comptroller declines to change the rules based on this comment.

The comptroller received several comments about the reference to the program marketplace in proposed §16.404(h) and proposed §16.407(g). Every Kid, First Day, Mastercard, and Outschool believe that the employment of a single program marketplace for participant purchases creates ambiguity and uncertainty for participants, could limit parent choice, could limit the participation of providers and vendors and is contrary to the spirit of multiple CEAOs. They therefore request that the marketplace reference be replaced by a comptroller-approved payment or purchasing mechanism. Mastercard suggests the use of technology that achieves five goals: convenience, fidelity, efficiency, security, and transparency. TASB suggests changing "may" to "shall" in proposed §16.407(g) to plainly state whether such a marketplace constitutes the only means of making approved purchases. The comptroller appreciates the commenters' interest in maintaining the integrity and accessibility of the program. While the use of a single purchase platform provides certainty and clarity for participants, minimizing the possibility of fraud and waste, the comptroller agrees the program may need flexibility considering how quickly the technological landscape evolves. The comptroller therefore adopts the rule with clarifying changes to indicate that any comptroller-approved purchasing system is acceptable and is the only permissible mechanism.

TASB asks that the rules explicitly prohibit reimbursements if that is the intent. Conversely, one individual commenter requests the implementation of an alternative to the use of a single program marketplace, such as the submission of receipts. Education Code, §29.360(f) specifically forbids reimbursements and is incorporated in §16.403(b)(4)(B) as one of the attestations required for program participation. Therefore, the comptroller declines to revise the rule based on this comment.

TASB recommends changes to these rules to explicitly permit the purchase of services or products exceeding the balance of a participant's account, provided the participant pays the difference. CollegeBoard states making the CEAO as a purchasing intermediary will prevent homeschoolers from using ESA accounts to pay for the PSAT/NMSQT because school districts collect the exam fees from homeschoolers. The comptroller understands the request to address these specific scenarios, but recognizes that system limitations of a CEAO may, at least initially, preclude solutions. Senate Bill 2 expresses the legislature's intent that the program be quickly implemented. The legislation imposes a rule adoption deadline of May 15, 2026, and authorizes emergency rules for purposes of the 2026-2027 school year without the usual statutory findings. Senate Bill 2 also expresses the legislature's intent to limit administrative costs with statutory caps on the percentage of funds available for both comptroller and CEAO costs. The comptroller declines to address solutions to these issues in the rule because the need to quickly and economically begin the program outweighs the benefit. However, the comptroller appreciates the thoughtful suggestions that merit further discussion and consideration as the program is implemented.

The comptroller received several comments regarding the prohibition of payments to a participant's family members in §16.404(k). Every Kid, ExcelinEd, and First Day request enforcement of this restriction via provider and participant attestations and revisions to the rule that clarify a parent may be employed by a participating child's provider so long as they do not have direct interaction with their child. ExcelinEd believes the proposed rule would unintentionally restrict student eligibility or force a parent to change employment for the sake of student participation. The comptroller agrees that Education Code, §29.359(b) should not be read to prevent a participating child from attending a private school where their parent teaches, but notes that it imposes a strict prohibition on program payments to a person related to a participating child. Because it is impossible for a nonprofit corporation, a corporation, or some other entity to be related to a child within the third degree of consanguinity, the adopted rule clarifies that it does not preclude payments to entities other than sole proprietorships or partnerships. With respect to enforcement of the provision, the comptroller cannot rely solely on attestations, precluding the use of other methods, including audits. The adopted rule will not require reliance solely on attestations.

The comptroller received several comments regarding the participant, provider, and vendor suspension provisions contained in proposed §16.405. Every Kid, ExcelinEd, First Day, the Miles Foundation, and TASB request that the rule distinguish between intentional fraud or flagrant misuse of program funds and unintentional errors or mistakes. Specifically, the commenters ask that a participant be given an opportunity to cure inadvertent violations prior to suspension, while participants committing intentional violations be suspended immediately. Texas 2036 simi-

larly asks that the consequences for a school that inadvertently submits erroneous information. One individual commenter approved of the rule but also requested that a cure period be allowed and that notices be delivered by regular mail and email. While the comptroller appreciates commenters' concerns, Education Code, §29.3585(a) and §29.364(a) require the comptroller to suspend, at least temporarily, participant accounts, providers, and vendors for failure to remain in good standing. The comptroller notes that it is not the participant who is suspended, but rather the participant's account. A child in private school won't have to stop going to school. Instead, payments from their account will be paused while the program determines what needs to be corrected. The comptroller notes that without account suspensions, participants could continue making inadvertent but prohibited expenditures. An inadvertent improper payment is still an improper payment and an unauthorized expenditure of taxpayer dollars. To reduce possible problems during account suspension for unintentional mistakes that could be resolved faster than 30 days, the comptroller adopts §16.405(c) with a change authorizing faster action to resolve minor issues for participants, providers, and vendors. The comptroller also adopts §16.405 with changes to clarify suspension applies to the participant's account, rather than the participant. The adoption also removes participant eligibility as a cause for suspension because a participant's removal from the program for ineligibility is addressed separately. The comptroller notes that a participant, provider, or vendor will be given notice and an opportunity to cure any violation before a final decision is made and that the rule requires notification via mail and email.

TASB suggests specifying the duration of any ineligibility under proposed §16.403(g), if not permanent, whether reinstatement is permitted, and how reinstatement is obtained. TASB also asks that proposed §16.405 specify the length of suspension or clarify that removal from the program under proposed §16.405 is permanent. Senate Bill 2 contains two sections addressing suspension from the program: Education Code, §29.3585 deals with the suspension of providers and vendors; and Education Code, §29.364 deals with the suspension of program participant accounts. In both cases, a cure period is provided before final removal from the program. In neither case, however, does the statute contemplate reinstatement to the program following such removal. The comptroller agrees that additional clarity is needed and adopts the rule with changes that remove subsection (g) from §16.403 and globally address suspension and removal for violations in §16.405 to address suspension length and to specify that removal from the program for a violation is permanent.

TASB also requests additional protections to prevent removed individuals or entities from re-entering the program under a new organizational name and suggests adding two-year operational prerequisites on other types of providers and vendors. TASB also suggests a fraud and complaint hotline. The comptroller understands the need to protect the integrity of the program and to takes steps to prevent fraud and abuse. The comptroller believes the rules contain many provisions to curb bad actors and declines to revise the rule based on this comment. However, the comptroller appreciates the thoughtful suggestions that merit further discussion and consideration as the program is implemented.

TASB requests additional guidance on reimbursement procedures for providers or vendors that accept program funds but fail to deliver the purchased service or item. Specifically, TASB asks whether the participant account will be reimbursed regardless of the outcome of any reclamation process. TASB also notes that the rules fail to address the remedies available to a participant that loses placement in a private school based on an error on the part of the comptroller or a CEAO. The comptroller appreciates commenters' concerns but believes that the process for resolving these issues is addressed in §16.405 and §16.409. Therefore, the comptroller declines to revise the rules based on these comments.

Finally, TASB requests that the term "substantial" as a modifier for a "violation of law" be removed from proposed §16.405(e) with respect to reporting instances of fraud or abuse to a local county or district attorney. Because Education Code, §29.366 uses the phrase "any other violation of law" and requires the comptroller to report such instances to a local county or district attorney, the comptroller agrees and adopts the rule with that change.

The comptroller received four comments requesting clarity concerning the interaction between proposed §16.405 concerning suspensions and proposed §16.409 concerning appeals. Every Kid, ExcelinEd, First Day, and the Miles Foundation ask that proposed §16.405(f) clarify that a participating parent retains the right to appeal a decision regarding the removal of their child from the program under proposed §16.409. The comptroller agrees with the commenters and adopts the rule with revisions to clarify that the appeal rights under proposed §16.409 apply to final decisions related to a program participant under §16.405.

The comptroller received two comments regarding the types of approved providers under §16.406(1), the meaning of the term "instructional materials" as used in §16.406(3), and the scope of §16.406(4). Interplay suggests expanding §16.406 to allow payment of tuition and fees to apprenticeship, trades and career and technical education programs including related technical instruction, and clarifying that instructional materials includes digital, online or virtual instructional materials used in such programs. Interplay argues the programs should be added because of Texas' growing demand for skilled trade, and argues their suggestions is consistent with Education Code, §31.002. The comptroller notes most of these edits are unnecessary because the §16.401 is adopted with an added "instructional materials" definition to include digital materials and removes the for-credit requirement from the "online educational course" definition. While not covering in-person apprenticeship programs, the definition will allow payment of tuition and fees for related online technical courses as well as online trade, career and technical education courses. One individual commenter requests that covered expenses include art and science materials, museum and park memberships, and fees for small-group classes. EEFLC asks whether fees for extracurricular activities are covered, such as robotics, cooking, or piano lessons. Education Code, §29.358 provides a comprehensive list of the types of education service providers eligible to participate in the program with corresponding accreditation, licensing and other requirements. Adding these programs would conflict with program statutory requirements. Unlike Senate Bill 2 requirements for private schools, Senate Bill 2 does not require a career and technical education programs to administer annual assessments and does not require participants enrolled only with a career and technical education programs to share assessment results with the CEAO. Where such programs otherwise qualify under a §16.404 vendor category, however, they may be approved for participation in the program. The comptroller declines to change §16.406 in response to this comment, but instead adopts §16.401 with changes to add a

definition of "instructional materials" and remove the for-credit requirement of the "online educational course" definition.

The comptroller received one comment regarding the limitation on payments for educational therapies to the extent covered by government benefits or private insurance in proposed §16.406(7). TASB asks the comptroller to specify the process to ensure the application of this limit. The comptroller agrees that protecting program assets is in the best interests of the state and all participants and endeavors to ensure that program funds are distributed in an equitable manner. The CEAO's responsibility for determining the validity of education-related expenses is addressed in the CEAO's contract, and proposed §16.405 provides a mechanism for addressing any funds that are improperly distributed. Therefore, the comptroller declines to revise the rules based on this comment.

The comptroller received several comments on the scope of the hardware, software, and other technology category of approved expenses contained in proposed §16.406(9). McGraw Hill requests that the restriction in the rule that such items be required by a private school be revised to align with the language in the statute. The comptroller agrees that Education Code, §29.359(a)(8) allows the purchase of hardware, software, and technological devices required by an education service provider or vendor of educational products or services. Therefore, the comptroller adopts the rule with changes to align with the statute and allow purchases of hardware, software, and technological devices required by any approved provider or vendor.

Interplay requests that the term "software" as used in the proposed rule be clarified to exclude online courses, digital curricula, or online instructional materials whether constituting the primary content of instruction or supplemental resources, such that the 10% cap on technology expenses does not apply. Interplay argues this is necessary to ensure ESA funds can pay for online and virtual reality-based training programs. To clarify permissible expenses in §16.406, the comptroller adds a definition in §16.401 for "instructional materials" and modifies the "online educational course" definition. The comptroller notes that some items, such as VR headsets and Manual J calculation software, can be permissible educational expenditures but are subject to the statutory 10% cap.

One individual commenter requests that the 10% cap on technology expenditures under proposed §16.406(9) be relaxed in the case of assistive devices or specialized tools recommended by an educator or therapist. Education Code, §29.359(a)(8) explicitly limits the annual covered amount spent on technological devices to 10% of the amount transferred to a participating child's account that year. The comptroller appreciates the commenter's concerns but believes the rule accurately reflects the limitation in statute and declines to change the rule based on this comment.

The comptroller received a comment from OSOD and one individual requesting additional rulemaking regarding the criteria to be used for approval at the comptroller's discretion of other types of vendors to provide qualified education related services and products under proposed §16.404(h). The comptroller received comments on the types of academic assessment instruments that are considered approved education-related expenses under proposed §16.406(5). CLI requests that authority to pay academic assessment administrators for "academic instruments" explicitly include competency-based learning assessments, grade placement assessments, literacy assessments, college advanced placement tests, college or post-secondary entrance examinations, and preparatory entrance examinations. CLI argues this change is needed to allow ESA funds to pay for academic assessments despite explicit statutory authority for this expense. When reviewing Education Code, Chapter 29, Subchapter J as a whole, the comptroller interprets "academic assessment" and "assessment instrument" to mean the same thing. The comptroller agrees with commenters and adopts §16.401(3) with a change to clarify the definition applies to both terms. The comptroller agrees that criteria for administrators of academic assessments and other vendors approved under Education Code, §29.358(b-1) should be included in the rule. The comptroller replaces proposed §16.404(h) with the criteria for approval of vendors that provide the types of approved education-related expenses that Education Code, §29.358(b-1) references.

The comptroller received one comment regarding the administration of program accounts under proposed §16.407. Every Kid requests that transaction fees be prohibited on participants, providers, and vendors. Education Code, §29.360(g) already addresses this subject and it specifically prohibits a CEAO from imposing transaction fees on participant accounts. Accordingly, the comptroller declines to change the rule.

The comptroller received many comments regarding the $2,000 funding cap in proposed §16.407(b). Abraham's, AELL, AFC, Allstars, Angels Care, Ascension, Atelier, BBMA, Bella Gardens, Belton, Blessing, Bright Beginnings, Bright Horizons, CCA, CCCC, CCS, Celebree, Children at Risk, Children's Lighthouse, Children's Safari, Cielito, Colyandro, Creative Care, DCC, DCCDS, Dunkin, Early Matters, ECEC, EFS, Endless, EPCF, Every Kid, Family Compass, First Day, FLIP, Footprints, Fractal, Future Scholars, Goddard, GStop, Happy Tree, Heritage, Hope, Ivy Kids, Jupiter House, Kiddie Academy, Kids Academy, Kids Co., Kids Concepts, KidsPark, Kids R Kids, KinderCare, LakeCreek, LCG, Legacy, Liberty, Little School, Magnolia, Marion, Metrocrest, MHEC, the Miles Foundation, Nest, Next Generation, NPN, NTEEA, Open Door, Outschool, Pillars, PreK Today, Primrose, Q&A, Rainbow, Ready Set, Respite, Robindell, ROCK, Sharp, Steady Steps, SX6, THSC, TLCCA, TLE, TPPF, TSVF, United Way, Vogel, Work Texas, 2T, and many individual commenters raise two points with respect to this provision. First, many request that the funding cap not apply to students participating in a prekindergarten or kindergarten program approved as a provider under Education Code, §29.358(b)(6) and request that such students receive "the full ESA amount" or "the $10,000" funding amount (an approximation by commenters of the "85 percent of the estimated statewide average amount of state and local funding per student in average daily attendance" provided under Education Code, §29.361(a)(1)) as well as any added amount for children with a disability up to $30,000. Many of these commenters such as CCA advocate for participants to be able to use full funding to pay for a "community-based setting that meets their specific needs, including the ability to receive full-day and year-round programming aligned to a parent's work schedule" with a "curriculum aligned to early childhood best practices." These commenters also note that because "many private schools do not offer pre-k, this dramatically limits families' options and leaves out the very programs that have long partnered with the state to prepare children for school." These programs, Nest notes, provide a "high-quality, accredited environment where {the} focus is on preparing children for school readiness, lifelong learning, and social-emotional growth." Children's Lighthouse notes that many of these providers are licensed by the Texas Health and Human Services Commission, hold state and national accreditations,

meet other rigorous standards, and are trusted by and vital to working families across the state. Respite states that this dilemma is especially acute for children with special needs and/or complex medical conditions such as the children they serve. TLCCA argues that "high quality childcare providers are essential to early childhood development and should be valued partners in the ESA program, alongside private schools." CCA, SX6, and United Way says the proposed rule only provides the "illusion of choice." NTEEA says science "removes any doubt that children learn from birth and because so many mothers and fathers are in the workforce when their children are young, it is critical that we ensure access to high quality prek programs." DCCDS agrees, arguing that additional funding would permit families with children to be able to work while their children receive an education, allowing them to grow into adults that can contribute to their communities. LakeCreek states that additional funding would allow them to "improve learning materials, enhance classroom resources, provide specialized support for children with diverse learning needs, and maintain affordable tuition for families." Belton says "private preschools like ours are missing out on important training opportunities that would help our staff adapt to changes in teaching and behavioral management for special needs children." Fractal, the Miles Foundation, and many other commenters cite the average annual cost for private prekindergarten in Texas as a justification for providing "full funding" to such students to make prekindergarten more affordable. Children's Lighthouse notes that the early childhood education industry contributes $3.64 billion to the Texas economy but argues that lack of full program funding undermines the industry's sustainability because the current economic climate forces parents to select a free public prekindergarten program, rather than the private provider they choose; Education Connection mentioned the same pattern. Several commenters argue the proposed rules provide full funding only for TEPSAC-accredited schools, ignoring TRS, the state-approved quality rating system, with more stringent evaluations than NAC, NAEYC, and NECPA. CCA specifically notes that many prekindergarten providers have never had a reason to seek TEPSAC accreditation because the state encouraged the alternate accreditation standards promulgated under Education Code, §29.171. Vogel urges the comptroller to "not discriminate against childcare centers that also are the same high quality as private PreK programs." The comptroller notes that the program's purpose is to provide educational options, including certain prekindergarten and kindergarten programs, to parents, and does not provide funding to support providers and vendors. The comptroller adopts §16.403(b) and §16.407(b) with changes to ensure that participants enrolled in the program who qualify for prekindergarten under Education Code, §29.153 and enroll at an approved private prekindergarten or kindergarten provider of educational services accredited under Education Code, §29.171, qualify for participation in the program without being subject to the $2,000 funding cap. To clear up confusion over the type of prekindergarten and kindergarten programs the statute allows, the comptroller notes that §16.404 incorporates by reference the requirements of Education Code, §29.171, and the comptroller adopts §16.403 with the statutory list of requirements for children to qualify under Education Code, §29.153.

Second, the commenters also reference Education Code, §29.361(b-1) suggesting the language limits only students meeting the "home-schooled student" definition under Education Code, §29.916(a)(1) to the $2,000 funding cap. THSC worries that application of this cap generally will steer parents towards a single provider type, a private school, rather than empowering them to select the type of education best suited to their child's needs. THSC suggests that the $2,000 cap should only apply in cases where a program participant affirmatively indicates that they intend to use the funds for homeschool expenses, that funding should not be based on whether a participant is classified as a "homeschool student vs another type of student," and that participants educated through various alternative models, such as micro schools, learning pods, and the like, should be funded at the same level as private school students (approximately $10,300 per student and up to $30,000 for children with a disability). Every Kid states the rule's application of the $2,000 cap could improperly restrict funding for children enrolled in other approved education service providers. Heritage also advocates for a multi-provider approach, argues that a parent's ability to fire service providers adds sufficient accountability, and is concerned that thousands of Texas participants will be unable to find a private school to attend. Colyandro states that a participating child could enroll at, and obtain their education from, any type of education service provider listed in Education Code, §29.358(b). Outschool's argument is similar: that students could "enroll" with other types of providers, implying that Outschool--a vendor of online courses and online tutoring--should participate at the level of a private school without satisfying the accreditation, assessment, duration, or location requirements. TPPF and AFC state program participants should receive full funding to attend workforce training, microschools, or nationally-accredited private schools outside the TEPSAC framework, and argue the $2,000 limit may hinder broader state workforce training goals and conflicts with legislative intent for the broadest possible education options. TPPF and AFC further argue the limit will stifle innovation, reduce participation levels (especially in the areas of workforce readiness), and specialized learning environments. ECEC believes the legislation only authorizes application of the funding cap to homeschool students and thwarts the legislature's intent to provide educational freedom to parents in determining how their children receive their education. ExcelinEd states the $2,000 limit should apply only to traditional homeschoolers because full funding should be available to students in hybrid schools and other customized options, including paying for online courses, public school courses, tutors, and the like. Kiddie Academy states that "nowhere in the language of Senate Bill 2 is a cap based on {the} type of qualified educational provider contemplated." One commenter asks that the $2,000 funding cap be waived for students with disabilities that are unable to gain private school admission. Sen. Creighton and Rep. Buckley, the authors of Senate Bill 2, submitted a comment indicating that the legislative intent was that only those students enrolled in an accredited private school should not be subject to the funding cap. Supporting this position, the commenters point to Education Code, §29.362(d)(2)(B), which requires a CEAO to notify the comptroller when it is determined that a participating child is not enrolled in a private school, a provision that serves no purpose if not to ensure each child receives the proper funding amount. The comment also explains this distinction is needed to ensure the accountability and educational quality for participating students. The comptroller agrees with the Senate Bill 2 authors that the educational environment in which a child participates determines the funding cap's applicability. Adding customized options that include online courses, public school courses, tutors, micro schools, or learning pods to the program as education service providers would conflict with program statutory requirements. Unlike Senate Bill 2

requirements for private schools, Senate Bill 2 does not require online courses, public school courses, tutors, micro schools, or learning pods to administer annual assessments and does not require participants enrolled in these types of courses to share assessment results with the CEAO. The legislature did not intend for Senate Bill 2 to create a new category of students who are neither enrolled in private school nor homeschooled. The comptroller notes that when the legislature created the Texas Academy of Mathematics and Science at the University of North Texas ("TAMS"), it added a corresponding exemption for TAMS students in Education Code §25.086. In contrast, when the legislature enacted Senate Bill 2, it did not create a corresponding exemption for program participants in Education Code, §25.086. If the program allowed fully-funded participants to only use providers and vendors that are not approved private schools (or approved prekindergarten providers), then full program funding could be provided to participants who are not exempted by Education Code, §25.086, and such funding would effectively eliminate the statutory requirements for: TEPSAC or Texas Education Agency approved accreditation; operating a campus for two school years; location in the state; and annual assessments and the sharing assessment results with the CEAO. In contrast to participants who attend private schools, participants who are homeschooled: are limited to $2,000; are not required to take annual assessments nor to share any annual assessments with the CEAO; are exempt from Education Code, §25.085; and may choose to piece together customized options from one or more providers and vendors including non-accredited vendors of online courses, as well as tutors, public school courses, and the like. The comptroller disagrees that these alternative arrangements are eligible for the full funding level described in Education Code, §29.361(a)(1). Because these arrangements fit within the broad "home-schooled student" definition in Education Code, §29.916(a)(1), the $2,000 funding cap in Education Code §29.361(b-1) applies to all these arrangements. Therefore, the comptroller declines to revise the rule based on these comments.

The comptroller received comments from Heritage and one individual requesting that the $2,000 funding cap in proposed §16.407(b) be waived for children with a disability who are unable to find placement in an accredited private school. Heritage states the Arizona Empowerment Scholarship Account program provides higher funding amounts to disabled students regardless of whether they attend a private school or create their own multi-service provider approach with tutors, teaching services, and therapists. Heritage argues that applying the cap to disabled students unable to enroll in private school conflicts with legislative intent to prioritize students with disabilities and is strongly at variance with experience in other states. The comptroller interprets the wording of Education Code, §29.361 to preclude combining the $2,000 amount with additional amounts for children with a disability. Therefore, the comptroller declines to revise the rule based on these comments.

The comptroller received many comments regarding the requirement to secure an individualized education program to obtain the additional funding available to children with a disability under §16.407(b). TCCB and TPSA interpret proposed §16.403(b)(5) to require the issuance of an IEP prior to enrollment in the program. The commenters are concerned that the requirement would discriminate against children diagnosed with a disability after enrollment in the program and note that many diagnoses, such as dyslexia, do not manifest until 1st or 2nd grade. The commenters also note that interpreting Education Code, §29.361(a)(2) to set the amount of special education funding for all future years would prevent additional special education funding for children diagnosed with a disability after their enrollment in the program. Commenters suggest applying the funding calculation for each enrollment year based on the amount that a public school would have received the prior year, both to avoid an unfair result and because the statute does not explicitly prohibit a child from getting additional funding simply because they're diagnosed after enrollment in the program. The comptroller agrees that the wording of Education Code, §29.361(a)(2) and §29.3615 leads to results not likely not intended by the legislature. For the 2026-2027 program year, by freezing IEP based funding at amounts applicable in the 2025-2026 school year, the IEP based funding for all students enrolling in this first program year will not be based on the new funding model for the 2026-2027 school year that provides increased funding based on IEP intensity. And, as commenters note, the statutory wording will also prevent increased IEP based funding for children with disabilities who obtain an IEP after program enrollment. The comptroller notes that most or all of this requirement's impact will not occur until the 2027-2028 school year, giving the legislature time to correct any unintended consequences. The comptroller adopts §16.403 adding subsection (c), renumbering subsequent subsections as necessary, to provide for a reasonable deadline to submit an IEP but, because the comptroller believes §16.407 to be consistent with the statutory requirements, declines to revise the rule based on these comments.

Arc, DRTx, TCASE, and TCDD request that proposed §16.407(b) specifically reference Education Code, §29.3615 because the procedures for the issuance of an IEP under this statutory provision may differ in some respects from the standard issuance of an IEP for a public school. Arc says the clarification would ensure funding calculations reflect statutory requirements and reduce confusion for families and schools. TCDD also believes omitting this reference could lead to inconsistent application of program funding and the misinterpretation of eligibility criteria. TCASE argues that law differentiates between IEPs created under Education Code, §29.3615 ("ESA IEP") and IEPs created for public school students ("PS IEP"), and contends the ESA program can only accept ESA IEPs. TCASE argues the differing purpose of each type will result in a different end product. They state the PS IEP is for the purpose of accessing a free and appropriate public education, and cite Education Code, §29.3615(c) to mean the ESA IEP is only for purposes of establishing the child's eligibility to participate in the program as a child with a disability. TCASE's June 2025 focus blog discussing Senate Bill 2 informs their membership of public school special education administrators that, under the IEP section of Senate Bill 2, "school districts are not required to write an IEP for children who are evaluated for special education. Instead, TCASE's understanding is that districts will be required to fill out a "checklist" of services that TEA can use to determine the child's ESA amount. Proposed rules to implement this troubling section of Senate Bill 2 will likely not be released until after the bill's effective date of Sept. 1." TCASE also argues the program should require IEPs both for prioritization and for calculating special education funding.

Other commenters disagree with TCASE. TPSA, in oral comments, stated many private schools that exclusively serve children with special needs are very eager to participate in the ESA program. TPSA stated some children get an IEP while attending public school in early grades, then transition to private school

for the remainder of their education, and encouraged the program to accept those PS IEPs regardless of timing. TPSA said that currently, many private school students are only able to get an FIIE and cannot get an IEP from public schools. Because of this, TPSA asked if FIIEs will suffice for increased funding. TPSA questioned whether it is logistically possible for children to get an IEP within the timeline of the application process. TPSA noted that requiring IEPs for the inaugural year will overburden local school districts and the program should endeavor to spread the workload to other qualified professionals. Every Kid, in oral comments, praised the program for proposing to allow a doctor's diagnosis for special needs students. Every Kid stressed the importance of having an alternative pathway because, in other states, requiring an IEP has been a limiting barrier for special needs students to participate. Dr. Hanson, owner of Oak Creek Academy for neurodivergent students from kindergarten through age 21, asked that IEPs be accepted regardless of the date issued because autism doesn't go away with age.

The comptroller notes that little time remains before the program's inaugural application period, and families will have difficulty obtaining an ESA IEP before the application period closes. If the comptroller adopted rules that require an ESA IEP for both prioritization and funding, as TCASE suggests, it could: prevent children with a disability from qualifying for special education prioritization for the 2026-2027 school year; prevent participating children, even those with a PS IEP, from receiving IEP based special education funding; and for participating children enrolling for the 2026-2027 school year who do not receive a PS IEP until after the 2026-2027 school year begins, would prevent them from ever receiving IEP based special education funding because the formula is tied to the amount available for the school year prior to initial program enrollment.

A review of Senate Bill 2 as a whole does not support TCASE's analysis. The legislature recognized the time consuming rulemaking process could delay launching the program, and authorized the comptroller to use emergency rulemaking procedures for rules needed to launch by the 2026-2027 school year. If the legislature had intended for the program to only accept ESA IEPs, Senate Bill 2 would have also authorized TEA to use emergency rulemaking procedures for the inaugural year. Further, the legislature based the funding calculation on amounts that the child's school district would receive for that child under that child's IEP, making it unlikely the legislature intended ESA IEPs to contain disability and funding-related information that PS IEPs lack. And the reduction of special education participation that would result from TCASE's arguments would defeat clear legislative intent for this program to help special education students. Senate Bill 2 was enacted to provide additional educational options to assist families in this state in exercising the right to direct the educational needs of their children. Requiring ESA IEPs and preventing their availability for the inaugural year will deprive special needs families of this option. Senate Bill 2 prioritizes low income children with a disability, provides additional funding to support special needs students, and requires school districts to provide IEPs for non-public school students who were often able only to obtain FIIEs. For these reasons, the comptroller declines to specifically reference Education Code, §29.3615 in the funding formula.

AFC, Oak Creek, and TPPF request that, for the purpose of increased special education funding, the program accept not only an IEP issued under Education Code, §39.3615 but equivalent documents from other states and special education recognition through a different source, such as a diagnosis from a licensed practitioner. TPPF and AFC argue that parents moving here from out of state should not be required to get a new Texas IEP. TPPF and AFC also suggest providing increased funding without an IEP by supplanting the IEP with a determination made by CPA in collaboration with TEA. One individual commenter concurs requesting that alternative documentation of a disability be accepted to qualify a student for the increased funding. Education Code, §29.356 does not require an IEP for application prioritization. In contrast, Education Code, §29.361(a)(2) explicitly requires an IEP. The IEP criteria, while generally shaped by federal law, are further shaped by each state, making evaluation criteria and disability determinations inconsistent across states. The comptroller therefore declines to revise the funding formula based on these comments, but as noted above, revises the proof accepted for prioritization to include an out of state IEP.

TxP2P notes that it is not uncommon for a private school to believe they can provide specialized services and admit a child with a disability only to begin charging additional tuition and fees over time as the school adds services to adequately address the student's needs. Autism Society and TxP2P ask that the rules address the disposition of IEP funding for a child with a disability if that student withdraws from a private school to be homeschooled or return to their local public school. Under Education Code, §29.361(a)(2), funding for a child with a disability is based on the child's enrollment status and the IEP. Education Code, §29.355(b)(3) states that a child who enrolls in a public school, including an open-enrollment charter school, is ineligible for the program and would not be entitled to funding. If a child with a disability withdraws from an approved private school to be homeschooled, the child's funding would be subject to the limitations under Education Code, §29.361(b-1). The comptroller believes that the rules already incorporate these statutory requirements, and therefore declines to revise the rules based on these comments.

Shelton asks whether a child with a disability who is issued an IEP under Education Code, §29.3615 that entitles the child to the full funding amount of up to $30,000 will continue to receive that amount throughout the child's participation in the program. Oak Creek requests that the issuance of an IEP not be subject to an age requirement or particular timeline. Education Code, §29.361(a)(2) does not require a child with a disability to refresh an IEP at certain intervals. The comment does not appear to request a change, so the comptroller declines to revise the rule based on the comment.

Two commenters express concern that children with disabilities are not eligible to receive an IEP or that they must enroll in a public school to receive one. One commenter requests allowing for an alternative calculation based on statewide special education funding weights tied to a disability identified by a license professional, and Individualized Service Plan issued under IDEA, or an SSI/SSDI determination letter. Education Code, §29.361(a)(2) explicitly requires an IEP to calculate additional funding for a child with a disability. Further, Education Code, §29.3615 requires a school district to evaluate and generate an IEP for any student not enrolled in a public school. Because statute requires an IEP to calculate funding, the comptroller declines to revise the rules based on these comments.

The comptroller received comments on timing related to funding participant accounts. CtS, the Miles Foundation, and Primer request the extension of the initial funding date in §16.407(c) from July 1 to August 15 to account for the practical timelines by which parents make decisions regarding school selections. They state

a July 1 deadline will unnecessarily exclude children from the program. Primer states the July 1 funding deadline would operate as a de facto application deadline and argues the statutory authority to pro-rate funding for children who enroll in the program after the school year begins means the program must allow an application period for mid-year enrollment. The comptroller notes the application period is unrelated to the funding deadline and the requirement to pro-rate funding can also apply to waitlisted children who enroll mid-year. Because July 1 is not the application deadline, the comptroller declines to revise the rule based on these comments.

TCCB and TPSA interpret §16.407(b),(c) and (f) to effectively require verification of private school enrollment before July 1, and to limit the July 1 transfer to $2,000 absent that verification. TCCB and TPSA suggest the rule make clear the importance of applying to private schools and private school acceptance before the July 1 deadline. They also suggest the rule clarify what happens to the remaining funding if a child intending to attend private school is not accepted by July 1. The comptroller notes that for the CEAO to transfer funds to participant accounts on July 1, the CEAO will need time before July 1 to verify private school enrollment. The program will make clear the importance of the summer deadlines on its website and in the student handbook. For transfers that must be delayed in order to meet other statutory requirements, such as verification of the information required for calculations, the program may continue to make the initial annual transfers in batches on later dates in July or August, or later if necessary. The comptroller notes that statute does not require reductions for transfers that don't meet the July 1 deadline, but does require proration of the annual amount for participants who enroll after the school year begins. The comptroller agrees that §16.407 limits the funding for participant accounts to $2,000 absent verification of enrollment in an approved private school or an approved pre-kindergarten or kindergarten provider, and requires that the initial funding of at least 25% for participant accounts take place by July 1 of each year. The comptroller adopts §16.407 with changes to clarify that transfers are subject to verification, and verifications must be made before the July 1 transfers.

TASB requests clarification to proposed §16.407(f)(2) to specify how a CEAO will confirm a participating child's enrollment in private school and suggests the development of a standard enrollment-verification form for private schools to complete to ensure consistency. The CEAO's contract addresses the CEAO's responsibility for obtaining documents confirming the eligibility of participating children, and §16.405 outlines consequences for private schools and participants that fail to comply with such a program requirement. The comptroller believes that these mechanisms will result in accurate enrollment information and therefore declines to revise the rules based on this comment.

EEFLC requests clarity regarding the timing of payments for approved education-related expenses to providers of services that are provided over time. For example, the commenter asks when a provider that offers year-long classes may invoice the participant for services rendered. The comptroller understands the challenge that service providers may experience in this regard but believes that billing practices for services provided is a matter between the provider and the participant. Therefore, the comptroller declines to revise the rules based on this comment.

The comptroller also received one comment regarding the timing of payments for approved education-related expenses in proposed §16.407(g). Specifically, Every Kid requests that a CEAO be required to verify a payment request for an approved expense within 10 business days and issue payment to the provider or vendor within 10 business days of verification or notify a participating parent within 10 business days if an expense cannot be verified. Education Code, §29.360(c) requires a CEAO to make payment to a provider or vendor within 10 business days of verifying that a payment request is for an approved expense but does not impose a timeline on the verification process or mandate notification to a participating parent. The comptroller's contract with the CEAO imposes detailed performance standards for payment services and is a more efficient and effective mechanism for managing this function. Therefore, the comptroller declines to revise the rule based on the comment.

The comptroller received one individual comment disagreeing with the rollover of funds in program accounts from one program year to the next under §16.407(i). This suggestion conflicts with Education Code, §29.361(e) and the comptroller declines to revise the rule based on this comment.

The comptroller received comments regarding the program participant, education service provider, and vendor of education-related products autonomy provision in proposed §16.408. Generally, TCCB indicates that thousands of Texas parents are counting on this new program to increase their access to the right educational setting for their children but express concern that any dilution of the religious liberty and institutional autonomy protections could undermine participation. Specifically, TCCB urges the comptroller to decline imposing requirements in the rules regarding vaccination status because doing so would violate Education Code, §29.368(b). The comptroller agrees and the rule adoption will respect the legislation's autonomy provision and will not add any vaccination related provisions.

LDF argues that §16.408(a) may cause confusion on whether private schools and certified educational assistance organization must comply with certain federal laws, and suggests the comptroller add rules addressing the application of equal protection and Title VI. The comptroller notes that a state administrative law cannot determine whether equal protection and Title VI apply to certain organizations. The comptroller declines to add the suggested provisions, but adopts §16.408(a) with a change to clarify the dangling modifier to avoid possible misinterpretation of that subsection.

One commenter asks that private schools be required to admit and serve students with disabilities, including providing or arranging nursing and health services such as feeding tubes and medication administration, unless they can demonstrate "an undue burden under clear standards." This commenter also asks that private schools be required to provide bilingual and English as a Second Language accommodation. Finally, this commenter asks that schools document and report any denial of admission under such circumstances. Oak Creek, a private school serving neurodivergent children, asks that they be permitted to implement treatment plans from neuropsychologists, pediatric psychologists, developmental pediatricians, and other specialists. Education Code, §29.368 prohibits the comptroller from adopting additional rules impacting a private school's admission standards, curriculum, or operations; nothing in either Senate Bill 2 or the proposed rules prohibits a private school from providing special services specific to the needs of their students. The comptroller declines to revise the rule based on these comments.

Two individual commenters expressed strong support for the protections proposed §16.408 provides, with one commenter requesting the rule explicitly state that participation in the program

does not convert a private entity to a state actor and to delineate that the state may not impose curriculum, admissions, or operational requirements beyond what the law already requires. One commenter stated that private schools must retain their independence without government interference in their operations, values, or teaching standards. The comptroller believes the proposed rule already contains the requested protections and therefore declines to revise the rule based on these comments.

The comptroller received several comments on §16.409 regarding a program participant's appeal right with respect to decisions affecting a participating child. Every Kid and First Day request that the rule be expanded to confer similar appeal rights on program providers and vendors. Every Kid also requests a more robust appeals process, including appointing an independent appeals officer to conduct such reviews within 30 days. SEF suggests developing an independent review board to monitor and investigate participant complaints. Education Code, §29.373, the statutory provision that establishes a program participant's appeal rights, does not include an analogous provision for providers or vendors. The same statutory provision vests the comptroller with the sole responsibility for moderating such disputes. Because these suggestions conflict with Education Code, §29.373, the comptroller declines to revise the rule based on these comments.

Two individual commenters request that appeal rights be expanded for participants to allow the reporting and resolution of claims involving denied admissions, discrimination, and expulsion from a private school based on disability-related needs, as well as to hear concerns regarding the quality of services being provided. One of these commenters suggests the appointment of a state-level Ombudsman to address these additional concerns. The comptroller understands the concerns but notes that Education Code, §29.368 prohibits any state agency from interfering with such decisions. Therefore, the comptroller declines to revise the rule based on these comments.

The comptroller received one comment on proposed §16.409(d) stating that participant appeals are not considered a contested case and are final. AFT believes that the statute is silent on this measure and, consequentially, the comptroller is bound by the terms of the Texas Administrative Procedures Act, which would presume such decisions are subject to judicial review. Education Code, §29.373(b) specifically states that appeals under the program are not considered to be contested cases. Therefore, the comptroller declines to revise the rule based on this comment.

The comptroller received several comments requesting the addition of future rules providing more specificity regarding advertising and marketing under Education Code, §29.3535. IDRA, TSTA, and one individual commenter ask that rules be adopted that prohibit promoting any specific provider or vendor and require acknowledgement by applicants of the special education notice required under Education Code, §39.367. The commenters also request that promotional materials for the program clearly advise applicants of the impact the provider autonomy provision under Education Code, §29.368 might have on admissions, discipline, methods of instruction, and codes of conduct and distinctly describe the lottery process for admission to the program and the importance of timely enrolling in a private school. The comptroller appreciates the concerns raised and is committed to providing clear, straightforward information to program participants. However, no changes will be made because these suggestions are beyond the scope of this rulemaking.

The comptroller received two comments regarding additional rules related to the processes and procedures governing audits under Education Code, §29.363. Every Texan asks that rules be adopted to provide detail on the documentation required of participants and to establish an online tool to facilitate submission of such documentation. One individual commenter requests additional specificity with respect to the protections to be implemented to prevent fraud and abuse of program funds. The comptroller values the commenters' concerns but believes the suggestions are outside the scope of the rule proposal, and that the proper forum to address these concerns lies with the program website, audit requirements, and other informational materials. The comptroller therefore declines to revise the rules based on these comments.

Another individual commenter asks that CEAOs be subject to audits to confirm compliance with best practices in the holding and managing of program funds. The commenter also asks that these requirements be included in the evaluation criteria for the award of a contract and that the Chief Financial Officer of any organization awarded a contract attest to the organization's public money security plan. Proposed §16.402(a)(3) subjects CEAOs to annual audits compliant with the requirements of Education Code, §29.363, which includes examination of the organizations' internal controls and compliance with program requirements, and the CEAO's contract contains additional detailed audit requirements. The comptroller does not believe the rules are the appropriate forum to address the commenter's other concerns. The comptroller therefore declines to revise the rules based on these comments.

The comptroller received many comments requesting additional rules clarifying the program reporting obligations. EdTrust, Every Texan, Grandparents, IDRA, OSOD, SEF, TASB, Texas 2036, and TSTA ask that future rules specify the criteria and methodologies used to generate the reports required under Education Code, §29.371 and §29.3715 and to ensure the reports are comprehensive and accurate, providing the appropriate level of oversight to the program. Grandparents criticizes the rules for failing to address the accountability system to evaluate program outcomes. OSOD believes transparent reporting and public accountability are crucial to avoid the track record of questionable spending experienced by other states, such as the $1 million spent on Legos in Arizona or the Disney World, Universal Studios, and SeaWorld tickets purchased in Florida. Texas 2036 suggests using a standardized template to help schools and students in responding to the surveys that the CEAO will be circulating noting that both the "credential of value" and "median wage on a regionalized basis" definitions are highly complex and frequently change. IDRA specifically asks for new rules to address how to measure "the effect of the program on public and private school capacity and availability" (a comment echoed by Grandparents) and "the amount of cost savings accruing to the state as a result of the program." Every Texan and several individuals ask that the calculation for the "estimated statewide average amount of state and local funding per student in average daily attendance," by district including local and state funding totals and any recapture payments, be disclosed together with a timeline for when this disclosure will happen. TASB requests that the method used by the Texas Education Agency to determine the amount of funding available to children with a disability be published on the program website. Every Texan asks that future rulemaking disclose all qualified and non-qualified purchases made using program accounts and one individual commenter requests that gifts, grants, and donations dis-

closed under Education Code, §29.371(a)(7) include the name of each donor and the amount donated. GRH requests that the demographic report required by Education Code, §29.3715 include a district-level breakdown of students exiting a public school to participate in the program, indicating whether the student enrolled in a private school or participated in a homeschool program to assist policymakers to understand local enrollment impact and help with resource allocation. GRH, together with AFT and Every Texan, requests that the report provide categorization not only by students that are considered "educationally disadvantaged," but by the prioritization groupings in Education Code, §29.356(b)(2), ensuring that underserved students are being provided an educational choice. GRH argues this disaggregation will inform policymakers and the public how participation differs across income levels. Every Texan also asks that reporting inform the public whether participants were previously identified as special needs students. Grandparents and an individual commenter ask that, to ensure fairness, the report gather complete student demographic data, including each student's race, family income, home language, and disability status. LDF and SEF complain the rules do not address the administration of data collection and reporting and urges the comptroller to promulgate rules that require additional data collection and specific disaggregated reporting. Many individual commenters request that the prior school and family income of program participants be disclosed. Every Texas requests that information on a participant's prior school environment be disclosed. Two individual commenters ask that the comptroller collect and publish data on how students with disabilities and emergent bilinguals are being served, including detail on admissions and denials, accessibility compliance, and services offered. One individual commenter requests that private schools participating in the program annually publish an impact report showing student growth metrics, such as graduation rates, academic growth, and readiness for postsecondary opportunities, and Texas 2036 asks that this information be annually provided to the Education Research Center so that taxpayers can access information indicating whether program participants are "better or worse off." The Bush Institute suggests requiring schools to share clear details about how to enroll, requirements for admission, and how many spots are available by grade, suggests making assessment data from schools easy for parents to find and understand, and suggests the program ensure information about the program is clear, timely, and well-publicized. OSOD and one individual commenter ask that the comptroller publish the total number of participating students, total dollars distributed, and breakdowns of spending by major category, the amount distributed to each school, provider, and vendor, the audit results for each year, including the amounts recovered from ineligible expenditures, and the amounts retained by the comptroller or paid to CEAOs for administration of the program. The commenter also requested that such data include regional and demographic information so that the public could see where funds were being distributed across the state. OSOD also asks that the comptroller provide regular reports evaluating whether providers and vendors are charging participants services and products at market value and public reporting of any provider or vendor suspended from the program and the reason for such suspension. Every Kid requests publication of a comparison of CEAOs that provides satisfaction ratings and performance metrics, and monthly reporting of prioritization decisions. TASB recommends rules with criteria or methodology for participant satisfaction, the effect on public and private school capacity, the biennial funding estimate, and the validation of self-reported data, and asks that the names of all donors be included in the report. TASB argues methodology for the biennial funding estimate is important to prevent waiting list abuse and to provide reliable information. TASB asks that rules be adopted to establish a mechanism such as annual disclosure forms subject to audit to verify provider and vendor compliance with the prohibition on rebates or refunds to program participants contained in Education Code, §29.365(b). OSOD and TASB also ask that, despite the requirement under Education Code, §29.371(c) that annual reports cover a period of not less than five years, interim reports be generated by the comptroller, stating that otherwise, the public and the legislature would lack information on the expenditure of taxpayer dollars until 2031. GRH also requests that the report, for consistency, mirror the format of the Texas Education Agency's Public Education Information Management System Transfer Report, including using Unique Identification numbers established by the agency, stating data alignment will ensure comparability and more accurate analysis. One individual commenter requests private schools share clear details about how to enroll, requirements for admission, and how many spots are available by grade and one commenter asks for publication of a list of approved providers and vendors. The comptroller appreciates the concern about transparency and reporting, and will comply with statutory reporting and audit requirements. However, these requested additions are outside the scope of the proposed rules, are not a logical outgrowth of the proposal, and would materially alter the issues raised in the proposed rules. Such an adoption would deprive affected parties of fair notice and the opportunity for meaningful and informed participation in the rulemaking process. *See Tex. Workers' Comp. Comm'n v. Patient Advocates*, 136 S.W.3d 643 (Tex. 2004). The comptroller declines to change the rules in response to these comments.

The comptroller received comments from one individual disagreeing with the veracity of the fiscal note and asking that it be replaced by the Legislative Budget Board analysis listing categories of program costs. The comptroller notes that program costs result from the legislation and were covered by the fiscal note for Senate Bill 2.

The comptroller received one comment from ATPE requesting notification to school districts when a student enters or exits the program. The commenter notes that to comply with compulsory attendance laws school districts may spend significant time and resources each year tracking down children participating in the program. Further, without accurate enrollment projections, districts cannot plan class sizes and staffing needs effectively. The comptroller appreciates that such information may help districts make sound staffing and class size decisions, but notes this comment is outside the scope of this rulemaking.

The comptroller received one individual comment asking that all program notices, information, applications, and forms be made available to applicants in families' home language. This suggestion is outside the scope of this rulemaking, but the comptroller notes the CEAO is contractually required to provide customer support in both English and Spanish.

The new sections are adopted under Education Code, §29.372, which authorizes the comptroller to adopt rules to implement, administer, and enforce Education Code, Chapter 29, Subchapter J.

The new sections implement Education Code, Chapter 29, Subchapter J, concerning the education savings account program.

§16.401. Definitions.

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

(1) Agency--The Texas Education Agency.

(2) Application period--The period that the program is open to receive applications.

(3) Assessment instrument or academic assessment--A nationally norm-referenced test evaluating academic aptitude or a test consistent with the requirements under Education Code, Chapter 39, Subchapter B, including an alternative assessment administered to a child with a disability. For this subchapter, a "nationally norm-referenced test" requires that the test compare a child's performance to the performance of comparable children throughout the United States.

(4) Campus--A building, set of buildings, or other property owned or controlled by a private school, including a virtual campus, and used by the institution in direct support of, or in a manner directly related to, the provision of educational instruction.

(5) Certified educational assistance organization--As defined by Education Code, §29.351(2), an organization certified under Education Code, §29.354, to support the administration of the program.

(6) Child with a disability--As defined by Education Code, §29.351(3), a child who is eligible to participate in a school district's special education program under Education Code, §29.003.

(7) Comptroller--The Texas Comptroller of Public Accounts.

(8) Education service provider or provider--An approved private school, or an approved private provider of a prekindergarten or kindergarten program.

(9) Educational therapies--Treatment provided to a participating child by or at the direction of a licensed physician or licensed therapist to address the academic performance of a participating child.

(10) Good standing--A participating parent, participating child, education service provider, or vendor of educational products or services shall be considered in good standing with the program by complying with all applicable program requirements and applicable law.

(11) Higher education provider--As defined by Education Code, §29.351(4), an institution of higher education or a private or independent institution of higher education, as those terms are defined by Education Code, §61.003.

(12) Industry-based credential--A credential listed on the agency's most recently published Industry-Based Certification List for Public School Accountability.

(13) Instructional materials--Printed or digital materials, supplies, or equipment that convey educational information to a student, assists another in conveying educational information to a student, or otherwise contributes to a student's learning process.

(14) Located in this state--A physical location in the state of Texas, whether a campus or administrative office, where the private school or private provider of a prekindergarten or kindergarten program employs one or more Texas residents sufficient to enable the program's operations and enforcement, including compliance with the program's audit requirements.

(15) Online educational course or program--A subject-specific instructional offering in which instruction and content are delivered synchronously or asynchronously primarily over the Internet.

(16) Parent--As defined by Education Code, §29.351(5), a resident of this state who is a natural or adoptive parent, managing or possessory conservator, legal guardian, custodian, or other person with legal authority to act on behalf of a child.

(17) Participating child--As defined by Education Code, §29.351(6), a child enrolled in the program.

(18) Participating parent--The parent who applied to participate in the program under Education Code, §29.356, on behalf of their child.

(19) Program--As defined by Education Code, §39.351(8), the program established under Education Code, Chapter 29, Subchapter J.

(20) Program participant--As defined by Education Code, §29.351(9), a participating child or a participating parent.

(21) Program year--The period from July 1 of one year through June 30 of the next year.

(22) Secretary--The Texas Secretary of State.

(23) Sibling--A brother, sister, stepbrother, stepsister, half-brother, half-sister, or a foster brother or sister who is a dependent of the participating parent and has been placed with the participating parent by an authorized placement agency or by judgment, decree, or other order of a court of competent jurisdiction.

(24) Total annual income--The adjusted gross income for federal income tax purposes or its estimated equivalent of the child's parents or, if only one parent qualifies to claim the child as a dependent, the adjusted gross income for federal income tax purposes or its estimated equivalent of the parent who qualifies to claim the child as a dependent.

(25) Tuition and fees--The standard amount imposed on all students under §16.406(1) of this subchapter for teaching and instruction, including application fees, registration fees, and course specific fees to the extent related to educational instruction.

(26) Vendor of educational products or services or vendor--A vendor approved to receive money from the program for providing products or services that are approved education related expenses. The term excludes an approved private school or an approved private provider of a prekindergarten or kindergarten program.

§16.402. Certified Educational Assistance Organizations.

(a) To be selected as a certified educational assistance organization by the comptroller, an organization must:

(1) be registered with the secretary to do business in this state;

(2) have the right to transact business in this state and comply with all tax filing, collection, and payment requirements imposed by the state of Texas;

(3) comply with the audit requirements under Education Code, §29.363, by providing to a private entity under contract with the comptroller or to the state auditor, as applicable:

(A) the organization's internal controls over program transactions;

(B) confirmation that residency documentation specified under Education Code, §29.355(a-1), for each child admitted to the program and served by the organization during the applicable program year was verified by the organization; and

(C) any other information or documentation related to a program transaction;

(4) establish and maintain cybersecurity controls and processes satisfactory to the comptroller, including best practices developed under Government Code, §2054.5181;

(5) comply with all applicable state and federal confidentiality and privacy laws, including the Family Educational Rights Privacy Act of 1974 (20 U.S.C. §1232g); and

(6) comply with all program requirements under Education Code, Chapter 29, Subchapter J.

(b) A certified educational assistance organization must have the ability to perform one or more of the services listed in Education Code, §29.354.

(c) On or before every October 1 and February 1, or as additionally requested by the comptroller, each certified educational assistance organization shall comply with the requirements under §29.362(d), Education Code, for each participating child served by the organization.

§16.403. Program Participation.

(a) A child is eligible to participate in the program if, during program participation:

(1) the child is eligible to either attend a public school, including an open-enrollment charter school, under Education Code, §25.001, or a free prekindergarten program offered by a public school or open-enrollment charter school to certain children under Education Code, §29.153;

(2) the child is not enrolled in a public school, including an open-enrollment charter school, or a prekindergarten program of a public school, including an open-enrollment charter school;

(3) the child is a citizen or national of the United States or has been lawfully admitted to the United States;

(4) the child has not been declared ineligible for the program under Education Code, §29.364; and

(5) the child has not graduated from high school.

(b) To apply for participation in the program, the child's parent must submit a comptroller-approved application to the designated certified educational assistance organization during the application period. The application must be accompanied by:

(1) authorization to allow electronic verification that, or documentary proof that the child is a citizen or national of the United States or was lawfully admitted into the United States, including being a legal permanent resident, in a format acceptable to the comptroller and subject to verification by the comptroller, such as a copy of one of the following for the child: a birth certificate issued in the United States or one of its territories, a certificate of United States naturalization, a certificate of United States citizenship, a United States Consular Report of Birth Abroad, a United States passport, a Legal Permanent Resident Card, an order or judicial decision issued from the Executive Office of Immigration Review, or other documentation issued by the Department of Homeland Security affirming lawful admission;

(2) authorization to allow electronic verification of, or documentary proof of the child's current residency in this state as established by one of the following documents specified under Education Code, §29.355(a-1): a utility bill, lease or mortgage statement, driver's license or state identification card, voter registration card, letter from a government agency in the United States, or notarized affidavit of residency;

(3) authorization to allow electronic verification of, or documentary proof of, total annual income, such as an Internal Revenue Service transcript of a federal tax return, Texas Workforce Commission data, the most recently filed federal tax returns or other documentation requested by the program to determine and verify total annual income;

(4) an agreement and certification under penalty of perjury by the participating parent that they will:

(A) only request the payment of program money for approved education-related expenses under Education Code, §29.359;

(B) not attempt to withdraw cash or seek reimbursement from the child's account;

(C) refrain from selling items purchased with program money;

(D) for a participating child in grades 3 through 12 enrolled in a private school that is an approved education service provider, provide or authorize and instruct the administrator of assessment instrument administered to a child under Education Code, §29.358, to provide the results of such assessment to the certified educational assistance organization responsible for that child by the end of the program year during which the assessment is administered;

(E) comply with the audits requirements under Education Code, §29.363, by providing to a private entity under contract with the comptroller or to the state auditor any information or documentation related to a program transaction; and

(F) no later than 30 calendar days from the date the child enrolls in a public school, including an open-enrollment charter school, or otherwise becomes ineligible to participate in the program, provide written notification to the program in a comptroller-approved format and will cease requesting distributions from the child's account for any expense incurred on and after the date the child is no longer eligible to participate in the program;

(5) for a child to be considered a child with a disability for purposes of prioritization under Education Code, §29.356:

(A) proof of eligibility to participate in a school district's special education program under Education Code, §29.003, by meeting an eligibility definition described by 19 TAC §89.1040 that is submitted in a comptroller-prescribed format and signed by one or more licensed professionals qualified to attest that the child meets the applicable eligibility definition, for a child moving to this state from another state, submitted in the form of an individualized education program created by a school district in another state for that child and verified by that state or school district, or submitted in the form of a full individual and initial evaluation of the child conducted by a school district under Education Code §29.004; or

(B) authorization to verify with the agency that an individualized education program has been issued by a school district or open-enrollment charter school for the child; and

(6) for a child to be considered eligible to enroll in a school district's or open-enrollment charter school's prekindergarten program under Education Code, §29.153, authorization to allow electronic verification that, or documentary proof that, the child will be between 3 and 5 years of age on September 1 of the following school year and:

(A) is unable to speak and comprehend the English language;

(B) is educationally disadvantaged as defined by Education Code, §5.001(4);

(C) is 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;

(D) is the child of an active-duty member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who is ordered to active duty by proper authority;

(E) is the child of a member of the armed forces of the United States, including the state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty;

(F) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Family Code, §262.201, or foster care in another state or territory, if the child resides in this state;

(G) is the child of a person eligible for the Star of Texas Award as a peace officer under Government Code, §3106.002, a firefighter under Government Code, §3106.003, or an emergency medical first responder under Government Code, §3106.004; or

(H) is the child of a person employed as a classroom teacher at a public primary or secondary school in the school district that offers a prekindergarten class under Education Code, §29.153.

(c) For the purpose of calculating the amount to be transferred to the account of a child with a disability under Education Code, §29.361, the applicant must submit authorization to verify with the agency that an individualized education program has been issued by a school district for the child. The program may establish a deadline for verification of an individualized education program with the agency for the purpose of calculating funding under Education Code, §29.361(a)(2), and the deadline may be as early as practicable to efficiently determine funding amounts for children accepted into the program.

(d) A participating parent is not required to reapply, but must be in good standing and provide notice in a comptroller-approved format to a designated certified educational assistance organization during the application period if the parent intends for their participating child to continue to participate in the program the following program year. To the extent there are available positions, such a child shall be admitted to the program for the following program year prior to the approval of applications under subsection (f) of this section.

(e) Information shared with a certified educational assistance organization by the agency, a school district, or an open-enrollment charter school to determine a child's eligibility to participate in the program, including a child's public school enrollment status and whether the child can be counted toward a public school's average daily attendance for purposes of the allocation of funding under the foundation school program, shall be held consistent with all applicable federal and state confidentiality and privacy requirements, shall not be sold or otherwise distributed, and shall not be retained beyond the period necessary to determine a child's eligibility.

(f) Acceptable applications for admission to the program received during an application period shall, at the direction of the comptroller, be:

(1) separated into the following categories:

(A) siblings of participating children;

(B) children to whom subparagraph (C) of this paragraph does not apply; and

(C) children who previously ceased participation in the program by enrolling in a public school, including an open-enrollment charter school;

(2) separated within each group established under paragraph (1) of this subsection into the following subcategories as described by Education Code, §29.356(b)(2):

(A) children with a disability who are members of a household with a total annual income that is at or below 500% of the federal poverty guidelines;

(B) children who are members of a household with a total annual income that is at or below 200% of the federal poverty guidelines;

(C) children who are members of a household with a total annual income that is above 200% of the federal poverty guidelines and below 500 percent of the federal poverty guidelines; and

(D) children who are members of a household with a total annual income that is at or above 500% of the federal poverty guidelines;

(3) sequentially ordered by lottery within each resulting subcategory if more eligible applications are received than available slots during an application period, with siblings applying during the same application period being considered together in the first subcategory for which one of the siblings qualifies;

(4) subject to Education Code, §29.3521(d), which limits admission of children under paragraph (2)(D) of this subsection to 20% of the amount appropriated for the school year, approved for admission to the program in the order established under paragraph (3) of this subsection until available funds calculated under §16.407(a) of this subchapter have been exhausted based on the total annual amount calculated under Education Code, §29.361, for each child admitted; and

(5) to the extent not approved for admission under paragraph (4) of this subsection, placed on a waiting list in the order established under paragraph (3) of this subsection.

(g) Subject to Education Code, §29.3521(d), which limits admission of children under subsection (f)(2)(D) of this section to 20% of the amount appropriated for the school year, if additional funds become available, applications for children on the waiting list may be approved for admission to the program in the order established under subsection (f)(5) of this section, with funding of the child's account to be prorated for the remaining months of the program year beginning on the first day of the month following the month of approval. When implementing waiting list admissions, and after considering relevant factors including enabling program participation, administrative complexity, costs, and delays, the program may:

(1) determine time periods for waiting list admissions;

(2) provide reasonable deadlines for applicant response and enrollment; and

(3) for each new application period, determine what information from the previously-submitted application must be updated and confirmed.

(h) As soon as practicable after making a waiting list implementation determination under subsection (g) of this section, the program must post the determination on the program's internet website and add the information to the next handbook publication.

§16.404. Education Service Providers and Vendors of Educational Products.

(a) To be approved as an education service provider or vendor of educational products or services by the comptroller, a provider or vendor must submit a comptroller-approved application and:

(1) if an education service provider, be located in this state;

(2) if a vendor of products or services, be registered with the secretary to do business in this state;

(3) have the right to transact business in this state by complying with all tax filing, collection, and payment requirements imposed by the state of Texas; and

(4) agree and certify under penalty of perjury that the provider or vendor will:

(A) accept orders and money from the program only for education-related expenses approved under Education Code, §29.359;

(B) subject to subsection (b) of this section, not charge a program participant for services or products paid for by the program, including tuition and fees, in an amount greater than or in addition to the established standard amount charged to all others for that service or product by the provider or vendor;

(C) not accept program money for a service or product to the extent the service or product is not provided;

(D) not rebate, refund, or credit to or share program money with a program participant or any person on behalf of a program participant;

(E) promptly return any money received in violation of program rules or other relevant law to the comptroller or designated certified educational assistance organization for deposit into the program fund;

(F) ensure that each person who will interact with a participating child by reason of their employment with the provider or vendor, including in person, online, or electronic interactions, is not identified as having engaged in misconduct described by Education Code, §22A.051(a)(2)(A), (B), (C), or (D), by:

(i) using the interagency reportable conduct search engine established under Health and Safety Code, Chapter 810; or

(ii) if the interagency reportable conduct search engine established under Health and Safety Code, Chapter 810, has not been established, using the registry established under Education Code, §22A.051;

(G) comply with the audits requirements under Education Code, §29.363, by providing to a private entity under contract with the comptroller or to the state auditor information or documentation related to a program transaction;

(H) notify the comptroller or designated certified educational assistance organization not later than the 30th calendar day after the date that the provider or vendor no longer meets the program requirements; and

(I) abide by all other program requirements.

(b) A private school may charge different standard amounts of tuition and fees for categories of students if those categories are unrelated to program participation.

(c) An approved provider of supplemental special education services under Education Code, Chapter 29, Subchapter A-1, in good standing with the agency shall be approved as a vendor of educational products or services for the program.

(d) A private school shall be approved as a provider by permitting electronic verification of, if available, or submitting proof of:

(1) accreditation by an organization recognized by the Texas Private School Accreditation Commission or agency;

(2) annual administration of an assessment instrument to participating children in grades 3 through 12;

(3) continuous operation of a campus, regardless of whether located in this state, for at least two school years preceding the date the school seeks approval; and

(4) that the school is located in this state.

(e) For a private school that operates more than one campus in this state, including a virtual campus, approval to participate extends only to a campus that is:

(1) operated by that school; and

(2) covered by the accreditation that the school submitted under subsection (d)(1) of this section or covered by another accreditation by an organization recognized by the Texas Private School Accreditation Commission or agency.

(f) A public school or open-enrollment charter school shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof of accreditation by the agency and demonstrating the ability to provide services or products to participating children in a manner such that the children are not counted toward the district's or school's average daily attendance.

(g) A higher education provider shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof of a nationally recognized postsecondary accreditation.

(h) A private provider of a prekindergarten or kindergarten program shall be approved as an education service provider by permitting electronic verification of, if available, or submitting proof that the provider meets the requirements of Education Code, §29.171 and is located in this state;

(i) A private tutor, therapist, or employee of a teaching service shall be approved as a vendor of educational products or services by permitting electronic verification of, if available, or submitting proof that:

(1) the individual providing the service to the child is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national criminal history record review in an acceptable format and dated within 30 days of the application;

(2) the individual providing the service to the child is not included in the registry under Education Code, §22A.151;

(3) if a tutor or employee of a teaching service:

(A) is an educator employed by or a retired educator formerly employed by a school accredited by the agency, an organization recognized by the agency, or an organization recognized by the Texas Private School Accreditation Commission;

(B) holds a relevant license or accreditation issued by a state, regional, or national certification or accreditation organization; or

(C) is employed in or retired from a teaching or tutoring capacity at a higher education provider; and

(4) if a therapist, the individual providing the service possesses a current, relevant license or accreditation issued by a state, regional, or national certification or accreditation organization.

(j) To be approved as a vendor of products or services under Education Code, §29.358(b-1), a vendor must comply with subsection (a) of this section and must:

(1) if a vendor of an online educational course or program under Education Code, §29.359(A)(1)(C), permit electronic verification of, if available, or submit proof that each person who will interact with a participating child by reason of their employment with the vendor, including in person, online, or electronic interactions, is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national criminal history record review in an acceptable format and dated within 30 days of the application;

(2) if a vendor of an academic assessment under Education Code, §29.359(4), comply with Education Code, §29.357(b); or

(3) if a vendor of transportation services under Education Code, §29.359(6), permit electronic verification of, if available, or submit proof that:

(A) each person who will interact with a participating child by reason of their employment with the vendor, including in person, online, or electronic interactions, is not required to be discharged or refused to be hired by a school district under Education Code, §22A.157, and has not engaged in misconduct described by Education Code, §22A.052(b)(1), by obtaining a complete national criminal history record review in an acceptable format and dated within 30 days of the application; and

(B) each person providing such transportation services holds a valid Texas driver's license required for the transportation service provided.

(k) Money transferred by the program to a participating child's account may not be used to pay any individual related to the participating child within the third degree by consanguinity or affinity, as determined under Government Code, Chapter 573. For the purpose of this subsection, a payment to an entity, other than a sole proprietorship owned by the individual or a partnership of which the individual is a partner, is not a payment to an individual related to the participating child.

§16.405. Suspension of Program Participation.

(a) A program participant's account shall be suspended from use any time the participant fails to comply with any program requirement or other applicable law. An education service provider or vendor of educational products or services shall immediately be suspended from participating in the program at any time the provider or vendor fails to meet the eligibility requirements or fails to comply with any program requirement or other applicable law.

(b) On suspension under subsection (a) of this section, the comptroller or a designated certified educational assistance organization shall notify the participating parent, education service provider, or vendor of educational products or services in writing both by first-class mail and email that the participant's ability to use their account, or provider's or vendor's right to participate in the program, has been suspended and that no purchases or payments may be made on or after the date of suspension. The notification must specify the grounds for the suspension, any corrective action required, and notice that the participant, provider, or vendor has 30 calendar days from the date of the notification to respond and comply with any corrective actions required.

(c) On the expiration of the 30-calendar-day period under subsection (b) of this section, or earlier if a response has been received and any corrective action completed, based on the severity of the violation, the response and actions taken by the program participant, education service provider, or vendor of educational products or services, and the risks to the integrity of the program, at the comptroller's discretion:

(1) the comptroller may permanently close the participant's account thereby removing the participant from the program or permanently remove the education service provider or vendor of educational products or services from the program if the participant, provider, or vendor has failed to respond or fully comply with the required corrective action by the deadline specified under subsection (b) of this section;

(2) the comptroller or a designated certified educational assistance organization may temporarily reinstate the participant's account, or temporarily reinstate the provider or vendor for 30 calendar days and allow purchases or payments to resume, conditioned on successful performance of additional corrective action; or

(3) the comptroller or a designated certified educational assistance organization may reinstate the participant's account, or reinstate the provider or vendor for participation in the program if the participant, provider, or vendor has fully complied with the required corrective action.

(d) On the expiration of the 30-calendar-day period under subsection (c)(2) of this section, based on the severity of the violation, the response and actions taken by the program participant, education service provider, or vendor of educational products or services, and the risks to the integrity of the program, and at the comptroller's discretion:

(1) the comptroller may permanently close the participant's account thereby removing the participant from the program or permanently remove the provider or vendor from the program if the participant, provider, or vendor has failed to fully comply with the required corrective action; or

(2) the comptroller or a designated certified educational assistance organization may reinstate the participant's account, or reinstate the provider or vendor for participation in the program if the participant, provider, or vendor has fully complied with the required corrective action.

(e) On removal under this section, the comptroller shall notify the program participant, education service provider, or vendor of educational products or services and each certified educational assistance organization that facilitates program purchases that the participant, provider, or vendor may no longer participate in the program. If the comptroller has evidence of fraud or any other violation of law by a participant, provider, or vendor, the comptroller shall notify the appropriate local county or district attorney with jurisdiction over the participant, provider, or vendor.

(f) A decision to permanently close a participant's account under this section thereby removing them from participation in the program is appealable under §16.409 of this subchapter. All other decisions made under this section are final and not subject to appeal.

§16.406. Approved Education-Related Expenses.

Program money may be used only at an approved provider for the following education-related expenses of a participating child:

(1) tuition and fees paid to a private school, higher education provider, online educational course, or industry-based training program that provides credit towards a high school diploma or industry-based credential;

(2) uniforms required by a private school, higher education provider, or industry-based training program in which the child is enrolled;

(3) textbooks and instructional materials;

(4) fees for classes or other educational services provided by a public school, including an open-enrollment charter school, if the classes or services do not qualify the child to be included in the district's or school's average daily attendance;

(5) costs related to assessment instruments for the child;

(6) fees for educational services provided by a private tutor or teaching service to the child;

(7) fees for educational therapies or services provided to the child to the extent not covered by government benefits or by private insurance or provided by a public school, including an open-enrollment charter school;

(8) costs related to transportation provided to the child by a commercial, fee-for-service provider for travel to and from an education service provider or vendor of educational products or services;

(9) the cost of computer hardware and software and other technological devices required by an education service provider or vendor of educational products or services or prescribed by a physician to facilitate the child's education, not to exceed in any year 10% of the total amount allocated to the participating child's account for the program year; and

(10) the cost of breakfast or lunch provided by a private school to the child during the school day.

§16.407. Program Administration.

(a) Each program year, the comptroller shall calculate the amount available to fund accounts of participating children based on amounts appropriated and other available program funds.

(b) Each school year that a child participates in the program, as directed by Education Code, §29.361(a)(1), a total amount shall be transferred to the child's program account equal to 85% of the estimated statewide average amount of state and local funding per student in average daily attendance for the most recent school year for which that information is available. Subject to the $30,000 limitation under Education Code, §29.361(b), an additional amount shall be transferred to the account of a child with a disability equal to the amount a school district in which the child would otherwise be enrolled would be entitled to receive for the child calculated based on the child's individualized education program and the provisions of Education Code, Chapter 48, that provide funding based on a child's participation in a school district's special education program under Education Code, Chapter 29, Subchapter A, applicable for the school year preceding the school year in which the child initially enrolls in the program. The amount transferred to the account of a participating child who is not enrolled in a private school or a private provider of a prekindergarten or kindergarten program that is an approved education service provider may not exceed the $2,000 limitation specified under Education Code, §29.361(b-1). Any award of additional program funds based on changes in participant status during a school year is subject to the availability of program funds.

(c) No later than July 1 of each program year or as soon thereafter as appropriated funds become available, the comptroller shall make payments to a certified educational assistance organization for each participating child served by the organization equal to at least one-quarter of the total annual amount calculated under subsection (b) of this section for that child. Subject to subsection (f) of this section, the organization shall immediately deposit the amount received for each child under this subsection into the account established for that child.

(d) No later than October 1 of each program year or as soon thereafter as appropriated funds become available, the comptroller shall make additional payments to a certified educational assistance organization for each participating child served by the organization to the extent necessary to ensure payments for that program year equal at least one-half of the total annual amount calculated under subsection (b) of this section for that child. The organization shall immediately deposit the amount received for each child under this subsection into the account established for that child.

(e) No later than April 1 of each program year or as soon thereafter as appropriated funds become available, the comptroller shall make additional payments to a certified educational assistance organization for each participating child served by the organization to the extent necessary to ensure payments for that program year equal the total annual amount calculated under subsection (b) of this section for that child. The organization shall immediately deposit the amount received for each child under this subsection into the account established for that child.

(f) A certified educational assistance organization shall not make any amount available to a child's program account prior to:

(1) verifying that the child remains eligible for the program under Education Code, §29.355; and

(2) confirming enrollment at an approved education service provider that is a private school or a private provider of a prekindergarten or kindergarten program, if applicable.

(g) Program participants shall purchase approved education-related expenses for a participating child using a comptroller-approved payment system accessible through the program's Internet website. To the extent a purchase request is verified to be for an approved education-related expense from a provider in good standing for a participating child in good standing and the total amount of the purchase does not exceed the child's account balance, the certified educational assistance organization serving the child shall approve the purchase and deduct the total amount of the purchase from the child's account.

(h) An approved education service provider or vendor of educational products or services shall refund to the certified educational assistance organization any payment received for services that are not provided in full or for products that are returned for a refund. Any refund received by the program from a provider or vendor shall be deposited into the account of the participating child to be available for future purchases of approved education-related expenses.

(i) Money remaining in a participating child's account at the end of a program year shall be carried forward to the next program year, provided:

(1) the child remains eligible for the program under Education Code, §29.355;

(2) the participating parent has provided notice under Education Code, §29.356(i)(1), that the child will continue participation in the program for the next program year; and

(3) the program participant has not been declared ineligible for participation in the program under Education Code, §29.364.

(j) On the date a participating child is no longer eligible to participate in the program and any pending payments for approved education-related expenses have been completed, the certified educational assistance organization responsible for the participating child's account shall close the account and any money remaining in the account shall be returned to the comptroller for deposit into the program fund for purposes of the program.

§16.408. Program Participant, Provider, and Vendor Autonomy.

(a) An education service provider or vendor of educational products or services that receives money distributed under the program

is not a recipient of federal financial assistance on the basis of receiving that money, and may not be considered to be a state actor on the basis of receiving that money.

(b) state agency or state official may not adopt a rule or take other governmental action related to the program and a certified educational assistance organization may not take action that:

(1) limits or imposes requirements that are contrary to the religious or institutional values or practices of an education service provider, vendor of educational products or services, or program participant; or

(2) limits an education service provider, vendor of educational products or services, or program participant from freely:

(A) determining the methods or curriculum to educate students;

(B) determining admissions and enrollment practices, policies, and standards;

(C) modifying or refusing to modify the provider's, vendor's, or participant's religious or institutional values or practices, operations, conduct, policies, standards, assessments, or employment practices based on the provider's, vendor's, or participant's religious values or practices; or

(D) exercising the provider's, vendor's, or participant's religious or institutional practices as the provider, vendor, or participant determines.

§16.409. Appeals.

(a) The participating parent of a participating child may appeal decisions made by the program related to that child.

(b) The participating parent must provide the comptroller written notice of appeal under subsection (a) of this section by email or at the physical address for such appeals listed on the program's Internet website within 30 calendar days of the date of the notice of decision to be appealed.

(c) The notice of appeal under subsection (b) of this section must be in a comptroller approved format and must include:

(1) the name of the participating child;

(2) a brief statement of the facts; and

(3) the basis for overturning the decision.

(d) The comptroller may request additional information if needed, and shall respond to the notice of appeal within 30 calendar days after the date the notice and any additional requested information was received by the comptroller with a final decision explaining the basis for the decision. An appeal under this section is not a contested case and a decision of the comptroller under this section is final and not subject to further appeal.

§16.410. Notice.

(a) Except as otherwise provided in this subchapter, any notice to a program participant required under this subchapter may be provided electronically to the email address provided by the program participant. If notice cannot be sent electronically, the comptroller or certified educational assistance organization shall provide notice by regular United States mail to the mailing address on file for the program participant. It is the responsibility of the participant to maintain up-to-date contact information with the program.

(b) Service of notice required under this subchapter by the comptroller or certified educational assistance organization to a program participant, education service provider, or vendor of educational products or services is deemed complete and received upon:

(1) the date the notice is sent, if sent by email before 5:00 p.m. Central Standard Time;

(2) the date after the notice is sent, if sent by email after 5:00 p.m. Central Standard Time; or

(3) three business days after the date it is postmarked, if sent by regular United States mail.

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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