

The Texas Education Agency (TEA) proposes new §§78.1001, 78.1003, and 78.2001, concerning counseling services and student advising. The proposed new sections would relocate existing requirements from 19 TAC Chapter 61 with no changes to the content of the rules.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Proposed new §78.1001 would move existing language from 19 TAC §61.1026, which requires school districts and open-enrollment charter schools to report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors at each campus and the availability of expanded learning opportunities. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

Proposed new §78.1003 would move existing language from 19 TAC §61.1073, which implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

Proposed new §78.2001 would move existing language from 19 TAC §61.1071, which requires school counselors to provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year. The relocation is necessary due to a comprehensive reorganization of 19 TAC Chapter 61. No changes from the existing rule are proposed.

**FISCAL IMPACT:** Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations to relocate existing requirements.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to allow for TEA rules to be reorganized. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 14, 2025, and ends April 14, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 14, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new sections are proposed under Texas Education Code (TEC), §33.252, which outlines the types of expanded learning opportunities that may be provided by school districts and open-enrollment charter schools and the manner in which expanded learning opportunities may be offered; TEC, §48.009, which requires the commissioner to by rule require each school district and open-enrollment charter school to report through PEIMS information regarding the availability of school counselors at each campus and the availability of expanded learning opportunities as described by TEC, §33.252; TEC, §33.005, which provides that a school counselor shall plan, implement, and evaluate a comprehensive school counseling program that meets the requirements of the section; TEC, §33.006(d), which requires, except as provided by subsection (e) of the section, school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program developed under TEC, §33.005; TEC, §33.006(e), which requires school district boards of trustees that determine that staffing needs require school counselors to spend less than 80% of their work time on duties that are components of counseling programs developed under TEC, §33.005, to change the policy adopted under subsection (d) of the section to reflect the reasons why counselors need to spend less than 80% of their work time on components of the counseling program, list those non-component duties, and set the required percentage of work time to be spent on components of the counseling program; and TEC, §33.006(h), which requires each school district to annually assess the district's compliance with the policy adopted under TEC, §33.006(d), and, on request by the commissioner, provide a written copy of the assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §33.252 and §48.009, for §78.1001; and TEC, §33.005 and §33.006, for §78.1003.

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**§78.1001. Statutorily Required Reporting through the Public Education Information Management System.**

- (a) Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the number of full-time equivalent school counselors, defined as 40 hours of counseling services a week, at each campus.
- (b) Each school district and open-enrollment charter school shall report through TSDS PEIMS for each campus:
  - (1) the availability of expanded learning opportunities that are provided during:
    - (A) an extended school day program that students are required to attend as part of the regular program of the campus at which students are enrolled to increase the academic achievement and development of participating students;
    - (B) an extended school year program that students are required to attend as part of the regular program of the campus at which students are enrolled to increase the academic achievement and development of participating students; or

- (C) a supplemental voluntary structured learning program that:
  - (i) occurs outside of the regular school day, including before- and after-school programs and summer programs; and
  - (ii) is coordinated with and enhances the regular academic program of the campus to increase the academic achievement and development of the participating student; and
- (2) the availability of expanded learning opportunities that are provided by offering:
  - (A) rigorous coursework that includes activities related to providing Texas Essential Knowledge and Skills (TEKS)-aligned credit-earning courses, including activities related to dual credit and credit recovery;
  - (B) mentoring that consists of scheduled interaction between a trained adult and an individual student in which the adult provides support and teaches life skills to help the student's personal and academic development;
  - (C) tutoring that consists of one-on-one or small group instruction, led by a certified teacher, that provides supplemental content instruction or homework help to support student mastery of academic material and that does not include academic skill-building activities;
  - (D) physical activity that consists of instructor-led activities designed to provide students with supplemental opportunities for individual or group exercise or related knowledge and skills that encourage regular physical activity;
  - (E) academic support that provides supplemental instruction related to student academic skill development, including compensatory education, test-taking skills, and related academic skill-building, and that does not include tutoring and homework help; or
  - (F) educational enrichment in one or more subjects, including fine arts, civic engagement, science, technology, engineering, and mathematics, that includes activities that engage students in actively exploring academic content introduced during the regular school day to increase the academic success of students and consists of activities that are intentionally designed to align with but not replicate the instruction.

**§78.1003. Annual Assessment of School District Compliance.**

- (a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.
  - (1) Comprehensive school counseling program--provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).
  - (2) Duties that are components of a counseling program--work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).
  - (3) School counselor--the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).
  - (4) School counselor's total work time--the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.
- (b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, as established by each district, the time spent on work duties performed by the school counselor throughout a school year. This tracking tool shall:
  - (1) include the following components:
    - (A) the total work time worked by the school counselor for the year;

- (B) the total time spent on the following duties that are components of a counseling program developed under TEC, §33.005:
    - (i) provision of a guidance curriculum;
    - (ii) responsive services for students;
    - (iii) individual planning for students; and
    - (iv) system support; and
  - (C) the total time spent on duties that are not components of a counseling program developed under TEC, §33.005, including time spent in administering assessment instruments or providing other assistance in connection with assessment instruments (except time spent in interpreting data from assessment instruments); and
- (2) be maintained by the district in a format that can be made available to Texas Education Agency (TEA) upon request.
- (c) School districts shall annually assess the district's compliance with the policy adopted under TEC, §33.006(d). The assessment shall include:
- (1) work time tracking documentation as described in subsection (b) of this section for each school counselor in the district;
  - (2) the number of school counselors whose work was in compliance with the district policy adopted under TEC, §33.006(d); and
  - (3) the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d).
- (d) The assessment described in subsection (c) of this section shall be maintained by the school district in a format that can be made available to TEA upon request.
- (e) Not later than October 15 of each year, TEA will request the following information from a randomly selected sample of school districts, with district responses required to be submitted to TEA not later than November 15 of each year in the format requested by TEA:
- (1) a copy of the district policy adopted under TEC, §33.006(d);
  - (2) a copy of the district annual assessment as required by subsection (c) of this section;
  - (3) the number of school counselors in the district from the previous school year;
  - (4) the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d); and
  - (5) any other findings, conclusions, or analysis included in the annual assessment required by subsection (c) of this section, including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code, §33.007, which requires school counselors to provide information about postsecondary education to students and their parents or guardians.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.007.

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**§78.2001. Counseling Public School Students Regarding Higher Education.**

- (a) In accordance with Texas Education Code (TEC), §33.007, a counselor shall provide certain information about higher education to a student and a student's parent or guardian during the first year the student is enrolled in a high school or at the high school level in an open-enrollment charter school and again during the student's senior year.
- (b) The information that counselors provide in accordance with subsection (a) of this section must include information regarding all of the following:
  - (1) the importance of higher education, which:
    - (A) includes workforce education, liberal arts studies, science education, graduate education, and professional education to provide broad educational opportunities for all students;
    - (B) furthers students' intellectual and academic development; and
    - (C) offers students more career choices and a greater potential earning power;
  - (2) the advantages of completing the recommended high school curriculum or higher, including, at a minimum, curriculum programs which:
    - (A) provide students with opportunities to complete higher-level course work, particularly in mathematics, science, social studies, and languages other than English, thereby:
      - (i) increasing students' readiness for higher education and reducing the need for additional preparation for college-level work;
      - (ii) preparing students for additional advanced work and research in both career and educational settings;
      - (iii) allowing students, in certain instances, to receive college credit for their high school course work; and
      - (iv) enabling students to be eligible for certain financial aid programs for which they would otherwise be ineligible (e.g., the TEXAS grant program);
    - (B) enable students to receive an academic achievement record noting the completion of either the recommended program or higher; and
    - (C) provide students who elect to complete the distinguished achievement program with an opportunity to demonstrate student performance at the college or career level by demonstrating certain advanced measures of achievement;
  - (3) the advantages of taking courses leading to a high school diploma relative to the disadvantages of preparing for a high school equivalency examination, including:
    - (A) the progressive relationship between education and income; and
    - (B) the greater possibility for post-secondary opportunities (including higher education and military service) that are available to students with a high school diploma;
  - (4) financial aid eligibility, including:
    - (A) the types of available aid, not limited to need-based aid, and including grants, scholarships, loans, tuition and/or fee exemptions, and work-study;

- (B) the types of organizations that offer financial aid, such as federal and state government, civic or church groups, foundations, nonprofit organizations, parents' employers, and institutions of higher education; and
- (C) the importance of meeting financial aid deadlines;
- (5) instruction on how to apply for financial aid, including guidance and assistance in:
  - (A) determining when is the most appropriate time to complete financial aid forms; and
  - (B) completing and submitting the Free Application for Federal Student Aid (FAFSA) or any new version of this form as adopted by the U.S. Department of Education;
- (6) the Texas Higher Education Coordinating Board's Center for Financial Aid Information, including its toll-free telephone line, its Internet website address, and the various publications available to students and their parents;
- (7) the Automatic Admissions policy, which provides certain students who graduate in the top 10% of their high school class with automatic admission into Texas public universities; and
- (8) the general eligibility and academic performance requirements for the TEXAS grant program, which allows students meeting the academic standards set by their college or university to receive awards for up to 150 credit hours or for six years or until they receive their bachelor's degree, whichever occurs first. The specific eligibility and academic performance requirements, along with certain exemptions to these requirements, are specified in Chapter 22, Subchapter L, of this title (relating to Toward Excellence, Access and Success (TEXAS) Grant Program). The general requirements include:
  - (A) Texas residency;
  - (B) financial need;
  - (C) registration for the Selective Service or exemption from this requirement;
  - (D) completion of the recommended high school program or higher or, in the case of a public high school that did not offer all of the courses necessary to complete the recommended or higher curriculum, a certification from the district that certifies that the student completed all courses toward such a curriculum that the high school had to offer;
  - (E) enrollment of at least three-quarters time in an undergraduate degree or certificate program within 16 months of high school graduation, unless an allowable exemption is satisfied; and
  - (F) no conviction of a felony or crime involving a controlled substance, unless certain conditions are met.