

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the October 22, 2021 issue of the *Texas Register* (46 TexReg 7138) and will not be republished. The amendment adopts by reference the *2021-2022 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools. Although no changes were made to §129.1025 since published as proposed, the *2021-2022 Student Attendance Accounting Handbook* adopted by reference includes changes at adoption.

REASONED JUSTIFICATION: TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

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

The amendment to §129.1025 adopts by reference the student attendance accounting handbook for the 2021-2022 school year. The adopted handbook is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accountinghandbook>.

Significant changes to the *2021-2022 Student Attendance Accounting Handbook* include the following.

#### *Section 1, Overview*

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System (TSDS) Public Education Information Management System (PEIMS). The following changes implement reporting requirements for attendance and funding.

Language was revised to state that a school district may serve any student in any capacity or setting as long as serving the student does not interfere with the education of funding-eligible students.

Language was revised to update the statutory authority amended by House Bill 3, 86th Texas Legislature, 2019, from TEC, Chapter 42, to TEC, Chapter 48, throughout the handbook.

#### *Section 2, Audit requirements*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §44.008, authorizes the commissioner to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language was revised to state that if the district uses a system that is almost entirely functional without the use of paper documents, it must meet the additional standards established in the subsection addressing the Paperless Attendance Accounting Systems or the district must generate and retain paper copies of attendance reports and records.

Language was revised to exclude the career and technical education (CTE) code from the subsection addressing student detail reports.

Language was added to state that board-approved local policy that defines the instruction methods (i.e., synchronous, asynchronous, or a combination of both) should include the official attendance times for synchronous

instruction. Additionally, if the board policy indicates approval for asynchronous method, the local educational agency (LEA) must create an asynchronous instructional plan.

Language was added to state that documentation of a student's instructional schedule, whether synchronous or asynchronous, includes the minimum amount of instructional time to meet the two-through-four rule.

### *Section 3, General Attendance Requirements*

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

Language was deleted to remove the requirement of charter schools to serve students in the geographic boundary authorized in the charter school's charter agreement.

Language was revised to state that if a student repeats a course for which the student has already received credit, the time that the student spends taking the course for a subsequent time does not count toward the accumulation of attendance hours for FSP funding purposes unless the course is being repeated due to a student's parent electing for the student to repeat a course from the 2020-2021 school year. This provision will expire on September 1, 2022.

Language was revised to state that students can generate average daily attendance (ADA) funding if they are eligible to graduate but who continue their education to meet the requirements of a higher high school diploma standard; students enrolled in a TEA-designated Pathways in Technology Early College High School (P-TECH) and coded in TSDS PEIMS (E1612).

Language was deleted to remove the provision that a charter school may enroll a child of an employee regardless of geographic boundary.

Language was revised to provide parents with contact information to apply for a school certificate that can be used for school purposes but is not a legal substitute for a certified copy of a birth certificate.

Language was added to state that a student may be considered present for FSP purposes if the student is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible. Documentation from a health care professional licensed, certified, or registered to practice in Texas must be provided that specifies the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

Language was revised to state that student may be considered present for FSP purposes if the student misses school for the purpose of visiting a driver's license office.

Language was revised to state that demographic and special program information for all students served in the district should be reported through the TSDS PEIMS Fall submission

Language was revised to state that for General Education Homebound (GEH), a student must have a medical condition that is documented by a physician licensed to practice in the United States. Except in cases of medically fragile students, potential medical conditions or concerns that student may develop medical conditions do not constitute grounds for GEH program eligibility. In cases where students are medically able to receive more than the required minimum four hours of face-to-face instruction, LEAs must provide additional remote instruction. Please note that concurrent instruction is not allowed.

Language was revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in GEH programs where medically appropriate. Virtual instruction provided to students in GEH programs could not be provided by a teacher concurrently instructing students in person.

Language was added to include tutorial time that occurs before or after school in the operational minute calculation. If transportation is provided, the district must ensure that before- and/or after-school transportation options are available to students who wish to participate in the tutorial instruction.

Language was revised to state that school districts and charter schools that do not, as part of the TSDS PEIMS Summer submission, report their calendars to TEA until after the school year is complete must ensure that they have the required number of minutes/days built into their school board-approved calendars.

Language was added to note that prior year documentation from the 2019-2020 or 2020-2021 school year may be used in the following manner. If the 2019-2020 school year attendance report is selected, use only the average of the first four six-weeks attendance reporting periods due to the closures during the fifth and sixth six weeks of the 2019-2020 school year. Use the TSDS PEIMS Superintendent's Report of Student Attendance 2019-2020 Summer Collection report (PDM3-130-001). If the 2020-2021 school year attendance report is selected, show the overall average attendance rate for the year for the district or applicable campus.

Language was revised with reference to time in situational instances shown in the table regarding closure for bad weather or other issue of health and safety. Also, language was revised in agency policy in the same table.

Language was revised to state that one program that allows for state funding of school days beyond the 75,600 minutes that make up the state funding year provides extended school year (ESY) services for certain students receiving special education services.

Language was revised to state that beginning in the 2020-2021 school year, an additional instructional-days incentive became available to district or charter school campuses that offer up to an additional 30 days of half-day instruction for students enrolled in prekindergarten (Pre-K) through Grade 5.

Language was revised to state that participating campuses receive half-day funding for students attending each additional day and that additional days funding started on September 1, 2020.

Language was revised to state the Additional Days School Year (ADSY) program allows for additional half-day funding for each school day beyond the 180 days, up to 210 days. Also, language was revised to show that no public school will be funded in excess of a 180-day calendar except for the schools that meet all the criteria for the additional days incentive funding that became available starting in the 2020-2021 school year.

Language was revised to state that districts with tracks ending after June 16, 2022, which is the due date for initial TSDS PEIMS Summer submission, must still submit their initial TSDS PEIMS Summer submissions by that due date. Resubmissions can be delayed; however, resubmissions will not be processed after August 18, 2022.

In response to public comment, Section 3.6.3 was corrected at adoption to state that a student serving as an election clerk must be eligible to serve as an election clerk.

In response to public comment, Section 3.7, relating to the GEH program, was corrected at adoption to state that LEAs may provide additional remote instruction.

#### *Section 4, Special Education*

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

Language was revised to cite 19 TAC §89.1070 in the Special Education section, including the foot notes.

Language was revised to state that a full individual and initial evaluation must be completed, and the district must meet the requirements in 34 CFR, §300.323 (f)(2), if appropriate, within 30 days of the evaluation report.

Language was revised to state that, once an admission, review, and dismissal (ARD) committee determines that a student is no longer a child with a disability, the student is dismissed from special education and related services, which also occurs when a parent revokes consent in writing for a student's receipt of special education services.

Language was revised to state that the ARD committee must provide the effective date of dismissal of special education and related services to the district, and the district must record this date in the attendance accounting system.

Language was revised to state that to be placed in the special education homebound setting, a student must have a current medical condition that is documented by a physician except in cases of severely immuno-compromised students. The language clarifies that potential medical conditions or concerns that students may develop medical conditions do not constitute grounds for special education homebound program eligibility.

Language was revised to state that supplementing in-person homebound instruction with virtual instruction is encouraged for students in special education homebound programs where medically appropriate and to the extent that such instruction is consistent with students' individualized education programs (IEPs). Virtual instruction provided to students in special education homebound programs could not be provided by a teacher concurrently instructing students in person.

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

Language was revised in the coding chart to state that ineligible Pre-K students may be served in the Pre-K classroom if the ARD committee deems it appropriate and space is available. However, eligible Pre-K students should not be denied enrollment due to an ineligible Pre-K student's enrollment.

Language was revised to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "limited English proficient (LEP) student" used in TEC, Chapter 29, Subchapter B. This also resulted in a change to the term "English learner (EL)" used in 19 TAC Chapter 89, Subchapter B. These terms describe the same group of Texas students. An emergent bilingual student is in the process of acquiring English and has another language as the student's primary or home language. As PEIMS is revised to reflect these changes, the terms "emergent bilingual (EB)" and "English learner (EL)" may be bridged as EB/EL, and the data element names may still indicate the use of LEP during the transition. It is important to note that "English learner" is still used in federal regulations and guidance.

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

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

Language was deleted to remove eligibility of a district to remove funding in the amount of \$50 for students enrolled in two or more CTE courses.

Language was revised regarding computing contact hours for CTE weighted funding and the tiers.

In response to public comment, Section 5.3 was modified at adoption to clarify enrollment procedures and to remove indicator codes.

In response to public comment, Section 5.6 was modified at adoption to remove references to codes V4, V5, and V6 and delete language that did not reflect the new tiered CTE funding system.

In response to public comment, Section 5.12 was modified at adoption to update certain examples to reflect the new tiered CTE funding system.

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

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language

programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language was revised to state that when parents indicate the use of more than one language in response to question 1 and/or question 2 of the home language survey, it is the district's responsibility to contact the parent to determine which language is used most of the time.

Language was revised to state that if a language other than English is indicated on any of the required questions on the survey, the district must assess the student for English language proficiency.

Language was deleted to remove the term "limited English proficiency."

Language was added to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaces the term "LEP student" used in TEC, Chapter 29, Subchapter B. See the previous description of changes to Section 4 for an explanation of these changes.

Language was revised to state that the date of the student's enrollment from another Texas public school is the start date for continued program services if the student has been previously identified and served in Texas.

Language was revised to provide the link where the appropriate codes are available.

Language was revised to state that to be eligible for participation in the bilingual or English as a second language (ESL) education program, a student must meet the requirements that are listed.

Language was revised to show students who may participate in a district's bilingual or ESL education program but are not eligible for bilingual education allotment (BEA) funding. This includes students participating or continuing in a one-way dual language immersion, transitional bilingual education, or an ESL program.

The section was revised to include a fact sheet with information on weighted BEA funding.

Language was revised to state that English learners served through an alternative language program generate BEA funds.

Language was added to include Program Model Fact Sheet and Certification Fact Sheet under teacher certification requirements.

Language was revised to revise to state the language proficiency assessment committee (LPAC) will determine if a student can be classified as English proficient and has demonstrated readiness to participate equitably in grade level instruction.

Language was revised to state that the LPAC may recommend that an English proficient student continue in the dual language immersion program with parental approval.

Language was revised to state that as PEIMS is revised to reflect changes as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the data element names may still use LEP or EL during the transition.

Language was revised to state that once a reclassified student has completed all four years of state and federal monitoring, he or she will be coded as Former Limited English Proficient/English Learner, code 5 in the Limited English Proficient/English Learner indicator for the duration of his or her schooling in Texas.

Language was revised to provide the link for the English Learning Portal that gives additional resources for program implementation.

Language was revised to state that as PEIMS is revised to reflect changes as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the data element names may still use LEP or EL during the transition.

Language was revised to provide link to access additional resources for program implementation.

In response to public comment, Section 6.2 was modified at adoption to align with 19 TAC §89.1220(m)(2), stating that parental approval may be obtained through a phone conversation or email that is documented in writing and retained.

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

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

Language was revised to include eligibility for students in foster care in another state or territory who now reside in Texas.

Language was revised to state that a student is eligible for Pre-K if the student was eligible to enroll in Pre-K but did not attend during the previous school year under TEC, §29.153 (b), and the child has not yet enrolled in kindergarten or if the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124.

Language was revised to state that a child's parent or guardian can elect for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC §29.153(b), and the child has not yet enrolled in kindergarten.

Language was revised to state that as a result of SB 2066, 87th Texas Legislature, Regular Session, 2021, the term "emergent bilingual student" replaced the term "LEP student" used in TEC, Chapter 29, Subchapter B. The term "English learner (EL)," as used in 19 TAC Chapter 89, Subchapter BB, changes as well. See the previous description of changes in Section 4 for an explanation of these changes.

Language was revised to show that the home language survey will question what language is used in the child's home.

Language was revised to state that a child who is a member of a household receiving benefits from the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families program, State Medicaid program, or Food Distribution Program on Indian Reservations is eligible for the National School Lunch Program.

Language was revised to state that students who are in or who have ever been in the conservatorship of the Texas Department of Family Protective Services (DFPS) (that is, in foster care) following an adversary hearing or were in foster care in another state or territory but now reside in Texas are eligible for free Pre-K.

Language was revised to state that if an individual has a Pre-K-age child and has been nominated but not notified as an honoree prior to the current school year, that individual may request that the Early Childhood Education Division determine eligibility based on the nomination submitted for review to the Criminal Justice Division.

Language was revised to state that proof is required to ensure a student is three or four years old as of September 1 of the school year unless the child's parent or guardian elects for the child to repeat Pre-K in accordance with TEC, §28.02124, or if the child would have been eligible to enroll in Pre-K during the previous school year under TEC, §29.153(b), and has not yet enrolled in kindergarten.

Language was revised to state that Pre-K classes for eligible students four years old and older must operate on a full-day basis unless the district has applied for and received a waiver. Pre-K classes for eligible three-year-old children and ineligible three- and four-year-old children may be operated as a half-day program.

Language was revised in the Eligible Days Present and ADA Eligibility table to show Early Childhood Special Education Services (ECSE) served in Pre-K classroom.

### *Section 8, Gifted/Talented*

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

Language was added to state that districts must code a furloughed student who is taking leave from receiving services through a state-approved gifted/talented program with a gifted/talented indicator code of 0 in the Student Detail Report.

### *Section 10, Alternative Education Programs (AEPs) and Disciplinary Removals*

TEC, §37.008, establishes the general parameters for disciplinary alternative education programs, including placement of students in alternative settings. The following changes implement reporting for alternative settings.

Language was revised to show mandatory expulsion in the disciplinary removals and programs table.

### *Section 11, Nontraditional Programs*

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

Language was revised to state that students are sometimes educated during nontraditional hours or days of the week or in nontraditional programs within the district, such as in optional flexible school day programs (OFSDPs), or off-campus by providers other than the district, such as colleges or universities.

Language was revised to state that districts must not use the AP trademark or AP PEIMS Code (service IDs) unless an audit has been performed.

Language was revised to state that districts must not use the IB trademark or IB PEIMS Code (service IDs) unless authorized by the International Baccalaureate Organization.

Language was revised to state that the Texas Higher Education Coordinating Board shall develop and implement a pilot program under which a licensed hospital may offer dual credit courses to high school students enrolled in a school district in partnership with the district.

Language was revised to state that students must meet requirements for one of the listed assessments to meet Texas Success Initiative Assessment criteria, and requirements to qualify for English courses and revisions were made in the chart showing student eligibility for dual credit courses.

Language was deleted in a requirement for student eligibility to enroll in dual courses with regard to content area of the course and an exemption limited to an institution of higher education partnering with the school district.

Language was deleted to remove the funding of Optional Extended Year Program for the 2021-2022 school year.

Language was added to elaborate on ADSY, ADSY program design, ADSY reporting and funding, and additional ADSY information.

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

TEC, Chapter 30A, establishes the general parameters for the Texas Virtual School Network (TXVSN). TEC, §30A.153, authorizes funding for the TXVSN from the FSP under certain circumstances. TEC, §48.004, authorizes

the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following change implements reporting for the TXVSN to account for attendance and funding.

Language was revised to state that the state virtual school network includes the TXVSN catalog of supplemental online courses for Grades 9 through 12. Courses first became available through the TXVSN course catalog in January 2009 and may be provided through the TXVSN course catalog by a TXVSN course provider.

Language was revised to include eligibility criteria for a student's full-time enrollment in TXVSN courses and state that these courses are offered through the TXVSN course catalog.

Language was added to state that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN Online School (OLS) program is considered to be enrolled in a TXVSN course or OLS program when he or she begins receiving instruction and actively engages in instructional activities in a TXVSN subject area or course.

Language was added to show that a student taking a course offered through the TXVSN course catalog or an officially recognized TXVSN OLS program is considered to be, and must be reported as, withdrawn from the TXVSN course or OLS program when the student is no longer actively participating in the TXVSN course or program.

Language was revised to state that the section on remote instruction that is not delivered through the TXVSN will describe procedures for submitting requests for waivers of those rules and policies and information on how the agency will evaluate those requests.

Language was revised to include that remote instruction not delivered through TXVSN cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language was revised to state that remote conferencing means remote instruction in which a student at an off-campus location is able to virtually participate in classes provided by a teacher on the student's campus.

Language was revised to state that remote conferencing students will receive funding provided that certain requirements are met, such as the total amount of remote conferencing instruction must not exceed more than 20 instructional days over the entirety of the school year.

Language was further revised to state that in addition to other conditions, documentation from a physician must include a statement that the student is to remain confined to their home or to a hospital; the student has a positive test result for a communicable condition listed in 25 TAC §97.7; or the student has been identified as having been in close contact with COVID-19.

Language was revised to state that if the documented temporary medical condition persists longer than 20 instructional days over the entirety of the school year or a 504 committee determines that remote instruction is needed for more than 20 days, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. An example is provided of a child being in close contact with COVID-19 more than twice over the course of the year, and the family opted to follow the stay-at-home recommendations each time.

Language was revised to state that remote conferencing generates attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day and students in Grades 6 through 12 receive at least four hours of instruction through synchronous instruction each school day. The instruction does not need to be consecutive.

Language was revised to state that for students participating through remote conferencing, instruction must be provided synchronously, which means two-way, real-time/live virtual instruction between teachers and students. The instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.



Language was revised to state that, in submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, districts must state how program requirements will be satisfied to claim weighted funding.

Language was revised to state that for remote conferencing special education students, the instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.

Language was revised to state that to receive funding for remote conferencing special education students, the student's ARD committee must have determined, in a manner consistent with state and federal law, that the remote instruction to be provided is required for the provision of a free and appropriate public education (FAPE). A placement change for a student served by special education requires the ARD committee to meet to address the change in placement and document it in the student's IEP, generally within 10 school days.

Language was revised to state that if the ARD committee determines that remote conferencing should be needed for longer than 20 instructional days over the entirety of the school year, a waiver request must be submitted for an extension of remote conferencing beyond the allowable cumulative 20 instructional day period. Waivers will be granted on a case-by-case basis and a waiver will not be granted if the student is unable to attend school for a reason other than a medical condition, such as confinement at home for disciplinary reasons. Any waiver request must include an explanation of the circumstances giving rise to the waiver request.

Language was revised to state that special education students participating by remote conferencing will generate attendance if students in Pre-K through Grade 5 receive the equivalent of four hours of instruction with at least two hours of synchronous instruction each school day. Students in Grades 6 through 12 must receive at least four hours of instruction through synchronous instruction each school day in order to generate attendance. This instruction does not need to be consecutive.

Language was revised to state that for remote conferencing special education, both on-campus instructional time and remote conferencing instructional time can be included when calculating two-through-four-hour rule eligibility provided the remote instruction is provided synchronously, which means two-way, real-time/live virtual instruction between teachers and students, not concurrent instruction.

Language was added to state that a student served through remote conferencing may be eligible to generate weighted funding for programs such as CTE or bilingual/ESL education, provided that requirements for the applicable program(s) are met. In submitting a waiver request to extend remote conferencing instruction beyond the allowable 20 instructional days over the entirety of the school year, an explanation must be provided as to how program requirements will be satisfied in order to claim weighted funding.

Language was revised to state that for remote homebound instruction for regular education students and special education students, waivers will only be granted in extremely severe medical circumstances, and a waiver must be submitted for each individual student.

Language was revised to state that CTE courses provided on campus and self-paced computer courses may be considered for contact hours provided all conditions are met.

Language was revised to state that the requirement that a teacher be appropriately qualified/certified does not apply to an open-enrollment charter school unless the school's charter states that a CTE course must be taught by a qualified/certified CTE or technology applications teacher.

Language was revised regarding information on CTE weights and the use of multipliers.

Language was revised regarding weights for the gifted/talented category of students.

Language was added to elaborate on methods of virtual instruction, students' eligibility for ADA funding, eligibility based on current school year, limits on total remote participation ADA, attendance taking and minutes requirement, remote synchronous instructions, and remote asynchronous instruction.

In response to public comment, Sections 12.3, 12.3.1, and 12.3.2 were modified at adoption to indicate that concurrent instruction is not allowed.

In response to public comment, Section 12.6.2.4 was modified at adoption to note that the section applies only to the 2021-2022 and 2022-2023 school years and expires on September 1, 2023.

### *Glossary*

Language was deleted from the Glossary regarding at-risk students and language was added to include criteria to meet the at-risk student's classification.

### *General*

In response to public comment, the term "auditory impairment" was replaced with the term "deaf or hard of hearing" throughout the handbook.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began October 22, 2021, and ended November 22, 2021. Following is a summary of the public comments received and the corresponding agency responses.

### *General*

Comment: A parent commented that virtual online learning should continue.

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

Comment: Forty-one concerned parents and Texans commented that students should not be screened out of virtual education with a test and requested that all students be allowed access to grandfathered virtual programs.

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

Comment: A parent commented with concerns about virtual learning overall and that the parent's local school district did not participate in virtual options.

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

Comment: A parent requested that the proposed *2021-2022 Student Attendance Accounting Handbook* not be approved. The parent stated that many families would be impacted if students are required to return to school in person.

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

### *Section 3 - General Attendance*

Comment: The Texas Association of School Business Officials (TASBO) commented on Section 3 of the handbook, which states that a student may be considered present for FSP purposes if the student is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible and that documentation of the student's illness must be provided by a physician certified/licensed in Texas. TASBO commented that many Texas school districts reside on borders to other states and that, due to geographical location, students may have physicians who are licensed in the United States but not specifically in Texas. TASBO stated that the section needs to be amended to allow for a physician from another state but licensed in the United States in alignment with other medically-related funded absences in the same section of the handbook.

Response: The agency disagrees. Section 3.6.3 of the handbook is legislatively mandated by Texas Education Code (TEC), §25.087(b)(3), and cannot be changed unless the Texas legislature makes a change to the statute.

Comment: A school district employee commented that in Section 3.6.3 of the proposed handbook, language related to the requirements for a student to serve as an election clerk states that the student must be ineligible to serve as an election clerk. The commenter asked if the word "ineligible" should be changed to "eligible."

Response: The agency agrees. Section 3.6.3 was corrected at adoption to read, "a student must be eligible to serve as an election clerk...."

Comment: The Association of Texas Professional Educators (ATPE) commented that the association recognizes that Senate Bill (SB) 15, 87th Texas Legislature, Second Called Session, 2021, amended TEC, §48.0071(e), to change the prohibition on eligible charters accepting students outside of their geographic boundaries for purposes of enrolling them in a local remote learning program but that the proposed change to Section 12 would impact transfer eligibility for all charter schools regardless of setting. TASBO stated that the proposed language is dramatically overbroad and contrary to the statutory framework the legislature has established regarding charter school boundaries and enrollment. TASBO recommended that language regarding changes to charter school enrollment, including any exemption or exceptions to otherwise general practice as related to the requirements established by SB 15, should be limited to Section 12 of the handbook.

Response: The agency disagrees. The handbook does not eliminate geographic boundary limitations.

Comment: The Texas Council of Administrators of Special Education (TCASE) commented that Section 3.7 states remote instruction is required to be provided if the student is medically able to participate in instruction for more than the minimum four hours. TCASE commented that districts are not allowed to submit documentation that would result in the funding of more than one ADA and questioned the agency's authority to require additional remote instruction if the GEH committee has already determined the face-to-face instruction that is to occur during the homebound period. TASBO requested the agency either delete the sentence requiring remote supplemental instruction or delete the sentence and allow supplemental instruction to occur concurrently to avoid an unfunded mandate putting undue burden on a district.

Response: The agency agrees. Section 3.7 has been corrected at adoption to read, "LEAs may provide additional remote instruction."

#### *Section 4 - Special Education*

Comment: TCASE requested that the agency consider using the term "deaf or hard of hearing" throughout the handbook rather than the term "auditory impairment" to align with Texas Government Code, §392.002(b-1).

Response: The agency agrees and has modified the handbook at adoption to change "auditory impairment" to "deaf or hard of hearing" throughout the handbook.

Comment: TCASE requested that guidance be given in Section 4.3.3, Enrollment Procedures for a Student Who is New to Your District but Was Previously Receiving Special Education Services, on how to comply with 19 TAC §89.1050(j)(4), which references the requirements for students who enroll during the summer. TCASE stated that various circumstances exist based on when a student enrolls in a district, whether required professionals are currently on contract at the time of student enrollment, and what records are received at the time of enrollment, especially when a student is enrolling from out of state.

Response: The agency disagrees. Section 4.3.3 pertains to students with disabilities who transfer into a school district during the school year. Section 89.1050(j)(4) addresses the long-standing requirement of 34 CFR, §300.323(a), that at the beginning of the school year, the school district must have an individualized education program (IEP) in effect for each student with a disability within its jurisdiction. A student who enrolls or registers during the summer is not a transfer student subject to the transfer requirements of 34 CFR, §300.323(e) and (f), and §89.1050(j)(1) and (2), which is what Section 4.3.3 addresses. For this student, the new school district must implement the IEP from the previous school district in full on the first day of class of the new school year or must convene an ARD committee meeting during the summer to revise the student's IEP for implementation on the first day of class of the new school year. In further response to the comment, please note that the glossary in the

handbook defines "enrollment (in enrollment)" for purposes of the handbook as, "Actually receiving instruction by attendance in a public school, as opposed to being registered but not yet receiving instruction." The term may have other meanings in the field or in other contexts.

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

Comment: A school district CTE coordinator commented that in Section 5.6, Computing Contact Hours, a general employability course needs to be considered as a part of a program of study. The commenter stated that "soft skills" are important to business and industry and that students need to know the general employability skills that every trade requires to sustain employment.

Response: The agency disagrees. Programs of study are revised on a recurring schedule, not to exceed once every five years, to ensure they remain current and relevant to the needs of business and industry. The statewide programs of study were implemented during the 2020-2021 school year. During the revision process, there will be an opportunity for input from stakeholders.

Comment: A school district CTE coordinator commented that Career Prep II should be a part of a program of study. The commenter added that if a student has enough responsibility to be employed for two years in high school (during Career Prep I and II), it is a huge predictor of career and employability success.

Response: The agency disagrees. Programs of study are revised on a recurring schedule, not to exceed once every five years, to ensure they remain current and relevant to the needs of business and industry. The statewide programs of study were implemented during the 2020-2021 school year. During the revision process, there will be an opportunity for input from stakeholders.

Comment: A Texas community member commented that clarification is needed when referencing CTE code in Section 5.3, Enrollment Procedures, and other sections. The commenter stated confusion among stakeholders about whether the CTE code is the CTE contact hour code or the CTE indicator code.

Response: The agency agrees. The handbook has been modified at adoption to clarify enrollment procedures and remove CTE indicator codes.

Comment: A Texas community member commented that due to the new tiered CTE funding system and changes to the Texas Student Data System, V4, V5, and V6 code references should be removed from the first paragraph in Section 5.5, CTE (Contact Hour) Codes, on pages 161-162 of the proposed handbook. The commenter also recommended deleting two specific paragraphs that read, "For students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. For example, a student enrolled in three separate 45-minute CTE courses would be assigned a code of V3 (V1+V1+V1=V3)," and, "For students who are enrolled in more than one CTE course, CTE codes are combined to determine the correct code assigned to each student. For example, a student is enrolled in a CTE course that averages 45 minutes per day (V1) and a CTE course that averages 135 minutes per day (V3). When the V1 and V3 class codes are combined, the student is assigned a code of V4 in the attendance accounting system."

Response: The agency agrees. At adoption, the handbook was updated to remove the two paragraphs recommended for deletion by the commenter and remove references to codes V4, V5, and V6.

Comment: A Texas community member commented regarding Section 5.6, Computing Contact Hours. The commenter stated that updates are needed to communicate how the new tiered CTE funding will work.

Response: The agency agrees and plans to update Section 5.6 in the 2022-2023 handbook after more research and development.

Comment: A Texas community member recommended additional information in Section 5.7.5, Required Site Visits by Teachers, such as the purpose of the site visit and whether virtual site visits are an option.

Response: The agency disagrees. While not specified, teachers conducting on-site visits is best practice. Public health conditions vary by localities, and teachers should consider local district and county decisions on current health conditions when determining the method of conducting site visits. Virtual site visits will be acceptable when current health conditions in localities prevent in-person site visits from being conducted.

Comment: A Texas community member commented that the examples in Section 5.12 should be reviewed for accuracy due to changes in CTE funding.

Response: The agency agrees and has modified examples 1, 2, 3, 5, 6, 7, 9, 10, 12, 13, 14 to reflect changes in CTE funding.

### *Section 6 - Bilingual*

Comment: A school district Public Education Information Management System director commented that the handbook should better align with 19 TAC §89.1220(m)(2), which allows a school district to place or exit a student in a program without written approval of the student's parent if the parent provides approval through a phone conversation or e-mail that is documented in writing and retained.

Response: The agency agrees and has modified Section 6.2 at adoption to align with §89.1220(m)(2), stating that parental approval may be obtained through a phone conversation or email that is documented in writing and retained.

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

Comment: ATPE commented that one of the proposed changes to Sections 12.3, 12.3.1, and 12.3.2 establishes that remote instruction cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time. ATPE stated that while this is an important protection for both students and educators, in the case of extended forms of virtual education, such as Local Remote Learning Programs, it is likely unnecessary and overburdensome for the much more limited and transient form of virtual instruction represented by remote conferencing.

Response: The agency agrees. Language was added to Sections 12.3, 12.3.1, and 12.3.2 at adoption to indicate that concurrent instruction is not allowed.

Comment: ATPE commented that the exemption in Section 12.6.2.4, Exception to Limit on Total Remote Participation ADA: LEAs eligible under the TEC, §48.0071(c), appropriately parrots the statutory language found in TEC, §48.0071(c), as established by SB 15, 87th Texas Legislature, Second Called Session, 2021, but noted that section of statute expires September 1, 2023. ATPE recommended providing notice of this expiration to relevant parties by specifying in the handbook that this section applies only to the 2021-2022 and 2022-2023 school years and expires after that point.

Response: The agency agrees and has modified Section 12.6.2.4 to specify that the section applies only to the 2021-2022 and 2022-2023 school years and expires on September 1, 2023.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §25.081, which states that for each school year, each school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, as amended by Senate Bill (SB) 289 and House Bill (HB) 699, 87th Texas Legislature, Regular Session, 2021, which provides purposes for which a school district shall excuse a

student from attending school, including excusing a high school student 15 years of age or older for the purpose of visiting a driver's license office to obtain a driver's license or a learning permit; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, as amended by SB 15, 87th Texas Legislature, Second Called Session, 2021, and SB 1615, SB 1697, and HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that average daily attendance is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section; TEC, §48.102, which states that for each student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student in average daily attendance in a special education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, as amended by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each full-time equivalent student in average daily attendance in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a P-TECH school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, as amended by SB 2066, 87th Texas Legislature, Regular Session, 2021, which states that for each student in average daily attendance in kindergarten through third grade, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC §48.109, as added by HB 1525, 87th Texas Legislature, Regular Session, 2021, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in average daily attendance are eligible for funding under this section. If the state funds exceed amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the

total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; and TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.055(b)(35); 25.081; 25.0812; 25.087; 29.0822; 30A.153; 48.004; 48.005; 48.102; 48.103; 48.104; 48.105; 48.106; 48.108; 48.109; and 48.270.

<rule>

**§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.**

- (a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.
- (b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2020-2021 are described in the official Texas Education Agency (TEA) publication *2021-2022 Student Attendance Accounting Handbook*, dated October 2021, which is adopted by this reference as the agency's official rule. A copy of the *2021-2022 Student Attendance Accounting Handbook*, dated October 2021, is available on the TEA website with information related to financial compliance. The commissioner will amend the *2021-2022 Student Attendance Accounting Handbook*, dated October 2021, and this subsection adopting it by reference, as needed.
- (c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.