

The Texas Education Agency (TEA) proposes new §102.1021, concerning the rural pathway excellence partnership (R-PEP) program. The proposed new rule would implement House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, by establishing the R-PEP program.

**BACKGROUND INFORMATION AND JUSTIFICATION:** HB 2209, 88th Texas Legislature, Regular Session, 2023, established the R-PEP program and created an allotment and outcomes bonus under the Foundation School Program (FSP) to support the program.

Proposed new §102.1021 would implement HB 2209 by defining the requirements of the R-PEP program.

New subsection (a) would specify the applicability of the new section.

New subsection (b) would establish a school district's eligibility for R-PEP benefits.

New subsection (c) would define key words and concepts related to R-PEP.

New subsection (d) would outline the requirements of the performance agreement required to be approved by the school boards of each participating district and the proposed R-PEP coordinating entity in order to be designated by TEA as an R-PEP.

New subsection (e) would outline the application process the coordinating entity must follow in order to be designated by TEA. This process would include submitting a letter of intent; a description of the pathways offered by the partnership that align with high-wage, high-demand careers in the region; the approved performance agreement between districts and coordinating entity; letters of support from relevant organizations; and scoring criteria TEA will use to make designation decisions.

New subsection (f) would outline the performance standards for R-PEP renewal and revocation, including the timeline for TEA to make renewal and revocation decisions, the content of the renewal application package, and the criteria by which TEA will make renewal or revocation decisions.

New subsection (g) would outline the process by which TEA will award R-PEP planning and implementation grants as funds are available.

**FISCAL IMPACT:** Kelvey Oeser, deputy commissioner for educator support, has determined that for the first five-year period the proposal is in effect, there would be fiscal implications for state and local government. The estimated cost to the state was \$3,321,147 in fiscal year (FY) 2023 and is \$5 million each year for FYs 2024-2028. The R-PEP program will allocate funding to rural school districts in three ways through the FSP: an additional average daily attendance allocation, an R-PEP outcomes bonus, and an R-PEP planning and implementation grant. There is an annual cap of \$5 million on all FSP payments related to the R-PEP program.

The estimated cost to local government is \$950,000 each year for FYs 2025-2028. School districts choosing to participate in the R-PEP program may have costs associated with planning, implementing, and sustaining the R-PEP program outside of the life of grant funds. Small, rural school districts would receive additional FSP funding for their participation in college and career pathway partnerships.

TEA assumes that the cost to the FSP would include decreases in Recapture Payments - Attendance Credits of \$950,000 each fiscal year. The decrease in recapture is reflected as a savings because recapture is appropriated as a method of finance for the FSP in the General Appropriations Act.

**LOCAL EMPLOYMENT IMPACT:** The proposal would have an effect on local economy; therefore, TEA completed a local employment impact statement as required under Texas Government Code, §2001.022. The R-PEP program is designed to increase the readiness of students to attain a high-wage, high-demand career in their region. As of FY 2024, an estimated 322 students are participating in an R-PEP program. Assuming a 10% growth year over year, the number could reach 472 students in FY 2028. According to the U.S. Bureau of Labor Statistics, individuals under the age of 25 with some college or an associate degree, as an R-PEP would have, have an average unemployment rate of 3.8%. Using that as a baseline, assuming that 3.8% of R-PEP graduates will not attain

employment, the estimated numbers reflect the number of students that might attain local employment due to the R-PEP program for each year for FYs 2024-2028.

**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. Given the anticipated increase in students achieving credentials in high-wage, high-demand careers, the economic impact to rural communities is likely to be positive.

**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 a new regulation by establishing the R-PEP program created by HB 2209, 88th Texas Legislature, Regular Session, 2023.

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. Oeser 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 providing school districts with incentives to expand access to high-wage, high-demand college and career programming. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have data and reporting implications. TEA will collect the following new data from local education agencies: campuses participating in the R-PEP program through a new designation process; student attendance with a new instructional program type in the Texas Student Data System Public Education Information Management System (TSDS PEIMS); and the number of contact hours for participating students in R-PEP programs.

**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 April 12, 2024, and ends May 13, 2024. 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 April 12, 2024. 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 section is proposed under Texas Education Code (TEC), §29.912, as added by House Bill (HB) 2209, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish and administer the R-PEP program to incentivize and support multidistrict, cross-sector, rural college and career pathway partnerships that expand opportunities for underserved students to succeed in school and life while promoting economic development in rural areas; TEC, §29.912(k), which requires the commissioner to adopt rules as necessary to implement the program; and TEC, §48.118, as added by HB 2209, 88th Texas Legislature, Regular Session, 2023, which establishes an additional average daily attendance allotment, an outcomes bonus, and a grant program to support R-PEPs.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §29.912 and §48.118, as added by House Bill 2209, 88th Texas Legislature, Regular Session, 2023.

<rule>

**§102.1021. Rural Pathway Excellence Partnership Program.**

- (a) Applicability. This section applies only to an eligible school district that intends to establish a rural pathway excellence partnership (R-PEP) under Texas Education Code (TEC), §29.912.
- (b) Eligibility for R-PEP benefits. A school district is eligible for R-PEP program benefits if it has fewer than 1,600 students in average daily attendance and enters into a partnership with at least one other school district, irrespective of the number of students in average daily attendance in the other district, located within a distance of 100 miles.
- (c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) Coordinating entity--An entity that has the capacity to effectively coordinate a multi-district partnership that includes at least one district eligible for benefits under subsection (b) of this section, has entered into a performance agreement approved by the board of trustees of each partnering school district, is an eligible entity as defined by TEC, §12.101(a), and has a governing or advisory board that meets all membership requirements defined in TEC, §29.912.
  - (2) Institution of higher education--An institution of higher education has the meaning assigned by TEC, §61.003.
  - (3) Pathway--A program of study or endorsement described by TEC, §28.025(c-1), that:
    - (A) aligns with regional labor market projections for high-wage, high-demand careers with advancement opportunities; and
    - (B) incorporates:
      - (i) Texas Education Agency (TEA)-approved career and technical education programs of study, as defined in TEC, §48.106, and/or Texas College and Career Readiness School Models, including Pathways in Technology Early College High School (P-TECH) and Early College High School (ECHS);
      - (ii) college and career advising; and
      - (iii) a continuum of work-based learning experiences that allow students to reflect on and apply what they have learned.
  - (4) Performance agreement--A legally binding agreement between the board of trustees of each partnering school district and the coordinating entity that confers specific authority to the coordinating entity over the R-PEP pathways as defined in TEC, §29.912.
  - (5) School district--For the purposes of this section, a reference to a school district includes an open-enrollment charter school.
- (d) Performance agreement. To contract with the coordinating entity to operate under TEC, §29.912, the board of trustees of each partnering school district must approve a legally binding agreement with the coordinating entity. The R-PEP performance agreement must:
  - (1) confer to the coordinating entity the same authority with respect to pathways offered under the partnership provided to an entity that contracts to operate a district campus under TEC, §11.174. The coordinating entity must have:

- (A) authority to employ and manage the staff member responsible for the pathways at each partner campus, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;
- (B) authority over the employees in each pathway, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment;
- (C) initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the pathway. If the coordinating entity rescinds the assignment of any district employee or district contractor, the district must grant the request within 20 working days;
- (D) authority to and must directly manage the staff member responsible for the pathways at each partner campus, including having the sole responsibility for evaluating their performance;
- (E) initial, final, and sole authority over educational programs within each pathway for specific, identified student groups, such as gifted and talented students, emergent bilingual students, students at risk of dropping out of school, special education students, and other statutorily defined populations;
- (F) initial, final, and sole authority to set the school calendar and the daily schedule; and
- (G) authority to develop and exercise final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway;
- (2) include ambitious and measurable performance goals and progress measures tied to current college, career, and military readiness outcomes bonus standards and longitudinal postsecondary completion and employment-related outcomes;
- (3) allocate responsibilities for accessing and managing progress and outcome information and annually publishing that information on the Internet website of each partnering district and the coordinating entity;
- (4) authorize the coordinating entity to optimize the value of each college and career pathway offered through the partnership by:
  - (A) determining scheduling;
  - (B) adding or removing a pathway;
  - (C) selecting and assigning pathway-specific personnel;
  - (D) developing and exercising final approval of pathway budgets, which must include at least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118, for each student participating in a pathway; and
  - (E) determining any other matter critical to the efficacy of the pathways; and
- (5) provide that any eligible student enrolled in a partnering school district may participate in a college or career pathway offered through the partnership.
- (e) Applying for designation of an R-PEP.
  - (1) Applicant eligibility. A coordinating entity must submit a single application on behalf of each district and campus it requests to designate as eligible for R-PEP benefits.

- (2) Types of applications. A coordinating entity may submit an application to start a new R-PEP or an application to expand a previously designated R-PEP in good standing with all applicable R-PEP requirements.
- (3) Application contents. The following provisions apply to an R-PEP application submitted to the commissioner of education.
- (A) A coordinating entity must submit a letter of intent to prior to applying for an R-PEP or an expansion of an existing R-PEP, in accordance with the procedures determined by the commissioner.
- (B) The application package shall contain, but is not limited to, any of the following:
- (i) an application form;
  - (ii) a description of R-PEP pathways, including a list of pathways offered at each R-PEP district and evidence that the college and career pathways offered align with regional labor market projections for high-wage, high-demand careers;
  - (iii) a description of the R-PEP organizational structure, including a staffing plan that outlines roles and responsibilities related to operating and coordinating the R-PEP pathways and includes at least two full-time equivalent roles that:
    - (I) are under the control of the coordinating entity to the extent required to fulfill responsibilities related to R-PEP;
    - (II) may be distributed among more than two employees or contractors, including employees or contractors of the district with time allocated for duties managed by the coordinating entity; and
    - (III) will be engaged and begin fulfillment of their roles within 30 days of approval by the commissioner;
  - (iv) a proposed budget demonstrating the use of funds allocated to the coordinating entity from the partner districts and ensuring that the coordinating entity exercises final approval over least 80% of the state and local funding to which each partnering school district is entitled under TEC, §§48.106, 48.110, and 48.118;
  - (v) an approved performance agreement in alignment with subsection (d) of this section; and
  - (vi) letters of support from relevant organizations, including institutions of higher education, workforce development organizations, and school districts in the region.
- (C) TEA shall review application packages submitted under this section. If TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §29.912, TEA shall notify the applicant and allow 10 business days for the applicant to submit any missing or explanatory documents.
- (i) If, after giving the applicant the opportunity to provide supplementary documents, TEA determines that the eligibility approval request remains incomplete and/or the eligibility requirements of TEC, §29.912, have not been met, the eligibility approval request will be denied.
  - (ii) If the documents are not timely submitted, TEA shall remove the eligibility approval request without further processing. TEA shall establish procedures and schedules for returning eligibility approval requests without further processing.
  - (iii) Failure of TEA to identify any deficiency or notify an applicant thereof does not constitute a waiver of the requirement and does not bind the commissioner.
- (D) Upon written notice to TEA, an applicant may withdraw an application package.

(4) Application review.

- (A) Applicants with complete application packages satisfying the requirements in paragraph (3) of this subsection will be reviewed by a panel selected by the commissioner.
- (B) The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except TEA staff.
- (C) TEA may perform additional due diligence on R-PEP applicants, including, but not limited to:
  - (i) interviewing applicants, including individuals from the district, coordinating entity, and institutions of higher education, and requiring the submission of additional information and documentation prior to and after the interview;
  - (ii) interviewing other entities that have contracted with the proposed coordinating entity to assist TEA in determining the past success of a coordinating entity in meeting program-aligned goals; and
  - (iii) collecting additional data and information not submitted in the application that demonstrates the likelihood of success in meeting R-PEP program goals.
- (D) TEA will notify each applicant of its selection or non-selection for R-PEP designation no later than the 60th day after the date the commissioner receives all R-PEP application or expansion materials.
- (E) In order to qualify for ongoing benefits subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests deemed necessary by TEA staff to determine the ongoing eligibility of the R-PEP program.
- (F) To receive benefits under TEC, §48.118, the district must continuously meet the requirements in this subsection and subsection (d) of this section.

(f) Performance standards for R-PEP renewal.

- (1) No less than three years after an R-PEP designation is approved or renewed, each R-PEP coordinating entity must submit for TEA review a renewal package to determine continued eligibility for R-PEP allocations.
- (2) The renewal package may contain, but is not limited to, any of the following:
  - (A) a renewal form;
  - (B) assurance from the R-PEP coordinating entity and school board of trustees for each participating R-PEP district that the performance agreement continues to meet TEA criteria and is being implemented in accordance with TEC, §29.912, and this section;
  - (C) budgets for the R-PEP demonstrating alignment with TEC, §29.912, and this section; and
  - (D) outcomes measures as evidenced by progress reports and program data.
- (3) The commissioner may deny renewal of the authorization of a designated R-PEP program based on any or all of the following factors:
  - (A) noncompliance with application assurances and/or the provisions of this section;
  - (B) lack of program success as evidenced by progress reports and program data;
  - (C) failure to meet performance standards specified in the application and/or R-PEP performance contract; and
  - (D) failure to provide accurate, timely, and complete information as required by TEA to evaluate the effectiveness of the R-PEP program.

(g) R-PEP grants.

- (1) TEA will announce and execute an open application for R-PEP planning and implementation grants pursuant to TEC, §48.118, to assist school districts and coordinating entities in planning, development, establishment, or expansion of partnerships as funds are available.
- (2) TEA will make publicly available the R-PEP grant application, eligibility criteria, and scoring rubric. Priority will be given to coordinating entities that have entered into a performance agreement or, if in the planning stage, have entered into a memorandum of understanding to enter into a performance agreement, unless the source of funds does not permit a grant to the coordinating entity, in which case the grant shall be made to a participating school district acting as fiscal agent.
- (3) Submitted applications will be scored according to the published scoring rubric, and grants will be awarded by TEA to the applicants whose applications are scored highest under the rubric.