

The State Board of Education (SBOE) proposes amendments to §§89.1, 89.2, and 89.5 and new §89.4 concerning gifted/talented education. The proposed revisions would update rules to align with the requirements of House Bill (HB) 1525, 87th Texas Legislature, Regular Session, 2021, and codify current program practices.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Chapter 89, Subchapter A, provides rules for gifted and talented education. HB 1525, 87th Texas Legislature, Regular Session, 2021, provided for a gifted and talented student allotment and established criteria for using the funds. The proposed revisions to Chapter 89, Subchapter A, would implement HB 1525 and codify current program practices. Specifically, the following changes would be made.

Section 89.1 would be amended to add new paragraph (6) to establish that school district policies related to gifted and talented education may not limit the number of students who may be identified as gifted and talented. In addition, the section title would be modified to clarify that the section addresses the identification of gifted and talented students.

Section 89.2 would be amended to clarify terms regarding professional learning for staff and establish criteria for completion. The section title would also be updated to reflect the contents of the rule.

New §89.4 would align with HB 1525, 87th Texas Legislature, Regular Session, 2021, by establishing fiscal responsibilities for school districts regarding the use of gifted and talented services for identified students.

Section 89.5 would be amended to establish additional criteria for program accountability in new paragraphs (2) and (3). New paragraph (2) would require school districts to annually certify to the commissioner that the district's services for gifted and talented students have been established in accordance with the Texas State Plan for the Education of the Gifted/Talented (State Plan) and that the use of funds complies with new §89.4. New paragraph (3) would include the addition of a performance measure by the board of trustees in alignment with the State Plan.

The SBOE approved the proposed revisions for first reading and filing authorization at its April 12, 2024 meeting.

**FISCAL IMPACT:** Justin Porter, associate commissioner and chief program officer for special populations programs, reporting, and student support, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government 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:** Texas Education Agency (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 add a new regulation and expand existing regulations to align with the requirements of HB 1525, 87th Texas Legislature, 2021, and clarify current expectations, practices, and 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 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:** Mr. Porter 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 clarify requirements related to gifted and talented identification, professional learning, fiscal responsibility, and program accountability. 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 or 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 May 17, 2024, and ends at 5:00 p.m. on June 17, 2024. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in June 2024 in accordance with the SBOE board operating policies and procedures. 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 May 17, 2024.

**STATUTORY AUTHORITY.** The amendments and new section are proposed under Texas Education Code (TEC), §29.121, which establishes the definition of a gifted and talented student; TEC, §29.122, which establishes that each school district shall adopt a process for identifying and serving gifted and talented students; TEC, §29.123, which establishes that the State Board of Education shall develop and update a state plan for the education of gifted and talented students to guide school districts; §39.236, which establishes criteria for the commissioner to adopt standards to evaluate school district programs for gifted and talented students; and TEC, §48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, which establishes criteria for utilizing the gifted and talented student allotment funds.

**CROSS REFERENCE TO STATUTE.** The amendments and new section implement Texas Education Code, §§29.121; 29.122; 29.123; 39.236; and 48.109, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021.

<rule>

§89.1. Student Identification [Assessment] .

School districts shall develop written policies on student identification that are approved by the local board of trustees and disseminated to parents. The policies must:

- (1) include provisions for ongoing screening and selection of students who perform or show potential for performing at remarkably high levels of accomplishment in the areas defined in the Texas Education Code, §29.121;
- (2) include assessment measures collected from multiple sources according to each area defined in the Texas State Plan for the Education of Gifted/Talented Students;
- (3) include data and procedures designed to ensure that students from all populations in the district have access to assessment and, if identified, services for the gifted/talented program;
- (4) provide for final selection of students to be made by a committee of at least three local district educators who have received training in the nature and needs of gifted students; [and]
- (5) include provisions regarding furloughs, reassessment, exiting of students from program services, transfer students, and appeals of district decisions regarding program placement ; and [ ]
- (6) not limit the number of students the district may identify as gifted/talented or served under the district's program for gifted/talented students.

§89.2. Professional Learning [Development] .

School districts shall ensure that:

- (1) prior to assignment in the program or within one semester of assignment , teachers who provide instruction and services that are a part of the program for gifted/talented [gifted] students have a minimum of 30 hours of professional learning [staff development] that includes nature and needs of gifted/talented students, assessing student needs, and curriculum and instruction for gifted/talented [gifted] students;
- ~~[(2) teachers without training required in paragraph (1) of this section who provide instruction and services that are part of the gifted/talented program must complete the 30-hour training requirement within one semester;]~~
- (2) ~~[(2)]~~ teachers who provide instruction and services that are a part of the program for gifted/talented [gifted] students receive a minimum of six hours annually of professional learning [development] in gifted/talented [gifted] education; and
- (3) ~~[(4)]~~ administrators and counselors who have authority for program decisions have a minimum of six hours of professional learning [development] that includes nature and needs of gifted/talented students and program options with an update after legislative sessions .

§89.4. Fiscal Responsibility.

School districts shall adopt a policy regarding the use of funds to support the district's program for gifted and talented students, as required by Texas Education Code, §29.022(b). The policy must:

- (1) ensure that 100% of state funds allocated for gifted/talented education are spent on providing gifted/talented services or enhancing the district's gifted and talented program; and
- (2) establish a method to account for the expenditure of the gifted and talented allotment in alignment with the Texas Education Agency's financial compliance guidance.

§89.5. Program Accountability.

A school district [School districts] shall ensure that :

- (1) student assessment and services for gifted/talented students comply with accountability standards defined in the Texas State Plan for the Education of the Gifted/Talented (State Plan); [ ]
- (2) it annually certifies to the commissioner of education that the district's program for gifted/talented students is consistent with the State Plan and that the district's use of funds comply with §89.4 of this title (relating to Fiscal Responsibility); and
- (3) the board of trustees annually measures the performance of the district in providing gifted/talented services in alignment with the State Plan.