

The Texas Education Agency (TEA) proposes an amendment to §97.1071, concerning special program performance and monitoring, review, and supports. The proposed amendment would clarify current practice and align with federal guidance related to state supervision requirements.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1071 defines criteria for special program monitoring, review, and support that a school district or open-enrollment charter school must engage in with TEA.

New subsection (a) would define school districts to include open-enrollment charter schools.

Re-lettered subsection (b) would be amended to include 34 Code of Federal Regulations (CFR), §§300.600-300.609, as part of the compliance requirements that school districts are subject to for general supervision and monitoring. Re-lettered subsection (b)(2) would be amended to update a cross reference to include Texas Education Code (TEC), §39.003 and §39.004, as part of the activities for intensive or special investigative remote or on-site reviews.

New subsection (d) would be added to provide compliance requirements for program effectiveness to include emergent bilingual students in TEC, §29.062. This TEC citation would also be added to re-lettered subsection (j).

The proposed changes to re-lettered subsections (e), (f), and (j) would update a cross reference to 19 TAC §97.1001, where provisions for Results Driven Accountability are addressed.

Re-lettered subsection (h) would be amended to change the cyclical monitoring process from discretionary to mandatory as required by federal guidance.

Re-lettered subsection (k) would be amended to include reference to 19 TAC §89.1076, which describes the system of interventions and sanctions established to ensure program effectiveness and compliance with federal and state requirements for special education and related services. Paragraphs (1), (2), (4), (5), (6), (7), and (8) would be deleted as these guidelines are already established in §89.1076.

To comply with current federal requirements as to how a state will address what is termed an "area of concern," new subsection (l) would be added to establish a process that provides for the investigation and issuance of findings regarding alleged violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA. Proposed new subsection (l) would define "area of concern"; provide guidelines that apply to the process of investigating and issuing findings for alleged violations of IDEA, Part B; and describe the actions TEA may take when receiving, investigating, substantiating, and acting on a substantiated area of concern.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

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

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

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

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

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand

an existing regulation to align with federal regulations related to state supervision and clarify current program practices. This expansion is necessary as TEA is charged with supervision and monitoring of school district and open-enrollment charter school compliance with IDEA, Part B.

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 create a new regulation; 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 defining criteria for special program monitoring, review, and support that a school district must engage in with TEA. There is no anticipated economic cost to persons who are required to comply with the proposal.

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

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

PUBLIC COMMENTS: The public comment period on the proposal begins May 24, 2024, and ends June 24, 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/). Public hearings will be conducted to solicit testimony and input on the proposed amendment at 9:30 a.m. on May 30 and 31, 2024. The public may participate in either hearing virtually by linking to the hearing at <https://zoom.us/j/95891521987>. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.028, which establishes limitations on compliance monitoring; TEC, §28.006, which establishes requirements for reading diagnostic instruments; TEC, §29.062, which establishes compliance requirements for programs designed for emergent bilingual students; TEC, §38.003, which establishes criteria for screening and treatment for dyslexia and related disorders; TEC, §39.003, which establishes the authority for special investigations; TEC, §39.004, which establishes the conduct of special investigations; TEC, §39.056, which establishes criteria for monitoring reviews; 34 Code of Federal Regulations (CFR), §300.149, which lists the state's responsibility for general supervision of the Individuals with Disabilities Education Act (IDEA), Part B; and 34 CFR, §§300.600-300.609, which describe the requirements for state monitoring and enforcement of IDEA, Part B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.028, 28.006, 29.062, 38.003, 39.003, 39.004, and 39.056; and 34 Code of Federal Regulations, §§300.149 and 300.600-300.609.

<rule>

§97.1071. Special Program Performance; Monitoring, Review, and Supports.

(a) For purposes of this section, school districts include open-enrollment charter schools.

(b) ~~(a)~~ School districts ~~[and open enrollment charter schools]~~ are subject to general supervision and monitoring activities for compliance with state law and federal regulation, including 34 Code of Federal Regulations (CFR), §§300.600-300.609, and review of program implementation and effectiveness within certain special populations of students. Activities may include:

- (1) random, targeted, or cyclical reviews authorized under Texas Education Code (TEC), §39.056, conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or
 - (2) intensive or special investigative remote or on-site reviews authorized under TEC, §39.003 and §39.004 [~~§39.057~~] .
- (c) [~~(b)~~] Activities described in subsection (b) [~~(a)~~] of this section are applicable for compliance with requirements for reading diagnosis in TEC, §28.006, and dyslexia and related disorders in TEC, §38.003, and §74.28 of this title (relating to Students with Dyslexia and Related Disorders).
- (d) Activities described in subsection (b) of this section are applicable for compliance with requirements for program effectiveness for emergent bilingual students in TEC, §29.062.
- (e) [~~(e)~~] The commissioner of education shall assign school districts [~~including open enrollment charter schools,~~] an annual determination level based on performance levels of certain special populations student groups under §97.1001 of this title (relating to Accountability Rating System) [~~§97.1005 of this title (relating to Results Driven Accountability)~~] according to the following general criteria:
- (1) the degree to which the district's performance reflects a need for targeted or intensive supports, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);
 - (2) a comparison of the district's performance relative to aggregated state performance and state performance standards;
 - (3) a statistical distribution of districts exhibiting a comparable need for targeted support; and
 - (4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.
- (f) [~~(d)~~] In addition to performance levels determined under §97.1001 [~~§97.1005~~] of this title, the commissioner may consider any other applicable information, such as:
- (1) complaints investigation results;
 - (2) special education due process hearing decisions;
 - (3) data validation activities;
 - (4) integrity of assessment or financial data;
 - (5) longitudinal intervention history; and
 - (6) other federally required elements.
- (g) [~~(e)~~] The standards used to assign districts to specific determination levels under this section are established annually by the commissioner and communicated to all school districts. Determination level categories for assignment include:
- (1) meets requirements;
 - (2) needs assistance;
 - (3) needs intervention; and
 - (4) needs substantial intervention.
- (h) [~~(f)~~] In addition to determination levels described in subsections [~~(e) and~~] (e) and (g) of this section, the commissioner shall [~~may~~] develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, a district may be required to implement and/or participate in:

- (1) focused self-analysis of district data and program effectiveness;
- (2) focused remote and/or on-site review;
- (3) required stakeholder engagement;
- (4) focused compliance reviews;
- (5) strategic support and continuous improvement planning; and/or
- (6) corrective action plan development.

(i) ~~(g)~~ The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in subsection ~~(h)(1)-(6)~~ ~~(f)(1)-(6)~~ of this section.

(j) ~~(h)~~ Actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1001 ~~§97.1005~~ of this title, statutory requirements in TEC, § 28.006 ~~29.062~~, and ~~§~~ 38.003, and §74.28 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

(k) ~~(i)~~ Actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by ~~the~~ TEA, such as those described in §89.1076 of this title (relating to Interventions and Sanctions) and []

~~[(1) required fiscal audit of specific program(s) and/or of the district, paid for by the district;]~~

~~[(2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;]~~

~~[(3)]~~ expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan, and submission of district/program data ~~. []~~

~~[(4) public release of monitoring review findings;]~~

~~[(5) denial of requests under TEC, §7.056 and/or §12.114;]~~

~~[(6) reduction, suspension, redirection, or withholding of program funds;]~~

~~[(7) lowering of the special education determination level of the district; and/or]~~

~~[(8) lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating;]~~

~~(l)~~ In exercising its general supervision authority under 34 CFR, §300.149 and §300.600, TEA has established a process that provides for the investigation and issuance of findings regarding alleged violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA, that arise from an area of concern. The following guidelines shall apply to this process.

~~(1)~~ "Area of concern" means that TEA has been made aware of an allegation regarding a violation of, or noncompliance with, a requirement of IDEA, Part B, or a state special education law or administrative rule.

~~(2)~~ Information and awareness of an area of concern may arise directly from TEA or from external sources.

~~(3)~~ TEA will engage in a process to determine if an area of concern is determined to be credible, and, if determined credible, TEA will initiate an investigation to determine if findings of noncompliance will be issued.

~~(4)~~ A media report or social media post alleging special education noncompliance, as well as an anonymous report of alleged noncompliance, will not be treated as an area of concern unless TEA identifies or receives information and facts that a specific violation of state or federal law or rule has occurred if the allegation were to be confirmed true.

- (5) When an individual reports an allegation of special education noncompliance, TEA may direct the individual to the established dispute resolution processes. Depending on the frequency or specificity of the type of allegation made, TEA may engage in the activities described in paragraph (3) of this subsection.
- (6) The process and investigation described in paragraph (3) of this subsection may include one or more of the following actions:
- (A) contacting the district that is the subject of the allegation to gather more information, which may include staff, parent, or student interviews, and requesting a response to an allegation;
 - (B) reviewing existing citations of noncompliance or any noncompliance identified within the last two school years on the same or similar alleged violation;
 - (C) reviewing filed state complaints that are in process of being investigated or that have been substantiated within the last two school years on the same or similar alleged violation;
 - (D) reviewing due process hearing decisions issued within the last two years in which the hearing officer's final written decision contains a finding of noncompliance on the same or similar alleged violation;
 - (E) contacting groups that represent or advocate for families and communities served by the district;
 - (F) reviewing and analyzing available student- or district-level data that relate to the alleged violation;
 - (G) reviewing and analyzing fiscal and program information, such as grant applications, contracts, self-assessments, and other special education documents submitted to TEA by the district; and
 - (H) any other activity or measure within TEA's general supervision and monitoring authority.
- (7) TEA may apply any intervention or sanction within its authority if noncompliance or a violation is substantiated, including those described in subsection (h) of this section and §89.1076 of this title.