

**ATTACHMENT II**  
**Text of Adopted Amendment to 19 TAC**

**Chapter 129. Student Attendance**

**Subchapter AA. Commissioner's Rules**

**§129.1027. Optional Flexible School Day Program.**

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students ~~[in Grades 9-12]~~, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.
  - (2) Instructional contact hours--For the purposes of this section, instructional contact hours are the hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.
  - (3) Optional Flexible School Day Program (OFSDP)-- An OFSDP is a program authorized ~~[Authorized]~~ under the Texas Education Code (TEC), §29.0822, that is [a program] approved by the commissioner ~~[of education]~~ to provide flexible hours and days of attendance for eligible students ~~[in Grades 9-12]~~, as defined in subsection (b) of this section.
  - (4) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.
  - (5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.
  - ~~[(6) School year For funding purposes, a school year cannot exceed 1,080 instructional hours in a 12-month consecutive period as adopted by the school district board of trustees.]~~
- (b) Student eligibility. A student is eligible to participate in an OFSDP if:
- (1) the student ~~[is enrolled in Grade 9, 10, 11, or 12 and at least one of the following conditions is satisfied]~~ :
    - (A) ~~[the student]~~ is at risk of dropping out of school, as defined by the TEC, §29.081;
    - (B) ~~[the student]~~ is attending a campus implementing an innovative redesign, as described by §97.1051(7)(B) of this title (relating to Definitions) [defined by the TEC, §39.132] ; ~~[or]~~
    - (C) ~~[the student]~~ is attending an approved early college high school program, as defined by the TEC, §29.908; or [and]
    - (D) as a result of attendance requirements under the TEC, §25.092, will be denied credit for one or more classes in which the student has been enrolled; and
  - (2) either:
    - (A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or
    - (B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.
- (c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

- (1) The Texas Education Agency (TEA) shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the TEA for approval.
  - (2) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP.
  - (3) A school district must submit an application in accordance with instructions provided by the TEA.
  - (4) As part of the application process, a school district shall include the following information:  
~~[implementation plan description, staff plans, schedules, and student attendance accounting security procedures and documentation.]~~
    - (A) implementation plan description;
    - (B) staff plans;
    - (C) schedules; and
    - (D) student attendance accounting security procedures and documentation.
  - (5) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the TEA division responsible for financial audits. The annual audit must be determined by the TEA to be in compliance with applicable audit standards.
  - (6) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.
  - (7) The TEA may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or interventions or sanctions under the TEC, Chapter 39.
  - (8) The TEA may grant or reject an entire application or grant or reject any campus submitted on an application.
  - (9) The TEA will notify each applicant of its approval or nonapproval to operate an OFSDP.
  - (10) The school district must receive notice of approval to continue or begin participation in the program.
- (d) Attendance. A school district must report student OFSDP attendance in a manner provided by the TEA in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.
- (e) Funding under the TEC, Chapters 41, 42, and 46. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding. For funding purposes, attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in average daily attendance with perfect attendance.
- (f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.
- (g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the TEA and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

- (1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.
  - (2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.
  - (3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.
  - (4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.
- (h) School district annual performance review.
- (1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.
    - (A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.
    - (B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.
  - (2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the TEA.
  - (3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.
- (i) Evaluation of programs.
- (1) The TEA shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.
  - (2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.
- (j) Revocation of or denial to renew authorization to operate an OFSDP.
- (1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:
    - (A) noncompliance with application assurances and/or the provisions of this section;
    - (B) failure to keep timely and accurate audit and attendance accounting records;
    - (C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;
    - (D) lack of program success as evidenced by progress reports or program data; or
    - (E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the OFSDP.
  - (2) A revocation or nonrenewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or nonrenewal is issued unless another date is determined by the commissioner.

- (3) An OFSDP is entitled to a ten-day notice of the proposed revocation or nonrenewal and an informal review by the commissioner's designee.
- (4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.
- (5) The OFSDP is a state program subject to a special accreditation investigation ~~[that may be monitored by an on-site visit]~~ under the TEC, Chapter 39 ~~[§39.075]~~ . Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose interventions and sanctions on a school district under the TEC, Chapter 39 ~~[§39.131]~~ , for failure to comply with the OFSDP requirements of this section.