

Commissioner's Rule Review

Chapter 102, Subchapter FF, Educator Award Programs

Chap.	Ext.	Issue	Desired Change	Rationale	Focus Group Comments	TEC	Agency Response
102	1073	Small schools do not really benefit	Small schools benefited more from the TEG grant. DATE spreads it out too much to be worth the effort involved	Change back to TEG formula could increase the money for small schools	No additional comments	21.651 21.702	Requires new statute. The statute referencing TEEG was eliminated during the 81st legislature. At this point, the agency has no authority to change back to TEEG program or formula.
102	1071	Yes. Rewarding select teachers negatively affects morale and does not improve student achievement.	"No Change"	No Comment	No additional comments	21.651	No change requested.
102		Accept changes as outlined	Accept changes as outlined	Accept changes as outlined	No additional comments		Unable to locate outlined changes.
102	1073	District Awards for Teacher Excellence (b)(10) As worded, the rule excludes administrators who hold the "old" certificates including mid-management, etc.	(b)(10) Principal-the lead administrator at a campus who holds an appropriate administrator certificate, as specified in TAC Chapter 231.	(b)(10) The lead administrator of the campus (principal) can hold a variety of certificates in accordance with assignment rules.	No additional comments	21.702	Agreed, program manager will clarify rule to who holds an appropriate administrator certificate, as specified in TAC Chapter 231 and 241.

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102	1073	<p>Various subsections of this rule need to be revised/deleted, including:</p> <p>Subsection (b)(1), because it expands the definition of the term "award" beyond just monetary without apparent authority from the legislature.</p> <p>Subsection (h)(3) because the terms "valued at" are based on an expansion of the term "award" beyond just monetary.</p> <p>Subsection (b)(7), because limiting the definition of "meaningful, objective measures" to solely "quantifiable measures" does not comport with the statute and legislative intent, additionally, "are measured and reported in the same way for every campus/school district and in the same way from year to year" can be deleted for the same reason. CONTINUED</p>	<p>Subsection (b)(1): delete.</p> <p>Subsection (h)(3): delete the words "valued at". At the very least, the rule should be changed to include language stating that the awards "must be objectively verified as being" valued at no less than \$1000 per educator.</p> <p>Subsection (b)(7) should be changed to state: "Meaningful, objective performance measures --- qualitative measures such as evaluations of student projects, exhibits or portfolios and/or quantifiable measures such as assessments, student attendance, enrollment in advanced classes, and graduation rates." □</p> <p>Subsection (e)(2)(C): delete the words "quantifiable and". □</p> <p>Subsections (b)(7) and (e)(2)(C): At the very least, the words "and qualitative" should be added in each of these subsections. CONTINUED</p>	<p>Subsection (b)(1): In the Agency FAQ document regarding the original DATE rules, there are a series of questions and answers showing that the Agency clearly interpreted the legislative intent for "award" to be monetary (see below): http://ritter.tea.state.tx.us/ed_init/eeg/datex/Master_DATE_FAQ.pdf</p> <p>A-5 Can D.A.T.E. funds be used to provide all professional educators in a district with a pay raise? No, a district must make difficult decisions when designing their D.A.T.E. plans. A district must align their D.A.T.E. goals with district goals to justify the practice of awarding certain educators. While there is a strong egalitarian mindset in education, and all educators in Texas schools work hard, a performance award system is meant to reward those educators who are most CONTINUED</p>	<p>Definition of awards. Clarification needed as to what the award will be. Should be received through inputs from teachers. Programmatic Change.</p> <p>Eliminate campus to campus</p> <p>Subsection (h) (3) - Local decisions regarding award.... Confirm this ability with legal.</p>	21.702	<p>1) The statute does not limit awards to monetary value only. The purpose of rule is to allow for more options for districts and local discretion.</p> <p>2) Agree. The agency will provide guidance and clarity for districts on meaning of "valued at."</p> <p>3) The language in rules does not exclude the use of qualitative measures and DATE Guidance has even referred to portfolios as an example of units of measurement.</p> <p>4) The language in rules does not exclude the use of qualitative measures.</p> <p>5) Agreed, no change required both statute and rules indicate that districts should utilize a district-level committee established under TEC, Chapter 11, Subchapter F as indicated in comment.</p> <p>6) In order to mirror statute and lessen the burden on districts e(3) was eliminated. CONTINUED</p>

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<p>CONTINUED FROM ISSUE</p> <p>Subsection (e)(2)(C) because it also uses the term “quantifiable” and for the reasons stated above, should be deleted.</p> <p>Subsection (e)(2)(A), because it doesn’t require that the district committee developing the DATE plan must be the district-level planning and decision-making committee established under the TEC, Chapter 11, Subchapter F.</p> <p>Former Subsection (e)(3): should be reinstated because it required that the local school board must approve the local awards plan and any changes to it, as well as the grant application prior to submission to TEA, and this requirement brought a necessary level of accountability into the local awards plan process, as well as gave local campus educators a forum for redress of grievances under the local awards plan.</p> <p>Subsection (e)(4), because the enabling statute does not require that a school board's decision regarding the local awards plan cannot be appealed to the commissioner.</p> <p>Subsection (f)(5): because it does not specify significant “teacher” involvement.</p> <p>Subsection (h)(3), because the commissioner does not have statutory authority to adopt rules to limit his jurisdiction under Texas Education Code section 7.057 to hear appeals regarding local decisions about award amounts. [END]</p>							
<p>CONTINUED FROM DESIRED CHANGE</p> <p>Subsection (e)(2)(A) should be changed to read "be developed by the district-level planning and decision-making committee established under the TEC, Chapter 11, Subchapter F."</p> <p>In the alternative, subsection (e)(2)(A) should be changed to at least state: "be developed by a district-level committee for a school district that intends to participate in the program, such as the district-level planning and decision-making committee established under the TEC, Chapter 11, Subchapter F. Two-thirds of the members must be classroom teachers."</p> <p>Reinstate former subsection (e)(3)</p> <p>Deleted Subsection (e)(4)</p> <p>Subsection (f)(5): former rule language requiring significant "teacher" involvement should be reinstated as follows, "(5) A school district must maintain attendance records, meeting minutes, or other similar evidence of significant teacher involvement from participating campuses."</p> <p>Subsection (h)(3): the sentence "Local decisions regarding award amounts are final and may not be appealed to the commissioner" should be deleted. [END]</p>							

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CONTINUED FROM RATIONALE [1]							
effective in producing learning gains in their students. It is not feasible that D.A.T.E funds be used to provide pay raises to all teachers in the district.							
<p>B-9 Can districts choose to award funds to teachers who are new to the school or teachers who are retiring? Yes, as long as the teachers meet the definition of a classroom teacher and are able to meet the performance criteria, they may be awarded under Part I. Teachers who retire at the end of the 2007-08 school year are allowed to receive awards; those who retired before the 2007-08 school year began are not allowed to be included. Teachers who retire mid-year are allowed to receive awards.</p>							
Please note that decisions to include or not include teachers are made at the discretion of the eligible district.							
B-19 Are individual awards required to be at least \$3,000? Can we provide awards in other amounts?							
Research shows that in order for award amounts to be meaningful, it is highly suggested that award amounts be at least \$3,000 per teacher. Teachers listed in Part I must have the opportunity to receive a minimum award of \$1,000 as approved by the local school board. Part II funds have no minimum award amounts.							
B-25 When should districts and campuses plan to distribute funds to teachers and other district personnel?							
Districts should expect to pay out awards under Part I between May 15, 2009 and October 15, 2009.							
C-16 How does the district need to modify its policies or contracts for teachers and other employees who receive awards?							
District employment contracts or local compensation policies must specify that qualifying employees may receive award payments to the extent authorized under the district award plan. Please consult your legal counsel with respect to this issue.							
Clearly, the Agency's use of the terms "funds", "award amounts", "pay out" and "payments" in these questions/answers shows that it interpreted legislative intent for the word "award" to be monetary. Additionally, interestingly, Question C-23 of the same FAQ speaks to the very issue of whether DATE funds can be used for things like equipment and technology, with the Agency answering that they cannot be used for these purposes (see below):							
C-23 Can districts use Part II funds to purchase equipment or technology hardware for classroom use?							
No, equipment and technology hardware are unallowable uses of funds. A list of allowable and unallowable uses of funds is provided in Section L., Part II of the RFA. District however, may purchase software for computer use and other such hardware.							
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CONTINUED FROM RATIONALE [2]							
<p>Yet, now the Agency is attempting to allow not only Part II funds to be used for equipment and other non-monetary uses, but Part I funds as well. Deleting this subsection will take care of these issues.</p>							
<p>Subsections (b)(1) and (h)(3): Aside from legislative intent, one of our main reasons for our concern about this expansion of the definition of the term “award” beyond monetary awards is that monetary awards are easily quantifiably valued. Additionally, whereas whether something is of value is often in the eye of the beholder, money is universally regarded as valuable, partly because it is the key way to acquire other tangible items of value. Indeed, an award recipient can always use a monetary award to purchase the other kinds of tangible rewards mentioned in the proposed rule if he/she thinks doing so would be of value, but the difference is that whether he/she chooses to use it in that way is his/her choice. We fear that this language takes that choice away from the awardee, and instead, could force upon an awardee something that may or may not be valuable.</p>							
<p>Furthermore, as mentioned above, monetary awards are easily quantifiably valued. However, the non-monetary tangible awards listed in the proposed rule are not so easily quantifiably valued. Accordingly, it will be harder to assess whether an award recipient is truly receiving something valued at no less than \$1000 per educator. Deleting and/or revising subsections (b)(1) and (h)(3) will address these issues.</p>							
<p>Subsection (b)(7) and Subsection (e)(2)(C):The applicable statute for the District Awards for Teacher Excellence (DATE) program, Texas Education Code (TEC), section 21.705, states that districts must use at least 60 percent of grant funds to directly award classroom teachers who effectively improve student achievement as determined by “meaningful, objective measures.” In contrast, the (former) statute for the Texas Educator Excellence Grant (TEEG) program, TEC Section 21.656(b)(1)(A), stated that awards could only be given to classroom teachers who demonstrate success in improving student achievement using “objective, quantifiable measures, such as local benchmarking systems, portfolio assessments, end-of-course assessments, and value-added assessments.” Thus, while both of these statutes were adopted at the same time, the DATE statute uses the term “meaningful” while the former TEEG statute used the term “quantifiable.”</p>							
<p>Because the term “quantifiable” has a very specific meaning, that being, “expressible as a quantity or relating to or susceptible of measurement”, it is clear that the legislature used it very purposefully in the former TEEG statute, and by the same token, very purposefully chose not to use it in the DATE statute. Additionally, for all practical purposes, the term “quantifiable”, as demonstrated by the former TEEG statute, limits the eligible measures to mostly tests, or assessments. By choosing not to use the term “quantifiable” in the DATE statute, the legislature clearly intended to allow the use of measures other than tests, such as evaluation of projects, exhibits, or portfolios.</p>							
<p>Additionally, changing the language in this way to reflect legislative intent negates the need for the language in the rule which states that the measures “are measured and reported in the same way for every campus/school district and in the same way from year to year”, since that language would only be applicable to quantitative measures.</p>							
<p>Subsection (e)(2)(A): Since these statutorily created committees are the recognized entities for employee input into school/district matters, the proposed rule should require that it is only the statutorily-created district-level planning and decision-making committee that is charged with developing the incentive plans.</p>							
<p>Additionally, since the law requires that professional staff representatives on these statutorily-created committees must be elected by the professional staff in the district and that at least two-thirds of the elected professional staff representatives on the committee must be classroom teachers, charging the statutorily-created committees under TEC Chapter 11 with developing the incentive plans lends legitimacy to the process and furthers the statute’s stated intent for the significant involvement of teachers in developing the plan. Changing the language in the way we recommended will address these issues. [CONTINUED]</p>							

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<p>CONTINUED FROM RATIONALE [3]</p> <p>Regarding the alternative language we suggested, since current law regarding the district-level planning and decision-making committee requires that 2/3 of the elected professional staff representatives on the committee must be classroom teachers, and the current rule refers to the district-level planning and decision-making committee, the rule language should comport with the 2/3 classroom teacher requirement and changing it in the way we recommended will accomplish this.</p> <p>Former Subsection (e)(3): reinstating this provision bring a necessary level of accountability into the local awards plan process, as well as gives local campus educators a forum for redress of grievances under the local awards plan.</p> <p>Subsection (e)(4): Deleting this subsection will address the fact that the enabling statute does not require that a school board's decision regarding the local awards plan cannot be appealed to the commissioner.</p> <p>Subsection (f)(5): This subsection speaks to the forms of evidence of significant involvement from participating campuses that a district must maintain. It appears to correlate to the statutory requirement that local awards plans must be submitted with evidence of significant teacher involvement (TEC Section 21.704(c)). However, we note that former rule language using the words "campus teacher" and "teacher" were struck in recent rule revisions when referencing these forms of evidence. We object to these words being struck, as the statute is specific in using the word "teacher" involvement. Without the words "teacher", the proposed provision deviates from the specific requirements of the statute and allows for forms of evidence that may show evidence of campus involvement but not evidence of the more specific teacher involvement.</p> <p>Subsection (h)(3): Deleting the sentence "Local decisions regarding award amounts are final and may not be appealed to the commissioner." will address the problem of the commissioner exceeding statutory authority in limiting his jurisdiction under Texas Education Code section 7.057 to hear appeals of local decisions regarding award amounts. [END]</p>							
<p>CONTINUED FROM AGENCY RECOMMENDATION</p> <p>7) The agency will consult with legal department in regard to deleting e(4).</p> <p>8) Agreed, change will be made from "participating campuses" to teachers."</p> <p>9) The agency will consult with legal department in regard to deleting h(3). [END]</p>							

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102		The school librarian is an integral part of instruction on the campus. S/he is a teacher first and a librarian second. Please clarify that they are included in educator award programs.	Where you say "classroom teacher, principal, ..." please add librarian: "classroom teacher, librarian, principal..."		No additional comments	21.702	Classroom teacher is defined in TEC Section 5.001 (2) and it does not explicitly list librarians, inclusion of librarians requires statutory change. However, librarians may be awarded under Part II funds to be compliant with statute.
102	1073 (7)	Wording all but requires districts to purchase nationally standardized commercial assessments.	Allow district generated, evaluated, and justified assessments to be used as measures for the grant.	Allows more flexibility for financially strapped districts.	No additional comments	21.704	Agree. The rule will be reviewed and delete the statement "in the same way for every campus/school district and in the same way from year to year."
102	1071	This grant is no longer available. The rule is obsolete, so therefore the rule should be deleted.	Delete the entire rule.	Funding for this grant is no longer available. The rule is no longer applicable.	No additional comments	21.651	Agree. Staff will follow up with agency coordination to eliminate rules referencing TEEG which was eliminated from statute.