Chapter 129. Student Attendance

Subchapter AA. Commissioner's Rules

§129.1021. Optional Method of Calculating Average Daily Attendance in Districts with Significant Migrant Population.

Beginning in the 1991-1992 school year and each year thereafter, districts in which the total district enrollment contains 5.0% or more students who have certificates of eligibility in the migrant students record transfer system (MSRTS) shall have the district's annual average daily attendance (ADA) calculated by using the best four of the six-weeks periods. In no case shall the annual ADA calculated by using the best four of the six-weeks periods exceed the sum of the number of students who have certificates of eligibility plus the ADA calculated by using all six six-weeks periods.

Statutory Authority: The provisions of this §129.1021 issued under the Texas Education Code, §42.005(c).

Source: The provisions of this §129.1021 adopted to be effective February 12, 1992, 17 TexReg 857.

§129.1023. Student Attendance Accounting Standards.

(a) The student attendance accounting standards established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and Texas Education Code (TEC), §42.004, shall be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs. These student attendance accounting standards shall be annually published in official Texas Education Agency (TEA) publications. These publications shall be widely disseminated and cover the following procedures:

(1) description of the Foundation School Program (FSP) eligibility requirements of all students;

(2) prescription of the minimum standards for all attendance accounting systems, whether manual or automated;

(3) listing of the documentation requirements for attendance audit purposes;

(4) specifications of the minimum standards for systems that are entirely functional without the use of paper; and

(5) details of the responsibilities of all district personnel involved in student attendance accounting.

(b) FSP allotments may be revised as a result of investigative activities by the TEA division responsible for school financial audits, as authorized under TEC, §§42.255, 44.008, and 44.010.

Statutory Authority: The provisions of this §129.1023 issued under the Texas Education Code, §42.004.

Source: The provisions of this §129.1023 adopted to be effective May 10, 2001, 26 TexReg 3393; amended to be effective October 23, 2008, 33 TexReg 8643.

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

(a) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2011-2012 are described in the official Texas Education Agency (TEA) publication *2011-2012 Student Attendance Accounting Handbook Version 2*, which is adopted by this reference as the agency's official rule. A copy of the *2011-2012 Student Attendance Accounting Handbook Version 2* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner of education will amend the *2011-2012 Student Attendance Accounting Handbook Version 2* and this subsection adopting it by reference, as needed.

(b) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Statutory Authority: The provisions of this §129.1025 issued under the Texas Education Code, §30A.153 and §42.004.

Source: The provisions of this §129.1025 adopted to be effective May 10, 2001, 26 TexReg 3393; amended to be effective December 2, 2001, 26 TexReg 9627; amended to be effective January 5, 2003, 27 TexReg 12213; amended to be effective November 16, 2003, 28 TexReg 9834; amended to be effective December 6, 2005, 30 TexReg 8088; amended to be effective December 24, 2006, 31 TexReg 10096; amended to be effective April 27, 2008, 33 TexReg 3263; amended to be effective March 5, 2009, 34 TexReg 1586; amended to be effective March 3, 2010, 35 TexReg 1733; amended to be effective December 28, 2010, 35 TexReg 11631; amended to be effective March 20, 2012, 37 TexReg 1901.

§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, 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 under the Texas Education Code (TEC), §29.0822, that is approved by the commissioner to provide flexible hours and days of attendance for eligible students, 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.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student:

(A) is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) is attending a campus implementing an innovative redesign, as described by §97.1051(7)(B) of this title (relating to Definitions);

(C) is attending an approved early college high school program, as defined by the TEC, §29.908; or

(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:

(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 under the TEC, Chapter 39. 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, for failure to comply with the OFSDP requirements of this section.

Statutory Authority: The provisions of this §129.1027 issued under the Texas Education Code, §29.0822.

Source: The provisions of this §129.1027 adopted to be effective July 4, 2007, 32 TexReg 3988; amended to be effective October 23, 2008, 33 TexReg 8643; amended to be effective December 20, 2009, 34 TexReg 8966.

§129.1029. Optional Flexible Year Program.

(a) General provisions. In accordance with the Texas Education Code (TEC), §29.0821, a school district may modify its instructional calendar to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an Optional Flexible Year Program (OFYP) may reduce the number of instructional days for certain students.

(b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.

(1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under the TEC, §39.023.

(2) The student is not eligible for promotion to the next grade level.

(c) Program criteria.

(1) A school district may reduce the number of instructional days during the regular school year for students who are not eligible for participation in this program to no fewer than 170 days.

(2) A school district must provide at least 180 days of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.

(3) In accordance with subsection (d) of this section, a school district may request waivers for no more than five days of staff development or teacher preparation in order to provide additional days of instruction.

(4) A school district that provides transportation services must continue to provide these services during the OFYP.

(5) A school district that participates in the National School Lunch Program or the National School Breakfast Program must continue to provide these services during the OFYP.

(6) A school district may require educational support personnel to provide service as necessary for an OFYP.

(7) Each educator employed under a ten-month contract must provide the minimum days of service required under the TEC, §21.401, notwithstanding the reduction in the number of instructional days or in the number of staff development days.

(d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.

(1) A school district must submit a letter to the Texas Education Agency division responsible for state funding describing the proposed modifications to the instructional calendar, including a description

of the OFYP that will be provided under the TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district is requesting a waiver of staff development days or teacher preparation days, the letter must also indicate that the request to waive staff development days or teacher preparation days has been approved by the campus site-based decision-making committee.

(2) Approval to modify the number of instructional days is limited to one year. Extensions may be approved by submitting subsequent applications.

(3) No approval will be granted that reduces the number of instructional days to fewer than 170 days.

(4) The commissioner may require a school district to provide an evaluation that demonstrates the success of its approach as a condition of approval.

(e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the reduced number of days (no fewer than 170). For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the scheduled number of days (180 or more) in which instruction took place.

Statutory Authority: The provisions of this §129.1029 issued under the Texas Education Code, §29.0821.

Source: The provisions of this §129.1029 adopted to be effective November 20, 2008, 33 TexReg 9233.