



Public Comments on Proposed New Commissioner's Rules in 19 TAC Chapter 150 May 26, 2020

The Association of Texas Professional Educators (ATPE) respectfully submits the following comments on Proposed New 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, §150.1012, Local Optional Teacher Designation System.

Definitions

In defining “classroom teacher” under **subsection (a)(1)(C)** of this proposed rule, the agency has mirrored the statutory language in Texas Education Code (TEC) §5.001. However, the term “educator” that is embedded in this rule’s definition of classroom teacher is also an important term of art defined in TEC §5.001 that should be reflected in the rule. Also, we feel that where the agency wishes to mirror the language of a definition that is found in statute, it is a best practice to refer to that section of the TEC in the language of the rule. This decreases the likelihood that definitions in rule and statute will diverge over time. **ATPE therefore recommends amending section (a)(1)(C) of the rule** to read as follows:

- (C) Classroom teacher--An educator, ~~as defined by TEC, §5.001,~~ who is employed by a school district and who, not less than an average of four hours each day, teaches in an academic instructional setting or a career and technical instructional setting. This term does not include an educational aide or a full-time administrator.

Fees

ATPE is concerned about the fee that would be assessed under **subsection (a)(2)(A)** of the proposed rule. We believe \$500 per designated teacher is a significant amount of money to require districts to spend up front, especially when it is not clear how the agency will spend these funds. Furthermore, this fee requirement could create either a barrier to entry into the program or, at the very least, a perverse incentive for districts to artificially lower the number of teachers they designate based on financial constraints as opposed to academic reasons. Imposing such a high fee seems particularly unnecessary when, pursuant to TEC §48.112(g), a district is entitled to “receive an increased allotment under this section in the amount necessary for reimbursement for any fees paid under TEC §21.3521.” **ATPE recommends that the agency utilize either a fee structure based on district size, but not based on the number of teachers a district submits for designation, or a nominal amount per designated teacher.**

Teacher Eligibility

Subsection (b)(1)(B) of the proposed rule deals with teacher eligibility for the designation. Throughout the proposed rule language, the agency appropriately refers to designee eligibility using a definition of classroom teacher that is based on hours of teaching over a certain number of days. However, there are instances in which a teacher is designated within the PEIMS system as the teacher of record for a certain class but does not actually teach the class, and these situations beg for clarification in the rule.

As an example, some charters and districts will assign a teacher who is uncertified, or not fully certified, to instruct a class while assigning a certified educator as the teacher of record for that class within PEIMS. The certified educator assigned as the teacher of record but not instructing the class may or may not have other teaching duties commensurate with the eligibility requirements to receive a designation under a local optional designation system. To ensure statewide validity and reliability of the program, teacher data, including attribution of class role and student performance data to the proper teacher, must be accurate and uniform throughout the designation process. **ATPE seeks clarity on the assignment of class role and performance data to teachers of record who are not personally providing the bulk of instruction to students assigned to them in the PEIMS system.**

Duration of a Subsequent Designation

Subsection (b)(1)(C) of the proposed rule relates to a district's ability to assign a higher designation to a previously designated teacher. ATPE appreciates the clarification that an educator can receive a designation higher than the initial designation received. However, **we request clarification in the rule as to whether an increase in designation status applies only during the remainder of the five-year period of the initial designation or if the higher designation status remains in effect for an additional five years from the time the newer, higher designation is given.**

Resubmission of a District's Application

Subsection (c)(1)(B) of the proposed rule pertains to resubmission of an application and states, "TEA may permit the applicant to resubmit" an application under certain circumstances. ATPE believes the use of the permissive "may" in this subsection is not justified and that a more certain, mandatory standard should be applied here with regard to the administrative issue of accepting a corrected application within a defined period of time. Insofar as there is no automatic approval, the agency can simply deny a resubmitted application if it remains deficient. Thus, no additional discretion is warranted or needed.

ATPE recommends the following language for this subsection:

(B) If TEA determines that an application does not meet the standards established under TEC, §21.3521, and this section, TEA [may] shall permit the applicant to resubmit

the application within three months of the original submission. If no resubmission is timely made, the application will be denied.

Provisional Approval

ATPE believes the concept of provisional approval under **subsections (c)(1)(C) and (D)** of the proposed rule lacks statutory authority. TEC §21.3521 does not provide a basis for provisional approval of a local optional teacher designation system. Either the local designation system meets the standards imposed by statute and agency rule or it does not. Therefore, **ATPE requests that subsections (c)(1)(C) and (D) be deleted from the proposed rule.**

Teacher Observation Rubrics

ATPE also requests clarification in Subsection (c)(2)(A)(i)(II) of the proposed rule dealing with teacher observation rubrics included in a district's application. This subsection identifies particular rubrics that may be used, but it also includes language referring to "another rubric that is based on observable, job-related behaviors, including teacher implementation of discipline management and the performance of teachers' students." Based on this language, it is unclear whether the agency intends to review and then approve or reject the locally developed observation rubrics included in an application. If the agency intends to review locally developed observation rubrics, then the rule should provide additional detail on the review and approval process for such rubrics. For example, if the agency intends to continue the use of rubric-review materials already posted on the TEA website for this purpose, these standards also should be documented in the rule, perhaps as a figure, and subjected to the public comment process.

Confidentiality of Teacher Evaluations

ATPE believes some of the proposed rule language in §150.1012 is overly broad and exceeds the agency's statutory authority. The language at issue is found in proposed **subsection (c)(2)(C)** regarding data collection through a school district's application and **subsection (e)(3)** regarding monitoring and program evaluation through an annual data submission by districts. TEC §21.3521(h) requires the agency to collect the information necessary to implement that section. However, the same subsection of the statute also specifies that "information otherwise confidential remains confidential."

ATPE was among the multiple stakeholders who asked the legislature to add confidentiality protections to subsection (h), and the statutory language was intentionally crafted to allow TEA to obtain the information "necessary" to implement the local optional designation system while maintaining the existing confidentiality of individual teacher evaluations. TEC §21.3521(h) does not give the agency authority to breach the existing confidentiality requirement. The agency can make a case that access to aggregate evaluation data, and perhaps even certain data pertaining to individual evaluations, is needed to verify that districts are properly granting teacher designations. However, the statute does not authorize the unmasking or linking of individual teachers' identities to any evaluation data collected by the agency under these rules, and such identification is not necessary to the process of ensuring validity and reliability.

This balance of providing data without compromising identity is akin to the longstanding practice of handling confidential student information and gives meaning to words the legislature chose to use when crafting TEC §21.3521. To comply with the authorizing statute, **the proposed rule should specify that any information in a teacher’s evaluation or observation that could reveal the identity of that teacher must be redacted prior to sending the evaluation or observation data to the agency.**

Survey Response Plans

Subsection (e)(2) of the proposed rule calls for a district’s annual data submission to TEA to include its response plan to annual surveys about the district’s local designation system. ATPE greatly appreciates the inclusion of this information, but we believe the development of a response plan that is never executed is of limited value. **ATPE suggests soliciting information about the implementation of such response plans.** Beginning in year two of a district’s annual data submissions, the district should include a report on the implementation of the prior year’s response plan in addition to sharing its response plan for the current year.

Effects of Voiding a Local Optional Designation System

Subsection (f)(2)(E) gives the commissioner discretion to void an existing local optional teacher designation system. ATPE notes that one of the most disruptive and disheartening aspects of past incentive pay plans for educators has been the near uniform history of their discontinuation, effectively resulting in a pay cut for many educators who had previously received the incentive pay. To avoid instability in educator pay programs wherever possible, the agency should spell out with certainty its grounds for terminating an established local program. The discretionary authority in subsection (f)(2)(E) does not provide this certainty, and for this reason, **ATPE suggests removing (f)(2)(E) from the proposed rule.**

Voiding Teacher Designations

Subsection (f)(3) of the proposed rule deals with voidability of teacher designations. ATPE believes one of the defining characteristics of the optional teacher designations created by way of House Bill 3 is the durability and portability of those designations. Subsection (f)(3) of the proposed rule goes beyond the limited statutory authority for terminating a teacher’s designation, thereby compromising its durability and portability.

Through TEC §21.3521, the legislature provided one explicit justification for termination of a five-year designation and one that is implicit. First, the law explicitly states in TEC §21.3521(f), “A teacher designation issued under this section is void in the determination that the designation was issued improperly.” This subsection refers to a district’s improperly issuing a designation to one of its educators using an approved designation system. If a district’s approved designation system is subsequently voided for noncompliance issues, the educators who previously received a designation under that system, including some who may no longer work for that district, should not be penalized for the district’s later noncompliance. In TEC §21.3521(c), the legislature also specified that “a classroom teacher that holds a National Board Certification

issued by the National Board for Professional Teaching Standards may be designated as recognized.” Accordingly, the only two reasons to terminate a classroom teacher’s designation are because the district improperly issued the designation in the first place or because the teacher’s National Board Certification has been terminated.

As a practical matter, the final determination on revocation, cancellation, or surrender of an educator’s teaching certificate, as referenced in subsection (f)(3)(D) of the proposed rule, negates a teacher’s ability to qualify for funding associated with a designation. Thus, such an action effectively voids a teacher’s designation, along with the two statutory grounds for voiding a designation that are outlined above. However, ATPE believes the reference to suspension of a certificate leads to an interpretation of the rule that is less clear. A teacher’s certificate may be suspended, or a teacher may accept a suspension in lieu of adjudication, for a period that is shorter than the time remaining on their designation. Assuming the suspension does not involve a finding that the teacher’s designation was improperly issued, such a suspension does not provide a statutory, or de facto, justification for voiding the teacher’s designation.

ATPE recommends amending subsection (f)(3) as follows:

(3) Approval of individual teacher designations are voidable by TEA for one or more of the following reasons:

- (A) a determination within 12 months of receiving a designation that a teacher [has] had not fulfilled all designation requirements at the time the designation was given;
- (B) [the school district at which the designation was earned has had its local optional designation system voided;]
- ~~[(C)]~~ the National Board for Professional Teaching Standards revokes a National Board certification that provided the sole basis for a teacher's designation; or
- ~~[(D)(C)]~~ a final determination on the [suspension,] revocation, cancellation, or surrender of a certificate issued by the State Board for Educator Certification to a designated teacher [:-or]
- ~~[(E)]~~ at the discretion of the commissioner.

Student Growth

The proposed rule contains multiple references to a “**student growth**” component. Although the authorizing statute provides an indirect requirement to utilize student performance, there is no statutory basis for this rule to limit student performance to “student growth” alone.

TEC §21.3521 makes two indirect references to student performance. The first is in subsection (a) where the statute calls for districts to use “appraisals that comply with Section 21.351 or 21.352” in making teacher designations. The second reference is in subsection (b)(2) of the statute, which prohibits the commissioner from “require[ing] a district to use an assessment instrument adopted under Section 39.023 to evaluate teacher performance.” TEC §§21.351 and 21.352 require both the commissioner’s recommended teacher appraisal system and locally developed teacher appraisal systems to include “the performance of teachers’ students” as criteria. While ATPE concurs that student growth is a useful measure of student performance, absolute student performance is also a well-recognized measure of academic achievement under Texas law. TEC §21.3521 does not specify the exclusive use of student

growth under an optional designation system, but it does refer to evaluations that can use both growth and absolute performance of teachers' students. For this reason, a district application that proposes to designate teachers based on student growth, absolute performance, or a combination of the two should be approved, assuming it meets other required criteria. **ATPE requests that all references to student "growth" be replaced with student "performance" in the proposed rule, and we also ask the agency to consider defining student performance in subsection (a) so as to clarify that student performance can include student growth, absolute performance, or a combination of the two.**

High-Needs Campuses

Lastly, House Bill 3 included in these statutes repeated references to the prioritization of high-needs campuses within local optional designation systems. **ATPE observes that the proposed rule contains absolutely no reference to the requirement or ability of local designation systems to prioritize high-needs campuses.** In order to satisfy the intent of House Bill 3, the agency should consider adding rule language that encourages districts to heed this important aspect of the law, which seeks to increase equity by attracting and retaining highly effective teachers at the campuses that need them the most.

ATPE appreciates the agency's consideration of our feedback. For additional information, contact ATPE Governmental Relations at government@atpe.org or (512) 467-0071.