



# Comments on Proposed Amendments to 19 TAC Chapter §150.1012

February 16, 2021

The Association of Texas Professional Educators (ATPE) respectfully submits the following comments on proposed amendments to 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, §150.1012, Local Optional Teacher Designation System. The rule implements requirements for school districts and charter schools to implement local teacher designation systems to qualify for Teacher Incentive Allotment (TIA) funds authorized by House Bill 3 (2019).

## **Correlation of Teacher Observation and Student Growth**

The proposed rule amendments in subsection (c)(2)(A)(i) update the criteria that must be included in the teacher observation component of a school district's application for approval of its teacher designation system.

The change to (c)(2)(A)(i)(I) would require the teacher observation component to include a "correlation between teacher observation and student growth data." **ATPE maintains that the proposed rule should not limit districts by requiring a correlation between teacher observation and student growth, as this correlation may not be the best indicator of effective teaching.**

The authorizing statute TEC §21.3521 makes two indirect references to student performance but does not reference student growth. One of these is found in subsection (a), in which the statute calls for districts to use "appraisals that comply with Section 21.351 or 21.352" in making teacher designations. Those sections require both the commissioner's recommended teacher appraisal system and the districts' locally developed teacher appraisal systems to include "the performance of teachers' students" as criteria. Therefore, although the authorizing statute indirectly requires the use of student performance, there is no statutory basis to limit student performance to "student growth" alone.

Districts should not be limited to rubrics that correlate teacher observation and student growth. District applications that propose to use rubrics incorporating student growth, absolute performance, or a combination of the two should still be valid, especially during a time of uncertain student performance. Student growth may not be evident when it has been depressed by learning losses stemming from the unprecedented COVID-19 pandemic.

Furthermore, a mere correlation between teacher observation and student growth is not always indicative of effective teaching. As many educators will attest, teaching students is often overwhelmingly about supporting their social and emotional needs. Meeting these basic student needs is foundational to relationship-building and setting the stage for learning. Accordingly, it

takes time and skill in many non-academic aspects of teaching simply to get students to a place where academic learning can take place, particularly in high-need schools. Societal, economic, and personal factors outside of a teacher's control also consistently impact student academic performance. For this reason, a highly skilled teacher in a high-need school may build lasting, positive relationships but see very little "academic" growth in their students and thus demonstrate a weak correlation of skill to growth. Conversely, a lesser skilled teacher who "checks all of the boxes" in an advantaged school may see tremendous growth and thus demonstrate a strong correlation of skill to growth.

House Bill 3 deliberately and repeatedly prioritized high-need campuses in its design of the TIA program. **To accommodate the circumstances of teachers and students in those high-need schools, ATPE recommends that the rule maintain flexibility in allowing districts to develop and use rubrics to determine teacher designations, rather than limiting districts' approved rubrics only to those that correlate teacher observation and student growth.**

### **TEA Administrative Discretion**

TEA has inserted several instances of increased administrative discretion within the proposed rule amendments. **ATPE requests transparency and specificity on how this will impact the district application process.**

In subsections (c)(2)(C) and (e)(1)(C), the agency gives itself unlimited administrative discretion "in circumstances where data is difficult to provide and a district would otherwise be unable to provide sufficient data for application consideration." While this change was no doubt proposed with the effects of the pandemic in mind, the proposed language is subject to varying interpretations and is not suitably time-limited. The rule change 1) does not contemplate any process for ensuring such discretionary decisions made by TEA are transparent to the public and to school districts; 2) does not explain whether a lack of data constitutes an incomplete application under subsection (c)(1)(A); and 3) offers no process by which a district could provide sufficient data once the difficulty has been resolved.

### **Effects of Voiding a Local Optional Designation System and Teacher Designations**

ATPE believes that one of the most disruptive and disheartening aspects of past incentive pay plans for Texas 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. Educators, including our members, are naturally wary of processes by which a teacher designation may be revoked.

**Proposed subsection (f)(2)(E)** provides a new option for TEA to void a local optional designation system if the district fails "to remove district employees from the designation determination process who have a conflict of interest and acted in bad faith to influence designations."

The law in TEC §21.3521(f) explicitly states, "A teacher designation issued under this section is void in the determination that the designation was issued improperly." This subsection refers to the improper issuance of a designation using an approved designation system and addresses

any concerns regarding individual educators. If a district's approved designation system is subsequently voided for non-compliance 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 non-compliance. If a district has its local optional designation system voided under the proposed amendment in subsection (f)(2)(E) of the rule, then the designation of any teacher currently or even formerly employed by the district will be put in jeopardy under subsection (f)(3)(B), which states that individual teacher designations are voidable if a school district local optional designation system is voided.

**Proposed subsection (f)(3)(E)** provides that approval of individual teacher designations can be voided by TEA if "the district issued a designation in bad faith by not removing a district employee from the designation determination process who had a conflict of interest." The proposed addition to the rule is vague and does not specify whether the agency would void *only* its approval of a designation that was issued specifically to the district employee who had a conflict of interest. As currently written, the amendment does not forestall the possibility of voiding designations issued to multiple teachers in a district that is found to have acted in "bad faith" with respect to a single employee's conflict of interest. The rule should not unfairly penalize other educators in the district who did not have a conflict of interest.

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