



**Public Comments on the  
Proposed 2021-2022 Student  
Attendance Accounting Handbook  
November 22, 2021**

The Association of Texas Professional Educators (ATPE) respectfully submits the following comments on the proposed 2021-2022 Student Attendance Accounting Handbook.

**2.3.5 – Additional Required Documentation**

This section lists additional documents required in the event of an audit. Changes to this section include the additions of items 20 and 21 to the list of required documents.

20. board-approved local policy that defines the instruction methods (i.e., synchronous, asynchronous, or a combination of both) (This local policy should include the official attendance times for synchronous instruction. Additionally, if the board policy indicates approval for asynchronous method, the LEA must create an asynchronous instructional plan.)

21. documentation of a student's instructional schedule, whether synchronous or asynchronous, that includes the minimum amount of instructional time to meet the two-through-four rule

The requirements expressed in these items are specifically related to a district's use of remote virtual instruction outside of the Texas Virtual School Network (TxVSN). Districts choosing not to offer this program of instruction should not be required to create or maintain the documentation referenced in items 20 or 21.

**3.2.1.4 – Code 3 Eligible Transfer Student Full Day**

Proposed changes to this section delete language specifying that:

Charter schools are only approved to serve students in the geographic boundary authorized in the charter school's charter agreement, unless the student is a child of an employee of the school and regardless of whether the child resides in the geographic boundary served by the school. Reporting a General Attendance Requirements [2020–

2021]2021-2022 Student Attendance Accounting Handbook student with ADA eligibility code 3 would demonstrate that the charter school is serving students outside of its approved geographic boundary and may constitute a material violation of the charter. A charter school should not use ADA eligibility code 3.

While we recognize that Texas Education Code (TEC) 48.0071(c) in accordance with Senate Bill 15 as passed by the 87<sup>th</sup> Legislature in the second special session changes the prohibition on eligible charters' accepting students outside of their geographic boundaries for purposes of enrolling them in a Local Remote Learning Program, the proposed change to this section would impact transfer eligibility for all charter schools regardless of setting. As such, this language is dramatically overbroad and contrary to the statutory framework the Legislature has established regarding charter school boundaries and enrollment.

Language regarding changes to charter school enrollment, including any exemption or exceptions to otherwise general practice as related to the requirements established by Senate Bill 15, should be limited to section 12 of this handbook.

Additional supporting information on this item can be found in the comments submitted by Patti Everitt on behalf of a group of education organizations including ATPE.

### 3.6.3 – Requirements for a Student to Be Considered Present for FSP (Funding)

#### Purposes

Typically, a student must be present at the official attendance-taking time to be counted present for funding purposes. However, there are numerous exceptions that allow a student not actually on campus at the time attendance is taken to be considered in attendance for FSP purposes—for example, participation in a supervised 4H activity or the observance of a religious holy day.

Another current exemption is temporary absence because of a documented appointment for the student or the student's child with a health care professional licensed, certified, or registered to practice in the United States. The 21-22 handbook proposes to add the following additional medical exemption:

is absent as the result of a serious or life-threatening illness or related treatment that makes the student's attendance infeasible. Documentation from a health care professional licensed, certified, or registered to practice in Texas must be provided that specifies the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

While ATPE certainly appreciates this addition, we feel it does not go far enough. Each year students with the flu, strep, or a cold come to class. In addition to symptoms

impairing their own ability to learn, they are potentially spreading these diseases to their peers and teachers, exponentially increasing illness-related learning loss. The prevention of communicable disease at the schoolhouse, which may include but is certainly not limited to COVID-19, should not be disincentivized by our attendance funding rules. Accordingly, ATPE recommends replacing the language above with the following:

is absent as the result of a communicable or life-threatening illness or related treatment. Documentation from a health care professional licensed, certified, or registered to practice in Texas must be provided that specifies the student's illness and the anticipated period of the student's absence relating to the illness or related treatment.

#### 4.7.2.1 – Homebound Notes

New language added to this section encourages “[s]upplementing in-person homebound instruction with virtual instruction.” ATPE sees the benefits of using available technology to supplement in-person instruction. In light of such encouragement, however, we do think that in the current environment, and in these rules in particular, it is important to clearly indicate what compensatory, or non-supplemental, instruction, which—shy of a waiver under 12.3.3 or 4—must be delivered in-person to homebound students, entails. We therefore request that TEA add language to this section that provides additional clarity on what instruction is compensatory, and must be delivered in person, versus what would be considered supplemental and could thus be offered virtually.

#### 12.3.1 and 12.3.2 – Remote Conferencing

Sections 12.3.1 and 12.3.2 include rules for Remote Conferencing for regular education and special education students. Importantly, these programs are separate from Local Remote Learning Programs as established by Senate Bill 15 during the 87<sup>th</sup> Legislature, second special session, and addressed in 12.6 of the proposed handbook.

One of the proposed changes to 12.3, 12.3.1 and 12.3.2 establishes that remote instruction “cannot be concurrent, which means remote students must not be taught by a teacher who is also teaching in-person students at the same time.” In considering this restriction, it is important to note that remote conferencing is, by definition, quite limited in terms of eligibility and time. Specifically, the program is limited to those students “unable to attend school because of a temporary medical condition,” and instruction cannot generally “exceed more than 20 instructional days over the entirety of the school year.”

Due to these requirements, students who receive instruction through remote conferencing will be coming from an in-person educational setting, may enter the virtual setting at different points throughout the school year, and in fairly short order will return to the in-person setting from which they came. This is substantially different from a Local Remote Learning Program, where students are more likely to enter at the beginning of the year or at a designated interval and are more likely to remain in the program for an extended period of time.

Because of the anticipated extended exposure, up to and including a full academic year, of students to a Local Remote Learning Program, the Legislature wisely included statutory protections limiting the practice of teachers concurrently educating students in Local Remote Learning Programs and in-person classroom settings. Although this is an important protection for both students and educators, in the case of extended forms of virtual education, such as Local Remote Learning Programs, it is likely unnecessary and overburdensome for the much more limited and transient form of virtual instruction represented by remote conferencing.

#### 12.6.2.4 – Exception to Limit on Total Remote Participation ADA: LEAs eligible under the TEC, §48.0071(c)

This exemption appropriately parrots the statutory language found in TEC 48.0071(c) as established by Senate Bill 15. However, that section of statute expires September 1, 2023. Accordingly, ATPE recommends providing notice of this expiration to relevant parties by specifying in the rule that this section applies only to the 2021-2022 and 2022-2023 school years and expires after that point.

ATPE appreciates the opportunity to provide feedback during this process and invites the Commissioner and Texas Education Agency staff to contact ATPE Governmental Relations at (800) 777-2873 or [government@atpe.org](mailto:government@atpe.org) for any additional information.