

Comments to the Texas Education Agency on Proposed Changes to the 2021-2022 Student Attendance Accounting Handbook

November 22, 2021

On October 22, 2021, the Texas Education Agency (TEA) proposed an amendment to §129.1025, concerning student attendance accounting. The proposed amendment would adopt by reference the 2021-2022 Student Attendance Accounting Handbook (SAAH). The handbook provides student attendance accounting rules for school districts and charter schools.

Twenty organizations listed below endorse the following comments on the proposed amendment to §129.1025. These organizations oppose the change in the SAAH that deletes section *3.2.1.4 Code 3 Eligible Transfer Student Full Day* related to the enrollment of charter students outside the approved geographic boundary, absent additional information from TEA that addresses the questions included in these comments.

We ask TEA for a response to the questions that will clarify issues about how this proposed change to the SAAH will increase TEA's capacity to monitor and enforce its own rules and state law; ensure charter school compliance with these rules and thereby avoid the misuse of state funds; ensure that charter schools comply with the commitments made in their application and their charter as approved by the elected State Board of Education; and provide transparency to the public.

TEA proposes to delete the sectionⁱ in the new SAAH that requires charter schools to report whether they have enrolled an ineligible student who resides outside the charter's approved geographic boundary (i.e., by deleting the use of attendance Code 3 to identify an ineligible student). This change also deletes language in the SAAH which clearly states that enrolling ineligible students "may constitute a material violation of the charter." Geographic boundaries are approved by TEA and the State Board of Education (SBOE) as part of the charter approval process. Currently, charter schools may only enroll students in the approved geographic boundary with the exception of children of charter employees.

A review of this change in the SAAH raises questions and concerns that deleting this section would have broad implications for charter school policy. The change eliminates TEA's clearly stated prohibition against enrolling students outside the approved geographic boundary and deletes the code that TEA currently uses to identify whether a charter school enrolls an ineligible student.

The geographic boundary is a critical part of a charter's application and approval [TEC 12.111(a)(13)]. It is central to defining the mission of the charter, the actual need for a new charter in that specific geographic area, and which students who will be served by the charter.

Importantly, the change to the SAAH eliminates the code that charters use to report the enrollment of an ineligible student outside the approved geographic boundary without providing another coding requirement. In effect, it appears that TEA is removing the primary tool it currently uses to identify violations of the approved geographic boundary and raises questions about how TEA will monitor and enforce its own rule.

This change could compromise the authority of the SBOE in the charter application approval process which is based in part on which students will be served as defined by an approved geographic boundary. It appears to open up the potential for a charter applicant to misrepresent the students to be served and face limited or no consequences. As a result, students that the SBOE intended to be served could be crowded out by easier-to-educate “transfers”.

In addition, this change would not conform to current TEA rules in TAC 100.1041 (d)(1) which withhold state funds from a charter that expands its geographic boundary without an approved amendment to the charter. The absence of a mechanism to enforce the approved geographic boundary also appears contrary to state law that requires charter schools to have a geographic boundary [TEC 12.111(a)(13)], if TEA makes this requirement effectively unenforceable.

In its response to concerns about the change in the SAAH, TEA states that that the agency is not changing the geographic boundary requirement, but is instead using the change in the SAAH to shift from financial enforcement for violations of the requirement to administrative enforcement through a “corrective action” plan and/or other governance interventions. This shift in enforcement apparently would not routinely include recovering funds for ineligible students who have already been served. Yet, the Commissioner explained to the SBOE on November 17, 2021 that TEA has used “corrective action” plans since 2008 to enforce its rules on the enrollment of ineligible students, raising the question of why a change to the rule is necessary.

Major questions and concerns exist about how TEA can actually monitor and enforce its rule on geographic boundaries given this policy change, how it will play out in real practice, and whether the proposed change to the SAAH will be sufficient incentive to prevent violations of the rule.

We ask TEA to respond to the following questions that will clarify the concerns about the change in TEA rules:

1. Will TEA end its long-standing practice of recovering state funds from charter schools that have violated TEA rules and state law by enrolling ineligible students? If not, what criteria will be used to determine whether to recover funds?

2. Why does the amendment to the rule single out one type of ineligible student for special consideration? Texas does not fund other ineligible students, including: students from outside of Texas, students who don't meet PreK eligibility requirements, overage students, or those that already have a high school diploma. Why would this one type of "student already served" be singled out for different treatment?
3. How specifically will TEA staff identify whether a charter school has violated its charter by enrolling ineligible students outside the approved geographic boundary if this rule is adopted and the code is deleted from the Handbook? Has TEA proposed a new code in the SAAH that would replace the deleted code?
4. Given limited TEA staff capacity, how will TEA effectively monitor compliance with the geographic boundary requirement absent the reporting code? TEA is already unable to effectively monitor the commitments that charter schools make in their application or charter to ensure they are meeting the promises they made. How can TEA staff now assume additional responsibility to monitor another major requirement of the law?
5. How does this change increase TEA's ability to enforce its rule on geographic boundaries?
6. What new problem does this amendment to the rule solve? What has changed in the enforcement process that requires a change in the rules?
7. How many enforcement actions have been taken in the last five years to address enrollment of ineligible students, including enrollment outside the approved geographic boundary? What is the total amount of state funds recovered annually over the last five years?
8. Will TEA propose a change to TAC 100.1041 (d)(1) which clearly states that a charter school is not eligible for state funds without an amendment to expand its geographic boundary? If yes, why didn't TEA post this proposed change to the rules at the same time it posted the change to the SAAH?
9. Is TEA effectively nullifying state law that requires charter schools to have a geographic boundary by undermining the agency's ability to identify and thereby enforce this requirement [TEC 12.111(a)(13)]?
10. Is the use of an administrative enforcement/corrective action, without the routine use of financial enforcement, i.e., the recovery of state funds, a strong enough incentive to ensure compliance with TEA's rule and state law on geographic boundaries?
11. How will TEA define administrative enforcement/corrective action plan? The ambiguity of "administrative enforcement" appears to show there is no longer a consistent agency policy. For example, would students "already served" be allowed to remain through graduation as part of a "corrective action" plan? Could a charter improve its academic

performance by selectively serving ineligible students and then escape any real consequences by being “successful”?

12. Will the administrative enforcement be determined at the sole discretion of the Commissioner?
13. Will charter schools be disadvantaged by the subjectivity of the proposed rule? Could “administrative enforcement” include revocation or replacement of a board? Placing this much discretion with the commissioner leaves everyone without the ability to anticipate the agency’s action.
14. The Legislature has determined that charters serve a specific geographic area [TEC 12.111(a)(13)]. Why is TEA effectively reversing the Legislature’s policymaking role for public education by deleting the geographic boundary section in the SAAH?

The following 20 organizations endorse the comments on the proposed changes to the Student Attendance Accounting Handbook submitted to TEA on 11/22/21:

Association of Texas Professional Educators (ATPE)
Coalition for Education Funding (CEF)
Every Texan
Fast Growth School Coalition
Go Public
Intercultural Development Research Association (IDRA)
Pastors for Texas Children
Raise Your Hand Texas (RYHT)
Texas American Federation of Teachers (Texas AFT)
Texas Association of Community Schools (TACS)
Texas Association of Latino Administrators and Superintendents (TALAS)
Texas Association of Midsize Schools (TAMS)
Texas Association of Rural Schools (TARS)
Texas Association of School Administrators (TASA)
Texas Association of School Boards (TASB)
Texas Classroom Teachers Association (TCTA)
Texas Elementary Principals and Supervisors Association (TEPSA)
Texas School Alliance (TSA)
Texas State Teachers Association (TSTA)
Texas Urban Council (TUC)

ⁱ Deleted section on Page 4 of the change document for the Student Attendance Accounting Handbook.

[Link](https://tea.texas.gov/sites/default/files/saah2122-changedoc.pdf) to the change document: <https://tea.texas.gov/sites/default/files/saah2122-changedoc.pdf>

See Section 3.2.1.4 (Code 3) as follows:

3.2.1.4 Code 3 Eligible Transfer Student Full Day

~~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 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.~~