

The State Board of Education (SBOE) adopts new §61.101, concerning special purpose school districts. The new section is adopted without changes to the proposed text as published in the July 31, 2020 issue of the *Texas Register* (45 TexReg 5287) and will not be republished. The new section identifies provisions of the Texas Education Code (TEC) that are applicable and provisions that are not applicable to the special purpose school districts operated by Texas Tech University (TTU) and The University of Texas at Austin (UT Austin).

REASONED JUSTIFICATION: The SBOE approved the TTU Independent Study by Correspondence High School Program in September 1993. The SBOE approved the UT High School program in November 1998. For both special purpose districts, the SBOE established the following conditions: no state funds shall be used to support the program; transcripts awarded to students enrolled in the program shall be consistent with the academic achievement record required by the Texas Administrative Code (TAC); courses offered shall be consistent with courses required by the TAC; requirements for a high school diploma shall be consistent with the state graduation requirements and with exit-level assessment requirements in the TAC; state required testing will be implemented in accordance with existing rules and schedules; and other SBOE rules for curriculum shall be applicable as appropriate.

The 86th Texas Legislature, 2019, passed House Bill 3, which entitled a special-purpose school district operated by TTU or UT Austin to funding under TEC, Chapter 48. If TTU or UT Austin receives state funding for a school year, the special-purpose district may not charge tuition or fees to students enrolled in the district who are residents of Texas for that school year, other than fees authorized under the TEC.

The new section specifies duties or limitations to be imposed on the special-purpose school districts if they opt to receive state funding.

The SBOE approved the proposed new section for first reading and filing authorization at its July 2, 2020 meeting and for second reading and final adoption at its September 2, 2020 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new section for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2021-2022 school year. The earlier effective date will allow the special purpose districts to begin planning for implementation before the beginning of the 2021-2022 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began July 31, 2020, and ended August 31, 2020. The SBOE also provided an opportunity for registered oral and written comments at its September 2020 meeting in accordance with the SBOE board operating policies and procedures. No comments were received.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code, §11.351, which permits the State Board of Education to establish a special-purpose school district for the education of students in special situations whose educational needs are not adequately met by regular school districts. The board is also permitted to impose duties or limitations on the school district as necessary for the special purpose of the district.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §11.351.

<rule>

§61.101. Applicability of State Law for Special Purpose School Districts.

- (a) This section applies only to the special purpose school districts operated by the University of Texas at Austin and Texas Tech University.
- (b) The special purpose school districts operated by the University of Texas at Austin and Texas Tech University are public schools of this state fulfilling the mission of the Texas public education system to ensure that Texas students receive a quality education that enables them to achieve their potential and fully participate now and in the future in the social, economic, and educational opportunities of our state and nation.

- (c) Each special purpose school district shall be governed by the board of regents of the parent university, which has the authority and responsibilities of a school district board of trustees with respect to the operation of the special purpose school district but has no authority to levy a tax. The board of regents may delegate authority and responsibilities.
- (d) Each special purpose school district shall have an advisory board consisting of at least five members that, along with the superintendent, reports to the board of regents regarding the operation of the district. The president of the university may designate a person to report on the management, operations, and accountability of the special purpose school district to the board of regents. The following requirements apply to each special purpose school district.
 - (1) The advisory board shall hold public meetings that comply with appropriate notice requirements for governmental bodies.
 - (2) The president of the university shall appoint the superintendent of the special purpose school district.
 - (3) The university shall submit nominees for approval by the State Board of Education (SBOE) to serve as special purpose school district advisory board members. The superintendent may not participate in the nomination process for the advisory board.
 - (4) The superintendent and advisory board shall ensure information required to be made available to the public is made available on the special purpose school district's website.
 - (5) The university shall develop an advisory board training program that provides the relevant board training required under Texas Education Code (TEC), §11.159, and shall submit to the SBOE the training requirements by September 1 of each odd-numbered year.
- (e) Students who are eligible to enroll in a Texas independent or common school district are eligible to enroll in a special purpose school district, and each special purpose school district:
 - (1) shall establish an initial enrollment window for each academic semester that uses a lottery to fill open spots not filled by previously enrolled students. After the initial enrollment window closes, enrollment may be based on a first come first served basis;
 - (2) shall develop an outreach program targeted at underserved student populations;
 - (3) may admit students at least 21 years of age and under 26 years of age for the purpose of completing the requirements for a high school diploma in accordance with TEC, §25.001. For purposes of TEC, §25.001(b-2), the term "classroom setting" does not include a virtual classroom that has no physical proximity; and
 - (4) is neither required nor prohibited from providing a student with home computer equipment or internet access.
- (f) Except as provided elsewhere in this section, each special purpose school district operates as a public school of Texas, and the laws applicable to Texas public schools, per TEC, §11.352(c), apply, including:
 - (1) providing for equal education opportunity, in accordance with the TEC and constitutions of Texas and the United States;
 - (2) charging fees, holding funding in trust for the education of students, and spending funding to achieve the educational purposes listed in this section;
 - (3) complying with student records retention, transmission, and other related requirements;
 - (4) having access to other school resources such as regional education service centers under TEC, Chapter 8 and §11.003; commissioner of education waiver authority under TEC, §7.056; school immunity under TEC, Chapter 22, Subchapter B; and relevant grant programs;
 - (5) certification requirements under TEC, §§21.003, 21.055, and 21.057, and continuing education requirements under TEC, §21.054, with employment practices to include provisions substantially similar to TEC, §21.0031 and §21.058;

- (6) complying with the health, safety, and welfare provisions such as reporting of misconduct under TEC, §§21.006, 21.0061, 21.009, 21.057, 21.058, 21.0581, and 21.062, and background checks under TEC, Chapter 22, Subchapters C and C-1;
 - (7) parental and student rights such as those provided for in TEC, Chapter 26.
 - (A) The special purpose school district shall establish a grievance process for complaints.
 - (B) If the special purpose school district determines that releasing a copy of an assessment would jeopardize the security of the assessment because it has not been published and is not publicly available, in place of releasing a copy of the assessment, the special purpose school district shall provide information regarding the standards and concepts for which the student failed to demonstrate proficiency or, using appropriate security protocols, make the assessment available for personal review by the student and parent without releasing a copy;
 - (8) creditable years of service;
 - (9) curriculum and graduation requirements under TEC, Chapter 28;
 - (10) the instructional materials allotment and the provisions of TEC, Chapter 31; and
 - (11) accreditation, assessment of academic skills, academic accountability, and interventions and sanctions under TEC, §11.001 and Chapters 39 and 39A.
- (g) Each special purpose school district shall develop a policy regarding when a student is deemed absent and has excessive absences under its program.
- (1) If the student has excessive absences under the policy, the special purpose school district shall notify both the student and the school district the student would otherwise be entitled to attend that the student has been disenrolled from the special purpose school district.
 - (2) By September 1 of each odd-numbered school year, the special purpose school district shall submit its absence policy to the SBOE, including any modifications made since the previous submission.
- (h) If a special purpose school district seeks a waiver under commissioner authority for more than three consecutive years, the special purpose school district shall submit the issue to the SBOE for consideration as a possible permanent exemption.
- (i) As a special purpose school district is designed to provide education statewide through digital learning methodologies, the following special requirements and modifications are in effect.
- (1) TEC, Chapter 12A, does not apply.
 - (2) TEC, Chapter 22, Subchapter A, does not apply.
 - (3) The superintendent shall make personnel decisions for the special purpose school district.
 - (A) Employee grievances shall be covered by the parent university's human resources practices.
 - (B) The parent university's human resources requirements and practices shall apply to employees, unless otherwise indicated by law or rule.
 - (4) The special purpose school district shall operate in the time and accounting manner necessary to comply with the funding model established by the commissioner for access to Foundation School Program (FSP) funds.
 - (5) The special purpose school district shall adopt a student code of conduct that aligns with the provisions of TEC, Chapter 37, but is not required to include the use of disciplinary alternative education programs or juvenile justice alternative education programs.
 - (6) The special purpose school district shall annually submit to the SBOE a report on disciplinary actions made to the district and a report on complaints made to the special purpose school district.

- (7) TEC, §§11.1542, 11.1543, and 11.155, do not apply.
 - (8) The special purpose school district is not required to have the membership compositions for committees under TEC, §§11.251, 11.252, 11.253, or 11.255, but must develop plans and policies that comply with those provisions.
 - (9) Educator contract requirements under TEC, Chapter 21, Subchapters C, D, E, F, and G; appraisal system requirements under TEC, Chapter 21, Subchapter H; duties and benefits requirements under TEC, Chapter 21, Subchapter I; and staff development requirements under TEC, Chapter 21, Subchapter J, do not apply, and the special purpose school district shall develop an appraisal system that contains the items in TEC, §21.351(a).
 - (10) TEC, §§25.08111 and 25.111-25.114, do not apply.
 - (11) The requirements of TEC, §28.004, to have a school health advisory council do not apply, but the special purpose school district shall:
 - (A) comply with the provisions of TEC, §28.004, with regard to the parameters of health education and curriculum materials; posting, notice, and grievance provisions; and consideration of related issues; and
 - (B) require that the advisory board solicit community and parental input and develop recommendations regarding the subject matter of TEC, §28.004(c)(1), (2)(A) and (D)-(H), and (3)-(6).
 - (12) Financial accountability and fiscal management under TEC, Chapters 39 and 44, shall apply as if the special purpose school district were a university charter school, and the special purpose school district's public funds must be maintained in a manner that allows auditing of the public funds separate from other funds.
- (j) The provisions of this section apply to each special purpose school district's operation for educating students eligible for enrollment in Texas public schools who enroll in the state-funded special purpose school district. This section does not apply to a tuition-based program operated in tandem with the state-funded program. However, the school operations that include Texas students are subject to subsection (l) of this section.
- (1) A parent of a Texas student may voluntarily decide to enroll a student in the tuition-based program.
 - (2) The special purpose school district shall biannually report student attendance in its state-funded school and Texas student attendance in its tuition-supported school. Information shall be provided to ensure that student participation does not disadvantage any student group from access to the state-funded school.
- (k) Each special purpose school district shall submit to the SBOE by September 1 of each odd-numbered year an updated list by section of the TEC, Title I and Title II, with recommendations regarding which sections of the code should apply or not apply to the operations of its schools. The submission must compare the recommendations to the list last provided to the SBOE.
- (l) If the special purpose school district declines FSP payment, the special purpose school district is authorized to charge tuition and is subject to:
- (1) accreditation, academic assessment, academic and financial accountability, and interventions under TEC, Chapters 39 and 39A; and
 - (2) reporting requirements imposed by the Texas Education Agency.
- (m) The parent university of each special purpose school district shall submit nominations for and establish an advisory board as soon as practicable, and the provisions of this section that require the special purpose school district to develop a policy apply beginning with the 2021-2022 school year.