

The Texas Education Agency (TEA) proposes an amendment to §61.1034, concerning the new instructional facility allotment (NIFA). The proposed amendment would modify the rule to clarify existing statutory provisions and administrative procedures to calculate the allotment.

BACKGROUND INFORMATION AND JUSTIFICATION: Texas Education Code (TEC), §42.158, enacted by Senate Bill 4, 76th Texas Legislature, 1999, created the NIFA for public school districts. The NIFA is provided for operational expenses associated with the opening of a new instructional facility and is available to all public school districts and open-enrollment charter schools. The proposed amendment clarifies the NIFA.

New subsection (b)(4) would clarify that retaining an existing gymnasium on an instructional campus does not affect the eligibility of a new instructional facility for the NIFA.

FISCAL IMPACT: Amy Copeland, chief school finance officer and associate commissioner of school finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons,

PUBLIC COMMENTS: The public comment period on the proposal begins January 3, 2025, and ends February 3, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on December 27, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §48.004, which authorizes the commissioner of education to adopt rules as necessary to implement and administer the Foundation School Program; and TEC, §48.152, which entitles school districts to an allotment of \$1,000 for each student in average daily attendance in a manner prescribed by TEC, §48.152(d), for operational expenses associated with opening a new instructional facility as defined by TEC, §48.152(a), and requires the commissioner to reduce each district's allotment under this section in the manner provided by TEC, §48.266(f), if the total amount of allotments to which districts are entitled under this section for a school year exceeds the amount appropriated under §48.152(f).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.004 and §48.152.

<rule>

§61.1034. New Instructional Facility Allotment.

(a) Definitions. The following definitions apply to the new instructional facility allotment (NIFA) in accordance with ~~the~~ Texas Education Code (TEC), §48.152.

(1) Instructional campus--A campus that:

- (A) has its own unique campus ID number registered with the Texas Education Agency (TEA), an assigned administrator, enrolled students who are counted for average daily attendance, and assigned instructional staff;
- (B) receives federal and/or state and/or local funds as its primary support;
- (C) provides instruction in the Texas Essential Knowledge and Skills (TEKS);
- (D) has one or more grade groups in the range from early education through Grade 12; and
- (E) is not a program for students enrolled in another public school.

(2) Instructional facility--A real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by ~~the~~ TEC, §28.002.

(3) New instructional facility--A facility that includes:

- (A) a newly constructed instructional facility, which is a new instructional campus built from the ground up;
- (B) a repurposed instructional facility, which is a facility that has been renovated to become an instructional facility for the first time for the applying school district or charter school; or
- (C) a leased facility operating for the first time as an instructional facility for the applying school district or charter school with a minimum lease term of not less than 10 years. The lease must not be a continuation of or renegotiation of an existing lease for an instructor an irating E.8 (te)9.2 (d)-799 (0)-4799 6228012 0Td[(a)-169 (1e)-2.8 (a)-2.8 (s)2.4 (e)-2.7 Td-7.1

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(settle-up) amount earned by each eligible school district and open-enrollment charter school, as described in subsection (e)(6) of this section.

(e) Costs and payments. The costs and payments for the NIFA are determined by the commissioner.

(1) The allotment for the NIFA is a part of the cost of the first tier of the Foundation School Program (FSP). This allotment is not counted in the calculation of weighted average daily attendance for the second tier of the FSP.

(2) If, for all eligible applicants combined, the total cost of the NIFA exceeds the amount appropriated, each allotment is reduced so that the total amount to be distributed equals the amount appropriated. Reductions to allotments are made by applying the same percentage adjustment to each school district and charter t ofht FohepT4tp -0.000lmfctedentu.6 ()rsls a (t)/ anT (h)19. (ho)12 (9