

## Chapter 129. Student Attendance

### Subchapter AA. Commissioner's Rules

#### **§129.1021. Calculation of Average Daily Attendance and Full-Time Equivalents for School Districts and Charter Schools with Significant Migrant Population.**

- (a) For each school district or charter school in which the total enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner of education will calculate the district's or charter school's annual average daily attendance (ADA) by using the best four of the six-week periods. In no case may the annual ADA calculated by using the best four of the six-week periods exceed the sum of the number of students who have certificates of eligibility plus the ADA calculated by using all six six-week periods.
- (b) For each school district or charter school in which the total enrollment contains 5.0% or more students who have certificates of eligibility in the state's migrant student tracking database, the commissioner will calculate the district's or charter school's annual full-time equivalents (FTEs) as used in the calculation of the special education, bilingual education, and career and technical education allotments by using the best four of the six-week periods for each of the three FTE counts. In no case may the annual FTE count calculated by using the best four of the six-week periods exceed the sum of the number of students who have certificates of eligibility plus the FTEs calculated by using all six six-week periods.

*Statutory Authority: The provisions of this §129.1021 issued under the Texas Education Code, §42.005(c).*

*Source: The provisions of this §129.1021 adopted to be effective February 12, 1992, 17 TexReg 857; amended to be effective October 10, 2012, 37 TexReg 8016.*

#### **§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.**

- (a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §48.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.
- (b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2023-2024 are described in the official Texas Education Agency (TEA) publication *2023-2024 Student Attendance Accounting Handbook*, which is adopted by this reference as the agency's official rule. A copy of the *2023-2024 Student Attendance Accounting Handbook* is available on the TEA website with information related to financial compliance. The commissioner will amend the *2023-2024 Student Attendance Accounting Handbook* and this subsection adopting it by reference, as needed.
- (c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

*Statutory Authority: The provisions of this §129.1025 issued under the Texas Education Code, §§7.055(b)(35); 25.001, as added by Senate Bill (SB) 1008, 88th Texas Legislature, Regular Session, 2023; 25.0344, as added by House Bill (HB) 1959 and HB 2892, 88th Texas Legislature, Regular Session, 2023; 25.081; 25.0812; 25.087, as amended by HB 1212 and SB 68, 88th Texas Legislature, Regular Session, 2023; 28.02124, as amended by HB 3803, 88th Texas Legislature, Regular Session, 2023; 29.081, as amended by SB 1647, 88th Texas Legislature, Regular Session, 2023; 29.0822; 30A.153; 48.004; 48.005; 48.102; 48.103; 48.104; 48.105; 48.106; 48.108; 48.109; 48.270; and 49.204.*

*Source: The provisions of this §129.1025 adopted to be effective May 10, 2001, 26 TexReg 3393; amended to be effective December 2, 2001, 26 TexReg 9627; amended to be effective January 5, 2003, 27 TexReg 12213; amended to be effective November 16, 2003, 28 TexReg 9834; amended to be effective December 6, 2005, 30 TexReg 8088; amended to be effective December 24, 2006, 31 TexReg 10096; amended to be effective April 27, 2008, 33 TexReg 3263; amended to be effective March 5, 2009, 34 TexReg 1586; amended to be effective March 3, 2010, 35 TexReg*

*1733; amended to be effective December 28, 2010, 35 TexReg 11631; amended to be effective March 20, 2012, 37 TexReg 1901; amended to be effective December 26, 2012, 37 TexReg 9930; amended to be effective December 31, 2013, 38 TexReg 9565; amended to be effective December 15, 2014, 39 TexReg 9665; amended to be effective May 24, 2016, 41 TexReg 3691; amended to be effective December 8, 2016, 41 TexReg 9508; amended to be effective November 12, 2017, 42 TexReg 6177; amended to be effective May 3, 2018, 43 TexReg 2581; amended to be effective October 21, 2019, 44 TexReg 6026; amended to be effective April 29, 2020, 45 TexReg 2701; amended to be effective November 18, 2020, 45 TexReg 8129; amended to be effective March 3, 2022, 47 TexReg 916; amended to be effective October 18, 2022, 47 TexReg 6875; amended to be effective September 27, 2023; 48 TexReg 5540.*

**§129.1027. Optional Flexible School Day Program.**

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.
  - (2) Campus of innovative redesign--A campus with an approved campus turnaround plan in accordance with the requirements of Texas Education Code (TEC), §39A.107, that:
    - (A) provides a rigorous and relevant academic program;
    - (B) provides personal attention and guidance;
    - (C) promotes high expectations for all students; and
    - (D) addresses comprehensive schoolwide improvements that cover all aspects of a school's operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.
  - (3) Community-based dropout recovery education program--For the purposes of this section, a community-based dropout recovery education program is a public or private program authorized under the TEC, §29.081(e), offered on a campus or through an internet online program that leads to a high school diploma and prepares the student to enter the workforce as defined in TEC, §29.081(e-1) and (e-2).
  - (4) Instructional contact hours--Except for the purposes of subsection (b)(1)(B) of this section, instructional contact hours are the hours spent learning the curriculum under faculty and administrators with baccalaureate or advanced degrees. For the purposes of subsection (b)(1)(B) of this section, instructional contact hours are hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.
  - (5) Optional Flexible School Day Program (OFSDP)--An OFSDP is a program authorized under the Texas Education Code (TEC), §29.0822, that is approved by the commissioner to provide flexible hours and days of attendance for eligible students, as defined in subsection (b) of this section.
  - (6) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.
  - (7) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.
- (b) Student eligibility. A student is eligible to participate in an OFSDP if:
- (1) the student:
    - (A) has dropped out of school or is at risk of dropping out of school, as defined by the TEC, §29.081;
    - (B) is attending a campus implementing an innovative redesign;

- (C) is attending a community-based dropout recovery education program, as defined by the TEC, §29.081(e-1) and (e-2);
  - (D) is attending an approved early college high school program, as defined by the TEC, §29.908; or
  - (E) as a result of attendance requirements under the TEC, §25.092, will be denied credit for one or more classes in which the student has been enrolled; and
- (2) either:
- (A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or
  - (B) the student agrees in writing to participate if the student is 18 years of age or older or has otherwise attained legal status as an adult by reason of marriage or court order.
- (c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.
- (1) The Texas Education Agency (TEA) shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the TEA for approval.
  - (2) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting in compliance with subsection (h)(2) of this section before applying to operate an OFSDP.
  - (3) A school district must submit an application in accordance with instructions provided by the TEA.
  - (4) As part of the application process, a school district shall include the following information:
    - (A) implementation plan description;
    - (B) staff plans;
    - (C) schedules; and
    - (D) student attendance accounting security procedures and documentation.
  - (5) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the TEA division responsible for financial audits. The annual audit must be determined by the TEA to be in compliance with applicable audit standards.
  - (6) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.
  - (7) The TEA may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or interventions or sanctions under the TEC, Chapter 39A.
  - (8) The TEA may grant or reject an entire application or grant or reject any campus submitted on an application.
  - (9) The TEA will notify each applicant of its approval or nonapproval to operate an OFSDP.
  - (10) The school district must receive notice of approval to continue or begin participation in the program.
- (d) Attendance. A school district must report student OFSDP attendance in a manner provided by the TEA in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

- (e) Funding under the TEC, Chapters 46, 48, and 49. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding. For funding purposes, attendance for a student for a 12-consecutive-month school year cannot exceed the equivalent of one student in average daily attendance with perfect attendance.
- (f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.
- (g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the TEA and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.
  - (1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.
  - (2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.
  - (3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.
  - (4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.
- (h) School district annual performance review.
  - (1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.
    - (A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.
    - (B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.
  - (2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the TEA.
  - (3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.
- (i) Evaluation of programs.
  - (1) The TEA shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.
  - (2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.
- (j) Revocation of or denial to renew authorization to operate an OFSDP.
  - (1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

- (A) noncompliance with application assurances and/or the provisions of this section;
  - (B) failure to keep timely and accurate audit and attendance accounting records;
  - (C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;
  - (D) lack of program success as evidenced by progress reports or program data; or
  - (E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the OFSDP.
- (2) A revocation or nonrenewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or nonrenewal is issued unless another date is determined by the commissioner.
  - (3) An OFSDP is entitled to a ten-day notice of the proposed revocation or nonrenewal and an informal review by the commissioner's designee.
  - (4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.
  - (5) The OFSDP is a state program subject to a special accreditation investigation under the TEC, Chapter 39A. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose interventions and sanctions on a school district under the TEC, Chapter 39A, for failure to comply with the OFSDP requirements of this section.

*Statutory Authority: The provisions of this §129.1027 issued under the Texas Education Code, §§29.081, 29.082, 39A.107, and 48.004.*

*Source: The provisions of this §129.1027 adopted to be effective July 4, 2007, 32 TexReg 3988; amended to be effective October 23, 2008, 33 TexReg 8643; amended to be effective December 20, 2009, 34 TexReg 8966; amended to be effective August 2, 2018, 43 TexReg 4983; amended to be effective December 6, 2020, 45 TexReg 8517.*

#### **§129.1029. Optional Flexible Year Program.**

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
  - (1) Optional Flexible Year Program (OFYP)--An OFYP is a program authorized under the Texas Education Code (TEC), §29.0821, that is approved by the commissioner of education to provide a flexible year program to meet the educational needs of its students, including providing intensive instructional services. A school district approved by the commissioner of education to implement an OFYP may reduce the number of instructional minutes for certain students.
  - (2) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.
- (b) Eligibility. A student is eligible to participate in the OFYP if the student meets one or more of the following criteria.
  - (1) The student did not or is not likely to achieve a passing score on an assessment instrument administered under the TEC, §39.023.
  - (2) The student is not eligible for promotion to the next grade level.
- (c) Program criteria.
  - (1) A school district may reduce the number of instructional minutes during the regular school year for students who are not eligible for participation in this program to no fewer than 71,400 minutes.
  - (2) A school district must provide at least 75,600 minutes of instruction to those students who meet the eligibility criteria defined in subsection (b) of this section.

- (3) A school district that provides transportation services must continue to provide these services during the OFYP.
  - (4) A school district that provides meal services through the National School Lunch Program, School Breakfast Program, or a locally funded program must continue to provide these services during the OFYP.
  - (5) A school district may require educational support personnel to provide service as necessary for an OFYP.
  - (6) A school district may not reduce the number of educators on staff on OFYP instructional days.
  - (7) A school district must schedule proposed OFYP instructional minutes before the last approved state student assessment testing window of the school year.
- (d) Approval process. To implement an OFYP, a school district must request prior approval from the commissioner of education.
- (1) A school district must submit a letter to the Texas Education Agency (TEA) division responsible for state funding describing the proposed modifications to the instructional calendar, including a description of the OFYP that will be provided under the TEC, §29.0821. The letter must indicate the date on which the board of trustees approved the modified instructional calendar. If the district is requesting a waiver of staff development days or teacher preparation days, the letter must also indicate that the request to waive staff development days or teacher preparation days has been approved by the campus site-based decision-making committee.
  - (2) A school district must submit to the TEA a copy of its modified instructional calendar. The instructional calendar must indicate the days and minutes scheduled as OFYP instructional days. No approval will be granted that reduces the number of instructional minutes to fewer than 71,400 minutes.
  - (3) Approval to modify the number of instructional days is limited to one year. Requests for a school district to operate an OFYP for subsequent years must be approved annually.
  - (4) The commissioner may require a school district to provide an evaluation that demonstrates the success of its approach as a condition of approval.
- (e) Funding. For a school district that operates an OFYP, the calculation of average daily attendance is modified to reflect the approved instructional calendar. For students placed on a reduced instructional calendar, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the reduced number of days. For eligible students served through the OFYP, the reported number of days of instruction used as the divisor in calculating average daily attendance must reflect the scheduled number of days in which instruction took place.

*Statutory Authority: The provisions of this §129.1029 issued under the Texas Education Code, §29.0821.*

*Source: The provisions of this §129.1029 adopted to be effective November 20, 2008, 33 TexReg 9233; amended to be effective April 26, 2016, 41 TexReg 2957; amended to be effective July 8, 2018, 43 TexReg 4453.*

#### **§129.1031. Reporting Off-Campus Programs.**

- (a) In accordance with the Texas Education Code, §42.0052, a board of trustees of a school district or a governing body of a charter holder may adopt a policy that allows a student to participate in an off-campus instructional program. The program must be provided only by an institution of higher education that is accredited by one of the regional accrediting associations specified in §74.25 of this title (relating to High School Credit for College Courses).
- (b) To be eligible, a student must:
  - (1) be in Grade 11 or 12;

- (2) have demonstrated college readiness as outlined in the requirements for participation in dual credit programs in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook);
  - (3) meet any eligibility requirements adopted by the institution of higher education specified in §74.25 of this title; and
  - (4) have the approval of the high school principal or other school official designated by the school district or open-enrollment charter school.
- (c) Funding eligibility for a student participating in an off-campus program will include time instructed in the off-campus program. A campus may choose an alternate attendance-taking time for a group of students that is scheduled to be off-campus during the regular attendance-taking time. The alternate attendance-taking time will be in effect for the period of days or weeks for which the group is scheduled to be off-campus during the regular attendance-taking time (for example, for the semester or for the duration of employment). This alternate attendance-taking time may not be changed once it is selected for a particular group of students. If attendance is taken at an off-campus location, the school district must ensure that attendance is taken in accordance with the student attendance accounting handbook adopted under §129.1025 of this title.
- (d) For a school district or an open-enrollment charter school to receive Foundation School Program funding for a student participating in an off-campus program under this section, the district or charter school must have documentation of an agreement between the district or charter school and the college.
- (e) The off-campus program approved under this section must comply with rules adopted by the Texas Higher Education Coordinating Board in the Texas Administrative Code, Title 19, Part 1, with respect to teacher qualifications.

*Statutory Authority: The provisions of this §129.1031 issued under the Texas Education Code, §§12.106, 48.005, and 48.007.*

*Source: The provisions of this §129.1031 adopted to be effective May 24, 2016, 41 TexReg 3694.*