

The State Board of Education (SBOE) proposes an amendment to §74.28, concerning students with dyslexia and related disorders. The proposed amendment would update the rule to align with House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023; clarify terminology used in the Texas Education Code (TEC); and update the *Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (Dyslexia Handbook)* adopted as Figure: 19 TAC §74.28(c) to clarify requirements related to dyslexia evaluation, identification, and instruction.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 74.28 provides the requirements to school districts and open-enrollment charter schools for identifying students with dyslexia or related disorders and providing appropriate services to those students.

The 85th Texas Legislature, Regular Session, 2017, passed HB 1886, amending TEC, §38.003, to specify that a student enrolled in public school must be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The legislation required that the program include screening at the end of the school year for all students in Kindergarten and Grade 1. An amendment to §74.28 to align the rule with HB 1886 was approved for second reading and final adoption at the June 2018 SBOE meeting with an effective date of August 27, 2018.

Section 74.28 was amended effective March 13, 2019, to adopt the *Dyslexia Handbook* in rule as Figure: 19 TAC §74.28(c).

The section was amended again effective December 25, 2019, to require school districts and open-enrollment charter schools to report to the Texas Education Agency (TEA) through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of screening for dyslexia and related disorders required at the end of the school year for each student in Kindergarten and each student in Grade 1 in accordance with TEC, §38.003(a).

The section was amended again effective February 10, 2022, to clarify that evaluations for dyslexia and related disorders must go through the process required by the Individuals with Disabilities Education Act.

The proposed amendment would update the section and the *Dyslexia Handbook* to align with the passage of HB 3928.

The SBOE approved the proposed amendment for first reading and filing authorization at its February 2, 2024 meeting.

**FISCAL IMPACT:** Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government to comply with the proposal, including school districts and open-enrollment charter schools, beyond what is required by federal Individuals with Disabilities Education Act (IDEA) regulations.

**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, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking would expand an existing regulation by clarifying requirements

related to student evaluation, identification, and instruction for dyslexia and related disorders in accordance with HB 3928, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying requirements related to dyslexia evaluation, identification, and instruction in alignment with recent statutory changes. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data or reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins March 1, 2024, and ends at 5:00 p.m. on April 1, 2024. A form for submitting public comments is available on the TEA website at <https://tea.texas.gov/about-tea/laws-and-rules/sboe-rules-tac/proposed-state-board-of-education-rules>. The SBOE will take registered oral and written comments on the proposal at the appropriate committee meeting in April 2024 in accordance with the SBOE board operating policies and procedures. 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 March 1, 2024.

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §7.102(c)(28), as amended by House Bill (HB) 3928, 88th Texas Legislature, Regular Session, 2023, which requires the State Board of Education (SBOE) to approve a program for screening and testing students for dyslexia and related disorders; TEC, §29.0031, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which requires that dyslexia is considered and meets the definition of specific learning disability, as this is defined in the Individuals with Disabilities Education Act. It also requires certain actions when a student is suspected of having dyslexia and in the evaluation for dyslexia; TEC, §29.0032, as amended by HB 3928, 88th Texas Legislature, Regular Session, 2023, which requires that providers of dyslexia instruction be fully trained in the local educational agency's materials in order to provide that instruction; TEC, §38.003(a), which requires that students enrolling in public schools be screened or tested, as appropriate, for dyslexia and related disorders at appropriate times in accordance with a program approved by the SBOE. The program must include screening at the end of the school year of each student in Kindergarten and each student in Grade 1; and TEC, §38.003(c), which requires the SBOE to adopt any rules and standards necessary to administer TEC, §38.003, Screening and Treatment for Dyslexia and Related Disorders.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §§7.102(c)(28), 29.0031, and 29.0032, as amended by House Bill 3928, 88th Texas Legislature, Regular Session, 2023; and §38.003(a) and (c).

<rule>

#### **§74.28. Students with Dyslexia and Related Disorders.**

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

- (1) Screening a student for dyslexia or a related disorder, a term used in Texas Education Code (TEC), §38.003, means the administration of a universal screening instrument required for students in Kindergarten and Grade 1.

- (2) Testing a student for dyslexia or a related disorder, a term used in TEC, §38.003, means a comprehensive evaluation as required under 34 Code of Federal Regulations (CFR), Part 300, and includes evaluation components as stated in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders," referenced in subsection (c) of this section, for the identification of dyslexia or a related disorder.
- (3) Treatment for a student identified with dyslexia or a related disorder, a term used in TEC §38.003, means any instructional accommodations through an accommodation plan under Section 504 or instructional accommodations, modifications, and/or the provision of dyslexia instruction in accordance with a student's individualized education program (IEP).
- (4) Direct dyslexia instruction, a term used in TEC, §7.102(c)(28), or dyslexia instruction means evidence-based dyslexia instruction that includes the required components of dyslexia instruction and instructional delivery methods as outlined in the handbook referenced in subsection (c) of this section and as described by a student's IEP under TEC, §29.005.
- (5) Provider of dyslexia instruction (PDI) means a provider who meets the requirements of TEC, §29.0032.

- ~~(a) In order to support and maintain full educational opportunity for students with dyslexia and related disorders and consistent with federal and state law, school districts and open enrollment charter schools shall provide each student with dyslexia or a related disorder access to each program under which the student qualifies for services.~~
- (b) The board of trustees of a school district or the governing body of an open-enrollment charter school must adopt and implement a policy requiring the district or school to comply with this section, inclusive of the handbook referenced in subsection (c) of this section and the provision of dyslexia instruction for students identified with dyslexia or a related disorder as determined by the student's admission, review, and dismissal (ARD) committee [ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate, evidence based instructional services to the student are implemented in the district] .
- (c) A school district's or open-enrollment charter school's policy [procedures] must be implemented according to the State Board of Education's (SBOE's) [Education (SBOE) approved strategies for screening, individualized evaluation, and techniques for treating dyslexia and related disorders. The strategies and techniques are described in the] "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders " provided in this subsection. Before adopting changes to the handbook, the SBOE will consider input provided by [The handbook is a set of guidelines for school districts and open enrollment charter schools that may be modified by the SBOE only with broad based dialogue that includes input from] educators and professionals in the field of reading and dyslexia and related disorders , as well as parents and other stakeholders, from across the state.

Figure: 19 TAC §74.28(c) [Figure: 19 TAC §74.28(e)]

- ~~(d) Screening as described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" and further evaluation should only be conducted by individuals who are trained in valid, evidence based assessments and who are trained to appropriately evaluate students for dyslexia and related disorders.~~
- (d) ~~(e)~~ A school district or open-enrollment charter school must provide evidence-based dyslexia instruction by a trained PDI for students with dyslexia or a related disorder that includes the required instructional and delivery components [shall purchase a reading program or develop its own evidence based reading program for students with dyslexia and related disorders that is aligned with the descriptors] found in the handbook referenced in subsection (c) of this section [ "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies that use individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." The professional development activities specified by each open enrollment charter school and district and/or campus planning and decision making committee shall include these instructional strategies] .

- ~~[(f) — At least five school days before any evaluation or identification procedure is used selectively with an individual student, the school district or open enrollment charter school must provide written notification to the student's parent or guardian or another person standing in parental relation to the student of the proposed identification or evaluation. The notice must be in English, or to the extent practicable, the individual's native language and must include the following:]~~
- ~~[(1) — a reasonable description of the evaluation procedure to be used with the individual student;]~~
  - ~~[(2) — information related to any instructional intervention or strategy used to assist the student prior to evaluation;]~~
  - ~~[(3) — an estimated time frame within which the evaluation will be completed; and]~~
  - ~~[(4) — specific contact information for the campus point of contact, relevant Parent Training and Information Projects, and any other appropriate parent resources.]~~
- ~~[(g) — Before a full individual and initial evaluation is conducted to determine whether a student has a disability under the Individuals with Disabilities Education Act (IDEA), the school district or open enrollment charter school must notify the student's parent or guardian or another person standing in parental relation to the student of its proposal to conduct an evaluation consistent with 34 Code of Federal Regulations (CFR), §300.503, provide all information required under subsection (f) of this section, and provide:]~~
- ~~[(1) — a copy of the procedural safeguards notice required by 34 CFR, §300.504;]~~
  - ~~[(2) — an opportunity to give written consent for the evaluation; and]~~
  - ~~[(3) — a copy of information required under Texas Education Code (TEC), §26.0081.]~~
- ~~[(h) — Parents/guardians of a student with dyslexia or a related disorder must be informed of all services and options available to the student, including general education interventions under response to intervention and multi-tiered systems of support models as required by TEC, §26.0081(d), and options under federal law, including IDEA and the Rehabilitation Act, §504.]~~
- ~~[(i) — Each school or open enrollment charter school must provide each identified student access at his or her campus to instructional programs required in subsection (e) of this section and to the services of a teacher trained in dyslexia and related disorders. The school district or open enrollment charter school may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.]~~
- ~~[(j) — Because early intervention is critical, a process for early identification, intervention, and support for students at risk for dyslexia and related disorders must be available in each district and open enrollment charter school as outlined in the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders." School districts and open enrollment charter schools may not use early intervention strategies, including multi-tiered systems of support, to delay or deny the provision of a full and individual evaluation to a child suspected of having a specific learning disability, including dyslexia or a related disorder.]~~
- ~~(e) [(k)]~~ Each school district and open-enrollment charter school shall report through the Texas Student Data System Public Education Information Management System (TSDS PEIMS) the results of the screening for dyslexia and related disorders required for each student in Kindergarten and each student in Grade 1 in accordance with TEC, §38.003(a).
- (f) [(l)] Each school district and open-enrollment charter school shall provide to parents of students enrolled in the district or school information on a parent education program for parents/guardians of students with dyslexia and related disorders. This program must include :
- (1) ~~[awareness and]~~ characteristics of dyslexia and related disorders;
  - (2) evaluation and identification ~~[information on testing and diagnosis]~~ of dyslexia and related disorders;
  - (3) ~~[information on]~~ effective instructional strategies for teaching students with dyslexia and related disorders;

- (4) ~~[information on]~~ qualifications of and contact information for PDIs at each campus or school ~~[those delivering services to students with dyslexia and related disorders]~~ ;
- (5) instructional ~~[awareness of information on]~~ accommodations and modifications ~~[, especially those allowed for standardized testing]~~ ;
- (6) ~~the steps in the special education process, as described in the form developed by the Texas Education Agency to comply with TEC, §29.0031(a)(1); and~~
- (7) ~~how to request a copy and access the electronic version of the handbook referenced in subsection (c) of this section.~~
- ~~[(6) information on eligibility, evaluation requests, and services available under IDEA and the Rehabilitation Act, §504, and information on the response to intervention process; and]~~
- ~~[(7) contact information for the relevant regional and/or school district or open-enrollment charter school specialists.]~~
- ~~[(m) School districts and open-enrollment charter schools shall provide to parents of children suspected to have dyslexia or a related disorder a copy or a link to the electronic version of the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders."]~~
- (g) ~~[(h)]~~ School districts and open-enrollment charter schools will be subject to monitoring for compliance with federal law and regulations in connection with this section. School districts and open-enrollment charter schools will be subject to auditing and monitoring for compliance with state dyslexia laws in accordance with administrative rules adopted by the commissioner of education as required by TEC, §38.003(c-1).
- (h) ~~School districts and open-enrollment charter schools must include the member required by TEC, §29.0031(b), on the multidisciplinary team and ARD committee, as appropriate, who meets the requirements of TEC, §29.0031(b)(1) or (2), or who meets the training requirements established by the SBOE as described in the handbook referenced in subsection (c) of this section.~~