

TEXAS REGISTER

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a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (800) 226-7199 (512) 463-5561 FAX (512) 463-5569

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How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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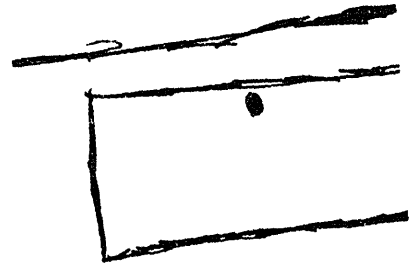
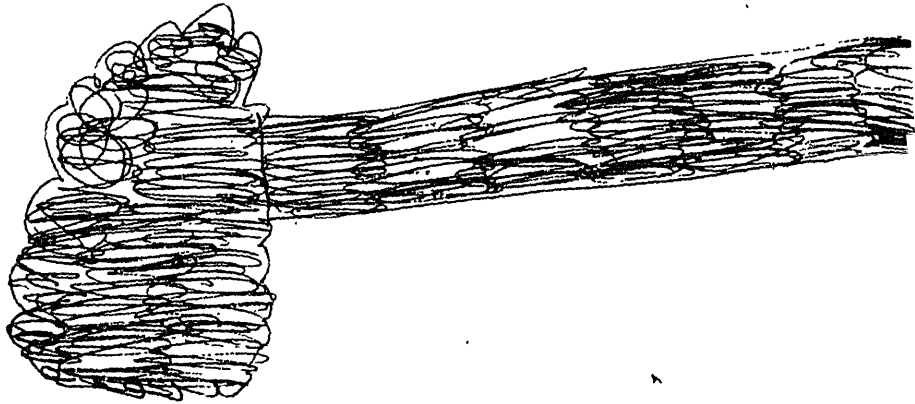
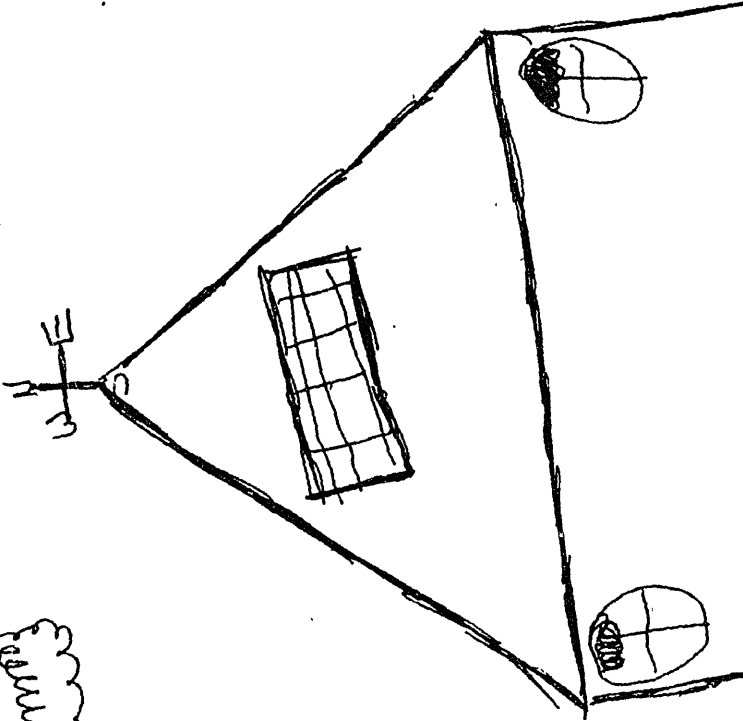
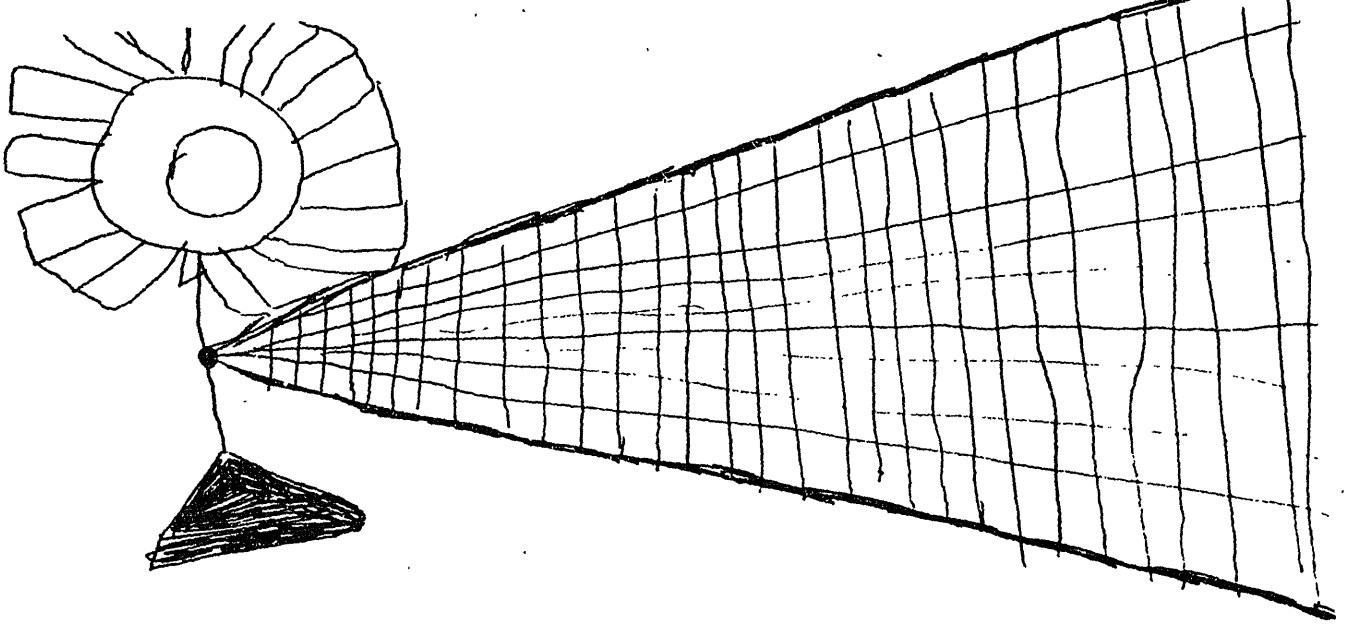
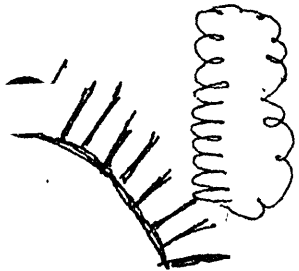
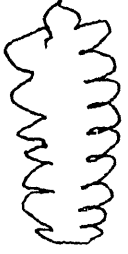
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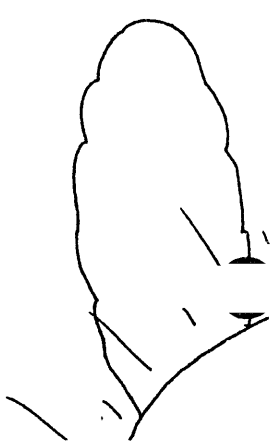
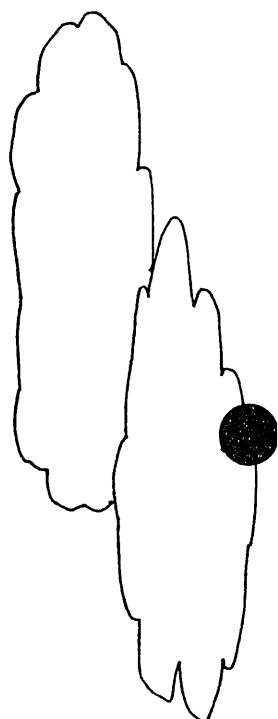
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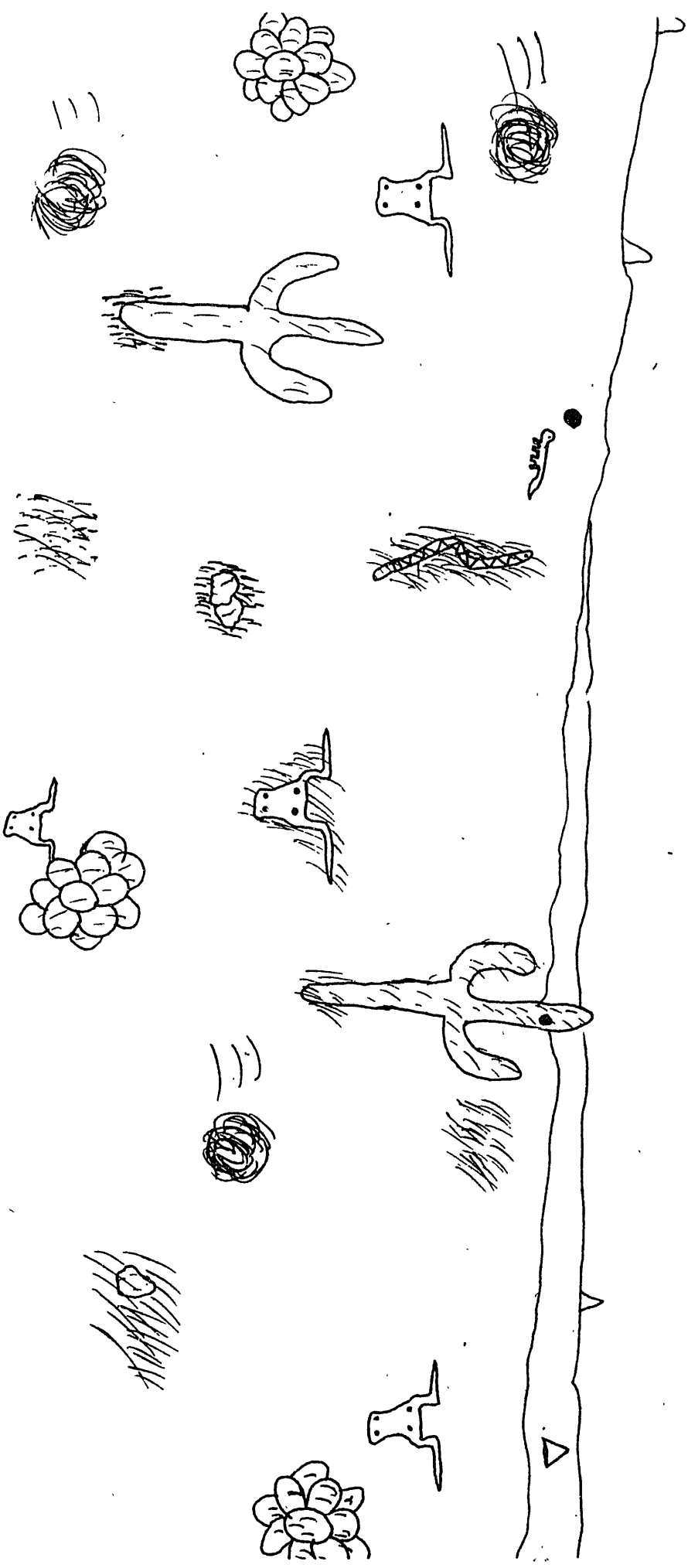
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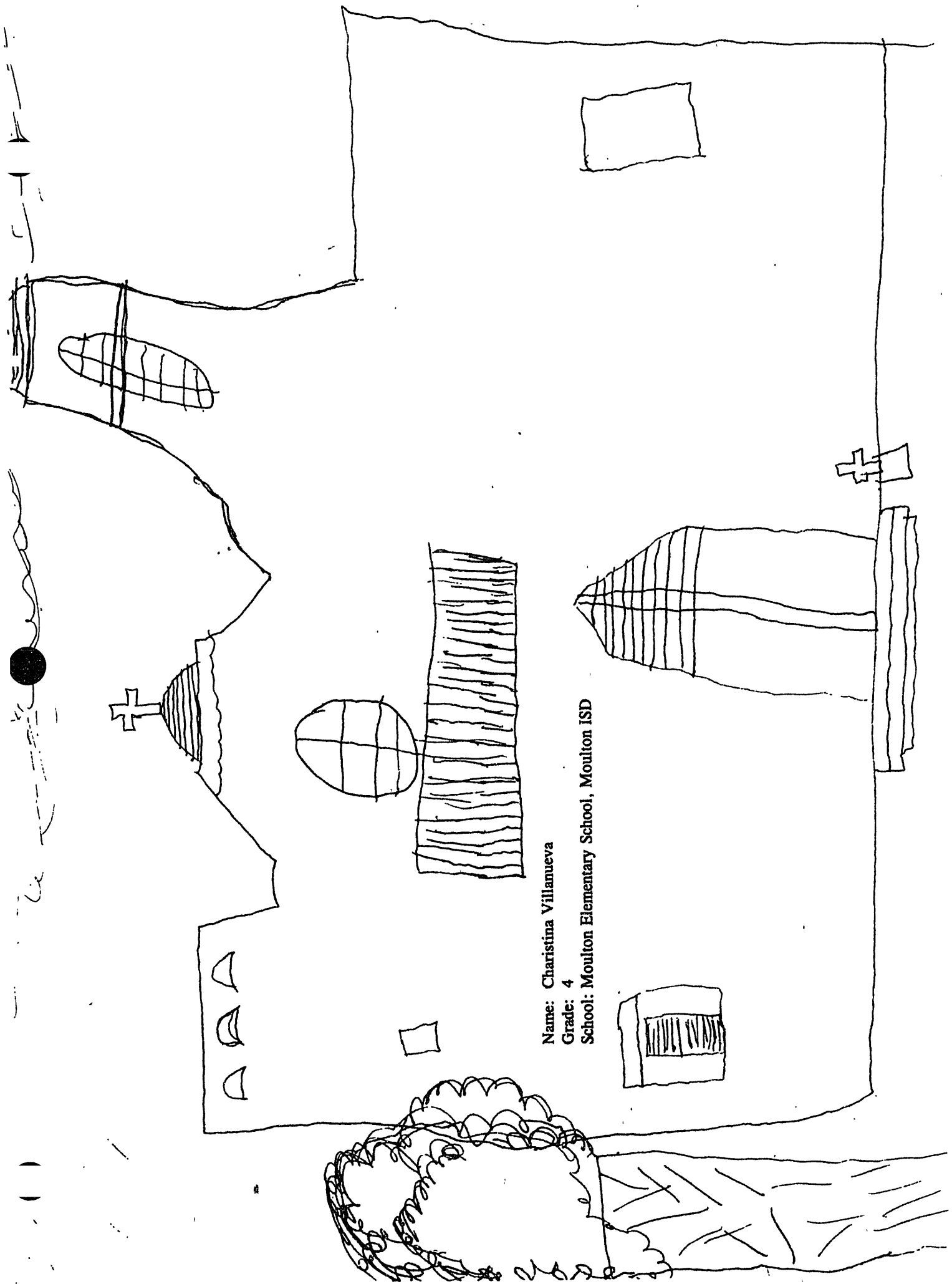


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Grade: 4
School: Moulton Elementary School, Moulton ISD



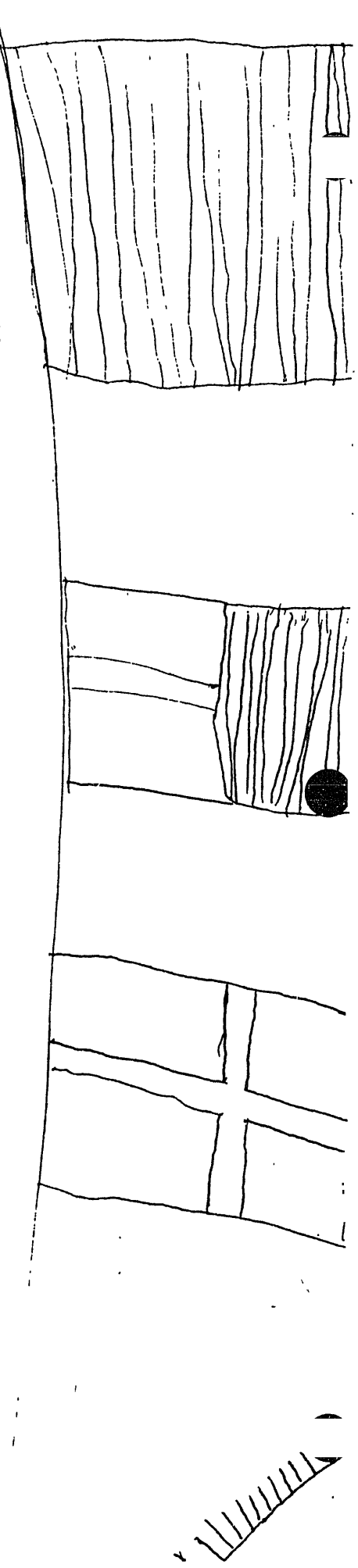
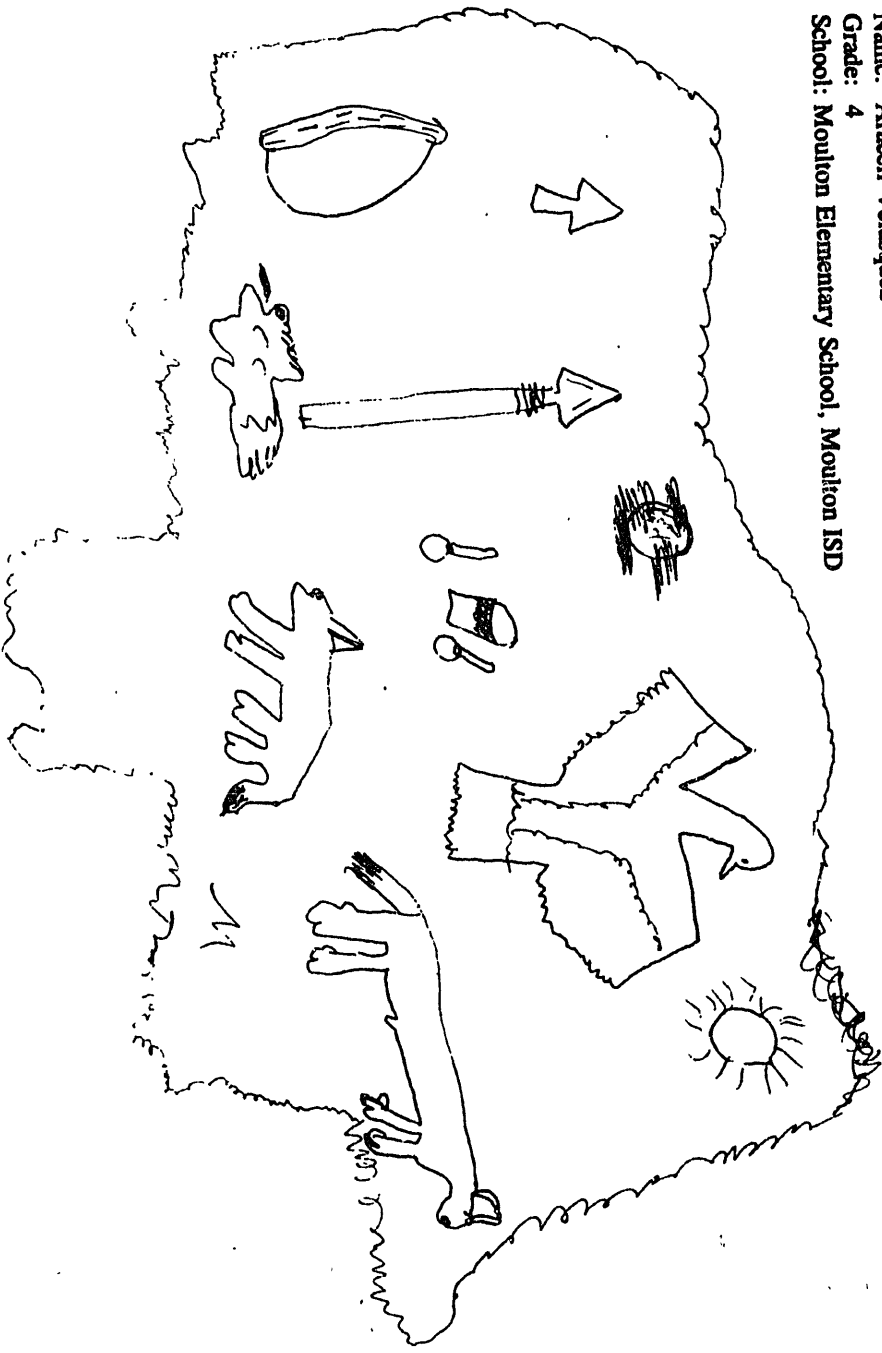
Name: Katy Hoffman
Grade: 4
School: Moulton Elementary School, Moulton ISD





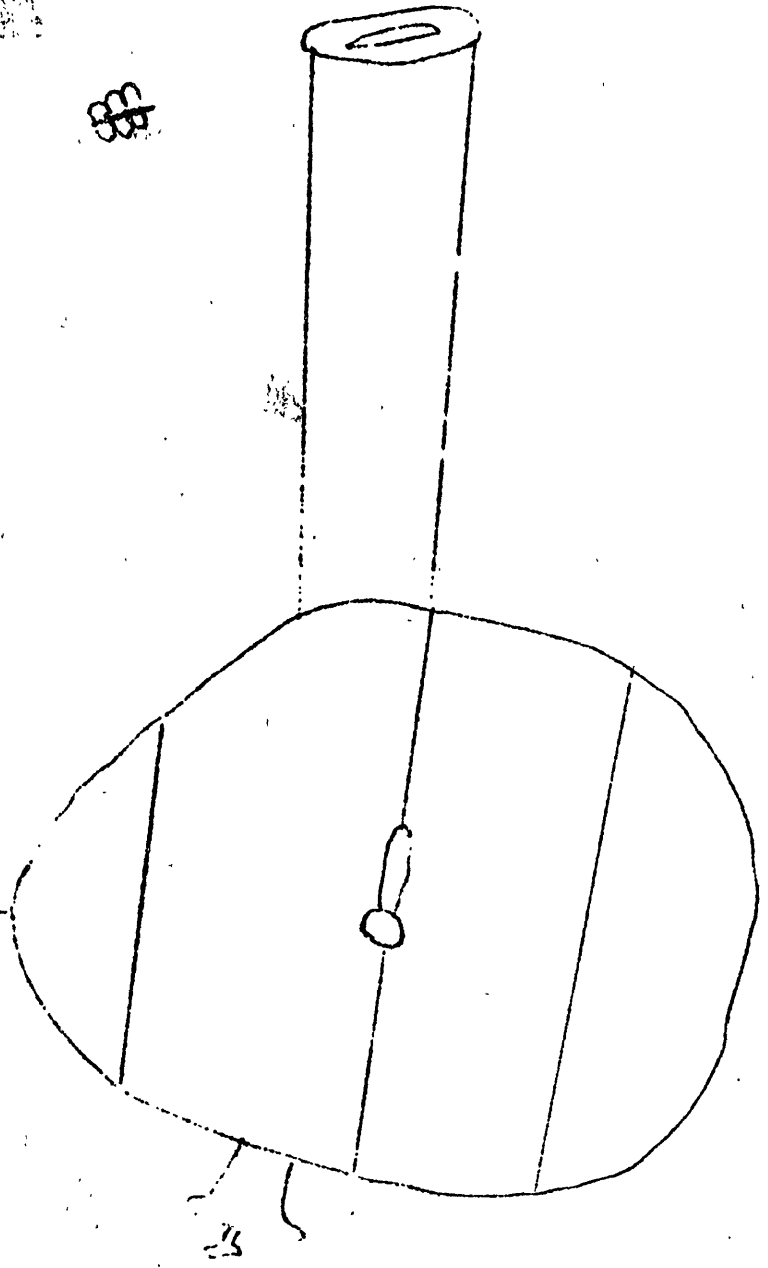
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Grade: 4
School: Moulton Elementary School, Moulton ISD

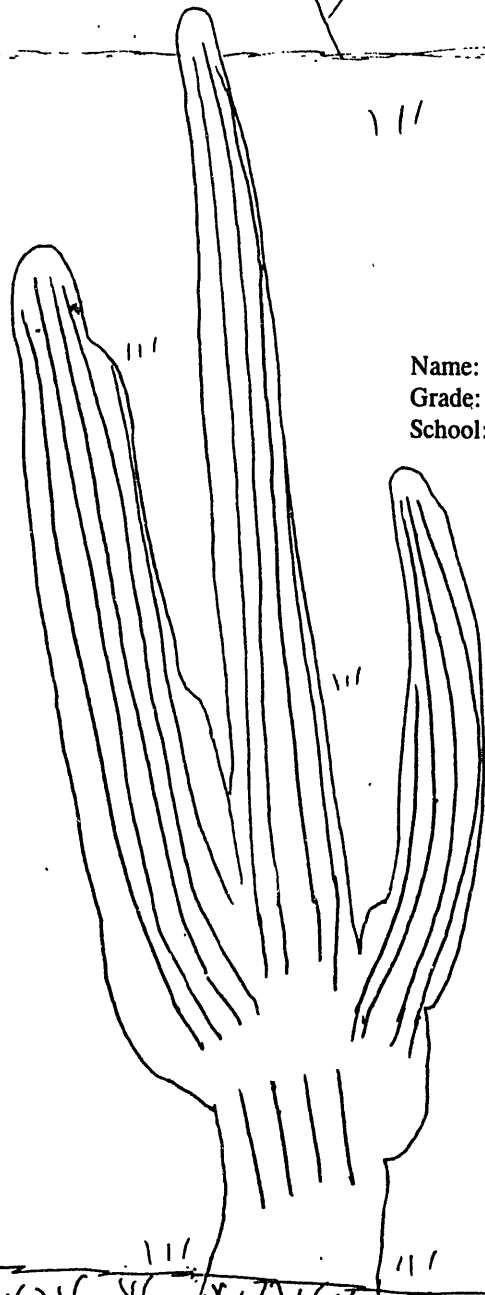
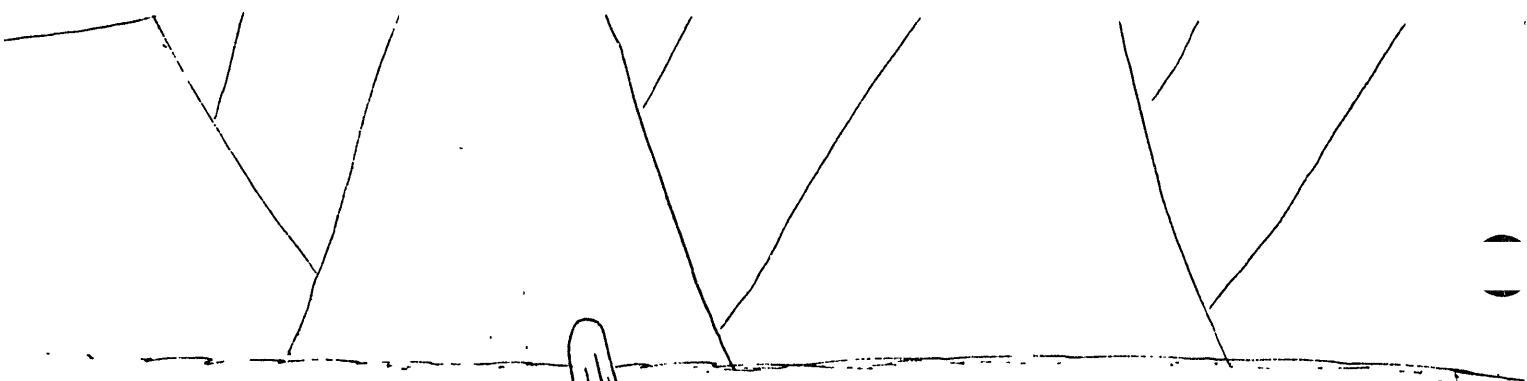
Name: Araceli Velasquez
Grade: 4
School: Moulton Elementary School, Moulton ISD



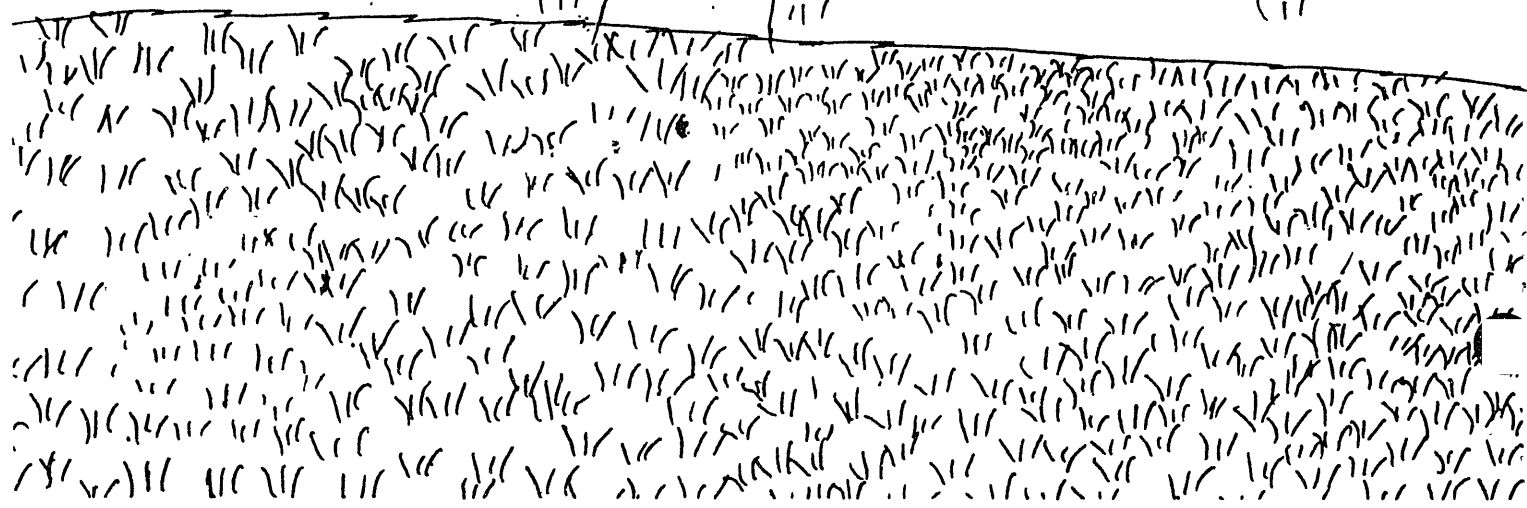
Name: Brandon Janscock
Grade: 4
School: Moulton Elementary School, Moulton ISD

* Come and
take it





Name: Anthony Podriquez
Grade: 4
School: Moulton Elementary School, Moulton ISD



THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the **Texas Register** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

(Editor's Note: The notices of appointments were printed incorrectly in the November 17, 1995, issue of the Texas Register. The correct notices should read as follows.)

Appointments Made October 26, 1995

To be District Attorney for the 47th Judicial District, Potter and Armstrong Counties, until the next General Election and until her successor shall be duly elected and qualified: Rebecca King, 2400 South Polk, Amarillo, Texas 79101. Mrs. King will be replacing Danny E. Hill of Amarillo who is deceased.

Appointments Made October 31, 1995

To be Judge for the 177th Judicial District Court, Harris County, until the next General Election and until her successor shall be duly elected and qualified: Carol G. Davies, 435 Southchester, Houston, Texas 77079. Ms. Davies will be replacing Judge Miron A. Love of Houston who retired.

Appointments Made November 7, 1995

To be Judge for the Third Judicial District Court, Anderson, Henderson, and Houston Counties, until the next General Election and until his successor shall be duly elected and qualified: Dan Moore, P.O. Box 392, Athens, Texas 75751. Mr. Moore will be replacing Judge R. W. Lawrence of Palestine who retired.

To be Judge for the 378th Judicial District Court, Ellis County, until the next General Election and until his successor

shall be duly elected and qualified: The Honorable Roy A. Scoggins, Jr., 1204 Lakeridge, Ennis, Texas 75119. Judge Scoggins is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 381st Judicial District Court, Starr County, until the next General Election and until his successor shall be duly elected and qualified: John A. Pope, III, 108 North Pope Street, Rio Grande City, Texas 78582. Mr. Pope is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 382nd Judicial District Court, Rockwall County, until the next General Election and until his successor shall be duly elected and qualified: The Honorable William B. Lofland, 1200 Ridge Road, Rockwall, Texas 75087. Judge Lofland is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 383rd Judicial District Court, El Paso County, until the next General Election and until her successor shall be duly elected and qualified: Kathleen Cardone, 732 Cheltenham Drive, El Paso, Texas 79912-1530. Judge Cardone is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 394th Judicial District Court, El Paso County, until the next General Election and until his successor shall be duly elected and qualified: James

Amador Daross, 4809 Costa De Oro Road, El Paso, Texas 79922. Mr. Daross is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 392nd Judicial District Court, Henderson County, until the next General Election and until his successor shall be duly elected and qualified: Carter William Tarrance, 810 Maryland Drive, Athens, Texas 75751. Mr. Tarrance is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

To be Judge for the 394th Judicial District Court, Brewster, Hudspeth, Culberson, Presidio, and Jeff Davis Counties, until the next General Election and until his successor shall be duly elected and qualified: Kenneth D. DeHart, P.O. Box 1410, Alpine, Texas 79831. Mr. DeHart is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

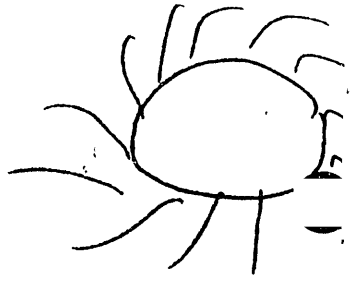
To be Judge for the 411th Judicial District Court, San Jacinto, Trinity, and Polk Counties, until the next General Election and until his successor shall be duly elected and qualified: The Honorable Robert Hill Trapp, P.O. Box 96, Coldspring, Texas 77331. Mr. Trapp is being appointed to a newly created court pursuant to House Bill 3235, 74th Legislature, Regular Session.

Issued in Austin, Texas, on November 9, 1995.

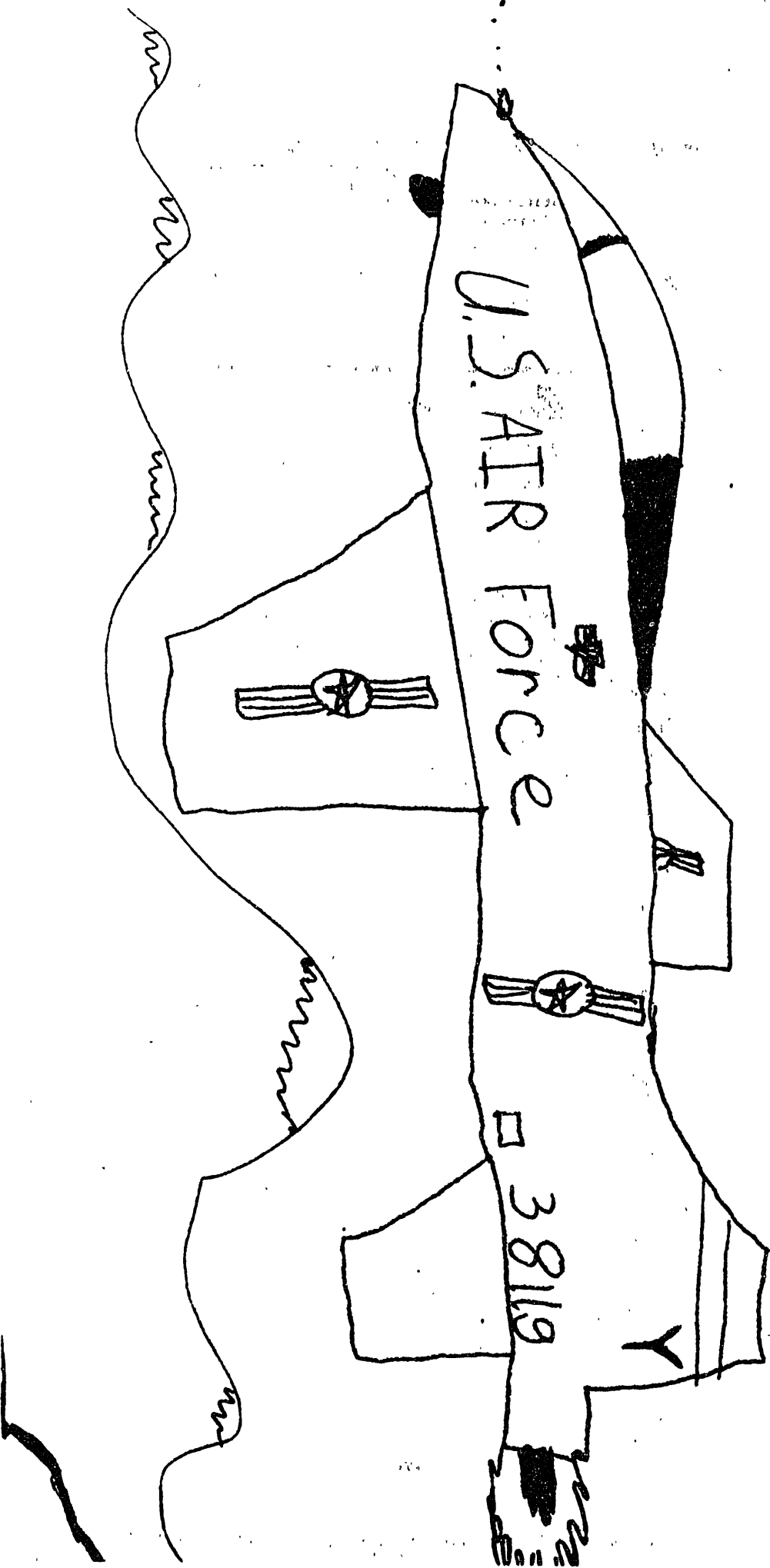
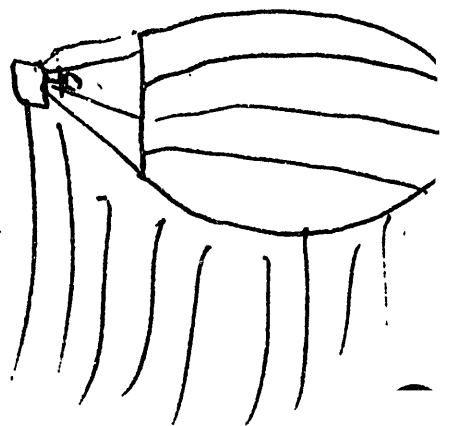
TRD-9514557

George W. Bush
Governor of Texas





Name: Jeremy Burchell
Grade: 4
School: Moulton Elementary School, Moulton ISD



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-324. The Texas Ethics Commission has been asked to consider the following question: Is an article by a nonprofit association in its magazine serving as an education piece about the association's political action fund considered a solicitation for purposes of the Election Code, §253.100?

Issued in Austin, Texas, on November 6, 1995.

TRD-9514768

Lucia Dodson
Executive Assistant
Texas Ethics Commission

Filed: November 14, 1995



Ethics Advisory Opinions

EAO-288 (AOR-322). Whether a judicial candidate for a newly created district court may accept political contributions and make political expenditures despite the fact that the creation of the new court is contingent on approval by the United States Department of Justice.

Summary of Opinion. A judicial candidate for a newly created district court may accept political contributions and make political expenditures despite the fact that the new district has yet to be approved by the United States Department of Justice, provided that the candidate has filed a campaign treasurer appointment and a Judicial Declaration of Intent form with the proper filing authority for the newly created district court.

EAO-289 (AOR-323). Whether holiday greeting cards sent by an officeholder and paid for from political contributions must have a political advertising disclosure.

Summary of Opinion. Holiday greeting cards sent by an officeholder and paid for with political contributions are not required to contain a political advertising disclosure as long as the name and address of the officeholder sending the cards appear on the card itself or on the envelope.

Issued in Austin, Texas, on November 6, 1995.

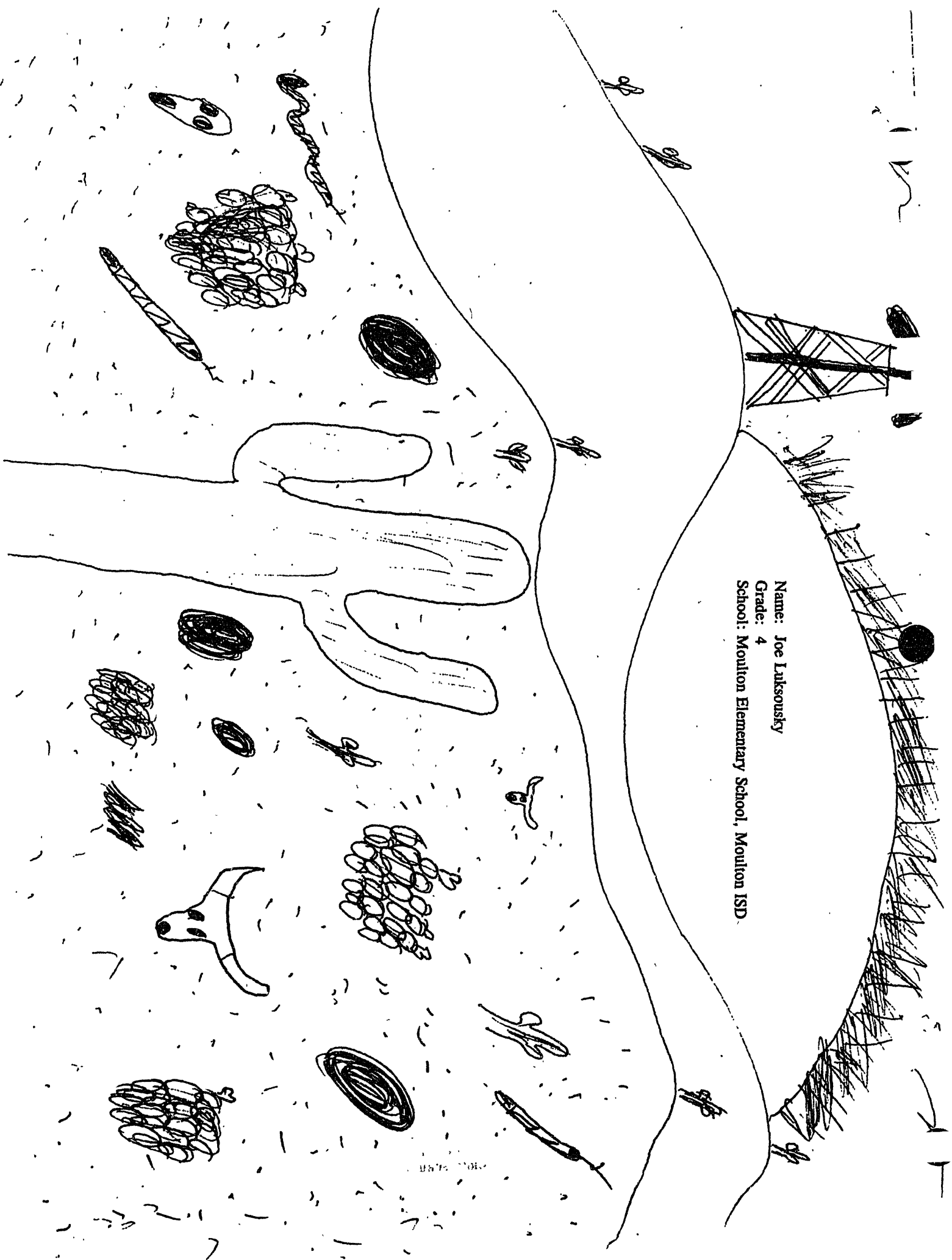
TRD-9514767

Lucia Dodson
Executive Assistant
Texas Ethics Commission

Filed: November 14, 1995



Name: Joe Lukousky
Grade: 4
School: Moulton Elementary School, Moulton ISD



PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology in proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

Voting Systems

• 1 TAC §81.52

The Office of the Secretary of State proposes an amendment to §81.52 to add new subsection (c) concerning voting procedures for precinct ballot counters. The proposed amendment is necessary because the Texas Election Code (the "Code") does not provide specific voting procedures for the proper processing of ballots to be tabulated by voting systems specifically designed as electronic precinct ballot counters ("precinct counters").

Ann McGeehan, Deputy Assistant Secretary of State, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. McGeehan also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the rule is necessary to allow the Service to receive the best possible data on which to base its actions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed new rule may be directed to Ann McGeehan, Deputy Assistant Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060 or fax (512) 475-2811. Comments must be received no later than 30 days following publication of the proposed rule in the *Texas Register*.

The new section is adopted under the Election Code, §31.003, which provides the secretary of state with authority to obtain and maintain uniformity in the application, operation, and interpretation of election laws, and prepare detailed and comprehensive written directives and instructions relating to election laws.

The Texas Election Code, Texas Election Code Annotated, Chapter 127, Subchapter F,

§127.157 is affected by this proposed amendment.

§81.52. Precinct Ballot Counters.

(a)-(b) (No change.)

(c) In addition to the procedures provided herein and in §127.157 of the Texas Election Code (the "Code"), compliance with the following voting procedures is required for the proper processing of ballots to be tabulated by voting systems specifically designed as electronic precinct ballot counters ("precinct counters"):

(1) The voter may deposit a ballot directly into a precinct counter. If the machine returns the ballot to the voter because the ballot is blank, mismarked, damaged, or otherwise spoiled, the voter may either attempt to correct the ballot, request another ballot once the spoiled ballot is returned to the election officer, or request the election official to override the rejection so that the precinct counter accepts the ballot, and outstacks the write-in, if necessary.

(2) The voter is not entitled to receive more than three ballots. The procedures for handling a spoiled ballot provided by §64.007 of the Code must be followed.

(3) The precinct counter must be set up to reject and return the ballot to the voter rather than outstack the ballot if it is blank, mismarked, undervoted, or overvoted.

(4) If the precinct counter rejects the ballot for any reason and the voter has received the maximum number of ballots or does not wish to make further changes to the ballot, the election official must override the rejection so that the precinct counter accepts the ballot and outstacks the write-in, if necessary.

(5) While the polls are open or as soon as practicable after the polls close, the counted ballots shall be re-

moved from the ballot box and examined for irregularly marked ballots for processing in accordance with §127.157(b)-(e) of the Code.

(d)[(c)] If the tabulating equipment is not capable of separating damaged, irregularly marked, and write-in ballots for manual counting, a container meeting the specifications of the Code for ballots boxes number one and number two must be provided for the deposit of ballots by voters after the ballots have been marked. At the direction of the presiding judge, the election officials shall unlock the ballot container and process the ballots in accordance with the provisions of the Texas Election Code, §127.034(b) and (c), and then pass the ballots to be counted electronically through the tabulator for counting.

(e)[(d)] In either case, the damaged and irregularly marked ballots shall be counted manually or duplicated for automatic tabulation pursuant to §127.126 of the Code. [the Texas Election Code, §127.126] Write-in ballots shall be counted manually, and the results added to those for ballots counted by the tabulating equipment. The results entered on the returns shall reflect the totals obtained from the count of the ballots tabulated on the tabulating equipment and from the manual count of damaged, irregularly marked, and write-in ballots.

(f)[(e)] In this section, damaged ballot means a ballot that is damaged such that it may not be accurately counted by the tabulating equipment.

(g)[(f)] The returns, ballots, and other records of the election shall then be distributed in accordance with the provisions of Chapter 66 of the Code [the Texas Election Code, Chapter 66]. Ballots must be returned to the appropriate authority in a container meeting the specifications of the [Election] Code for ballot box number three.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514898

Clark Kent Ervin
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-5650 or toll-free 1-800-252-(VOTE)8683.

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Records and Reports

• 16 TAC §23.13

The Public Utility Commission of Texas proposes an amendment to §23.13, concerning statistical reports. This amendment adds a new subsection (f) titled Infrastructure Reports which details the information to be filed by an electing incumbent local exchange company to ensure compliance with the infrastructure commitments mandated by the Public Utility Regulatory Act of 1995 (PURA 95 or the Act) §§3.358, 3.359, 3.403. An incumbent local exchange company that elects incentive regulation under subtitle H or I of the Act is required to deploy certain telecommunications infrastructure in its service areas within the state of Texas. In addition, the Act requires an electing incumbent local exchange company to deploy telecommunications network infrastructure to certain requesting entities in order to enable such entities to have ubiquitous, broadband, digital services for voice, video, and data. The proposed rule requires an electing incumbent local exchange company to file an annual infrastructure report on the anniversary date of its election in order for the commission to track the progress of telecommunications infrastructure deployment in the state.

Kevin K. Zaring, Assistant General Counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the section.

Mr. Zaring also has determined that for each year of the first five year period that the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the effective monitoring of statutorily required deployment of telecommunications infrastructure, which will ensure that such deployment is accomplished. There may be minimal economic costs to persons who are required to comply with the section as proposed. There will be no effect on small businesses as a result of enforcing this section.

Mr. Zaring also has determined that for each of the first five years that the proposed section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposed rule (15 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 14425. The Commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The Commission will consider the costs and benefits in deciding whether to adopt the amendment.

The Commission Staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029, at the Commission's offices on December 5, 1995, at 10:00 a.m.

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §3.358(c), which requires the Commission to ensure that certain infrastructure goals are achieved; §3.403(b), which requires the Commission to ensure that certain infrastructure goals are achieved; and §3.403(g) which requires each electing local exchange company to file an annual report with the Commission which sets forth its progress on infrastructure deployment.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, Texas Revised Civil Statutes, Article 1446c-0.

§23.13. Statistical Reports

(a)-(e) (No change.)

(f) Infrastructure Reports: Each incumbent local exchange company (LEC) that elects incentive regulation under the subtitles (H) or (I) of the Public Utility Regulatory Act (PURA 95) shall file an infrastructure report with the commission each year on the anniversary date of its election. One copy of the report must be filed as a hard copy, and one copy must be filed in an electronic format. The report must include sufficient information to ensure compliance with the requirements of §§3.358, 3.359, and 3.403 of the Act. At a minimum, the report must include the following information:

(1) End-to-end digital connectivity.

(A) Percent and total number of access lines that have end-to-end digital connectivity. Also, total number of lines that were upgraded to end-to-end

digital connectivity during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and Common Language Location Identification (CLLI) Code, and by class of customers (such as residential and business).

(B) The associated investment and expense for the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(C) The total number of equipped and active voice channels, number of channels on fiber optics, and number of channels on copper facilities. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(2) New digital switch deployment.

(A) Percent and total number of local exchange access lines served by digital switching facilities. Also, total number of lines that were served by new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(B) Percent and total number of central offices equipped with digital switching facilities. Also, total number of central offices that were equipped with new digital switching equipment during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(C) The associated investment and expense for the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code.

(D) The type, make, and quantity of switching equipment installed during the previous year. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of the switch along with a brief description of its functionalities and capabilities.

(3) Inter-office broadband facilities (capable of transmitting at least 45 megabits per second of digital information).

(A) Percent and total number of inter-office facilities that use broadband facilities. Also, total number of inter-office facilities that were upgraded for broadband capability during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, number of DS-3 channels or optical channels, etc.) and location of such facilities, for the previous year. Also include installation and service dates for such facilities.

(C) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(4) Common Channel Signaling System (SS-7) deployment.

(A) Percent and total number of central offices equipped with SS-7 capability. Also, total number of central offices that were equipped with SS-7 capability during the previous year and cumulative for the period since election. This information shall be provided for each wire center or central office, identified by name and CLLI Code. Also include actual installation and service dates of SS-7 capability along with a brief description of its functionalities.

(B) The associated investment and expense data for such facilities, for the previous year and cumulative for the period since election.

(5) Fiber optic facilities to tandem central offices.

(A) Percent and number of serving central offices that have optical fiber facilities to their connecting tandem offices. Also, total number of serving central offices that were upgraded with fiber optic facilities to their respective tandem switching office during the previous year and cumulative for the period since election.

(B) Include schematic diagrams that indicate quantity (such as fiber sheath miles, and number of strands, or number of DS-3 channels or optical channels etc.) and location of such facilities, for the previous year. Also include

installation and service dates for those facilities.

(C) The associated investment and expense data, for the previous year and cumulative for the period since election.

(6) Infrastructure commitment to certain entities.

(A) Identify each entity, by name and type, that requests services provided under PURA §3.359 or §3.403, as applicable. Include the name, address, and telephone number of the contact person for each entity served.

(B) For each entity identified in subparagraph (A) of this paragraph, list the date of each request and the actual installation and service dates. Also list the type of service(s) requested and actually provided, including quantity and location. Provide information that describes the functionalities and application of each type of service provided.

(C) For each entity identified in subparagraph (A) of this paragraph, provide the associated investment and expense data for the previous year and cumulative for the period since election.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514716

Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 458-0100

Certification

• 16 TAC §23.32

Public Utility Commission of Texas proposes an amendment to §23.32, relating to Automatic Dial Announcing Devices (ADADs). This amendment will conform the existing rule to the mandates of the Public Utility Regulatory Act of 1995 (PURA 95 or the Act), §3.653, which regulates the operation of an ADAD. The proposed amendment creates an additional circumstance when the operation of an ADAD will be considered in compliance with the requirement for certain information to be included in an ADAD message. The proposed amendment also requires that an

ADAD, when used for solicitation purposes, has a message shorter than one minute or the capability of terminating the call within one minute when the call is answered by a telephone answering device.

Kevin K. Zarling, Assistant General Counsel, Office of Regulatory Affairs, has determined that for each year of the first five year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Zarling also has determined that for each year of the first five year period the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be less intrusive use of ADADs, particularly by eliminating those situations where an ADAD message of extreme duration causes a called person's line to remain off-hook, preventing other in-coming calls or causing a called-person's answering machine to become disabled by using up the machine's message storage capacity.

Mr. Zarling also has determined that for each year of the first five year period the proposed section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the proposed section.

Comments on the proposed rule (15 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 14517. The Commission invites specific comments addressing the issue of which federal laws and regulations are applicable to the use described in subsection (c)(3) of the rule. The Commission also invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed amendment. The Commission will consider the costs and benefits in deciding whether to adopt the amendment.

The Commission Staff will conduct a public hearing on this rulemaking under Texas Government Code §2001.029, at the Commission's offices on November 30, 1995, at 9:00 a.m.

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §3.653, which establishes the requirements for operation of an ADAD; and §3.658, which grants the Commission the power to adopt rules necessary to carry out its duties with respect to regulation of ADADs.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, Texas Revised Civil Statutes, Article 1448c-0.

§23.32. Automatic Dial Announcing Devices.

(a)-(b) (No change.)

(c) Requirements for use of an automatic dial announcing device. A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.

(1)-(2) (No change.)

(3) The message must clearly state during the first 30 seconds of the call the nature of the call; [At the beginning of the message, the message shall state clearly] the identity of the business, individual, or other entity initiating the call, and. [In addition, the message shall, during or after the message, state clearly] the telephone number (other than that of the ADAD which placed the call) [or address] of such business, individual, or other entity, provided, however, that if an ADAD is used for debt collection purposes and the use complies with applicable federal law and regulations, and the ADAD is used by a live operator for automatic or hold announcement purposes, the use complies with this paragraph. The entire message must be delivered in one language.

(4) The device must disconnect from the called person's line no later than 30 seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations §68.318(c)(2).

(5) The device, when used for solicitation purposes, must have a message shorter than one minute or have the technical capacity to recognize a telephone answering device on the called person's line and terminate the call within one minute.

(6)[(5)] For calls terminating in this state, the device must not be used to make a call:

(A) for solicitation before noon or after 9:00 p.m. on a Sunday or before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday; or

(B) for collection purposes at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 United States Code §1692 et seq).

(7)[(6)] Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may

not be made to telephone numbers of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

(8)[(7)] If during a call a cross-promotion or reference to a pay-per-call information service is made, the call must include:

(A) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;

(B) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and

(C) the estimated amount of time required to receive the entire information offered by the service during a call.

(d)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514717

Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 458-0100

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TITLE 19. EDUCATION
Part II. Texas Education
Agency

Chapter 61. School Districts

Subchapter A. Board of Trustees Relationship

• 19 TAC §61.1

The Texas Education Agency (TEA) proposes new §61.1, concerning continuing education for school board members. The new rule establishes definitions, requirements, and procedures related to: the school district orientation session; a basic orientation to the Texas Education Code; an annual team-building session with the school district board of trustees and superintendent; and specified hours of continuing education based on identified needs. The rule also provides that the

State Board of Education (SBOE) shall adopt a framework for governance leadership to be used in structuring continuing education for school board members. The new rule is proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. Current §61.61 (relating to Training for School Board Members) is proposed for repeal in a separate submission.

Under Senate Bill 1, a rule adopted by SBOE normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that an SBOE rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of at least two-thirds of the board members, proposes an earlier effective date of March 1, 1996. The earlier date is necessary to ensure that school board members have training in accordance with state statute in a timely manner.

Ruben Olivarez, executive deputy commissioner for accountability, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule. There will be no impact on state government. The impact on local government (school districts) cannot be accurately determined at this time. School districts may incur costs associated with developing and delivering school board member training. There will be no effect on small businesses.

Mr. Olivarez and Criss Cloudt, executive associate commissioner for policy planning and information management, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the course of training for school board members delivered by education service centers will focus on the key aspects of state education statute that board members should know to function effectively as an educational leadership team. School board members will have an opportunity to receive additional training based on their self-evaluation of training needs. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Information Management, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed rule submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §11.159, which directs SBOE to provide a training course for independent school board trustees to be offered by the regional education service centers.

The new section implements the Texas Education Code, §11.159.

§61.1. Continuing Education for School Board Members.

(a) Under the Texas Education Code, §11.159, the State Board of Education (SBOE) shall adopt a framework for governance leadership to be used in structuring continuing education for school board members. Copies of the framework shall be sent annually to the president of each board of trustees to be distributed to all current board members and the superintendent.

(b) The continuing education required under the Texas Education Code, §11.159, applies to each member of an independent school district board of trustees. The continuing education requirement consists of orientation sessions, an annual team building session with the local board and the superintendent, and specified hours of continuing education based on identified needs. The superintendent's participation in team building sessions as part of the continuing education for board members shall represent one component of the superintendent's ongoing professional development.

(1) Each school board member of an independent school district shall receive a local district orientation and an orientation to the Texas Education Code.

(A) Each new board member shall participate in a local district orientation session within 60 days before or after the board member's election or appointment. The purpose of the local orientation is to familiarize new board members with local board policies and procedures and district goals and priorities.

(B) Before January 1, 1997, each sitting board member shall receive a basic orientation to the Texas Education Code and relevant legal obligations. The orientation shall have special but not exclusive emphasis on statutory provisions related to governing Texas school districts. The orientation shall be delivered by regional education service centers (ESCs) and shall be three hours in length.

(C) Following January 1, 1997, each newly elected board member of an independent school district shall receive the orientation to the Texas Education Code within the first year of service. The orientation shall be delivered by ESCs and shall be three hours in length.

(D) After each session of the Texas Legislature, including each regular session and called session related to education, each school board member shall receive an update to the basic orientation provided by the ESC. The update session

shall be of sufficient length to familiarize board members with major changes in the code and other relevant legal developments related to school governance. A board member who has attended an ESC basic orientation session that incorporates the most recent legislative changes is not required to attend an update.

(2) The entire board, including all board members, shall annually participate with their superintendent in a team building session facilitated by the ESC or another registered provider. The team building session shall be of a length deemed appropriate by the board, but generally at least three hours. The purpose of the team building session is to enhance the effectiveness of the board-superintendent team and to assess the continuing education needs of the board-superintendent team. The assessment of needs shall be based on the framework for governance leadership and shall be used to plan continuing education activities for the year for the governance leadership team.

(3) In addition to the continuing education requirements in paragraphs (1) and (2) of this subsection, each board member shall receive additional continuing education on an annual basis in fulfillment of assessed needs and based on the framework for governance leadership. The continuing education sessions may be provided by ESCs or other registered providers.

(A) In a board member's first year of service, he or she shall receive at least ten hours of continuing education in fulfillment of assessed needs.

(B) Following a board member's first year of service, he or she shall receive at least five hours of continuing education annually in fulfillment of assessed needs.

(C) A board president shall receive continuing education related to leadership duties of a board president as some portion of the annual requirement.

(c) No continuing education shall take place during a school board meeting unless that meeting is called expressly for the delivery of board member continuing education. However, continuing education may take place prior to or after a legally called board meeting in accordance with the provisions of the Government Code, §551.001(4).

(d) An ESC board member continuing education program shall be open to any interested person, including a current or prospective board member.

(e) A registration fee shall be determined by ESCs to cover the costs of provid-

ing continuing education programs offered by ESCs.

(f) A private or professional organization, school district, government agency, college/university, or private consultant shall register with the Texas Education Agency (TEA) to provide the board member continuing education required in subsection (b)(2) and (3) of this section.

(1) The registration process shall include documentation of the provider's training and/or expertise in the activities and areas covered in the framework for governance leadership.

(2) An updated registration shall be required of a provider of continuing education every three years.

(3) A school district that provides continuing education exclusively for its own board members is not required to register.

(g) The provider of continuing education shall provide verification of completion of board member continuing education to the individual participant and to the participant's school district. The verification must include the provider's registration number.

(h) At least 50% of the continuing education required in subsection (b)(3) of this section shall be designed and delivered by persons not employed or affiliated with the board member's local school district. No more than one hour of the required continuing education that is delivered by the local district may utilize self-instructional materials.

(i) To the extent possible, the entire board shall participate in continuing education programs together.

(j) Annually, at the meeting at which the call for election of board members is normally scheduled, the current president of each local board of trustees shall announce the name of each board member who has and has not completed the required continuing education, shall cause the minutes of the local board to reflect the information, and shall make this information available to the local media.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514809

Crisis Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Subchapter E. Board of Trustees Relationship

• 19 TAC §61.61

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §61.61, concerning training for school board members. The rule specifies the amount, type, and delivery of training required of school board members. The repeal is necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new §61.1 (relating to Continuing Education for School Board Members) is proposed in a separate submission.

Under Senate Bill 1, a rule adopted by the State Board of Education (SBOE) normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that an SBOE rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of at least two-thirds of the board members, proposes an earlier effective date of March 1, 1996. The earlier date is necessary to allow a new rule to be adopted that complies with the requirements of Senate Bill 1 that will ensure that school board members will have training in a timely manner.

Ruben Olivarez, executive deputy commissioner for accountability, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeal.

Mr. Olivarez and Criss Cloudt, executive associate commissioner for policy planning and information management, have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that SBOE may adopt a new rule regarding continuing education for school board members that complies with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Information Management, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§61.61. Training for School Board Members.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514808

Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Chapter 65. Technology

Subchapter A. Center for Educational Technology

• 19 TAC §§65.1-65.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §§65.1-65.4, concerning the Center for Educational Technology. The rules designate membership category names and requirements for participating in the center. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

Geoffrey Fletcher, associate commissioner for curriculum, assessment, and professional development, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Fletcher and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the com-

missioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§65.1. Center for Educational Technology Membership Policies and Categories.

§65.2. In-state Membership Categories.

§65.3. Out-of-State Membership Categories.

§65.4. Governing Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514810

Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Chapter 68. Transportation

The Texas Education Agency (TEA) proposes the repeal of §§68.11-68.14, 68.21-68.26, 68.32-68.34, and 68.111-68.113, concerning student transportation services. The rules establish requirements for student transportation, including definitions and procedures related to: school district responsibility for transportation services; student eligibility for services; types of transportation; and transportation administration. The rules also adopt by reference several TEA forms and publications related to student transportation services. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

David Anderson, chief counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Anderson and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules have been published in the *Texas Register*.

Subchapter A. Transportation Operations

Commitment to Providing Student Transportation Services

• 19 TAC §68.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§68.11. Provisions of Services: General.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514811 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Student Eligibility for Transportation Services

• 19 TAC §§68.12-68.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§68.12. Regular Student Eligibility.

§68.13. Handicapped Student Eligibility.

§68.14. Vocational Student Eligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514812 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Types of Transportation

• 19 TAC §§68.21-68.26

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§68.21. Provision of Services by Type of Program.

§68.22. Regular and Prekindergarten/Kindergarten Transportation.

§68.23. Private Transportation (Regular and Handicapped).

§68.24. Handicapped Transportation.

§68.25. Vocational Transportation.

§68.26. Contracted Transportation Services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514813 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Transportation Administration

• 19 TAC §§68.32-68.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§68.32. Operation of School Buses.

§68.33. Uses of School Buses.

§68.34. Determining Operation Costs on a Per Mile Basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514814 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter B. Adoptions by Reference

• 19 TAC §§68.111-68.113

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§68.111. Program Guide for School Bus Driver Training in Texas.

§68.112. School Bus Driver's Driving Record Evaluation.

§68.113. Medical Examination Report for School Bus Drivers.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Cris Cloudt
Associate Commissioner,
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Texas Education Agency

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For further information, please call: (512) 463-9701

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Chapter 78. Vocational and Applied Technology Education

The Texas Education Agency (TEA) proposes the repeal of §§78.1-78.3, 78. 10, and 78.11, concerning vocational and applied technology education. The rules establish definitions, requirements, and procedures related to: establishing a career and technology program; establishing a district-wide local advisory council; contracted instruction; and the quality work force planning system. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

J. R. Cummings, associate commissioner for special populations and state director for vocational education, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

Subchapter A. General Provisions

• 19 TAC §§78.1-78.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the

Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§78.1. Vocational and Applied Technology Education.

§78.2. Local Advisory Councils.

§78.3. Vocational Education for Public School Students by Contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Cris Cloudt
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Research
Texas Education Agency

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Subchapter B. Quality Work Force Planning

• 19 TAC §§78.10, §78.11

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§78.10. Integrated Vocational-Technical Education and Training Delivery System for a Quality Work Force.

§78.11. Fiscal Agents for Quality Work Force Planning Committees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Texas Education Agency

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Chapter 97. Planning and Accreditation

• 19 TAC §§97.1-97.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §§97.1-97.9, concerning planning and accreditation. The rules establish definitions, requirements, and procedures related to: the purpose of accreditation; accreditation status; campus performance ratings; the accreditation process; special investigations; the appeal process; and accreditation of nonpublic schools. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 97 is proposed in a separate submission.

Ruben Olivarez, associate commissioner for accountability, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Olivarez and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the State Board of Education may adopt new rules regarding planning and accreditation that comply with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§97.1. Purpose of Accreditation.

§97.2. Accreditation Required.

§97.3. Types of Accreditation Status.

§97.4. Types of Campus Performance Ratings.

§97.5. Criteria for Accreditation.

§97.6. The Accreditation Process.

§97.7. Special Investigations.

§97.8. The Appeal Process.

§97.9. Non-public Schools.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Cris Cloudt
Associate Commissioner,
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Research
Texas Education Agency

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For further information, please call: (512) 463-9701

◆ ◆ ◆
• 19 TAC §§97.1-97.7

The Texas Education Agency (TEA) proposes new §§97.1-97.7, concerning planning and accreditation. The rules establish definitions, requirements, and procedures related to: the purpose of accreditation; accreditation status; campus performance ratings; and placing on probation or revoking a home-rule school district charter or an open-enrollment charter school. The new rules are proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. Current Chapter 97 is proposed for repeal in a separate submission.

Ruben Olivarez, associate commissioner for accountability, has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the repeals. The effect on state or local government cannot be precisely determined at this time. Anticipated costs to state or local government are related to possible hearings for placing on probation or revoking a home-rule school district charter or an open-enrollment charter school. The costs would include travel for the review teams responsible for the hearings and any

costs associated with conducting the hearings at district or charter school facilities. Currently, no home-rule school district charters or open-enrollment charter schools have been approved for operation. There will be no effect on small businesses as a result of enforcing or administering the repeals.

Mr. Olivarez and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an accountability system that is driven by excellence and equity in student performance and that provides assistance and intervention, as appropriate, as close as possible to the actual point of delivery of educational services. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed rules submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§7.102(b) (9), 12.027, and 12.028, which authorizes the State Board of Education to adopt rules relating to placing on probation or revoking a home-rule school district charter; the Texas Education Code, §§7.102(b)(10), 12.115, and 12.116, which authorizes the State Board of Education to adopt rules relating to granting, modifying, placing on probation, revoking, or denying renewal of the charter of an open-enrollment charter school; the Texas Education Code, §39.051(a), which authorizes the State Board of Education to adopt a set of indicators of the quality of learning on a campus; and the Texas Education Code, §39.072(a), which authorizes the State Board of Education to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating.

The new sections implement the Texas Education Code, §§7.102(b)(9), 7.102(b)(10), 12.027, 12.028, 12.115, 12.116, 39.051(a), and 39.072(a).

§97.1. Purpose of Accreditation. The purpose of school accreditation is to assure that school districts will be held accountable for excellence in student performance and equity for all segments of the student population. Accreditation of a school district will be determined through assessment of student performance on the academic excellence indicators and other performance indicators. Accreditation will also include elements of effective site-based decision making and planning activities directed toward the improvement of outcomes for all students. Under this accountability system, schools will receive optimal encouragement

to secure release from state laws and rules which inhibit student performance and will have maximum flexibility in determining the kinds of programs needed to achieve excellence and equity standards, consistent with state and federal laws and State Board of Education (SBOE) rule.

§97.2. Accreditation Status.

(a) Each school district must be assigned an accreditation status by the Texas Education Agency (TEA).

(b) The accreditation of a school district is based primarily on its overall performance by all student populations and on the performance of each of its individual campuses as demonstrated on state adopted academic excellence indicators and other indicators of student performance.

(c) Additional criteria used for accreditation standards may include consideration of compliance with statutory requirements, State Board of Education (SBOE) rules, applicable court orders, data reported through the Public Education Information Management System (PEIMS), high school graduation requirements specified in the Texas Education Code, §7.056(e)(3)(C)-(I), and the effectiveness of the special education program.

(d) Accreditation by a voluntary association is a local option of the district, but it does not substitute for accreditation by the TEA.

§97.3. Types of Accreditation Status. The specific procedures for determining accreditation status based on performance measures will be established by the commissioner of education. The types of status districts may receive are as follows.

(1) Exemplary. In accordance with the established procedures, a district may be classified as exemplary if it meets or exceeds the state exemplary standards on all academic excellence indicators for which performance data are available and criteria have been established.

(A) The performance results reported on each of the academic excellence indicators for all student populations shall be the primary consideration of exemplary status.

(B) A district may retain its exemplary status unless it fails to maintain exemplary standards established by the commissioner of education.

(2) Recognized. In accordance with the established procedures, a district may be classified as recognized if it meets or exceeds the state standards and the required improvement on all academic excel-

lence indicators for which performance data are available and criteria have been established.

(A) The performance results reported on each of the academic excellence indicators for all student populations shall be the primary consideration of recognized status.

(B) A district may retain its recognized status unless it fails to maintain recognized standards established by the commissioner of education.

(3) **Academically Acceptable.** In accordance with the established procedures, a district shall be classified as academically acceptable when it exceeds the academically unacceptable, but is below the exemplary and recognized, standards of performance on all of the academic excellence indicators for which performance data are available and criteria have been established.

(4) **Academically Unacceptable.** In accordance with the established procedures, a district shall be classified as academically unacceptable when the district's students fail to achieve the standard of acceptable performance on the academic excellence indicators for which performance data are available and criteria have been established.

(A) The performance results reported on each of the academic excellence indicators for all student populations shall be the primary consideration for academically unacceptable status.

(B) A district will retain its academically unacceptable status until it meets the standards of academically acceptable, recognized, or exemplary status.

§97.4. Types of Campus Performance Ratings. The specific procedures for determining campus performance ratings, based on overall performance by all student populations as demonstrated on state adopted academic excellence indicators and other indicators of student performance, will be established by the commissioner of education. Additional criteria will be established by the commissioner of education for special campuses which serve unique populations and/or provide alternative education programs. The types of performance ratings campuses may receive are as follows.

(1) **Exemplary.** In accordance with the established procedures, campuses must meet the same standards in respect to each of the designated academic excellence indicators that apply to the district level and are set forth for district exemplary status.

(2) **Recognized.** In accordance with the established procedures, campuses must meet the same standards in respect to each of the designated academic excellence indicators that apply to the district and are set forth for district recognized status.

(3) **Acceptable.** In accordance with the established criteria, campuses are rated as acceptable as long as they maintain performance that is above the low performing level set by the commissioner and do not otherwise qualify as exemplary or recognized.

(4) **Low Performing.** In accordance with the established procedures, campuses are rated as low performing if they fail to achieve the standard of acceptable performance on the academic excellence indicators and other student performance measures.

§97.5. Criteria for Accreditation. The academic excellence indicators stipulated in law and other performance indicators as adopted by the State Board of Education (SBOE) shall be the main consideration of the Texas Education Agency (TEA) in the annual rating of a district and campuses. Performance on the academic excellence indicators required by this section shall be used for the purposes of evaluation and accreditation. The indicators must be based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status. Use of the academic excellence indicators in the rating process shall include consideration of district and campus performance in relation to:

(1) standards established for each indicator;

(2) required improvement necessary to meet the state standards and for students to meet exit requirements as defined by the commissioner of education; and

(3) comparable improvement of the district and campus relative to a profile developed from the total state student performance data base that exhibits substantial equivalence to the characteristics of students served by the campus or district, including past academic performance, socioeconomic status, ethnicity, and limited English proficiency.

§97.6. Placing on Probation or Revoking a Home-Rule School District Charter.

(a) The State Board of Education (SBOE) may place on probation or revoke a home-rule school district charter for one or more of the circumstances prescribed by the Texas Education Code, §12.027(a). The Texas Education Agency (TEA) may propose that a home-rule district charter be placed on probation or revoked if it is determined that the district:

(1) committed a material violation of the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management; or

(3) failed to comply with the requirements of the Texas Education Code, Chapter 12, Subchapter B.

(b) The TEA shall notify a home-rule school district of the grounds for proposing that its charter be placed on probation or revoked.

(c) Within 15 working days after receiving the notice, the district shall submit to the TEA a written request for a hearing under this section.

(d) An opportunity for a hearing shall be provided to the district and to parents of students residing in the district.

(e) A hearing held under this section is open to the public and shall be held in the district.

(f) The hearing shall be an opportunity for the district and parents of students residing in the district to provide comment and explanation regarding the placement on probation or revocation of the district charter.

(g) A hearing held under this section shall be conducted by a review team designated by the commissioner of education.

(h) A review team created under this section shall be:

(1) established in each of the regional education service centers (ESCs); and

(2) composed of the following individuals:

(A) the superintendent of a school district other than the district under review;

(B) a trustee of the board of a school district other than the district under review; and

(C) a member of the ESC staff.

(i) Following the public hearing, the review team shall provide the commissioner of education with a report of findings and a recommendation regarding the probation or revocation of a district charter. The report may include:

(1) a recommendation to modify the charter of a home-rule school district to include the specific modifications to be made to the charter and to provide for a

review to determine that the required modifications have been implemented; or

(2) a recommendation to place the charter of a home-rule charter school district on probation, state the specific terms of the probation, the length of the probationary period, and provisions for periodic review of compliance with the terms of the probation.

(j) The commissioner of education may adopt the recommendation of the review team in whole or in part and may issue a recommendation to the SBOE that the home-rule district charter be placed on probation or revoked.

§97.7. Placing on Probation or Revoking an Open-Enrollment Charter School.

(a) The State Board of Education (SBOE) may modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school if SBOE determines the person operating the school:

(1) committed a material violation of the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management; or

(3) failed to comply with the requirements of the Texas Education Code, Chapter 12, Subchapter B.

(b) The recommendation to modify, place on probation, revoke, or deny renewal of the charter of an open-enrollment charter school shall be based on the findings of a Texas Education Agency (TEA) review team.

(c) The person operating the school shall be notified before the school's charter is modified, placed on probation, revoked, or denied renewal. The notice shall clearly specify the action sought and the grounds for taking such action. The notice also shall state that an opportunity for a public hearing shall be provided to the person operating the open-enrollment charter school and to parents and guardians of students in the school. Notice served on the person operating the school shall be notice to parents and guardians of students in the school.

(d) A hearing held under subsection (c) of this section shall be open to the public and must be held at the facility at which the program is operated unless a different location is agreed to by the person operating the school.

(e) Within 15 working days after receiving the notice, the person operating the school or a parent or guardian of a student in the school may request a hearing and submit a written response to the board containing specific answers to each of the findings included in the notice. The TEA

shall schedule a hearing upon receiving a request and written response. If a request for hearing and a written response are not submitted within 15 days, the recommendations of the commissioner of education or his or her designee shall be submitted to SBOE.

(f) Following a public hearing and examination of any written response, the TEA review team may:

(1) find that some or all of the findings have merit and make a formal proposal to SBOE that the school's charter be modified, placed on probation, revoked or denied renewal;

(2) recommend specific modifications to be made to the charter and provide for a review to determine that the required modifications have been implemented;

(3) recommend specific terms of probation, to include the length of the probationary period, and provisions for periodic review of compliance with the terms of the probation; or

(4) dismiss any or all of the findings in the report.

(g) The commissioner of education or his or her designee shall submit a final report of findings and recommendations to SBOE.

(h) The SBOE shall decide whether to modify, place on probation, revoke, or deny the renewal of the charter of an open-enrollment charter school. The decision shall take effect 30 days after the date of the SBOE meeting at which the action is taken, unless SBOE prescribes another date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Criss Cloudt
Associate Commissioner,
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For further information, please call: (512) 463-9701

Chapter 105. Foundation School Program

Subchapter A. Definitions

• 19 TAC §105.1

The Texas Education Agency (TEA) proposes new §105.1, concerning the Foundation School Program. The rule defines the

terms "tax levy" and "tax collection" for the purposes of calculating certain state aid entitlements under the Texas Education Code, Chapter 42, and implementing the wealth-equalizing provisions of the Texas Education Code, Chapter 41. The new rule is proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. Current Chapter 105 is proposed for repeal in a separate submission.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a consistent application of state laws to achieve a fair and reasonable distribution of state funds for public education. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed rule submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with the Texas Education Code, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The new section implements the Texas Education Code, §42.004.

§105.1. Rules for the Definition of Tax Levy and Tax Collection.

(a) General provisions. For the purpose of determining state aid under the Texas Education Code, Chapter 42, and in implementing the wealth-equalizing provisions of the Texas Education Code, Chapter 41, calculations that include tax collections as a data element shall reference subsection (b) of this section.

(b) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Total levy—The sum of the maintenance and operation and debt service levies generated by applying a district's adopted tax rates to its locally assessed valuation of property for the current tax year.

(2) Tax collection—Total taxes collected September 1-August 31 for the current and all prior years' total levies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Policy Planning and
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Texas Education Agency

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The Texas Education Agency (TEA) proposes the repeal of §105.11 and §105.31, concerning the Foundation School Program. The rules define the terms "tax levy" and "tax collection" for the purpose of calculating certain state aid entitlements under the Texas Education Code. The rules also establish the authority and procedures under which a school may operate on an abbreviated day. The repeal is necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 105 is proposed in a separate submission.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Wisnoski and Criss Cloutd, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the State Board of Education may adopt new rules regarding the Foundation School Program that comply with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloutd, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

• 19 TAC §105.11

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§105.11. Rules for the Definition of Tax Levy and Tax Collection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter B. School Year • 19 TAC §105.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeal implements the Texas Education Code, §7.102.

§105.31. Abbreviated Days of Instruction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Chapter 113. Federal Funds To Support Public Education in Texas

The Texas Education Agency (TEA) proposes the repeal of §§113.1, 113.21, 113.22, 113.31, 113.32, concerning federal funds to support public education. The rules establish

the system of receiving complaints and appealing TEA action concerning federally funded programs. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

David Anderson, chief counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Anderson and Criss Cloutd, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloutd, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

Subchapter A. Federal Funds for Local Education Agencies

• 19 TAC §113.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102.

§113.1. Contracts Permitted.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter B. Complaint Procedures for Federal Programs

• 19 TAC §113.21, §113.22

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§113.21. Complaints Concerning Federally Funded Programs.

§113.22. Resolution of Complaints Concerning Federal Programs.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Subchapter C. Hearing Procedures for Federal Programs

• 19 TAC §113.31, §113.32

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§113.31. Hearings Concerning Federal Programs.

§113.32. Delegation of Authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514833 Criss Cloutd
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Chapter 121. Public School Finance-Personnel

The Texas Education Agency (TEA) proposes the repeal of §§121.1, 121.11-121.14, 121.31-121.35, 121.41, and 121.42, concerning public school finance with regard to personnel. The rules establish definitions, requirements, and procedures related to: personnel records; years of service for salary increment purposes; and the salary schedule. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

Joe Wisnoski, coordinator for school finance and fiscal analysis, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Wisnoski and Criss Cloutd, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be compliance with Senate Bill 1. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloutd, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

Subchapter A. General Provisions

• 19 TAC §121.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeal implements the Texas Education Code, §7.102. §121.1. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter B. Personnel Records

• 19 TAC §§121.11-121.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§121.11. Types of Records.

§121.12. Credentials.

§121.13. Teacher Service Record.

§121.14. Evidence of Educational Attainment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Subchapter C. Years of Service for Salary Increment Purposes

• 19 TAC §§121.31-121.35

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§121.31. General Provisions Concerning Years of Service.

§121.32. Minimum Employment Requirements for Creditable Service.

§121.33. Entities Recognized for Creditable Service.

§121.34. Requirements Concerning Entities Recognized for Creditable Service.

§121.35. Credit for Work Experience for Vocational Education Personnel.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514836 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Subchapter D. Salary Schedule

• 19 TAC §§121.41, §121.42

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified Texas Education Agency rules.

The repeals implement the Texas Education Code, §7.102.

§121.41. Minimum Salary Schedule.

§121.42. Extended Service.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514837 Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

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For further information, please call: (512) 463-9701

Chapter 176. Minimum Standards for Operation of Licensed Texas Driver Training Programs

The Texas Education Agency (TEA) proposes new §§176.1-176.21 and §§176.101-176.122, concerning driver training programs. The rules establish minimum standards of operation for driver training schools and for driving safety schools and course providers, including definitions, requirements, and procedures related to: school and instructor licensure; exempt schools; school personnel; courses of instruction; school facilities and equipment; student complaints; records; application fees and other charges; and the uniform certificate of course completion. The new rules are proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. Current Chapter 176 is proposed for repeal in a separate submission.

The proposed new rules contain several changes to current Chapter 176, including the following. Separate licensure structures are established for driver education and driving safety schools, as well as for the respective school instructors. A private driver education school may conduct a driver training course at an accredited public or nonpublic secondary school for the students of that school.

Course providers of driving safety programs must pay for the evaluation and approval of a driving safety program and may not operate the programs in Texas without meeting licensing requirements that include education and experience, bonding, and financial stability. Extension sites of driving safety schools are no longer allowed. Driving safety course providers must be licensed and bonded for \$25,000. License fees of \$150 for each driving safety school and \$2,000 for each course provider are required.

A driving safety instructor or a private, licensed school driver education instructor is required to present evidence of completion of continuing education at each renewal of the

instructor's license. Instructor development programs may be approved to be offered in the private, licensed driving schools.

Driving safety course providers may be held accountable for violating provisions of proposed Chapter 176. Driving safety instructors no longer have access to certificates of course completion used to dismiss traffic tickets or obtain insurance discounts. Driver education certificates will be supplied by TEA to the private, licensed driver education schools. The schools must account for these certificates and ensure that only qualified graduates receive them. A school may be declared closed when the facilities are vacated, students are dismissed for more than ten class days, or when students are transferred to another location without prior notice to TEA.

J. R. Cummings, associate commissioner for special populations, has determined that for the first five-year period the rules are in effect there will be fiscal implications as a result of enforcing or administering the rules. There will be no effect on local government. The effect on state government will include additional costs and increases in revenue. The additional costs are estimated to be \$482,878 in fiscal year (FY) 1996 and \$355,878 in each of FYs 1997-2000. The increases in revenue are estimated to be \$494,376 in FY 1996 and \$582,869 in each of FYs 1997-2000.

The additional costs will include operating expenses and professional services. The increases in revenue will result primarily from an increase in the cost of a driving safety certificate from \$1.10 to \$1.70. In addition, revenue will increase based on sales of a new driver education certificate. The TEA projects that the increases in revenue will be offset by costs associated with the increased regulation required by Senate Bill 964, 74th Texas Legislature, 1995.

The effect on small businesses and individuals cannot be precisely determined at this time. Possible additional costs include the following. Under the new rules, each instructor will be required to complete a continuing education requirement. Depending on the options selected to satisfy this requirement, an instructor may be required to pay a minimal cost to comply. In addition, an individual who is dual licensed as a driver education and driving safety instructor will be required to pay an additional \$12.50 for licensure in FY 1996.

A driving safety school owner will be required to pay a user fee to a course provider of not less than \$3.00 per student for the use of course materials, oversight, and course administration. Additionally, a driving safety school owner will be required to pay an increase of \$.60 per certificate of completion. An extension of a driving safety school will be required to apply for a driving safety school license and pay an additional \$97.50. Driver education school owners will be required to pay an increase of \$1.96 per certificate of completion. The TEA anticipates that the increases in costs will be passed on to individuals through an increase in driving safety and driver education course fees.

A driving safety course provider will experience increases in costs in several areas. A new fee of \$9,000 for course evaluation will

be required of each provider who receives approval on or after September 1, 1995. Also, each course provider will be required to pay a \$2,000 license application fee.

A course provider may incur an expense of approximately \$3,000-\$5,000 for new automation requirements. Additionally, a course provider will be required to pay an increase of \$.60 per certificate of completion, plus \$.32 per certificate for first class postage. Finally, each course provider will be required to post a \$25,000 bond. The estimated charge for the bond is \$250-\$500, depending on the financial stability of the course provider. The TEA anticipates that the increases in costs to a course provider may be recovered by the user fee of \$3.00 per student being charged to driving safety school owners as of September 1, 1995.

Before September 1, 1995, the consumer paid average costs of \$20 for a driving safety course and \$200 for a driver education course. Under the new rules, a school owner will be required to charge the consumer a minimum fee of \$25 for a driving safety course. The TEA anticipates that the cost for a driver education course will also increase to cover the increased costs to driver education school owners under statute and the new rules.

The cost of compliance with the new rules for a small driving safety course provider will be approximately \$14,250 during FY 1996. This cost includes the \$9,000 course approval fee (if applicable), the \$2,000 license application fee, automation requirements of approximately \$3,000, and a bonding charge of approximately \$250. No additional loss is anticipated for FYs 1997-1999 since the projected figures are expected to be one-time costs. Further, this initial loss may be entirely offset by the user fee of \$3.00 per student that a course provider is required to charge a driving safety school owner as of September 1, 1995.

The cost of compliance with the new rules for a small driving safety or driver education school cannot be precisely determined at this time. The financial impact will result primarily from the user fee of \$3.00 per student being charged by the course provider. The TEA anticipates that this cost increase will be passed on to the consumer through an increase in course cost.

The cost of compliance with the new rules for a small driving safety course provider compared with the largest driving safety course provider may differ based on \$100 of sales since the course approval fee (if applicable), application fee, automation costs, and bond charges will require a small course provider to pay more per \$100 of sales. The TEA does not anticipate that the increase in the cost of a driving safety certificate of completion and the costs associated with the first-class mailing requirement will result in any differentiation of costs between a small and a large course provider.

The cost of compliance with the new rules for a small driving safety school compared with the largest driving safety school may differ based on \$100 of sales since the application fee will be increased from \$52.50 to \$150.

This differentiation of costs should be minimal.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be an increased awareness of traffic safety and a move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. The anticipated economic cost to persons who are required to comply with the rules as proposed cannot be precisely determined. As discussed previously, some of the increases in costs for school owners and course providers may be passed on to consumers through increases in course costs.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed rules submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

Subchapter A. Minimum Standards for Operation of Texas Driver Education Schools

• 19 TAC §§176.1-176.21

The new sections are proposed under Texas Civil Statutes, Article 4413(29c), §4(a), which authorizes the State Board of Education to adopt rules necessary to carry out the Texas Driver and Traffic Safety Education Act in consultation with the Driver Training School Advisory Commission.

The new sections implement Texas Civil Statutes, Article 4413(29c), §4(a).

§176.1. General Requirements and Purpose of Standards.

(a) Minimum standards of operation must be maintained by all driver education schools to ensure educational courses are of high quality which will be of benefit to the student, the school, and the state and to fulfill the purposes and objectives of the Texas Driver and Traffic Safety Education Act. The observance and maintenance of these standards are the responsibility of each school for inherent advantage to the school itself and for the common good of all of the driving public.

(b) The Texas Education Agency (TEA) will evaluate each school according to the standards of practice set forth in this chapter and appropriate laws. The complete picture presented by the entire educational, promotional, and ethical character of the school will receive consideration in the TEA evaluation.

(c) Every effort will be made to

evaluate fairly and impartially each driver education school application for licensure to solicit students in Texas for the purpose of providing driver education and driver education instructor development courses of instruction. The TEA will endeavor to provide an effective and constructive application of the law and standards of practice adopted for regulating driver education schools.

(d) The TEA will assist all driver education schools and the school directors under its jurisdiction, whenever possible, in complying with the provisions of the law and standards of practice. Inquiries or requests for information should be directed to TEA.

§176.2. *Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advertising—Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to arouse a desire to patronize that school and/or course.

Branch school—A licensed driver education school that has the same ownership and name as a licensed primary driver education school.

Break—An interruption in a course of instruction.

Change of ownership of a school—A change in the control of the school. Any agreement to transfer the control of a school is considered to be a change of ownership. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

Chief school official—The owner, director, or assigned liaison of a licensed driver education school.

DE-964—The driver education certificate of completion.

Division—The division of the Texas Education Agency (TEA) responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing Texas driver training programs.

Division director—The person designated by the commissioner of education to carry out the functions and regulations governing the driver education schools and designated as director of the division responsible for licensing driver training programs.

Good reputation—A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transferring a DE-964 or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

Moral turpitude—Conduct that is inherently immoral or dishonest.

New course—A driver education course is considered new when it has not been offered previously or has been offered and then discontinued.

Primary or main school—A licensed driver education school that may have branch schools.

Public or private school—An accredited public or non-public secondary school.

§176.3. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Civil Statutes, Article 4413(29c), §7, shall request an exemption in writing and provide any information deemed neces-

sary to the division director to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education Agency (TEA) in order to ensure continued operation in compliance with the exemption provisions.

(c) Schools desiring an exemption from the Texas Driver and Traffic Safety Education Act on the basis of being otherwise regulated and approved under any other state law shall provide evidence that all of the driver education courses are so regulated.

(d) The driver education course shall be eligible for the exception under Texas Civil Statutes, Article 4413(29c), §7(c)(5), when the driver education school contracts with schools otherwise regulated and approved to provide instruction and submits the following evidence of compliance.

(1) Classroom instruction shall be at the school otherwise regulated and approved, and all in-car instruction shall originate from the school otherwise regulated and approved or at the driving school.

(2) Driver education schools shall contract with the school otherwise regulated and approved and not with the individual student.

(3) The school otherwise regulated and approved shall collect fees for the course from the students and pay the driver education school in accordance with terms of the contract. Exempt driver education schools shall not collect any monies from the students.

(4) The driver education certificate of completion shall be signed by the driver education school instructor on the line designated as "Signature of Driver Education Instructor." The chief school official or service center director of the school that has contracted the instruction to the driver education school shall sign or cause a stamped signature to be affixed to the driver education certificate of completion.

§176.4. School Licensure.

(a) Application. An application for a school license for a primary or branch driver education school shall be made on forms supplied by the Texas Education Agency (TEA).

(b) Bond requirements. In the case of an original or a change of owner application, an original bond or approved alternate form of security shall be provided. In the case of a renewal application, an original bond or approved alternate form of security or a continuation agreement for the approved bond currently on file or continua-

tion of an approved alternate form of security shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA. Approved alternate forms of security shall adhere to the following guidelines.

(1) An irrevocable letter of credit. The letter shall be in the name of the owner of the school. The letter shall specify the amount of credit extended, which shall be equivalent to the coverage required for a corporate surety bond, and the purpose of the credit. The letter shall contain the signature of an appropriate bank representative. The bank and the letter shall be approved by TEA.

(2) A cash deposit. An irrevocable account shall be established by the school owner in the name of TEA to be drawn upon as needed to pay student refunds as needed if the school closes owing refunds. The account shall be equivalent to the coverage required for a corporate surety bond. The bank and the terms of the account shall be approved by TEA. The TEA shall keep records of deposits and/or withdrawals on the account.

(c) Verification of ownership.

(1) In the case of an original or change of owner application for a primary school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) In the case of an original or change of owner application for a branch school, the owner shall submit an application on forms supplied by TEA.

(3) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(d) Effective date of the driver education school license. The effective date of the school license for a primary driver education school shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue. For a branch school, the expiration date of the driver education school license shall be concurrent with the driver education school license for the primary school.

(e) Purchase of a driver education school.

(1) A person or persons purchasing a licensed driver education school shall obtain an original license.

(2) A driver education school license for a branch school is transferable only to an applicant who owns a currently licensed primary driver education school. A purchaser of a branch school who does not own a currently licensed primary driver education school shall obtain an original driver education school license for a primary school.

(3) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(4) A change of ownership of a driver education school is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(f) New location.

(1) The division director shall be notified of any change of address at least three working days before the move.

(2) A complete application for a driver education school license to reflect a new location shall be submitted to TEA and include all documents designated by the commissioner of education as being neces-

sary with the appropriate fee. A driver education school license may be issued after the new facilities have been inspected and the complete application is approved.

(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.

(g) Renewal of driver education school license. A complete application for the renewal of a license for a primary or branch driver education school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) properly executed bond or a properly executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security; and

(4) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(h) Denial, revocation, or conditional license. The authority to operate a branch school ceases if a primary driver education school license is denied or revoked. The operation of a branch school license may be subject to any conditions placed on the continued operation of the primary driver education school. A driver education school license for a branch school may be denied, revoked, or conditioned separately from the license for the primary school.

(i) Notification of legal action. A school shall notify the division director in writing of any legal action that may concern the operation of, or is filed against, the school, its officers, any owner, or any school instructor within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(j) School closure.

(1) The school owner shall notify TEA 15 business days before the anticipated school closure. The school owner shall provide written notice of the actual discontinuance of the operation within three working days after the cessation of classes. A school shall make all records available for review to TEA within 30 days of the date the school ceases operation.

(2) The division director may declare a school to be closed as of the last day of attendance when written notification is received by TEA from the school owner stating that the school will close; when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate; when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate; when the school dismisses all students, contrary to the school's approved class schedule, without first notifying TEA; or when students are dismissed for more than ten consecutive days that were identified as class days in the approved class schedule.

(k) Itinerant schools. Schools that conduct classes on a short-term basis to provide training in communities that do not have access to the training being offered will not be required to file a change of address application for each location; however, the school shall not operate in more than one location at a time and shall give written notice in advance of each location. The written notice shall include, but not be limited to, the new address, information about the population, how the course will be advertised, assurance that no other training facility is located in the area that can service the community, business hours, the length of time the school will be located at the new site, where student records will be maintained, and any other assurances requested by the division director. The division director will determine whether the school meets the criteria of an itinerant school.

(l) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driver education school and the public or private school. The course shall be subject to the same rules which apply at the licensed driver education school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.5. Applications from Small Businesses.

(a) Time periods. Applications from small businesses for driver education school licenses and from school directors shall be processed in accordance with the following time periods.

(1) The first period is a time from the receipt of an application to the date of issuance of a written notice approv-

ing the application or outlining the reasons why the application is unacceptable. The time periods for each application are:

(A) initial driver education school license-30 days;

(B) renewed driver education school license-60 days;

(C) change in owner driver education school license-60 days; and

(D) school directors-20 days.

(2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:

(A) initial driver education school license-30 days;

(B) renewed driver education school license-30 days;

(C) change in owner driver education school license-30 days;

(D) school directors (approval contingent on issuance of school's license)-30 days; and

(E) school directors (approval not contingent on issuance of school's license)-20 days.

(b) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsection (a) of this section, the applicant has the right to request of the division director full reimbursement of all filing fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for driver education school licenses and school directors exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(c) Appeal. If the request for full reimbursement authorized by subsection (b) of this section is denied, the applicant may then request a hearing by appealing to the commissioner of education for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving driver education schools pursuant to Texas Civil Statutes, Article 4413(29c), and Chapter 157 of this title (relating to Hearings and Appeals).

§176.6. Driver Education School Responsibility for Employees.

(a) All instruction in a driver education course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor may teach any practice teaching necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed supervising teacher. If a licensed instructor enters or leaves the employment of any driver education school, the school director shall notify the division director within five days on forms furnished by the commissioner of education, indicating the name, address, and license number of the school and the instructor, the date of employment or the termination date, and the reason for termination.

(b) No driver education school owner-operator or employee shall:

(1) permit any individual to give classroom instruction or in-car instruction at the school or classroom location unless the individual has a valid current driver education instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided in a course that is not currently on the school's list of approved courses;

(4) complete, issue, or validate a DE-964 to a person who has not successfully completed the entire portion of the course for which the DE-964 is being issued;

(5) authorize, approve, or conduct any instruction in a motor vehicle that fails to meet the requirements stated in §176.17 of this title (relating to Motor Vehicles); or

(6) conduct any part of a TEA-approved driver education course upon the premises or in a facility that does not promote the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter.

(c) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any driver education school shall be deemed an agent of the driver education school, and the school shall share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.7. School Directors and Administrative Staff Members.

(a) Each school shall designate one person as the school director.

(1) Duties. The school director shall be responsible for all actions related to day-to-day operation and administration of the school, which includes supervising instructors, organizing and scheduling classes, maintaining the school plant, maintaining proper administrative records, and signing documents which require the signature of the chief school official.

(2) Qualifications. The person designated as the school director shall have:

(A) a baccalaureate degree from an accredited institution of higher learning (four-year college or university); successful completion of six semester hours of driver education and/or driving safety courses; and one year of paid experience in administration, supervision, or management of a driver education school;

(B) a combined total of five years of higher education and administrative/management experience; or

(C) a current license as a driver education instructor and be qualified to teach one or more of the school's courses for at least three of the five preceding years.

(b) During any period when the school director is required to be absent from the school, the owner shall designate a liaison to provide student records, contracts and schedules, as well as access to driver education vehicles, to agency staff. The liaison is not required to pay an application

fee; however, the school shall notify the Texas Education Agency (TEA) in writing as to who will be appointed as liaison.

(c) An administrative staff member may be designated by the school director for a driver education school.

(1) Duties. The administrative staff member may perform all the administrative functions of the school.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent or be a licensed driver education instructor.

(d) An individual shall be approved by TEA as the school director or administrative staff member before employment as such.

(e) The school director, liaison, or administrative staff member shall assist TEA representatives during any announced compliance visit by TEA.

(f) Violations at the school or by the school director or the administrative staff member may result in removal of the approval of the school director and/or the administrative staff member.

§176.8. Driver Education Instructor License.

(a) Application for licensing as a driver education instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driver education instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach.

(b) A person applying for an original driver education instructor's license shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driver education instructor license may qualify for the following endorsements.

(1) Supervising teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of all state examinations issued by TEA to the applicant and an official transcript indicating successful completion of 15 semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the 15 semester hours of driver and traffic safety education if TEA determines that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of all state examinations issued by TEA to the applicant and evidence of successful completion of an appropriate instructor development course.

(B) Responsibilities of a supervising teacher include:

(i) instruction and administration of multiphase driver education to teens and adults as prescribed in the state-approved curriculum guide for driver education, the "Standards for an Approved Course in Driver Education for Texas Schools," and this chapter; and

(ii) instruction of approved driver education instructor development courses.

(2) Driver education teacher.

(A) The application shall include:

(i) a current, valid Texas teacher's certificate with proof of successful completion of all state examinations issued by TEA to the applicant and an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(ii) a current, valid Texas teacher's certificate with evidence of successful completion of all state examinations issued by TEA to the applicant and evidence of successful completion of an appropriate instructor development course.

(B) Responsibilities of a driver education teacher include instruction and administration of multiphase driver education to teens and adults as prescribed in the state-approved curriculum guide for driver education, the "Standards for an Approved Course in Driver Education for Texas Schools," and this chapter.

(3) Teaching assistant.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for in-car instruction only;

(ii) an official transcript indicating successful completion of six semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the six semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of an appropriate instructor development course.

(B) The duties of a teaching assistant are limited to in-car instruction only.

(4) Teaching assistant (full).

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division that indicates approval for all phases of laboratory instruction and limited non-instructional assistance in the classroom;

(ii) an official transcript indicating successful completion of nine semester hours of driver and traffic safety education from an accredited college or university. Completion of course work in an approved alternative certification program may suffice for all or part of the nine semester hours of driver and traffic safety education if TEA can determine that the course is equivalent; or

(iii) evidence of successful completion of an appropriate instructor development course.

(B) All teaching assistants (full) are allowed to assist certified teachers in the classroom provided the licensed driver education teacher is present. The duties are limited to the following areas:

(i) grading or handing out written assignments;

(ii) operating audiovisual equipment; and

(iii) providing in-car instruction for teens and adults. A teaching assistant (full), if properly certified to do so, may also teach simulator and multicar driving range training.

(5) Rehabilitative driver education in-car instructor.

(A) The application shall include:

(i) a valid teaching assistant certificate issued by the appropriate TEA division or evidence of completion of an approved driver education program for certification as a teaching assistant (six to nine semester hours); and

(ii) evidence of employment by, or a written contract with, the specific hospital or approved community rehabilitation program.

(B) The endorsement will be valid only during the time the instructor is employed by or under contract with the specified hospital or approved community rehabilitation program and will entitle the instructor to provide driver education instruction only at the specified hospital or approved community rehabilitation program.

(d) A renewal application for a driver education instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and shall be accompanied by the annual instructor licensing fee and evidence of continuing education on a form provided by TEA or its equivalent.

(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education.

(e) Continuing education requirements include the following.

(1) Driver education instructors shall participate in and provide evidence of completion of at least one of the following to obtain credit for continuing education.

(A) Instructors may participate in a TEA-approved driver education continuing education course. Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms provided by TEA. A verification form

indicating completion may be provided to TEA by the school owner on behalf of the instructors. The form shall be signed by the instructor, the facilitator or presenter, and the school owner.

(B) Credit may be given for successful completion of a postsecondary course that pertains to instruction techniques or instruction related to driver education as provided by an accredited college or university. Evidence of completion shall be a copy of an official transcript indicating a passing grade.

(C) Credit may be given for successful completion of an approved driver education instructor development course or TEA-approved alternative certification program for driver education. Evidence of completion shall be verifiable records of successful completion of the course.

(2) Driver education school owners may receive an approval for a six-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(3) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that contributes directly to the professional competence of the licensee;

(B) the course pertains to subject matters that relate to the practice of driver education instruction, instruction techniques, or related subjects; and

(C) no more than half of the course is conducted by a licensed instructor. Additional resources may include guest speakers such as judges, law enforcement officers, attorneys, education experts, or any individuals who have specialized expertise in related subject matter.

(4) Driver education school owners shall notify the division director of the dates, times, and locations of all continuing education courses as soon as the information is available for distribution to the instructors.

(5) Carryover credit of continuing education hours shall not be permitted.

(6) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(7) A licensed individual who conducts an approved continuing education course may receive credit for attending con-

tinuing education; however, the prohibition in paragraph (6) of this subsection will apply.

(8) Evidence of completion of an approved six-hour continuing education course shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion may be provided to TEA by the school owner on behalf of the instructor. The form shall be signed by the instructor, the facilitator or presenter, and the school owner.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driver education instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual instructor licensing fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director and school owner in writing of any criminal complaint identified in subsection (m) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) The commissioner of education may suspend, revoke, or deny a license to any driver education instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense

involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with the state and members of the public. Driver education instruction involves supervision of inexperienced drivers on public highways and accurate record keeping and reporting for driver licensing, court documentation, and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or in-car instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regula-

tions of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81 (relating to Criteria for Driver Improvement Action), during the past two years or that such action is needed to protect the students and motoring public.

§176.9. Courses of Instruction.

(a) This section contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in these rules, an approval may be granted by the division director on behalf of the State Board of Education (SBOE). Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from the Texas Education Agency (TEA). All instructor development curriculum submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(2) Instruction records shall be maintained by the school and supervising teacher for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application

for licensing, and one copy will be maintained in a permanent file at the school.

(3) All student instruction records submitted for the approved instructor development courses shall be original documents.

(4) All driver education instructor development courses shall be taught at a licensed driver education school. The course shall be taught by a properly licensed supervising teacher.

(5) Schools desiring to teach driver education instructor development courses shall either submit course offerings as a part of the school application or, if offered periodically, submit the dates and scheduled instructors' names and license numbers before teaching the course.

(b) A branch school may offer only a course that is approved for the primary school.

(c) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(d) If an approved course is discontinued, the division director shall be notified within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(e) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(f) The commissioner of education may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no facilities and equipment.

(4) The school has been found to be in violation of Texas Civil Statutes, Article 4413(29c) and/or this chapter.

(5) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.10. Contracts-Students.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money. If no monies are received prior to enrollment or attendance, the contract shall be executed no more than 72 hours after the start date of the driver education class or before the seventh hour of the driver education course.

(b) All driver education school contracts shall contain at least the following:

(1) the student's legal name and driver's license or social security number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the primary school or the branch school;

(6) the specific course to be taught;

(7) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the length of each lesson or course;

(11) the school's cancellation and refund policy;

(12) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(13) the number of in-car lessons;

(14) the rate per lesson or course for classroom instruction;

(15) the rate per lesson or course for in-car instruction;

(16) the rates for use of a school car for a road test (if an extra charge is made);

(17) a statement that the school maintains vehicle insurance as required by Texas Civil Statutes, Article 6701h, and uninsured or underinsured coverage;

(18) the signature of a school representative; and

(19) the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of minority have been removed generally by law. Instead, such an individual shall:

(A) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married;

(B) present a court order showing removal of disabilities of minority; or

(C) present a notarized parental authorization.

(c) In addition, all driver education school contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a DE-964 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(d) The original of the contract shall be given to each driver education student.

(e) A copy of each contract shall be a part of the student files maintained by all driver education schools.

(f) Schools shall submit proposed or amended contracts to the division director, and those documents shall be approved prior to use by schools.

(g) Contracts used at branch schools must be those approved for use at the primary school.

(h) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

§176.11. Progress. Appropriate standards shall be implemented to ascertain the progress of the students.

(1) Progress standards shall meet the requirements of the currently adopted curriculum guide.

(2) Each primary school shall submit to the division director for approval an established procedure to ensure that each student who attends the primary school and all branch schools demonstrates an acceptable level of mastery of the essential elements for driver education. Mastery is a prerequisite to awarding a grade of 70 or above.

(3) Evidence of mastery shall be determined by one or more of the following methods:

(A) unit tests;

(B) assignments;

(C) class participation;

(D) teacher observation; and

(E) skills performance checklist.

(4) The progress evaluation record shall be of the type and nature to reflect whether the student is making satisfactory progress to the point of being able to complete all subject matter within the allotted time provided in the currently approved course curriculum for driver education.

§176.12. Attendance.

(a) Appropriate standards, which include positive records of student attendance, shall be implemented to ascertain the attendance of the students.

(1) Absence for a full-hour class period shall be charged when the student in driver education is not present for a full 55

minutes of a 60-minute period, which is considered the equivalent to one hour of instruction. Break periods shall be provided for each instructional hour and shall not be combined to shorten the course.

(2) The attendance policy shall stipulate that students who accumulate absences of more than 25% of the scheduled classroom hours for teenage driver education shall be terminated, and a refund shall be totally consummated within 30 days. The student whose enrollment is terminated for violations of the attendance policy may not reenter before the start of the next new class. If the student enters the next new class and completes the scheduled classroom hours within 90 days of the original contract, refunds that were due may be transferred to the new contract.

(3) The student may receive credit for previous training if the student reenters and completes the applicable portion of the course within the following time periods, starting from the first scheduled day of class on the original contract:

(A) 90 days for the classroom phase; or

(B) 180 days for the in-car phase.

(4) Variances to the guidelines may be made at the discretion of the division director.

(5) School holidays, such as summer vacation, Christmas holidays, etc., shall not be considered as days of absence.

(b) A school must maintain a master record of attendance for each student that clearly indicates the number of scheduled hours each day and the hours of absence. A legend showing symbols or abbreviations of entries on the form shall be a part of the master record of attendance for driver education courses. The instructor's master record of attendance must indicate a record of each student's attendance. Entries in the master record of attendance shall be made in ink and shall be updated on a daily basis.

§176.13. Makeup and Alternative Scheduling.

(a) A student shall be considered absent when not in attendance at a regularly scheduled class time and when not in attendance at another regularly scheduled alternate class time on the same day. Any period of absence for any portion of scheduled instruction will require that the student complete that portion of scheduled instruction.

(b) A primary school shall submit a makeup policy for approval. Branch schools

shall use the policy approved for use at the primary school. All makeup lessons shall be documented on the individual instruction record, which shall reflect the signature and license number of the instructor responsible for conducting the makeup session. Makeup lessons may be presented in any sequence.

(1) For a policy that allows students to attend a missed lesson at a later date during a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual makeup session, a synopsis of each lesson shall be submitted as part of the application for licensure. A sample of each makeup lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the Texas Education Agency (TEA) at the school. Each lesson shall be clearly identified as a makeup lesson and identified as to the units of instruction to be covered. A licensed driver education teacher or supervising teacher shall be available without other teaching assignments to provide assistance directly to students during the individual-study lesson. Any makeup shall be considered an absence and be subject to the attendance policy.

(3) For a policy that provides alternative scheduling, a school may allow a student to attend an alternative class on the same calendar date as the class the student was previously scheduled to attend. The school may provide alternative scheduling only if the sequence of instruction will be maintained by the identical lesson being offered in the alternative class time. In addition to all other requirements, the student instruction record shall reflect the time of day the alternate class was attended. A student selecting alternative scheduling shall not be considered absent.

(c) All classroom makeup lessons shall be completed by the student within 90 days of the first scheduled day of class. If the student does not complete the entire classroom phase, including all makeup lessons, within the 90-day period, the student shall be terminated, and no credit for classroom instruction shall be granted, except as allowed by §176.12(a)(4) of this title (relating to Attendance). Makeup work shall not be authorized to remove absences.

§176.14. Conduct Policy.

(a) The primary school shall submit a copy of the policies pertaining to conduct to the Texas Education Agency (TEA) for approval. Branch schools shall use the policies approved for use at the primary school.

(b) A statement regarding the following shall be submitted:

- (1) conditions for dismissal; and
- (2) conditions for reentry of those students dismissed for violating the conduct policy.

§176.15. Cancellation and Refund Policy.

(a) School cancellation and refund policies shall be in accordance with Texas Civil Statutes, Article 4413(29c).

(b) Refunds for all driver education schools shall be completed within 30 days after the effective date of termination except as allowed under §176.12(a)(2) of this title (relating to Attendance). Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address.

(d) If it is determined that the method used by the school to calculate refunds is in error or the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c), §13(h)(4), conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by the Texas Education Agency (TEA) for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and

check number of payment if payment has been made, and any balance due.

(e) All students trained by unlicensed instructors may be entitled to refund of tuition and fees for the training provided by the unlicensed instructors as determined by the division director.

(f) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division director.

(g) Branch schools shall use the policies approved for use at the primary school.

§176.16. Facilities and Equipment.

(a) Each driver education school licensed by the commissioner of education shall display, in a prominent place in each location, a sign or notice indicating the following:

- (1) rates per lesson or course for classroom instruction;
- (2) rates per lesson or course for in-car instruction;
- (3) rates for use of school vehicle for road tests (if extra charge is made); and
- (4) length of lessons and course for classroom and in-car instruction.

(b) No classroom facility shall be located in a private residence. Driver education schools, including primary and branch schools, that offer the classroom phase for adult or teenage driver education shall have a permanent year-round facility. The classroom facilities, when used for instruction, shall contain at least the following:

- (1) adequate seating facilities and tables or desks for all students being trained;
- (2) a chalkboard, a dry-erase board, or felt display board for the driver education classroom, which is visible from all seating positions;
- (3) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and
- (4) any materials that have been approved as a part of the course approval.

(c) Additional classrooms may be approved for use by a licensed driver education school for the purpose of offering driver education courses. The school owner shall provide a proposal that shall be approved before using the additional classroom facilities. The proposal shall include:

- (1) a floor plan indicating the exact dimensions of the classroom facility and its location in respect to the school

facilities. The classroom facilities shall be located in the same building as the main school, or in the case of portable facilities, the structure shall be on the property owned or leased by the school and immediately adjacent to the school facility;

(2) evidence that the school owner owns, has leased, or is able to lease the classroom facilities. In the case of portable facilities, evidence shall be submitted that the structure can be placed on the property leased or owned by the school owner in the location designated in the proposal; and

(3) any other items or assurances requested by the division director.

(d) A school offering driver education shall maintain an office in a place other than a private residence.

(e) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(f) Enrollment shall not exceed the design characteristics of the student work stations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

§176.17. Motor Vehicles.

(a) All behind-the-wheel instruction of students in driver education schools shall be conducted in motor vehicles owned or leased by the owner of the driver education school, unless the student is physically disabled, in which case, the student shall use special vehicle controls. All school motor vehicles and vehicles owned by students with physical disabilities that are used to demonstrate or practice driving lessons shall:

- (1) be equipped with dual control on the foot brake located within easy reach of the instructor that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;
- (2) be equipped with safety belts, and students and instructors shall comply with requirements of Texas Civil Statutes, Article 6701d, §107C;
- (3) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate, if required;
- (4) be insured by a company authorized to do business in Texas with a continuous liability insurance policy in the amount specified in Texas Civil Statutes, Article 6701h, and include coverage for uninsured or underinsured motorists;
- (5) be equipped with an extra inside rearview mirror on the instructor's

side and an outside rearview mirror on both sides;

(6) bear a conspicuously displayed, securely fastened sign to the front and rear stating "Student Driver." A sign similarly displayed bearing the name of the driver education school under which it is licensed may be used in lieu of the above student driver sign. The sign shall be in plain view and shall be readable from a distance of not less than 100 feet;

(7) be maintained in safe mechanical and physical condition at all times; and

(8) be equipped with applicable mechanical devices when used in training of students with physical disabilities (students may use their own vehicles if special mechanical devices are necessary).

(b) School owners shall ensure that the division director is notified at all times of all vehicles that are to be used for instruction purposes. Notification shall be made on forms provided by the Texas Education Agency (TEA).

(c) All vehicles shall be insured in accordance with subsection (a)(4) of this section and shall have evidence available for inspection by TEA representatives.

(d) If it is found that the school has used an uninsured vehicle, TEA shall impose a civil penalty not to exceed \$1,000 per day that the uninsured vehicle was used. Each vehicle shall constitute a separate offense.

§176.18. Student Complaints.

(a) The primary school shall have a written grievance procedure approved by the division director that is disclosed to all students. Branch schools shall follow the procedures approved for the primary school. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The branch or primary school shall make every effort to resolve complaints.

§176.19. Records.

(a) A driver education school shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). There may be unannounced compliance surveys at each school each year. Other compliance surveys may be announced at the discretion of the division director.

(b) The schools shall retain all student records for at least three years. A school shall maintain the records of the students who completed driver education classes at the school for the most current 18 months. All other driver education records shall be maintained at a location accessible by the school owner.

(c) A driver education school licensed by TEA shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.

(1) Individual students.

(A) The entries on the individual student record form shall be made in ink. The minimum requirements indicating attendance entries shall be maintained by using symbols or abbreviations of the following:

- (i) absent;
- (ii) makeup;
- (iii) present;
- (iv) termination;
- (v) withdraw; and
- (vi) transfer.

(B) The individual student record form for driver education shall include the following:

- (i) name and classroom address of the school;
- (ii) name, full address, telephone number of the student, and date of birth;
- (iii) date instruction terminated, if applicable;
- (iv) type and number of license held by the student, including the expiration date and licensing state;
- (v) month, day, year, and time of instruction;
- (vi) each unit of instruction;
- (vii) grade earned for each unit;
- (viii) instruction hours for classroom, simulators, behind-the-wheel, and observation;
- (ix) initials of each instructor for each classroom session or behind-the-wheel lesson. The instructor's signature and license number shall appear at least once on the front or back of the form;
- (x) beginning and ending dates of the course;

(xi) statement of assurance signed by student and instructor that the record is true and correct;

(xii) adult classroom;

(xiii) adult behind-the-wheel;

(xiv) adult simulation;

(xv) teen classroom;

(xvi) teen behind-the-wheel and observation; and

(xvii) teen simulation.

(2) Student records form. Students shall sign the student record form maintained by the school. The signature statement shall state that the student verifies the instruction received was as shown on the instruction record form.

(3) DE-964. Each driver education school shall retain a copy of the DE-964 in the appropriate student files.

(d) Each driver education school shall, upon request, furnish each individually contracted student a duplicate of his or her instruction record when all of the courses contracted for are completed or the student otherwise ceases taking instruction at or with the school, providing all financial obligations have been met by the student.

§176.20. Names and Advertising.

(a) No primary school shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another licensed driver education or driving safety school without written consent of that school. Schools holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driver education school after August 31, 1995, with a name like, or deceptively similar to, a name used by another licensed driver education or driving safety school.

(b) A school license shall not contain more than one school name. Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule. Use of names other than the approved school name may constitute a violation of this section.

(c) Branch schools shall adopt, use, and conduct business with the same name as the primary school.

(d) A school shall not, by advertisement or otherwise, state or imply that a driver's license, permit, or DE-964 is guaranteed or assured to any student or individ-

ual who will take or complete any instruction or enroll or otherwise receive instruction in any driver education school.

(e) A school shall not advertise without including the school name or the school number exactly as it appears on the driver education school license.

(f) The division director may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that a retraction of such advertising claims be published by the school in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension or revocation of the school license.

(g) Continuance of an advertisement that has been determined to be false, misleading or deceptive, without action to discontinue the advertisement after notice, shall result in assessment of a civil penalty. The penalty shall be assessed regardless of who was responsible for an error or misprint in the original placement of the advertisement.

§176.21. Application Fees and Other Charges.

(a) If a driver education school changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.4(e)(4) of this title (relating to School Licensure), the change of ownership is substantially similar, the new owner shall pay the statutory fees allowed by Texas Civil Statutes, Article 4413(29c), §13(d)(3)(A).

(b) A late renewal fee shall be paid in addition to the annual renewal fee if the school fails to postmark a complete application for renewal at least 30 days before the expiration date of the driver education school license. The requirements for a complete application for renewal are found in §176.4(g) this title (relating to School Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) Driver education instructors applying for school licensure as required by Texas Civil Statutes, Article 4413(29c), §13(b)(2), shall pay the fee amount set forth in statute.

(d) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The initial fee for a primary school is \$1,000.

(2) The initial fee for a branch school is \$850.

(3) The renewal fee for a driver education school is \$200.

(4) The fee for a change of address of a driver education school is \$180.

(5) The fee for a change of name of a driver education school or to change the name of an owner is \$100.

(6) The application fee for each additional driver education course is \$25.

(7) The application fee for each school director is \$30.

(8) The application fee for each administrative staff member is \$15.

(9) Each application for an original driver education instructor's license shall be accompanied by a processing fee of \$50, except that the fee may not be collected for an applicant who is currently teaching a driver education course in a public school in this state.

(10) The annual instructor license fee is \$25.

(11) The late instructor renewal fee is \$25.

(12) The duplicate driver education instructor license fee is \$8.

(13) The fee for an investigation at a school to resolve a complaint is \$1,000.

(14) The driver education school late renewal fee is \$200.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514839

Cris Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

◆ ◆ ◆
Subchapter B. Minimum Standards for Operation of Texas Driving Safety Schools and Course Providers

• 19 TAC §§176.101-176.122

The new sections are proposed under Texas Civil Statutes, Article 4413(29c), §4(a), which authorizes the State Board of Education to adopt rules necessary to carry out the Texas Driver and Traffic Safety Education Act in consultation with the Driver Training School Advisory Commission.

The new sections implement Texas Civil Statutes, Article 4413(29c), §4(a).

§176.101. General Information.

(a) Minimum standards of operation must be maintained by all driving safety schools and course providers to ensure educational courses are of high quality which will be of benefit to the student, the school, and the state and to fulfill the purposes and objectives of the Texas Driver and Traffic Safety Education Act. The observance and maintenance of these standards are the responsibility of each school and course provider for inherent advantage to the school or course provider itself and for the common good of all of the driving public.

(b) The Texas Education Agency (TEA) will evaluate each school and course provider according to the standards of practice set forth in this chapter and appropriate laws. The complete picture presented by the entire educational, promotional, and ethical character of the school or course provider will receive consideration in the TEA evaluation.

(c) Every effort will be made to evaluate fairly and impartially each driving safety school and course provider application for licensure to solicit students in Texas for the purpose of providing instruction of driving safety courses and driving safety instructor development courses. The TEA will endeavor to provide an effective and constructive application of the law and standards of practice adopted for regulating driving safety schools and course providers.

(d) The TEA will assist all driving safety schools and course providers and the school and course provider administrators under its jurisdiction, whenever possible, in complying with the provisions of the law and standards of practice. Inquiries or requests for information should be directed to TEA.

§176.102. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Advertising—Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to arouse a desire to patronize that school and/or course.

Break—An interruption in a course of instruction occurring after the course introduction and before the course summation.

Change of ownership of a school or course provider—A change in the control of the school or course provider. Any agreement to transfer the control of a school or course provider is considered to be a change of ownership. The control of a school or

course provider is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

Clock hour—50 minutes of instruction in a 60-minute period for a driving safety course.

DE-964—The driver education certificate of completion.

Division—The division of the Texas Education Agency (TEA) responsible for executing the provisions of the law, rules, regulations, and standards as contained in this chapter and licensing driver training programs.

Division director—The person designated by the commissioner of education to carry out the functions and regulations governing the driving safety schools and course providers and designated as director of the division responsible for licensing driver training programs.

Good reputation—A person is considered to be of good reputation if:

(A) there are no felony convictions related to the operation of a school or course provider, and the person has been rehabilitated from any other felony convictions;

(B) there are no convictions involving crimes of moral turpitude;

(C) within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(D) the person does not own or operate a school or course provider currently in violation of the legal requirements involving fraud, deceptive trade practices, student safety, quality of education, or refunds; has never owned or operated a school or course provider with habitual violations; and has never owned or operated a school or course provider which closed with violations including, but not limited to, unpaid refunds or selling, trading, or transfer-

ring a DE-964 or uniform certificate of course completion to any person or school not authorized to possess it;

(E) the person has not withheld material information from representatives of TEA or falsified instructional records or any documents required for approval or continued approval; and

(F) in the case of an instructor, there are no misdemeanor or felony convictions involving driving while intoxicated over the past seven years.

Instructor trainer—A driving safety instructor who has been trained to prepare instructors to give instruction in a specified curriculum.

Moral turpitude—Conduct that is inherently immoral or dishonest.

New course—A driving safety course is considered new when it has not been approved by TEA to be offered previously, or has been approved by TEA and offered and then discontinued, or the content or lessons of the course have been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

Public or private school—For the purpose of these rules, a public or private school is an accredited public or non-public secondary school.

Uniform certificate of course completion—A certificate of course completion.

§176.103. Exemptions.

(a) Schools desiring to be considered exempt from regulation as authorized by Texas Civil Statutes, Article 4413(29c), §7, shall request an exemption in writing and provide any information deemed necessary to the division director to determine exempt status.

(b) Any school granted exempt status may be required to provide information or be visited by representatives of the Texas Education Agency (TEA) in order to ensure continued operation in compliance with the exemption provisions.

§176.104. Driving Safety School Licensure.

(a) Application for driving safety school. An application for a license for a driving safety school shall be made on forms supplied by the Texas Education Agency (TEA) and shall include:

(1) individual requests for approval for each multiple classroom of the school. The applications shall be made on forms provided by TEA. The driving safety school shall receive TEA approval for each location prior to advertising or offering a driving safety course at the location; and

(2) verification from the licensed course provider that the school is authorized to provide the approved driving safety course and that the school will operate in compliance with all course provider policies and procedures.

(b) Verification of ownership for driving safety school.

(1) In the case of an original or change of owner application for a driving safety school, the owner of the school shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the school shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(c) Effective date of the driving safety school license. The effective date of the driving safety school license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(d) Purchase of driving safety school.

(1) A person or persons purchasing a licensed driving safety school shall obtain an original license.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds, and all other instruments necessary to transfer ownership of the school shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the school shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(e) New location.

(1) The division director shall be notified of any change of address of a driving safety school at least three working days before the move.

(2) A complete application for a driving safety school license to reflect a new location shall be submitted to TEA and

include all documents designated by the commissioner of education as being necessary, together with the appropriate fee. A driving safety school license may be issued after the complete application is approved.

(3) If the move is beyond ten miles and, as determined by the division director, a student is prevented from completing the training at the new location, a full refund of all money paid and a release from all obligations are due.

(f) Renewal of driving safety school license. A complete application for the renewal of a license for a driving safety school shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable; and

(3) any other revision or evidence of which the school has been notified in writing that is necessary to bring the school's application for a renewal license to a current and accurate status.

(g) Denial, revocation, or conditional license. For schools approved to offer only one driving safety course, the authority to operate a driving safety school shall cease if the course provider license is denied or revoked. The license of the driving safety school may continue for 60 calendar days to allow the school owner to obtain approval to operate under a different course provider license. At the end of the 60-day period, the school license will be revoked unless an approved course will be offered. The current driving safety school license shall not be renewed without an approved course. A driving safety school license may be denied, revoked, or conditioned separately from the license of the course provider.

(h) Notification of legal action. A school shall notify the division director in writing of any legal action that is filed against the school, its officers, any owner, or any school instructor that might concern the operation of the school within five working days after the school, its officers, any owner, or any school instructor has commenced the legal action or has been served with legal process. Included with the written notification, the school shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(i) School closure.

(1) The school owner shall notify TEA at least 15 business days before the anticipated school closure. The school owner shall provide written notice of the actual discontinuance of the operation within three working days after the cessa-

tion of classes. A school shall make all records available for review to TEA within 30 days of the date the school ceases operation.

(2) The division director may declare a school to be closed as of the last day of attendance when written notification is received by TEA from the school owner stating that the school will close; when TEA staff determine by means of an on-site visit that the school facility has been vacated without prior notification of change of address given to TEA and without TEA approval of future plans to continue to operate; when an owner with multiple school locations transfers all students from one school location to another school location without written notification and TEA approval of future plans to continue to operate; when the school dismisses all students, contrary to the school's approved class schedule, without first notifying TEA; or when students are dismissed for more than ten consecutive days that were identified as class days in the approved class schedule.

(j) Course at public or private school. A school shall receive approval from TEA prior to conducting a course at a public or private school, and approval may be granted by TEA upon review of the agreement made between the licensed driving safety school and the public or private school. The course shall be subject to the same rules which apply at the licensed driving safety school, including periodic inspections by TEA representatives. An on-site inspection is not required prior to approval of the course.

§176.105. Course Provider Licensure.

(a) Application for course provider. An application for a license for a course provider shall be made on forms supplied by the Texas Education Agency (TEA). An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form provided by TEA.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider.

(1) In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership that includes, but is not limited to, copies of stock certificates, partnership agreements, and assumed name registrations. The division director may require additional evidence to verify ownership.

(2) With the renewal application, the owner of the course provider shall provide verification that no change in ownership has occurred. The division director may require additional evidence to verify that no change of ownership has occurred.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications in order to carry out the responsibilities of a course provider. Verifiable education and/or experience in administration and/or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(1) A course provider who has owned or been a primary consignee of an approved driving safety course and has been fully operational as a course provider in the State of Texas for a continuous 12-month period before September 1, 1995, satisfies the educational and experience qualifications.

(2) A course provider who has an approved driving safety course but has not been fully operational as a course provider for a continuous 12-month period must submit evidence of at least one year of experience in administration and/or supervision.

(3) A new course provider shall submit evidence of at least 30 semester credit hours of education from an accredited postsecondary institution and one year of paid experience in administration and/or supervision.

(f) Effective date of the course provider license. The effective date of the course provider license shall be the date the license is issued. Exceptions may be made if the applicant was in full compliance on the effective date of issue.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) In addition, copies of the executed sales contracts, bills of sale, deeds,

and all other instruments necessary to transfer ownership of the school or course provider shall be submitted to TEA. The contract or any instrument transferring the ownership of the driving safety school or course provider shall include the following statements.

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership.

(B) The sale of the course provider shall be subject to approval by TEA.

(C) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(3) A change of ownership of a course provider is considered substantially similar:

(A) in the case of ownership by an individual, when the individual transfers ownership to a corporation in which the individual owns 100% of the stock of the corporation;

(B) in the case of ownership by a corporation, when the ownership is transferred to a partnership in which the stockholders possess equal interest in the owning partnership; or

(C) in the case of ownership by a partnership or a corporation that transfers ownership to a corporation in which the partners hold interest that equals the interest of the owning partnership, or the owning corporation transfers ownership to a different corporation in which the stockholders for both corporations possess equal shares.

(4) In the event a change of ownership is substantially similar, the applicant pays a change in ownership fee as opposed to an initial application fee.

(h) New location.

(1) The division director shall be notified of any change of address of a course provider at least three working days before the move.

(2) A complete application for a course provider license to reflect a new location shall be submitted to TEA and include all documents designated by the commissioner of education as being necessary, together with the appropriate fee. A course provider license may be issued after the complete application is approved.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

- (1) completed application for renewal;
- (2) annual renewal fee, if applicable;
- (3) properly executed bond or a properly executed continuation agreement for the bond currently approved by, and on file with, TEA or approved alternate form of security, if applicable; and

(4) any other revision or evidence of which the course provider has been notified in writing that is necessary to bring the course provider's application for a renewal license to a current and accurate status.

(j) Notification of legal action. A course provider shall notify the division director in writing of any legal action that is filed against the course provider, its officers, any owner, or any school instructor that might concern the operation of the course provider within five working days after the course provider becomes aware of the fact that the legal action has commenced or the legal process has been served. Included with the written notification, the course provider shall submit a file-marked copy of the petition or complaint that has been filed with the court.

(k) Course provider closure. In reference to Texas Civil Statutes, Article 4413(29c), §9, a course provider owner shall notify TEA at least 15 business days before the course provider closure. The course provider shall provide written notice of the actual discontinuance of the operation within three working days after the cessation of classes. A course provider shall make all records available for review to TEA within 30 days of the date the course provider ceases operation.

(l) Financial stability.

(1) Annual requirements. The course provider shall furnish annually to the division director a balance sheet, on a form provided by TEA or in a form approved by TEA, which reflects sufficient assets and net worth to maintain the operation of the course provider business. The balance sheet shall be submitted within 45 days from the close of the course provider's fiscal year or at the time of an original application. In addition, the balance sheet shall be accompanied by the course provider's notarized true and correct statement.

(2) Financial stability guidelines. The balance sheet of the course provider shall reflect all of the following:

(A) a positive cash flow;

(B) a positive equity or net worth balance; and

(C) a current ratio of at least one-to-one.

§176.106. Applications from Small Businesses.

(a) Time periods. Applications from small businesses for driving safety school or course provider licenses and from school administrative staff members shall be processed in accordance with the following time periods.

(1) The first period is a time from the receipt of an application to the date of issuance of a written notice approving the application or outlining the reasons why the application is unacceptable. The time periods for each application are:

(A) initial driving safety school or course provider license-30 days;

(B) renewed driving safety school or course provider license-60 days;

(C) change in owner driving safety school or course provider license-60 days; and

(D) administrative staff members-20 days.

(2) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time periods for each application are:

(A) initial driving safety school or course provider license-30 days;

(B) renewed driving safety school or course provider license-30 days;

(C) change in owner driving safety school or course provider license-30 days;

(D) school administrative staff members (approval contingent on issuance of school's license)-30 days; and

(E) school administrative staff members (approval not contingent on issuance of school's license)-20 days.

(b) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsection (a) of this section, the applicant has the right to request of the division director full reimbursement of all filing fees paid in that particular application process. If the division director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for driving safety school or course provider licenses and school administrative staff members as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(c) Appeal. If the request for full reimbursement authorized by subsection (b) of this section is denied, the applicant may then request a hearing by appealing to the commissioner of education for a resolution of the dispute. The appeal will be processed in the same manner as other appeals involving driving safety schools or course providers pursuant to Texas Civil Statutes, Article 4413(29c), and Chapter 157 of this title (relating to Hearings and Appeals).

§176.107. Driving Safety School and Course Provider Responsibilities.

(a) All instruction in a driving safety course shall be performed in locations approved by the Texas Education Agency (TEA) and by TEA-licensed instructors. However, a student instructor may teach the 12 hours necessary for licensing in a TEA-approved location under the direction and in the presence of a licensed driving safety instructor trainer who has been trained in the curriculum being instructed. If a licensed instructor enters or leaves the employment of any driving safety school, the school administrative staff member shall notify the division director and course provider within five days on forms furnished by the commissioner of education, indicating the name, address, and license number of the school and the instructor, the date of employment or the termination date, and the reason for termination.

(b) No course provider or employee shall provide instruction or allow instruction to be provided in a course that is not currently on the school's list of approved courses.

(c) No driving safety school owner-operator or employee shall:

(1) permit any individual to give instruction at the school or any classroom location unless the individual has a valid current driving safety instructor's license with the proper endorsement issued by the division, except as provided in subsection (a) of this section;

(2) allow an instructor to give instruction or allow a student to secure instruction in the classroom or in a motor vehicle if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code, §1.04(1); and the Health and Safety Code, §§481.002, 484.002, and 485.001;

(3) provide instruction or allow instruction to be provided in a course that is not currently on the school's list of approved courses;

(4) complete, issue, or validate a verification of course completion for a person who has not successfully completed the entire course;

(5) authorize, approve, or conduct any instruction in a motor vehicle that fails to meet the requirements stated in §176.118 of this title (relating to Motor Vehicles); or

(6) conduct any part of a TEA-approved driving safety course that does not promote the purpose and objectives as set forth in the Texas Driver and Traffic Safety Education Act or the educational objectives set forth in this chapter.

(d) For the purposes of Texas Civil Statutes, Article 4413(29c), and this chapter, each person employed by or associated with any driving safety school shall be deemed an agent of the driving safety school, and the school shall share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

§176.108. Administrative Staff Members.

(a) Each driving safety school shall designate one person as the administrative staff member.

(1) Duties. The school administrative staff member shall be responsible for all actions related to day-to-day operation and administration of the school, which in-

cludes supervising instructors, organizing and scheduling classes, maintaining the school plant, and maintaining proper administrative records.

(2) Qualifications. The administrative staff member shall have a high school diploma, GED, or equivalent or be a licensed driving safety instructor.

(b) During any period when the school administrative staff member is required to be absent from the school, the owner shall designate a liaison to provide student records, contracts, and schedules to Texas Education Agency (TEA) staff. The liaison is not required to pay an application fee; however, the school shall notify TEA in writing as to who will be appointed as liaison.

(c) An individual shall be approved by TEA as the administrative staff member before employment as such.

(d) The school administrative staff member or liaison shall assist TEA representatives during any announced compliance visit by TEA.

(e) Violations at the school or by the administrative staff member may result in removal of the approval of the administrative staff member.

§176.109. Driving Safety Instructor License.

(a) Application for licensing, as a driving safety instructor shall be made on forms supplied by the Texas Education Agency (TEA). A person is qualified to apply for a driving safety instructor license who:

(1) is of good reputation; and

(2) holds a valid driver's license for the preceding five years in the areas for which the individual is to teach.

(b) A person applying for an original driving safety instructor's license shall submit to TEA the following:

(1) complete application as provided by TEA;

(2) processing and annual instructor licensing fees;

(3) documentation showing that all applicable educational requirements have been met. Original documentation shall be provided upon the request of the division director; and

(4) any other information necessary to show compliance with applicable state and federal requirements.

(c) A person applying for a driving safety instructor license may qualify for the following endorsements.

(1) Driving safety instructor.

(A) The application shall include evidence of completion of 24 hours of training covering techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing.

(B) The responsibilities of a driving safety instructor include instructing a TEA-approved driving safety course specific to the curriculum in which the individual is trained.

(2) Driving safety instructor trainer.

(A) The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(i) a Texas teaching certificate with driver education endorsement and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach;

(ii) a teaching assistant certificate and 60 hours of experience, exclusive of the 36-hour instructor development course, in the same driving safety course for which the individual is to teach; or

(iii) completion of all the requirements of a driving safety instructor and 150 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 30 hours shall be in the same driving safety course for which the individual is to teach.

(B) The responsibilities of a driving safety instructor trainer include instructing a TEA-approved driving safety course and signing as a driving safety instructor trainer for the 12 hours of practice teaching required for driving safety instructor trainees.

(3) Instructor development course driving safety instructor trainer.

(A) The application shall include evidence of:

(i) completion of all the requirements for a driving safety instructor trainer plus an additional 150 hours of verifiable experience as a licensed driving

safety instructor, of which the most recent 60 hours shall be in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course with 300 hours experience as a driving safety instructor. An author of an approved course may hire an instructor with 300 verifiable hours of experience to be trained and licensed as an instructor development course driving safety instructor trainer. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the division director the ability to teach the course prior to being licensed, and

(ii) a statement signed by the driving safety course provider, if different than the applicant, recommending the instructor as an instructor development course instructor trainer.

(B) The responsibilities of an instructor development course driving safety instructor trainer include instructing a TEA-approved driving safety course, training individuals to teach a TEA-approved driving safety course, and signing student instruction records for driving safety trainees.

(d) A renewal application for driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form provided by TEA and shall be accompanied by the annual instructor licensing fee and evidence of continuing education.

(2) A complete license renewal application shall be postmarked or hand-delivered at least 30 days before the date of expiration or a late instructor renewal fee shall be imposed. A complete application includes:

(A) completed application for renewal;

(B) annual renewal fee; and

(C) evidence of continuing education.

(e) Continuing education requirements include the following.

(1) Each course provider will be responsible for receiving an approval for a six-hour continuing education course and providing the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) A continuing education course may be approved if TEA determines that:

(A) the course constitutes an organized program of learning that contributes directly to the professional competence of the licensee;

(B) the course pertains to subject matters that relate to the practice of driving safety instruction, instruction techniques, or related subjects;

(C) no more than half of the course is conducted by the course provider or a licensed instructor. Additional resources may include guest speakers such as judges, law enforcement officers, attorneys, education experts, or any individuals who have specialized expertise in related subject matter; and

(D) if applicable, the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data.

(3) Course providers shall notify the division director of the dates, times, and locations of all continuing education courses as soon as the information is available for distribution to the instructors.

(4) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by TEA. A verification form indicating completion may be provided to TEA by the course provider on behalf of the instructors. The form shall be signed by the instructor, the facilitator or presenter, and the course provider.

(5) Carryover credit of continuing education hours shall not be permitted.

(6) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(7) A licensed individual who conducts an approved continuing education course may receive credit for attending continuing education; however, the prohibition in paragraph (6) of this subsection will apply.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by TEA and shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at TEA.

(g) All driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes; and

(2) the annual instructor licensing fee.

(h) All other license change requests, including duplicate instructor licenses or name changes, shall be made in writing and shall include payment of the duplicate instructor license fee.

(i) The TEA shall be notified of an instructor's change of address in writing. Address changes shall not require payment of a fee.

(j) All instructors shall notify the division director, school owner, and course provider in writing of any criminal complaint identified in subsection (m) of this section filed against the instructor within five working days of commencement of the criminal proceedings. The division director may require a file-marked copy of the petition or complaint that has been filed with the court.

(k) All instructors shall provide training in an ethical manner so as to promote respect for the purposes and objectives of driver training as identified in Texas Civil Statutes, Article 4413(29c), §2.

(l) An instructor shall not make any sexual or obscene comments or gestures while performing the duties of an instructor.

(m) The commissioner of education may suspend, revoke, or deny a license to any driving safety instructor trainer or instructor under any of the following circumstances.

(1) The applicant or licensee has been convicted of any felony, or an offense involving moral turpitude, or an offense of involuntary manslaughter, or criminally negligent homicide committed as a result of the person's operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs, or an offense involving tampering with a governmental record.

(A) These particular crimes relate to the licensing of instructors because such persons, as licensees of TEA, are required to be of good moral character and to deal honestly with courts and members of the public. Driving safety instruction involves accurate record keeping and reporting for court documentation and other purposes. In determining the present fitness of a person who has been convicted of a crime and whether a criminal conviction directly relates to an occupation, TEA shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(B) In the event that an instructor is convicted of such an offense, the instructor's license will be subject to revocation or denial. A conviction for an offense other than a felony shall not be considered by TEA under this paragraph if a period of more than ten years has elapsed since the date of the conviction or of the release of the person from the confinement or suspension imposed for that conviction, whichever is the later date. For seven years after an instructor is convicted of an offense involving driving while intoxicated, the instructor's license shall be recommended for revocation or denial.

(C) For the purposes of this paragraph, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

(i) the sentence is subsequently probated and the person is discharged from probation; or

(ii) the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(2) The applicant, licensee, any instructor, or agent is addicted to the use of alcoholic beverages or drugs or becomes incompetent to safely operate a motor vehicle or conduct classroom or behind-the-wheel instruction properly.

(3) The license was improperly or erroneously issued.

(4) The applicant or licensee fails to comply with the rules and regulations of TEA regarding the instruction of drivers in this state or fails to comply with any section of Texas Civil Statutes, Article 4413(29c).

(5) The instructor fails to follow procedures as prescribed in this chapter.

(6) The applicant or licensee has a personal driving record showing that the person has been the subject of driver improvement or corrective action as cited in Department of Public Safety administrative rules, 37 TAC §15.81 (relating to Criteria for Driver Improvement Action), during the past two years or that such action is needed to protect the students and motoring public.

§176.110. Courses of Instruction.

(a) This section contains requirements for driving safety and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course

meets the minimum requirements set forth in these rules, an approval may be granted by the division director on behalf of the State Board of Education (SBOE). Other types of courses may be considered by the division director and submitted to SBOE for consideration for approval.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to: promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Minimum course content. A driving safety course shall include, as a minimum, materials adequate to address the following topics and to comply with the minimum time requirements for each topic and the course as a whole.

(i) Course introduction—minimum of ten minutes (instructional objective—to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The traffic safety problem—minimum of 15 minutes (instructional objectives—to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) five leading causes of motor vehicle crashes in Texas as identified by the Department of Public Safety.

(iii) Factors influencing driver performance—minimum of 20 minutes (instructional objective—to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures—minimum of 30 minutes (instructional objectives—to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated

by documentation from the Department of Public Safety on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XIII) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments—minimum of 20 minutes (instructional objectives—to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions—hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control—minimum of 15 minutes (instructional objective—to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving—minimum of 20 minutes (instructional objective—to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies—minimum of 40 minutes (instructional objective—to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors; and

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.).

(ix) Driving emergencies—minimum of 40 minutes (instructional objective—to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment—minimum of 15 minutes (instructional objective—to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive); and

(V) helmets and other protective equipment.

(xi) Alcohol and traffic safety—minimum of 40 minutes (instructional objective—to identify the effects of alcohol on roadway users). Instruction shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects;

(IV) synergistic effects; and

(V) countermeasures.

(xii) Comprehensive examination and summation—minimum of 15 minutes (this shall be the last unit of instruction).

(xiii) The remaining required 20 minutes of instruction shall be allocated to the topics included in the minimum course content, excluding clause (i) and clause (xii) of this subparagraph, or to additional driving safety topics that satisfy the educational objectives of the course.

(C) Course management. Approved driving safety courses shall be presented in compliance with the following guidelines.

(i) No more than 50 students per class are permitted in driving safety courses.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) A minimum of 300 minutes of instruction is required.

(iv) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content, excluding the course introduction and comprehensive examination and summation. All break

periods shall be provided after instruction has begun and before the comprehensive exam and course summary.

(v) Administrative procedures, such as enrollment, shall not be included in the 300 minutes of the course.

(vi) Courses conducted in a single day shall allow a minimum of 30 minutes for lunch, which is exclusive of the total course length of 360 minutes.

(vii) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided prior to the last unit of the instructional day or the comprehensive exam, whichever is appropriate.

(viii) The order of topics shall be approved by the Texas Education Agency (TEA) as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(ix) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(x) The TEA shall produce and supply to course providers, at no cost to the course providers, copies of a short introductory video that will provide information about the requirements for completing a six-hour driving safety course and the penalties involved for accepting a uniform certificate of course completion for a course that was not six hours in length. The course provider shall ensure that the video is shown to all students of each class during the introduction. Alternative methods for providing the required information to the students may be submitted by the course provider and approved at the discretion of the division director.

(xi) Driving safety schools shall collect at least \$25 from each student in attendance at a driving safety course. The purpose of the requirement is to ensure that all driving safety schools maintain a uniform minimum cost as provided under Texas Civil Statutes, Article 4413(29c), §13(a-1). Any promotions or incentives which are not part of the course, but which are provided by the school or any agent of the school, must be paid separately by the student in addition to the cost of the course.

(D) Driving safety course guides. A course guide is a description of the content of the course and the techniques of instruction that will be used to present the course. The guide shall be bound into one unit or contained in a hole-punched notebook with a cover and a table of contents. To be approved for licensing, each

course provider shall submit as part of the application a course guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student conduct and attendance;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of: relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course; and the furniture deemed necessary to accommodate the students in the course, such as tables, chairs, and other furnishings. A variety of relevant motion picture films, slides, videos, or tape recordings shall be used for at least 60 minutes but cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) a clear identification of the order in which the units of instruction will be presented, and for each student, the course shall be taught in the order identified in the approved application;

(vii) written or printed materials that shall be provided for use by each student as a guide to the course. Exceptions to this requirement may be made by the division director on an individual basis;

(viii) a description of the plans under which the course will be presented;

(ix) units of instruction sufficient to present the topics identified in subparagraph (B) of this paragraph and any additional topics unique to the course. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (B) of this paragraph. A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V) of this subparagraph. The total time of the units shall contain a minimum of 24 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final exam. The applicant may choose not to provide alternative testing techniques; however, students shall be advised of courses providing alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Student course evaluation. Each student instructed in a driving safety course shall be given an opportunity to evaluate the course and the instructor on an official evaluation form. A master copy of the evaluation form will be provided to TEA. The evaluation forms must be collected at the conclusion of each class and kept on file at the location of the school for a period of one year.

(H) Instructor performance. Driving safety course providers with more than one instructor shall submit a written plan describing how monitoring of instructor performance will be accomplished. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation, and the corrective action to be taken when instructors do not meet criteria established by the course provider.

(I) Instructor training. Course providers shall ensure that instructors are provided with the most recent course materials and relevant data and information pertaining to driving safety.

(J) State-level evaluation of driving safety courses. Each course provider shall collect adequate student data to enable TEA to evaluate the overall effectiveness of a course in reducing the number of violations and accidents of persons who successfully complete the course. The commissioner of education shall determine a level of effectiveness that serves the purposes of Texas Civil Statutes, Article 4413(29c). For each student, each course provider shall collect and, upon request, provide to TEA the following data:

(i) complete legal name;
(ii) driver's license number;

(iii) date of birth; and

(iv) date of course completion. Information derived from the study of this data will be used by TEA to evaluate the state's overall driving safety course and as a part of the total evaluation of individual courses. The data, as prescribed by TEA, shall be provided to the course provider within a 30-day period 24 months subsequent to approval of the driving safety course by TEA. The TEA shall, within 12 months of receiving the data, conduct an evaluation of the driving safety courses in general and of each approved course. The evaluation shall be conducted relative to the pre-course and post-course driving records of the graduates.

(K) Innovative driving safety courses. Upon the written request of an applicant, the commissioner of education may approve the course structure of an innovative driving safety course which would not otherwise be in compliance with this chapter. The approval of an innovative driving safety course shall expire at the end of one year unless timely renewed. To renew the approval, an applicant must submit a renewal request and complete report at least 30 days prior to expiration. The renewal request and report must provide evidence acceptable to the commissioner of education of the accomplishment of the implementation plan and goals submitted for the previous year and include an acceptable updated plan of implementation and statement of goals for the following year. A written request must include a report that provides the following:

(i) documentation of the developmental process;

(ii) the actual presentation that would be used;

(iii) justification demonstrating how the offered course would more completely satisfy the educational objectives of driving safety than a driving safety course that could be otherwise approved pursuant to this chapter;

(iv) a specific plan of implementation and statement of goals for the immediate year following approval;

(v) in the case of a renewal request, an evaluation of the effectiveness of the course for the previous approved period; and

(vi) any other information requested by the commissioner of education to adequately review the presentation.

(L) Driving safety courses delivered by technology. The commissioner of education may approve a driving safety course delivered by technology and waive

any rules to accomplish this approval if:

(i) the educational objectives, minimum course content, applicable areas of course management, examination, and student course evaluation requirements are met;

(ii) the course materials are written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor;

(iii) with the exception of circumstances beyond the control of the course owner, the student has adequate access to a licensed instructor (on the average, within two minutes) throughout the course such that the flow of instructional information is not delayed;

(iv) the equipment and course materials are available only through and at the approved driving safety school or classroom; and

(v) there is sufficient evidence to demonstrate the security of the course and that it cannot be circumvented by the general public.

(M) Requirements for authorship. The course materials shall be written by a TEA-licensed driving safety instructor or other individuals or organizations with recognized experience in writing instructional materials with input from a TEA-licensed driving safety instructor.

(2) Instructor development courses.

(A) Driving safety instructors shall successfully complete 36 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 36 clock hours of training for driving safety instructors, excluding those clock hours approved by TEA staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include: the trainee's name, address, driver's license number, and

other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the TEA-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. The course shall be presented by a properly licensed instructor trainer.

(E) Applicants shall complete 36 hours of training in the driving safety curriculum that shall be taught. Of the 36 hours, 24 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 24-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(b) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division director shall be notified

within 72 hours of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division director for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division director, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the commissioner of education determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The commissioner of education may revoke approval of any course under any of the following circumstances.

(1) A statement contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of Texas Civil Statutes, Article 4413(29c), and/or this chapter.

(4) The course has been found to be ineffective in carrying out the purpose of the Texas Driver and Traffic Safety Education Act.

§176.111. Contracts-Students.

(a) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money.

(b) All driving safety contracts shall contain at least the following:

(1) the student's legal name and driver's license number;

(2) the student's address, including city, state, and zip code;

(3) the student's telephone number;

(4) the student's date of birth;

(5) the full legal name and license number of the driving safety school or approval number of the classroom location, as applicable;

(6) the specific name of the approved driving safety course to be taught;

(7) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(8) the terms of payment;

(9) the number of classroom lessons;

(10) the number of behind-the-wheel lessons, if applicable;

(11) the length of each lesson or course;

(12) the course provider's cancellation and refund policy;

(13) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(14) the signature and license number of the instructor; and

(15) the signature of the student.

(c) In addition, all driving safety school contracts shall contain statements substantially as follows.

(1) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(2) The school is prohibited from issuing a uniform certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

(3) This agreement constitutes the entire contract between the school and the student, and verbal assurances or promises not contained herein shall not bind the school or the student.

(4) I further realize that any grievances not resolved by the school may be forwarded to Driver Training, Texas Education TEA, 1701 North Congress Avenue, Austin, Texas 78701. The current telephone number of the division shall also be provided.

(5) The statement required in paragraph (4) of this subsection shall include the name and address of the course provider.

(d) Driving safety may use a group contract which includes more than one student's name.

(e) A copy of each contract shall be a part of the student files maintained by the driving safety school and/or course provider.

(f) Course providers shall submit proposed or amended contracts to the divi-

sion director, and those documents shall be approved prior to use by schools.

(g) Contracts for group instruction must meet all legal requirements.

(h) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

§176.112. Progress.

(a) Appropriate standards shall be implemented to ascertain the progress of the students.

(b) Progress standards for driving safety shall meet the requirements as set forth in §176.110(a)(1)(F) of this title (relating to Courses of Instruction).

§176.113. Attendance.

(a) Appropriate standards, which include negative records of student attendance, shall be implemented to ascertain the attendance of the students.

(b) A school that offers a driving safety course shall document the hours scheduled each day and each hour not attended in a manner approved by the division director.

(c) A school must maintain a master record of attendance for each student that clearly indicates the number of scheduled hours each day and the hours of absence. The instructor's master record of attendance must indicate a record of each student's attendance. Entries in the master record of attendance shall be made in ink and shall be updated on a daily basis.

§176.114. Makeup and Alternative Scheduling.

(a) A student shall be considered absent when not in attendance at a regularly scheduled class time and when not in attendance at another regularly scheduled alternate class time on the same day. Any period of absence for any portion of scheduled instruction will require that the student complete that portion of scheduled instruction.

(b) A course provider shall submit a makeup policy for approval. Driving safety schools shall use the policy approved for use by the course provider. All makeup lessons shall be documented on the group instruction record, which shall reflect the signature and license number of the instructor responsible for conducting the makeup session. Makeup shall be conducted in accordance with the course provider policy outlined in the instructor development course.

(c) For a policy that allows students to attend a missed lesson at a later date during a regularly scheduled class, the class

shall be engaged in the same lesson the student missed previously.

(d) All makeup lessons shall be completed by the student within 90 days of the first scheduled day of class. If the student does not complete the entire course, including all makeup lessons, within the 90-day period, the student shall be terminated, and no credit for instruction shall be granted. Makeup work shall not be authorized to remove absences.

§176.115. Conduct Policy.

(a) The course provider shall submit a copy of the policies pertaining to conduct to TEA for approval. Driving safety schools shall use the policies approved for the course provider.

(b) A statement regarding the following shall be submitted:

(1) conditions for dismissal; and

(2) conditions for reentry of those students dismissed for violating the conduct policy.

§176.116. Cancellation and Refund Policy.

(a) Course provider cancellation shall be in accordance with Texas Civil Statutes, Article 4413(29c). Driving safety schools shall use the cancellation policy approved for the course provider.

(b) Refunds for all driving safety schools or course providers shall be completed within 30 days after the effective date of termination. Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within 120 days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In those cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(c) In reference to Texas Civil Statutes, Article 4413(29c), §13(h)(4), a school or course provider is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address; and

(2) certified mail to the student's permanent address.

(d) If it is determined that the school does not routinely pay refunds within the time required by Texas Civil Statutes, Article 4413(29c), §13(h)(2)(E), the school shall submit a report of an audit which includes any interest due as set forth in Texas Civil Statutes, Article 4413(29c),

§13(h) (4), conducted by an independent certified public accountant or public accountant who is properly registered with the appropriate state board of accountancy, of the refunds due former students. The audit opinion letter shall be accompanied by a schedule of student refunds due which shall disclose the following information for the previous two years from the date of request by Texas Education Agency (TEA) for each student:

(1) name, address, and either social security number or driver's license number;

(2) last date of attendance or date of termination; and

(3) amount of refund with principal and interest separately stated, date and check number of payment if payment has been made, and any balance due.

(e) All students trained by unlicensed instructors may be entitled to refund of tuition and fees for the training provided by the unlicensed instructors as determined by the division director.

(f) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of TEA and acceptable to the division director.

§176.117. Facilities and Equipment.

(a) Each driving safety school licensed by the commissioner of education shall display, in a prominent place in each classroom location, a sign or notice indicating the rates per lesson or course.

(b) No classroom facility shall be located in a private residence.

(c) The classroom facilities, when used for instruction, shall contain at least the following:

(1) adequate seating facilities for all students being trained;

(2) adequate charts, diagrams, mock-ups, and pictures relating to the operation of motor vehicles, traffic laws, physical forces, and correct driving procedures; and

(3) any materials that have been approved as a part of the course approval.

(d) The amount of classroom space shall meet the use requirements of the maximum number of current students in class with appropriate seating facilities as necessitated by the activity patterns of the course.

(e) Enrollment shall not exceed the design characteristics of the student work stations. The facilities shall meet any state and local ordinances governing housing and safety for the use designated.

(f) A violation of the law or rules by any multiple classroom location constitutes a violation by the driving safety school.

(g) All classroom approvals are contingent on the driving safety school license and shall be subject to denial or revocation if such action is taken against the license of the driving safety school that has responsibility for the classroom location.

(h) Course provider facilities shall be staffed in such a manner that an employee of the course provider is available to answer questions and take messages during regular business hours.

(i) The course provider location shall be the physical address as stated on the course provider license.

§176.118. Motor Vehicles.

(a) Driving safety schools that want approval to teach a driving safety course approved to provide behind-the-wheel instruction as part of the course shall conduct all behind-the-wheel instruction of students in motor vehicles in compliance with this section. All vehicles shall:

(1) be equipped with safety belts, and students and instructors shall comply with requirements of Texas Civil Statutes, Article 6701d, §107C;

(2) be properly registered in compliance with the motor vehicle registration laws of Texas and bear a current motor vehicle inspection certificate, if required;

(3) be insured by a company authorized to do business in Texas with a continuous liability insurance policy in the amount specified in Texas Civil Statutes, Article 6701h, and will include coverage for uninsured or underinsured motorists;

(4) be maintained in safe mechanical and physical condition at all times; and

(5) be equipped with applicable mechanical devices when used in training of students with physical disabilities (students may use their own vehicles if special mechanical devices are necessary).

(b) School owners shall ensure that the division director is notified at all times of all vehicles that are to be used for instruction purposes. Notification shall be made on forms provided by the Texas Education Agency (TEA).

(c) All vehicles shall be insured in accordance with subsection (a)(3) of this section and shall have evidence available for inspection by TEA representatives.

(d) If it is found that the school has used an uninsured vehicle, TEA shall impose a civil penalty not to exceed \$1,000

per day that the uninsured vehicle was used. Each vehicle shall constitute a separate offense.

§176.119. Student Complaints.

(a) The course provider shall have a written grievance procedure approved by the division director that is disclosed to all students. Driving safety schools shall follow the procedures approved for the course provider. The function of the procedure shall be to attempt to resolve disputes between students, including terminations and graduates, and the school. Adequate records shall be maintained.

(b) The driving safety school or course provider shall make every effort to resolve complaints.

§176.120. Records.

(a) A driving safety school or course provider shall furnish upon request any data pertaining to student enrollments and attendance, as well as records and necessary data required for licensure and to show compliance with the legal requirements for inspection by authorized representatives of the Texas Education Agency (TEA). There may be unannounced compliance surveys at each school or course provider each year. Other compliance surveys may be announced at the discretion of the division director.

(b) The course provider shall retain all student records for at least three years. The actual driving safety comprehension test does not have to be retained; however, the test score must be in the student's records. The division director may require a school to retain the actual test of each student for a designated period of time if deemed necessary by the division director to show compliance with the legal requirements.

(c) A course provider licensed by TEA shall maintain a permanent record of instruction given to each student who received instruction to include students who withdrew or were terminated.

(d) The record for group contract students shall contain a master instruction record indicating date and type of instruction given by subject matter and signature and license number of the instructor. Attached to the master instruction record will be a roster of students satisfactorily completing this course.

§176.121. Names and Advertising.

(a) No driving safety school or course provider shall adopt, use, or conduct any business under a name that is like, or deceptively similar to, a name used by another licensed driving safety or driver edu-

cation school without written consent of that school. Schools or extensions holding a name approved by the Texas Education Agency (TEA) as of August 31, 1995, may continue to use the name approved by TEA. No new license will be issued to a driving safety school or course provider after August 31, 1995, with a name like, or deceptively similar to, a name used by another licensed driving safety or driver education school.

(b) A school license shall not contain more than one school name. Schools that hold approvals for more than one name as of August 31, 1995, shall provide written notice to TEA of the name that will be selected for the school at the renewal period subsequent to adoption of this rule. Use of names other than the approved school name may constitute a violation of this section.

(c) A school shall not, by advertisement or otherwise, state or imply that a uniform certificate of course completion is guaranteed or assured to any student or individual who will take or complete any instruction or enroll or otherwise receive instruction in any driving safety school.

(d) A driving safety school shall not advertise without including the school name exactly as it appears on the driving safety school license or school number. A driving safety school shall not advertise a multiple classroom location without including the school name exactly as it appears on the driving safety school license and the classroom approval number exactly as assigned by TEA.

(e) The division director may require that a school furnish proof to TEA that substantiates any advertising claims made by the school. Failure to provide acceptable proof may require that a retraction of such advertising claims be published by the school in the same manner as the disputed advertisement. Continuation of such advertising shall constitute cause for suspension or revocation of the school license.

(f) A school or course provider shall not design, manufacture, or supply to any court of the state any written materials that may be false, misleading, or deceptive.

§176.122. Application Fees and Other Charges.

(a) If a driving safety school or course provider changes ownership, the new owner shall pay the same fee as that charged for an initial fee for a school. In cases where, according to §176.105(g)(3) of this title (relating to Course Provider Licensure), the change of ownership of a course provider is substantially similar, the new owner shall pay the statutory fees allowed by Texas Civil Statutes, Article 4413(29c), §13(d)(3)(A).

(b) A late renewal fee shall be paid in addition to the annual renewal fee if a driving safety school or course provider fails to postmark a complete application for renewal at least 30 days before the expiration date of the driving safety school license. The requirements for a complete application for renewal are found in §176.104(f) of this title (relating to Driving Safety School Licensure) and §176.105(i) of this title (relating to Course Provider Licensure). The complete renewal application must be postmarked or hand-delivered with a date on or before the due date.

(c) License, application, and registration fees shall be collected by the commissioner of education and deposited with the state treasurer according to the following schedule.

(1) The fee for a driving safety course approval is \$9,000.

(2) The initial fee for a course provider is \$2,000.

(3) The initial fee for a driving safety school is \$150.

(4) The annual renewal fee for a course provider is \$200.

(5) The fee for a change of address of a course provider or driving safety school is \$50.

(6) The fee for a change of name of a course provider or name of owner is \$100.

(7) The fee for a change of name of a driving safety school or name of owner is \$50.

(8) The application fee for each additional course for a driving safety school is \$25.

(9) The application fee for each administrative staff member is \$15.

(10) Each application for an original driving safety instructor's license shall be accompanied by a processing fee of \$50.

(11) The annual instructor license fee is \$25.

(12) The late instructor renewal fee is \$25.

(13) The duplicate driving safety instructor license fee is \$8.

(14) The fee for an investigation at a driving safety school or course provider to resolve a complaint is \$1,000.

(15) The course provider late renewal fee is \$200.

(16) The driving safety school late renewal fee is \$100.

(17) The fee for a duplicate uniform certificate of course completion is \$10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514840

Criss Cloudt
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-9701

Chapter 176. Driver Training Schools

Subchapter B. Minimum Standards for Operation of Texas Driver Training Schools

• 19 TAC §§176.10-176.20, 176.22, 176.23, 176.25-176.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Education Agency or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §§176.10-176.20, 176.22, 176.23, and 176.25-176.34, concerning driver training schools. The rules establish minimum standards of operation for driver training schools, including definitions, requirements, and procedures related to: school and instructor licensure; exempt schools; school personnel; courses of instruction; school facilities and equipment; student complaints; records; application fees and other charges; and the uniform certificate of course completion. The repeals are necessary to comply with the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995. A new Chapter 176 is proposed in a separate submission.

J.R. Cummings, associate commissioner for special populations, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the State Board of Education may adopt new rules concerning driver training schools that comply with Senate Bill 1 and Senate Bill 984. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Criss Cloudf, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeals submitted under the Administrative Procedure Act and the Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rules has been published in the *Texas Register*.

The repeals are proposed under the Texas Education Code, §7.102, which authorizes the State Board of Education to review specified TEA rules.

The repeals implement the Texas Education Code, §7.102.

§176.10. *General Information.*

§176.11. *Definitions.*

§176.12. *Exemptions.*

§176.13. *School Licensure.*

§176.14. *Driving Safety Course-Extension Locations.*

§176.15. *Applications from Small Businesses.*

§176.16. *Driver Training School Responsibility for Employees.*

§176.17. *School Directors and Administrative Staff Members.*

§176.18. *Driver Training Instructor Licensure.*

§176.19. *Courses of Instruction.*

§176.20. *Contracts-Students.*

§176.22. *Progress.*

§176.23. *Attendance.*

§176.25. *Make Up.*

§176.26. *Conduct Policy.*

§176.27. *Cancellation and Refund Policy.*

§176.28. *Facilities and Equipment.*

§176.29. *Motor Vehicles.*

§176.30. *Student Complaints.*

§176.31. *Records.*

§176.32. *Names and Advertising.*

§176.33. *Application Fees and Other Charges.*

§176.34. *Uniform Certificates of Course Completion for Driving Safety Course.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

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Criss Cloudf
Associate Commissioner,
Policy Planning and
Research
Texas Education Agency

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For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 321. Definitions

• 22 TAC §321.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §321.1, concerning Definitions. This amended section clarifies the procedure by which a physical therapist or physical therapist assistant supervise physical therapy aides.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be proper supervision of physical therapy aides. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas State Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas

Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§321.1. *Definitions.* The following words, terms, and phrases, when used in the rules of the Texas Board of Physical Therapy Examiners, shall have the following meanings, unless the context clearly indicates otherwise.

Physical therapist assistant—The supervision of the physical therapist assistant shall include the following:

(A)-(E) (No change.)

(F) The physical therapist assistant may not:

(i) screen patients for physical therapy, or specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures;

(ii)-(iii) (No change.)

(iv) sign progress notes which include assessments used to design or modify patient care;

(v) interpret the objective findings related to patient progress and or goal achievement which are included in the discharge summary.

Physical therapy—The evaluation, examination, and utilization of exercises, rehabilitative procedures, massage, manipulations, and physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound in the aid of diagnosis or treatment. Physical therapists may perform evaluations without referrals. Physical therapy practice includes the use of modalities, procedures, and tests to make evaluations. Physical therapy practice includes, but is not limited to the use of: Electromyographic (EMG) Tests, Nerve Conduction Velocity (NCV) Tests, Thermography, Transcutaneous Electrical Nerve Stimulation (TENS), bed traction, application of topical medication to open wounds, sharp debridement, provision of soft goods, inhibitive casting and splinting, Phonophoresis, Iontophoresis, and bio-feedback services.

Physical therapy aide—All rules governing the direction of the physical therapist assistant are further modified for the physical therapy aide.

(A) (No change.)

(B) The physical therapy aide may support physical therapy activities within the scope of on-the-job training and

with on-site supervision by [of] a physical therapist or physical therapist assistant within reasonable proximity of the physical therapy aide. The physical therapist or physical therapist assistant must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(C) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514759

John Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

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For further information, please call: (512) 305-6900

Chapter 323. Powers and Duties of the Board

• 22 TAC §323.4

The Texas Board of Physical Therapy Examiners proposes an amendment to §323.4, concerning Applications Review Committee. This amended section will identify the board approved credentialing review agency.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be qualified credential review evaluator/evaluators for foreign-trained applicants seeking licensure in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§323.4. Applications Review Committee.

(a)-(e) (No change.)

(f) The board approved credentialing review agency is International Credentialing Associates (ICA). The Texas Board of Physical Therapy Examiners will accept evaluations from this agency between the dates of February 1, 1996 and January 31, 1997.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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John Maline
Executive Director
Executive Council of
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For further information, please call: (512) 305-6900

Chapter 329. Licensing Procedure

• 22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.1, concerning General Licensing Procedures. This amended section identifies who will examine and approve applications for licensure in Texas.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a consistent procedure for examining and approving application for people seeking licensure in Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§329.1. General Licensing Procedure.

(a) Applications.

(1) The board office will receive completed applications from persons seeking licensure under the Act. Applications shall be examined by the coordinator [executive director] for conformity with rules and regulations governing applications for licensure as established by the board. Applications shall include:

(A)-(D) (No change.)

(2)-(4) (No change.)

(b)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514761

John Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

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For further information, please call: (512) 305-6900

• 22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes an amendment to §329.5, concerning Licensing Procedures for Foreign-Trained Applicants. This amended section removes the reference to a specific a board approved credentialing agency.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of a board approved credentialing agency or agencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas

Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment

§329.5. Licensing Procedures for Foreign-Trained Applicants.

(a) (No change.)

(b) The foreign-trained applicant's transcripts will be evaluated by a board-approved credentialing entity. The credentialing review agency [The board-approved credentialing entity is International Credentialing Associates (ICA). This entity] will determine if the education is equivalent to a U.S. degree in physical therapy and if the applicant has a minimum of 60 academic semester credits or the equivalent from an accredited institution of higher learning. In the event that the board-approved entity in an evaluation does not adhere to the guidelines of §329.5(g), the Applications Committee can override the evaluation. An evaluation by a board-approved education credentialing agency is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.

(c)-(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514879 John Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 305-6900

Chapter 341. License Renewal

• 22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §341.1, concerning License Renewals. This amended section will clarify the rules for renewing a physical therapist or physical therapist assistant license.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater ease in understanding the instructions for license renewal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§341.1. Requirements for Renewal.

[(a) Biennial renewal. Licensees are required to renew their licenses biennially by the end of the month in which they were originally licensed. Continuing Education Units (CEUs) are required to be submitted with renewal applications.

[(1) Implementation of the two year renewal will occur in two phases. Implementation of these phases will begin January 1994.

[(A) Licensees whose fifth digit in their license number is even will renew their license for two years. They are not required to submit CEUs with this first two-year renewal. For their second two-year renewal, these licensees will submit 3 CEUs (2 CEUs for physical therapist assistants) which have been obtained in the three intervening years. For their third two-year renewal, these licensees will submit 3 CEUs (2 CEUs for physical therapist assistants) which have been obtained in the two intervening years.

[(B) Licensees whose fifth digit in their license number is odd will renew their license for one year. They are not required to submit CEUs for this one year renewal. For their calendar year 1995 renewal, these licensees will renew their licenses for two years and must submit 3 CEUs (2 CEUs for physical therapist assistants) which have been obtained in the past two years. In 1997, these licensees will again renew for two years and are required to submit CEUs.]

(a) [(b)] The licensed physical therapist must complete, in each biennium, three CEUs.

(b)[(c)] The licensed physical therapist assistant must complete, in each biennium, two CEUs.

(c)[(d)] CEU requirements must be completed in the biennium preceding the licensee's biennial renewal month.

(d)[(e)] The original program completion document must be retained by the licensee. This document must be signed and certified by the authorized person as per the course application. It shall include the:

- (1) licensee's name as printed on the renewal certificate;
- (2) license number of the licensee;
- (3) program date(s); and
- (4) CEU credits awarded.

(e) [(f)] Copies of the original program completion document must be submitted to prove compliance with the required CEUs for the previous biennium. These documents must be submitted with the biennial license renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

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Executive Director
Executive Council of
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For further information, please call: (512) 305-6900

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• 22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes an amendment to §341.3, concerning Qualifying Continuing Education Units. This amended section will establish a procedure for approving programs for continuing education.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of approved educational programs to help licensees maintain their competency to practice physical therapy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§341.3. Qualifying Continuing Education Units (CEUs).

(a)-(d) (No change.)

(e) Approval of CEU programs.

(1) To receive CEU credit for a program the program must be approved by the board either before or after it is attended. An application for continuing education units form must be completed and submitted to the board for approval of a program for CEUs with a fee set by the board. Only one fee is required for each program. Once the fee has been paid for a program, any number of persons may submit attendance at this program for CEU credit without paying additional fees. A program may be provided more than one time and at different locations within one year from the date that the course is first offered and payment of additional fees is not required. [within the calendar year from the date in which the fee is paid without payment of additional fees.]

(2) (No change.)

(3) Privileged sponsors.

(A)-(B) (No change.)

(C) Maintenance of privileged sponsorship. Omission, falsification or noncompliance with any of the following requirements will result in immediate withdrawal of the privileged sponsorship by the board. To maintain privileged sponsorship status an entity must:

(i) (No change.)

(ii) submit to the board notification of each [the] course to be offered. The board must receive this information prior to the course offering. Information must include; name, address, and telephone number of sponsor; title, dates of presentation, and location of program; CEUs to be awarded; and name and signature of the person who will be signing the course completion certificates;

(iii) (No change.)

(iv) use the following statement in publicity: "This is a continuing

education offering for Physical Therapists and/or Physical Therapist Assistants approved by the Texas [State] Board of Physical Therapy Examiners which meets the requirement of Continuing Education Units"; and

(v) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514880

John Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 305-6900

Chapter 343. Contested Case Procedure

• 22 TAC §343.41

The Texas Board of Physical Therapy Examiners proposes an amendment to §343.41, concerning Agreed Orders. This amended section will require licensees disciplined by the board to reimburse the agency for investigation expenses.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection from violators of the Physical Therapy Practice Act and rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amendment.

§343.41. Agreed Orders.

(a)-(b) (No change.)

(c) The agreed order with the notarized signature of the respondent will be presented to the board. The proposed agreed order shall have no effect until such time as the board may, at a regularly scheduled meeting, take action approving the agreed order. When the board has ratified an agreed order the licensee will reimburse the board for all the investigation expenses. The investigation expenses will be included as a condition of the order. A copy of the agreed order will be sent to the licensee's employer, and facility administrator.

(d)-(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514763

John Maline
Executive Director
Executive Council of
Physical Therapy and
Occupational Therapy
Examiners

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 305-6900

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

• 22 TAC §463.32

The Texas State Board of Examiners of Psychologists proposes new §463.32, concerning Specialist in School Psychology. The new rule is being proposed in order to define what an individual must do to obtain a license as a Specialist in School Psychology. The new rule sets forth training and examination requirements for applicants for this license. The rule also defines what individuals are eligible for grandparenting into the license and how temporary permits can be obtained to provide psychological services in the public schools.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect, the cost to the Agency to implement this license is approximately \$39,000 for fiscal year 1996 and \$25,000 for fiscal year 1997 and every year thereafter. However, the 74th Legislature did not provide the Agency with appropriation authority to cover this cost. The revenue generated by application fees and renewal fees collected from these individuals would more than offset the anticipated costs. The Agency estimates the revenue would increase by \$60,000 in fiscal year 1996 and by \$30,000 in fiscal year

1997 and every year thereafter. The Agency anticipates no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the protection of the health and welfare of the citizens of Texas, in particular the children who attend public schools in Texas, by ensuring that individuals who provide psychological services in the public schools meet certain minimum requirements and are subject to the requirements and regulations of the agency. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section will be in direct proportion to the cost of application fees, plus the costs of taking and passing the examinations required for licensure as set forth by the Educational Testing Service and in §473.2 of the Board's rules, as well as the fees for annual renewal of the license.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new section is proposed under Texas Civil Statutes, Article 4512c, §26, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§463.32. *Specialist in School Psychology.* Education Code, authorizes the Board to set standards for school psychological services. These standards are set forth as follows:

(1) Licensed Specialist in School Psychology.

(A) Training Qualifications.

Candidates for Licensure as a Specialist in School Psychology with a currently valid National Certified School Psychologist (NCSPP) certification or who have graduated from a training program accredited by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training qualifications. Other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, with at least 60 graduate level semester credit hours, no more than 12 of which may be internship. A graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must

submit evidence of graduate level coursework and internship as follows:

(i) Psychological Foundations - minimum one course in each of the following:

(I) biological bases of behavior

(II) human learning

(III) social and cultural bases of behavior

(IV) child/adolescent development

(V) psychopathology/exceptionalities

(ii) Research/Statistics—minimum one course

(iii) Educational Foundations—minimum one course in each of the following:

(I) instructional design

(II) organization and operation of schools

(iv) Assessment—minimum one course in each of the following:

(I) psychoeducational assessment

(II) socio-emotional-behavioral assessment

(v) Interventions—minimum one course in each of the following:

(I) counseling

(II) behavior management

(III) consultation

(vi) Professional Issues and Ethics—minimum one course

(vii) Practicum (including assessment)—minimum one course

(viii) Internship—minimum 1,200 hours, of which 600 must be in a school. The internship must be part of an academic training program and supervised by a Licensed Psychologist with competency in school psychology. No experience which is supervised by a psychologist who is related within the second degree of affinity or within the second degree by consan-

guinity to the person, nor is under Board disciplinary order, may be considered for Specialist in School Psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and may be obtained in not less than one or more than two academic years. Supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. Experiences must include assessment, intervention, behavior management, and consultation, for children representing a range of ages and handicapping conditions.

(B) Examinations. Candidates for licensure as a Specialist in School Psychology must take and pass the Board's Jurisprudence Exam. Candidates must also take the National School Psychology Examination administered by the Educational Testing Service and obtain at least the cut-off score for the NCSPP.

(C) Additional Requirements. In addition to the requirements of subparagraphs (A) and (B) of this paragraph, candidates for licensure as a Specialist in School Psychology must meet the requirements imposed under §11(d) of the Psychologists' Certification and Licensing Act.

(D) Transition Provision for the Licensed Specialist in School Psychology.

(i) Grandparenting

Period. A person who, on or after September 1, 1992 but before September 1, 1996 was employed as a School Psychologist or Associate School Psychologist by a school district of this state under the Education Code, as that code existed on January 1, 1995, is entitled to a license as a Licensed Specialist in School Psychology under §26 of the Psychologists' Certification and Licensing Act, without examination, if the person applies to the Board for the license before September 1, 1997 and pays the appropriate fees set by the Board.

(ii) TEA Certification. A

person who is employed by a public school as a School Psychologist or Associate School Psychologist and who holds a certificate issued by the Central Education Agency or the Texas Education Agency under former Subchapter B, Chapter 13, Education Code, may continue to practice under that certificate until the person obtains a license as a Licensed Specialist in School Psychology as provided by subparagraph (D)(i) of this paragraph, which specifies a September 1, 1997 final date to apply.

(iii) Verification. Candidates for licensure as a Specialist in School Psychology under this grandparent provision must verify their status as a School Psychologist or Associate School Psychologist, employed by an ISD during the above dates, by means of a letter from the Superintendent of the school district or his/her designee, stating this information.

(iv) Deficiency Plans. Candidates for licensure as a Specialist in School Psychology who are on temporary permits or intermediate certifications may apply under the grandparent provision only if their deficiency plans have been completed by September 1, 1997. Completion of the deficiency plan must be verified by the source preparing the original deficiency plan.

(E) Temporary Permits. Individuals may apply to the Board for a temporary permit to offer psychological services in the school. This permit is valid for a period not to exceed three years. Application for Temporary Permit must include verification from the ISD Superintendent, or his/her designee, that the applicant will be providing psychological services at least half time in the school district. At a minimum, candidates for Temporary Permit must possess:

(i) A master's degree in psychology from a regionally accredited institution, containing a minimum of 42 graduate level semester credit hours, including at least two courses each in assessment and intervention and one course each in ethics, child development and psychopathology.

(ii) A deficiency plan to complete coursework/internship which is needed to meet the requirements for licensure as a Specialist in School Psychology as outlined in subparagraph (A) of this paragraph. The deficiency plan must be completed by the training director of the psychology program in which the additional training is to take place and submitted to the Board on institutional letterhead.

(iii) Upon completion of the deficiency plan, the training director must submit a letter to the Board verifying completion of the plan.

(2) Endorsed Specialist in School Psychology. School psychology endorsement is based on equivalency with the training provisions established for the Licensed Specialist in School Psychology. Individuals who already possess a license or certification under this Board, and who meet the qualification for the Licensed Specialist in School Psychology under paragraph (1)(A) of this section, may apply to the Board for a School Psychology Endorsement and practice under the same provisions. Application may also be made

under the grandparenting provisions of paragraph (1)(D) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514793

Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 305-7700

Chapter 465. Rules of Practice

• 22 TAC §465.38

The Texas State Board of Examiners of Psychologists proposes new §465.38, concerning Psychological Services in the Schools. The new rule is being proposed in order to define the type and scope of practice permitted by individuals who provide psychological services in the public school systems of Texas as Licensed Specialists in School Psychology, as well as the minimum level of competency that all practitioners must possess in order to obtain licensure under the section.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect, the cost to the Agency to implement this license is approximately \$39,000 for fiscal year 1996 and \$25,000 for fiscal year 1997 and every year thereafter. However, the 74th Legislature did not provide the Agency with appropriation authority to cover this cost. The revenue generated by application fees and renewal fees collected from these individuals would more than offset the anticipated costs. The Agency estimates the revenue would increase by \$60,000 in fiscal year 1996 and by \$30,000 in fiscal year 1997 and every year thereafter. The Agency anticipates no fiscal implications for local government as a result of enforcing or administering the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the protection of the health and welfare of the citizens of Texas, in particular the children who attend public schools in Texas, by ensuring that individuals who provide psychological services in the public schools meet certain minimum requirements and are subject to the requirements and regulations of the agency. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section will be negligible.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The new section is proposed under Texas Civil Statutes, Article 4512c, Section 26, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed new rule does not affect other statutes, articles, or codes.

§465.38. Psychological Services in the Schools.

(a) Definition. A Licensed Specialist in School Psychology means a person who is trained to deal with psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning conditions for students.

(b) Providers of School Psychological Services. School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide school psychological services include Licensed or Endorsed Specialists in School Psychology, interns and other individuals with a Temporary Permit issued by this Board to provide such services under §463.32 of this title (relating to Specialist in School Psychology), and certified or licensed psychologists with competency in school psychology.

(c) Competency in School Psychology. For certified or licensed psychologists practicing in the public schools, competency in school psychology means a doctoral major in school psychology, an ABPP in school psychology, retraining under APA Guidelines as a school psychologist, or a currently valid NCSP.

(d) Scope of Practice. Nothing in this rule prohibits school districts from hiring licensed psychologists who do not have competency in school psychology to provide psychological services in their particular areas of expertise, so long as they are not asked to provide the broad range of school psychological services. Similarly, nothing in this rule prohibits the Licensed Specialist in School Psychology from practicing in the private sector, provided the practitioner is in compliance with Rule §465.18 of this title (relating to Supervision).

(e) Supervision. Direct systematic, face-to-face supervision must be provided to interns, to certified psychologists, to individuals on temporary permits, and to individuals providing interpretation of projective tests such as the Rorschach or Thematic Apperception Test. Such supervi-

sion must also be provided to Licensed Specialists in School Psychology and to Licensed Psychological Associates with School Psychology Endorsement for a period of two academic years following the internship. Aspects of supervision may be delegated by supervisors as appropriate. Nothing in this rule applies to administrative supervision of psychology personnel within the schools, often done by non-psychologists, in job functions involving, but not limited to, attendance, time management, completion of assignments, adherence to school policies and procedures.

(f) Supervisor Qualifications. When supervision of interns or certified psychologists is involved or when school psychological services are contractual or involve private sector funding, supervision is to be provided by a licensed psychologist with demonstrated competency in school psychology. When school psychological services are rendered in the public schools, supervision may be provided by a licensed psychologist with demonstrated competency in school psychology or by a doctoral level licensed specialist in school psychology employed by the school district. Licensed specialists in school psychology with three years' experience providing psychological services in the schools may be designed supervisors if the district applies to the Board under the Board's Hardship Policy.

(g) Psychological Services Oversight. Each public school district offering school psychological services shall have available at least one psychologist, as specified in subsection (f) of this section, with competency in school psychology, to serve as a resource to provide ongoing mentorship, consultation, continuing education or other assigned duties as needed. Districts may form consortia or contract with regional service centers, along with other options, for securing the services of such a person.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 15, 1995.

TRD-9514784

Rebecca E. Forkner
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 305-7700

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 407. Internal Facilities Management

Inscription on State Vehicles

• 25 TAC §407.171

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §407.171, concerning inscription on state vehicles.

The proposed new section would fulfill the mandates of the Texas Transportation Code, Chapter 721, which require the department to adopt rules specifying use of department vehicles that are exempt from the requirements of the statute.

Don Green, chief financial officer, has determined that for each year of the first five-year period the section as proposed is in effect there will be no significant fiscal impact on state or local government or small businesses as a result of enforcing the section as proposed.

Karen Hale, assistant commissioner, has determined that the public benefit is compliance with state statute. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposed new section may be submitted to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12688, Austin, Texas 78711-2688, within 30 days of publication.

The new section is proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking authority.

The new section would affect Texas Transportation Code, Chapter 721.

§407.171. Inscription on State Vehicles. State vehicles used primarily for transporting individuals receiving services from the Texas Department of Mental Health and Mental Retardation are not required to have a department inscription printed on the vehicle. The purpose served is individual confidentiality, safety, normalization of individuals receiving services, and the reduction of stigma associated with mental illness and mental retardation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514781

Ann Utley
Chalman
Texas Board of Mental
Health and Mental
Retardation

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 206-4516

Part V. Center for Rural Health Initiatives

Chapter 500. Executive Committee for the Center for Rural Health Initiatives

Subchapter D. Texas Rural Physician Assistant Loan Reimbursement Program

• 25 TAC §§500.101, 500.103, 500.105, 500.107, 500.109

The Center for Rural Health Initiatives (Center) proposes new §§500.101, 500.103, 500.105, 500.107, and 500.109, concerning the Rural Physician Assistant Loan Reimbursement Program which will provide loan repayment to physician assistants working in rural areas of Texas with a high need for primary health care services. The proposed new sections establish the purpose and administration of the program; provide definitions; provide for dissemination of program information; establish eligibility requirements; establish the application and selection processes; and establish the loan repayment process.

Carol A. Peters, program administrator, has determined that for the first five years the proposed sections are in effect there will be fiscal implications for public state entities. State government is required to fully fund the program from licensure fees paid by physician assistants to the Texas State Board of Medical Examiners. The Texas State Board of Physician Assistant Examiners of the Texas State Board of Medical Examiners is authorized, by law and legislative appropriation, to transfer \$90,000 in state funds from licensure fees to the Center for each year of the current biennium. The Center will award loan reimbursements based on the availability of these state funds.

Ms. Peters also has determined that for each year of the first five years that the proposed sections are in effect, the long-term benefit to residents of rural areas with a high need for primary health care services will be improved access to and availability of those services. There will be no negative effect on small businesses and there will be no cost to persons who comply with the requirements of the proposed sections. The law establishing the Rural Physician Assistant Loan Reimbursement Program gives the Center significant latitude to establish policies and procedures for administering the program. There are,

however, two provisions specified in law which are not subject to change through the rule-making process. These legal provisions limit participation in the program to physician assistants who are working in rural Health Professional Shortage Areas or rural Medically Underserved Areas and who are graduates of Texas physician assistant training programs. The Center has received numerous inquiries from physician assistants interested in the program. Many of those inquiring express disappointment upon learning that state law limits participation to graduates of Texas physician assistant training programs. The Center advises these individuals that a change in legislation must occur before this particular requirement can be modified.

Comments on the proposed sections may be submitted to Carol A. Peters, Program Administrator, Center for Rural Health Initiatives, P.O. Drawer 1708, Austin, Texas 78767-1708, within 30 days of the date of publication.

These new sections are proposed under the Health and Safety Code, Chapter 106, Subchapter C, which authorizes the Executive Committee of the Center for Rural Health Initiatives to adopt rules to administer the Center's programs.

No other statute, article, or code is affected by these new sections.

§500.101. Purpose, Administration and Delegation of Powers and Duties.

(a) The purpose of the Rural Physician Assistant Loan Reimbursement Program is to encourage qualified physician assistants to practice in areas in rural Texas where there is a high need for primary health care providers.

(b) The Center for Rural Health Initiatives, or its successor or successors, shall administer the Rural Physician Assistant Loan Reimbursement Program.

(c) The Executive Committee delegates to the executive director the necessary powers, duties and functions to administer the program.

§500.103. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Approved program—A post-secondary health professional training program in Texas approved for training physician assistants and accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the American Osteopathic Association.

Center—The Center for Rural Health Initiatives established by the Omnibus Health Care Rescue Act passed by the 71st Session of the Texas Legislature.

Executive committee—The nine member governing body of the Center for

Rural Health Initiatives appointed by the governor, lieutenant governor and speaker.

Executive director—The chief executive officer of the Center for Rural Health Initiatives.

Rural Health Professional Shortage Area (HPSA)—Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians. The degree-of-shortage designations, also determined by the United States Department of Health and Human Services, range from groups one to four, with one representing the highest degree of shortage.

Rural Medically Underserved Area (MUA)—Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services or its successors, as an area with a demonstrated shortage of personal health services. Areas with the lowest Index of Medical Underservice (IMU) score, also determined by the United States Department of Health and Human Services, are the most severely medically underserved.

RPALR Program—The Rural Physician Assistant Loan Reimbursement Program established by the Physician Assistant Licensing Act passed by the 73rd Session of the Texas Legislature.

Service obligation period—A consecutive 12-calendar-month period immediately preceding the date of application and during which a physician assistant provided health care services as a physician assistant in a rural health professional shortage area or rural medically underserved area.

§500.105. Dissemination of Information.

(a) The Center shall disseminate information about the Rural Physician Assistant Loan Reimbursement Program to all interested parties.

(b) The Center shall publish and send information about the program to health care institutions of higher education, physician assistant training programs, appropriate state agencies, interested professional associations, and, upon request, to individuals.

§500.107. Requirements for an Eligible Educational Loan, an Eligible Lender or Holder, and an Eligible Physician Assistant.

(a) An educational loan is eligible for repayment if it was obtained through an eligible lender for purposes of attending a post-secondary institution.

(b) An educational loan is not eligible for repayment if it:

(1) was a self-made educational loan from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(2) involves a service obligation; or,

(3) is in default at the time of the physician assistant's application.

(c) An eligible lender or holder makes or holds an educational loan to an individual for purposes of attending an approved post-secondary institution. An eligible lender or holder may include, and is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company. An eligible lender or holder may not be any private individual.

(d) A physician assistant eligible for loan reimbursement is one who:

(1) passed the certifying examination administered by the National Commission on Certification of Physician Assistants, is licensed to practice as a physician assistant in Texas by the Texas State Board of Physician Assistant Examiners of the Texas State Board of Medical Examiners, and against whom no professional disciplinary action has been taken;

(2) satisfactorily completed an approved Texas physician assistant training program within ten years prior to the date of application; and

(3) completed a minimum of one service obligation period as a physician assistant in a rural Texas Health Professional Shortage Area or rural Medically Underserved Area.

§500.109. Application Process, Recipient Selection and Reimbursement of Educational Loans.

(a) First-time and renewal applications for the RPALR Program are accepted annually during a time period specified by the Center. An eligible physician assistant applies for the RPALR Program by completing a loan reimbursement application packet and returning the completed loan reimbursement application packet to the Center.

(b) Selection of recipients is contingent upon the availability of funds. Applicants practicing in areas with the highest degree of shortage and/or lowest IMU score are selected over other applicants. Selected

recipients are recommended by the Center's executive director and approved by the Center's executive committee. Applicants are notified whether or not they are accepted for loan reimbursement after the annual application period is closed and recipients are selected.

(c) Eligible education loans of selected recipients are reimbursed by annual payments made at a time specified by the Center and under the following conditions:

(1) total annual reimbursement to one or more eligible lenders or holders must not exceed the recipient's unpaid principal loan balance, including capitalized interest, from all sources, or a maximum of \$5,000, whichever is less. Depending upon the availability of funds and the number of qualifying applicants, the Center may establish an annual reimbursement amount below \$5,000 per eligible recipient; however, the minimum total annual payment cannot be less than \$2,500 per eligible recipient unless the recipient's total unpaid principal loan balance is below \$2,500;

(2) each service obligation period must be completed before reimbursement is made;

(3) loan reimbursement may be renewed annually but for no more than a total of four service obligation periods and total maximum reimbursement amount of \$20,000;

(4) annual payment is made co-payable to the recipient and to the eligible lender(s) or holder(s) and applied only to the outstanding principal balance of the education loan, including capitalized interest;

(5) recipients are responsible for payment of any and all state and federal taxes to which this loan reimbursement is subject.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514751

Laura M. Jordan
Executive Director
Center for Rural Health
Initiatives

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 479-8891

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TITLE 28. INSURANCE
Part I. Texas Department
of Insurance

The following proposed sections submitted by the Texas Department of Insurance will be

serialized beginning in the November 24, 1995 issue of the *Texas Register*. The earliest possible date of adoption is December 22 1995.

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter JJ. Minimum Registration, Disclosure and Nondiscrimination Requirements for Viatical Settlements

- 28 TAC §§3.10001-3.10018

Chapter 26. Small Employer Health Insurance Regulations

- 28 TAC §§26.1, 26.4-26.11, 26.13, 26.19, 26.20, 26.22, 26. 27
- 28 TAC §§26.14-26.18, 26.27

Part II. Texas Workers' Compensation Commission

Chapter 160. Workers' Health and Safety/General Provisions

- 28 TAC §160.3

The Texas Workers' Compensation Commission proposes new §160.3, concerning the subscribing employer's report of injury. The new rule is proposed to clarify the requirements of subscribing employers for filing reports of injury.

Recent legislation (House Bill 1089, 74th Legislature, 1995) amended Texas Labor Code, §409.005 to require that employers report injuries to insurance carriers and that carriers then report the injury to the commission electronically. Prior to this statutory amendment, employers were required to report injuries directly to the commission and the carrier. Texas Labor Code, §411.032, which is applicable to both subscribing and non-subscribing employers, was not changed by the legislature and still requires an employer to file a report of injury with the commission. These two sections of the Labor Code, require reports of injury for different purposes. Section 409.005 is the reporting mechanism for claim information and is used in the claim process. Section 411.032 is the reporting mechanism for health and safety information. It is the commission's intention to require only one report of injury from subscribing employers. Therefore, new rule §160.3 is proposed to clarify that an employer that files a report of injury with the carrier in accordance with Texas Labor Code, §409.005 also satisfies the requirement under Texas Labor Code, §411.032.

Janet Chamness, Chief of Budget, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local govern-

ments as a result of enforcing or administering the rule. At the present time the health and safety information required under Texas Labor Code, §411.032 is being obtained from the report of injury filed with the commission pursuant to Texas Labor Code, §409.005. This new rule does not change that practice.

Ms. Chamness also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule will be implementation of the Workers' Compensation Act as amended by the Legislature in 1995 and faster and more efficient claims filing. In addition, this new rule will prevent the necessity of filing an additional report with the commission.

There will be no anticipated economic costs to persons who are required to comply with the rule as proposed. The filing of only one report of injury will prevent any increase in costs to subscribing employers.

There will be no difference in costs of compliance for small businesses as compared to large businesses.

Comments on the proposal or requests for a public hearing must be received by 5:00 p.m. on Monday, December 18, 1995, and submitted to Elaine Crease, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The new rule is proposed under the Texas Labor Code, §402.042(b)(11), which allows the executive director to prescribe the form, manner, and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §409.005, as amended by House Bill 1089, 74th Legislature, 1995, which provides the procedure for filing a report of injury and the format to be used; and the Texas Labor Code, §411.032, which requires an employer to file a report of injury with the commission, mandates the commission to adopt rules prescribing the form and manner of reports, and establishes an administrative violation for failure to comply.

This proposed new rule affects the following statutes: the Texas Labor Code, §402.042(b)(11), which allows the executive director to prescribe the form, manner, and procedure for transmission of information to the commission; the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §409.005, as amended by House Bill 1089, 74th Legislature, 1995, which provides the procedure for filing a report of injury and the format to be used; and the Texas Labor Code, §411.032, which requires an employer to file a report of injury with the commission, mandates the commission to adopt rules prescribing the form and manner of reports, and establishes an administrative violation for failure to comply.

§160.3. Subscribing Employer's Report of Injury. A subscribing employer's report of injury filed in accordance with Texas Labor Code, §409.005 shall satisfy that employer's requirement to file a report of injury under Texas Labor Code, §411.032, unless the commission requests that the employer file a report with the commission for a specific injury.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514694

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 440-3700

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter II. Telecommunications Infrastructure Fund Assessment

• 34 TAC §3.1101

The Comptroller of Public Accounts proposes new §3.1101, concerning due date for assessment report and payment. The new section is being proposed pursuant to House Bill 2128, 74th Legislature, 1995, which imposes an assessment on telecommunication utilities and commercial mobile service providers. The purpose of the assessment is to finance the Telecommunications Infrastructure Fund.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements Texas Civil Statutes, Article 1446c, §3.606.

§3.1101. Due Date for Assessment Report and Payment.

(a) The annual assessment imposed by Texas Civil Statutes, Article 1446c, §3.606, is due and payable in four payments. The quarterly assessment report and payment for each of the fiscal years in which the annual assessment is imposed is due and payable as follows:

Figure: 34 TAC 3.1101(a)

(b) Report Due Date Reporting Period October 31, July 1-September 30 January 31, October 1-December 31, April 30, January 1-March 31, July 31, April 1-June 30.

(c) The due date for the report due October 31, 1995, is extended to January 31, 1996. The initial report will cover the period of September 1, 1995-December 31, 1995.

(d) Data reports will be required in order to establish rates for the first year's assessment. Telecommunications utilities and commercial mobile service providers, including resellers and sellers of telecommunications debit cards, must file a report for each account. The data reports will account for taxable telecommunications receipts from July 1, 1994 through June 30, 1995. The reports are due on November 30, 1995, and must be filed even if there are no receipts to report. The rate for subsequent years will be based on data from the previous four quarterly assessment reports.

(e) All payments postmarked, or received if not mailed, after the due date are late, and a penalty of 5.0% of the assessment is due. If the assessment is not paid within 30 days after the due date, an additional 5.0% of the assessment is due. Interest at a rate of 12% per year is due if the payment is more than 60 days late.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514784

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-4028

• 34 TAC §3.1102

The Comptroller of Public Accounts proposes new §3.1102, concerning telecommunications receipts and assessment determination. This new section is being proposed pursuant to House Bill 2128, 74th Legislature, 1995, which imposes an assessment on telecommunication utilities and commercial mobile service providers. The purpose of the assessment is to finance the Telecommunications Infrastructure Fund.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements Texas Civil Statutes, Article 1446c, §3.606.

§3.1102. Telecommunications Receipts and Assessment Determination.

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

(1) Basic local exchange telephone service—The provision by a telephone company of each access line and each dial tone to a fixed location for sending and receiving telecommunications in the telephone company's local exchange network. Services will be considered to be basic whether the customer has access to a private line or a party line or whether the customer has limited or unlimited access. It does not include long-distance telecommunications service.

(2) Commercial mobile service—

(A) Any mobile service that is provided for profit and makes interconnected service available:

(i) to the public; or

(ii) to such classes of eligible users as to be effectively available to a substantial portion of the public, as speci-

fied by regulation by the Federal Communications Commission (FCC);

(B) Mobile service means radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

(i) both one-way and two-way radio communication services;

(ii) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and

(iii) any service for which a license is required in a Personal Communications Service as authorized by the FCC.

(C) The full text defining Commercial Mobile Service can be found in the Communications Act of 1934, §153(n) and §322(d) (47 United States Code, §151, et seq).

(3) Commercial mobile service provider—Any person (sole owner, partnership, corporation or other organization) who is a provider of commercial mobile service. The term includes persons who resell mobile service to end users. Specialized mobile radio service companies will not be considered commercial mobile service providers until August 10, 1996, pursuant to 47 Code of Federal Regulations, §20.9(c).

(4) Long-distance telecommunication—A service which both originates from and is billed to a telephone number or billing or service address within Texas.

(5) Private line—A telephone circuit dedicated for use between specific locations.

(6) Sales tax—Tax due under the Tax Code, Chapter 151.

(7) Telecommunications receipts—Any receipt derived from telecommunications services on which the retailer is required to collect Texas sales tax.

(8) Telecommunications services—The electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics or any other method now in existence or that may be devised including, but not limited to, long-distance telephone service. The storage of data or other information for subsequent retrieval or the processing, or reception and processing, of data or information intended to change

its form or content are not included in telecommunications services. Providers of telecommunications services should refer to §3.344 of this title (relating to Telecommunications Services).

(9) Telecommunications utility—Any person, corporation, river authority, cooperative corporation, or any combination thereof now or hereafter owning or operating for compensation in this state equipment or facilities for the conveyance, transmission, or reception of communications over a telephone system as a dominant carrier. Interexchange telecommunications carriers (including resellers of interexchange telecommunications services), specialized communications common carriers, other resellers of communications, other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system, providers of operator services, and separated affiliate and electronic publishing joint ventures are also telecommunications utilities. The full text defining a telecommunications utility can be found in the Public Utility Regulatory Act of 1995, Title III, §3.002(9). The term includes resellers of telecommunications services and includes individuals selling telecommunications services by means of debit cards.

(b) Assessment base. Sales for resale and sales to persons exempted from paying sales tax under the Tax Code, Chapter 151, are excluded from the assessment base. Commercial mobile service providers and telecommunications utilities, including persons who are resellers in either of those categories, shall pay the assessment on charges for any of the following:

(1) basic local exchange service;

(2) enhanced services (metro service, extended area service, multiline hunting, Private Branch Exchange (PBX) trunk, etc.);

(3) auxiliary services (call waiting, call forwarding, etc.);

(4) long-distance telecommunications services which are both originated from and billed to a telephone number or billing or service address within Texas; therefore, if a call originates in Texas and is billed to a Texas service address, the charge is taxable even if the invoice, statement, or other demand for payment is sent to an address in another state;

(5) paging, mobile telephone, and other commercial mobile service, including roaming charges;

(6) a taxable service paid for by the insertion of coins or tokens into a coin-operated telephone;

(7) equipment provided to a customer as part of a telecommunications ser-

vice including separately stated charges for installation, maintenance, and repair. Equipment sold to customers and invoiced separately from telecommunications services is excluded. Separately stated charges for maintenance or repair of customer-owned equipment are excluded;

(8) installation of telecommunications services (service connection fee); and

(9) private line services, including charges for related equipment. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the inter-office channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. Other methods may be used if first approved in writing by the comptroller.

(c) Assessment determination. The annual assessment will be determined in the following manner.

(1) Telecommunications utility. The \$75,000,000 annual assessment for each fiscal year divided by the taxable telecommunications receipts reported by all utilities from July 1 through June 30 immediately preceding the beginning of each report period will result in an assessment rate applicable to all utilities for the following four quarters. Because the rate is based on historical data, the comptroller may adjust the rate to reflect actual taxable telecommunications receipts. The assessment rate times the taxable telecommunications receipts reported by each utility will result in the amount owed by that utility.

(2) Commercial mobile service provider. The \$75,000,000 annual assessment for each fiscal year divided by the taxable telecommunications receipts reported by all providers from July 1 through June 30 immediately preceding the beginning of each report period will result in an assessment rate applicable to all providers for the following four quarters. Because the rate is based on historical data, the comptroller may adjust the rate to reflect actual taxable telecommunications receipts. The assessment rate times the taxable telecommunications receipts reported by each provider will result in the amount owed by that provider.

(3) Both funds applicable. Persons acting as both telecommunications utilities and commercial mobile service providers must report attributable data and pay assessments to each fund.

(d) Rate adjustment. Before the issuance of the third or fourth quarter assessment reports, the comptroller may adjust the assessment rate by accounting for current reports filed and any amended reports filed or audits concluded in the previous quarters.

(e) Balance. Any overage or underage balance remaining at the end of a fiscal year will be forwarded to the following year's annual assessment. The following year's annual assessment will be adjusted to account for the previous years balance, if any.

(f) Application. This section applies to the Telecommunications Infrastructure Fund Assessment only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 11, 1995.

TRD-9514765

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-4028

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• 34 TAC §3.1103

The Comptroller of Public Accounts proposes new §3.1103, concerning auditing, records, assessments. This new section is being proposed pursuant to House Bill 2128, 74th Legislature, 1995, which imposes an assessment on telecommunication utilities and commercial mobile service providers. The purpose of the assessment is to finance the Telecommunications Infrastructure Fund.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Kary W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements Texas Civil Statutes, Article 1446c, §3.606.

§3.1103. Auditing, Records, Assessments.

(a) Taxpayer accounts may be audited by authorized representatives of the Comptroller of Public Accounts at any time during regular business hours of the taxpayer.

(b) The audit will be performed by examining any records, books, or other information which are maintained by the taxpayer. If the records are inadequate to accurately reflect the taxable telecommunications receipts, the auditor will base the audit report on the best information available.

(c) The Comptroller of Public Accounts may assess any unpaid tax assessment within four years after the date the assessment was due and payable.

(d) All taxpayers subject to the tax assessment imposed by Texas Civil Statutes, Article 1446c, §3.606, must keep adequate records in order to accurately determine the amount of tax due and payable for a period of at least four years, and make the records available to the comptroller or his designated representative upon request.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514768

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-4028

◆ ◆ ◆
Chapter 9. Property Tax
Administration

Subchapter I. Validation Procedures

• 34 TAC §9.4026

The Comptroller of Public Accounts proposes an amendment to §9.4026, concerning forms for appraisal of special inventory. The amendment deals with the valuation of dealer's inventories maintained by motor vehicle dealers under the terms of the Property Tax Code, new §23.121 and §23.122, (Acts 1995, 74th Legislature, page 4727, Chapter 945). This rule will adopt new confidential forms to allow motor vehicle dealers to report inventories subject to ad valorem taxes to the County Tax Assessor-Collector.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Larrilyn Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each kind of property tax exemption.

The amendment implements the Property Tax Code, §23.121 and §23.122.

§9.4026. Forms for Appraisal of Certain Types of [Special] Inventory.

(a) A property owner may use comptroller Model Forms 23.121 [23.12B] and 23.122 [23.12B-1] to file a dealer's motor vehicle [special] inventory tax statement and [special] inventory [declaration] forms as required by Tax Code, §23.122 [§23.12B]. Except as provided by law, all information contained on these forms is confidential.

(b) A property owner may use a dealer's [special] inventory tax statement form that sets out the information listed in subsections (c) and (d) of this section in the same language and sequence as the model form. A property owner may use a dealer's [special] inventory declaration form that sets out the information listed in subsections (f) and (g) of this section in the same language and sequence as the model form.

(c) The dealer's [special] inventory tax statement shall provide the appraisal district's name, address, and telephone number.

(d) The dealer's [special] inventory tax statement shall provide the following information:

(1)-(6) (No change.)

(7) a description of each vehicle [unit] sold, including model year, make, and [vehicle] identification number;

(8)-(9) (No change.)

(10) the type of sale, indicating whether the unit is sold from a dealer's [special] inventory or is a dealer-to-dealer sale, fleet sale, or subsequent sale [from excluded inventory];

(11) the sales price as it appears or would appear on the title documents;

(12) the unit property tax value if the unit was sold from the dealer's [owner's special] inventory;

(13) the [county] aggregate tax rate the owner used to calculate unit property tax value;

(14) the number of units sold by the owner from the dealer's [special] inventory and the number of units sold by the owner as a dealer-to-dealer sale, fleet sale, or subsequent sale [from excluded inventory] during the month for which the statement is filed;

(15) the dollar amount of sales made by the owner from the dealer's [special] inventory and the dollar amount of sales made by the owner as a dealer-to-dealer sale, fleet sale, or subsequent sale [from excluded inventory] during the month for which the statement is filed; and

(16) (No change.)

(e) In addition to the information required by subsections (c) and (d) of this section, a dealer's [special] inventory tax statement made available by a chief appraiser as required by subsection (i) of this section shall include the following:

(1) information about how to complete and file a dealer's [special] inventory tax statement;

(2) a statement of the penalty or penalties provided by Tax Code, §23.122, for a motor vehicle inventory tax statement [§23.12B], for failing to file a special inventory tax statement;

(3)-(4) (No change.)

(f) The dealer's [special] inventory declaration shall provide the appraisal district's name, address, and telephone number.

(g) A dealer's [special] inventory declaration shall require a property owner to provide the following information:

(1)-(6) (No change.)

(7) each of the owner's general distinguishing numbers issued by the Texas Department of Transportation[, if the owner has a general distinguishing number];

(8) a statement that the owner is the owner of a dealer's [special] inventory;

(9) the number of units sold by the owner from dealer's [special] inventory and the number of units sold by the owner as a dealer-to-dealer sale, fleet sale, or subsequent sale [from excluded inventory] during the year or applicable time period for which the declaration is filed;

(10) the dollar amount of sales made by the owner from dealer's [special] inventory and the dollar amount of sales made by the owner as a dealer-to-dealer sale, fleet sale, or subsequent sale [from excluded inventory] during the year or applicable time period for which the declaration is filed; and

(11) the market value of the inventory for the current tax year as computed under the Tax Code, §23.121 [§23.12A].

(h) In addition to the information required by subsections (f) and (g) of this section, a dealer's [special] inventory declaration made available by a chief appraiser as required by subsection (i) of this section shall include the following:

(1) information about how to complete and file a dealer's [special] inventory declaration;

(2) a statement of the penalty or penalties provided by the Tax Code, §23.121 [§23.12B] for failing to file a dealer's [special] inventory declaration; and

(3) a notice of the penalties prescribed under the Penal Code, §37.10, for making or filing an application containing a false statement.

(i) A chief appraiser shall make available to a property owner Model Forms 23.121 [23.12B] and 23.122 [23.12B-1]. A chief appraiser may make available a different form for a dealer's [special] inventory tax statement that sets out the information listed in subsections (c)-(e) of this section in the same language and sequence as the model form.

(j) A chief appraiser may make available a different dealer's [special] inventory declaration that sets out the information listed in subsections (f)-(h) of this section in the same language and sequence as the model forms.

(k) (No change.)

(l) The Comptroller of Public Accounts adopts by reference Model Form 23.121, dealer's motor vehicle inventory declaration [23.12B, special inventory tax statement], and Model Form 23.122, dealer's motor vehicle inventory tax statement [23.12B-1, special inventory declaration]. Copies of the forms are available for public inspection at the Office of the Secretary of State, Texas Register Division, or may be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 13, 1995.

TRD-9514764

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 463-4028

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission

Chapter 344. Standards for Secure-Post Adjudication Juvenile Residential Facilities

• 37 TAC §§344.1-344.17

The Texas Juvenile Probation Commission proposes new §§344.1-344.17, concerning the minimum standards for county-authorized post-adjudication facilities for juvenile offenders.

Keith Rudeseal, Director of Special Projects, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Rudeseal also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be increased public safety and enhanced rehabilitated services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Keith Rudeseal, Director of Special Projects, Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711.

The new rules are proposed under the Texas Human Resources Code, §§141, 001, 141.041, and 141.042, which provides the Texas Juvenile Probation Commission with the authority to set minimum standards for facilities for juvenile offenders and to adopt the rules for these purposes.

No other statutes, articles, or codes are affected by the proposed new rules.

§344.1. *Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

Secure Post Adjudicatory Residential Facility—A public facility administered by a Juvenile Board or a privately-operated facility certified by the juvenile board intended for the treatment and rehabilitation of youth who have been placed on probation for a delinquent offense.

Boot Camp-A facility meeting the above definition that features military-style discipline and structure as an integral part of its treatment and rehabilitation program.

Certification-Facilities, whether county or privately-operated must be annually inspected and certified by the Juvenile Board of the county in which the facility is located as a suitable and appropriate placement for juveniles.

Juvenile Corrections Officer-A person whose primary responsibility is the supervision of the daily activities of juveniles in residence. Clerical, food service, janitorial and other auxiliary staff are not considered to be Juvenile Corrections Officers.

§344.2. Administration, Organization, and Management.

(a) Policy Board. The juvenile board is responsible for approving policy for the facility. The facility is operated according to current written policies which address personnel, administration, child care, programs, and training. The juvenile board conducts an annual review of the policies.

(b) Annual Inspection. The judge of the juvenile court and the members of the juvenile board of the county in which the facility is located shall personally inspect the facility at least annually and certify in writing that the facility is suitable for the placement and treatment of juveniles according to TJPC standards.

(c) Monitoring. The Texas Juvenile Probation Commission shall annually monitor each residential facility for compliance with standards promulgated by said agency. The juvenile board will be furnished with a report of the findings. Facilities found to be out of compliance will be afforded a reasonable amount of time to correct deficiencies. In accordance with established procedures, if a facility fails to come into compliance after such time, state funding to the juvenile board may be suspended or reduced.

(d) Staff Coverage. The facility is staffed by juvenile corrections officers 24 hours each day, seven days a week, except when no juvenile is in the facility. Electronic monitoring equipment may not be used to substitute for required corrections officers. Observations of residents are provided to each juveniles assigned caseworker. A juvenile corrections officer of one sex shall not be the sole supervisor of a juvenile of the other sex. When residents of both sexes are in the facility, both male and female juvenile corrections officers shall be on duty.

(e) Administration. One administrative officer is to be designated as the program director or superintendent, hereafter referred to as administrative officer. The person designated must meet the require-

ments for certification as a juvenile probation officer. The administrative officer directs and evaluates the program of youth care and the operation of the facility. Another staff member is designated to be in charge during the administrative officer's absence.

(f) Duties of the administrative officer. The duties of the administrative officer include, but are not limited to the following:

(1) providing facility staff an organizational chart which annually reflects the structure of authority; responsibility and accountability within the facility;

(2) reporting the death, abuse or neglect of any resident of the facility in accordance with the law;

(3) supervising expenditures and aiding in preparation of annual budgets;

(4) overseeing all phases of daily program including staff schedules, maintenance, food service, rehabilitation programs, educational programs, purchases, and housekeeping; and

(5) insuring that the facility is in compliance with all required statutes and standards.

(g) Resident/Staff Ratio. The Corrections Officer to resident ratio shall not be less than:

(1) one to 12 during waking hours, one to eight is preferred;

(2) one to 20 during sleeping hours, one to 16 is preferred.

(3) at least two staff shall be on duty at all times.

§344.3. Personnel.

(a) Qualifications. Selection, retention, promotion, and demotion of facility staff are on the basis of knowledge, skills, performance, and abilities. No person is discriminated against on the basis of age, sex, race, religion, national origin, or disability. Corrections officers shall be of good moral character and emotionally suited for working with juveniles. A corrections officer must be 21 years of age and have either a high school diploma or a general equivalency diploma; this requirement may be waived in writing by the chairman of the juvenile board. Background investigations of prospective employees are conducted according to county or juvenile board policy. Preference in employment should be given to those best qualified by education and training in juvenile corrections. Preference should be given to those with bachelors' degrees conferred by colleges and universities accredited by an organization recognized by the Coordinating Board, Texas College and University System.

(b) Written policies are made available to each new employee at the time of hiring. The policies are reviewed annually and updated if necessary. The policies include:

(1) employee grievance procedures;

(2) employee evaluation procedures requiring a written evaluation at least annually.

(3) job description including duties and responsibilities of each position and a description of the operational shift pattern.

(c) Personnel Records. The administrative officer ensures that a personnel file is maintained for each employee which includes the application for employment, reference information, performance evaluations, training records, and documentation of promotion, demotion, termination, and other job actions.

(d) Salaries. The Administrative officer ensures all salary levels for juvenile community based correctional facility personnel are reasonable and comparable with prevailing salaries in the local public and private sectors.

(e) Communicable disease. Facility policy may require tests for communicable diseases such as tuberculosis and hepatitis as a condition of employment and periodically thereafter.

§344.4. Training and Staff Development.

(a) Training Program. The administrative officer of the community based correctional facility ensures that the facility's corrections officers participate in a training program approved by the Texas Juvenile Probation Commission.

(b) New Employees. The administrative officer ensures that corrections officers receive 40 hours of Texas Juvenile Probation Commission approved orientation training within the first six months of employment.

(c) Certification. The administrative officer ensures that each corrections officer is certified by the Texas Juvenile Probation Commission, under the same requirements for detention officers, and receives 40 hours of training each year in addition to the required 40-hour orientation.

§344.5. Management Information System.

(a) Data Collection. The administrative officer ensures that accurate annual statistics pertaining to juveniles admitted to a community based correctional facility are gathered and recorded, including:

(1) total number of admissions;

(2) total days of care provided;

- (3) age, sex, and race of resident;
- (4) committing offense of residents;
- (5) length of stay; and
- (6) average cost per resident per day.

(b) Management Review. The administrative officer participates in an annual evaluation of overall operations of the community based correctional facility. Existing policies and practices are reviewed to determine their continuing relevance to the mission of the facility.

(c) Research Programs. The administrative officer reviews proposals for research for conformity with departmental policy. Residents may voluntarily participate in approved research programs. Medical, pharmacological, and cosmetic programs are forbidden.

§344.6. *Juvenile's Records.*

(a) Daily Records. Written polices require:

- (1) a uniform format for identifying and separating files;
- (2) record entries made, dated, and signed by the staff member responsible for the resident;
- (3) a daily report of admissions and releases;
- (4) a single document to identify all juveniles in the facility and their physical location;
- (5) procedures to ensure confidentiality of records;
- (6) an individual program plan on each resident; and
- (7) all other documentation required for the appropriate level of care provided in the facility, in accordance with Levels of Care adopted by the Health and Human Services Commission.

(b) Admissions. Each resident's admission file contains at least the following:

- (1) date and time of admission and release;
- (2) name, aliases and nicknames and social security number;
- (3) last known address;
- (4) adjudicated offense;
- (5) name and phone number of resident's attorney;
- (6) name, title, and signature of delivering officer;
- (7) court order;

- (8) race, sex and date of birth;
- (9) citizenship;
- (10) educational history and school records;
- (11) employment history;
- (12) name, relationship, address, and phone number of parents, guardian, or persons with whom juvenile resided at the time of admission;
- (13) health assessment, including a signed medical release, immunization records, and need for handicapped services;
- (14) Current medical, dental, and psychological evaluation;
- (15) common application;
- (16) space for remarks; and
- (17) name of person recording data.

(c) Contents: Each juvenile's record is available to the treatment staff, is kept in a secure place, and includes at least the following:

- (1) admissions form;
- (2) delinquent history;
- (3) referral source;
- (4) signed inventory of cash and property held;
- (5) list of approved visitors;
- (6) progress reports;
- (7) program rules and disciplinary policy signed by resident;
- (8) grievance and disciplinary record;
- (9) individual program and treatment plan;
- (10) final release and transfer report.

§344.7. *Physical Plant.*

(a) Building and Safety Codes.

- (1) The facility conforms to applicable federal, state and/or local building codes.
- (2) The facility conforms to applicable zoning ordinances or has a plan to comply with or change such laws, codes or zoning ordinances.
- (3) The facility conforms to applicable federal, state, and/or local fire safety codes. Compliance is documented by the authority having jurisdiction. A fire alarm system is required and must be approved by the authority having jurisdiction. The authority approves any variances, ex-

ceptions, or equivalencies that do not constitute a serious life safety threat to the occupants of the facility.

(4) There is documentation by a qualified source that the interior finishing materials in juvenile living areas, exit areas and places of public assembly are in accordance with recognized codes.

(5) Written policy requires regular inspection of all fire safety equipment including extinguishers, fire alarms, storage procedures, and alternative power source.

(b) Size, Organization, and Location.

(1) Staff/Juvenile Interaction. Physical plant design facilitates personal contact and interaction between staff and juveniles.

(2) Facility Size.

(A) The community based correction facility operates with living units of no more than 24 juveniles each. Boot Camps operate with living units of no more than 50 juveniles each.

(B) If the facility is located on property shared with another correctional facility, such as an adult community based correctional facility and/or juvenile detention facility, it shall be administered as a separate program. All applicable federal and state laws pertaining to separation of juveniles from adult inmates will be observed.

(C) Written policy and procedures provide that a new community based correctional facility or special purpose institution be constructed or an existing facility be expanded only after a needs assessment has been completed by the juvenile board or other appropriate agency.

(D) The facility location is selected with participation from the community in which it is to be located.

(E) The population of the facility shall not exceed the design capacity. Written policies specify procedures to be followed to reduce the population in case the maximum capacity is unavoidably exceeded

(F) The facility is located to facilitate use of community-based services and continued contact between juveniles and their families.

(c) Housing.

(1) Living units are designed to provide a degree of privacy for the residents consistent with the need for security and proper supervision.

(2) The security of the facility is designed and constructed so juveniles can be grouped in living and activity areas in accordance with a classification plan.

(3) Floor space for sleeping areas in which juveniles are confined conform with the following minimum requirements.

(A) Single Occupancy: 60 total square feet.

(B) Multiple Occupancy: 35 square feet of unencumbered space per occupant.

(C) Boot Camps 25 square feet of unencumbered space per occupant.

(4) Bunk beds do not exceed two levels.

(5) Each sleeping room has at a minimum the following facilities and conditions:

(A) sanitation facilities, including access to toilet facilities that are available for use 24 hours a day;

(B) access to a wash basin with hot and cold running water;

(C) a bed above floor level, space for clothing and personal effects; and

(D) thermostatically controlled temperatures.

(6) Day rooms with space for varied juvenile activities are situated adjacent to the juvenile sleeping areas. Day rooms provide a minimum of 35 square feet of space per juvenile (exclusive of lavatories, showers, and toilets) for the maximum number expected to use the day room at one time. Day rooms provide sufficient seating and writing surfaces for every juvenile using the day room at one time. Furnishings are consistent with the security needs of the assigned juveniles.

(7) Toilets are provided at a minimum ratio of one for every 12 juveniles in male facilities, and one for every eight in female facilities. For new facilities, the ratio is one for every six juveniles. Urinals may be substituted for up to one half of the toilets in all-male facilities. All housing units with five or more juveniles have a minimum of two toilets.

(8) Residents have access to operable showers with temperature-controlled hot and cold running water at a minimum ratio of one shower for every eight juveniles. Water for showers is thermostatically controlled to temperatures ranging from 100

to 120 degrees Fahrenheit to ensure the safety of juveniles and to promote hygienic practices.

(9) Handicapped juveniles are housed in a manner that provides for their safety and security. Rooms or housing units used by the handicapped are designed for their use and provide for integration with the general population. Appropriate facility programs and activities are accessible to handicapped juveniles confined in the facility.

(10) Isolation rooms are equipped with a toilet, wash basin, running water and a bed.

(d) Environmental Conditions. Housing Areas. Written policy, procedure, and practice requires that all housing areas provide a minimum in the following:

(1) Natural light available from source within 20 feet of the room.

(2) Artificial lighting suitable for tasks to be performed.

(3) Access to drinking fountain.

(4) Heating, ventilation and acoustical systems to ensure healthful and comfortable living and working conditions for juveniles and staff.

(5) An alternative power source to operate lights, ventilation, communications, and electric doors in case power is interrupted.

(e) Program and Services Areas. Adequate space must be provided for the various program and service functions conducted in the facility. Spatial requirements are best determined by careful assessment of how, when, and by how many juveniles such spaces are used. Minimum requirements are:

(1) Exercise Area. Outdoor and covered/enclosed exercise areas for general population juveniles are provided in sufficient number to ensure that each juvenile is offered at least one hour of access daily.

(2) Visiting. Sufficient space is provided for a visiting room or area for visitation. There is adequately designed space to permit screening and searching of both juveniles and visitors. Space is provided for the proper storage of visitors' personal items not allowed into the visiting area.

(3) Interview Space. There is an interview and counseling space available in or near the living unit.

(4) Classrooms. School classrooms are designed in conformity with local or state educational requirements and with security requirements of the facility.

(5) Dining Areas. There is at least 15 square feet of floor space per per-

son using the dining room or dining area. Space is provided for group dining except where security or safety considerations justify otherwise.

(6) Food Service. The food preparation area includes a space for food preparation based on population size, type of food preparation, and method of meal service. There are provisions for adequate storage and loading areas and garbage disposal facilities.

(7) Sanitation and Hygiene. Toilet and wash basin facilities are available to food service personnel and juveniles in the vicinity of the food preparation area. Equipment and kitchen are cleaned at least daily. Hair nets are worn by all food service staff when preparing and serving food.

(8) Housekeeping. Adequate space is provided for janitorial closets that are accessible to the living and activity areas. Each closet is equipped with a sink, cleaning implements, and a system of ventilation.

(9) Clothing and Supplies. Space is provided in the facility to store and issue clothing, bedding, personal hygiene, cleaning supplies, and other items required for daily operations.

(10) Personal Property. Space is provided for secure storage of the resident's personal property.

(11) Mechanical Equipment. Separate and adequate space is provided for mechanical and electrical equipment.

(f) Administrative and Staff Areas.

(1) Administrative Areas. Adequate space is provided for administrative, security, professional, and clerical staff. This space includes conference rooms, storage room for records, a public lobby, and toilet facilities.

(2) Access to Individuals with Disabilities. All parts of the facility that are accessible to the public are accessible to and usable by staff and visitors with physical disabilities.

§344.8. Security and Control.

(a) Written policies for security and control of the facility include the following:

(1) Procedures to continue operation in the event of a work stoppage or other staff crisis;

(2) Procedures governing the use of chemical agents and restraint devices, including training of staff in their use, and prohibition of the use of percussion or electrical shocking devices by staff. Policies governing the use of chemical agents include, but are not limited to the following criteria:

(A) the juvenile board must approve all chemical agents to be used and authorize in writing permission to use them in limited situations;

(B) chemical agents can only be used when less severe methods to gain control of a riotous situation have been exhausted, are ineffective or unpractical. Chemical agents may never be used as punishment;

(C) chemical agents may only be used by staff trained in their use;

(D) immediately following the incident, juveniles exposed to chemical agents will be examined, and treated if necessary, by a medical professional;

(E) in all cases, the use of a chemical agent will be witnessed by a staff member other than the staff using the agent; and

(F) any use of chemical agents is to be reported to the chief administrative officer immediately after the incident, and in writing within 24 hours.

(3) Policies governing the use of agency and personal vehicles to transport juveniles. Proper documentation of liability and medical payment passenger coverage is required of all personnel who transport children;

(4) Provisions for fire drills; and

(5) Prohibition of firearms in the facility.

(b) Searches. Searches are conducted according to written policies limited to certain conditions:

(1) A juvenile may be required to surrender his or her clothing and to shower under observation upon admission.

(2) A juvenile may be required to surrender his or her clothing and submit to a search at times other than admission only if there is cause to believe he or she is concealing contraband.

(3) A juvenile may be required to undergo an anal or genital body cavity search only if there is probable cause to believe he or she is concealing contraband. A body cavity search may be conducted only by a physician.

(c) Special Incidents. All special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices and physical force are reported in writing to the administrative officer. A copy of the report is placed in the

file of the resident(s) involved in the incident.

(d) Written Policies. Written policies for security and control of the facility include, but are not limited to the following:

(1) policies governing the control and use of the keys. The administrative officer determines which doors shall be kept locked except when in use and during emergencies;

(2) policies requiring frequent inspections and maintenance of security devices and all other areas of the facility. Written reports document deficiencies; and

(3) policies controlling the use of tools and medical and kitchen equipment.

(e) Classification Plan. The security of the facility is designed and constructed so that residents can be grouped in accordance with a classification plan.

(f) Perimeter Security. The facility is structured so children remain within the premises and the general public is denied access without authorization. Perimeter security must be maintained at all times.

(g) Secure Storage. Space is provided for the secure storage of chemical agents for cleaning, restraining devices, and related security equipment. This equipment is readily accessible to authorized persons only.

(h) Each living unit is designed so individual rooms, a day room, and child care workers' offices are in close proximity to juveniles for the purpose of communication and interaction.

(i) Restraint Devices. Written policy and procedure require that staff use only approved equipment for the purpose of mechanical restraint and may only use such equipment in a manner consistent with its intended use. The following devices are approved for use:

(1) Handcuffs—Metal devices fastened around the wrist to restrain free movement of the hands and arms;

(2) Wristlets—A cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt;

(3) Anklets—Cloth or leather band fastened around the ankle or leg;

(4) Ankle Cuffs—Metal, cloth or leather band fastened around the ankle to restrain free movement of the legs. Handcuffs may not be used to cuff the ankles;

(5) Plastic Cuffs—Plastic devices fastened around the wrist or legs to restrain free movement of hands, arms or legs. Plastic cuffs should only be used in emergency situations;

(6) Waist Band—A cloth, leather, or metal band fastened around the waist

used to secure the arms to the sides or front of the body.

(j) Use of restraint devices. Restraint devices are to be used only to prevent residents from inflicting bodily harm on another person or upon themselves or to prevent them from escaping from the facility or while in transit. Restraint is not to be used as punishment or to substitute for room confinement. Devices must be applied properly and not secured so tightly as to interfere with circulation nor so loosely as to cause chafing of the skin. The following use is prohibited:

(1) Devices may not be secured to a stationary object except when full body restraint is needed;

(2) Juveniles may not be restrained to a fixed object in a standing position;

(3) Juveniles may not be restrained to any part of a vehicle during transportation.

(4) Juveniles may not be restrained to one another.

§344.9. Rules and Discipline.

(a) Rules of Conduct. The facility's rules of conduct, sanctions and procedures for violations are defined in writing and communicated to all juveniles and staff. Disciplinary procedures are carried out promptly and with respect for due process. Written rules of conduct include, but are not limited to the following:

(1) Written policy, procedure, and practices provide for a system of rewarding the positive behavior of individual juveniles.

(2) Written rules of juvenile conduct specify acts prohibited within the facility and penalties that can be imposed for various degrees of violation. The written rules are reviewed annually and updated as needed.

(3) Written policies detail all chargeable offenses, ranges of penalties, and disciplinary procedures given to each juvenile and staff member and is translated into those languages spoken by significant numbers of juveniles. Signed acknowledgment of receipt of the written rules is maintained in each juvenile's file. When a literacy or language problem prevents a juvenile from understanding the written rules, a staff member or translator assists the juvenile in understanding the rules. Consequences for major rules violations may include removal from the program and referral to juvenile court for modification of disposition, referral to criminal court if appropriate, or reclassification within the facility resulting in loss of privileges and extended length of stay. Major rules violations include:

(A) Violation of the laws of Texas or the United States;

(B) Escape or attempted escape from the facility;

(C) Causing physical pain or injury to one's self or another person;

(D) Possessing a weapon;

(E) Using controlled substances or alcohol or refusing to take a drug test;

(F) Causing property damage of \$100 or more; and

(G) Persistent refusal to comply with facility rules.

(4) All personnel who work with the juveniles receive sufficient training so that they are thoroughly familiar with the rules of juvenile conduct, the rationale for the rules, and the sanctions available.

(5) There are written guidelines for informally resolving minor misbehavior on the part of residents. Consequences for minor rules violations include loss of privileges, restriction from the group, or extra work details. Minor rules violations include, but are not limited to:

(A) Using another's property without permission;

(B) Threatening others;

(C) Cursing, using racial or ethnic slurs or disrespectful language toward another;

(D) Disruption of organized activities;

(E) Deliberate disobedience of staff;

(F) Failure to attend and participate in scheduled activities;

(G) Engaging in inappropriate physical contact or sexual activity;

(H) Tattooing or piercing body parts of one's self or others; and

(I) Deliberate failure to follow the dress code.

(6) Written policy, procedures, and practice require that prior to room and/or privilege restriction, the juvenile has the reasons for the restriction explained to him or her and has an opportunity to explain the behavior leading to the restriction.

(7) During room restriction, staff contact is made with the juvenile at least every 15 minutes, depending on his or her emotional state.

(8) Written policy, procedures, and practice specify that room restriction for minor misbehavior serves only a "cooling off" purpose and is short in time duration, with the time period specified at the time of assignment.

(9) Written policy may require a dress code for residents including rules concerning the length and style of hair.

(b) Prohibited Sanctions. The following sanctions are prohibited:

(1) Corporal punishment, physical abuse, and humiliating punishment;

(2) Group punishment for the acts of individuals;

(3) Deprivation of food, clothing, sleep, medical services, school, exercise, correspondence, parental contact, or legal assistance; and

(4) One resident sanctioning another.

(c) Enforcement.

(1) Law Violations. Written policy, procedures, and practice provide that when a juvenile allegedly commits an act covered by criminal law, the case should be referred to an appropriate court or law enforcement officials for consideration for prosecution.

(2) Disciplinary Reports. Written policy, procedure, and practices require that employees prepare a disciplinary report and forward to the administrative officer within 24 hours when they have a reasonable belief that a juvenile has committed a major violation of facility rules or reportable minor violations.

(3) Confinement. When a juvenile has been charged with a minor rules violation requiring confinement for the safety of the juvenile, other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 hours. Confinement for periods of more than 24 hours is reviewed every 24 hours by an administrator or designee who was not involved in the incident. Confined juveniles will not be restrained by mechanical devices unless their behavior indicates that there is a danger that they might harm themselves or others, damage property, or attempt to escape.

(4) Notification. To ensure due process, it is essential that juveniles accused of major rules violations are given written notice of the charges and proposed sanctions against them within 24 hours. If the resident does not agree with the charges or sanctions, he or she may request an informal appeal through the chain of command of the facility. If the resident is not satisfied after the informal appeals have been exhausted, he or she may request a formal hearing.

(5) Disciplinary Hearing.

(A) Written policy, procedure, and practice provide that disciplinary hearings on major rule violations are conducted by an impartial person or panel of persons. Upon the juveniles request, these hearings must be conducted as soon as possible but not later than seven days excluding weekends and holidays. A record of the proceeding is made and maintained for at least six months.

(B) Written policy, procedure, and practice provide that juveniles have an opportunity to make a statement and present documentary evidence at the hearings and can request witnesses on their behalf. The reasons for denying such requests are stated in writing.

(C) Written policy, procedure, and practice provide that a written record is made of the decision and the supporting reasons and is given to the juvenile. The hearing record and the supporting documents are kept in the juvenile's file and in the disciplinary committee's records.

(D) Written policy, procedure, and practice provide that if a juvenile is found not guilty of an alleged rules violation, the disciplinary report is removed from the juvenile's file.

(E) Written policy, procedure, and practice provide for review of all disciplinary hearings and dispositions by the facility administrator or designee to assure conformity with policy and regulations.

(F) Written policy, procedure, and practice grant juveniles the right to appeal decisions of the disciplinary committee to the facility administrator or designee. Juveniles have up to 15 days after receipt of the decision to submit an appeal. The appeal is decided within 30 days of its receipt, and the juvenile is promptly notified in writing of the results.

§344.10. Food Services.

(a) **Quality.** Meals meet the dietary requirements of the United States Department of Agriculture school breakfast, lunch, and dinner dietary allowances.

(b) **Menu Plans.** Food service staff plan menus and follow the schedule whenever possible. Menu plans are kept one year. Menus contain a variety of foods and recognize special occasions and holidays.

(c) **Special Diets.** Special diets are provided in the following circumstances:

(1) A special diet is provided to a juvenile upon the recommendation of a physician or dentist.

(2) A special diet is provided to a juvenile whose religious beliefs require it.

(d) **Staff Meals.** Facility staff on duty where juveniles are eating need not eat, but if they do, they must eat the same food served to the juveniles unless:

(1) A special diet has been ordered by his or her physician or dentist; or

(2) A special diet is required by his or her religious beliefs.

(e) **Daily schedule.** Two hot meals and one other meal which need not be hot are provided at regular meal times during each 24 hour period. No more than 14 hours may elapse between the evening meal and breakfast unless a snack is provided.

(f) **Staff supervision.** Staff members supervise children during meals.

§344.11. Hygiene.

(a) The facility's sanitation and hygiene program complies with applicable regulations and standards of good practice to protect the health and safety of juveniles and staff.

(b) Written policy, procedure, and practice provide for the control of vermin and pests.

(c) There is a written housekeeping plan for the facility's physical plant.

(d) **Clothing.** Clean clothing is supplied to residents upon admission. Clean socks and underwear are issued daily, other clothing at least twice per week. Written policy, procedure, and practice provide for the issue of special and, when appropriate, protective clothing and equipment to juveniles assigned to food service, hospital, garage, facility physical plant, maintenance shops, and other special work.

(e) **Bedding.** Written policy, procedure, and practice provide for the issue of suitable clean bedding and linen, including two sheets, pillow and pillowcase, one mattress, and sufficient blankets to provide

comfort under existing temperature controls. There is provision for linen exchange at least weekly.

(f) **Personal Cleanliness.** Residents bathe or shower upon admission. A facility schedule provides for a daily bath or shower for each resident. Juveniles are given appropriate instruction on hygiene and are required to comply with acceptable rules of personal cleanliness and oral hygiene.

§344.12. Medical and Health Care Services.

(a) Written policies describe the manner in which health care services are provided to residents. Each juvenile is informed orally and in writing of the procedures. The policies include the following:

(1) If the administrative officer of the correctional facility believes any resident or employee to be in need of immediate medical attention, he may require that person to submit to a medical examination.

(2) The referring agency provides a complete medical and dental evaluation of each resident. The evaluation is kept in the resident's permanent file. The results of the evaluation are communicated to staff responsible for daily supervision of the residents. At admission, a staff member completes a Texas Juvenile Probation Commission approved medical checklist to determine whether the juvenile has prescribed medications and whether he appears to be ill, injured, or intoxicated. Policies ensure the information is conveyed to all appropriate staff.

(3) The referring agency provides consent to medical treatment from the juvenile's parent, guardian, or conservator. The consent form is kept in the resident's permanent file, and a copy is accessible to daily supervision staff.

(4) The administrative officer ensures that arrangements are made with local health care providers to treat the residents of the facility.

(5) If a resident requests medical treatment or if a staff member believes that he or she is in need of treatment, the staff member consults with an approved medical professional.

(b) Juvenile corrections officer training to respond to health related situations includes the following:

(1) recognition of signs, symptoms, and actions required in potential emergency situations;

(2) knowledge of first aid and cardiopulmonary resuscitation;

(3) methods of obtaining assistance including posted telephone numbers of medically trained professionals;

(4) recognition of symptoms of mental illness, mental retardation, and chemical dependency;

(5) procedures for transfer to appropriate medical or health providers;

(6) control of pharmaceutical supplies including security of drugs and prescriptions, manner and time of administration, and documentation of each administration; and

(7) AIDS awareness.

(c) If medical services are delivered in the facility, adequate space, equipment, supplies, and materials are provided.

§344.13. Intake, Admission, and Release.

(a) A completed common application form, psychological evaluation, and valid court order must be received prior to the juvenile's admission.

(b) A medical examination must be completed within 30 days of the juvenile's admission by the referring agency. Immunizations must be up to date and documented. A current TB test should be included.

(c) A medical consent form from the juvenile's parent, guardian, or conservator must be provided by the referring agency upon admission.

(d) The juvenile's school records must be provided by the referring agency upon admission.

(e) Written policy governs the conditions of intake, admission and discharge from the program. A juvenile corrections officer orients each newly admitted resident to the facility gives an explanation of the grievance policy and procedure, and assigns the juvenile to a housing unit.

(f) All personal property taken from a juvenile admitted to the facility is safely stored. A receipt for the property is filed.

(g) A child may be discharged from the facility by an order of the committing court, successful completion of the program or continued noncompliance with the program. Procedures for releasing juveniles include, but are not limited to:

(1) verification of identity;

(2) verification of release papers;

(3) completion of release arrangements with the person or agency to whom the juvenile is to be released;

(4) return of personal property including any prescription medications;

(5) instructions for forwarding mail; and

(6) transportation arrangements.

§344.14. Communications.

(a) Mail. Written policy governing residents' mail includes, but is not limited to the following:

(1) Written policy and procedure governing correspondence of juveniles are made available to all staff and juveniles, are reviewed annually, and updated as needed. A resident's rights to privacy and unlimited correspondence may not be limited except when:

(A) The staff have cause to suspect that certain correspondence is part of an attempt to formulate, devise, or otherwise effectuate a plan to escape from the facility, or to violate state or federal laws;

(B) Communication with certain individuals is specifically forbidden by the resident's court-ordered rules of probation, parole rules, or by the facility's rules of separation.

(C) The resident's parents or guardian have furnished the staff a specific list of individuals who they feel should not communicate with the resident. Such incoming correspondence will be returned unopened to the sender.

(2) Residents are furnished with writing materials and postage for no fewer than two letters a week, and with unlimited postage for legal correspondence.

(3) Staff forwards all incoming and outgoing mail without delay, unless there is reason to believe that the correspondence is limited by the conditions outlined above.

(4) Mail may be opened by staff only in the presence of the juvenile with inspection limited to search for contraband. Money received in the mail is accounted for according to agency policy.

(5) Provisions are made to forward mail when the juvenile is released or transferred.

(b) Telephone. Written policy, procedure, and practice provide for reasonable access to the telephone including times, length of calls, and other limitations. The resident and the parents or guardians are provided with copies of the telephone policy.

(c) Visitation. Written policies schedule regular and reasonable visitation hours. The plan contains a procedure to allow for emergency visitation and to allow limited physical contact. The resident and the parents or guardians are provided a copy of the policy, including the regularly scheduled hours for visitation. A visitor's registry

is provided to document name, address, and relationship to the resident.

§344.15. Juvenile Rights.

(a) Courts and Legal Counsel. Written policy, procedure, and practice ensure and facilitate juvenile access to counsel and assist juveniles in making confidential contact with attorneys and their authorized representatives. Such contact includes but is not limited to, telephone communications, uncensored correspondence, and visits.

(b) Illegal Discrimination. Written policy, procedure and practice provide that juveniles are not subjected to discrimination based on race, religion, national origin, sex, or physical disability.

(c) Prohibited Sanctions. Written policy, procedure, and practice protect juveniles from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment. Residents will not be subjected to supervision and control by other residents.

(d) Grievances. There is a written juvenile grievance procedure that is made available to all juveniles and that includes at least one level of appeal to ensure due process.

(e) Control and Experiments. Except under the order of a physician, no stimulant, tranquilizer, or psychotropic drug will be administered for purposes of behavioral management and control. The use of juveniles for medical, pharmaceutical, or cosmetic experiments is prohibited.

(f) Religious Expression. Residents may participate in religious services and religious counseling voluntarily, subject only to the limitations necessary to maintain facility security and control.

(g) Services. Residents have a right to a basic program of services which includes, but is not limited to:

- (1) supervision to protect personal safety;
- (2) adequate living quarters;
- (3) nutritious meals;
- (4) exercise;
- (5) counseling; and
- (6) medical care.

§344.16. Programs.

(a) Education Services. The administrative officer develops a program which provides for coordination with local school officials within the area served by the facility. It is recommended that teacher student ratios not exceed one to ten, and that instructors be certified by the Texas Education Agency. The program provides

education to each juvenile in the facility appropriate to the juvenile's needs but not less than four hours on every day that school is normally in session and may include any of the following:

(1) providing accredited education programs which can enhance the juvenile's basic skills;

(2) providing remedial and special education to help improve the juvenile's capacity to perform in school;

(3) allotting space to an independent school district to provide instruction at the community based correction facility; and

(4) providing alternative education programs required by Chapter 37 of the Texas Education Code.

(b) Library Services. Library services and materials are available to all residents.

(1) The administrative officer designates a staff member or trained volunteer as library coordinator.

(2) Library materials consist of books, magazines, and recordings which meet the educational, informational, and recreational needs of residents.

(c) Recreation and Activities. Recreation and activities are available to all residents.

(1) The administrative officer designates a staff member or trained volunteer as recreation coordinator.

(2) Each juvenile participates in one hour of organized physical exercise each day.

(3) Each juvenile is allowed at least one hour of unstructured activities each day.

(4) Recreational material, equipment, and supplies are provided for indoor and outdoor activities.

(d) Work. Residents are permitted to work only in compliance with state and federal child labor laws and minimum wage laws. The juveniles are required to assume responsibilities for cleaning their own rooms and shared living space. Work assignments do not conflict with or substitute for education, recreation, or other programming. Juveniles may be required to work in accordance with an order for community service restitution. Juveniles shall not perform personal services for staff.

(e) Religion. The administrative officer designates a qualified staff member or volunteer to coordinate the facility's religious programs.

(f) Individualized Treatment. The administrative officer assures that appropriate services are available to meet each juvenile's needs as documented in his or her Individual Program Plan. Written policy and procedure ensure that:

(1) Facility staff complete the resident's Individual Program Plan within 30 days of admission. The responsible staff member and resident sign the plan, and copies are provided to the juvenile's parent and the juvenile court of record.

(2) Resident's have input into the design of the Individual Program Plan and in any changes to the plan.

(3) The resident's progress is reviewed and documented at least every two weeks.

(4) Prior to release from the facility, a final review of the Plan is conducted and a release plan is formulated in cooperation with the juvenile court of record and the resident's parents.

(g) Rehabilitative Services. Written policy and procedure provide for a social services program that includes, but is not limited to:

- (1) Individual, group, and family counseling;
- (2) substance abuse counseling and treatment;
- (3) AIDS awareness; and
- (4) specialized treatment.

§344.17. Citizen and Volunteer Involvement.

(a) The administrative officer encourages involvement of local citizens. Written policies govern the volunteer program:

- (1) screening, selection, and termination criteria;
- (2) orientation and training requirements;
- (3) a requirement that volunteers who provide professional services meet the same requirements as paid professional staff;
- (4) documentation of the volunteer's hours worked;

(b) The Administrative Officer insures that the facility maintains a current listing of community agencies that provide

services to juveniles and that the staff is familiar with procedures for accessing those services.

(c) The facility shall organize a local Citizen's Advisory Council in order to promote community cooperation and support.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514797

Vicki Wright
Executive Director
Texas Juvenile Probation
Commission

Earliest date of adoption: December 22, 1995

For further information, please call: (512) 443-2001

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services
Chapter 48. Community Care for Aged and Disabled

Medicaid Waiver Program for Persons with Related Conditions

• **40 TAC §48.2101**

The Texas Department of Human Services (DHS) proposes an amendment to §48.2101, concerning Medicaid Waiver Program for Persons with Related Conditions, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to delete an obsolete reference to the Intermediate Care Facility for Mentally Retarded chapter, which is now administered by the Texas Department of Mental Health and Mental Retardation.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be access to correct rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 450-3228 in DHS's Long Term Care Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-060, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§48.2101. Introduction. Enrollment and provider payments for home and community-based services for persons with related conditions are contingent upon approval by the Health Care Financing Administration. ["Persons with related conditions" is defined according to §27.102 of this title (relating to Definitions for Level-of-Care Criteria).]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 14, 1995.

TRD-9514753

Nancy Murphy
Section Manager for Media
and Policy Services
Texas Department of
Human

Earliest possible date of adoption: December 22, 1995

For further information, please call: (512) 450-3765

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

Part XIII. Texas Commission on Fire Protection

Chapter 431. Minimum Standards for Fire and Arson Investigator

- 37 TAC §431.7

The Texas Commission on Fire Protection has withdrawn an amendment to §431.7, which appeared in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3674). The amendment had a scheduled effective date of January 1, 1996. However, §431.7 was subsequently repealed in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6335) effective September 1, 1995, and replaced by a new §431.7, that includes the text of the withdrawn amendment, which appeared in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6335).

Issued in Austin, Texas, on November 13, 1995.

TRD-9514779 Jack Woods
 General Counsel
 Texas Commission on Fire
 Protection

Effective date: November 14, 1995

For further information, please call: (512)
918-7184



PUBLICATION SCHEDULE

The following is the 1995 Publication Schedule for the Texas Register. Listed below are the deadline dates for the June-December 1995 issues of the Texas Register. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the Texas Register are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
75 Tuesday, October 3	Wednesday, September 27	Thursday, September 28
76 Friday, October 6	Monday, October 2	Tuesday, October 3
Tuesday, October 10	Wednesday, October 4	Thursday, October 5
77 Friday, October 13	THIRD QUARTERLY INDEX	
78 Tuesday, October 17	Wednesday, October 11	Thursday, October 12
79 Friday, October 20	Monday, October 16	Tuesday, October 17
80 Tuesday, October 24	Wednesday, October 18	Thursday, October 19
81 Friday, October 27	Monday, October 23	Tuesday, October 24
82 Tuesday, October 31	Wednesday, October 25	Thursday, October 26
83 Friday, November 3	Monday, October 30	Tuesday, October 31
84 Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	No Issue Published	
85 Tuesday, November 14	Wednesday, November 8	Thursday, November 9
86 Friday, November 17	Monday, November 13	Tuesday, November 14
87 Tuesday, November 21	Wednesday, November 15	Thursday, November 16
88 Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
89 Friday, December 1	Monday, November 27	Tuesday, November 28
90 Tuesday, December 5	Wednesday, November 29	Thursday, November 30
91 Friday, December 8	Monday, December 4	Tuesday, December 5
92 Tuesday, December 12	Wednesday, December 6	Thursday, December 7
93 Friday, December 15	Monday, December 11	Tuesday, December 12
94 Tuesday, December 19	Wednesday, December 13	Thursday, December 14
95 Friday, December 22	Monday, December 18	Tuesday, December 19
96 Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	