

Summary of Public Comments and Agency Responses Related to Proposed Amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System

Comment: Disability Rights Texas (DRTX), joined by the Texas Council on Developmental Disabilities and the Arc of Texas, commented that the PBMAS has served as a key mechanism for TEA to fulfill its monitoring responsibilities in public education since its inception in 2004. They also commented on Indicator #16 in the special education (SPED) program area (SPED Representation) and stated that every school district and charter school is expected to identify no more than 8.5% of its enrollment as children with disabilities, and the larger the score the more scrutiny the school district or charter school is subject to by TEA.

The commenters further stated that they have witnessed an accelerating gap in the trend between school population and students with disabilities in Texas during the past decade and that the continuing fall in the proportion of students with disabilities appears inconsistent with Census Bureau and Centers for Disease Control and Prevention data, which do not suggest a drop in the incidence of physical, intellectual, and mental and emotional disabilities in the school-age population.

Finally, the commenters noted that Texas school districts and charter schools, regardless of their TEA score relative to the performance level for the SPED Representation indicator, have a duty to strictly adhere to the child find duty under the Individuals with Disabilities Education Act (IDEA) and that all children with disabilities who are in need of special education, regardless of the severity of their disability, must be identified, located, and evaluated.

Agency Response: The agency agrees that the PBMAS serves as a key mechanism for TEA to fulfill its monitoring responsibilities in public education, but it disagrees that every school district and charter school is expected to identify no more than 8.5% of its enrollment as students with disabilities. As a value that has been either at, or very near, the state rate since 2010-2011, 8.5% continues to serve as an appropriate starting point for the range of PL assignments used in the SPED Representation indicator, but the PL assignment process also recognizes the range of rates that exist on this indicator across a diverse set of Texas districts.

The comment on Census Bureau and Centers for Disease Control and Prevention data is outside the scope of the current rule proposal.

The agency notes, however, that in Texas the predominant disability category reported for students with disabilities is learning disability, which has historically accounted for nearly half of all students with disabilities. It is this category, rather than physical, intellectual, and emotional disability, that has accounted for the most significant decrease in the numbers reported in the PBMAS SPED Representation indicator. Specifically, the number of students reported with a learning disability decreased from 255,522 based on 2002-2003 reporting data to 163,662 based on 2013-2014 reporting data.

The agency further notes that this 10-year decrease in students identified as having learning disabilities corresponds with a period of time in which the state of Texas implemented a comprehensive and sustained set of strategies designed to increase the learning and achievement of all students, with a particular focus on those students who struggle to master basic skills in reading and mathematics. These strategies included providing research-based, high-quality professional development to teachers; implementing effective programs to promote reading proficiency by Grade 3; developing quality screening tools and early assessments to identify and monitor students' learning challenges as early as possible; and an emphasis on Response to Intervention (RTI), Positive Behavior Interventions and Support (PBIS), as well as other effective strategies for intensive and specialized instruction to address the needs of all students.

The agency agrees that all Texas school districts and charter schools are required to adhere to the requirements of applicable state and federal laws, including the IDEA.

Comment: The Texas Charter Schools Association commented that the PL 0 of 8.5% for Indicator #16 (SPED Representation) fails to recognize the growing percentage of students in the state of Texas who have bona fide needs for special education services and does not make allowances for schools that might enroll a higher percentage of SPED students for legitimate reasons. TCSA stated that a distinction should be drawn between SPED representation and SPED identification because a student's current charter school is held accountable for his or her SPED representation even though the student could have been identified for SPED services by the student's prior school system.

Agency Response: Regarding SPED Representation Indicator #16, the agency cannot respond to the suggestion that there is a "growing percentage of students in the State of Texas who have bona fide needs for special education services," since current data show consistent decreases in special education representation over the last 10 years. The agency disagrees that the PL 0 rate of 8.5% fails to make allowances for schools that might enroll a higher percentage of SPED students or that a distinction should be drawn in the indicator between SPED representation and SPED identification. As a value that has been either at, or very near, the state rate since 2010-2011, 8.5% continues to serve as an appropriate starting point for the range of PL assignments used in the SPED Representation indicator, but the PL assignment process also recognizes the range of rates that exist on this indicator across a diverse set of Texas districts. Additionally, the PBMAS special education representation indicator is appropriately aligned with the IDEA authorizing statute and with the requirements that apply to all districts serving students in special education programs, irrespective of district type or mission. The agency continues to maintain that the PBMAS includes components, such as varied PL assignments, that recognize and effectively accommodate the diversity of the state's districts, including charter schools. To the extent there may be other considerations specific to a particular charter school or district that cannot be captured in a large-scale, standardized data analysis system such as the PBMAS, those are more appropriately addressed in systems and processes that are outside the scope of the proposed rulemaking, including interventions determinations.