

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. The Texas Council of Administrators of Special Education (TCASE), the Texas Association of School Administrators (TASA), and the Texas Elementary Principals and Supervisors Association (TEPSA) recommended consolidating Indicators #10, #11, #12, and #13 into one Representation and Disproportionality indicator resulting in one PL with sub-indicators as Report Only. The Texas School Alliance (TSA) expressed support for this comment.

Agency Response. The agency disagrees. However, as noted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70*, available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/, the agency is engaged in an ongoing process of integrating and aligning its special education monitoring responsibilities and as part of that process will continue the phase-in transitional approach to indicator redevelopment evident in previous years' PBMAS releases. While the 2016 PBMAS includes an initial redevelopment of the SPED representation indicators, the agency anticipates it will be the 2017 PBMAS before additional considerations could be implemented with existing agency resources.

Comment. Disability Rights Texas (DRTx) commented that there is no authority to include SPED Indicator #10 and that the indicator is contrary to TEC, §29.010(f).

Agency Response. The agency disagrees. In addition to a wide range of state and federal authority authorizing the agency to monitor districts' special education programs, IDEA, §612(a)(24), requires states to have a process in place to prevent not only the disproportionate representation of children by race and ethnicity, but also the over-identification of children with disabilities. Like all SPED indicators in the 2016 PBMAS, SPED Indicator #10 is consistent with both federal law and TEC, §29.010(f).

Comment. Disability Rights Texas (DRTx) expressed a grave concern that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate and that the indicator does not account for school districts that do not identify enough students with disabilities. DRTx indicated it has received numerous complaints over the years about referrals not being made because of a concern about this indicator affecting districts' choices.

Agency Response. The agency disagrees that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that districts have not initiated referrals because of a concern about any PBMAS indicator and has evidence of a violation of processes and procedures resulting in the denial of special education services to an eligible student, it should file a special education complaint with the agency.

Comment. The Texas Charter Schools Association (TCSA) commented that all schools have a federal responsibility to evaluate and identify all students suspected of having a disability, that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of students identified as a student with a disability even though they may believe more students should be receiving services, and that SPED Indicator #10 is at odds with the federal Child Find mandate. TCSA further commented that by accepting all students who were identified by previous school districts, by attracting families with children with disabilities, and by having geographic boundaries that often overlap more than one school district, some charter schools may have higher than average special education representation and that SPED Indicator #10, therefore, unfairly penalizes charter schools. TCSA stated that SPED Indicator #10 could directly result in the non-renewal or closure of a charter school as a result of the Charter School Performance Framework. TCSA recommended that SPED Indicator #10 be changed to a Report Only indicator.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of their students identified as a student with a disability even though they may believe more students should be receiving services. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure students are placed in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications and provide protections against evaluation measures that are racially or culturally discriminatory.

The agency disagrees that SPED Indicator #10 unfairly penalizes charter schools, noting there is no evidence that charters in general are unfairly assigned the lowest PLs for the indicator or that when a charter is assigned the PLs, it is because the charter accepted all students who were identified by previous school districts, attracted families with children with disabilities, or has geographic boundaries that overlap more than one school district. Additionally, the agency notes that although the Charter School Performance Framework is outside the scope of the proposed rule action, it is not aware of any circumstances whereby charter revocation or nonrenewal ensues from a charter school appropriately meeting its obligation to identify and provide a free appropriate public education to all students with disabilities who require special education.

Comment. The Arc of Texas (The Arc) commented that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education services and requested the agency reconsider using it as a PL. The Arc suggested the indicator had a significant impact on the number of students enrolled in special education services and that enrollment mirrored the national average at 11.5% in 2006, but quickly dropped to 8.5% after the PL was implemented, which to The Arc indicates school districts are using it as a hard line determinate for the number of students permitted to be enrolled in special education. The Arc stated that roughly 3% of students in Texas are not getting the supports and services they need and that school districts are working to meet the 8.5% rather than identifying students with disabilities.

The Arc further commented that having unidentified students with special needs contributes to the strain on teachers and the consequential teacher shortage. Lastly, The Arc stated that if students are not getting the supports they need and teachers are not prepared to support them, this will be reflected in test scores, dropout rates, and graduation levels.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.

Comment. A representative of the Coalition of Human Rights Policy Advocates commented that she has attended many admission, review, and dismissal (ARD) committee meetings where there was a clear indication a student would qualify for special education services and a parent requested an independent evaluation to further advocate for that and that children should receive services if they qualify, not based on an 8.5% cap or limit.

Agency Response. If the commenter has evidence that, during any initial evaluation, a school district engaged in a violation of processes and procedures resulting in the denial of special education services to an eligible student, she should file a special education complaint with the agency. The agency agrees that children should receive services if they qualify and notes that there are many reasons a student may not be eligible based on the considerable amount of evidence the ARD committee is required to consider in making that determination. The agency disagrees there is an 8.5% cap or limit. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal

requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Comment. An individual commented that we need to assess our students and decide whether they belong in special education based on the student, not based on an indicator that places the school in trouble for going over 8.5%. The individual further commented that there are a lot of bad outcomes for not identifying 1 out of 3 students.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.