

The Texas Education Agency (TEA) adopts new §61.1073 concerning counseling public school students. The new section is adopted with changes to the proposed text as published November 4, 2022 issue of the Texas Register (47 TexReg 7387) and will be republished. The adopted new section implements the statutory requirement for school districts to annually assess compliance with the district policy requiring a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program as

including proposed strategies to address any lack of compliance with the district policy adopted under TEC, §33.006(d).

**SUMMARY OF COMMENTS AND AGENCY RESPONSE** The public comment period on the proposal began November 4, 2022, and ended December 5, 2022. Following is a summary of public comments received and agency responses.

**Comment:** Sixty school counselors expressed support for the proposed rule, noting that the rule would allow them to support students and counsel according to TEC, §33.005, while limiting non-counseling duties.

**Response:** The agency agrees that the rule will permit school counselors to support students while limiting non-counseling duties.

**Comment:** Thirty-six school counselors expressed support for the proposed rule, noting that it would hold districts more accountable for allowing counselors to spend at least 80% of their time on duties established in TEC, §33.005. The commenters noted that some districts require counselors to test students despite testing being listed as a non-counseling duty in TEC, §33.006.

**Response:** The agency agrees that the rule supports compliance with TEC, §33.005 and §33.006.

Response: The agency agrees that the rule supports counselors in serving students as described in TEC, §33.005 and §33.006.

Comment: One student expressed support for the rule, specifically noting that the student's local school board adopted a policy aligned to the language in 19B with no modifications but did not alter the time counselors spend on non-counseling duties like testing. The student requested that counselors be more available to students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Six community members, including two parents, expressed support for the rule to allow counselors more time on counseling duties and better support students by limiting non-counseling duties.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One community member expressed a belief that tracking hours is an undue burden and not necessary to help students.

Response: The agency disagrees. Tracking time and effort is a practice used in many fields and can be done efficiently. The rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: One school administrator expressed support for the rule but recommended that only districts out of compliance with counselors spending 80% of their time on counseling duties report their time.

Response: The agency disagrees that only districts whose counselors not spending 80% of their time on counseling duties should report their time. In order for a district to ensure it is in compliance with the law, time must be reported for all counselors.

Comment: One school administrator expressed agreement with the rule and stated that without it, no district would comply with TEC, §33.006.

Response: The agency provides the following clarification. School districts are required to comply with statute regardless of agency administrative rules. However, the rule is intended to provide support and accountability for districts for their compliance.

Comment: One school administrator proposed reporting time spent on counseling duties and time spent on non-counseling duties as opposed to time spent within each category of comprehensive school counseling.

Response: The agency disagrees that only counseling and non-counseling duties should be tracked as opposed to time spent within each category. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services.

Comment: Four school administrators expressed support for the rule but expressed concern that the tracking of time will be an additional burden. The commenters also asked for lower counselor-to-student ratios.

Response: The agency disagrees that the tracking of time will be an additional burden and provides the following clarification. Districts have the flexibility to develop or adopt appropriate time trackers and/or work time analysis procedures. The Texas Model for Comprehensive School Counseling Programs and the ASCA National Model: Implementation Guide provide various templates for work time analysis. The data gathered provides districts with valuable information to support counselors in meeting the needs of their students. The comment regarding counselor-to-student ratios is outside the scope of the proposed rulemaking.

Comment: Two school administrators expressed support for the rule as a way to meet the needs of students.

Response: The agency agrees that the rule supports counselors spending more time with students on counseling duties described in TEC, §33.005 and §33.006.

Comment: Four school administrators disagreed with the determination that the rule does not have a fiscal impact.

Response: The agency offers the following clarification: There are no additional costs resulting from the proposed rule. TEC, §33.005, requires the implementation of a comprehensive counseling program. System support, a component of the comprehensive counseling program, establishes work time analysis as an appropriate counseling duty. State law also requires school districts to adopt a policy that requires a school counselor to spend at least 80% of the school counselor's total work time on duties that are components of a counseling program and annually assess the district's compliance with the policy.

Comment: One school administrator asked if a draft could be sent out, if a standardized tracker could be provided, how districts will be measured, and how the random districts would be chosen.

Response: The agency provides the following clarification. The Texas Model for Comprehensive School Counseling Program and the ASCA National Model: Implementation Guide provide various templates for work time analysis, including standardized time trackers. The rule will require school districts to annually assess work

Comment: Lumberton ISD expressed disagreement with the rule and stated that the district's counselors are already swamped with counseling students experiencing mental health situations. The district further stated that adding time and effort log requirements will do nothing to assist students.

Response: The agency disagrees that the rule does nothing to assist students and offers the following clarification. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Cisco ISD stated that the proposal has a cost to districts, more importantly, counselors who will have to spend valuable hours on completing these reports. The district expressed understanding that there are counselors who feel they are not able to provide counseling because they are required to manage assessments or perform other non-counseling duties but that punishing every counselor in the state to complete a time and effort sheet is counterintuitive. The district stated that, if TEC, §33.006(h), must be monitored, it would be much easier to simply have the counselors sign a statement that is submitted annually stating that 80% of their work time is spent on duties that are components of a counseling program developed under TEC, §33.005.

Response: The agency disagrees that signing a statement is sufficient evidence of compliance with TEC, §33.006. The agency disagrees that the rule punishes counselors and adds additional burden because counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: Big Sandy ISD expressed agreement with the 80% rule but stated a concern that the additional paperwork and time tracking will be overwhelming and demeaning.

Response: The agency disagrees that the tracking of time will be demeaning and overwhelming. Tracking time and effort is a practice used in many fields and can be done efficiently. Counselors should spend at least 80% of their work time on appropriate counseling duties described in TEC, §33.006. A comprehensive counseling program described in TEC, §33.005, includes the component of system support, under which work time analysis falls. Work time analysis is a necessary and appropriate counseling duty.

Comment: The Texas Counseling Association (TCA), Texas School Counselor Association (TSCA), two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(a)(1) to specifically cite the Texas Mod

Response: The agency agrees and has adjusted §61.1073(c)(3) at adoption to read, "the number of school counselors in the district whose work was not in compliance with the district policy adopted under TEC, §33.006(d)."

Comment: TCA, TSCA, two professors, and two school administrators expressed support for the rule but requested that the agency consider amending §61.1073(e) to reduce reporting requirements by allowing districts to simply submit their annual assessments upon request since ~~the~~ requested in this subsection is required to be included in each district's annual assessment.

Response: The agency agrees and has deleted §61.1073(e)(2) and (4), as proposed, and added new paragraph (2) to read, "a copy of the district annual assessment ~~is~~ required by subsection (c) of this section" at adoption. The agency has also amended renumbered §61.1073(e)(4) to read, "the number of school counselors in the district whose work is determined by the district to be out of compliance with the district policy adopted under TEC, §33.006(d)."

Comment: Texas State Teachers Association (TSTA) commented that the rule as drafted increases counselors' workloads in ways unrelated to a comprehensive counseling program. TSTA proposed revisions to §61.1073(b).

Response: The agency disagrees that reporting on each component of the school counseling program will increase workloads in ways unrelated to a comprehensive counseling program. TEC, §33.005, describes a comprehensive counseling program and each of its ~~components~~ ~~inputs~~. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. In response to other comments, the agency revised §61.1073(b)(1), ~~(b)~~ and ~~(c)~~ at adoption.

Comment: Texas Classroom Teachers Association (TCTA) commented that the proposal to track specific amounts

Comment: Texas American Federation of Teachers (AFT) commented that tracking time is overburdensome and that districts should track only the 20% of time not spent on counseling duties. Texas AFT also commented that a clearer definition of which schools will be randomly selected is necessary.

Response: The agency disagrees that reporting only on the 20% of time not spent on school counseling duties is sufficient and that tracking each component of a school counseling program will be overburdensome. TEC, §33.005, describes a comprehensive counseling program and each of its components. Data on time spent in each category provides information on what services are being provided to students. The data helps ensure that students are receiving appropriate services. The agencyhe ageute ge3.9 (e)4vn e cefpro





assessment to Texas Education Agency on or before a date specified by the commissioner. This section requires the commissioner to adopt rules to implement these requirements.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §33.005 and §33.006, as amended by Senate Bill 179, 87th Texas Legislature, Regular Session, 2021.

<rule>

§61.1073. Annual Assessment of School District Compliance.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

- (1) Comprehensive school counseling program provision of a guidance curriculum, responsive services, individual planning, and system support as described in Texas Education Code (TEC), §33.005(b).
- (2) Duties that are components of a counseling program work activities related to the development, implementation, and evaluation of a comprehensive school counseling program as described in TEC, §33.005(b).
- (3) School counselor the position described by TEC, §21.003, and Chapter 239, Subchapter A, of this title (relating to School Counselor Certificate).
- (4) School counselor's total work time the amount of time, reported in hours, that a school counselor is contracted to work as a school counselor for a school district during a school year.

(b) School districts shall require each district school counselor to track and document, using a standardized tracking tool, as established by each district, the time spent on work duties performed by the school counselor throughout a school year.

(3)