

The Texas Education Agency (TEA) adopts new §74.2101, concerning the middle school advanced mathematics program. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 950) and will be republished. The adopted new section implements Senate Bill (SB) 2124, 88th Texas Legislature, Regular Session, 2023, by establishing requirements related to automatic enrollment of certain middle school students into an advanced mathematics program designed to prepare students to enroll in Algebra I in Grade 8.

REASONED JUSTIFICATION: SB 2124, passed by the 88th Texas Legislature, Regular Session, 2023, established Texas Education Code (TEC), §28.029, requiring each school district and open-enrollment charter school to automatically enroll in an advanced mathematics course all Grade 6 students who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework. The statute includes an opt-out provision for parents or guardians who wish to remove their child from automatic enrollment in the advanced mathematics course.

The adopted rule requires each school district and open-enrollment charter school to develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8. The adopted rule includes requirements for enrollment criteria and parent notification.

The following changes were made to the rule based on public comment.

Subsection (b) was modified to clarify that local education agencies (LEAs) must identify, rather than develop, a local measure for use in determining student eligibility for the middle school advanced mathematics program.

Subsection (c) was modified to clarify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

New subsection (h) was added to establish that LEAs are required to obtain written approval from the parent or guardian to remove a student from the middle school advanced mathematics program.

New subsection (i) was added to require LEAs to annually report to the agency data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

As proposed, the new rule did not have a data and reporting impact. However, in response to public comment, a reporting requirement was added at adoption. Therefore, the adopted new rule would have a data and reporting impact. New subsection (i) requires each school district and open-enrollment charter school to annually report to TEA data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period began February 23, 2024, and ended March 25, 2024. Following is a summary of public comments received and agency responses.

Comment. One teacher, six administrators, and one community member stated the current accountability system needs to be refined to address Domains 1 and 2 to ensure schools are not negatively impacted when their highest math performers are not included because they are taking Algebra I.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin requested that TEA conduct oversight on school system participation over time to meet the legislative intent of SB 2124, 88th Texas Legislature, Regular Session, 2024. The commenters stated that non-punitive audits should focus on the implementation of the intended goal of increasing advanced math

opportunities for all students and should serve to create a culture of transparency, accountability, and continuous improvement.

Response. The agency disagrees and has determined that it does not have statutory authority to monitor compliance with the requirements of SB 2124.

Comment. Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin requested that TEA clarify the agency's intent to collect information or data on which measure school systems are using to determine student placement to meet the legislative intent of SB 2124.

Response. The agency agrees that the collection of data related to implementation of the middle school advanced mathematics programs is important. In response to this and other comments, new subsection (i) was added at adoption to require each school district and open-enrollment charter school to annually report to TEA data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.

Comment. A Texas counselor, a Texas administrator, and a regional education service center specialist stated that more guidance is needed regarding high school expectations for students in middle school advanced mathematics. The commenters expressed concern that students may opt not to enroll in or not be offered advanced math classes during their senior year in high school.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two Texas teachers expressed opposition to the low bar for automatic enrollment in middle school advanced mathematics programs and suggested revising the criteria for automatic enrollment.

Response. The agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment. A Texas administrator expressed concern there would be an outsize impact on small districts when only a small number of students qualify for the program. The commenters cited changes to student-to-staff ratios, the need for teachers to add additional certifications, and budgetary constraints as consequences of the new requirement.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A Texas administrator expressed full support of the proposed rule and stated that their district currently has local policy that mirrors the proposal.

Response. The agency agrees. The agency made additional changes at adoption to respond to other comments.

Comment. Two Texas administrators and a community member asked if there would be online coursework or textbooks. The commenters expressed concern for schools that would have to create curriculum for a new course with no content standards or curriculum to follow.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A Texas administrator stated that some districts have block scheduling at the high school level, which allows students to complete eight math courses during high school. The commenter asked if these schools would be able to get a waiver from offering Algebra I in middle school since they have planned the sequence of courses for high school.

Response. The agency provides the following clarification. TEC, §28.029, requires LEAs to develop a middle school advanced mathematics program that is designed to enable students to enroll in Algebra I in Grade 8 and to automatically enroll students who meet certain criteria into the program in Grade 6.

Comment. A Texas administrator requested that districts be allowed to provide the required parent notification within the first 10 days of instruction rather than 14 days prior to instruction.

Response. The agency disagrees and has determined that requiring the written notification no later than 14 days prior to the start of instruction was appropriate as proposed.

Comment. One counselor, three Texas teachers, ten administrators, and two community members expressed concern with the ability of small rural schools with limited teacher positions and scheduling flexibility to implement these requirements.

Response. This comment is outside the scope of the proposed rulemaking. The agency also provides the following clarification. TEA staff will be posting guidance and resources on the agency's advanced mathematics webpage to assist LEAs in implementing middle school advanced mathematics programs.

Comment. A Texas counselor and a Texas administrator asked if Grade 5 State of Texas Assessments of Academic Readiness (STAAR®) math results would be released earlier as a result of these requirements. The commenters stated that LEAs would need time to pull data, adjust schedules, set the notification system in place, and ensure that parents receive the information.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Two Texas administrators and two community members asked when Texas Essential Knowledge and Skills (TEKS) would be published for the advanced middle school mathematics courses.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the agency provides the following clarification. At this time, the TEKS for Grades 6-8 mathematics are expected to remain in effect and must be used to provide instruction for middle school math. LEAs must provide instruction in all the TEKS for Grades 6-8, and students must demonstrate proficiency in those TEKS prior to enrolling in Algebra I. LEAs have the flexibility to combine or compact the TEKS for multiple grade levels to best serve their students. These are local decisions.

Comment. A Texas teacher and two Texas administrators expressed concern with the criteria for automatically enrolling students in an advanced mathematics program. The commenters stated that there is a large gap in rigor between the TEKS for Grade 5 and Grade 6 and that scoring in the top 60% on the Grade 5 Math STAAR® test is not a true representation of a student's ability to be in an advanced math class in Grade 6.

Response. This comment is outside the scope of the proposed rulemaking. Additionally, the agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment. Two Texas administrators requested that the EC-6 certification be approved for teaching advanced Grade 6 mathematics. The commenters stated that, if necessary, this could also include district-led professional learning to supplement these teachers' knowledge of the TEKS for Grade 7 and higher.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A Texas administrator asked if the state will provide training supports for districts, campuses, or teachers. The commenter stated that Texas needs to ensure teachers have the tools to support students to stay on the path when the math gets hard rather than dropping to the on-level pathway.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A Texas administrator said there is a critical lack of knowledge in some middle school mathematics teachers who do not know how to teach math at the rigor of their grade level. The commenter stated that all the focus on math instruction is at the lower elementary level, not middle school.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. Four Texas administrators and a parent asked for clarification regarding whether a student who does not fall in the 60th percentile or higher but does fall in the top 40% of the local measure must be automatically enrolled in a middle school advanced math program or if it is up to local LEA discretion.

Response. The agency agreed that additional clarification on the requirements for automatic enrollment was necessary. In response to this and other comments, subsection (c) was modified to clarify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

Comment. Two Texas administrators, two Texas teachers, and a community member stated that it is unfair to automatically place a student in a middle school advanced math program. The commenters stated that the school or district should not be eliminated from that decision making.

Response: The agency disagrees and provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework.

Comment: Two counselors, a Texas administrator, and two community members stated that policy makers are more concerned in over-preparing students at such a young age and less concerned with their social emotional mental health. They are concerned that students are not mature enough to handle the stress this program may put them under.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. A counselor, nine Texas administrators, six teachers, and two community members expressed concern that the 60th percentile on the Grade 5 mathematics assessment is too low a cut-point for placement in advanced mathematics. The commenters proposed the rule specify the criteria be students who performed at the "Meets" or "Masters" level on STAAR®.

Response. The agency provides the following clarification. TEC, §28.029(b), requires all school districts and open-enrollment charter schools to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on the Grade 5 mathematics assessment or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency Grade 5 mathematics coursework. Students who score in the 60th or higher percentile are performing in the top 40% statewide.

Comment. A Texas teacher and four Texas administrators stated that the establishment of advanced middle school math courses would be particularly challenging in a small district where the students are divided into only two sections per grade level. The commenters requested more flexibility in the way districts implement a plan to increase student participation in Grade 8 Algebra I.

Response. The agency provides the following clarification. TEC, §28.029, requires LEAs to develop a middle school advanced mathematics program that is designed to enable students to enroll in Algebra I in Grade 8 and to automatically enroll students who meet certain criteria into the program in Grade 6.

Comment. Three Texas administrators, a teacher, and a community member stated that districts should have the ability to give a local assessment to determine placement in an advanced mathematics class that is not based solely on Grade 5 coursework.

Response. The agency agrees and has determined that LEAs may administer a local assessment as a local measure. In response to this and other comments, subsection (b) was modified at adoption to clarify that LEAs must identify, rather than develop, a local measure for use in determining student eligibility for the middle school advanced mathematics program.

Comment: Representatives from E3 Alliance, Texas Business Leadership Council, Texas 2036, Commit, Teach Plus, Educate Texas, The Education Trust, Democrats for Education Reform-Texas, Good Reason Houston, Teach for America, and Opportunity Austin recommend adding a statement regarding the use of student ranking, clarifying that the practice is intended for school systems currently ranking students in Grade 5 based on overall performance. The commenters emphasized that student ranking is not a mandatory or recommended method for identifying students to be entered into advanced math pathways.

Response. The agency disagrees that the suggested clarification is necessary. Additionally, the agency provides the following clarification. TEC, §28.029, requires that the local measure include the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

Comment. Texas Classroom Teachers Association recommended that subsection (d) be combined with proposed subsection (c) so that it is clear that a district can use either the Grade 5 Math STAAR® results or a local measure in all cases except when no Grade 5 Math STAAR® results are available, in which case a local measure must be used.

Response. The agency disagrees and has determined that the language as proposed would limit a student's ability to qualify for the program. In response to this and other comments, subsection (c) was modified at adoption to specify that students can qualify for automatic admission for the middle school advanced mathematics program by scoring either in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument or in the top 40% on a local measure identified by the LEA.

Comment. A Texas administrator asked how the new requirement would affect honor students.

Response. The agency provides the following clarification. LEAs are responsible for the instructional arrangement and support of various special populations, including honors classes and students.

Comment. A Texas administrator asked if performance on the Algebra I end-of-course assessment could be applied to high school math scores out of concern that the top students would not count toward the high school's accountability.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023, which requires a school district or open-enrollment charter school to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023.

<rule>

**§74.2101. Middle School Advanced Mathematics Program.**

- (a) Each school district and open-enrollment charter school shall develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8.
- (b) Each school district and open-enrollment charter school shall identify a local measure for use in determining student eligibility for automatic enrollment in a middle school advanced mathematics program.
- (c) School districts and open-enrollment charter schools shall automatically enroll in a middle school advanced mathematics program each Grade 6 student whose performance was either:
  - (1) in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument administered under Texas Education Code, §39.023(a); or
  - (2) in the top 40% on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.
- (d) A local measure shall be used to determine enrollment of Grade 6 students for whom there are no results on the state Grade 5 mathematics assessment.
- (e) A school district or open-enrollment charter school shall make public the criteria for automatic enrollment in a middle school advanced mathematics program, including any criteria for a local measure, before the start of each school year.
- (f) The parent or guardian of a student who will be automatically enrolled in a middle school advanced mathematics program may opt the student out of automatic enrollment in an advanced mathematics program.
- (g) Each school district and open-enrollment charter school shall provide a written notice to the parent or guardian of each student entering Grade 6 who will be automatically enrolled in a middle school advanced mathematics program. The written notification shall be provided no later than 14 days before the first day of instruction for the school year. The required notice shall include a description of:
  - (1) the purpose of the program;
  - (2) the middle school advanced mathematics program offered by the school district or open-enrollment charter school, including an overview of the content addressed at each grade level;
  - (3) resources offered to support student success;
  - (4) the right of the parent or guardian to opt their child out of the middle school advanced mathematics program; and
  - (5) the process for a parent or guardian to opt their child out of the program and any associated deadlines.
- (h) A school district or open-enrollment charter school shall obtain written approval from the parent or guardian to remove a student from the middle school advanced mathematics program.
- (i) Each school district and open-enrollment charter school shall annually report to the Texas Education Agency (TEA) data related to student enrollment and performance in the middle school advanced mathematics program in a manner and time to be determined by TEA.
- (j) This section does not prohibit a school district or open-enrollment charter school from establishing a process to initially enroll Grade 7 or 8 students in a middle school advanced mathematics program.