

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) adopts amendments to §§89.1049, 89.1065, and 89.1141, concerning special education services. The amendments are adopted without changes to the proposed text as published in the March 22, 2024 issue of the *Texas Register* (49 TexReg 1837) and will not be republished. The adopted amendments clarify terminology and codify current program practices.

REASONED JUSTIFICATION: Section 89.1049 establishes parental rights regarding adult students. The adopted amendment to §89.1049 removes references to an outdated school year.

Section 89.1065 establishes criteria for extended school year (ESY) services.

The adopted amendment to §89.1065(2) establishes the documentation required for ESY services to include data collected by the district and the student's parents using assessments, as opposed to evaluations. The amendment also replaces language related to individualized education program (IEP) goals and objectives with language related to areas where the student previously demonstrated acquired progress. An additional change clarifies severe or substantial regression as the student being unable to maintain previously acquired progress in one or more critical IEP areas in the absence of ESY services.

Section 89.1065(5) is revised to establish a requirement for the admission, review, and dismissal (ARD) committee to consider ESY services at the student's annual IEP review, as opposed to the parent requesting a discussion regarding ESY services at the ARD committee meeting. Language is added to specify that if a student for whom ESY services were considered and rejected at the annual IEP review later demonstrates a need for ESY services, the parent and school district must determine either through an IEP amendment by agreement in accordance with 34 Code of Federal Regulations (CFR), §300.324(a)(4), or during an ARD committee meeting the location, duration, and frequency of ESY services the student requires.

New §89.1065(10) adds criteria regarding a student requiring ESY services who withdraws during the summer months from one district and registers in another to require the new district

to be responsible for fulfilling ESY services. The new district may include the direct provision of the services or contract with the previous district or another entity to provide the services or payment for the services.

Section 89.1141 establishes education service center regional special education leadership. The section is amended to remove guidelines already established in statute and/or program and grant guidelines.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began March 22, 2024, and ended April 22, 2024, and included public hearings on April 4 and 5, 2024. Following is a summary of public comments received and the agency responses.

§89.1049, Parental Rights Regarding Adult Students

Comment: A special education advocate requested that TEA add "educational representatives" to this section.

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

§89.1065, Extended School Year Services

Comment: A school psychologist commented requesting clarification for the addition of the term "assessment" as opposed to "evaluations."

Response: The agency provides the following clarification. "Assessments" are typically viewed as less formal than "evaluations." Student data is critical to determining ESY service needs, and formal evaluations are not needed to collect that data.

§89.1141, Education Service Center Regional Special Education Leadership

Comment: The Alliance of and for Visually Impaired Texans and ten individuals commented in disagreement with the proposed deletion of subsection (e), which requires education service center personnel providing leadership, training, and support for students with visual impairments to be certified.

Response: The agency disagrees. Information regarding staff qualifications is already included in the program guidelines that are required in education service center grants distributed from TEA. The qualifications are, therefore, not required to be in rule since adhering to the program guidelines is a requirement for the receipt of grant funds.

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS

19 TAC §89.1049, §89.1065

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §8.001, which establishes the operation of education service centers; TEC, §8.002, which de-

finishes the purpose of education service centers; TEC, §8.051, which establishes the core services of education service centers and services to improve student and district performance; TEC, §8.052, which requires education service centers to use funds distributed under TEC, §8.123, to implement initiatives identified by the legislature; TEC, §8.053, which defines additional services a regional service center may provide; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.017, which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; 34 Code of Federal Regulations (CFR), §300.12, which defines criteria for an educational service agency; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.321, which establishes the requirements of an IEP team for each child with a disability; 34 CFR, §300.520, which establishes the criteria for the transfer of parental rights for a child with a disability who reaches the age of majority under state law; and 34 CFR, §300.106, which establishes the criteria for extended school year services.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§8.001, 8.002, 8.051, 8.052, 8.053, 29.001, and 29.017; and 34 Code of Federal Regulations, §§300.12, 300.320, 300.321, 300.520, and 300.106.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 2024.

TRD-202402948

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: July 23, 2024

Proposal publication date: March 22, 2024

For further information, please call: (512) 475-1497



DIVISION 6. REGIONAL EDUCATION SERVICE CENTER SPECIAL EDUCATION PROGRAMS

19 TAC §89.1141

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §8.001, which establishes the operation of education service centers; TEC, §8.002, which defines the purpose of education service centers; TEC, §8.051, which establishes the core services of education service centers and services to improve student and district performance; TEC, §8.052, which requires education service centers to use funds distributed under TEC, §8.123, to implement initiatives identified by the legislature; TEC, §8.053, which defines additional services a regional service center may provide; TEC, §29.001, which requires the agency to develop and modify as necessary a statewide plan for the delivery of services to children with disabilities that ensures the availability of a free appropriate public education to children between the ages of 3-21; TEC, §29.017,

which establishes criteria for the transfer of rights from a parent to a child with a disability who is 18 or older or whose disabilities have been removed under Texas Family Code, Chapter 31, to make educational decisions; 34 Code of Federal Regulations (CFR), §300.12, which defines criteria for an educational service agency; 34 CFR, §300.320, which defines the requirements for an individualized education program (IEP); 34 CFR, §300.321, which establishes the requirements of an IEP team for each child with a disability; 34 CFR, §300.520, which establishes the criteria for the transfer of parental rights for a child with a disability who reaches the age of majority under state law; and 34 CFR, §300.106, which establishes the criteria for extended school year services.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 296. TEXAS ASBESTOS HEALTH PROTECTION

SUBCHAPTER H. LICENSE AND REGISTRATION PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

25 TAC §296.131

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of Texas Administrative Code (TAC), Title 25, Subchapter H, concerning License and Registration Provisions Related to Military Service Members, Military Veterans, and Military Spouses, and §296.131, concerning Military Service Members, Military Veterans, and Military Spouses without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2381), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to remove a rule no longer required due to implementation of Senate Bill (S.B.) 422, 88th Legislature, Regular Session, 2023, extending occupational reciprocity

to military service members. DSHS implemented S.B. 422 by adopting amended 25 TAC §1.81, concerning Recognition of Out-of-State License of a Military Service Member and Military Spouse, and new §1.91, concerning Alternative Licensing for Military Service Members, Military Spouses, and Military Veterans.

The repeal removes Subchapter H because the only rule it contains is being repealed.

COMMENTS

The 31-day comment period ended May 20, 2024.

During this period, DSHS did not receive any comments regarding the proposed rule repeal.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for administration of Texas Health and Safety Code Chapter 1001 to implement Texas Occupations Code Chapter 1954.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 16. COMPTROLLER GRANT PROGRAMS

SUBCHAPTER A. BROADBAND POLE REPLACEMENT PROGRAM

34 TAC §§16.1, 16.3, 16.4, 16.8 - 16.10, 16.12

The Comptroller of Public Accounts adopts amendments to §16.1 concerning definitions, §16.3 concerning notice and applications, §16.4 concerning eligible applicants, §16.8 concerning reimbursement awards, §16.9 concerning payment, §16.10 concerning requirements, and §16.12 concerning noncompliance, with changes to the proposed text as published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2171). The rules will be republished.

The amendments comply with House Bill 1505, §1, 87th Legislature, R.S., 2021, and House Bill 9, §2, 88th Legislature, R.S., 2023, which establish the broadband pole replacement fund and

the Texas broadband pole replacement program and require the comptroller to prescribe rules for the program.

The amendments to §16.1 add new definitions and make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.3 clarify the methods by which the office may provide notice of the availability of grant funds for award. The amendments also include conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.4 describe requirements related to eligible costs and grant eligibility requirements.

The amendments to §16.8 prioritize the deployment of broadband to rural areas and require grant recipients to negotiate and sign a grant agreement prior to issuance of a reimbursement award.

The amendments to §16.9 clarify that the time period within which a reimbursement award must be paid to a grantee starts after a notice of a reimbursement award is issued.

The amendments to §16.10 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.12 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The comptroller received comments from the following organizations, interest groups, and individuals: Texas Cable Association ("TCA"); Texas Electric Cooperatives ("TEC"); and Texas Telephone Association ("TTA").

The comptroller received a comment from TEC regarding the definition of "applicant" contained in §16.1(1). TEC acknowledged the definition was not new or amended but requested that the comptroller amend the term to ensure the participation of electric cooperatives. TEC noted that under the current definition an applicant is defined as a "person" and noted its concern that under the Public Utility Regulatory Act that term specifically excludes electric cooperatives. The comptroller thanks TEC for this comment but notes that under the Code Construction Act a "{p}erson includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity" unless the statute or context in which the word or phrase is used requires a different definition. The statute that governs the pole replacement program does not specify a different definition of "person" nor does it reference the Public Utility Regulatory Act. Therefore, the comptroller does not believe it is necessary to amend the rule as requested.

The comptroller received comments from TCA, TEC, and TTA regarding the proposed definitions for "eligible county" and "rural county" contained in §16.1(5) and §16.1(16) respectively.

TCA submitted extensive comments critical of the proposed definitions and eligibility requirements in §16.4 and urged the comptroller to withdraw the proposed rules. Citing case law, TCA suggested that the proposed definitions exceeded the comptroller's authority because state agencies may not promulgate rules that (1) contravene statutory language; (2) run counter to the general objectives of the statute; or (3) impose additional burdens, condition, or restrictions in excess of or inconsistent with the relevant

statutory provisions. See *State v. Office of Pub. Util. Counsel*, 131 S.W.3d 314 (Tex.App.-Austin 2004, pet. Denied) at 331. TCA objected to population and serviceability thresholds proposed in the definitions for "rural county" and "eligible county" as being inconsistent with the eligibility standards set out in House Bill 1505. Specifically, TCA asserts that the proposed definitions for "rural county" and "eligible county" create eligibility criteria that are inconsistent with the statute because the statutory language only imposes a single condition for reimbursement under the program. TCA quotes statutory language that pole replacement costs are eligible for reimbursement if the pole being replaced is located in an unserved area. See Government Code, §403.553(a)(4). TCA argues that by this language the legislature directed that reimbursements under the program should go to all projects that connect unserved locations no matter where in Texas they are located. Consequently, TCA suggests that by introducing rurality component and imposing serviceability thresholds not contained in the statutory language, the comptroller is impermissibly creating additional conditions in excess of relevant statutory provisions and thereby materially altering the program as enacted by the legislature by excluding otherwise eligible locations from reimbursement under the program.

With respect to rurality, TCA further suggests that the proposed definition for "rural county" is inconsistent with the language of Government Code, §403.553(b), which does not purport to define which projects are eligible for replacement. TCA commented that if the legislature had intended to limit the program to specific rural areas it would have included such a provision and defined such eligible "rural areas" in the statute. However, as TCA acknowledges, Government Code, §403.553(c), delegates wide latitude to the comptroller to administer and implement the pole replacement program including rulemaking authority. And it is well established that an "agency's rules must comport with the agency's authorizing statute, but the legislature does not need to include every specific detail or anticipate all unforeseen circumstances." *State v. Office of Pub. Util. Counsel v. Pub. Util. Comm'n of Tex.*, 131 S.W.3d 314, 321 (citing *Railroad Comm'n v. Lone Star Gas Co.*, 844 S.W.2d 679, 689 (Tex. 1992)). TCA further argued that the language of Government Code, §403.553(b), does not require the comptroller to restrict the program in the proposed manner. Further, TCA suggests that the statutory language is best understood as a general statement of purpose that informs the context of the legislature's decision to create a program for "unserved areas" lacking access to broadband. Under TCA's approach, in which the comptroller withdraws the proposed definitions, a replaced pole that is located in any unserved area, irrespective of the rurality of the area, is eligible for reimbursement under the program. But such a construction would render Government Code, §403.553(b) meaningless which courts disfavor. See *City of Rockwall v. Hughes*, 51 Sup. Ct. J. 349, 354 (Tex. 2008). It is also a basic tenet of statutory construction that the entire text of a statute is intended to be effective. See Government Code, §311.021(2). In addition, under the rules of statutory construction each sentence, clause, phrase and word is to be given effect, if possible. See *Moore v. Sabine National Bank of Port Arthur*, 527 S.W.2d 209, 212 (Civ. App.--Austin 1975, ref. n.r.e.). As a result, it cannot be the case that the comptroller may ignore rurality when considering program awards. While the comptroller disagrees with comments suggesting it may ignore rurality, it agrees that the language of the statute does not require the comptroller to restrict program eligibility in the proposed manner.

The comptroller is also mindful of additional comments from TCA that expressed concern that the geographical limits proposed by the comptroller painted with too broad a brush and argued in favor of changes that would expand the eligible areas to reduce the impact of the limits. TCA noted that while rural counties are necessarily rural areas, rural areas may exist in counties that have large cities or are adjacent to counties that have large urban areas. Therefore, TCA favored an approach that evaluated rurality based on project areas proposed by applicants seeking reimbursement. TEC and TTA similarly expressed concern that the proposed definition for "rural county" is overly restrictive. TEC and TTA particularly called out the restriction on eligibility for counties that are adjacent to counties with populations greater than 350,000. TEC noted that many counties that are adjacent to counties that have populations greater than 350,000 are decidedly rural in makeup. TTA echoed this comment, noting that the proposed definition would eliminate from consideration many counties that are sparsely populated. The comptroller acknowledges the concern that its proposed definition may be overly restrictive and may eliminate from consideration many areas that would otherwise be considered rural. To address this concern, instead of pursuing rurality as an eligibility criteria, the comptroller adopts §16.8 with a requirement for the office to prioritize applications based on rurality. Prioritizing rural areas implements Government Code, §403.553(b) stated purpose of "speeding the deployment of broadband to individuals in rural areas" without disqualifying applicants based on a rurality threshold. For the foregoing reasons, and in response to the comments, the comptroller withdraws the proposed definitions for "eligible county" and "rural county" and adopts §16.4 and §16.8 with changes.

TCA was critical of the proposed serviceability threshold contained in the proposed definition for "eligible county" for similar reasons. TTA also expressed reservations regarding inclusion of the proposed serviceability threshold noting that the threshold would eliminate many rural counties from participation in the program. In addition to the impact of the proposed serviceability threshold requirements, TCA noted the practical difficulty of using the criterion to determine eligibility due to ever-changing updates to the National Broadband Map and the impact of broadband grant awards under a wide variety of possible programs. TCA also advanced the opinion that excluding locations in counties would undercut the policy objective of expediting deployment to all unserved areas. Consequently, TCA urged the comptroller to not adopt the serviceability thresholds and withdraw the proposed definition for "eligible counties." Alternatively, TCA noted that limiting reimbursement under the program solely to projects in eligible counties long after the effective date of the statute would undermine substantial investments made by broadband providers in reliance on the program. TCA therefore suggested that if the comptroller proceeded with adopting the proposed eligibility criteria, the comptroller should only apply those changes to pole replacements made after the effective date of the amended rules. The comptroller disagrees with comments suggesting that it is exceeding its rulemaking authority. Under Government Code, §403.553(d), reimbursement of eligible pole replacement costs is limited to an "existing pole in an unserved area." And while the legislature provides a definition for "unserved area" as a location that lacks access to qualifying broadband, the definition leaves the scope of a such a location undefined and does not detail how the comptroller may determine that a location "lacks access" to qualifying broadband. See Government Code, §403.553(a)(4). Therefore, the comptroller believes that the proposed rule is a proper exercise of the comp-

troller's rulemaking authority in that it provides an objective standard for determining whether an area lacks access to qualifying broadband. However, the comptroller is sensitive to concerns that the proposed rule may be overly restrictive and negatively impact the program eligibility of otherwise eligible locations. Because the comptroller withdraws the proposed definition for "eligible county" that contains the serviceability thresholds, no additional change is needed in response to these comments.

TEC separately commented on the definition for "eligible county" expressing concern that the proposed definition continued to reference an out-of-date speed threshold for broadband service. TEC requested the comptroller amend the rule to reference the internet speed standards adopted by the Federal Communications Commission to track changes at the federal level without necessitating constant state rules changes in a quickly changing technological space. As TEC acknowledges, the comptroller does not have the authority to change the speed thresholds without a change in the statutory language. However, because the comptroller withdraws the proposed definition for the reasons previously discussed, the comptroller declines to amend the proposed rule based on this comment.

TTA additionally commented on the proposed definition of "eligible county" contained in §16.1(5) explaining that the definition creates ambiguity surrounding which state and federal grant programs would be considered by the office when evaluating area eligibility. TTA acknowledged that the proposed definition finds its genesis in statutory language but suggested that enumerating the state and federal programs would eliminate the ambiguity surrounding eligibility. The comptroller acknowledges this concern but notes that it withdraws the proposed definition for the reasons previously discussed. Therefore, the requested change is no longer necessary and the comptroller declines to make a change to the proposed rule based on this comment.

The comptroller received a single comment regarding application considerations contained in §16.3. TEC sought clarification on whether the BDO will evaluate applications on a first come, first served basis or take a different approach in its review. TEC recommended that applications received close in time to one another be competitively compared as opposed to a first-in first-out approach based on its concern that a first-in first-out approach would unduly favor applicants with greater resources and capabilities than smaller applicants. The comptroller believes that the specific evaluation criteria it will use to review applications should be left to individual notices of funding availability that will be issued at a later date. However, the comptroller anticipates that applications for reimbursement will be accepted during defined periods and will be rank-ordered based on evaluation criteria contained in any notices of funding availability. No change is needed in response to this comment.

The comptroller received a single comment regarding the negotiation requirements contained in §16.8. TEC requested the addition of clarifying language to explain the negotiation process in greater detail so that all applicants and affected third parties understand their roles and responsibilities. The comptroller agrees with this comment and adopts the rule with changes to §16.8 to clarify that the intended participants in the negotiation are the grant recipient and the office and a conforming change to §16.9.

The amendments are adopted under Government Code, §403.553(c), which requires the comptroller to prescribe rules for the Texas broadband pole replacement program.

The amendments implement Government Code, Chapter 403, Subchapter S, concerning infrastructure and broadband funding.

§16.1. Definitions.

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

(1) Applicant--A person that has submitted an application for a reimbursement award under this subchapter.

(2) Broadband serviceable location--A business or residential location in this state at which qualifying broadband service is, or can be, installed, including a community anchor institution.

(3) CCPF--The Coronavirus Capital Projects Fund (42 U.S.C. §804), established by §604 of the Social Security Act, as added by §9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(4) Eligible broadband facility--Has the meaning assigned by Government Code, §403.553(a)(1).

(5) Eligible pole replacement cost--Has the meaning assigned by Government Code, §403.553(a)(2).

(6) Grant recipient or Grantee--An applicant that receives a reimbursement award under this subchapter.

(7) Grant funds--Monies in the pole replacement fund.

(8) NOFA--Notice of Funding Availability.

(9) Office--The Broadband Development Office established within the comptroller's office under Government Code, Chapter 490I.

(10) Pole--Has the meaning assigned by Government Code, §403.553(a)(5).

(11) Pole owner--Has the meaning assigned by Government Code, §403.553(a)(6).

(12) Pole replacement fund--Has the meaning assigned by Government Code, §403.551(1).

(13) Pole replacement program--Has the meaning assigned by Government Code, §403.551(2).

(14) Qualifying broadband service--Has the meaning assigned by Government Code, §403.553(a)(3).

(15) Unserved area--Has the meaning assigned by Government Code, §403.553(a)(4).

§16.3. Notice and Applications.

(a) The office shall use one or more methods as necessary to provide notice of the availability of funds for award under this subchapter including publication in the *Texas Register* or on the *Electronic State Business Daily* website. The comptroller may make available a copy of the NOFA on the comptroller's website.

(b) The NOFA published under subsection (a) of this section may include:

(1) the total amount of grant funds available for reimbursement awards;

(2) the minimum and maximum amount of grant funds available for each application;

(3) limitations on the geographic distribution of grant funds;

(4) eligibility requirements;

- (5) application requirements;
- (6) reimbursement award and evaluation criteria;
- (7) the date by which applications must be submitted to the office;
- (8) the anticipated date of reimbursement awards; and
- (9) any other information the office determines is necessary for award.

(c) All applications for a reimbursement award submitted under this subchapter must comply with the requirements of Government Code, §403.553(g), and any requirements contained in a NOFA published by the office.

(d) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically.

(e) The office may require applicants to submit preliminary information to the office prior to submitting a completed application for a reimbursement award to enable the office to determine each applicant's eligibility to apply for a reimbursement award and to compile aggregate information that applicants may use in determining whether to complete the application process.

(f) During the review of an application, an applicant may be instructed to submit to the office additional information necessary to complete the review. Such requests for information do not serve as notice that the office intends to fund an application.

§16.4. Program Eligibility Requirements; Eligible Applicants; Costs.

(a) The office may award grant funds for actual and reasonable costs paid or incurred by an eligible applicant to remove and replace a pole in an unserved area.

(b) An applicant is eligible to apply to the office for a reimbursement award under this subchapter if the applicant:

- (1) is a pole owner or a provider of qualifying broadband service;
- (2) pays or incurs eligible pole replacement costs of removing and replacing an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility; and
- (3) otherwise meets eligibility criteria in a NOFA published under §16.3 of this subchapter.

(c) Eligible costs include the amount of any expenditures to remove and dispose of the existing pole, purchase and install a replacement pole, and transfer any existing facilities to the new pole.

(d) Costs that an applicant incurs that have been or will be reimbursed to the applicant by another party ultimately responsible for the costs are not eligible for reimbursement under this subchapter.

(e) An award under this subchapter may not exceed:

- (1) The lesser of 50% of the eligible pole replacement costs paid or incurred by the applicant or \$5,000, whichever is less, for the pole replaced; plus
- (2) the documented and reasonable administrative expenses incurred by the applicant in preparing and submitting the reimbursement application.

(f) The amount reimbursed under subsection (e)(2) of this section may not exceed 5.0% of the eligible pole replacement costs in the application.

§16.8. Reimbursement Awards.

(a) The office shall make a determination and provide notice of a reimbursement award or a notice of denial to an applicant not later than 60 calendar days after the date that the office receives a completed application from the applicant. An application will not be considered complete for purposes of this section unless an applicant has provided all the information necessary for the office to review the application, including any additional information requested by the office to complete the review.

(b) The office shall prioritize, and may give preference to, applications for pole replacement costs for poles located in rural areas.

(c) All grant funding decisions made by the office are final and are not subject to appeal.

(d) The approval of a reimbursement award shall not obligate the office to make any additional, supplemental, or other reimbursement award.

(e) The office shall provide notice of award to a successful applicant and, as applicable, the pole owner and the retail broadband service provider attaching the eligible broadband facility.

(f) After receiving notice of award, a grant recipient shall have 30 calendar days from receiving the notice of award to negotiate the terms of the grant agreement between the grant recipient and the office and to sign the grant agreement. The comptroller may extend the deadline to fully execute the grant agreement upon a showing of good cause by a grant recipient. If the grant agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award of the grant agreement or the extended deadline date, the office may rescind the award.

(g) The office shall issue the award after the grant agreement is fully executed by the grant recipient and the office.

§16.9. Payment.

A reimbursement award must be paid to a grant recipient not later than 30 calendar days after the date the office issues an award under §16.8(g) of this subchapter.

§16.10. Requirements.

(a) The administration and use of a reimbursement award are subject to:

- (1) the terms and conditions of the reimbursement award;
- (2) the requirements of Government Code, Chapter 403, Subchapter S; and
- (3) any other state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award.

(b) Grant funds may be used only for the purpose of supporting the pole replacement program, including the costs of program administration and operation.

(c) A grantee is the entity legally and financially responsible for compliance with state and federal laws, rules, regulations, and guidance applicable to the reimbursement award.

(d) Grant funds shall not be used for costs that will be reimbursed by any other federal or state funding source. The office may require an applicant/grantee to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the pole replacement program.

§16.12. Noncompliance.

(a) If the office has reason to believe that a grantee has violated any term or condition of a reimbursement award or any applicable laws,

rules, regulations, or guidance relating to the reimbursement award, the office shall provide written notice of the allegations to the grantee and provide the grantee with an opportunity to respond to the allegations.

(b) If the office finds on substantial evidence that a grantee has materially violated the requirements of Government Code, §403.553, with respect to reimbursements or portions of reimbursements, the office may direct the grantee to refund the reimbursement or a portion of the reimbursement with interest at the applicable federal funds rate as specified by Business and Commerce Code, §4A.506(b).

(c) If the office finds that a grantee has failed to comply with any term or condition of a reimbursement award, or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, other than the requirements described in subsection (b) of this section, the office may:

- (1) direct the grantee to refund the reimbursement award or a portion of the reimbursement award;
- (2) withhold reimbursement award amounts to a grantee under this subchapter pending correction of the deficiency;
- (3) disallow all or part of the cost of the activity or action that is not in compliance;
- (4) terminate the reimbursement award in whole or in part;
- (5) prohibit the grantee from being eligible for future reimbursement awards under the pole replacement program; or
- (6) exercise any other legal remedies available at law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 341. GENERAL STANDARDS FOR JUVENILE PROBATION DEPARTMENTS

SUBCHAPTER B. JUVENILE BOARD RESPONSIBILITIES

37 TAC §341.204

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §341.204 (concerning residential placement) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1416). The amended section will not be republished.

SUMMARY OF CHANGES

The amendments to §341.204 add that: (1) a juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with related standards; and (2) TJJD will maintain a list of pre-approved facilities.

The amendments to §341.204 also: (1) add that, if the facility is not on the list of pre-approved facilities, the juvenile board or juvenile probation department must request approval from TJJD and submit any information TJJD needs in order to make a determination under this provision; and (2) note that a given subsection does not apply to facilities registered with TJJD.

PUBLIC COMMENTS

TJJD received a public comment from Disability Rights Texas.

Comment: Regarding subsection (c) about placement in a facility constructed or previously used for adult offenders, the language should be amended to clearly state that juveniles will not be placed in a retrofitted facility until TJJD has determined that the facility has been appropriately retrofitted to comply with TJJD standards.

Response: The rule text states "A juvenile board or juvenile probation department may contract with a facility that was constructed or previously used for the confinement of adult offenders only after TJJD has determined the facility has been appropriately retrofitted to comply with TJJD standards related to facilities." TJJD believes this language meets the intent of the comment, as the no contract for the placement of youth would be able to be executed until TJJD made a determination of compliance with TJJD standards. No youth would be placed in a facility until a juvenile board or juvenile probation department had the authority and contract to do so.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also adopted under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.206

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §343.206 (concerning certification and registration of facility) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1417). The amended rule will not be republished.

SUMMARY OF CHANGES

The amendments to §343.206 add that: (1) TJJD will not register a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with related standards; and (2) a juvenile who has been committed to TJJD and is awaiting transport to a TJJD facility may be housed in a post-adjudication secure facility in a bed that is designated as a pre-adjudication bed or dually-designated as a pre-adjudication bed or a post-adjudication bed.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also adopted under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 344. EMPLOYMENT, CERTIFICATION, AND TRAINING

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §344.360 (concerning disclosure and review of applicant's prior history), §344.370 (concerning review by TJJD regarding eligibility for certification), and §344.690 (concerning credit for training hours for military service members, spouses, and veterans) and adopts amendments to 37 TAC §344.110 (concerning interpretation and applicability), §344.200 (concerning general qualifications for positions requiring certification), §344.202 (concerning general qualifications for faculty administrators), and §344.866 (concerning certification status) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1418). The new and amended rules will not be republished.

TJJD also adopts amendments to 37 TAC §344.204 (concerning education requirements) with changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1418). The amended rule will be republished.

BACKGROUND AND JUSTIFICATION

The new amendment to §344.204 explains that a department or facility may submit documentation to establish that a state agency in Texas or licensing entity in Texas has accepted a foreign high school diploma as sufficient to meet an employment or licensing requirement to have a high school diploma. The new amendment also explains that TJJD will determine whether the diploma is sufficient to meet the certification criterion related to having a high school diploma.

SUMMARY OF CHANGES

The amendments to §344.110 add that the requirements in this chapter are not subject to a waiver or variance except as provided in this chapter.

The amendments to §344.200 delete: (1) the phrase *be of good moral character* from the general requirements for certification as a juvenile probation officer, juvenile supervision officer, and a community activities officer; and (2) the phrase *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for certification as a juvenile supervision officer.

The amendments to §344.202 delete the phrase *possess the work experience or graduate study required elsewhere in this chapter* from the general requirements for facility administrators.

In addition to the new amendment listed above, the amendments to §344.204: 1) clarify that to be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board; 2) add that a new subsection ("Waiver of Education Requirement for Military") applies only to a person who is a military service member or military veteran who does not have a high school diploma or equivalent and who holds a current license issued by another jurisdiction for a position that is similar and with licensing requirements that are similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer; and 3) add that a department or facility that wishes to hire a military service member or military veteran in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED.

The new §344.360 states that: 1) a department or facility must require every applicant for any position to complete a TJJD form that requires the applicant to disclose and provide additional in-

formation as given in the rule text; 2) prior to making an offer to allow an applicant who disclosed additional information in order to begin employment or provide services in a position requiring certification or for which certification is optional and will be sought, the department or facility must perform certain actions as given in the rule text; 3) a request for review is required only if the department or facility wants to employ, contract with, or accept the individual as a volunteer; 4) prior to making an offer to allow an applicant who disclosed additional information to begin employment or provide services in a position not requiring certification or for which certification is optional but will not be sought, the juvenile board or designee shall review the information received and consider if the person is appropriate to work in the role; 5) a written record of the review must be maintained, including the name of the person(s) conducting the review, the date of the review, and the final decision; and 6) an applicant's failure to disclose the requested information is considered a violation of the Code of Ethics and may result in termination of employment, ineligibility for certification, or revocation of certification.

The new §344.370 states that: 1) upon receipt of the request for review, TJJJ will review the submitted information, seek additional information if warranted, and determine if the person should be denied a certification; 2) TJJJ shall notify the person of its decision and of the opportunity to appeal that decision to the executive director; and 3) upon receipt of an appeal, the executive director review the matter and determine if the certification should be denied.

The new §344.690 states that: 1) the given subsection applies only to a person who is a military service member, military veteran, or military spouse under certain conditions; 2) TJJJ may grant credit toward required training hours based on the person's verified military service, training, or education that is directly relevant to the position for which certification is sought; 3) no credit will be given for certain topics required elsewhere in the chapter; 4) the department or facility that employs a person described earlier may submit an application to TJJJ for possible credit; and 5) an individual to whom this section applies is also eligible to receive credit as otherwise provided by this chapter, as applicable.

The amendments to §344.866 add subsections for two new certification statuses: provisional and ineligible.

PUBLIC COMMENTS

TJJJ received public comments from Disability Rights Texas.

Comment: The language in §344.200 and §344.360 does not clearly indicate that TJJJ will conduct a criminal history background check or what type of check shall be conducted. Language should be added to mandate a national criminal history background check be conducted prior to employment.

Response: Section 344.300 directly addresses criminal history checks and was not modified as part of this rulemaking action. TJJJ requires a fingerprint-based criminal history check through the Fingerprint-Based Applicant Clearinghouse of Texas (FACT), which includes national criminal history information and real-time notification of new criminal activity. TJJJ believes Section 344.300 meets the intent of the comment.

Comment: Language should be added to §344.866 to clarify what provisional status means in terms of the tasks that would be prohibited or conducted with close supervision while on provisional status.

Response: This section just defines types of statuses we have, and provisional is a new status allowed by statute. TJJJ promul-

gates standards that require training before a person can provide direct supervision as well as a time limit to complete training in order to become certified. The proposed certification status does not alter these requirements, but instead designates the time period that exists before a person completes the requirements receives certification. This allows the certification to be revoked during the new provisional status, if warranted.

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §344.110

STATUTORY AUTHORITY

The amended section is adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJJ to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJJ.

The amended section is also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJJ and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJJ to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJJ to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §344.200, §344.202

STATUTORY AUTHORITY

The amended sections are adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended sections are also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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37 TAC §344.204

STATUTORY AUTHORITY

The amended section is adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended section is also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible

for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

§344.204. Education Requirements.

(a) Juvenile Probation Officer. To be eligible for certification as a juvenile probation officer, an individual must have acquired a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(b) Juvenile Supervision Officer and Community Activities Officer.

(1) Except as provided by subsection (c) of this section, to be eligible for certification as a juvenile supervision officer or community activities officer, an individual must meet one of the following educational requirements:

(A) a diploma from a high school accredited by a generally recognized accrediting organization or from a high school operated by the United States Department of Defense. TJJD considers the following entities as generally recognized accrediting organizations:

(i) the Texas Education Agency or the equivalent agency in another state;

(ii) an entity approved by the Texas Private School Accreditation Commission; and

(iii) regional accreditation organizations such as:

(I) Middle States Association of Colleges and Schools;

(II) New England Association of Schools and Colleges;

(III) North Central Association of Colleges and Schools;

(IV) Northwest Accreditation Commission;

(V) Southern Association of Colleges and Schools; and

(VI) Western Association of Schools and Colleges;

(B) a high school equivalency certificate (e.g., GED) issued by the Texas Education Agency or equivalent agency in another state;

(C) a diploma or certificate of completion issued in a homeschool setting;

(D) a United States military record that indicates the education level received is equivalent to a United States high school diploma or high school equivalency certificate;

(E) a foreign high school diploma that meets the validation requirements established in §344.206 of this chapter; or

(F) unconditional acceptance into a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board.

(2) A department or facility may attempt to establish that an entity not listed in paragraph (1)(A) of this subsection is a generally recognized accrediting organization by submitting supporting documentation to the TJJD certification office. Based on the documentation, TJJD will determine whether the entity is a generally recognized accrediting organization.

(3) Notwithstanding paragraph (1)(E) of this subsection, a department or facility may submit documentation to establish that a state agency in Texas or licensing entity in Texas has accepted a foreign high school diploma as sufficient to meet an employment or licensing requirement to have a high school diploma. TJJD will determine whether the high school diploma is sufficient to meet the certification criterion related to having a high school diploma.

(c) Waiver of Education Requirement for Military.

(1) This subsection applies only to a person who is a military service member or military veteran as those terms are defined in Chapter 55, Occupations Code who does not have a high school diploma or equivalent and holds a current license issued by another jurisdiction for a position that is substantially similar and with licensing requirements that are substantially similar to TJJD's certification requirements for a juvenile supervision officer or community activities officer, as determined by TJJD.

(2) A department or facility that wishes to hire a person described by paragraph (1) of this subsection in a position requiring certification as a juvenile supervision officer or community activities officer may request a waiver of the requirement that the person have a high school diploma or GED. The request must be submitted to TJJD's certification office on a form prescribed by TJJD and must include sufficient information regarding the person's credentials and experience to allow TJJD to determine if a waiver of the education requirement should be granted. Incomplete submissions may result in a denial of the waiver.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones

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SUBCHAPTER C. CRIMINAL HISTORY AND BACKGROUND CHECKS

37 TAC §344.360, §344.370

STATUTORY AUTHORITY

The new sections are adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule

requiring that an individual be of good moral character to qualify for certification from TJJD.

The new sections are also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. TRAINING AND CONTINUING EDUCATION

37 TAC §344.690

STATUTORY AUTHORITY

The new section is adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The new section is also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible

for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

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SUBCHAPTER G. CERTIFICATION

37 TAC §344.866

STATUTORY AUTHORITY

The amended section is adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The amended section is also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJD to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with

TJJD for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure.

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Jana L. Jones

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SUBCHAPTER B. QUALIFICATIONS FOR CERTIFICATION AND EMPLOYMENT

37 TAC §344.210, §344.220

The Texas Juvenile Justice Department (TJJD) adopts the repeal of 37 TAC §344.210 (concerning work experience) and §344.220 (concerning exemptions from required work experience or graduate study) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1424). The rules will not be republished.

SUMMARY OF CHANGES

Sections 344.210 and 344.220 are repealed as corresponding changes to the removal of the requirement that a person have one year of specific full-time work experience or one year of graduate study in order to be certified as a juvenile probation officer.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The repeals are adopted under §57 of SB 1727, 88th Legislature, Regular Session, which requires TJJD to repeal any rule requiring that an individual be of good moral character to qualify for certification from TJJD.

The repeals are also adopted under the following: 1) §221.002(a)(3), Human Resources Code, which requires the Board to adopt reasonable rules that provide appropriate educational, preservice, and in-service training and certification standards for probation and detention officers or court-supervised community-based program personnel; §222.001(b-1), Human Resources Code, which requires the department by rule to establish, with input from the advisory council on juvenile services and other relevant stakeholders, the minimum education and experience requirements a person must meet to be eligible for a juvenile probation officer certification; §222.0521, Human Resources Code, which provides that Chapter 53, Occupations Code, applies to the issuance of a certification issued by TJJD and Chapter 53, Occupations Code, requires agencies that issue occupational licenses to make certain rules related to military service members, military veterans, and military spouses; §222.0522, Human Resources Code, which authorizes TJJD to issue a provisional certification until a person is certified under §222.001, 222.002, or 222.003 and requires TJJD to adopt

rules regarding provisional certifications; and §§222.053 and 222.054, Human Resources Code, which authorize TJJJ to designate as ineligible for certification persons with provisional certifications and persons terminated from employment with TJJJ for certain reasons and to issue temporary ineligibility orders in accordance with a specified procedure;

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General Counsel

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CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Justice Department (TJJJ) adopts new 37 TAC §§349.600, 349.650, and 349.700, concerning advisory council on juvenile services and data, without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1425). The new rules will not be republished.

SUMMARY OF CHANGES

The new §349.600 includes a list of the overarching subjects on which the Advisory Council on Juvenile Services is meant to advise the Texas Juvenile Justice Board and explains that the goal of the advisory council is to provide actionable, direct, and inclusive feedback from the local perspective to TJJJ and its Board.

The new §349.600 also includes a description of the composition of the advisory council, the length of terms, and training received; a description of how vacancies that occur during a member's term are filled; an explanation of what constitutes a quorum; information pertaining to ex officio members; an explanation that the appearance of conflicts of interest should be avoided; a description of updates the advisory council's presiding officer provides to the Board; and an explanation of the statutes the advisory council is and is not subject to.

The new §349.650 explains that it is a ground for removal from the advisory council if a member is absent from more than half of the regularly scheduled meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

The new §349.700 explains that, for planning and research purposes, all juvenile probation departments participating in the state's regionalization plan are authorized to access data that any participating departments have submitted through the case management system.

PUBLIC COMMENTS

TJJJ did not receive any public comments on the proposed rule-making action.

SUBCHAPTER F. ADVISORY COUNCIL ON JUVENILE SERVICES

37 TAC §349.600, §349.650

STATUTORY AUTHORITY

Sections 349.600 and 349.650 are adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new sections are also adopted under §203.0081, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the Board to adopt general rules on the Advisory Council's purpose and procedures, updates the Advisory Council's membership to include the Department of Family and Protective Services, and requires the Advisory Council to make recommendations on sharing information with other child-serving agencies.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones

General Counsel

Texas Juvenile Justice Department

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For further information, please call: (512) 490-7278



SUBCHAPTER G. DATA

37 TAC §349.700

STATUTORY AUTHORITY

Section 349.700 is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJJ's functions and to adopt rules for governing TJJJ schools, facilities, and programs.

The new section is also adopted under §203.017, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJJ to create a regionalization plan.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES

SUBCHAPTER E. FACILITIES

37 TAC §351.49

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §351.49 (concerning retrofitted adult facilities) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1427). The new rule will not be republished.

SUMMARY OF CHANGES

The new §351.49 explains that, before a short-term detention facility accepts residents, the juvenile board in the county where the facility is located must ensure the facility has been approved by TJJD. It also explains that TJJD will not approve a facility that was constructed or previously used for the confinement of adult offenders unless TJJD determines the facility has been appropriately retrofitted to comply with certain standards.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The new section is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also adopted under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 355. NON-SECURE CORRECTIONAL FACILITIES

SUBCHAPTER B. APPLICABILITY AND GENERAL PROVISIONS

37 TAC §355.206

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §355.206 (concerning certification and registration of facility) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1428). The amended rule will not be republished.

SUMMARY OF CHANGES

The amendments to §355.206 add that a juvenile board may use or contract with a non-secure correctional facility that was constructed or previously used for confinement of adult offenders if the juvenile board can document and TJJD can verify that the facility is appropriately retrofitted to adhere to applicable standards.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rule-making action.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also adopted under §203.018, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which allows probation departments and TJJD to use facilities previously constructed or used for adult offenders, if TJJD determines the facility is appropriately retrofitted to meet youth-specific standards.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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