

Sections 827.31, 827.33, 827.34 Communities In Schools

The Texas Workforce Commission (Commission) adopts amendments to §§ 827.31 and 827.33 and new §827.34 concerning the funding of Communities In Schools (CIS) local programs. Sections 827.31, 827.33 and 827.34 are adopted with changes to the proposed text as published in the May 7, 1999, issue of the *Texas Register* (24 TexReg 3464).

The purpose of the amendments and new rule is to apply the same allocation for the CIS program used in fiscal year 1999, to fiscal year 2000. The purpose of the amendments and new rule is also to ensure that the CIS program operates on a statewide basis to fulfill the CIS program's mission. The CIS program's mission is to ensure that at-risk youth throughout the state have access to this much needed and worthwhile program that helps young Texans stay in school, and successfully learn and prepare for life by coordinating the connection of needed community resources in the school setting. The specific allocation amounts will be determined during the budgetary process of the Commission based on the factors set forth in these rules and applicable appropriations to the program.

Background. On April 20, 1999, the Commission approved the proposal of only the amendments necessary to extend the existing allocation rule for fiscal year 1999 to fiscal year 2000. The purposes of the proposed amendments are as follows: §827.31 sets forth the factors used for allocating Compensatory Education Funds for the CIS program; §827.33 sets forth the factors used for allocating Temporary Assistance to Needy Families (TANF) funds for the CIS program; and new §827.34 is added to set forth the factors used for allocating any other funds that may become available for use in administering the CIS program.

Under Senate Bill 1574, 76th Legislative Session, several programs, including the CIS program, for at-risk children and their families were transferred and consolidated under the Preventive and Early Intervention Services Division of the Texas Department of Protective and Regulatory Services (Department), including but not limited to the CIS program. In light of this consolidation of programs and the resulting transfer of the CIS program to the Department, the Commission has engaged in communication with the Department to receive comment on the proposed amendments.

The Commission held a public hearing on June 29, 1999, in room 244 of the TWC Building at 101 East 15th Street, Austin, Texas, to receive comments on the proposed amendments. Comments were received during the comment period and at the public hearing from the following persons or entities: four senators; two representatives; the executive director of the Texas Department of Protective and Regulatory Services;

and several CIS program executive directors, chairs, and board members including representatives from Central Texas, Golden Crescent, Comal County, Permian Basin, Northeast Texas, South Plains, Baytown, Denton County, McLennan County, Dallas, Greater Fort Hood Area, and Corpus Christi.

Several commenters, including several Texas state senators and representatives, were in favor of freezing the funding levels at the fiscal year 1999 levels, which would provide a stable financial environment for CIS programs during their transition to the Department and would allow the Department the opportunity to make changes consistent with its legislative direction shortly after receiving the program. One Senator requested that we continue funding for the CIS of the Permian Basin at \$225,000 for the next three years to give the new program time to allow the good work of the past Spring to solidify and expand. Some commenters presented opposition to some sections of the proposed rules, suggested alternate funding formulas and requested that a reduction not be applied to the programs. Others were opposed to the amendments and suggested freezing the funding at the levels that existed in the beginning of fiscal year 1999 or that the programs receive at least the amounts allocated for the prior year.

The executive director of the Department provided two comments on the proposed rules. The first comment from the Department, dated June 18, 1999, indicated, in part, that since the CIS program would be transferring to the Department effective September 1, 1999, that the Department would prefer not to have a major shift in funding at the same time the programs are transferring.

The second comment from the Department, dated June 29, 1999, indicated that the Department's proposal would be to freeze all CIS contracts at the funding levels initially allocated for fiscal year 1999 and extending the contracts at that level through December 31, 1999. This would give the board of the Department time to develop a new funding formula, adopt rules and execute resulting contracts to begin January 1, 2000.

Response to Comments: Based on these comments and review of all other comments, the Commission agrees that the minimum action needed to ensure that there is a smooth transition of the program to the Department is appropriate. To accomplish the smooth transition, the Commission agrees with the comments that requested the funding levels be maintained at the levels applicable for the beginning of fiscal year 1999. Because of the recent action of the Legislature to transfer the program, the need for a stable transfer period, and the need to allow the Department time to develop a new funding formula, adopt rules and execute resulting contracts to begin January 1, 2000, the Commission does not agree with the other requested changes.

Changes: In response to comments and to allow the Commission to make no significant changes to the allocations for both last year's "continuation programs" and "replication programs," and to make the rule applicable only for the period of time necessary until the Department can develop a new funding formula, adopt rules and execute resulting contracts to begin January 1, 2000, the following changes are incorporated. References to "1997" were clarified to "fiscal year 1997."

Regarding §827.31, except for the references to "For FY99" contained in subsections (d) and (e), the proposed amendments to §827.31(a)(2), (b)(2), (c), (d)(2), and (e) will not be made; the date "August 31, 1995" in subsections (c) and (d) are changed to "fiscal year 1997"; the proposed amendments to subsection (f) are adopted; and §827.31 is amended by adding subsections (g) and (h) to read as follows:

(g) Notwithstanding subsections (a) - (f) of this section, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated for fiscal year 1999 to the replication programs of fiscal year 1999.

(h) This section shall expire December 31, 1999.

Regarding §827.33, in subsection (c), except for the reference "For FY99," and the change of the reference "August 31, 1995" to "fiscal year 1997," the proposed amendments will not be made. Section 827.33 is further amended by adding subsections (d) and (e) to read as follows:

(d) Notwithstanding subsections (a) - (c) of this section, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated to the replication programs of fiscal year 1999.

(e) This section shall expire December 31, 1999.

Regarding §827.34, this section is revised by adding subsections (d) and (e) to read as follows:

(d) Notwithstanding subsections (a) - (c) of this section and other provisions of this Chapter 827 relating to Communities in Schools, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds

allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated to the replication programs of fiscal year 1999.

(e) This section shall expire December 31, 1999.

The specific comments received are summarized as follows. The response as detailed herein applies to all of the comments received.

One commenter recommended not reapplying the funding formula and holding funding at the current level.

The commenter asserted that the formula increases funding for a few sites and drastically reduces funding for other sites and that continued application of the formula will increase the disparity. The commenter asserted that the formula does not fulfill the intent of decreased reliance of local programs on state funds. The commenter further asserted that the spirit of the law behind the formula is to increase the total number of students served by expansion to new areas, but that the number served will decrease as some programs will close as a result of a second funding cut. The commenter suggested that it is more efficient to sustain an existing program than to expand to additional areas. The commenter referenced comments by the Commission that the current formula would be applied for one year. The commenter asserted that the definition of "at-risk student" has changed and use of the old definition results in an undercount of students.

The commenter asserted that the current formula is flawed because school districts may report at-risk students differently, that the definition of at-risk students used does not identify all students who are actually at risk, and that the formula uses property values for an entire area while CIS typically focuses its services on lowest income neighborhoods. The commenter referenced numerous criteria suggested for determining local financial resources and asserted that the two factors used in the formula give a flawed picture of the level of need and the financial resources in the area.

One commenter asserted that the funding formula is inadequate for a new replicated program to build a foundation and be prepared to assume a larger local financial role. The commenter suggested more money go to new programs being replicated and decreased funding go to expansions and continuing programs, that suggested that expansions be determined by the number of children in a program and continuation of a program be based on achievement of outcomes. The commenter asserted that time is needed to develop partnerships, that seed money is necessary to insure success, and that the growth of CIS is dependent on equitable funding opportunities provided by Commission partners. The commenter further stated that funding should be open,

easily understood and fair, and that possible contingencies for emergencies, replications, or expansions as the year progresses could be built into the system.

One commenter referenced the preamble to the rules which states that there are not anticipated economic costs to persons required to comply with the rules, and contended that this is untrue and that the CIS program represented by the commenter will suffer a loss of 28% in the first year the formula is in effect. The commenter asserted that the formula negatively impacts 16 of the 22 operational CIS programs in Texas and that it is not equitable because it adversely impacts smaller communities and favors urban programs. The commenter further asserted that legislative funds are critical to the continued viability of programs in rural areas, which have a dearth of available corporate donors or funding sources.

One commenter encouraged full funding of the CIS program in the area represented by the commenter for three years and noted that the current funding formula has a negative effect on that area. The commenter stated that approximately 2,100 students are considered to be at-risk students in the two school districts in the respective area.

One commenter explained the progress of a new CIS program implemented during the past year and requested that the first year's funding be continued for three years and, further, that additional funds be considered as the needs for the program expand. The commenter asserted that the funding formula negatively affects the new agency, citing the rule related to new programs. The commenter indicated that the number of students served determines the allocation, and noted that this program began operations during the last week of the school year.

Sixteen commenters referenced §§827.31 and 827.33 of the rules and asserted that these rules will negatively affect the CIS program represented by the commenters by reducing funding in a manner that is not equitable to all programs across the state. Seventeen commenters referenced wording in the legislation that the funding formula must be equitable. The seventeen commenters cited loss of funding for the local programs since 1995 and an increase in number of students served and contended that any further funding cuts will impact the ability to continue functioning. The seventeen commenters stated that the local programs have received outside funding, and one commenter asserted that there are few significant resources for continued funding as are available in urban areas. One of the commenters expressed concern that the formula would harm smaller rural programs and referenced involvement with the local program and the progress made.

One commenter referenced the Texas Education Code definition of at-risk students and contended that there are other factors that could cause a student to be at risk of dropping out of school, particularly those relating to socioeconomic conditions. The

commenter also asserted that local resources should be considered in the funding formula and that rural areas do not have access to the resources available in urban areas. The commenter cited accomplishments of the local program that the commenter represents in meeting contracted numbers yet experiencing a decrease in funding, and contended that an inequitable cut in funding resulted in the inability of the program to maintain adequate service provision at all sites and does not allow for expansion. The commenter cited statistics of the local area, the desire for a Youth Services Coordinator for each campus, and the students' need for local support and recognition of opportunities. The commenter further asserted the need for summer activities in the rural area and the necessity of reducing the service level of these activities as a result of a decrease in funding.

One commenter recommended a substitute for the proposed funding formula.

One commenter expressed concern with the potential negative impact of any formula, particularly on new programs, and questioned if a program which began in April should be held to the same results in terms of the number served as programs that started September 1. The commenter cited the challenges faced by the program the commenter represents, and recommended that programs which began in 1997 and afterward be given two to five years to build community-based funding before being subject to a reduction based on the number of students served. The commenter recommended criteria for evaluating a new program including: meeting goals, a plan for procuring additional funding, a vision for the future, the number of students being served, focus on providing service to the campus, perception of the state office and other executive directors of the new program's future, and the leadership of the new program. The commenter stated the strengths of the local programs and contended that a reduction in funding would be detrimental to continued service.

One commenter presented information from the local area represented by the commenter, including accomplishments of the program, program activities, potential for expansion, and other funding sources. The commenter contended that the formula is based on density of the at-risk population instead of percentage and that this is a disadvantage to smaller communities. The commenter asserted that local industries are allowed to contribute up to \$3,000 locally and that corporate funding is allocated to larger cities. The commenter requested the rules be changed to an equitable funding formula, no funding cuts, and that expansion funds become a request for proposal (RFP) process.

One commenter contended that the formula is an unfair distribution of funds and that an impact analysis should have been conducted. The commenter noted that the formula takes into consideration the total number of at-risk students in a district but not the number of schools CIS programs serve in the district. The commenter cited

challenges faced by the program the commenter represents, including: not having had the opportunity for expansion, the need to close school sites if funding is further reduced, and the smaller programs being rural in nature and having limited resources. The commenter cited concerns with the previous funding distribution, including: larger programs receiving increases in funds when they have numerous contributors, smaller rural programs not having access to corporate donors and experiencing funding reductions, programs receiving funds for expansion without assurance of the continued funding level, and insufficient expansion funding being offered to smaller programs to open a new school. The commenter suggested that the additional appropriated TANF funds be distributed among the programs that lost funding last year.

One commenter asserted that the funding formula is inequitable, particularly as it impacts the smaller programs. The commenter explained that the program represented by the commenter reduced personnel as a result of the previous allocation and will probably close sites if funding is further reduced. The commenter explained the structure and policy of the local organization, which limits fund-raising activities. The commenter suggested the stop-loss calculation that is applied to the Compensatory Education funding could also be applied to temporary assistance to needy families (TANF) funding, and that the funding could be based on the number of students served with a fixed amount of funds received for each case-managed student.

Two commenters stated their position as no change in the current funding formula as stated in the rules. The commenters also recommended no further reduction of allocations in the upcoming fiscal year.

One commenter cited the loss in funds in fiscal year 1999 for the program the commenter represents and attributed this to an inequitable funding formula. The commenter further cited the results of expansion funds made available in fiscal year 1999 and asserted that the program cannot continue the expansion site without the continuation of those funds. The commenter requested: no decrease in funding for the year 2000, the Department be given the option to review and make allocations using an equitable formula, expansion funds awarded in 1999 be included in the allocation for 2000, discontinuation of replication during the first year of the biennium, and that programs be awarded funds in proportion to the number of students they serve.

One commenter questioned how the local program could continue to serve the number of students and families it has successfully served if funding is reduced and asserted that the proposed formula is not equitable. The commenter urged consideration of the impact the formula will have on the program represented by the commenter. The commenter referenced legislation that describes any funding formula as equitable and

also referenced the comments of lawmakers concerning the cost of incarcerating prison inmates, 91% of whom did not graduate from high school.

One commenter expressed concern about the current allocation formula which cuts funding to smaller programs and asserts that the need is as great as in metropolitan areas, although the number of at-risk students may not be as high. The commenter urged the Commission to develop a more equitable funding formula that will not penalize non-metropolitan programs.

One commenter requested the funding formula be reviewed for change, asserting that small programs have lost funding through the years while larger programs have gained funds. The commenter contended that the formula is inequitable and that the program represented by the commenter has lost staff positions and increased the responsibilities of remaining staff, has been unable to expand to other sites needing services, that approximately 86% of the local population receives public assistance, and that social ills exist in the community. The commenter further requested that no funding cuts take place in the year 2000 as that would cause the local program to have to close sites, and suggests that large programs should share funds equally so that small and medium programs can expand. The commenter further asserts that funds for expansion should be made available through an RFP process.

One commenter cited the implementation activities of the program represented by the commenter and expressed concern that the program would be penalized because of beginning operation during the last week of school. The commenter requested that the local program be granted the same amount of funding for the next three years and expressed hope that funding would increase as the program grows.

One commenter asserted that it would be contrary to legislative intent for the Commission to promulgate rules for a program that will be under the jurisdiction of another state agency in less than 90 days. The commenter also suggested that the rule may be detrimental to new programs because funding is linked to the number of students served, and some new programs have not been in existence long enough to have actually served all of the students they plan to serve.

One commenter suggested that the main purpose of the proposed changes is to allow for the use of updated information from the Comptroller, and requested the opportunity to review the impact of the use of the new information to determine if there is major impact to local programs prior to making final comments on the rules. The commenter stated a preference not to have a major shift in funding at the same time the program is transferring to the Texas Department of Protective and Regulatory Services.

One commenter asserted any rulemaking concerning the program should be deferred to the Department once it is formally under their jurisdiction unless there is an immediate and compelling emergency concerning a lapse in funding for CIS programs prior to the transfer date of September 1, 1999.

One commenter described the status and vision of the new program which the commenter represents and requested consideration for additional funding over the next two to five years.

One commenter expressed hope that the Commission and Department could work out a formula that would not cut programs, that would be equitable, and that would be a consensus product.

One commenter expressed the need for the funding formula to be as equitable as possible and that that was the intent behind the legislation, and expressed expectation that the Commission would work closely in conjunction with local CIS programs and the Department in developing the formula. The commenter expressed assurance that the Commission had been made aware of several inequities in the current formula and disparities in funding some of the local programs.

One commenter referenced the reduction in funds experienced by the program the commenter represents, stated that the program has leveraged local dollars from a wide variety of sources, and asserted that the program is in a rural county with few local resources in industry and business and few additional dollars remaining for support. The commenter asserted that another decrease in funding as a result of the proposed funding formula would impact the ability of the program to serve students and would result in the necessity to close at least one current campus which would affect 100 children.

The new rule and amendments to the rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§ 827.31. Compensatory Education Funds.

(a) The state will retain an amount, to be determined by the Commission, for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive Request for Proposal process using the following criteria:

(1) the relative number of at-risk students in the local workforce development area compared to the number of at-risk students in the local workforce development areas of the state that are not served by a participating CIS program, and

(2) the local financial resources in the local workforce development area, defined as the area's total taxable property value in 1996 as determined by the Comptroller's Property Tax Division, divided by the total number of students in the area in 1996-1997.

(b) In the absence of responsive bids in the Request for Proposal process, funds not awarded may be allocated to contracted CIS programs for expansion based on the following criteria:

(1) the relative number of at-risk students in the school districts served by the respective program compared to the number of at-risk students in all school districts served by CIS, and

(2) the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined in 1996 by the Comptroller's Property Tax Division.

(c) Funds not awarded for replication or expansion will be distributed to the CIS programs existing as of fiscal year 1997, as outlined in subsection (d) of this section.

(d) The Commission will allocate an amount of Compensatory Education Funds, to be determined by the Commission, among CIS programs existing as of fiscal year 1997, based on the following criteria:

(1) no less than 50%, or more than 70%, shall be distributed to the individual CIS programs based on the relative proportion of the number of at-risk students attending school districts served by the respective program compared to the number of at-risk students in all school districts served by CIS, and

(2) no less than 10%, or more than 25%, shall be distributed on the basis of the weighted financial resources of individual communities and school districts, if less than the state average, as reflected in the statewide average of taxable property value per pupil in the state's independent school districts, as determined in 1996 by the Comptroller's Property Tax Division.

(e) The Commission may adjust Compensatory Education funding to existing CIS programs if a CIS program receives less than 90% or more than 125% of Compensatory Education funds initially distributed in FY98.

(f) The state will retain an amount, to be determined by the Commission, for programs started after 1997, based upon the following criteria:

(1) the relative number of at-risk students in the local workforce development area compared to the number of at-risk students in the local workforce development areas served by a CIS program started after 1997.

(2) the local financial resources in the local workforce development area, as the area's total taxable property value as determined by the Comptroller's Property Tax Division's most recent report reflecting such data, divided by the total number of students in the area in the corresponding year.

(g) Notwithstanding subsections (a) - (f) of this section, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated for fiscal year 1999 to the replication programs of fiscal year 1999.

(h) This section shall expire December 31, 1999.

§ 827.33. Temporary Assistance for Needy Families (TANF) Funding.

(a) The Commission may designate an amount of TANF funds for the State to retain for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. TANF replication funds will be made available through a competitive Request for Proposal process.

(b) In the absence of responsive bids in the Request for Proposal process, designated TANF replication funds not awarded will be allocated to contracted CIS programs for expansion based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(c) The Commission will allocate \$3 million of TANF funds among CIS programs existing as of fiscal year 1997, based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(d) Notwithstanding subsections (a) - (c) of this section, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds

allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated to the replication programs of fiscal year 1999.

(e) This section shall expire December 31, 1999.

§827.34. Other Funding.

(a) The Commission may designate an amount of funding for the State to retain for replication of the program in local workforce development areas of the state that are not served by a participating CIS program. Such replication funds will be made available through a competitive Request for Proposal process.

(b) In the absence of responsive bids in the Request for Proposal process, funds not awarded will be allocated to contracted CIS programs for expansion based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(c) The Commission may designate an amount of funding for the State to retain to allocate to CIS programs based on the percentage of at-risk students in the respective program compared to the number of at-risk students in all school districts served by CIS programs.

(d) Notwithstanding subsections (a) - (c) of this section and other provisions of this Chapter 827 relating to Communities in Schools, the Commission may choose to allocate as necessary to maintain the funding levels initially allocated by the Commission for fiscal year 1999. Levels initially allocated shall refer to funds allocated at the beginning of fiscal year 1999 to the CIS programs existing as of fiscal year 1997, and funds initially allocated to the replication programs of fiscal year 1999.

(e) This section shall expire December 31, 1999.