



Testimony to the State Board for Educator Certification

Regarding Item #9, December 6, 2024

By Quinn McCall

TCTA appreciates this opportunity to provide testimony regarding [Item #9 Proposed Revisions to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, Subchapter F, Special Education-Related Services Personnel Assignments](#)

TCTA has worked closely with TEA staff to refine the new content competency worksheet and we believe that the version being presented today truly addresses the input provided by stakeholders as well as the board. We appreciate staffs' willingness to meet with us to improve this worksheet over the past few months.

While we support the worksheet itself, as we testified at your last meeting, we have remaining concerns about the proposed rule text that *implements* the new worksheet. Our concern about the rule text recommended by staff is that it fails to convey that certain educators are grandfathered from the substantive requirements of the new worksheet. Rather, it simply directs all special education teachers without the appropriate content certification to the new worksheet, with the worksheet included as a Figure in the rule text.

Accordingly, we worked with staff to develop alternative rule text language that clearly states that special education teachers who demonstrated competency under the previous HOUSS framework need only the attestation of an administrator as to such on the new worksheet.

We appreciate that staff is offering the alternative rule text for your consideration.

TCTA strongly recommends that you direct staff to pursue the rule text option that *specifically* states what teachers who previously demonstrated content competency under HOUSS must do.

Otherwise, it is only upon accessing the Figure that one can determine that educators who have already met the old HOUSS standard are effectively grandfathered from any of the substantive requirements of the new worksheet. Specifically, for these educators, Sections B and F of the worksheet require a campus administrator to attest to this fact and *no other part of the worksheet applies*.

Although TCTA understands staff's desire to direct everyone to the new worksheet, we believe that, without *explicit* rule text notifying the field that certain educators are grandfathered from the substantive requirements of the new worksheet, it could needlessly cause anxiety and confusion.

Referring to a Figure in administrative rule text instead of directly spelling out what the rule requires is called *incorporation by reference*. In federal rulemaking, the technique was, at one point, commonly used because federal regulations became bogged down with thousands of rules and simply directing the reader to outside materials seemed to be a more efficient way to structure that information. However, as more and more materials were incorporated by reference, a new problem arose in that the materials themselves could be difficult to access by the regulated parties and put an additional barrier between the materials and a clear understanding of the rule in question.



TCTA conducted research into incorporation by reference and found a recent Harvard Law Review article on the topic. Among other things, it provides that, in light of the ever-growing number of incorporated references, “a regulation should be complete on its face, without the need to resort to incorporated materials to understand the substantive policy established by the regulation.”

Under the proposed rule text recommended by staff, educators would need to resort to the Figure in order to understand the fact that some of them are grandfathered from the substantive requirements of the new worksheet. Accordingly, the proposed rule text is *not* complete on its face.

Given that different sections and requirements of the new worksheet are applicable to different groups of educators, TCTA believes that the rule needs to make this clear on its face, and so we strongly urge you to choose the more explicit rule text moving forward.

Thank you for this opportunity to testify. We look forward to continuing to work with the board and TEA staff to ensure that the new requirements for demonstrating content competency are meaningful but flexible in order to best support special educators and the students they teach.