

SB 11, 86th Texas Legislature, 2019, added TEC, §7.061, which requires the commissioner to adopt or amend rules as necessary to ensure that building standards for instructional facilities and other school district and open-enrollment charter school facilities continue to provide a secure and safe environment. SB 11 also added TEC, §37.108(a)(2) and (3), to require a school district to adopt and implement a multi-hazard emergency operations plan that provides for, among other things, measures to ensure that district communications technology and infrastructure are adequate to allow for communication during an emergency and that district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone or another electronic communication device, that allows for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments.

To implement SB 11, adopted new §61.1040 establishes updated school facilities standards and new safety and security standards and compliance measures for instructional facilities constructed on or after November 1, 2021. The standards reflect recommendations from a school facilities standards advisory committee convened by the Texas Association of School Administrators and from other stakeholders providing input and public comment on previously proposed rules published in the *Texas Register* on May 15, 2020, and subsequently withdrawn by the agency effective November 9, 2020.

The new safety and security standards identified in adopted new §61.1040(k)(1) and (3) apply to all school district instructional facilities and all open-enrollment charter school instructional facilities. Compliance measures established in new §61.1040(k)(2) apply to all capital improvement projects of a school district or an open-enrollment charter school as a mechanism to implement additional safety and security standards for instructional facilities. Except for the safety and security standards and compliance measures identified in adopted new §61.1040(k), the standards do not otherwise apply to open-enrollment charter schools.

Adopted new §61.1040 addresses definitions and facilities standards for capital improvement projects necessary to promote educational adequacy, including the requirement for school districts to have educational specifications and long-range facilities plans; construction code requirements; methods to demonstrate compliance with construction quality standards; square footage requirements for instructional space, common areas, and special spaces; methods to demonstrate aggregate space compliance with the standards; and safety and security standards and compliance measures.

Section 61.1036 is amended to provide an end date that corresponds with the start date of the new standards. In addition, §61.1033 is repealed as those standards are obsolete.

The following changes were made to the rules since published as proposed.

Section 61.1036, School Facilities Standards for Construction on or after January 1, 2004

The section title and subsection (b)(3) were modified to reflect that the standards in the rule are effective for construction before November 1, 2021.

Section 61.1040, School Facilities Standards for Construction on or after November 1, 2021



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

The Texas Education Agency (TEA) adopts the repeal of §61.1033, an amendment to §61.1036, and new §61.1040, concerning school facilities. The repeal of §61.1033 is adopted without changes to the proposed text as published in the April 9, 2021 issue of the *Texas Register* (46 TexReg 2300) and will not be republished. Section 61.1036 and §61.1040 are adopted with changes to the proposed text as published in the April 9, 2021 issue of the *Texas Register* (46 TexReg 2300) and will be republished. The adopted revisions remove an obsolete rule, provide an end date for the current school facilities standards rule, and create a new rule to implement the safety standards required by Senate Bill (SB) 11, 86th Texas Legislature, 2019.

REASONED JUSTIFICATION: Texas Education Code (TEC), §46.008, requires the commissioner to establish standards for the adequacy of school facilities. Section 61.1033, adopted effective September 1, 1998, establishes standards for school facilities constructed before January 1, 2004. Section 61.1036, adopted effective June 9, 2003, establishes standards for facilities constructed on or after January 1, 2004.

The section title and subsection (c)(1) and (2) were modified to reflect that the standards in the rule are effective for construction on or after November 1, 2021.

In response to public comment, a definition for "non-designated entry" was added to the definitions as new subsection (a)(20) and the subsequent paragraphs were renumbered to accommodate the addition.

In response to public comment, subsection (d)(1)(A)(iii) was modified to remove the requirement that the long-range facility plan include a history of maintenance requirements, fulfillments, and completed and proposed projects to the facility. The updated language requires that the plan include a history of only completed capital improvement projects.

In response to public comment, subsection (d)(1)(B) was modified to remove the phrase "the inclusion of" so that the requirement reflects that the process shall include input from teachers, students, parents, taxpayers, and other school district stakeholders.

In response to public comment, subsection (e)(5) was modified to remove proposed language related to historically underutilized businesses for redundancy with Texas Government Code, Chapter 2161, and the subsequent subparagraphs were relettered to accommodate the deletion.

In response to public comment, subsection (f)(1)(C)(ii)(I) and (II) were modified to clarify responsibility for compliance with construction quality standards and specify that certain information provided by a local authority having jurisdiction must be in writing.

In response to public comment, subsection (g)(1)(A)(i) was modified to substitute the word "shall" for the word "may" to indicate that the School Library Standards and Guidelines adopted under TEC, §33.021, must be considered.

In response to public comment, subsection (g)(1)(A)(ii)(IV) was modified to eliminate the requirement that a school district add 25 square feet for each student computer in excess of 12 in the library.

In response to public comment, proposed subsection (g)(3), relating to required considerations for instructional safety for special spaces, was removed.

In response to public comment, subsection (h)(1)(F)(i) was modified to correct cross references to subsection (h)(3).

In response to public comment, subsection (j)(2)(G) was modified to narrow the designation of who can perform a plan review to include only an architect or an engineer.

In response to public comment, subsection (k)(3)(A) was modified to remove the requirement for the primary entrance of an instructional facility to always be door 0 and instead require that door to be the first in an entire sequence to allow flexibility for existing numbering systems in school districts.

In response to public comment, subsection (k)(5) was modified to clarify that any school district review that could modify public disclosure is narrowly tailored and limited to information related to school district safety and security information.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began April 9, 2021, and ended May 10, 2021. Following is a summary of the public comments received and corresponding responses.

Comment: A school district employee commented that the requirement in §61.1040(d)(1)(A)(iii) to include history of all relevant projects for every building would take huge resources to put into a legible format and should begin with projects contracted from this point forward, not for projects performed prior to 2021.

Response: The agency agrees and has revised §61.1040(d)(1)(A)(iii) at adoption to read, "history of completed capital improvement projects at the facility."

Comment: A school district employee commented that the requirement to obtain input from certain types of people is an overstretch beyond the statute's intent. The commenter stated that enough community input already exists through steering committees of bond referendums, the passing of measures on a ballot specific, and the fact that board members have approved the sales of bonds and project awards. The commenter further stated that many districts complete their long-range plans by spring of the year preceding projects and that if the input as stated in the proposal is required to be included as a component of each plan, it should be applicable for long range plans adopted after June 15, 2021, so people can plan accordingly for the upcoming years.

Response: The agency disagrees and provides the following clarification. The language in §61.1040(d)(1)(B) states that the school district shall consider input but does not necessitate its inclusion. The provisions in new §61.1040 become effective and should be followed beginning with the effective date of the rule. In response to other comments, the phrase "the inclusion of" was removed from §61.1040(d)(1)(B) at adoption.

Comment: The Texas Society of Architects (TxA) and a school district employee commented that the language in the rule that requires numbering systems for doors to begin with the number zero could be expensive and time consuming for districts to comply with. The district employee stated that many districts have existing numbering systems on doors, including physical numbers on the doors as well as digital numbering in door access systems that begin with a different number. The district employee stated that to make every primary entrance begin with zero would require renumbering every door, both physically and digitally. The district employee proposed that if numbering systems are already in place, even if the primary entrance is not zero, that districts be allowed to use their existing numbering system and continue that system on new construction as well. TxA had similar concerns and suggested that districts that had proactively added door numbering for exterior doors be allowed to continue to use their systems without penalty of having to change to comply with the rule.

Response: The agency agrees in part and disagrees in part. The agency has revised §61.1040(k)(3)(A) at adoption to read, "The primary entrance of an instructional facility, as defined by subsection (a)(23)(A) of this section, shall always be the first in the entire sequence and is the only door location that does not require numbering." However, the requirement that the numbering system begin at the front entrance and go clockwise remains.

Comment: The Texas Classroom Teachers Association (TCTA) commented that there are no requirements or guidelines in proposed new §61.1040 regarding how much adjustment can be made to the maximum instructional capacity under the qualitative method of compliance. TCTA commented that the "trigger" for pursuing this method of compliance is "prior documented approval of one or more instructional or operational practices for the proposed project that distributes or manages student capacity in

an innovative or non-traditional manner." TCTA stated this was a deeply concerning potential loophole for complying with the instructional facilities space standards set out in the proposed new rule. Accordingly, TCTA strongly recommended that rather than providing a wholesale alternative method of compliance as an option for accommodating instructional or operational practices that manage student capacity in an innovation/non-traditional manner, the agency provide a narrowly tailored exception process for districts to pursue with the agency when certifying compliance with instructional facilities space standards.

Response: The agency disagrees that an exception process is necessary to ensure compliance. The qualitative method simply allows two core spaces to be used if a school board has adopted a policy that modifies the proposed project's or campus's utilization. It allows additional spaces in the building to be counted as partially instructional in nature if they are partially used for instructional purposes.

Comment: TCTA commented with concerns about the change in proposed §61.1040(h)(3) and (i)(1) from delineating instructional space standards by type of instructional space, including general classrooms, specialized classrooms, etc., to "minimum square footage per student by campus type and the selected flexibility level." TCTA recommended that the rule set standards for types of instructional spaces, including general and specialized classrooms, rather than setting those standards at the school level.

Response: The agency disagrees that a change is needed to §61.1040. The facility standards simply allow a campus to design for a wider variety of class sizes and configurations that are permitted under the rule. The square footage per student provides that the building can meet the instructional needs of the capacity of the building and project.

Comment: TCTA commented with concerns about the provision in proposed new §61.1040(g)(3) for waiver ability from space standards for potentially high-risk environments like combination science classrooms/laboratories and science laboratories. TCTA recommended eliminating the ability for districts to seek waivers from these important safety standards.

Response: The agency agrees and has removed the waiver provision from the rule at adoption. TEA does not currently grant class-size waivers at the high-school level. It is a district's responsibility to ensure that safety standards are met and that class size does not exceed the number for which the space was designed.

Comment: TCTA commented that §61.1040(g)(1)(A)(i) should read, "A school district shall consider the School Library Standards and Guidelines as adopted under TEC, §33.021, when developing, implementing, or expanding library services" instead of "may consider."

Response: The agency agrees and has revised §61.1040(g)(1)(A)(i) at adoption to read "shall" instead of "may" to indicate that the standards must be considered.

Comment: TCTA commented in support of the minimum standards for combination science classrooms/laboratories for Kindergarten-Grade 8 in §61.1040(g)(2)(A)(i) and (ii). TCTA commented that the new standards improve upon current standards by requiring increased square feet per student as well as setting a maximum number of students.

Response: The agency agrees.

Comment: TCTA commented in support of the minimum standards for combination science classrooms/laboratories for Grades 9-12 in §61.1040(g)(2)(A)(iii). TCTA commented that the new standards improve upon current standards by setting square footage per student standards as well as a maximum number of students.

Response: The agency agrees.

Comment: TCTA commented in support of the minimum standards for science laboratories in Grades 6-8 in §61.1040(g)(2)(B)(ii). TCTA commented that the new standards improve upon current standards by requiring increased square feet per students as well as setting a maximum number of students.

Response: The agency agrees.

Comment: TCTA commented in support of the minimum standards for science laboratories in Grades 9-12 in §61.1040(g)(2)(B)(iii). TCTA commented that the new standards improve upon current standards by setting square footage per student standards as well as a maximum number of students.

Response: The agency agrees.

Comment: TCTA commented regarding §61.1040(b)(1)(E), which allows minor scopes of work to be performed as part of a major renovation without the minor scopes of work triggering compliance with the new standards. TCTA objected to the language based on the potential for a major loophole for districts to not have to comply with the instructional facilities space standards provided in rule and recommended that the provision be eliminated.

Response: The agency disagrees that the provision should be eliminated. The provision allows for minor scopes of work, like painting or flooring, that are not major renovations on their own to be included with major renovation projects. This will allow districts to get better pricing without requiring those areas to meet minimum space standards or methods of compliance.

Comment: TCTA commented that §61.1040(d)(1)(B) was weaker than the current school facilities rule because it only requires the long-range facility plan process to "consider the inclusion of input" rather than requiring the allowance of input in developing the educational specifications. TCTA recommended that the language be revised to strike the phrase "the inclusion of" so that it reads, "The process of developing the long-range facility plan shall consider input from teachers, students, parents, taxpayers, and other school district stakeholders."

Response: The agency agrees and has struck the phrase "the inclusion of" from §61.1040(d)(1)(B) at adoption. This change has no effect on the meaning of the rule language.

Comment: TCTA commented in support of §61.1040(j)(3)(C) that includes the provision that "a school district shall consider as part of a capital improvement project the use of designs, methods, and materials that will reduce the potential for indoor air quality problems." TCTA stated that the language improves upon current facilities standards.

Response: The agency agrees.

Comment: TCTA commented in support of §61.1040(j)(3)(D) that includes the provision that "a school district shall consider as part of a capital improvement project the use of sustainable school designs." TCTA stated that the language improves upon current facilities standards.

Response: The agency agrees.

Comment: TCTA commented on the provision of exceptions to additional safety and security standards based on cost in §61.1040(k)(4)(B). TCTA commented that allowing a building to go for five years without meeting any additional safety/security standards was not reasonable and recommended that the rule provide that the five-year long-range facility plan clearly state that if ceasing operation does not occur by the end of the third year, the facility will be compliant with at least two additional safety and security standards by the end of the following year.

Response: The agency disagrees with making the commenter's suggested change. TEA does not anticipate this exception being used frequently. However, in the event a district needed to take advantage of this exception, it is unlikely that the district would be able to put the additional safety and security standards in place in the shortened timeframe.

Comment: Three architects from PBK Architects, Inc. commented that proposed new §61.1040 has confusing square footage calculations. The commenters stated that the most significant change from previous facilities standards is the move to qualitative and quantitative methods of compliance, four levels of flexibility, and several square-foot-per-student calculation factors that must be assessed to determine a school's capacity. The commenters stated that the whole process seems much more confusing and convoluted. One commenter felt that the square footage calculations in proposed new §61.1040 are confusing and overly complicated and that the multiple levels of flexibility and square footage types will create various interpretations and misunderstandings during required board approvals as well as future analysis of building capacities. The commenters believe that the requirements of §61.1040(h), relating to the quantitative method of compliance for instructional facility space requirements, should be revisited and simplified.

Response: The agency disagrees. The complexity is necessary because the overall structure of the standards has changed. This allows for future modifications to be added based on research or other trusted sources. In addition, the higher levels of flexibility mean mobile furniture and technology, which likely necessitate additional square footage to account for multiple configurations and technology that would no longer be mounted to the wall like in a more traditional setting. The process involves applying a formula to calculate and show campus compliance. Specific suggestions to reduce the complexity of the calculation can be considered for future iterations of the standards.

Comment: Two architects from PBK Architects, Inc. commented that proposed new §61.1040 was too long. The commenters stated that the rule went from 11 pages in 2004 to 27 pages for the current proposal. Both commenters felt most of the growth is due to complexity with no apparent benefit.

Response: The agency disagrees. The new standards must take into account laws that have been enacted since the last update, and this necessitates the length of new §61.1040.

Comment: Three architects from PBK Architects, Inc. commented on minimum codes listed in §61.1040 and asked why the language needed to change. One commenter stated that having districts select their own code would mean the codes were more up to date than those listed in the rule that might not change for years. Another commenter stated that there did not seem to be a benefit to the added language. The third commenter stated that including specific codes date the document, requiring constant updates.

Response: The agency disagrees. The language required updating, and the codes listed in §61.1040(j) are for situations when a district would look to state-adopted codes. The codes will be updated in rule as needed.

Comment: Two architects from PBK Architects, Inc. commented on inclusive design. One commenter felt that the issue was a curriculum issue and not a facilities issue. Another commenter stated that school districts are obligated by new §61.1040 to set inclusive design goals and write a statement about addressing inclusive design in new and renovated facilities, but there are no standards proposed to determine if the goals are acceptable within the context of the new rule.

Response: The agency disagrees that any change is needed. Inclusive design is the intentional design for the variety of users of public school facilities, not related to curriculum. The purpose of this definition and inclusion in the education specifications is to require intentional decisions be made about facility design to meet the varied needs of users of the facility. Each campus and community are different so the goals and design decisions should be local and specific to the project and campus type.

Comment: Two architects from PBK Architects, Inc. commented on the necessity of board approvals. Both commenters stated that proposed new §61.1040 recommends board approvals for the TEA Square Footage Compliance path for every project. The commenters each felt that the number of actions seemed excessive and gave the opinion that it could be handled in other ways.

Response: The agency disagrees that the language needs to change. New §61.1040 does not necessitate that every project being pursued by a district be taken up separately by the board. If a district wants to designate all projects in a bond program as quantitative, it can do that and then take up a re-designation of a project to qualitative if it wants.

Comment: Two architects from PBK Architects, Inc. commented that the change from the existing standards regarding square footage per special education student will cause equity issues between new and existing campuses for a minor benefit and should be left alone.

Response: The agency disagrees. Additional square footage is needed for special education students. Existing facilities should be upgraded as projects are pursued.

Comment: Two architects from PBK Architects, Inc. commented on the inclusion of historically underutilized business (HUB) standards in §61.1040 and stated that the facilities rule was not the place for them.

Response: The agency agrees. The section on HUBs was stricken from §61.1040(e)(5)(C) at adoption.

Comment: Two architects from PBK Architects, Inc. commented that there was overlap in proposed new §61.1040 and the Texas Board of Architectural Examiners (TBAE) authority. The commenters stated that this standard specifies when an architect or engineer should be hired and said that authority was already with the TBAE. The commenters stated the language in the proposed new rule is at best duplicative and at worst confusing and should be removed.

Response: The agency disagrees that the language should be removed. Proposed new §61.1040(e)(4) addresses provisions if an architect is required to be hired. If it is required in the Texas Occupations Code and the project value exceeds \$50,000 due to public procurement processes, the provisions are triggered.

Comment: An architect from PBK Architects, Inc. commented that the square footage for libraries seems a bit outdated.

Response: The agency disagrees with making changes at this time. However, it may be reevaluated in a future review process.

Comment: An architect from PBK Architects, Inc. commented that more study was essential to determine the most straightforward way to achieve the goal of flexibility in school design. The commenter stated that the move toward a more innovative approach than simply counting square footage was admirable and necessary, but this method may not be the best.

Response: The agency disagrees that changes are needed to §61.1040 at this time. Because all of the spaces listed, with the exception of collaboration spaces, are currently used to establish building capacity, it seems logical to allow them to be used to show the facility has adequate instructional space to serve the number of students enrolled in the campus.

Comment: An architect from PBK Architects, Inc. commented that most of the safety and security requirements in §61.1040 were good starting points. The commenter stated that sophisticated districts execute these safety and security requirements already, and this standardizes a baseline of measures to implement on every significant project.

Response: The agency agrees.

Comment: An architect from PBK Architects, Inc. commented that changing the requirement for science countertops to six square foot per student instead of six linear feet make more sense.

Response: The agency agrees.

Comment: An architect from PBK Architects, Inc. commented that the methodology on how square footage is calculated is a bit confusing and has moved away from the previously simplistic qualitative method. The commenter noted that the requirement for a school district board of trustees to determine the district's compliance path before design development for every project leaves space to edit or modify to meet target budget numbers.

Response: The agency disagrees that the methodology leaves room for the board to edit or modify square footage calculations to meet target budget numbers. Edits and modifications would have to be of capacity and enrollment; otherwise, the board's designation either takes into account innovative policies or not.

Comment: An architect from PBK Architects, Inc. commented that the new standards appear to require less square footage overall per student. The commenter stated concern about the reduction of square footage for an overall campus after a year of social distancing and concern on occupancy.

Response: The agency disagrees that new §61.1040 reduces the required square footage. Square footage is summed up to a campus minimum. Social distancing is a short-term operational choice. If districts want to design for future or sustained social distancing, the rule does not preclude that.

Comment: An architect from PBK Architects, Inc. recommended an addition or requirement for outdoor learning environments. The commenter stated that with the myriad of statistics that show the value for students of all ages to spend time outside, Texas should embrace that in the new educational standards. The commenter further stated that outdoors is a continuation of the indoor learning environment.

Response: The comment is outside the scope of the proposed rulemaking. However, the commenter's suggestion can be considered in future rulemaking.

Comment: An architect from PBK Architects, Inc. commented that under proposed new §61.1040, new schools have the potential to be much smaller than pre-existing schools yet are deemed adequate for the same student capacity. The commenter stated that this accounting will likely be at odds with school administrators who feel the existing calculations leave their buildings too small already.

Response: The agency disagrees that a change is needed. The new standards simply change the compliance to the campus level instead of the space level.

Comment: TxA commented that the provisions in §61.1040(k) that direct school districts and open-enrollment charter schools to incrementally implement the specified safety and security standards in the rule based on the "project construction budget" definition in §61.1040(a)(25) will appropriately guide school districts and open-enrollment charter schools to make the foundational facilities upgrades specified to ensure effective implementation of Senate Bill 11 requirements. TxA suggested clarifying that the proposed "project construction budget" definition set out in subsection (a)(25) is to be based only on projected total aggregate dollars (as opposed to final total dollars) to establish subsection (k) compliance thresholds. TxA stated that would ensure the correct timing signals for the school district to approve the safety and security measures that are to be specified for the development of construction documents during the design phase of a capital improvement project.

Response: The agency disagrees that the requested clarification is necessary at this time. It may be reviewed at a future date.

Comment: TxA commented that proposed §61.1040(k)(1)(B) establishes a requirement that a document be developed by each school district or charter school designating each exterior door of each instructional facility on a campus as either a primary, secondary, or non-designated entrance and further requires that such designation of entrances be documented and become part of a school district long-range facility plan. TxA further commented that while primary and secondary entrances are defined in §61.1040(a)(23) and (29), respectively, there is currently no explicit or separate definition of a "non-designated entrance." TxA suggested that to avoid the potential for any confusion about the application of provisions relating to the various types of exterior doors defined in the rule a separate definition for a "non-designated entry" be added to subsection (a) to separate exterior doors that allow for emergency egress but do not operate as an entrance from the exterior of the building. TxA also suggested additional conforming changes be made to the proposed definition of a secondary entrance. To ensure all relevant definitions are closely aligned in the policy provisions of the rule, TxA also recommended changes to subsection (k) to conform the proposed definition of a "non-designated entry" with the access control specifications in subsection (k)(1)(B).

Response: The agency agrees. Section 61.1040(a) was modified at adoption to add a definition for "non-designated entry" in new subsection (a)(20). The definition reads, "Non-designated entry--A door that is not operable from the exterior and is designed to only allow for emergency egress."

Comment: TxA commented that clarification was needed for contractor certifications. TxA is concerned that the wording related to contractor certifications required in §61.1040(f)(1)(C)

could inadvertently be interpreted as requiring a contractor to certify that the facility meets building code requirements. TxA stated that the contractor does not and may not serve as the building code official, nor are they qualified to specify or certify applicable building code standards. To address any potential impact regarding insurability for design professionals or the appropriate contract accountability for contractors, TxA suggested changes be made to the contractor certification provisions in subsection (f)(1)(C)(ii)(I) to clarify, as expressed elsewhere in proposed §61.1040, that the contractor is required to build in accordance with the contract documents and to certify compliance with specified requirements and performance standards reflected in the construction documents.

Response: The agency agrees. At adoption, §61.1040(f)(1)(C)(ii)(I) was modified to clarify certification of contractual obligations of a contractor in accordance with the contract documents.

Additionally, §61.1040(f)(1)(C)(ii)(II) was modified at adoption to specify that documentation that a certificate of occupancy is not required or provided for by a local government must be in writing.

Comment: TxA commented that §61.1040(h)(1)(F)(i) should be updated to correct cross references to subsection (h)(3).

Response: The agency agrees and has modified the language at adoption to correct the cross references.

Comment: TxA commented that §61.1040(k)(5) should be amended to clarify that any school district review that could modify public disclosure is narrowly tailored and limited to information related to school district "safety and security" information.

Response: The agency agrees and has modified §61.1040(k)(5) at adoption to refine and more narrowly tailor the process by which a school district could limit public disclosure of information when related to "safety and security" information.

Comment: TxA commented that §61.1040(h)(1)(F)(i) and (i)(1)(F)(i), referencing the "maximum number of students that shall be served," may require clarification to address how that term is defined and whether it is intended to be defined as the "maximum occupant load per code" or by some other measure.

Response: The agency disagrees that the suggested change is necessary at this time. It may need to be reviewed at a future date.

Comment: TxA commented that §61.1040(j)(2)(G) may require clarification to ensure appropriate qualifications for those allowed to perform building code reviews as a third-party code compliance officer.

Response: The agency agrees and has modified the language at adoption to narrow the designation of who can perform a plan review to include only an architect or an engineer.

Comment: A school district employee commented that the requirement to add 25 square feet for computers in the library in excess of 12 is archaic and unnecessary. The commenter stated that with the prevalence of digital resources there should actually be less stack space and more computer stations. Additionally, the commenter stated that the minimum square footage requirements are excessive when a 3,500-student high school requires a 10,500 square foot library that will sit empty most of the day.

Response: The agency agrees and has modified §61.1040(g)(1)(A)(ii)(IV) at adoption to remove the reference to additional space for student computers.

19 TAC §61.1033

STATUTORY AUTHORITY. The repeal is adopted under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The repeal implements Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

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



19 TAC §61.1036, §61.1040

STATUTORY AUTHORITY. The amendment and new section are adopted under Texas Education Code (TEC), §7.061, as added by Senate Bill 11, 86th Texas Legislature, 2019, which requires the commissioner of education to adopt or amend rules as necessary to ensure that building standards for instructional facilities provide a secure and safe environment; TEC, §46.001, which provides a definition for instructional facility; TEC, §46.002, which allows the commissioner to adopt rules for administering instructional facility programs; and TEC, §46.008, which requires the commissioner to establish standards for adequacy of school facilities.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§7.061, 46.001, 46.002, and 46.008.

§61.1036. School Facilities Standards for Construction before November 1, 2021.

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

(1) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

(2) Educational program--A written document, developed and provided by the district, that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:

(i) the learning activities to be housed, by instructional space;

(ii) how the subject matter will be taught (methods of instructional delivery);

(iii) the materials and equipment to be used and stored;

(iv) utilities and infrastructure needs; and

(v) the characteristics of furniture needed to support instruction.

(3) Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall use the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The following information should be included in the educational specifications:

(A) the instructional programs, grade configuration, and type of facility;

(B) the spatial relationships--the desired relationships for the functions housed at the facility:

(i) should be developed by the school district to support the district's instructional program;

(ii) should identify functions that should be:

(I) adjacent to, immediately accessible;

(II) nearby, easily accessible; and

(III) removed from or away from; and

(iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation;

(C) number of students;

(D) a list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;

(E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;

(F) estimated budget for the facility project;

(G) school administrative organization;

(H) provisions for outdoor instruction;

(I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;

(J) the safety of students and staff in instructional programs, such as science and vocational instruction; and

(K) the overall security of the facility.

(4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

(5) Grade levels:

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(6) Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(7) Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.

(8) Library--Library will include the following minimum requirements:

(A) reading/instructional area;

(B) reference/independent study area;

(C) stack area;

(D) circulation desk/area;

(E) computer/online reference areas; and

(F) necessary ancillary areas, such as offices, workrooms, head-end room, and storage rooms.

(9) Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:

(A) a description of the current and future instructional program and instructional delivery issues;

(B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;

(C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.; and

(D) a timeline and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.

(10) Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the af-

affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.

(11) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(12) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(13) Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(14) Abbreviations:

- (A) ANSI--American National Standards Institute;
- (B) ICC--International Code Council; and
- (C) NFPA--National Fire Protection Association.

(b) Implementation date. The requirements for school facility standards shall apply to projects for new construction or major space renovations if:

(1) a board of trustees adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;

(2) a board of trustees calls a bond election where one or more capital improvement project titles as well as design or design and construction budgets are delineated; or

(3) a new contract or amendment to an existing contract for architectural services for new construction or a major renovation for a school facility project has been agreed to, and signed and dated by both parties to the agreement after January 1, 2004, and before November 1, 2021.

(c) Certification of design and construction.

(1) In this section, the word "certify" indicates that the architect or engineer has reviewed the standards contained in this chapter and used the best professional judgment and reasonable care consistent with the practice of architecture or engineering in the State of Texas in executing the construction documents. The architect or engineer also certifies that these documents conform to the provisions of this section, except as indicated on the certification.

(2) The school district shall notify and obligate the architect or engineer to provide the required certification. The architect's or engineer's signature and seal on the construction documents shall certify compliance.

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

(A) The school district shall provide the architect or engineer the educational program and educational specifications ap-

proved by the board of trustees as required by this subchapter, and building code specifications for the facility. If a school district has a long-range school facility plan, it shall also be provided to the architect or engineer.

(B) The architect or engineer shall perform a building code search under applicable regulations that may influence the project, and shall certify that the design has been researched before it is final.

(C) The architect or engineer shall also certify that the facility has been designed according to the provisions of this section, based on the educational program, educational specifications, long-range school facility plan, building code specifications, and all documented changes to the construction documents provided by the district.

(D) The building contractor or construction manager shall certify that the facility has been constructed in general accordance with the construction documents specified in subparagraph (C) of this paragraph. If the school district acts as general contractor, it shall make the certification required by this paragraph.

(E) When construction is completed, the school district shall certify that the facility conforms to the design requirements specified in subparagraph (A) of this paragraph.

(F) The certifications specified in subparagraphs (A)-(E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the Texas Education Agency (TEA). The school district will retain this form in its files indefinitely until review and/or submittal is required by representatives of the TEA.

(d) Space, minimum square foot, and design requirements.

(1) A school district shall provide instructional space if required by the district educational specifications described in subsection (e) of this section.

(2) For each type of instructional space, a district shall satisfy the requirements of this section by using the standard for square feet per room specified in paragraph (5)(B)-(D) of this subsection. For school districts with facilities that have one or more classrooms with maximum class sizes that are normally less than 22 students at the elementary level and less than 25 students at the middle or high school level, the school districts may satisfy the requirements of this section for those classrooms by using the standard for the minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection. These classrooms shall be designed on the basis of expected maximum class size, and not expected average class size. Upon submission by a district, alternate classroom designs with square feet per room measurements less than those specified in this subsection may be considered for approval by the TEA division responsible for state funding on a case-by-case basis.

(3) School districts should consider providing extra square footage in classrooms where the use on a regular basis of multiple computers, large furniture, televisions, mobile laptop carts, mobile video conferencing carts, monitors on carts, or the like is anticipated. To improve circulation and usability of classroom space, school districts with class sizes that are normally larger than 25 students for Grades 5-12 should also consider increasing the minimum classroom size by adding the appropriate minimum square feet per student specified in paragraph (5)(B)-(D) of this subsection for each student in excess of 25.

(4) Compliance with the standards specified in paragraph (5)(B)-(D) of this subsection will be evaluated based on the school district's intended full-time and/or part-time use of the areas, and not the name of the areas as identified in the construction documents.

(5) Instructional area size and design requirements.

(A) Design criteria. The school district shall provide the architect or engineer with all expected class sizes for the facilities, with the list of chemicals to be used in the science laboratories or science laboratory/classrooms, and with the number of computers anticipated in the library, so that the architect or engineer can adequately design the facilities to meet the criteria specified in subparagraphs (B)-(D) of this paragraph.

(B) General classrooms.

(i) Classrooms for prekindergarten-Grade 1 shall have a minimum of 800 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 36 square feet per student.

(ii) Classrooms at the elementary school level for Grades 2 and up shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 32 square feet per student.

(iii) Classrooms at the secondary school level shall have a minimum of 700 square feet per room. School districts with small class sizes may have classrooms that provide a minimum of 28 square feet per student.

(C) Specialized classrooms.

(i) A computer classroom used for the teaching of computer skills shall have a minimum of 900 square feet per room. The minimum room size is ideal for 25 students; 36 square feet per student should be added to the minimum square footage for each student in excess of 25. School districts with small class sizes may have computer classrooms that provide a minimum of 36 square feet per student. School districts should consider the heat output of computers when designing the ventilation system that serves a computer classroom.

(ii) Computer laboratories that are not used regularly for scheduled instruction but that are intended to support other instructional areas shall have a minimum of 25 square feet per computer station. For computer laboratories where the use of portable computers, such as laptop computers, is anticipated, the size may be reduced to 20 square feet per computer station.

(iii) The following provisions shall apply to combination science laboratories/classrooms, where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined lecture area.

(I) Combination science laboratories/classrooms shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(II) Combination science laboratories/classrooms shall have a minimum of 1,200 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 50 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(III) Combination science laboratories/classrooms shall have a minimum of 1,400 square feet per room at the high school level. The minimum room size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) School districts with small class sizes may have combination science laboratories/classrooms that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student

but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.

(iv) For districts that choose to use separate science classrooms and science laboratories, the following provisions shall apply.

(I) A science classroom shall be a minimum of 700 square feet regardless of grade level served.

(II) A science laboratory shall have a minimum of 800 square feet at the elementary school level. The minimum laboratory size is adequate for 22 students; 36 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(III) A science laboratory shall have a minimum of 900 square feet at the middle school level. The minimum laboratory size is adequate for 24 students; 38 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) A science laboratory shall have a minimum of 1,000 square feet at the high school level. The minimum laboratory size is adequate for 24 students; 42 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(V) Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the middle school and high school levels. The science laboratories shall be located convenient to the science classrooms they serve.

(VI) School districts with small class sizes may have science classrooms that provide a minimum of 32 square feet per student, and they may have science laboratories that provide a minimum of 36 square feet per student but not less than 600 square feet total at the elementary school level, a minimum of 38 square feet per student but not less than 700 square feet total at the middle school level, and a minimum of 42 square feet per student but not less than 800 square feet total at the high school level.

(v) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratories/classrooms, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratories/classrooms.

(vi) Each school science laboratory, science classroom, science laboratory/classroom, science preparatory room, and chemical storage room shall include the following provisions.

(I) A built-in fume hood shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in fume hood should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The exhaust shall be vented to the outside above the roof and away from air vents.

(II) A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room where hazardous chemicals are used by instructors and/or students. The eye/face wash shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures

during the winter season should consider a tepid water system with a heated source.

(III) A built-in safety shower shall be provided in each high school level chemistry or advanced placement chemistry laboratory or laboratory/classroom. A built-in safety shower should also be provided in each high school level integrated physics and chemistry laboratory or laboratory/classroom. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season should consider a tepid water system with a heated source.

(IV) Ventilation systems serving science rooms shall be designed and constructed so that under normal operation the return air from the science rooms is not recirculated into non-science areas. In the chemical storage rooms, a ventilation system shall exhaust the air to the outside, and shall not be recirculated back into the space.

(V) An exhaust fan that is controlled by the instructor shall be provided in all rooms where hazardous or vaporous chemicals are to be used or stored. The exhaust fan shall be of sufficient size to exhaust the total volume of air in the room within 15 minutes. The exhaust shall be vented to the outside above the roof and away from air vents.

(VI) A minimum of 6 linear feet of total horizontal workspace, such as lab stations, lab tables, countertops, desktops, or some combination of these, shall be provided for each student in each middle school and high school science laboratory and science laboratory/classroom.

(VII) If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students.

(vii) Special education classrooms shall have a minimum of 400 square feet per room. School districts with small class sizes may have rooms that provide a minimum of 40 square feet per student.

(viii) Specialized classrooms not otherwise identified within these standards shall at a minimum comply with the requirements specified in subparagraph (B) of this paragraph.

(ix) Compliance with the standards specified in clauses (iii) and (iv) of this subparagraph will be evaluated based on the average class size in those classrooms.

(D) Major support areas.

(i) Primary gymnasiums or physical education space, if required by the district's educational program, shall have a minimum of 3,000 square feet at the elementary school level; 4,800 square feet at the middle school level; and 7,500 square feet at the high school level.

(ii) A school district shall consider the School Library Standards and Guidelines as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. Libraries for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet. Libraries for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4.0 square feet for each student in excess of 100. Libraries for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3.0 square feet for each student in excess of

500. Libraries for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2.0 square feet for each student in excess of 2,000. A school district that plans to locate more than 12 student computers in the library shall add 25 square feet of space for each additional computer anticipated. The space allotments within the library shall be based on a formula of 30% for the reading/instructional area and reference/independent study area; 45% for the stack area, circulation desk/area, and computer/online reference areas; and 25% for the necessary ancillary areas. Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Standards and Guidelines.

(6) It is not the intent of these standards to limit the use of nontraditional, alternative, sustainable, and/or innovative school designs. A nontraditional design model is one that works to break down the scale of the school and to improve the connection of the student to the resources available within the school environment. If a school district chooses to use a nontraditional model, the following provisions shall apply.

(A) The instructional spaces where teachers will instruct groups of students in specialized coursework shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(C) of this subsection.

(B) Large group lecture spaces that do not use tables or desks for the students shall have a minimum of 15 square feet per student. Large group lecture spaces that do use tables or desks for the students shall meet the standard, as appropriate based on group size, for square feet per room or for the minimum square feet per student specified in paragraph (5)(B) of this subsection. A minimum of 150 square feet shall be provided for each small group, conference, or office space area or room.

(C) An individual student learning area that is assigned to a specific student shall have a minimum of 35 square feet. An individual student learning area that is not assigned to a specific student shall have a minimum of 25 square feet.

(D) If necessary under the design model, up to half of the reading/reference area function of the library may be dispersed throughout the facility outside the normal library boundaries. The sum total square footage of all library-related areas shall meet the minimum square feet specified for libraries in paragraph (5)(D)(ii) of this subsection.

(7) Other space requirements should be developed from school district design criteria as required to meet educational program needs.

(e) Educational adequacy. A proposed new school facility or major space renovation of an existing school facility meets the conditions of educational adequacy if the design of the proposed project is based on the requirements of the school district's educational program, the educational specifications, and the student population that it serves.

(f) Construction quality.

(1) Districts with existing building codes.

(A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third

party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, and where not otherwise required by local code, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the International Building Code (IBC) and International Fire Code (IFC).

(C) As part of their school facilities projects and where not otherwise required by local code, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. In absence of a local code, each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(2) Districts without existing building codes.

(A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC; and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified building code consultant or a third party architect or engineer. A qualified building code consultant is a person who maintains, as a minimum, a current certification from

the ICC. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

(B) For school facilities projects subject to these standards, fire alarm systems shall be provided. Fire alarm systems shall be designed and installed in accordance with applicable portions of the latest edition of the IBC and IFC.

(C) As part of their school facilities projects, school districts should consider providing automatic sprinkler systems for fire protection, fire suppression, and life safety. Each automatic sprinkler system shall be installed in accordance with the latest edition of the IBC and IFC.

(D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(3) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2007, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(A) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an

independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(B) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(C) A qualified, independent third party inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(D) A school district that has purchased or leased a portable, modular building for use as a school facility on or after September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 days of the effective date of this section; any items of noncompliance identified during the inspections shall be brought into compliance by the school district within 90 days of the date of the inspections.

(4) Other provisions.

(A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. School districts should use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under the Texas Health and Safety Code, Chapter 385. School districts should also use the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(D) School district facilities shall comply with the "Texas Accessibility Standards" as promulgated under the Texas Government Code, Chapter 469, Elimination of Architectural Barriers, as prepared and administered by the Texas Department of Licensing and Regulation.

(E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).

(F) School district facilities shall comply with all other local, state, and federal requirements as applicable.

§61.1040. School Facilities Standards for Construction on or after November 1, 2021.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Adjusted maximum instructional capacity--The maximum number of students who can be served at an instructional facility at any point in time as adjusted from the maximum instructional capacity based on the implementation of innovative instructional or operational practices.

(2) Architect--A person registered as an architect under Texas Occupations Code (TOC), Chapter 1051, and responsible for compliance with the architectural design requirements of TOC, Chapter 1051.

(3) Authority having jurisdiction--A state, local, or other regional department or an individual such as a fire marshal, building official, electrical inspector, or other individuals having statutory authority or authority assigned contractually by the school district to enforce specified building codes in accordance with subsection (j) of this section.

(4) Capital improvement project--Any school facility project consisting of new construction, major renovation, or minor renovation for which construction services are procured under Texas Government Code (TGC), Chapter 2269, in accordance with Texas Education Code (TEC), §44.031(a)(5).

(5) Contractor--A sole proprietorship, partnership, corporation, or other legal entity that:

(A) provides construction services and assumes the risk for constructing, rehabilitating, altering, or repairing all or part of a school facility at the contracted price;

(B) serves as the general contractor as defined in TGC, Chapter 2269;

(C) serves as a construction manager-at-risk as defined in TGC, Chapter 2269, Subchapter F;

(D) serves as a construction manager agent as defined in TGC, Chapter 2269, Subchapter E; or

(E) serves as a prime subcontractor for a project where the school district has contracted with a construction manager agent.

(6) Design guidelines or standards--A written document comprised of standardized information developed by the school district, possibly in partnership with consultants, often adopted by a school district board of trustees and provided to the design professional of record for reference on capital improvement projects. It includes, but is not limited to:

(A) the instructional programs, grade configuration, and types of facilities in the school district;

(B) a schedule of the estimated number and approximate size of all instructional and support spaces included in each facility and extracurricular activities;

(C) provisions for outdoor instruction;

(D) adjacencies diagram(s) defining relationships between functions at the facilities; and

(E) technical standards related to functional requirements, systems, manufacturers, products, and finishes.

(7) Design professional--An architect or engineer as defined in this subsection.

(8) Designated representative--A person designated by a school district board of trustees to act as the official representative of the district, in accordance with TEC, §44.0312, and TGC, §2269.053, who has the express authority to act and bind the school district, to the extent and for the purposes described in the contract for school facility design and construction services, including responsibilities for general administration of the contract and required school district certifications for educational adequacy, space, and construction quality.

(9) Engineer--A person registered as an engineer under TOC, Chapter 1001, and responsible for compliance with engineering design requirements and other applicable requirements of TOC, Chapter 1001.

(10) Hazardous chemical--This term has the meaning assigned in Texas Health and Safety Code, §502.003(13).

(11) Inclusive design--Design that considers the broad spectrum of human diversity with respect to ability, age, culture, gender, language, and other forms of human difference.

(12) Instructional facility--This term has the meaning assigned in TEC, §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002.

(13) Instructional space--All interior general learning spaces, including general classrooms, collaboration spaces, specialized classrooms, and laboratories. Outdoor instructional space may be provided at an instructional facility but may not be used to meet minimum aggregate space requirements in either method of compliance in subsections (h) and (i) of this section. Certain major support spaces may be classified as instructional space for purposes of complying with subsection (i) of this section.

(14) Major renovation--A project for the construction, addition, rehabilitation, alteration, or repair of an existing school facility that exceeds \$50,000 and requires the school district to hire an architect and an engineer.

(15) Maximum instructional capacity--The maximum number of students who can be served by an instructional facility at any point in time.

(16) Maximum student enrollment--The maximum number of students a school district expects to enroll at an instructional facility. For the quantitative method of compliance, maximum student enrollment must equal the maximum instructional capacity. For the qualitative method of compliance, maximum student enrollment is allowed to be higher than the maximum instructional capacity.

(17) Minor renovation--A project for the construction, addition, rehabilitation, alteration, or repair of an existing school facility that exceeds \$50,000 and for which a school district is required to hire an engineer but not an architect. If the scope of work for the minor

renovation project expands in the type and way that requires the hiring of an architect, the project must be reclassified as a major renovation. If the scope of work for the minor renovation requires that additional safety and security standards under subsection (k)(2) of this section be included in the scope of work of the project and those additional safety and security standards require the hiring of an architect, the project does not require reclassification as a major renovation.

(18) Modular, portable building--An industrialized building as defined by TOC, §1202.002 and §1202.003; any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(19) New construction--A project for the design and construction of a new school facility to be used for administrative, assembly, educational, or other occupancy for which a school district board of trustees is required to hire an architect, or the installation of a modular building regardless of whether an architect is required.

(20) Non-designated entry--A door that is not operable from the exterior and is designed to only allow for emergency egress.

(21) Non-instructional assembly facility--A non-instructional facility where large populations of occupants congregate such as arenas, performing arts centers, and stadiums.

(22) Non-instructional facility--Administrative buildings, transportation centers, and other support facilities that are not used predominately for teaching curriculum.

(23) Open-enrollment charter school--This term has the meaning assigned in §100.1001(3) of this title (relating to Definitions).

(24) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area;

(B) any exterior door the school district intends to allow visitors to use to enter the facility during school hours either through policy or practice; or

(C) any exterior door the school district intends to allow to remain unlocked during school hours.

(25) Prime design professional--The registered design professional engaged by a school district or school district's authorized agent to coordinate certain aspects of the project requiring review by the building official or third-party code compliance officer for compatibility of the design of the building or structure with applicable building codes, including the coordination of submittal documents prepared by others, deferred submittal documents, and phased submittal documents.

(26) Project construction budget--The total aggregate dollars to be spent to execute the design and construction of a capital improvement project, as approved by the school district at the completion of design development to establish the compliance thresholds under subsection (k) of this section in accordance with the requirements of subsection (k)(2) of this section.

(27) School district--The board of trustees of an independent school district or its designated representative, as permitted.

(28) School facility--Any instructional facility, specialized instructional facility, non-instructional assembly facility, non-instructional facility, or any other facility owned or operated by a school district.

(29) School level--

(A) elementary school level--an instructional facility or specialized instructional facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or only includes Grade 6;

(C) high school level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or only includes Grade 9; and

(D) secondary level--an instructional facility or specialized instructional facility that includes some or all grades from Grade 6 through Grade 12.

(30) Secondary entrance--Any exterior door that is not one of the following:

(A) a primary entrance; or

(B) a door that is not operable from the exterior and is designed to allow only for emergency egress.

(31) Specialized instructional facility--An instructional facility with a specialized educational purpose such as agricultural barns.

(32) Square feet per room--The net square footage of a space, including exposed storage space such as cabinets or shelving, but not including hallway space, classroom door alcoves, or storage space such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(33) Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any period of time during school hours.

(34) Third-party code compliance officer--A person who a school district has contracted with and designated to have all of the duties and powers of a building official, as defined by required construction codes, to the extent allowable by state law, to enforce compliance of any required construction code provision that is not enforced by a state or local authority having jurisdiction.

(b) Applicability.

(1) The school facilities standards established in this section shall apply to all school district capital improvement projects as follows, regardless of the type of school facility or the type of construction delivery method used by the district.

(A) A school district capital improvement project of any type or size relating to a school facility subject to this section must comply with applicable requirements established in subsections (d), (e), (f), (j), and (k) of this section.

(B) A project for new construction or major renovation at an instructional facility must comply with the requirements established in subsections (d), (e), (f), (g), (j), and (k) of this section and one of the methods required to demonstrate compliance with minimum space requirements established in subsections (h) and (i) of this section.

(C) A project for minor renovation at an instructional facility must comply with applicable requirements established in subsections (d)(1), (e), (f), (j), and (k) of this section.

(D) A project for new construction, major renovation, or minor renovation at a specialized instructional facility, non-instructional facility, or non-instructional specialized assembly facility must comply with applicable requirements established in subsections (d)(1), (e), (f), (j), and (k) of this section.

(E) A project for major renovation that includes minor scopes of work in an area of a school facility that is separate and distinct from the project scope of the major renovation may be performed as a part of a construction services contract for the major renovation without the minor scope of work becoming subject to the standards in subsections (g), (h), or (i) of this section if:

(i) the minor scopes of work would not, on a stand-alone basis, be considered a major renovation project; and

(ii) the cost of the minor scopes of work is included in the total cost of the project construction budget to determine the appropriate scope of work to be included in the project, as specified in subsection (k)(1)(B) of this section.

(2) A capital improvement project for an instructional facility of an open-enrollment charter school is subject to subsection (k) of this section and all applicable laws for an open-enrollment charter school facility but is not subject to subsections (c)-(j) of this section.

(c) Implementation.

(1) The school facilities standards established in this section shall apply to a capital improvement project for which at least one of the following has occurred on or after November 1, 2021:

(A) a board of trustees adopts a fiscal year maintenance and operations budget where a capital improvement project title and a design or design and construction budget are delineated;

(B) a board of trustees calls a bond election where one or more capital improvement project titles and design or design and construction budgets are delineated; or

(C) a new contract or amendment to an existing contract for architectural services for new construction or a major renovation project or a contract for engineering services for a major renovation or minor renovation has been agreed to and signed and dated by both parties to the agreement.

(2) A school district board of trustees may elect to treat a capital improvement project, for which an action listed in paragraph (1) of this subsection was taken prior to November 1, 2021, under standards established in §61.1036 of this title (relating to School Facilities Standards for Construction before November 1, 2021) or under the standards established in this section. If an election to comply with this section is made by a board of trustees, the school district and architect may mutually agree that the contract for design services may be adjusted and then must signify in writing that the project will become subject to the facilities standards established in this section through an affirmative indication on the required certification form for the project or through some other written document or addendum to the contract signifying election under this section and any modifications to the contract terms agreed to by the parties.

(3) If a school district board of trustees makes an election to comply with §61.1036 of this title under paragraph (2) of this subsection, it may still elect to comply with subsection (k) of this section.

(4) A school district shall consider implementing the safety and security standards under subsection (k) of this section for any safety and security upgrades to an existing instructional facility that does not require compliance with this section.

(d) Educational adequacy.

(1) Long-range facility plan. A school district shall ensure that a capital improvement project subject to this section complies with the requirements and standards as follows.

(A) Elements. The long-range facility plan shall include all of the following elements that apply to the facility and project and must also be updated prior to commencement of construction to include the access control document required in subsection (k)(1)(B) of this section:

(i) existing and proposed instructional programs at the project campus, including special education, dual language, course offerings, and partnerships;

(ii) the age and condition of all buildings and systems at the project campus;

(iii) history of completed capital improvement projects at the facility;

(iv) site evaluation of the project campus, including, but not limited to, overall site; shape; useable land; suitability for intended use as well as planned improvements; adequate vehicular, pedestrian, and emergency access; queueing; parking; and site amenities;

(v) the school district's educational specifications;

(vi) the school district's enrollment projections, maximum student enrollment of the facility, and the facility's maximum instructional capacity, if applicable; and

(vii) the noncompliance, partial compliance, or full compliance with each of the safety and security standards required in subsection (k) of this section.

(B) Process. The process of developing the long-range facility plan shall consider input from teachers, students, parents, taxpayers, and other school district stakeholders.

(C) Compliance. The requirement for a long-range facility plan is met when a school district completes the long-range facility plan, presents it to the school district board of trustees, and makes it available to the prime design professional for a capital improvement project. The long-range facility plan expires after five years from the date of the final plan presented to the school district board of trustees and must be updated prior to commencement of a subsequent capital improvement project. A long-range facility plan developed as part of a district-wide long-range facilities plan may be used to satisfy this requirement.

(2) Educational specifications. A school district shall ensure that a project for new construction and major renovation subject to this section complies with the requirements and standards as follows.

(A) Elements. Educational specifications are a written document prepared by the school district and approved by the school district board of trustees and shall include all of the following:

(i) the school district mission, vision, goals, and pedagogy;

(ii) preliminary details related to facility type, grades served, and maximum student enrollment;

(iii) pertinent provisions of the multi-hazard emergency operations plan that may inform the functionality of the built environment, including how the district complies with TEC, §37.108;

(iv) a written statement that includes:

(I) inclusive design goals and considerations supported by the school district; and

(II) how inclusive design should be addressed in new and renovated facility designs;

(v) minimum total square footage required to comply with the quantitative method of compliance; and

(vi) innovative teaching or operational practices intended for implementation at the instructional facility that may lead to the use of the qualitative method of compliance.

(B) Schedule. An educational specification shall be created for each campus type. If the design and construction of a new campus or major renovation of an existing campus differs substantially from an educational specification that exists for the same campus type, a separate educational specification must be developed. Educational specifications shall be initiated upon the first proposed project of its type and must be completed prior to initiating the planning or programming phase of a project. Each educational specification must be updated after five years from the date of approval.

(C) Compliance. The requirement for educational specifications is met when a school district delivers the approved document to the architect.

(3) Exceptions. A school district is exempt from the requirements of this subsection:

(A) if a school facility experiences catastrophic damage and the school district board of trustees approves a capital improvement project in accordance with TEC, §44.0312(c); or

(B) in a situation deemed urgent by action of the school district board of trustees that warrants immediate action because, if left unresolved, it would impair the conduct of classes.

(e) Administration.

(1) Administration of construction quality standards.

(A) This subsection establishes standards for the administration and procurements of design professional services and other professional services and for the administration of competitive bids and contracting requirements for construction services. A school district shall comply with requirements in this subsection and with all applicable requirements, restrictions, and responsibilities established in state law, administrative code, or by a local authority having jurisdiction.

(B) A school district shall comply with the administrative and procedural requirements established in this subsection and with the standards established in subsection (j) of this section to promote construction quality and best value for a capital improvement project subject to this section.

(C) A standard in this section that incorporates by reference a key statutory provision or administrative rule is established as a compliance requirement for a school district seeking to procure, obtain a competitive bid, or administer a contract for construction services, construction-related services, design professional services, or any other professional service required for a capital improvement project. The requirements establish a method by which a school district shall demonstrate compliance with the requirements in this subsection and with the construction quality standards and construction code requirements in subsection (j) of this section. Any express reference to, or omission of, an applicable statutory provision in this subsection may not be construed to diminish, alter, or abate a provision of law applicable to a school district or to a school district capital improvement project subject to this section.

(2) School district requirements and responsibilities.

(A) In accordance with TEC, §46.003(g), the board of trustees and voters of a school district shall determine district needs concerning construction, acquisition, renovation, or improvement to

instructional facilities. School district funding is entrusted to the district by the taxpayers, and a district must ensure procurement processes and procedures are transparent and provide the best value to the district by complying with applicable laws governing procurement of professional design services and construction services and with the standards established in this subsection to promote construction quality.

(B) In accordance with TEC, §11.201, a superintendent shall oversee and ensure compliance with the standards for school facilities established in this section pursuant to TEC, §46.008, and shall ensure board consideration for any action specified as being required to be made by the board of trustees, whether by statute, board rule, or other applicable requirement.

(C) In accordance with TEC, §44.0312(b), a board of trustees may not delegate the authority to act regarding an action authorized or required by TEC, Chapter 44, Subchapter B, to be taken by a board of trustees of a school district.

(D) In accordance with TEC, §44.0312(a), a board of trustees of a school district may, as appropriate, delegate its purchasing and contracting authority under TEC, Chapter 44, Subchapter B, regarding an action authorized or required to be taken by a school district or a designated person, representative, or committee.

(E) In accordance with TEC, §44.0312(a), when procuring construction services for a capital improvement project, a school district board of trustees shall provide notice of the delegation and the limits of the delegation in the request for bids, proposals, or qualifications or in an addendum to the request. If the school district fails to provide that notice, a ranking, selection, or evaluation of bids, proposals, or qualifications for construction services other than by the board of trustees in an open public meeting is advisory only.

(F) A superintendent shall ensure that a requirement to specify the level of delegation of authority is included in the bid specifications when procuring construction services to select a contractor, in accordance with TEC, §44.0312.

(G) In accordance with TEC, §44.0312(c), in the event of a catastrophe, an emergency, or a natural disaster affecting a school district, the board of trustees of the district has all authority to delegate to the superintendent or designated representative the authority to contract for the replacement, construction, or repair of school equipment or facilities under TEC, Chapter 44, Subchapter B, if emergency replacement, construction, or repair is necessary for the health and safety of district students and staff.

(H) In accordance with TEC, §44.031(d), and TGC, §2269.051, a school district may adopt rules as necessary to implement the management responsibilities and duties established for school district procurement and delivery of professional design and construction services for a capital improvement project.

(3) Requirements for construction services.

(A) In accordance with TEC, §44.031, the award of a school district contract for construction services or construction-related services valued at \$50,000 or more must be made by competitive bid or by the construction delivery contracting method established in TGC, Chapter 2269, that provides the best value for the district.

(B) In accordance with TGC, §2269.056(a), a school district that is considering a construction contract using a method of procuring construction services other than by competitive bid must first, before advertising, determine which contracting method for construction services contained in TGC, Chapter 2269, provides the best value to the school district for the project.

(C) A school district is required to consider certain factors established in TGC, §2269.056(b), if the district engages in consideration of a construction delivery contracting method other than competitive bidding to evaluate best value for the district, and the district must adhere to the requirements specified for each type of construction delivery contracting method established in TGC, Chapter 2269, Subchapters D, E, F, and G, and must determine, prior to utilization, the best value for the district. A school district shall comply and adhere in full to the requirements specified for each construction delivery contracting method.

(D) A school district shall ensure a contract for construction services required to be procured by a method in TGC, Chapter 2269, specifies the contractor's responsibilities for site safety and requires compliance with the requirement to provide workers' compensation insurance in accordance with Texas Labor Code, §406.096.

(E) In accordance with TGC, §2252.063 and §2252.064, a school district shall ensure that a contract with a general contractor requires the contractor to provide to the district annual payment statements derived from sales tax reports and to execute a bond issued by a surety company authorized to do business in the state of Texas in an amount determined by the school district, which may not exceed the contract price. The bond must be payable to the school district and conditioned on the faithful performance of the terms of the contract.

(F) If a school district selects the design build method of construction delivery, the district shall procure a design professional, independent of the contractor, to act as the school district's representative for the procurement process and for the duration of the construction in accordance with TGC, §2269.355.

(G) In accordance with TGC, §2269.408(a), if a job order contract or an order issued under the contract requires architectural or engineering services that constitute the practice of architecture or engineering, the school district shall select or designate an architect or engineer, in accordance with TGC, Chapter 2254, to prepare the construction documents for the project. In accordance with TGC, §2269.408(b), TGC, §2269.408(a), does not apply to a job order contract or an order issued under the contract for industrialized buildings or relocatable educational facilities subject to and approved under TOC, Chapter 1202, if the contractor employs the services of an architect or engineer who approves the documents for the project.

(4) Requirements for design professional services.

(A) In accordance with TGC, §2269.102, a school district seeking to issue a request for competitive bids for construction services shall first select or designate an architect or engineer, in accordance with TOC, Chapter 1051 or Chapter 1001, as applicable, to prepare the construction documents required for a capital improvement project to be awarded by competitive bid.

(B) A capital improvement project that contains architectural or engineering services, as defined by TOC, Chapter 1051 or Chapter 1001, as applicable, must use the professional services of an architect or engineer, or both, as required by the scope of the project.

(C) When architectural or engineering services are required, a school district shall procure architectural or engineering services from a design professional in accordance with TGC, §2254.004. A design professional may subcontract another design professional to perform architectural or engineering services as part of the scope of services that the subcontracting design professional is providing to a school district. A school district shall require that an architect perform architectural services in accordance with TOC, Chapter 1051, to prepare construction documents required for a new construction or major

renovation project for a school facility. A school district shall require that an engineer perform engineering services in accordance with TOC, Chapter 1001, to prepare engineering plans and specifications documents required for a minor renovation, major renovation, or a new construction project for a school facility.

(D) A school district shall designate one design professional to be the prime design professional for a capital improvement project and shall contractually engage the prime design professional to review and coordinate the design of the project, allowing the prime design professional to rely on and contract for other design professionals where appropriate.

(E) A school district shall ensure a contract for professional design services for a capital improvement project contains the scope of services defined with reasonable specificity, including contractual time parameters, milestones, or deadlines and shall ensure that contract terms conform to the standard of care established in Local Government Code, §271.904, which requires architectural and engineering services to be provided with the professional skill and care ordinarily provided by competent architects or engineers practicing under same or similar circumstances and professional license.

(F) In accordance with TOC, §1051.703(d), designation as the "prime design professional" does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to fulfill the requirements of a professional license for which they have not been lawfully granted.

(5) Requirements for professional services of third-party consultants.

(A) When procuring the professional services of a third-party consultant for a capital improvement project, a school district must adhere to the requirements established in TGC, Chapter 2269.058, and this section. A school district is required to select a qualified provider of a professional service for which it contracts under this subsection in accordance with TGC, Chapter 2254.

(B) A school district shall require any design professional contractually engaged to procure professional design services from any other design professional as a subconsultant to select and subcontract the professional design services based on the qualification-based selection process established in TGC, Chapter 2254.

(C) A school district shall ensure, through confirmation from a local or state building official or a third-party code compliance officer as provided for in subsection (j)(2) of this section, that all required inspections, testing, or permits required for a capital improvement project have been performed in accordance with contractual terms and in accordance with all applicable building code specifications.

(D) In accordance with TGC, §2269.058, a school district shall, independently of the contractor, construction manager-at-risk, or design-build firm, provide or contract for the construction materials engineering, testing, and inspection services and the verification testing services necessary for acceptance of the facility by the district.

(E) A school district shall ensure, through confirmation from a local or state building official or a third-party code compliance officer, that all code compliance issues and requirements for a capital improvement project have been addressed or performed, including inspections, testing, and permits that are required.

(F) Any contract with a third-party code compliance officer shall be in accordance with terms and requirements specified by the International Code Council and shall be procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058.

(G) A building permit or local government fee for code compliance, a contract with a third-party code compliance officer, a third-party inspector, or consultant shall be the obligation and responsibility of the school district, procured in accordance with TGC, Chapter 2254, as required by TGC, §2269.058, and consistent with the terms of subsection (j) of this section.

(H) In accordance with TEC, §44.901 and §44.902, a school district may contract for energy or water conservation measures and must procure the services for energy or water savings performance contracts according to the procedures established for professional services in TGC, §2254.004.

(6) Contract compliance and construction quality control assurances. A school district shall ensure that services sought by or provided to the district for a school facility capital improvement project, including, but not limited to, professional design services, construction services, construction administration services, third-party inspection services, third-party testing services, or third-party code compliance services, are provided through a project-specific written agreement that:

(A) conforms to applicable state laws and any requirements, standards, or codes adopted by a local authority having jurisdiction;

(B) contains all services required to be provided in the agreement, prohibits the school district from waiving any services or directing any changes where recommended by an applicable design professional, and requires all changes to the construction documents to be documented in writing and signed by the prime design professional, the contractor, and the school district;

(C) specifies the level of observation, testing, and documentation required to be conducted through the agreement to determine and certify conformance and completion of services provided;

(D) requires the use of a prime design professional to coordinate and prepare a proposed statement of any special inspections or testing required in accordance with the required construction codes, customizing the proposed statement based on knowledge about the project regardless of whether the statement requires testing and inspection to be less than the default requirements of the required construction codes, including materials testing, project-specific requirements for special inspections and testing, specific wind and seismic requirements, frequency of the special inspections, or tests to be performed in accordance with the referenced standard defining the inspection;

(E) ensures that construction documents are of sufficient clarity to indicate the timing, location, nature, and extent of specific inspections and tests required to be performed by the school district through the local authority having jurisdiction, the third-party code compliance officer, any third-party special inspector or inspection agency, or the prime design professional if qualified as a special inspector and specified as a contractual term;

(F) ensures that a building permit is issued by a local authority having jurisdiction or a third-party code compliance officer in which a building permit shall be considered by the school district to indicate that the proposed statement of special inspections is approved and constitutes the code-required inspections and tests;

(G) requires the contractor, before beginning construction, to submit to the school district, prime design professional, and the building official or third-party code compliance officer an acknowledgment of the contractor's responsibility to notify quality assurance personnel that will be performing inspections and tests when the project is ready for those specific inspections and tests and the contractor's re-

sponsibility to request and obtain a final report from each quality control person performing the code-required inspections and tests before requesting a certificate of occupancy;

(H) requires third-party inspectors to perform the code-required inspections and tests, to submit inspection and testing reports to the school district and the prime design professional, and to submit a final report to the school district, prime design professional, building official or third-party code compliance officer, and contractor, upon request by the contractor, indicating any known deficiencies discovered during the project that have not yet been addressed at the time of the request;

(I) requires special inspection and testing reports to be submitted to the building official and the prime design professional and any discrepancies to be brought to the attention of the contractor, and if not corrected, to be brought to the attention of the building official, the prime design professional, and the school district;

(J) specifies treatment for timely performance and documentation required in response to requests for information, change documents, or change orders;

(K) specifies payment certification provisions requiring notarized contractor signature on the application for Certificate of Substantial Completion and specifies that the school district must provide certification of payment for any of the school district's separate consultants or contractors;

(L) requires clear indication of the date of substantial completion on the payment certification, specifies the punch list provided by the contractor to address all remaining areas of the project, and documents all known school district accepted nonconforming work;

(M) limits required certifications of work requested or required by the school district to work required under the issuing party's services agreement;

(N) ensures that contract terms for design professional services are consistent and aligned and do not conflict or overlap with regard to contractual responsibilities assigned to the prime design professional, any design professional of record, the contractor, any prime subcontractors, a third-party building code compliance officer, or a third-party special inspector or consultant; and

(O) ensures appropriate specifications or treatment for the school district's acceptance or acknowledgement of a contractor's final completion as the owner of the facility.

(f) Certification of compliance with the school facilities standards.

(1) A school district, design professional, contractor, and prime subcontractors, if applicable, shall certify compliance with all applicable standards required in subsections (d) and (g)-(k) of this section as follows.

(A) School district certifications.

(i) Certifications related to educational adequacy under subsection (d) of this section.

(I) To provide an educationally adequate school facility, the school district shall certify compliance that the long-range facility plan was developed, presented to the school district board of trustees, and provided in a timely manner to the prime design professional.

(II) To provide an educationally adequate instructional facility or specialized instructional facility, the school district shall certify compliance that the educational specifications

were developed, approved by the school district board of trustees, and provided in a timely manner to the architect.

(III) To provide an educationally adequate school facility, the school district shall certify compliance that a capital improvement project has been designed by the design professional of record in reasonable accordance to meet the goals and expectations established in the long-range facility plan and, if applicable, educational specifications.

(ii) Certifications related to standards for space for instructional facilities under subsection (g) of this section and standards associated with the method of compliance for instructional facility space approved by the school district board of trustees under the quantitative method of compliance in subsection (h) of this section or the qualitative method of compliance in subsection (i) of this section.

(I) To provide adequate instructional spaces, where required, the school district shall certify compliance with applicable provisions of subsection (g) of this section.

(II) To provide adequate space in instructional facilities, the school district shall certify that the most appropriate method of compliance was presented to and approved by the school district board of trustees prior to commencement of design development.

(iii) Certifications related to safety and security standards under subsection (k) of this section. To continue to provide a safe and secure environment, the school district shall certify compliance with the applicable safety and security standards in subsection (k) of this section approved by the school district and provided as directives in a timely manner to the prime design professional and to other design professionals of record, contractors, and prime subcontractors.

(B) Design professional certifications.

(i) Certifications related to educational adequacy under subsection (d) of this section. The design professional of record for a capital improvement project shall certify compliance that the project has been designed in reasonable accordance with the long-range facility plan and educational specifications, if applicable.

(ii) Certifications related to standards for space for instructional facilities under subsection (g) of this section and to standards associated with the method of compliance approved by the school district board of trustees for instructional facility space under subsection (h) of this section related to the quantitative method of compliance or under subsection (i) of this section related to the qualitative method of compliance. To provide adequate instructional spaces and adequate space in instructional facilities, the architect of record shall certify compliance that the project has been designed in reasonable accordance with the standards for space in subsection (g) of this section and with the standards associated with the method of compliance approved by the school district board of trustees under subsection (h) or (i) of this section.

(iii) Certifications related to safety and security standards under subsection (k) of this section. A design professional of record shall certify compliance that the project has been designed in reasonable accordance with any required safety and security directives approved by the school district in accordance with subsection (k) of this section.

(C) Contractor certifications.

(i) Process certifications. To ensure construction quality and performance of contract terms, the contractor and prime subcontractors, if applicable, shall certify compliance that the project has been built in conformance with the contract documents.

(ii) Certifications related to construction quality standards under subsection (j) of this section.

(I) To ensure compliance with construction quality standards, the contractor and prime subcontractors, if applicable, shall certify compliance at the completion of a capital improvement project that the project has been built in conformance with the contract terms and performance standards specified by the contract documents for the general contractor and for any of its subcontractors or subconsultants of any tier, which shall include certification of compliance with any subsequent change order documents approved by the owner and the design professional of record.

(II) Where a third-party code compliance officer is required by subsection (j) of this section, to ensure that a third-party code compliance officer does not find any violations of the provisions of the required construction codes identified in subsection (j)(1) of this section that are not enforced by a state or local authority having jurisdiction, a school district shall require that a third-party code compliance officer issue a third-party certificate of occupancy. Where a local authority having jurisdiction enforces some of the required construction codes, a third-party code compliance officer shall not issue a third-party certificate of occupancy until either the local authority having jurisdiction has issued a certificate of occupancy or the local authority having jurisdiction indicates in writing to the third-party code compliance officer that the local authority having jurisdiction does not issue certificates of occupancy.

(iii) Certifications related to safety and security standards under subsection (k) of this section. To provide a safe and secure environment, the contractor and prime subcontractors, if applicable, shall certify compliance that the project has been built in reasonable accordance with the safety and security directives provided by the school district and reflected in the contract documents prepared by the design professional.

(iv) Special provisions for a construction manager agent. For projects that use the construction manager agent contracting method established in TGC, Chapter 2269, Subchapter E, the construction manager agent and each construction prime contractor must provide certification in accordance with clause (i) of this subparagraph, and each shall certify the scope of work for which they are contractually responsible.

(2) General provisions.

(A) For projects that use the construction manager agent contracting method established in TGC, Chapter 2269, Subchapter E, the construction manager agent and each construction prime contractor must provide certification in accordance with paragraph (1)(C)(i) of this subsection, and each shall certify the scope of work for which they are contractually responsible.

(B) The certification requirements specified for a school facility capital improvement project in this subsection shall be expressed on a form developed by the Texas Education Agency that identifies the appropriate certifications required for a capital improvement project based on the facility, project type, and method of contracting established in TGC, Chapter 2269, for the procurement of construction services approved by the school district board of trustees for the project. The form must include written certification requirements for a design professional of record, a general contractor, construction manager-at-risk, a design build firm, a construction manager agent, a prime contractor or subcontractor.

(g) Standards for space for instructional facilities.

(1) Minimum standards for common areas.

(A) Library.

(i) A school district shall consider the School Library Standards and Guidelines as adopted under TEC, §33.021, when developing, implementing, or expanding library services.

(ii) The sum total square footage of all library-related areas shall meet the following minimum square feet (SF) requirements based on maximum instructional capacity and may be contiguous or dispersed:

(I) for 100 students or fewer, a minimum of 1,400 SF;

(II) for 101-500 students, 1,400 SF plus an additional 4 SF for each student in excess of 100;

(III) for 501-2,000 students, a minimum of 3,000 SF plus an additional 3 SF for each student in excess of 500; and

(IV) for 2,001 or more students, a minimum of 7,500 SF plus an additional 2 SF for each student in excess of 2,000.

(B) Gymnasium. Primary gymnasiums or physical education space, if required by the school district's educational program, shall have a minimum of 3,000 SF at the elementary school level, 4,800 SF at the middle school level, and 7,500 SF at the high school level.

(2) Minimum standards for special spaces.

(A) Combination science classroom/laboratory.

(i) A combination science classroom/laboratory for Kindergarten-Grade 5 must provide a minimum of 50 SF per student. The room may have an established maximum of 22 students but must not exceed 25. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 linear feet (LF) per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.

(ii) A combination science classroom/laboratory for Grades 6-8 must provide a minimum of 58 SF per student. The room may have an established maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.

(iii) A combination science classroom/laboratory for Grades 9-12 must provide a minimum of 58 SF per student. The room may consider a maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.

(B) Science laboratory.

(i) The separate science laboratory and classroom configuration is not permissible at the elementary level.

(ii) A science laboratory for Grades 6-8 must be a minimum of 42 SF per student. The room must consider a maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) must be provided at student laboratory benches,

and an additional 3 LF per student of horizontal laboratory countertop support space must be provided for equipment and materials for investigations, activities, or student projects.

(iii) A science laboratory for Grades 9-12 shall be a minimum of 42 SF per student. The room must consider a maximum of 24 students but must not exceed 28. Within the total square footage of the room, 6 SF per student of horizontal laboratory countertop space (3 feet wide x 2 feet deep) shall be provided at student laboratory benches, and an additional 3 LF per student of horizontal laboratory countertop support space shall be provided for equipment and materials for investigations, activities, or student projects.

(C) Science classrooms. Science classrooms shall be provided at a ratio not to exceed 2:1 of science classrooms to science laboratories at the secondary level and must meet the requirements of subsection (h)(3) of this section. The science laboratories must be located in close proximity to the science classrooms they serve.

(D) Fume hoods.

(i) Each of the following shall have one built-in fume hood:

(I) at least one middle school prep room per grade level served in the school facility;

(II) high school level chemistry or Advanced Placement (AP) chemistry combination classroom/laboratory or laboratory; and

(III) prep room serving chemistry, AP chemistry, or integrated physics and chemistry (IPC) combination classroom/laboratory or laboratory.

(ii) A double-sided fume hood may be provided to satisfy chemistry or AP chemistry fume hood requirements.

(iii) The exhaust shall be vented to the outside, above the roof and away from air vents.

(E) Preparation/storage rooms. One preparation/storage room at a minimum 10 SF per student shall be provided adjacent to each combination science classroom/laboratory. One preparation/storage room at a minimum of 10 SF per student shall be provided per science classroom and be located adjacent to its partner science laboratory. Preparation/storage rooms may be combined, but the combination of more than one preparation/storage room shall not reduce the minimum square feet or quantity of built-in fume hoods required if they were not combined.

(F) Chemical storage room. If hazardous or vaporous chemicals are to be used in a science laboratory or combination science classroom/laboratory, a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students or non-authorized adults. One chemical storage room may be shared among multiple laboratories or classrooms/laboratories. Refer to National Fire Protection Association (NFPA), International Fire Code (IFC), and Occupational Safety and Health Administration (OSHA) for additional requirements.

(G) Eye/face wash. A built-in eye/face wash that can wash both eyes simultaneously shall be provided in each room serving Grades 5-12 where hazardous chemicals or eye irritants are used by instructors and/or students. The eye/face wash shall comply with the American National Standards Institute (ANSI) Standards for Shower

and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(H) Safety shower. A built-in safety shower shall be provided in each combination classroom/laboratory, laboratory, or prep room where a built-in fume hood is required or voluntarily provided. Where a safety shower is required in both the laboratory and corresponding prep room, a safety shower may be provided in only the prep room to satisfy this requirement. The safety shower shall comply with the ANSI Standards for Shower and Eyewash Equipment (Z358.1). The tepid water required by ANSI Z358.1 is not required to come from a heated source; however, school districts that commonly experience lengthy periods of extremely cold temperatures during the winter season shall consider a tepid water system with a heated source.

(I) Exhaust fan and ventilation system. Refer to International Mechanical Code, ANSI, OSHA, and NFPA for project requirements.

(J) Emergency shut-off controls. If electricity, gas, and/or water are provided in student areas, emergency shut-off controls shall be provided for each in a location accessible to the instructor but not easily accessible to students. It shall not be located at any doorway leading to a corridor or hallway.

(K) Special education. Specialized classrooms shall be a minimum of 45 SF per student.

(h) Quantitative method of compliance for instructional facility space requirements. A school district board of trustees shall approve compliance with this method or the method of compliance described in subsection (i) of this section before the commencement of design development for a capital improvement project for an instructional facility.

(1) To satisfy this method of compliance, the capital improvement project shall meet the minimum aggregate square footage based on the campus's flexibility level as specified in paragraph (2) of this subsection, the SF per student as specified in paragraph (3) of this subsection, and the maximum instructional capacity of the campus included in the project's educational specifications. Cafeterias, gymnasiums, and library space may not be used to satisfy this method of compliance. The minimum aggregate square footage required may be comprised of the following:

(A) mathematics, English/language arts, and history/social studies classrooms;

(B) combination science classrooms/laboratories;

(C) science classrooms, if the separate science classroom and laboratory layout is used;

(D) special education classrooms;

(E) collaboration areas; and

(F) elective classrooms or laboratories under the following circumstances:

(i) if the elective program necessitates a SF per student in excess of the value specified in subsection (h)(3) of this section, a maximum of total square feet for the space shall be used that is equal to the value specified in (h)(3) of this section multiplied by the maximum number of students that shall be safely served in that classroom or laboratory at a time;

(ii) if the elective classroom or laboratory is used between 51-100% of the school day, at a factor of 1; and

(iii) if the elective classroom or laboratory is used between 0-50% percent of the school day, at a factor of .5.

(2) The level of flexibility of a facility must be selected by a school district in order to calculate the minimum aggregate square footage under paragraph (3) of this subsection.

(A) Flexibility Level 1 (L1). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging; furniture is exclusively attached student desk/chair with an expectation of very infrequent rearrangement; minimal multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with partial access to mobile devices.

(B) Flexibility Level 2 (L2). Single, fixed teacher presentation space; compact organization of spaces makes access to outdoor space limited and challenging, but outdoor spaces may be visible from classrooms; furniture includes detached student desk/chair with an expectation of very infrequent rearrangement; moderate multipurpose functionality for walls with no capability of reconfiguration; teacher-centric digital instruction with moderate access to mobile devices.

(C) Flexibility Level 3 (L3). Multiple student/teacher presentation spaces; organization of spaces allows for proximal outdoor access that is visible from classrooms; flexible and mobile furniture that is easily rearranged; high use of multipurpose walls, including digital touchscreen and other functionalities; learner-centric digital instruction with high levels of access to a range of mobile devices.

(D) Flexibility Level 4 (L4). Multiple student/teacher presentation spaces that are likely mobile; organization of spaces allows for direct outdoor access that is visible from classrooms; highly flexible and mobile furniture that is easily rearranged by students independently or collectively; maximized inclusion of multipurpose walls, including digital capabilities and reconfiguration; learner-centric digital instruction with high levels of access to a range of mobile devices incorporating an "anytime/anywhere" instructional philosophy.

(3) The minimum aggregate square footage shall be determined based on the minimum square footage per student by campus type and the selected flexibility level approved under paragraph (2) of this subsection.

(A) Elementary schools (prekindergarten-Grade 5):

- (i) L1 36 SF per pupil (pp);
- (ii) L2 36 SF pp;
- (iii) L3 42 SF pp; and
- (iv) L4 42 SF pp.

(B) Middle schools (Grades 6-8):

- (i) L1 32 SF pp;
- (ii) L2 32 SF pp;
- (iii) L3 36 SF pp; and
- (iv) L4 36 SF pp.

(C) High schools (Grades 9-12):

- (i) L1 32 SF pp;
- (ii) L2 32 SF pp;
- (iii) L3 36 SF pp; and
- (iv) L4 36 SF pp.

(i) Qualitative method of compliance for instructional facility space standards. A school district board of trustees shall approve compliance with this method or the method of compliance described in subsection (h) of this section before the commencement of design development for a capital improvement project for an instructional facility. A school district may use the qualitative method of compliance for a capital improvement project only if the board of trustees has prior documented approval of one or more instructional or operational practices for the proposed project that distributes or manages student capacity in an innovative or non-traditional manner. Prior to approving the qualitative method of compliance, all instructional and operational practices applicable to the proposed project must have been documented and approved by the school district board of trustees to demonstrate compliance with the requirements in this subsection.

(1) To satisfy this method of compliance, the project shall meet the minimum total square footage based on the campus's flexibility level as specified in subsection (h)(2) of this section, the SF per student as specified in subsection (h)(3) of this section, and the adjusted maximum instructional capacity of the campus. The minimum aggregate square footage required may be comprised of the following:

(A) mathematics, English/language arts, and history/social studies classrooms;

(B) combination science classrooms/laboratories;

(C) science classrooms, if the separate science classroom and laboratory layout is used;

(D) special education classrooms;

(E) collaboration areas; and

(F) elective classrooms or laboratories under the following circumstances:

(i) if the elective program necessitates a SF per student in excess of the value specified in subsection (h)(3) of this section, a maximum of total square feet for the space shall be used that is equal to the value specified in subsection (h)(3) of this section multiplied by the maximum number of students that shall be safely served in that classroom or laboratory at a time;

(ii) if the elective classroom or laboratory is used between 51-100% of the school day, at a factor of 1; and

(iii) if the elective classroom or laboratory is used between 0-50% of the school day, at a factor of .5.

(2) Gymnasiums may not be used to satisfy this method of compliance. Cafeterias and library space may be used to satisfy this method of compliance and shall be treated like an elective space under paragraph (1)(F) of this subsection.

(j) Construction quality standards.

(1) Construction code requirements. A capital improvement project for a school facility must reasonably comply with the following construction code requirements.

(A) Projects located outside of a municipal jurisdiction in the unincorporated area of a county must reasonably comply with the following requirements.

(i) Where projects are located in a county that does not have an adopted general building code, projects must reasonably comply with the International Building Code and the Existing Building Code, as published by the International Code Council, as they existed on May 1, 2003. Where projects are located in a county that has an adopted general building code, projects must reasonably comply with the adopted general building code and any chapters that were not

adopted or removed entirely by amendment from the adopted model building code. Where a project is located in an area that is designated as a catastrophe area according to the Texas Department of Insurance, a project must also reasonably comply with any applicable amendments to the building code that have been adopted by the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 2210.

(ii) Where projects are located in a county that does not have an adopted mechanical code, projects must reasonably comply with the International Mechanical Code, as published by the International Code Council, as it existed on the same date that the applicable International Building Code was published. Where projects are located in a county that has an adopted mechanical code, projects must reasonably comply with the adopted mechanical code.

(iii) Where projects are located in a county that does not have an adopted fire code, projects must reasonably comply with the NFPA 101 Life Safety Code and NFPA 1 Fire Code standards adopted by the State Fire Marshal in accordance with TGC, §417.008, and in accordance with 28 TAC §34.301 (relating to Purpose). Where projects are located in a county that has an adopted fire code, projects must reasonably comply with the adopted fire code.

(iv) Where projects are located in a county that does not have an adopted plumbing code, projects must reasonably comply with the International Plumbing Code and referenced International Fuel Gas Code, as published by the International Code Council, as adopted by the Texas Board of Plumbing Examiners as established in 22 TAC §367.2(a) (relating to Code Requirements) in accordance with TOC, Chapter 1301. Where projects are located in a county that has an adopted plumbing code, projects must reasonably comply with the adopted plumbing code.

(v) Where projects are located in a county that does not have an adopted electric code, projects must reasonably comply with the National Electric Code, as published by the NFPA, as adopted by the Texas Department of Licensing and Regulation in accordance with TOC, Chapter 1305. Where projects are located in a county that has an adopted electric code, projects must reasonably comply with the adopted electric code.

(vi) Projects must reasonably comply with the International Energy Conservation Code, as published by the International Code Council, as adopted by the State Energy Conservation Office of Texas in accordance with Texas Health and Safety Code, Chapter 388.

(vii) Projects must reasonably comply with the International Swimming Pool and Spa Code, as published by the International Code Council, as it existed on May 1, 2019.

(viii) Projects must reasonably comply with the industrialized housing and building rules as adopted by the Texas Commission of Licensing and Regulation in accordance with TOC, Chapter 1202.

(B) Projects located inside of a municipal jurisdiction must reasonably comply with the following requirements.

(i) Where projects are located in a municipality that does not have an adopted general building code, projects must reasonably comply with the International Building Code and the International Existing Building Code, as published by the International Code Council, as they existed on May 1, 2003, in accordance with Local Government Code, §214.216. Where projects are located in a municipality that has an adopted general building code, projects must reasonably comply with the adopted general building code. Where a project is located in an area that is designated as a catastrophe area according to the Texas Department of Insurance, a project must also comply with any applicable amendments to the building code that have been adopted by

the Texas Department of Insurance in accordance with Texas Insurance Code, Chapter 2210.

(ii) Where projects are located in a municipality that does not have an adopted mechanical code, projects must comply with the International Mechanical Code, as published by the International Code Council, as it existed on May 1, 2003. Where projects are located in a municipality that has an adopted mechanical code, projects must reasonably comply with the adopted mechanical code.

(iii) Where projects are located in a municipality that does not have an adopted fire code, projects must reasonably comply with the NFPA 101 Life Safety Code and NFPA 1 Fire Code standards adopted by the State Fire Marshal in accordance with TGC, §417.008, and in accordance with 28 TAC §34.301. Where projects are located in a municipality that has an adopted fire code, projects must reasonably comply with the adopted fire code.

(iv) Where projects are located in a municipality that does not have an adopted plumbing code, projects must reasonably comply with the International Plumbing Code and referenced International Fuel Gas Code, as published by the International Code Council, as adopted by the Texas Board of Plumbing Examiners as established in 22 TAC §367.2(a) in accordance with TOC, Chapter 1301. Where projects are located in a municipality that has an adopted plumbing code, projects must reasonably comply with the adopted plumbing code.

(v) Where projects are located in a municipality that does not have an adopted electric code, projects must reasonably comply with the National Electric Code, as published by the NFPA, as adopted by the Texas Department of Licensing and Regulation in accordance with TOC, Chapter 1305. Where projects are located in a municipality that has an adopted electric code, projects must reasonably comply with the adopted electric code.

(vi) Where projects are located in a municipality that does not have an adopted energy conservation code, projects must reasonably comply with the International Energy Conservation Code, as published by the International Code Council, as adopted by the State Energy Conservation Office of Texas in accordance with Texas Health and Safety Code, Chapter 388. Where projects are located in a municipality that has an adopted energy conservation code, projects must reasonably comply with the adopted energy conservation code.

(vii) Where projects are located in a municipality that does not have an adopted swimming pool code, projects must reasonably comply with the International Swimming Pool and Spa Code, as published by the International Code Council, as it existed on May 1, 2019. Where projects are located in a municipality that has an adopted swimming pool code, projects must reasonably comply with the adopted swimming pool code.

(viii) Projects must reasonably comply with the industrialized housing and building rules as adopted by the Texas Commission of Licensing and Regulation in accordance with TOC, Chapter 1202.

(2) Third-party code compliance requirements.

(A) A school district shall require the prime design professional of a capital improvement project to submit to the school district a report identifying any construction code requirements that the prime design professional believes, to the best of their knowledge after performing research, will not be enforced by a state or local authority having jurisdiction.

(B) A school district shall contract with a third-party code compliance officer to enforce any construction code requirement

identified by a prime design professional pursuant to subparagraph (A) of this paragraph as not enforced by a state or local authority having jurisdiction and shall adjust the scope of services provided by the third-party code compliance officer if an error is discovered in the prime design professional's report.

(C) A school district shall hire a third-party code compliance officer to have all of the duties and powers of a building official, as defined by the required construction codes and to the extent allowable by state law, to ensure compliance with any required construction code provisions identified as not enforced by a state or local jurisdiction with authority pursuant to subparagraphs (A) and (B) of this paragraph.

(D) In the manner specified by TGC, §2269.058, a school district shall procure the services of a third-party code compliance officer required by subsection (j) of this section as a professional service in accordance with the Texas Professional Services Procurement Act, as established in TGC, Chapter 2254.

(E) A third-party code compliance officer must not be a design professional responsible for the design of any portion of the project, anyone employed by a design professional responsible for the design of any portion of the project, a contractor responsible for constructing any portion of the project, or anyone employed by a contractor responsible for constructing any portion of the project. A third-party code compliance officer may be a peer reviewer that performs a peer review required for any storm shelters that are part of the project.

(F) A third-party code compliance officer must have a Certified Building Official designation from the International Code Council (ICC). A third-party code compliance officer must also have at least ten years of experience or equivalent experience as an architect, engineer, inspector, contractor or superintendent of construction, or any combination of these, at least five years of which have been supervisory experience.

(G) A plan review performed by or under the supervision of a third-party code compliance officer must be performed by a qualified design professional or an independent third party qualified to certify plans through the ICC for the appropriate building, mechanical, electrical, or plumbing trade. Plan reviews performed under the supervision of a third-party code compliance officer must be performed by a person with at least five years of experience as an engineer or an architect.

(H) The following shall apply to a storm shelter where a required construction code has a provision requiring a storm shelter for certain projects.

(i) For the purposes of determining if a storm shelter is required for a specific building area, a school district shall require a third-party code compliance officer to accept, as a modification of the code in lieu of meeting the requirement to provide a storm shelter for that specific area, any written justification submitted by the school district that purports that the intended use of the specific building area that would be served by a storm shelter is not used for educational purposes during normal school hours when attendance is mandatory.

(ii) Where a storm shelter is required for new construction, a school district shall require a third-party code compliance officer to allow the occupant load for storm shelter design to be 110% of maximum instructional capacity, as stated by the designated representative of the school district in writing, even if this is significantly less than the total occupant load used for other purposes such as fire egress.

(iii) Where a storm shelter is required for additions, a school district shall require a third-party code compliance officer to allow the occupant load for storm shelter design to be based on, prorated

where only a portion of the school facility is considered, 110% of maximum instructional capacity, as stated by the designated representative of the school district in writing, even if this is significantly less than the total occupant load used for other purposes such as fire egress.

(iv) For the purposes of determining if a storm shelter can serve the occupants of a building that is located at a distance from the storm shelter that is greater than a code-required maximum distance, a school district shall require a third-party code compliance officer to accept, as a modification of the code in lieu of meeting the specific distance requirement, any written emergency operations plan submitted by the school district that purports to provide early notification to those occupants. School districts may use protections provided in TEC, §37.108, to protect sensitive information.

(v) For the purposes of determining if a storm shelter is required to be constructed at a school facility where applicable construction codes require a storm shelter and a modular building be installed as part of the project, a school district shall require a third-party code compliance officer to consider as new construction any modular building that is installed as part of the project, regardless of whether it is relocatable.

(3) Other requirements.

(A) A capital improvement project for a school facility subject to the standards in this section must comply with the 2010 Americans with Disabilities Act Standards for Accessible Design as well as the Texas Accessibility Standards of 2012.

(B) A school district shall notify a design professional in writing of any construction-related standard or expectation of the school district for the project that is not otherwise established or required by an applicable construction code as required in this subsection. Where a school district contracts with a design professional and that design professional subcontracts another design professional, the school district need only notify the design professional that has a contract with the school district.

(C) A school district shall consider as part of a capital improvement project the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. A school district may use the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under Texas Health and Safety Code, Chapter 385; the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency; or some other updated state approved guidelines or standards for indoor air quality in response to communicable disease related public health issues.

(D) A school district shall consider as part of a capital improvement project the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(k) Safety and security standards.

(1) Compliance requirements applicable to all instructional facilities campus-wide. A capital improvement project of a school district or an open-enrollment charter school must include campus-wide implementation of the following provisions.

(A) Communications infrastructure. In accordance with TEC, §37.108, a school district or an open-enrollment charter school shall:

(i) develop a multi-hazard plan that provides measures to ensure that school district communications technology and infrastructure are adequate to allow for communication during an emergency;

(ii) implement measures to ensure every classroom and portable classroom provides district employees, including substitute teachers, access to a telephone, cellular telephone, or other electronic communications device to allow immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments; and

(iii) develop site plans and floor plans for a school facility in accordance with TEC, §37.108(f).

(B) Access control. A school district or an open-enrollment charter school shall develop a document that designates each exterior door of each instructional facility campus-wide as either primary, secondary, or non-designated entrances and shall ensure that the documented designation of all exterior doors becomes part of the long-range facility plan prior to commencement of construction of a capital improvement project.

(2) Additional standards based on the project construction budget. A school district shall approve a project construction budget for a capital improvement project at completion of the design development phase of the project and prior to commencement of the construction documents phase. The project construction budget approved by the school district shall determine how many of the additional safety and security standards established in paragraph (3) of this subsection are required for the project. A school district shall designate in writing which of the additional safety and security standards in paragraph (3) of this subsection have been approved by the school district board of trustees for a capital improvement project and shall provide to the prime design professional and each design professional of record written documentation of the approved safety and security standards for the proposed facility prior to commencement of the construction documents phase of a capital improvement project. The following standards shall apply to a capital improvement project for an instructional facility until all instructional facilities campus-wide fully comply with all of the additional safety and security standards specified in this subsection.

(A) If a project construction budget is \$1 million to \$5 million, the facility is required to comply with at least one additional safety and security standard specified in paragraph (3) of this subsection.

(B) If a project construction budget is \$5 million to \$10 million, the facility is required to comply with at least two additional safety and security standards specified in paragraph (3) of this subsection.

(C) If a project construction budget is over \$10 million, the facility is required to comply with all of the additional safety and security standards specified in paragraph (3) of this subsection.

(D) For a capital improvement project that includes new construction, the new construction of an instructional facility is required to comply with all three of the additional safety and security standards specified in paragraph (3) of this subsection.

(3) Additional safety and security standards applicable to all instructional facilities campus-wide. A school district or an open-enrollment charter school must include campus-wide implementation of the following standards in accordance with terms and requirements of paragraph (2) of this subsection.

(A) Exterior door numbering. All instructional facilities campus-wide, including portable, modular buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations

where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the IFC, §505. The primary entrance of an instructional facility, as defined by subsection (a)(23)(A) of this section, shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The design professional of record shall coordinate with school district personnel and local emergency response personnel prior to incorporating exterior door numbering characters and locations into the contract documents for the facility or facilities specified to be included in a capital improvement project. The design professional of record shall coordinate this requirement with any and all accessibility requirements related to signage.

(B) Visitor management. All primary entrances of instructional facilities campus-wide must include the following:

(i) an unobstructed line of sight of approaching visitors through physical or digital means;

(ii) a physical barrier that prevents unassisted access to the facility by a visitor; and

(iii) a location for a visitor check-in and check-out process.

(C) Security cameras. All primary and secondary entrances of instructional facilities campus-wide must include a security camera.

(4) Exceptions to additional standards based on cost. A school district may opt out of the requirements specified in paragraph (2) of this subsection if:

(A) the facility is scheduled to, according to the long-range facilities plan, cease operations as an instructional facility within three years of the project; and

(B) the five-year long-range facility plan clearly states that, prior to the end date of the plan, the facility will be compliant with at least two additional safety and security standards specified in paragraph (2) of this subsection if ceasing operation does not occur or operation resumes. The long-range facility plan must specify which two additional safety and security standards will be implemented.

(5) Public disclosure process. A school district board of trustees or open-enrollment charter school governing body shall ensure information or documents collected, developed, or produced by the district as part of a capital improvement project are reviewed to ensure that any project-specific safety and security information is adjusted for disclosure if necessary to accommodate the requirement for a district to use protections provided in TEC, §37.108, which directs the school district to protect sensitive information, while also providing general information to the public indicating district compliance commitments made in accordance with this subsection.

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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