

Chapter 100. Charters

Subchapter AA. Commissioner's Rules Concerning Open-Enrollment Charter Schools

Division 1. General Provisions

Statutory Authority: The provisions of this Division 1 issued under the Texas Education Code, §§12.101, 12.1011, 12.1012, 12.102, 12.103, 12.104, 12.1052, 12.1053, 12.1054, 12.1055, 12.1059, 12.106, 12.107, 12.110, 12.1101, 12.111, 12.112, 12.113, 12.114, 12.1141, 12.115, 12.1162, 12.1163, 12.1181, 12.119, 12.120, 12.1202, 12.121, 12.1211, 12.123, 12.126, 12.128, 12.129, 12.136, 12.152, 12.153, 12.154, 39.082, and 39.085, and Local Government Code, §140.006 and §171.004, unless otherwise noted.

§100.1001. Definitions.

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

- (1) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in Texas Education Code (TEC), §12.1012.
- (2) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.
 - (A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.
 - (B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.
- (3) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted either by the State Board of Education (SBOE) or commissioner of education, whichever is applicable, pursuant to TEC, §12.101, identified with its own county district number.
 - (A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.
 - (B) An "employee of a charter holder," as used in this subchapter, means a charter holder employee who engages in no charter school activity and is not an officer of any charter school.
 - (C) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting. A campus may be a single site or may include multiple sites as described in subparagraph (D) of this paragraph.
 - (D) A charter school "site," as used in this subchapter, means an organizational unit of a charter school with administrative personnel identified by a separate street address within 50 miles of the campus with which it is associated and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE or commissioner or in an amendment granted under §100.1033(b)(10) of this title (relating to Charter Amendment).
 - (E) A charter school "facility," as used in this subchapter, means a building located on the same contiguous land as the campus with which it is associated or within one mile of the

campus. The facility and its associated address must be approved for instructional use through the submission of a certificate of occupancy (COO) to the commissioner prior to serving students in said facility.

- (4) Real estate--An interest, including a lease interest, in real property recognized by Texas law, or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.
- (5) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.
- (6) Personal property--An interest in personal property recognized by Texas law, including:
 - (A) furniture, equipment, supplies, and other goods;
 - (B) computer hardware and software;
 - (C) contract rights, intellectual property such as patents, and other intangible property;
 - (D) cash, currency, funds, bank accounts, securities, and other investment instruments;
 - (E) the right to repayment of a loan, advance, or prepayment or to the payment of other receivables; and
 - (F) any other form of personal property recognized by Texas law.
- (7) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.
- (8) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by the TEA, including all federal funds. The rules in this division apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.
- (9) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.
- (10) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issued a warrant for such funds before that date, or if an electronic transfer of such funds was made before that date.
- (11) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:
 - (A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or
 - (B) is extended, in whole or part, based on the charter holder's control over state funds.
- (12) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:
 - (A) the open-enrollment charter under which a charter holder holds the funds or property;
 - (B) an agreement under which an employee or contractor holds the funds or property;

- (C) a law, regulation, or rule that prescribes the manner of acquisition, sale, lease, custody, or disposition of the funds or property, including, but not limited to, violations of Local Government Code, §§171.002-171.007; Local Government Code, Chapter 271, Subchapter B; and TEC, §12.1053 and §12.1054, unless otherwise stated in the charter contract;
 - (D) a limited purpose for which the funds or property is delivered or received; or
 - (E) the use authorized by the governing body of the charter holder.
- (13) Management services--Services related to the management or operation of a charter school. Management services include any of the following:
- (A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;
 - (B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;
 - (C) managing a charter school's day-to-day operations as its administrative manager;
 - (D) preparing a proposed budget or submitting it to the governing body of a charter holder or charter school;
 - (E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;
 - (F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;
 - (G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or
 - (H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.053 and §39.054, or adopted by the governing body of a charter holder or charter school.
- (14) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:
- (A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;
 - (B) a nonprofit corporation that is exempt from taxation under 26 United States Code (USC), §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;
 - (C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

- (D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and
 - (E) a nonprofit corporation that is exempt from taxation under 26 USC, §115, is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or TEC, §12.152, and if:
 - (i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;
 - (ii) its board of directors must be appointed by such charter holder; and
 - (iii) its assets become the property of such charter holder upon dissolution.
- (15) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:
- (A) the applicable contract for charter between the charter holder and the SBOE or commissioner of education;
 - (B) all applicable state and federal laws, rules, and regulations;
 - (C) the request for application issued by the TEA to which the charter holder's application for open-enrollment charter responds;
 - (D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner; and
 - (E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, commitments, and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents or orally during its interview with the commissioner or commissioner's designee or orally at a public meeting of the SBOE or any of its committees.
- (16) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regardless whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."
- (17) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.
- (18) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant director of a charter holder or charter school, including one or more of the following functions:
- (A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;
 - (B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;
 - (C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

- (D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;
 - (E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;
 - (F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for developing budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);
 - (G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;
 - (H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;
 - (I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under TEC, §39.053 and §39.054, or other indicators adopted by the charter holder in its open-enrollment charter; or
 - (J) organizing the central administration of the charter holder or charter school.
- (19) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:
- (A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - (B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - (C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - (D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;
 - (E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or
 - (F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.
- (20) Business manager--A person charged with managing the finances of a charter holder or charter school.
- (21) Donate--Services are donated if:

- (A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;
 - (B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and
 - (C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.
- (22) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter and constitutes sufficient grounds for action against the charter holder under §100.1021 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter), §100.1023 of this title (relating to Intervention Based on Charter Violations), §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), and/or §100.1031 of this title (relating to Renewal of an Open-Enrollment Charter).
- (23) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1155 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only and does not:
- (A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or
 - (B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.
- (24) Shared services cooperative--A contractual arrangement among charter holders through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services and/or management services to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:
- (A) establish clear procedures for administering services under the direction and control of the cooperative and for assigning responsibility for all costs and liabilities associated with services provided under the contract;
 - (B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;
 - (C) establish clear procedures for withdrawal of a member from the agreement and for the dissolution and winding up of the affairs of the cooperative;
 - (D) if the cooperative may provide special education services, comply with TEC, §29.007; and
 - (E) be approved in writing by the commissioner before any services are provided.
- (25) High-performing entity--An entity that satisfies the criteria under TEC, §12.1011(a)(1), for out-of-state operations or an entity that satisfies the criteria for TEC, §12.1011(a)(2), for in-state operations that meets the performance criteria for the most recent rating years available.
- (26) Determination of academic accountability--The process used to determine the applicable year's accountability ratings to measure the academic performance of a charter.
- (A) For the purposes of this chapter, the term "academically acceptable" for the following rating years shall mean:

- (i) 2004-2011: the category of acceptable performance shall include a rating of Exemplary, Recognized, Academically Acceptable, and alternative education accountability (AEA): Academically Acceptable.
- (ii) 2013-2016: the category of acceptable performance shall include a rating of Met Standard and Met Alternative Standard.
- (iii) 2017 and beyond: the category of acceptable performance shall include a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual.
- (B) For purposes of determination, an academic performance rating during the 2011-2012 school year will not be considered.
- (C) For the purposes of this chapter, the term "academically unacceptable" performance means a rating of Academically Unacceptable, AEA: Academically Unacceptable, Improvement Required, or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual.
- (27) Determination of financial accountability--The process used to determine the applicable year's Financial Integrity Rating System of Texas (FIRST) rating to measure the financial performance of a charter.
 - (A) For purposes of this chapter, a satisfactory rating shall mean: Superior Achievement, Above Standard Achievement, or Standard Achievement.
 - (B) For the purposes of this chapter, a lower than satisfactory financial performance rating shall mean a FIRST rating of Substandard Achievement, Suspended: Data Integrity, or as otherwise indicated in the applicable year's financial accountability manual.

Source: The provisions of this §100.1001 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1002. Application and Selection Procedures and Criteria.

- (a) Prior to each selection cycle, the commissioner of education shall approve an application form for submission by applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:
 - (1) the timeline for selection;
 - (2) required applicant conferences and training prerequisites;
 - (3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;
 - (4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and
 - (5) the earliest date an open-enrollment charter school selected in the cycle may open.
- (b) The Texas Education Agency (TEA) shall review applications submitted under this section.
 - (1) If the TEA determines that an application is not complete, the TEA shall notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall remove the application without further processing.
 - (2) If the TEA determines that an application does not meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall remove the application without further processing.
 - (3) The TEA shall establish procedures and schedules for returning applications without further processing.

- (4) Failure of the TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.
- (c) Upon written notice to the TEA, an applicant may withdraw an application.
- (d) Applications that are determined to meet the standards established under TEC, §12.101, and §100.1015 of this title shall be reviewed and scored by an external application review panel selected by the commissioner from a pool of qualified candidates identified through a request for qualification (RFQ) process. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except the TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.
- (e) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle. The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.
- (f) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:
 - (1) personal email addresses;
 - (2) proprietary material;
 - (3) copyrighted material;
 - (4) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and
 - (5) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.
- (g) The commissioner or the commissioner's designee(s) in coordination with the TEA staff shall interview applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.
- (h) The commissioner may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:
 - (1) indications that the charter school will improve student performance;
 - (2) innovation evident in the program(s) proposed for the charter school;
 - (3) indications that the charter school will be fiscally viable from its inception;
 - (4) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;
 - (5) evidence of parental and community support for or opposition to the proposed charter school;
 - (6) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;

- (7) the history of the sponsoring entity of the proposed charter school, as defined in the application form;
- (8) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and
- (9) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:
 - (A) representation in urban, suburban, and rural communities;
 - (B) instructional settings;
 - (C) types of eligible entities;
 - (D) types of innovative programs;
 - (E) student populations and programs; and
 - (F) geographic regions.
- (i) In addition to the criteria specified in subsection (h) of this section, the commissioner shall approve or deny an application based on:
 - (1) documented evidence gathered through the application review process;
 - (2) merit; and
 - (3) other criteria, including:
 - (A) criteria related to capability of carrying out the responsibilities as provided in the charter; and
 - (B) the likelihood of operating a high-quality charter, including previous experience operating a public school(s).
- (j) Priority shall be given to an applicant that proposes a school in an attendance zone of a school district campus assigned an unacceptable performance rating under TEC, §39.054, for two preceding years.
- (k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. State Board of Education (SBOE) members and/or the TEA staff may initiate communications with an applicant. On finding a material violation of the no-contact period, the commissioner shall reject the application and deem it ineligible for award.
- (l) The commissioner shall notify the SBOE of each charter the commissioner proposes to grant under this subchapter. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless:
 - (1) the SBOE votes against the charter in accordance with TEC, §12.101(b-0); or
 - (2) the commissioner withdraws the proposal.
- (m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than two months after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met. An applicant that is not granted a charter may reapply.
- (n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.

- (o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.
- (p) The charter contract shall be for an initial term of five years beginning on the date the contract is signed by the commissioner following the granting of the initial charter contract.
- (q) The charter must open and serve students within one school year of the awarding of the charter contract. The commissioner, in the commissioner's discretion, may grant a single-year extension. Failure to operate within one year, or two years if an extension is granted, constitutes an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner.

Statutory Authority: The provisions of this §100.1002 issued under Texas Education Code, §§12.101, 12.1011, 12.110, 12.113, 12.152, 12.153, and 12.154.

Source: The provisions of this §100.1002 adopted to be effective September 18, 2014, 39 TexReg 7295; amended to be effective September 25, 2019, 44 TexReg 5396.

§100.1003. Application to Dropout Recovery Charters.

A charter granted under Texas Education Code, §12.101(b-7), for a dropout recovery school shall not be considered for the purposes of the limit on the number of charters for open enrollment under the cap. Such charter, however, shall expire at the end of any school year in which the school does not meet the statutory definition of dropout recovery as determined by the Texas Education Agency from the applicable Public Education Information Management System (PEIMS) report. A dropout recovery school shall be defined as a school that:

- (1) serves students in Grades 9-12;
- (2) has an enrollment of which 50% of students are 17 years of age or older as of September 1 of the school year as reported for the fall semester PEIMS submission; and
- (3) meets eligibility requirements for and is registered under alternative education accountability (AEA) procedures.

Source: The provisions of this §100.1003 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1004. Application to Public Senior College or University Charters and Public Junior College Charters.

The following provisions apply as indicated in this section to a public senior college or university charter school or a public junior college charter school as though the public senior college or university charter school or the public junior college charter school were granted a charter under Texas Education Code, Chapter 12, Subchapter D.

- (1) Section 100.1002(a) of this title (relating to Application and Selection Procedures and Criteria) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.
- (2) Section 100.1002(c), (h)(1)-(5) and (8), (m), and (o) of this title apply unless provided otherwise in the charter contract.

Source: The provisions of this §100.1004 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1005. Notification of Charter Application.

Prior to an application for an open-enrollment charter being submitted to the commissioner of education, the applicant shall provide notification via certified mail, return receipt requested, to:

- (1) the board of trustees and superintendent of each school district from the proposed geographic boundary as described in the open-enrollment charter application;
- (2) the governing board and superintendent of each charter school from the proposed geographic boundary as described in the open-enrollment charter application; and
- (3) each member of the legislature and State Board of Education member that represent the geographic area to be served by the proposed charter school.

Source: The provisions of this §100.1005 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1006. Optional Open-Enrollment Charter Provisions for Contracting and Purchasing.

Improvements to real property. Section 100.1073 of this title (relating to Improvements to Real Property) applies to a charter holder unless the charter holder amends its open-enrollment charter to include a statement expressly adopting the provisions of Texas Education Code (TEC), Chapter 44, Subchapter B, as the charter holder's process for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property. If such a statement is included in the open-enrollment charter, then the provisions of TEC, Chapter 44, Subchapter B, control in lieu of §100.1073 of this title. Nothing in this section shall require a charter holder to comply with TEC, Chapter 44, Subchapter B, except when awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property.

Source: The provisions of this §100.1006 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1007. Annual Report on Open-Enrollment Charter Governance.

- (a) No later than December 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title (relating to Filing of Documents), the following information on a charter school governance reporting form approved by the commissioner of education:
 - (1) identifying information for and compensation of each officer and member of the governing body of the open-enrollment charter holder;
 - (2) identifying information for and compensation of each officer of the charter school;
 - (3) identifying information for and compensation of each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school;
 - (4) identifying information for and compensation of all family members, within the third degree of consanguinity or third degree of affinity, of each board member, chief executive officer/superintendent, and chief financial officer for purposes of conflict of interest; and
 - (5) identifying information for and compensation of all family members, within the third degree of consanguinity or second degree of affinity, of each board member and chief executive officer/superintendent for purposes of nepotism.
- (b) The identifying information required for each member of the governing body of the open-enrollment charter holder, each member of the governing body of the charter school, and each chief executive officer/superintendent shall include:
 - (1) the title of each position held or function performed by the individual;
 - (2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, as described by the powers and duties listed in the charter;
 - (3) the legal name of the individual;
 - (4) any aliases or names formerly used by the individual, including maiden name;
 - (5) a mailing address for the individual;
 - (6) telephone numbers and electronic mail address for the individual;

- (7) the county and state in which the individual is registered to vote, if a governing body member of the charter holder or charter school;
 - (8) assurance that criminal records history check has been made and reported to the Texas Education Agency pursuant to §100.1151 of this title (relating to Criminal History; Restrictions on Serving).
- (c) The compensation information required for an individual under subsection (a) of this section shall include all compensation, remuneration, and benefits received by the individual in any capacity from the charter holder or the charter school, or from any contractor or management company doing business with the charter holder or charter school. The compensation reported shall include without limitation:
- (1) all salary, bonuses, benefits, or other compensation received pursuant to an employment relationship;
 - (2) all compensation received for goods or services under contract, agreement, informal arrangement, or otherwise;
 - (3) all payment of or reimbursement for personal expenses;
 - (4) all credit extended to the individual by the charter holder or charter school;
 - (5) the fair market value of all personal use of property paid for by the charter holder or charter school;
 - (6) the fair market value of all in-kind transfers of property;
 - (7) all compensation for goods or services provided to the charter holder through transactions unrelated to the charter school;
 - (8) all other forms of compensation or remuneration received by the individual from the charter holder or charter school;
 - (9) all forms of compensation received from a business in which a person under subsection (a) of this section has a significant interest in, pursuant to Texas Government Code, Chapter 171; and
 - (10) any payment or form of compensation to an individual under subsection (a) of this section by any and all family members, within the third degree of consanguinity or third degree of affinity.
- (d) No later than December 1 of each year, each open-enrollment charter holder shall file under §100.1013 of this title:
- (1) a copy of any amendments or changes to the articles of incorporation and bylaws, or comparable document; and
 - (2) a screenshot of the names of the governing body as listed on the home page of the school's internet website, along with a screen shot of the posting of the school's superintendent's salary or, as applicable, the administrator serving as educational leader or chief executive officer.

Source: The provisions of this §100.1007 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1010. Performance Frameworks.

- (a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard accountability system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).
- (b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.
- (c) The assignment of performance levels for charter schools on the 2022 CSPF report is based on specific criteria, which are described in the *2022 Charter School Performance Framework Manual* provided in this subsection.

[Figure: 19 TAC §100.1010\(c\)](#)

Statutory Authority: The provisions of this §100.1010 issued under the Texas Education Code, §12.1181 and §29.259.

Source: The provisions of this §100.1010 adopted to be effective September 18, 2014, 39 TexReg 7295; amended to be effective May 29, 2017, 42 TexReg 2827; amended to be effective August 2, 2018, 43 TexReg 4972; amended to be effective June 11, 2020, 45 TexReg 4002; amended to be effective March 8, 2022, 46 TexReg 5523; amended to be effective September 2, 2022, 47 TexReg 5335; amended to be effective August 10, 2023, 48 TexReg 4256.

§100.1013. Filing of Documents.

The following provisions apply to a document filed with the Texas Education Agency (TEA) under a provision of this subchapter. Grant applications and other documents filed with the TEA under provisions other than this subchapter are governed by the filing rules specific to those documents.

- (1) Hand delivery. A document shall be deemed filed only when stamped received by the receiving division of the TEA. A document stamped received after 5:00 p.m. Central Standard Time (CST) shall be deemed filed on the following business day.
- (2) Mail or courier. A document may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. A document shall be deemed timely filed if it is mailed on the filing deadline, as evidenced by a legible postmark placed on the envelope by the United States Postal Service, and the document is stamped received by the receiving division by 5:00 p.m. CST on the fifth business day following the filing deadline.
- (3) Facsimile transmission. Where facsimile transmission is permitted by the receiving division, the following provisions apply:
 - (A) Facsimile transmission of a document via telecopier to the receiving division constitutes filing if received in legible form. Filing by facsimile completed after 5:00 p.m. CST shall be deemed filed on the following business day.
 - (B) If the document requires an original signature or must be an original under applicable rules, then facsimile transmission constitutes filing only if, by 5:00 p.m. on the tenth calendar day following the filing deadline, the original is stamped received by the receiving division.
- (4) Receiving division. The receiving division is the division of the TEA specified by any rule in 19 TAC, Part II, requiring that a document be filed with the TEA. If a rule does not specify a division, the receiving division is the TEA division responsible for charter schools.
- (5) Misdirected filing. A document sent to a division other than the receiving division shall not be deemed filed unless and until received by the receiving division. It shall not be the responsibility of any division to timely redirect a document sent to a division other than the receiving division.

Source: The provisions of this §100.1013 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.

- (a) No applicant will be considered that has, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned or that is considered to be a corporate affiliate of, or substantially related to, an entity that, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.
- (b) Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.

- (1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.
 - (A) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.
 - (B) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate business plan that includes each of the following:
 - (i) a succinct long-term vision for the proposed school;
 - (ii) three to five core values or beliefs, with succinct explanations, for the operation of the proposed school;
 - (iii) a brief analysis of the target location(s) for the proposed school with a succinct explanation of the reasons for choosing the location(s);
 - (iv) a brief analysis of the competition in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;
 - (v) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget and considers the potential expansion of competition in the area for the same student population;
 - (vi) a list of risk factors, with brief explanations, that could jeopardize the viability of the proposed school;
 - (vii) a list of success factors, with brief explanations, that the proposed school founders have analyzed and determined will outweigh the risks;
 - (viii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;
 - (ix) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the request for applications (RFA);
 - (x) a narrative response, based on the revenue and expenditures provided in the template that will be provided in the RFA, detailing the ways in which the budget projections were derived, including any assumptions used; and
 - (xi) support documentation for budget projections as detailed in the budget template that will be provided with the RFA.
 - (C) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand. The applicant must identify in the template provided in the RFA available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donations that do not require repayment, meeting or exceeding the following amounts:
 - (i) the total amount of funds available;
 - (ii) the amount per student proposed to be served in the first year of operation; and

- (iii) the number of days of operation funded by the amount in this subparagraph, defined by the total annual budget divided by the number of approved instructional days.
 - (D) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times.
 - (E) The entity applying for the charter must have liabilities that are less than 80% of its assets.
 - (F) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:
 - (i) projected revenues are documented and use the amount per student designated in the RFA when calculating Foundation School Program (FSP) funding that will begin during the first year of operation, or the applicant provides compelling evidence as to the reasons that its FSP will be higher than the rate designated in the RFA; and
 - (ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.
 - (G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in Texas Education Agency (TEA) financial publications for charter schools.
- (2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing standards to demonstrate sound establishment and oversight of the charter's educational mission, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2).
- (A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity. Entities that have applied for 501(c)(3) status, but have yet to receive the exemption from the IRS, must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to consideration for interview. Failure to secure 501(c)(3) status deems an entity ineligible.
 - (B) The articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. The management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter's existence. However, if the applicant or its affiliate is a high performing entity, then it may vest management in a member provided that the entity may change the members of the governing body of the charter

holder prior to the expiration of a member's term only with commissioner's written approval. An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section. Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1033(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.

- (C) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.
 - (D) No family members within the third degree of consanguinity or second degree of affinity shall serve on the charter holder or charter school board.
 - (E) No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.
 - (F) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.
- (3) Educational and operational standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the Texas Essential Knowledge and Skills, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.
- (A) The charter applicant must clearly explain the overall educational philosophy to be promoted at the school, if authorized.
 - (B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.
 - (C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will differ from the traditional neighborhood schools or charter schools that currently operate in the area where the school or schools would be located.
 - (D) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.
 - (E) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:
 - (i) address the instructional needs of students performing both below and above grade levels in major content areas;
 - (ii) differentiate instruction to meet the needs of diverse learners;
 - (iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;
 - (iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and

- (v) implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English.
- (F) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.
 - (i) Except as provided in clause (iv) of this subparagraph, all teachers, regardless of subject matter taught, must have a baccalaureate degree.
 - (ii) Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.
 - (iii) Paraprofessionals must be certified as required to meet state and/or federal law.
 - (iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).
- (G) The charter applicant must commit to serving, by its third year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes.
- (H) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.
- (4) Additional requirements. An applicant for a competitive open-enrollment charter to be considered for award, as authorized by TEC, Chapter 12, Subchapter D, must ensure that each of the following occur or the application will be disqualified.
 - (A) The application is complete and meets all of the requirements set forth in paragraphs (1)-(3) of this subsection, as determined by the commissioner or the commissioner's designee.
 - (i) The commissioner or the commissioner's designee may conclude the review of an application once it is apparent that the application is incomplete or that the application fails to meet one or more of the requirements set forth in paragraphs (1)-(3) of this subsection.
 - (ii) Any applicant who submits an incomplete application, an application that fails to meet one or more of the requirements as set forth in paragraphs (1)-(3) of this subsection, or an application that contains information referenced in subparagraph (D)(i)-(iii) of this paragraph will be notified pursuant to §100.1002(b) of this title (relating to Application and Selection Procedures and Criteria) by the TEA division responsible for charter schools that the application has been removed from consideration of award and will not be sent forward for scoring by the external review panel.
 - (I) An applicant that is notified that the application has been removed from consideration of award by the commissioner or the commissioner's designee will have five business days to respond in writing and direct TEA staff responsible for charter schools to the specific parts of the application, which was received by the application deadline, that address the identified issue or issues, or to submit missing attachments.

- (II) Once any additional review is complete, the decision of the commissioner or the commissioner's designee is final and may not be appealed.
- (B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.
- (C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.
- (D) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following must be excluded from all applications:
 - (i) personal email addresses;
 - (ii) proprietary material;
 - (iii) copyrighted material;
 - (iv) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and
 - (v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.
- (E) Any application that includes material referenced in subparagraph (D)(ii)-(v) of this paragraph will be removed from consideration without any further opportunity for review.

Statutory Authority: The provisions of this §100.1015 issued under Texas Education Code, §§12.101, 12.110, 12.129, 12.152, 12.153, 12.154, and 12.156.

Source: The provisions of this §100.1015 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 1, 2003, 28 TexReg 2743; amended to be effective August 26, 2010, 35 TexReg 7213; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295; amended to be effective September 25, 2019, 44 TexReg 5397.

§100.1017. Application of Law and Rules to Public Senior College or University Charters and Public Junior College Charters.

- (a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).
- (b) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:
 - (1) §100.1033(b)(13) and §100.1101 of this title, relating to delegation of powers and duties, except as authorized in the charter contract upon written request of the governing body of the university, college, or junior college;

- (2) §100.1035 of this title, relating to compliance records;
- (3) §100.1073 of this title, relating to improvements to real property;
- (4) §§100.1111-100.1116 of this title, relating to nepotism;
- (5) §§100.1131-100.1135 of this title, relating to conflicts of interest;
- (6) §100.1203(a) of this title, relating to retention of government records; and
- (7) §100.1205 of this title, relating to procurement of professional services.

Source: The provisions of this §100.1017 adopted to be effective April 1, 2003, 28 TexReg 2743; amended to be effective August 26, 2010, 35 TexReg 7213; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1019. Application to Adult High School Charters.

The following provisions apply as indicated in this section to an adult education charter school as though the adult education charter school was granted a charter under Texas Education Code, Chapter 12, Subchapter D.

- (1) Section 100.1002(a) of this title (relating to Application and Selection Procedures and Criteria) applies, except that the commissioner of education may adopt a separate application form for applicants seeking a charter to operate an adult education charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The commissioner may approve or amend this separate application form without regard to the selection cycle referenced in that subsection.
- (2) Section 100.1002(b)(1), (c)-(g), (h)(1)-(3) and (6)-(8), (i), and (m)-(q) of this title apply unless provided otherwise in the charter contract.

Statutory Authority: The provisions of this §100.1019 issued under Texas Education Code, §12.265.

Source: The provisions of this §100.1019 adopted to be effective August 15, 2023, 48 TexReg 4392.

Division 2. Commissioner Action and Intervention

Statutory Authority: The provisions of this Division 2 issued under the Texas Education Code, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.1055, 12.1059, 12.106, 12.1061, 12.107, 12.110, 12.111, 12.112, 12.113, 12.114, 12.1141, 12.115, 12.116, 12.1161, 12.1162, 12.1163, 12.117, 12.1181, 12.119, 12.120, 12.1202, 12.121, 12.1211, 12.123, 12.126, 12.136, 39.051-39.054, 39.082, 39.085, 39.102, 39.103, and 39.104, unless otherwise noted.

§100.1021. Revocation and Modification of Governance of an Open-Enrollment Charter.

- (a) Mandatory revocation or reconstitution. Except as provided by subsection (b) of this section, the commissioner of education shall either revoke the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder:
- (1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
 - (2) failed to satisfy generally accepted accounting standards of fiscal management;
 - (3) failed to protect the health, safety, or welfare of the students enrolled at the school;
 - (4) failed to comply with Texas Education Code, Chapter 12, Subchapter D, or another applicable law or rule;
 - (5) failed to satisfy the performance framework standards as set forth in the Charter School Performance Framework Manual established under Texas Education Code (TEC), §12.1181; or
 - (6) is imminently insolvent as determined by the commissioner in accordance with §100.1022(h) of this title (relating to Standards to Revoke and Modify the Governance of an Open-Enrollment Charter).
- (b) Mandatory revocation.
- (1) Use of criteria. Notwithstanding §100.1022 of this title, the commissioner shall revoke the charter of an open-enrollment charter school if for the three preceding school years:
 - (A) the charter holder has been assigned an "academically unacceptable" performance rating under TEC, Chapter 39, Subchapter C;
 - (B) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance lower than satisfactory; or
 - (C) the charter holder has been assigned any combination of an academic performance rating of "academically unacceptable" under TEC, Chapter 39, Subchapter C, and/or a financial performance rating lower than satisfactory under TEC, Chapter 39, Subchapter D.
 - (2) Use of determinations and data. The following provisions apply to a mandatory revocation under this section.
 - (A) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued.
 - (B) For purposes of revocation under paragraph (1)(A) of this subsection, the term "unacceptable performance" means an academic accountability rating that is unacceptable as defined in §100.1001(26) of this title (relating to Definitions).
 - (C) For purposes of revocation under paragraph (1)(B) of this subsection, the term "financial performance lower than satisfactory" means a financial accountability rating that is lower than satisfactory as defined in §100.1001(27) of this title.

- (D) For purposes of revocation under paragraph (1)(A) of this subsection, the initial three school years for which performance ratings under TEC, Chapter 39, Subchapter C, shall be considered are the 2009-2010, 2010-2011, and 2012-2013 school years.
 - (E) For purposes of revocation under paragraph (1)(B) of this subsection, the initial three school years for which financial accountability performance ratings under TEC, Chapter 39, Subchapter D, shall be considered are the 2010-2011, 2011-2012, and 2012-2013 school years.
 - (F) The provisions in subparagraphs (D) and (E) of this paragraph and this subparagraph expire on September 1, 2016.
- (c) Notice and content of decision to revoke or modify. The commissioner shall provide written notice to the charter holder of the commissioner's decision to revoke or modify the governance of a charter. The notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.
 - (d) State Office of Administrative Hearing (SOAH) review of revocation. A decision by the commissioner to revoke the charter of an open-enrollment charter school under TEC, §12.115, is subject to review by the SOAH under an arbitrary and capricious or clearly erroneous standard as described by Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).
 - (e) Reconstitution of governing body of charter holder and/or creation of a new 501(c)(3) organization. With the exception of revocation actions taken under subsection (b) of this section, the commissioner may choose to reconstitute the governing board of a charter holder and/or require the creation of a new 501(c)(3) organization if it is determined that the charter holder committed any violation under subsection (a) of this section.
 - (1) To reconstitute the board, the commissioner shall appoint members to the governing body and shall consider local input from community members and parents as well as appropriate credentials and expertise for membership, including financial expertise, residency, and educational background. The commissioner may reappoint current members of the governing body.
 - (2) The commissioner may also require the charter holder board to create a new single purpose organization that is exempt from taxation under 501(c)(3), Internal Revenue Code of 1986, if the governing body of a charter holder subject to reconstitution governs enterprises other than the open-enrollment charter school. The commissioner shall appoint the members of the governing body of the newly created organization.
 - (3) The commissioner may require the charter holder to surrender the charter to the commissioner for transfer to the newly created organization.
 - (4) A decision by the commissioner to reconstitute the governing body of the charter of an open-enrollment charter school or to create a new 501(c)(3) organization under Internal Revenue Code of 1986 under TEC, §12.115, is subject to a formal review as described by Chapter 157, Subchapter EE, Division 2, of this title (relating to Formal Review).

Source: The provisions of this §100.1021 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1022. Standards to Revoke and Modify the Governance of an Open-Enrollment Charter.

- (a) Criteria for taking action. The action the commissioner of education takes under §100.1021(a) of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter) to either revoke or modify the governance of a charter shall be based on the best interest of the charter school's students as it relates to the violation charged in the notice, the severity of the violation, and any previous violation the school has committed.
 - (1) These criteria are not listed in order of importance. Rather, the commissioner shall assign weight to each criterion as indicated by the facts of the case presented. For example, serious or persistent charter violations may warrant revocation or non-renewal even if the violations benefited or had

neutral effect on the students enrolled in the charter school. The state's interest in legal compliance is sufficient basis for action.

- (2) The "best interest of the charter school's students" is not a decisional criterion independent of the violation charged in the notice. Rather, the commissioner shall consider the best interests of students only as this criterion relates to the violation charged in the notice. For example, evidence of serious and persistent violations in one area of performance may not be offset or excused by evidence of benefit to students in an area of performance that is unrelated to the violation charged in the notice.
- (b) Minimum academic performance required. Continuation of an open-enrollment charter is contingent on satisfactory academic performance as measured by the academic accountability ratings and accreditation statuses assigned under the Texas Education Code (TEC), Chapter 39, as well as any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory academic performance as measured by the ratings assigned under TEC, Chapter 39.
- (1) Consideration of campus ratings. The commissioner shall revoke an open-enrollment charter of a charter holder if all of the campuses operated under that charter have been closed under TEC, Chapter 39.
 - (2) Determination of academic performance. For purposes of this subsection, required minimum academic performance shall be determined as follows.
 - (A) An "unsatisfactory rating" shall mean an academic accountability rating that is "academically unacceptable" as defined in §100.1001(26) of this title (relating to Definitions). For any school year, if the Texas Education Agency (TEA) assigns no district-level ratings to open-enrollment charter schools generally, but does assign campus-level ratings in that year, then unsatisfactory ratings for a majority of the campuses operated by the charter holder in such year shall constitute an unsatisfactory rating for the charter holder at the "district" level.
 - (B) A "satisfactory rating" shall mean an academic accountability rating that is "academically acceptable" as defined in §100.1001(26) of this title.
 - (C) Ratings are "consecutive" if they are not separated by a rating period in which the TEA assigned accountability ratings to charter schools. For example, the TEA did not assign academic accountability ratings to charter schools for the 2011-2012 school year. Thus, the ratings for the 2010-2011 and 2012-2013 school years are consecutive both for charter holders registered under the standard accountability system as well as charter holders registered under the alternative education accountability (AEA) system.
 - (D) If the performance of an applicant for renewal under §100.1031 of this title (relating to Renewal of an Open-Enrollment Charter) cannot be determined because the applicant's charter school has not received accountability ratings and/or accreditation statuses for a sufficient number of years to support a judgment on its student performance:
 - (i) the commissioner shall make a decision on student performance under the discretionary review process under §100.1031(d) of this title; and
 - (ii) the commissioner's review under this subparagraph shall include the charter's annual evaluation under the Charter School Performance Framework Manual established under TEC, §12.1181, and the criteria described in §100.1032 of this title (relating to Standards for Discretionary Renewal).
 - (E) If the performance of a charter holder cannot be determined because the small numbers of students or the grade levels served by the program prevented, limited, or significantly impacted the application of the TEA's standard ratings and/or accreditation criteria, then the commissioner may evaluate substitute data chosen by the commissioner in taking action under this section.

- (i) Based on evaluation under this subparagraph, the commissioner shall determine whether the applicant has demonstrated a history of unsatisfactory academic performance. Any appeal under §100.1021 of this title of a determination under this clause may include the question whether the campus has had unsatisfactory academic performance.
 - (ii) Regardless of whether the campus has satisfactory student performance, the commissioner may modify the open-enrollment charter to require the charter holder to serve additional students or grade levels that will cause the campus to receive academic ratings and/or statuses in the future.
 - (F) If the performance of a charter holder cannot be determined because a high proportion of students served are in prekindergarten-Grade 2 or another grade for which an assessment instrument is not administered under TEC, §39.023, then the commissioner may evaluate the performance of the charter holder.
- (3) Finality of ratings.
 - (A) Any appeal to a specific rating must be brought using the appeals procedures in the relevant accountability manual, which includes alternative education accountability, adopted under Chapter 97, Subchapter AA, of this title (relating to Accountability and Performance Monitoring).
 - (B) Any challenge to a TEA rule, ratings standard, or process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.
- (c) Minimum financial performance required. Continuation of an open-enrollment charter is contingent on the charter holder satisfying generally accepted accounting standards of fiscal management.
 - (1) Determination. For purposes of this subsection, generally accepted standards of fiscal management shall be determined as follows.
 - (A) Any of the following constitutes failure to comply with generally accepted standards of fiscal management.
 - (i) Payment is made in excess of bonafide compensation agreements. The payment of compensation to an individual in excess of the fair market value of the services provided is a serious unsatisfactory financial performance. For purposes of this subsection, the fair market value of the services rendered shall be based on the individual's education, experience, prior salary history, the job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn.
 - (ii) Rental or purchase of property is in excess of its fair market value.
 - (iii) The charter school received a significant overallocation from the Foundation School Program based on data reported by the charter holder.
 - (iv) The charter school becomes imminently insolvent as determined in subsection (h) of this section.
 - (v) The charter school's financial auditor issues an adverse opinion regarding the school's financial statements or the school's financial auditor disclaims an opinion on the financial statements, and the issue resulting in the adverse or disclaimed opinion involves a significant amount of financial resources that were not properly documented or a material weakness that led to the misallocation of financial resources.
 - (vi) The charter holder exhibits other instances of fiscal mismanagement, including, but not limited to, the loss of financial records or a material non-compliance with §109.41 of this title (relating to Financial Accountability System Resource

- Guide) or related supplement resulting in a significant wasting of financial resources.
- (vii) A final investigative report issued by the TEA finds material noncompliance with the standards of this subsection.
- (viii) The annual audit report required by TEC, §44.008, is more than 180 days delinquent.
- (ix) The charter holder's property is subject to a lien, levy, or other garnishment and that lien, levy, or other garnishment is not removed within 30 days.
- (x) The charter holder is subject to a warrant hold and that warrant hold is not removed within 30 days.
- (xi) The charter holder loses its eligibility to participate in child nutrition programs for a period of more than 30 days.
- (xii) The charter holder has received an audit containing an adverse or disclaimed opinion, and based on the opinion is assigned a financial accountability rating that is less than satisfactory.
- (B) Charter holder financial performance will be evaluated in accordance with the following standards.
 - (i) Step transactions. The commissioner may view the transaction as a whole and may disregard any nonsubstantive intervening transaction taken to achieve the final results.
 - (ii) Arm's length transaction. A transaction that is described in subparagraph (A) of this paragraph that is the result of an arm's length transaction between completely unrelated parties is only a serious unsatisfactory financial performance if the transaction resulted in a significant wasting of financial resources.
- (2) Finality of audits and reports.
 - (A) Any review of a specific audited financial statement or investigative report must be brought using the procedures provided in the notice of the statement or report.
 - (B) Any challenge to a TEA rule, financial standard, or audit procedure must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.
- (d) Minimum compliance performance required. Continuation of an open-enrollment charter is contingent on the charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards, including student attendance accounting and grant requirements; and data integrity standards as demonstrated by monitoring reports under TEC, §7.028, final investigative reports issued by the TEA, and other evidence.
 - (1) Standard of required performance. The open-enrollment charter authorizing a charter school that has unsatisfactory compliance performance for three consecutive school years will be revoked.
 - (2) Determination of performance. For purposes of this subsection, required minimum compliance performance shall be determined as follows. A charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards, including student attendance accounting and grant requirements; or data integrity standards may be determined by applying the applicable standards to the facts as found by the TEA monitoring reports under TEC, §7.028, or final investigative reports issued by the TEA. Such reports establish non-compliance if the facts found therein are not in compliance with the standards set forth in this subsection. Other evidence may be considered.
 - (3) Finality of compliance reports.

- (A) Any review of a specific monitoring report or investigative report must be brought using the procedures described in the notice of the report.
 - (B) Any challenge to a TEA rule or compliance standard must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.
- (e) Minimum health and safety performance required. Continuation of an open-enrollment charter is contingent on the charter holder protecting the health, safety, and welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students) and this subsection or by an official report issued by a federal, state, or local authority with jurisdiction to issue the report.
- (1) Standard of required performance. The open-enrollment charter authorizing a charter school that fails to protect the health, safety, or welfare of the students enrolled at its school while on school property, while at school-related events, or at any time while under the supervision of school personnel shall be revoked effective immediately.
 - (2) Determination of performance. For purposes of this subsection, required minimum health and safety performance shall be determined as follows.
 - (A) A final investigative report issued by the TEA is admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.
 - (B) An official report issued by a federal, state, or local authority acting within its jurisdiction, as well as hearsay evidence and telephone testimony offered by officials from such authority, are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.
 - (C) Documents and testimony considered by the commissioner in making a determination under §100.1025 of this title are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.
 - (3) Finality of health and safety reports.
 - (A) Any appeal to a specific official report issued by a federal, state, or local authority acting within its jurisdiction must be brought using the procedures provided in law for the review of such findings.
 - (B) Any challenge to a TEA rule or compliance standard must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.
- (f) Minimum charter performance required. Continuation of an open-enrollment charter is contingent on the charter holder's implementation of and compliance with the terms of its open-enrollment charter as defined by §100.1001(15) of this title (relating to Definitions).
- (1) Standard of required performance. The open-enrollment charter authorizing a charter school that commits a material violation of its open-enrollment charter shall be revoked.
 - (2) Determination of performance. For purposes of this subsection, required minimum charter performance shall be determined as follows.
 - (A) A charter holder's compliance with its open-enrollment charter may be determined by applying the charter terms to the facts as found by the TEA monitoring reports under TEC, §7.028, or final investigative reports issued by the TEA. Such reports establish non-compliance if the facts found therein are not in compliance with these terms. Other evidence may be considered.
 - (B) A violation of the contract for charter, request for applications (RFA), or other document approved by the State Board of Education (SBOE) or of a condition, amendment, modification, or revision of a charter approved by the commissioner is material if it

directly violates the purpose of the contract, the RFA, or other documents approved by the SBOE or a condition, amendment, modification, or revision of the contract.

- (C) An open-enrollment charter as defined by §100.1001(15) of this title includes all applicable state and federal laws, rules, and regulations. A violation of such laws, rules, or regulations may be considered both under this subsection and under subsections (b)-(e) of this section, as appropriate.
- (3) Finality of charter violation reports.
 - (A) Any review of a specific investigative report must be brought using the procedures set forth in the notice of the report.
 - (B) Any challenge to a TEA rule or compliance standard must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.
- (g) Performance frameworks. Continuation of an open-enrollment charter is contingent upon the charter holder's satisfaction of standards set forth in the Charter School Performance Framework Manual established under TEC, §12.1181.
- (h) Imminently insolvent. For purposes of this section "imminently insolvent" means that the charter holder:
 - (1) has incurred liabilities in excess of net assets;
 - (2) is unable to pay its debts or financial obligations within 90 days of the date they become due;
 - (3) has declared bankruptcy;
 - (4) has otherwise sought the protection of bankruptcy laws;
 - (5) had a lien or warrant hold placed against it by the Internal Revenue Service;
 - (6) had a warrant hold placed against it by the Teacher Retirement System; or
 - (7) has a judgment lien placed against it.

Source: The provisions of this §100.1022 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1023. Intervention Based on Charter Violations.

- (a) The commissioner of education shall temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate, impose any sanction under Texas Education Code, Chapter 39, Subchapter E, and/or take any other reasonable action the commissioner determines necessary, if the commissioner determines that a charter holder:
 - (1) committed a material violation of the school's charter;
 - (2) failed to satisfy generally accepted accounting standards of fiscal management; or
 - (3) failed to comply with this subchapter or another applicable rule or law.
- (b) A determination under this section shall be made through a final investigative report issued by the Texas Education Agency.
- (c) The commissioner shall notify the open-enrollment charter school in writing of the action taken under this section. The notice must state the legal and factual basis for the action.

Source: The provisions of this §100.1023 adopted to be effective November 6, 2001, 26 TexReg 8823; amended to be effective June 22, 2009, 34 TexReg 4119; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1025. Intervention Based on Health, Safety, or Welfare of Students.

- (a) The commissioner of education may temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate in its entirety or at one or more locations, and/or take any other

reasonable action the commissioner determines necessary to protect the health, safety, or welfare of students enrolled at the school based on evidence that conditions at the school present a danger to the health, safety, or welfare of the students.

- (b) The commissioner must notify the charter holder in writing of the action taken in subsection (a) of this section.
- (c) If the commissioner's actions under subsection (a) of this section relate to circumstances that present an imminent danger of material harm to the health, safety, or welfare of students, the open-enrollment charter school may not receive state funds and may not resume operating until a determination is made that:
 - (1) despite initial evidence, the conditions at the school do not present an imminent danger of material harm to the health, safety, or welfare of students; or
 - (2) the conditions at the school that presented an imminent danger of material harm to the health, safety, or welfare of students have been corrected.
- (d) Not later than the third business day after the date the commissioner acts under subsection (a) of this section to address circumstances that present an imminent danger of material harm to the health, safety, or welfare of students, the commissioner shall provide the charter holder an opportunity for a hearing.
- (e) The hearing under this section shall be conducted under the procedures governing informal review of a preliminary investigative report specified in Chapter 157, Subchapter EE, Division 1, of this title (relating to Informal Review).
- (f) An action under subsection (a) of this section to address circumstances that present an imminent danger of material harm to the health, safety, or welfare of students remains in effect until a determination under subsection (e) of this section becomes final.
 - (1) If the determination is in favor of the charter holder, the commissioner must cease the action under subsection (a) of this section immediately and restore all funds to which the charter holder would be entitled but for such action.
 - (2) If the determination is against the charter holder, the commissioner must initiate adverse action against the charter under §100.1021 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter). The action under subsection (a) of this section then remains in effect until the final decision under §100.1021 of this title.

Source: The provisions of this §100.1025 adopted to be effective November 6, 2001, 26 TexReg 8823; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1026. Management of Charter Campus(es) Following Revocation, Surrender, or Expiration.

Upon revocation, surrender, or expiration of a charter, the commissioner of education or the commissioner's designee may:

- (1) assign one or more campuses to a consenting charter holder that meets the minimum qualifications for a campus expansion amendment approval as designated in §100.1033(b)(1)-(9) of this title (relating to Charter Amendment); or
- (2) provide for the management of the day-to-day operations of the campus(es) until alternative arrangements have been made.

Source: The provisions of this §100.1026 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1027. Accountability Ratings and Sanctions.

- (a) Commissioner authority. The commissioner of education may take any action relating to the charter holder or any of its charter campuses authorized by Texas Education Code (TEC), Chapter 39, Subchapters B, C, D, E, and J, and the rules adopted under those subchapters. Except as expressly provided by statute, the commissioner may take any accountability action against a charter holder or charter campus that the commissioner is authorized to take against a school district or campus under those subchapters.

- (b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an action under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a material charter violation.
- (c) Management company cooperation. A management company and its employees and agents shall fully cooperate with an action under subsection (a) of this section. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a management company breach.

Source: The provisions of this §100.1027 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1029. Agency Audits, Monitoring, and Investigations.

- (a) Agency authority. The Texas Education Agency (TEA) may conduct routine audits, monitoring, and other investigations of the charter school or charter holder to determine compliance with the terms of the open-enrollment charter, with the terms of federal or state grants, or as authorized in the Texas Education Code (TEC) or other law.
- (b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) constitutes a material charter violation.
- (c) Management company cooperation. A management company and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) constitutes a management company breach.

Source: The provisions of this §100.1029 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1031. Renewal of an Open-Enrollment Charter.

- (a) Petition for renewal.
 - (1) A charter holder of an open-enrollment charter may submit, as described by this section, a petition for:
 - (A) expedited renewal; or
 - (B) discretionary renewal.
 - (2) A petition for renewal of the charter must be submitted on the date provided by the Texas Education Agency (TEA) annually, prior to the expiration of the charter contract.
 - (3) A petition for renewal must be in the form provided by the TEA and shall include all information and documentation required by the form.
 - (4) If a charter holder fails to submit a timely and sufficient petition for renewal of an open-enrollment charter, the existing charter may expire at the end of its term.
- (b) Expedited renewal. If a charter holder submits the petition for expedited renewal, the commissioner of education will approve or deny the expedited renewal not later than the 30th day after the date of the charter holder submission. A charter holder may submit a petition for expedited renewal if:
 - (1) the charter holder has been assigned the highest or second highest performance rating under Texas Education Code (TEC), Chapter 39, Subchapter C, for the three preceding school years;
 - (2) the charter holder has been assigned a financial performance accountability rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is satisfactory or better for the three preceding school years; and

- (3) no campus operating under the charter has been assigned the lowest performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years or such a campus has been closed.
- (c) Expiration. Notwithstanding any other law, a determination by the commissioner under this subsection is final and may not be appealed. The commissioner may not renew the charter and must allow the charter to expire if:
 - (1) the charter holder has been assigned the lowest performance rating under TEC, Chapter 39, Subchapter C, for any three of the five preceding school years;
 - (2) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;
 - (3) the charter holder has been assigned any combination of the ratings described by paragraph (1) or (2) of this subsection for any three of the five preceding school years; or
 - (4) any campus operating under the charter has been assigned the lowest performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years and such a campus, and if applicable, all sites associated with the campus, has not been closed.
- (d) Discretionary renewal.
 - (1) A charter holder may submit a petition for discretionary renewal if it:
 - (A) does not qualify to submit the petition for expedited renewal; or
 - (B) is not subject to an expiration under subsection (c) of this section.
 - (2) In evaluating the petition for discretionary renewal, the commissioner shall consider the following:
 - (A) the results of the charter's annual evaluation under the performance framework set forth in the Charter School Performance Framework Manual established under TEC, §12.1181; and
 - (B) the criteria described under §100.1032 of this title (relating to Standards for Discretionary Renewal).
- (e) Special rules for alternative education accountability (AEA) charters. The following provisions apply to the renewal of the charter of an open-enrollment charter school that is registered under the TEA AEA procedures for evaluation under TEC, Chapter 39.
 - (1) Discretionary renewal of AEA charters. An AEA charter may submit the petition for discretionary renewal and the petition must be considered under the discretionary renewal process. An AEA charter may not submit a petition for expedited renewal.
 - (2) Academic criteria for discretionary renewal of AEA charters.
 - (A) In considering a petition for discretionary renewal by an AEA charter such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria as outlined in the Charter School Performance Framework Manual established under TEC, §12.1181, that is appropriate to measure the specific goals of the school.
 - (B) For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school:
 - (i) that serves students in Grades 9-12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and

- (ii) that meets the eligibility requirements for and is registered under AEA procedures adopted by the commissioner.
- (3) Expiration of AEA charters. The commissioner may not renew and must allow an AEA charter to expire if the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years.
- (f) Notice and content of renewal decision or determination.
 - (1) Expedited renewal decision. Not later than the 30th day after the submission of a petition for expedited renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the expedited renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.
 - (2) Discretionary renewal decision. Not later than the 90th day after the submission of a petition for discretionary renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the discretionary renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the determination.
 - (3) Expiration determination. The commissioner shall provide written notice to the charter holder of the commissioner's determination that the charter must expire. In the event a charter holder that meets the criteria for expiration submits a petition for renewal, the commissioner, not later than the 90th day after the submission, shall provide written notice to the charter holder of the commissioner's decision to deny the petition. Determinations made by the commissioner are final and may not be appealed. The notice shall include an explanation of the factual and legal basis for the determination, a description of the legally relevant factors considered, and an explanation of why the result reached is reasonable.
 - (4) Delivery and effective date of notice. The commissioner shall provide written notice to the charter holder by regular mail. Notice is effective as of the date of the postmark.
- (g) Appeal of renewal decisions and determinations. A decision by the commissioner to deny the petition for an expedited renewal or the petition for a discretionary renewal is subject to review by the State Office of Administrative Hearings under an arbitrary and capricious or clearly erroneous standard as described under Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).
- (h) Use of ratings and data. The following provisions apply to the petition for renewal or expiration under this section.
 - (1) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued, and the term "three of the five preceding school years" means three out of the most recent five school years during which a rating was issued.
 - (2) A rating that does not meet the criteria for "academically acceptable" as defined by §100.1001(26) of this title (relating to Definitions) shall not be considered the highest or second highest academic performance rating for purposes of this section.
 - (3) For purposes of renewal or expiration under this section, the term "unacceptable performance" means an unacceptable academic performance rating as defined by §100.1001(26) of this title.
 - (4) For purposes of renewal under this section, the term "financial performance lower than satisfactory" means a financial performance rating as defined by §100.1001(27) of this title.
 - (5) For purposes of determination of renewal or expiration, the academic accountability performance rating for the 2011-2012 school year may not be considered.

- (6) For purposes of determination of renewal or expiration, the earliest three school years for which performance ratings under TEC, Chapter 39, Subchapter C, shall be considered are the 2009-2010, 2010-2011, and 2012-2013 school years.
- (7) For purposes of determination of renewal, the earliest school year for which financial accountability performance ratings under TEC, Chapter 39, Subchapter D, may be considered is the 2010-2011 school year.
- (8) The provisions in paragraphs (5)-(7) of this subsection and this paragraph expire on September 1, 2016.
- (i) Conflict of rule. Except as provided by subsection (c) of this section, a contract term that conflicts with any rule in Part 2 of this title is superseded by the rule to the extent that the rule conflicts with the contract term.
- (j) Conditional approval. Notwithstanding any other rule in Part 2 of this title, the commissioner may require, as a condition of renewal, that the charter holder amend a contract under TEC, §12.114(a), to correct any ambiguities, defects, or other infirmities.

Source: *The provisions of this §100.1031 adopted to be effective September 18, 2014, 39 TexReg 7295.*

§100.1032. Standards for Discretionary Renewal.

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following:

- (1) Academic:
 - (A) assignment of an "academically unacceptable" rating as defined in §100.1001(26) of this title (relating to Definitions);
 - (B) failure to meet academic performance standards for students not measured in the accountability system;
 - (C) academic performance of subpopulations; and
 - (D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education;
- (2) Financial:
 - (A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);
 - (B) failure to hold state funds in trust for the benefit of the students of the charter school;
 - (C) failure to satisfy generally acceptable accounting standards of fiscal management;
 - (D) failure to resolve a lien, levy, or other garnishment within 30 days;
 - (E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;
 - (F) failure to timely file annual financial report required under TEC, §44.008;
 - (G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);
 - (H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(27) of this title;
 - (I) submission of attendance accounting data resulting in an overallocation from the FSP;
 - (J) existence of the following interested transactions:
 - (i) failure to comply with Local Government Code, Chapter 171;

- (ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and
 - (iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;
 - (K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;
 - (L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;
 - (M) renting or purchasing property for amounts in excess of fair market value;
 - (N) loss of eligibility to participate in the child nutrition program for more than 30 days;
 - (O) charter holder being imminently insolvent as defined by this chapter;
 - (P) failure to conduct fiscal mismanagement, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and
 - (Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable; and
- (3) Operational:
- (A) Governance:
 - (i) failure to timely file accurate and complete governance reporting forms;
 - (ii) non-compliance with required charter board training;
 - (iii) failure to timely and accurately report board training in the annual financial report;
 - (iv) failure to maintain verification of criminal history check/fingerprinting;
 - (v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Family Code, Open Meetings and Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;
 - (vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapter 12 and Chapter 22;
 - (vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Family Code, Chapter 261;
 - (viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency (TEA) in the applicable minutes of the charter holder's corporate records;
 - (ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and

- (x) failure to maintain the 501(c)(3) status of the charter holder at all times;
- (B) Complaints: failure to timely respond to and correct any complaints as directed by the TEA;
- (C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):
 - (i) operation of any sites that do not meet the definition of a site according to §100.1001(3)(D) of this title and that do not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;
 - (ii) failure to operate a campus at which at least 50 percent of students are in tested grades;
 - (iii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;
 - (iv) failure to document and fully disclose any step transactions in the purchase or sale of property; and
 - (v) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;
- (D) Activity fees and volunteer requirements:
 - (i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and
 - (ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;
- (E) Management contracts:
 - (i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;
 - (ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);
 - (iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with the TEA;
 - (iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:
 - (I) financial accounting;
 - (II) record retention;
 - (III) health, safety, and welfare of students;
 - (IV) educational program accountability;
 - (V) Texas Open Meetings Act;
 - (VI) Texas Public Information Act; and
 - (VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and

- (v) failure to comply with requirements in §100.1153 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and
- (F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181.

Source: The provisions of this §100.1032 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1033. Charter Amendment.

- (a) Amendments in writing. Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by the commissioner of education in writing.
- (b) Types of amendments. An amendment includes any change to the terms of an open-enrollment charter, including the following: maximum enrollment, grade levels, geographic boundaries, approved campus(es), approved sites, relocation of campus, charter holder name, charter school (district) name, charter campus name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. An amendment must be approved by the commissioner under this subsection. Expanding prior to receiving the commissioner's approval will have financial consequences as outlined in §100.1041(d)(1) of this title (relating to State Funding).
 - (1) Charter amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools. As applicable, the request shall set forth the text and page references, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.
 - (2) Timeline. All non-expansion amendments may be filed with the commissioner at any time throughout the year. Expansion amendment requests must be received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion.
 - (3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1010 of this title (relating to Performance Frameworks); student and other performance; compliance, staff, financial, and organizational data; and other information.
 - (4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.
 - (5) Conditional approval. The commissioner may grant the amendment without condition, or may require compliance with such conditions and/or requirements as may be in the best interest of students.
 - (6) Relocation amendment. An amendment to relocate an existing campus or site is not an expansion amendment subject to paragraphs (9)(A) and (10)(D) of this subsection. An amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.

- (7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.
- (8) Amendment determination. The commissioner's decision on an amendment request shall be final and may not be appealed. The same amendment request may not be submitted prior to the first anniversary of the submission of the original amendment request.
- (9) Expansion amendment standards. An expansion amendment is an amendment that permits a charter school to increase its maximum allowable enrollment, extend the grade levels it serves, change its geographic boundaries, or add a campus or site.
 - (A) In addition to the requirements of this subsection, the commissioner may approve an expansion amendment only if:
 - (i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a rating of "academically acceptable" as defined by §100.1001(26) of this title (relating to Definitions) as its most recent rating and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings are "academically acceptable" as defined by §100.1001(26) of this title;
 - (ii) the amendment request under paragraph (1) of this subsection is received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;
 - (iii) the most recent district rating for the charter school is "academically acceptable" and the most recent campus rating for at least 90% of the campuses operated under the charter school is "academically acceptable" as defined by §100.1001(26) of this title;
 - (iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas (FIRST) for Charter Schools is "satisfactory" as defined by §100.1001(27) of this title;
 - (v) the charter school has an accreditation status of Accredited;
 - (vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1010 of this title;
 - (vii) before voting to request an expansion amendment, the charter holder governing board has considered a business plan, has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school, and includes such a statement in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days. The business plan must be comprised of the following components:
 - (I) a statement discussing the need for the expansion;
 - (II) a statement discussing the current and projected financial condition of the charter holder and charter school;
 - (III) an unaudited statement of financial position for the current fiscal year;
 - (IV) an unaudited statement of financial activities for the current fiscal year;
 - (V) an unaudited statement of cash flows for the current fiscal year;
 - (VI) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

- (VII) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;
 - (VIII) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;
 - (IX) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;
 - (X) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed; and
 - (XI) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;
- (viii) the charter holder submits a signed statement attesting that within the last three years there have been no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve or submits, for the last three years of operation, copies of documents required by §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving), including documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees, and affidavits or other documentation that board members or employees whose criminal history checks deemed them ineligible to serve were removed from service;
- (ix) the commissioner determines that the amendment is in the best interest of students; and
- (x) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.
- (B) Notice of the approval or disapproval of expansion amendments will be made by the commissioner within 60 days of the date the charter holder submits a completed expansion amendment request. The commissioner may provide notice electronically. The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements that may be in the best interest of students.
- (10) Expansion amendments.
- (A) Maximum enrollment. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment not more than once each calendar year.
 - (B) Grade span. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.
 - (C) Geographic boundary. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to expand the geographic boundaries of the charter school only if it is accompanied by evidence of notification, electronic or otherwise, to the relevant district(s).

- (D) Additional campus. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new campus only if it meets the following criteria:
 - (i) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years;
 - (ii) the charter school under which the proposed new campus will be assigned currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B. For charter schools serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title (relating to High-Quality Prekindergarten Program) and the addition of the prekindergarten students meets the 50% threshold; and
 - (iii) the charter holder has provided evidence, via certified mail documented by return receipt, that each school district affected by the expansion was sent a notice to the district's central office of the proposed location and, if available, the address of any new campuses or sites, including proposed grade levels to be served and projected maximum enrollment.
- (E) Additional site. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new site under an existing campus only if it meets the following criteria:
 - (i) the charter school campus under which the proposed new site will be assigned currently has at least 50% of the student population in grades assessed under TEC, Chapter 39, Subchapter B. For charter school campuses serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title and the addition of the prekindergarten students meets the 50% threshold; and
 - (ii) the site will be located within 25 miles of the campus with which it is associated.
- (11) Expedited expansion. An expedited expansion amendment allows for the establishment of a new charter campus under TEC, §12.101(b-4).
 - (A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements.
 - (i) The charter school must have an accreditation status of Accredited and meet the following criteria:
 - (I) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years; and
 - (II) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings with:
 - (-a-) at least 75% of the campuses rated under the charter school also receiving a rating in the highest or second highest performance rating category in the most recent ratings; and

- (-b-) no campus receiving a rating in the lowest performance rating category in the most recent ratings.
- (ii) The charter holder must submit an expedited expansion amendment request in the time, manner, and form prescribed to the TEA division responsible for charter schools. The expansion amendment request will be:
 - (I) effective no earlier than the start of the fourth full school year at the affected charter school;
 - (II) received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;
 - (III) communicated via certified mail with a return receipt to the following entities:
 - (-a-) the superintendent and board of trustees of each school district affected by the expedited expansion as described in the amendment request form; and
 - (-b-) the members of the legislature who represent the geographic area affected by the expedited expansion as described in the amendment request form, noting that each entity has an opportunity to submit a statement regarding the impact of the amendment to the TEA division responsible for charter schools;
 - (IV) voted on by the charter holder governing body after consideration of a business plan determined by majority vote of the board affirming the growth proposed in the business plan is financially prudent relative to the financial and operational strength of the charter school. Such a statement must be included in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days; and
 - (V) submitted with copies of the most recent compliance information relating to §100.1035 of this title to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees.
- (B) Notice of eligibility to establish an expedited campus under this section will be made by the commissioner within 60 days of the date the charter holder submits a completed expedited expansion amendment.
- (12) New school designation. A new school designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.
 - (A) The commissioner may approve a new school designation for a charter only if:
 - (i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;
 - (ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) currently with at least 50% of the student population in grades assessed by the

state accountability system, has an accreditation status of Accredited, and meets the following:

- (I) is currently evaluated under the standard accountability procedures, currently has the highest or second highest district rating, and received the highest or second highest district rating in the previous two ratings with at least 75% of the campuses operated under the charter also receiving the highest or second highest rating and no campus with an "academically unacceptable" rating, as defined by §100.1001(26) of this title, in the most recent state accountability ratings. A rating that does not meet the criteria for "academically acceptable" as defined in §100.1001(26) of this title shall not be considered the highest or second highest academic performance rating for purposes of this section; or
 - (II) is currently evaluated under the alternative education accountability (AEA) procedures and received the highest or second highest AEA district rating for five of the last five ratings with:
 - (-a-) in the most recent applicable state accountability ratings, all rated campuses under the charter receiving an "academically acceptable" or higher rating, as defined by §100.1001(26) of this title; and
 - (-b-) if evaluated using AEA procedures, the district-level assessment data corresponding to the most recent accountability ratings demonstrate that at least 35% of the students in each of the following student groups (if evaluated) met the standard as reported by the sum of all grades tested on the standard accountability indicator in each subject area assessed: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient, and at risk;
 - (iii) no charter campus has been identified for federal interventions in the most current report;
 - (iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;
 - (v) the charter holder completes an application approved by the commissioner;
 - (vi) the new charter school campus that receives the new school designation will serve at least 100 students in its third year of operation;
 - (vii) the amendment complies with all requirements of this paragraph; and
 - (viii) the commissioner determines that the designation is in the best interest of students.
- (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school designation only if the campus with the proposed designation:
- (i) satisfies each element of the definition of a public charter school as set forth in federal law;
 - (ii) is not merely an extension of an existing charter school;
 - (iii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a new facility and county-district-campus number; and

- (iv) is governed, in the school's amended contract, by a separate written performance agreement that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).
- (C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:
 - (i) the terms of the open-enrollment charter school as a whole, as modified by the new school designation; and
 - (ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.
- (D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the campus with the proposed designation will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.
- (E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:
 - (i) whether the campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements; and
 - (ii) the extent to which the performance agreement for the campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).
- (F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iv) of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the new school designation.
- (13) High-quality campus designation. A high-quality campus designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to establish an additional charter school campus under an existing open-enrollment charter school pursuant to federal non-regulatory guidance. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.
 - (A) The commissioner may approve a high-quality campus designation for a charter only if:
 - (i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;
 - (ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title, currently has at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has the highest or second highest district rating, and received the highest or second highest rating in the previous two ratings with all of the campuses operated under the charter also receiving the highest or second highest rating as defined by §100.1001(26) of this title in the most recent state accountability ratings;

- (iii) no charter campus has been identified for federal interventions in the most current report;
 - (iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title; or federal requirements;
 - (v) the charter holder completes an application approved by the commissioner;
 - (vi) the new charter school campus that receives the high-quality campus designation will serve at least 100 students in its third year of operation;
 - (vii) the amendment complies with all requirements of this paragraph; and
 - (viii) the commissioner determines that the designation is in the best interest of students.
- (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:
- (i) satisfies each element of the definition of a public charter school as set forth in federal law;
 - (ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and
 - (iii) is governed, in the school's amended contract, by a separate written performance agreement that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).
- (C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:
- (i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and
 - (ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.
- (D) In making the findings required by subparagraph (B)(ii) of this paragraph, the commissioner shall consider whether the campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the campus with the proposed designation will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.
- (E) In making the finding required by subparagraph (B)(iii) of this paragraph, the commissioner shall consider:
- (i) whether the campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements;
 - (ii) whether an annual independent financial audit of the campus with the proposed designation is to be conducted. The high-quality campus must have a plan for a separate audit schedule apart from the open-enrollment charter school audit; and
 - (iii) the extent to which the performance agreement for the campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

- (F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iii) of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.
- (14) Delegation amendment. A delegation amendment is an amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.
- (A) The commissioner may approve a delegation amendment only if:
- (i) the charter holder meets all requirements applicable to delegation amendments and amendments generally;
 - (ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5, of this title (relating to Charter School Governance); and
 - (iii) the commissioner determines that the amendment is in the best interest of students.
- (B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.
- (C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:
- (i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;
 - (ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;
 - (iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;
 - (iv) final authority to adopt policies governing charter school operations;
 - (v) final authority to approve audit reports under TEC, §44.008(d); or
 - (vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.
- (D) The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(iii) of this subparagraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or

otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

- (i) to organize the charter school's central administration;
 - (ii) to approve reports or data submissions required by law; or
 - (iii) to select and terminate charter school employees or officers.
- (c) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

Statutory Authority: The provisions of this §100.1033 issued under the Texas Education Code, §§12.101, 12.1101, 12.114, 12.1181, and 29.259.

Source: The provisions of this §100.1033 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective August 26, 2010, 35 TexReg 7213; amended to be effective September 18, 2014, 39 TexReg 7295; amended to be effective June 8, 2017, 42 TexReg 2919; amended to be effective June 18, 2020, 45 TexReg 4010.

§100.1035. Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

- (a) A charter holder shall collect, maintain, and make available on request for inspection under this division, the following information on a form or in a format approved by the commissioner of education:
- (1) information identifying each member of the governing body of the charter holder and related compliance information as required by subsection (b) of this section;
 - (2) information identifying each chief executive officer and chief financial officer of the charter school and related compliance information as required by subsection (b) of this section;
 - (3) information identifying each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school, and related compliance information as required by subsection (b) of this section; and
 - (4) information identifying each employee of the charter school and related compliance information as required by subsection (b) of this section.
- (b) The compliance information recorded for each individual identified under subsection (a) of this section shall include:
- (1) the title of each position held or function performed by the individual;
 - (2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, if any, as described by the powers and duties listed in the charter pursuant to §100.1101 of this title (relating to Delegation of Powers and Duties);
 - (3) the legal name of the individual;
 - (4) any aliases or names formerly used by the individual, including maiden name;
 - (5) a complete criminal history record of convictions for the individual, issued by the Texas Department of Public Safety within three years of the date of the compliance record;
 - (6) a list of all relatives of the individual, within the third degree of consanguinity or affinity, under Government Code, Chapter 573, that:
 - (A) are employed by the charter holder or the charter school;
 - (B) conduct business transactions with the charter holder or the charter school;
 - (C) serve on the governing body of the charter holder or the charter school; or

- (D) have a substantial interest in a management company under Texas Education Code, §12.120; and
- (7) a full and complete list of the individual's business interests in, or transactions with, any charter holder, charter school, or management company.
- (c) Not later than 30 days following any change in the information recorded under this section, a charter holder shall make corrections to its most recent charter school compliance record.
- (d) A charter holder shall file the information with the Texas Education Agency division responsible for charter schools within ten business days of receiving a written request from the agency.

Source: The provisions of this §100.1035 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

Division 3. Charter School Funding and Financial Operations

Statutory Authority: The provisions of this Division 3 issued under the Texas Education Code, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.106, 12.1061, 12.107, 12.108, 12.114, 12.1141, 12.115, 12.1161, 12.1162, 12.1163, 12.122, 12.136, 39.082, 39.085, 39.102, and 39.104, and Local Government Code, §140.006 and §171.004, unless otherwise noted.

§100.1041. State Funding.

- (a) Funding formula elements. A charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to Texas Education Code (TEC), Chapter 42.
- (1) Tier I program allocations are determined by substituting the statewide average adjusted allotment in place of the district's calculated adjusted allotment. The state average adjusted allotment takes into account the cost of education index and the small, mid-size, and sparsity adjustments specified in TEC, §§42.102, 42.103, 42.104, and 42.105. The state average adjusted allotment is computed by averaging the adjusted allotment for each independent school district (ISD) in the state for the relevant school year.
 - (2) An allocation for the guaranteed yield allotment for Tier II of the FSP is determined by substituting a statewide average enrichment tax rate in place of the district's calculated enrichment tax rate (DTR) pursuant to TEC, §42.302. The state average tax rate is computed by averaging the DTR for each component of Tier II for each ISD in the state for the relevant school year.
- (b) Implementation schedule. The formula elements described in subsection (a) section will take effect for charter schools that begin operation in the 2001-2002 school year or later. Charter schools that report attendance that occurs prior to September 2, 2001, are considered to be in operation on September 1, 2001, and will be funded as described in House Bill 6, Section 40(b), 77th Texas Legislature, 2001. Charter schools that report no attendance that occurs prior to September 2, 2001, are considered to begin operation in the 2001-2002 school year or later, and will be funded according to subsection (a) of this section and TEC, §12.106.
- (c) Tuition and fees. A charter school shall not charge tuition and shall not charge a fee except:
- (1) a charter school may charge a fee listed in TEC, §11.158(a);
 - (2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532; and
 - (3) a charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).
- (d) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the chair and the commissioner of education.
- (1) If a charter holder, before or without approval of an amendment under §100.1033 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, expands its geographic boundaries, or exceeds its maximum allowable enrollment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.
 - (2) A former charter holder is not eligible to receive state funds.
- (e) Return of overallocated funds.
- (1) Within 30 days of receiving notice of an overallocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student

attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are overallocated within the meaning of this subsection.

- (2) If the charter holder fails to make the requested refund, the TEA may recover the overallocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.
- (3) Notwithstanding paragraph (2) of this subsection, the TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:
 - (A) the basis of the garnishment or recovery is that:
 - (i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and
 - (ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and
 - (B) the school:
 - (i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or
 - (ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school; and
 - (iii) used all funds received under TEC, §12.106, to provide education services to students.
- (4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

Source: The provisions of this §100.1041 adopted to be effective November 6, 2001, 26 TexReg 8826; amended to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1043. Status and Use of State Funds; Depository Contract.

- (a) Status and use of state funds.
 - (1) State funds received by a charter holder are public funds for all purposes under state law, and may be used only for a purpose for which a school district may use local funds under Texas Education Code (TEC), §45.105(c). Any other use or application of such funds constitutes misuse and misapplication of public funds and is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds.
 - (2) State funds received by a charter holder are held by the charter holder in trust for the benefit of the students of the charter school. In their use of public funds, the governing body of a charter holder, and the governing body and officers of a charter school, shall be held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law.
 - (3) A charter school shall accept tuition for students holding certain student visas as described in TEC, §25.0031(a).
- (b) Depository contract. Pending their use, state funds received by a charter holder must be deposited into a bank with which the charter holder has entered into a depository contract. Each year within the period prescribed by §100.1007 of this title (relating to Annual Report on Open-Enrollment Charter Governance) for filing articles of incorporation, the charter holder must file a copy of the depository contract with the Texas Education Agency division responsible for school financial audits; however, if there has been no

change since the last filing, the charter holder may file a statement to this effect in lieu of a copy of the depository contract.

- (1) State funds received by a charter holder must be deposited into an account owned and controlled exclusively by the charter holder pending their use. Once properly deposited, the charter holder may immediately use the funds for any purpose described in subsection (a)(1) of this section, subject to the standard of care and fiduciary duties described in subsection (a)(2) of this section.
- (2) A "bank" is defined by TEC, §45.201. Although the term excludes a bank the deposits of which are not insured by the Federal Deposit Insurance Corporation (FDIC), deposits exceeding FDIC-insured amounts need not be collateralized for the institution to constitute a "bank" under this subsection.
- (3) Notwithstanding this subsection, if required by a contract executed prior to September 1, 2001, state funds may be deposited into an account managed by a bond trustee acting on behalf of a charter holder for the sole purpose of complying with debt service obligations of the charter holder on a bond issued under TEC, Chapter 53.

Source: The provisions of this §100.1043 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1045. Investment of State Funds.

- (a) This section applies to a charter holder unless alternative requirements for investing state funds have been approved by the commissioner of education under §100.1006 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.
- (b) A charter holder shall invest state funds in accordance with Government Code, §§2256.009-2256.016.
 - (1) A requirement in those sections that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.
 - (2) State funds invested by a charter holder shall be maintained in a discrete charter investment account, separate and distinct from the operating accounts for the charter school and separate and distinct from any investment accounts related to non-charter activities.
 - (3) A charter holder shall invest state funds in accordance with any applicable provision or covenant contained in a debt instrument, bond indenture, or similar agreement.
 - (4) Nothing in this subsection shall authorize the investment of state or federal grant funds, unless investment of such funds is expressly authorized under the terms of the grant.
- (c) Investment of state funds shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.
 - (1) Investment of state funds shall be governed by the following investment objectives, in order of priority:
 - (A) preservation and safety of principal;
 - (B) liquidity; and
 - (C) yield.
 - (2) In determining whether a charter holder, or its employee or agent, has exercised prudence with respect to an investment decision respecting state funds, the determination shall be made taking into consideration:
 - (A) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

- (B) whether the investment decision was consistent with the written investment policy of the entity.

Source: The provisions of this §100.1045 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1047. Accounting for State and Federal Funds.

- (a) Fiscal year. A charter holder shall adopt a fiscal year consistent with Texas Education Code (TEC), §44.0011.
- (b) Financial accounting. A charter holder shall comply fully with:
 - (1) Generally Accepted Accounting Principles (GAAP);
 - (2) the Financial Accountability System Resource Guide, as adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide);
 - (3) the federal standards for financial management systems, 34 Code of Federal Regulations §80.20, Office of Management and Budget Circular A-87, and/or other applicable federal standards; and
 - (4) the financial accountability rating system (School FIRST for Charter Schools) specified in Chapter 109, Subchapter AA, of this title (relating to Commissioner's Rules Concerning Financial Accountability).
- (c) Annual audit. A charter holder shall at its own expense have the financial and programmatic operations of the charter school audited annually by a certified public accountant licensed by the Texas State Board of Public Accountancy and registered as a provider of public accounting services.
 - (1) The charter holder shall file a copy of the annual audit report, approved by a charter holder, with the Texas Education Agency (TEA) division responsible for school financial audits not later than the deadline specified by TEC, §44.008.
 - (2) The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the charter school through the Public Education Information Management System (PEIMS).
 - (3) Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133 or its successor.
- (d) Attendance accounting. A charter holder shall comply with the Student Attendance Accounting Handbook, as adopted by reference in §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook); TEC, §25.002; and Chapter 129 of this title (relating to Student Attendance), except that a charter school shall report its actual student attendance data to the TEA at six-week intervals, or as directed by the TEA.
- (e) Non-charter activities. A charter holder shall keep separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.
 - (1) Any business activities of a charter holder not directly related to the management and operation of the program described in the open-enrollment charter shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems from those recording the business activities of the charter school.
 - (2) Any commingling of charter and non-charter business in the accounting, auditing, budgeting, reporting, and recordkeeping systems of the charter school shall be a material charter violation.
- (f) Interested transactions. A charter holder shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131-100.1135 of this title. In addition, the following shall be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school:
 - (1) financial transactions between the charter school and the non-charter activities of the charter holder;

- (2) financial transactions between the charter school and an officer or employee of the charter holder or the charter school;
 - (3) financial transactions between the charter school and a member of the governing body of the charter holder or the charter school;
 - (4) financial transactions between the charter school and a management company charged with managing the finances of a charter school; and
 - (5) financial transactions between the charter school and any other person or entity in a position of influence over the charter holder or the charter school.
- (g) Position of influence. A person or entity is in a position of influence over the charter holder or the charter school, within the meaning of subsection (f)(5) of this section, if:
- (1) the charter holder or charter school is a subsidiary of, or shares governing body members, officers, or employees with, another organization, and:
 - (A) the person or entity is a shareholder, partner, administrator, official, or employee of the other organization; or
 - (B) the person or entity by any other means participates in the business decisions of the affiliate or parent organization; or
 - (2) a relative of the person is in a position of influence over the charter holder or the charter school under this section, within the third degree by consanguinity or affinity, as determined under Texas Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity).

Source: The provisions of this §100.1047 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective June 22, 2009, 34 TexReg 4119; amended to be effective August 26, 2010, 35 TexReg 7213; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1049. Disclosure of Campaign Contributions.

- (a) The governing body of a charter holder shall adopt policies implementing the disclosure requirements of State Board of Education Operating Rule, §4.3 (Disclosure of Campaign Contributions and Gifts), or its successor, and shall insure compliance by:
 - (1) the members of the governing body of the charter holder and charter school;
 - (2) the employees and agents of the charter holder and charter school; and
 - (3) any management company under contract with the charter holder or charter school.
- (b) The governing body of a charter holder shall insure that no state funds are expended by the charter holder, the charter school, or its management company for any political advertising within the meaning of Election Code, §251.001(16), as interpreted by the advisory opinions of the Texas Ethics Commission.

Source: The provisions of this §100.1049 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1050. Disclosure of Financial Information.

The governing board of an open-enrollment charter school shall continuously post on the school's internet website the following information:

- (1) the salary of the school's superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer; and
- (2) the school's annual financial statement.

Source: The provisions of this §100.1050 adopted to be effective September 18, 2014, 39 TexReg 7295.

§100.1051. Audit by Commissioner; Records in the Possession of a Management Company.

- (a) Commissioner authority. To the extent consistent with subsection (b) of this section, the commissioner of education may audit the records of:
- (1) a charter school;
 - (2) a charter holder; or
 - (3) a management company that has provided management services to a charter school or a charter holder.
- (b) Scope of audit.
- (1) An audit under subsection (a) of this section must be limited to matters directly related to the management or operation of a charter school, including the allocation of costs shared between the charter school and any non-charter business activity. The audit may examine any financial or administrative records related to the charter school that are in the possession of a management company or a former management company, including records related to the allocation of shared costs.
 - (2) Unless the commissioner has specific cause to conduct an additional audit, the commissioner may not conduct more than one on-site audit under this section during any fiscal year, including any financial and administrative records. For purposes of this subsection, an audit of a charter holder or management company associated with a charter school is not considered an audit of the school.
- (c) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an audit under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply timely with a request for access to records or other cooperation from the charter holder constitutes a material charter violation.
- (d) Management company cooperation. A management company and its employees and agents shall fully cooperate with an audit under subsection (a) of this section. Failure to timely comply with a request for access to records or other cooperation from the management company constitutes a management company breach, which may result in the commissioner taking action to prohibit, deny renewal of, suspend, or revoke the management contract as provided in Texas Education Code, §12.126.

Source: The provisions of this §100.1051 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1052. Final Audit Upon Revocation, Surrender, or Closure of an Open-Enrollment Charter.

- (a) Upon closure of a charter, the charter holder governing board must at their expense conduct a final audit.
- (b) The commissioner of education will assign a conservator to oversee the winding down of charter operations, protection of school assets, and recovery of any overallocation of state funds.
- (c) Revocation, surrender, or closure of a charter does not terminate the authority of the commissioner over the charter holder to ensure compliance of this section or applicable laws.

Source: The provisions of this §100.1052 adopted to be effective September 18, 2014, 39 TexReg 7295.

Division 4. Property of Open-Enrollment Charter Schools

Statutory Authority: The provisions of this Division 4 issued under the Texas Education Code, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.106, 12.1061, 12.107, 12.1162, 12.1163, 12.121, 12.122, 12.128, 39.082, and 39.085, unless otherwise noted.

§100.1063. Use of Public Property by a Charter Holder.

- (a) Public property. An interest in real estate or personal property acquired, improved, or maintained using state funds that were received by the charter holder on or after September 1, 2001, is public property for all purposes under state law. The date on which the property was acquired, improved, or maintained is not determinative. An interest in real estate acquired, improved, or maintained using state funds that were received by the charter holder before September 1, 2001, is public property only to the extent specified by §100.1065 of this title (relating to Property Acquired with State Funds Received Before September 1, 2001--Special Rules). Where the property is acquired with federal funds, federal law may preempt this section in whole or part.
- (b) Fiduciary duty respecting public property. Public property is held by the charter holder in trust for the benefit of the students of the charter school. With respect to the public property they manage, the members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, are trustees under Texas law; and the students enrolled in the school are beneficiaries of a trust. Each trustee shall be held to the standard of care and fiduciary duties that a trustee owes the beneficiary of a trust under Texas law.
- (c) Use of public property. Public property may be used only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with Texas Education Code (TEC), §12.107.
 - (1) Any use or application of public property for a purpose other than implementing a program that is described in the open-enrollment charter and is consistent with TEC, §12.107, constitutes misuse and misapplication of such property, and is subject to Texas law governing misuse or misapplication of public property.
 - (2) The governing body of a charter holder shall adopt and enforce local policies governing the use and application of public property by its employees, agents, contractors, and management companies. The policies shall prohibit the use or application of public property for any purpose but a program described in the open-enrollment charter, except that the policies may authorize charter holder employees to use local telephone service, cellular phones, electronic mail, Internet connections, and similar public property for incidental personal use, if the policies:
 - (A) do not result in any direct cost paid with state funds, or the charter holder is reimbursed for any direct cost incurred;
 - (B) do not impede charter school functions;
 - (C) do not authorize incidental personal use of public property for private commercial purposes; and
 - (D) authorize only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--for personal matters.
 - (3) The governing body of a charter holder shall by separate vote approve any joint use of real property for charter and non-charter activities. In the minutes of the vote approving the joint use, the governing body of a charter holder shall set forth the methodology used to allocate shared costs and the percentage allocation basis between charter and non-charter activities.
 - (4) The members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, shall authorize all uses and applications of the public property under their control, and shall not authorize any use or application that is inconsistent with the policy required by paragraph (2) of this subsection.

- (5) If pursuant to TEC, §12.111(9), the daily management of public property is delegated to any person, including a management company, the members of the governing body of the charter holder, and the members of the governing body and officers of the charter school, shall remain fully responsible to authorize all uses and applications of public property and enforce the policy required by paragraph (2) of this subsection.
- (6) Nothing in this section prevents a charter holder from authorizing the use of its public property by a contractor for the purpose of providing goods or services under the contract, if such use is an express contract term, factored into the price of the contract, and the contract is duly authorized by the governing body of the charter holder under this section.
- (d) Ownership of public property. Public property is owned by the charter holder, regardless of the funds used to acquire it. Subject to the requirements of §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) and this section, a charter holder retains all title to the property, exercises complete control over the property, and is entitled to all use and benefit from the property.
- (e) Public property mixed with private property. Property acquired, improved, or maintained partly using state funds and partly using other funds is mixed public and private property, and is subject to all requirements of this section.
- (f) Accounting for public property. Each charter holder shall include in its annual audit report an exhibit identifying the fixed assets of the charter holder and the ownership interest of all parties for all real estate and capitalized personal property presently held by the charter holder or acquired, improved, or maintained by the charter holder during the term of the open-enrollment charter.
 - (1) Pursuant to the requirements in §109.41 of this title (relating to Financial Accountability System Resource Guide), the annual audit report must separately disclose the cost basis and accumulated depreciation of all public property as determined by this division, and all other property held, acquired, improved, or maintained by the charter holder.
 - (2) Alternatively, the charter holder may omit the exhibit required by paragraph (1) of this subsection and substitute a statement, in accordance with the requirements in §109.41 of this title, that all property acquired, improved, or maintained during the term of the open-enrollment charter, and all property presently held by the charter holder, is public property under this division.
 - (3) All property held, acquired, improved, or maintained by the charter holder is subject to this subsection regardless whether it is public or private property.

Source: The provisions of this §100.1063 adopted to be effective November 6, 2001, 26 TexReg 8828; amended to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1065. Property Acquired with State Funds Received Before September 1, 2001--Special Rules.

- (a) Non-public property.
 - (1) An interest in personal property acquired, improved, and maintained solely using state funds that were received by the charter holder before September 1, 2001, is non-public property. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.
 - (2) An interest in real estate acquired, improved, and maintained using less than 50% state funds is non-public property if all state funds used were received before September 1, 2001. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.
 - (3) Non-public property under this section is exempt from §100.1063 of this title (relating to Use of Public Property by a Charter Holder) and exempt from §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder). However, non-public property under this section must be included in the exhibit required by §100.1063(f).

- (b) Public property.
 - (1) An interest in real estate acquired, improved, or maintained using 50% or more state funds is public property, even if all the state funds used were received by the charter holder before September 1, 2001.
 - (2) An interest in real estate acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.
 - (3) An interest in personal property acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.
 - (4) Public property under this section is subject to §100.1063 of this title (relating to Use of Public Property by a Charter Holder).
 - (5) Public property under this section is subject to §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) only to the extent it was acquired, improved, or maintained using state funds received on or after September 1, 2001.

Source: The provisions of this §100.1065 adopted to be effective November 6, 2001, 26 TexReg 8828.

§100.1067. Possession and Control of the Public Property of a Former Charter Holder.

- (a) Disposition of audited property. The commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit report as filed with the Texas Education Agency (TEA) or as revised pursuant to subsection (b) of this section. At any time, the commissioner may appoint a board of managers to transfer the property or may direct the governing board of the charter holder to transfer the property. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students. For purposes of this section, references to a charter holder refers to both an organization that currently holds a charter contract and an organization that formerly held a charter contract.
- (b) Disposition of property--defective audit. If the annual audit reports filed by a former charter holder are not in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law. The commissioner may transfer or direct the transfer of property to any public school if the commissioner determines that the transfer is in the best interest of students.
 - (1) At any time, the commissioner may determine whether the annual audit reports filed by a former charter holder substantially comply with §100.1063(f) of this title.
 - (2) At the commissioner's sole discretion, the commissioner may cure any defects in the annual audit reports by reviewing the audit reports and reclassifying the transactions and restating the financial statements or by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.
 - (3) The commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by the annual audit reports and any revisions made under this subsection.
- (c) Method of disposition of property. The commissioner may take possession, assume control, and supervise the disposition of property by taking one or more of the following actions.
 - (1) For real property purchased with funds received under the Texas Education Code (TEC), §12.106, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.
 - (A) The charter holder may retain or sell the property and provide reimbursement to the state. The following provisions apply to a charter holder that retains or sells the property.

- (i) The charter holder must notify the commissioner more than 30 calendar days prior to the last day of instruction that the charter holder intends to reimburse the state for its interest in the property and specify whether the charter holder intends to retain or sell the real property.
- (ii) The charter holder must provide the commissioner a written assurance that the charter holder will comply with the requirements of TEC, §12.1284.
- (iii) The charter holder must obtain the written consent of the commissioner.
- (iv) The charter holder must file an affidavit in the real property records of the county in which the real property is located disclosing the state interest in the property at least 30 calendar days prior to the last day of instruction.
- (v) Not later than 30 calendar days after the charter school's last day of operation, the charter holder must deposit with the Texas Comptroller of Public Accounts an amount equal to 110% of the estimated state reimbursement for the property as directed by the commissioner, which TEA will calculate by taking the fair-market value of the property as determined by an appraisal approved by the commissioner, subtracting the principal amount of any debt described by TEC, §12.128(e), and multiplying that result by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property. If an appraisal cannot be obtained in 30 calendar days, the charter holder may request that the commissioner grant an extension.
- (vi) The charter holder must prepare and submit a final audit under TEC, §44.008. This audit must be filed by the deadline specified in TEC, §44.008, and must disclose:
 - (I) the total amount of funds received under TEC, §12.106, that were used to purchase each separate item of real property to be retained or sold by the charter holder;
 - (II) the total amount of federal funds that were used to purchase each separate item of real property to be retained or sold by the former charter holder; and
 - (III) the total amount of state, federal, or any other private funds that were used to purchase the property to be retained or sold by the former charter holder.
- (vii) The charter holder shall timely make all required payments relating to the property, including note payments; shall maintain the premises; and shall maintain full insurance coverage as determined by the commissioner until the state has received its full reimbursement and released its claim to the property.
- (viii) The following provisions apply if the charter holder elects to retain the property.
 - (I) After the final annual audit report is filed, TEA will calculate the final state reimbursement amount, which is calculated by taking the fair-market value of the property as determined by the commissioner less the final principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property.
 - (II) If the final state reimbursement amount is greater than the deposit made with the comptroller under this section, the former charter holder must make the additional deposit to the comptroller within 30 calendar days

of TEA's determination of the final state reimbursement amount or as otherwise ordered by the commissioner.

- (III) Once the charter holder has filed its final audit report under TEC, §44.008, and sufficient funds are on deposit with the comptroller to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit as directed by TEA and release any state claim on the property. Any remaining funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.
 - (IV) If the charter holder fails to complete its final financial audit under TEC, §44.008, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the comptroller and shall dispose of the property as ordered by the commissioner. The commissioner may extend this deadline upon request of the charter holder.
- (ix) The following provisions apply if the charter holder sells the property.
- (I) The property must be sold for at least fair-market value, as determined under this section.
 - (II) The property must be sold and fully closed no later than one year after the last day of instruction.
 - (III) If the property is sold prior to the completion of the final audit report under TEC, §44.008, for an amount greater than the fair-market value used to determine the estimated state reimbursement amount, the charter holder shall deposit with the comptroller an amount equal to the difference between the estimated fair-market value and the sales price multiplied by the percentage of state funds used to purchase the property based on the most recent audit pursuant to TEC, §44.008.
 - (IV) After the property has been sold and the final audit report, pursuant to TEC, §44.008, has been filed, TEA shall calculate the final state reimbursement amount.
 - (V) The final state reimbursement amount is calculated by taking the final gross sales price of the property less the remaining principal amount of any debt described by TEC, §12.128(e), that was incurred prior to the charter school's cessation of operations and multiplying that amount by a fraction for which the numerator is the funds received under TEC, §12.106, used to purchase the property and the denominator is the funds received under TEC, §12.106, plus any non-state funds used to purchase the property.
 - (VI) If the final state reimbursement amount is greater than the total deposit made with the comptroller, the former charter holder must make the additional deposit to the comptroller within 30 calendar days or as otherwise ordered by the commissioner.
 - (VII) Once the former charter holder has filed its final audit report under TEC, §44.008, and sold the property, and once sufficient funds are on deposit with the state comptroller's office to pay the final reimbursement amount, the commissioner may request the comptroller to distribute the deposit and release any state claim on the property. Any funds on deposit with the comptroller may be returned to the former charter holder once the state has received the full final reimbursement amount.

- (VIII) The release of claims may be made in a closing where an independent third party is responsible for distributing the funds necessary to supplement the escrow account with the comptroller's office. If the property is sold before the final audit has been submitted to TEA, TEA may elect to release its claim on the property based on the most recent audit report.
- (IX) If the charter holder fails to complete its final financial audit under TEC, §44.008, fails to sell the property within one year after the last day of instruction, or fails to make an additional payment to the comptroller as required, the charter holder shall forfeit the amount deposited with the state comptroller and shall dispose of the property as ordered by the commissioner.
 - (x) For purposes of determining the fair-market value of the real property, the charter holder shall provide an appraisal from a certified appraiser approved by the commissioner not less than 60 calendar days after the final order of revocation, non-renewal, surrender, or return of the charter, or as otherwise directed by the commissioner. If the charter holder cannot provide an appraisal within 60 calendar days, the charter holder may request that the commissioner grant an extension.
 - (xi) The commissioner may direct the charter holder to contract with a specified, certified appraiser or require the charter holder to obtain additional appraisals and may then choose which appraisal will be used to calculate fair-market value.
 - (xii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), if the commissioner determines a former charter holder failed to comply with this section or TEC, §12.1282, on request of TEA, the attorney general shall take any appropriate legal action to compel the former charter holder to convey title to TEA or other governmental entity authorized by TEA to maintain or dispose of the property.
 - (xiii) All payments made by the charter holder to retain real property must be made with non-state funds. Lease payments received for state property are state property.
 - (xiv) A decision by the commissioner under this section is final and may not be appealed.
- (B) The charter holder may transfer the property using one of the following methods.
 - (i) Transfer to TEA.
 - (I) Subject to the satisfaction of any security interest or lien, the former charter holder shall transfer the property, including a conveyance of title, to TEA no later than two weeks after the last day of instruction.
 - (II) The following provisions apply to the sale of public real property by TEA.
 - (-a-) After TEA receives title to real property described by TEC, §12.128, TEA may sell the property at any price acceptable to TEA.
 - (-b-) On request of TEA, the General Land Office shall enter into a memorandum of understanding to sell real property for TEA as required by TEC, §12.1283. The memorandum of understanding may allow the General Land Office to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.

- (-c-) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of property under this section shall be deposited in the charter school liquidation fund.
- (ii) Transfer to a school district or open-enrollment charter school under TEC, §12.1282.
 - (I) The following order of priority shall be used when transferring to a school district or open-enrollment charter school under this clause. No property may be transferred to a school district or charter school if it has a financial accountability rating of lower than satisfactory.
 - (-a-) A charter school with the highest or second-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose approved geographic boundary encompasses the property to be transferred.
 - (-b-) A school district that has the highest or second-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose geographic boundary includes the property to be transferred.
 - (-c-) A charter school with the third-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose approved geographic boundary encompasses the property to be transferred.
 - (-d-) A school district with the third-highest academic accountability rating with no campus rated at the lowest or second-lowest accountability rating and whose geographic boundary encompasses the property to be transferred.
 - (II) A school district or an open-enrollment charter school may receive property under this clause only if:
 - (-a-) the open-enrollment charter school or school district receiving the property:
 - (-1-) has not received notice of the expiration or revocation of the contract for charter, notice of reconstitution of its governing body, or the assignment of an accreditation rating of Not Accredited-Revoked;
 - (-2-) agrees to the transfer;
 - (-3-) agrees to identify the property as purchased wholly using state funds on the school's annual financial report filed under TEC, §44.008; and
 - (-4-) agrees that if the property is sold within three years, the charter holder or school district will remit the sales proceeds back to TEA to be deposited in the charter school liquidation fund;
 - (-b-) any creditor with a security interest in or lien on the property described by TEC, §12.128(e), agrees to the transfer; and

- (-c-) the transfer of the property does not make the open-enrollment charter school or school district receiving the property insolvent.
- (III) Property received by an open-enrollment charter school or school district under this clause is considered state property. TEA may require a set amount of remuneration in exchange for the property, may accept bids, or may accept bids with a minimum bid amount established. If TEA takes bids, TEA shall transfer the property to the highest qualified bidder from the highest priority category established in subclause (I) of this clause, except as provided by subsection (g) of this section.
- (2) For personal property purchased with state funds, the commissioner shall direct the charter holder to dispose of the property through one of the following methods.
 - (A) If TEA determines that the cost of disposing of personal property described by TEC, §12.128, transferred to TEA by an open-enrollment charter school that ceases to operate exceeds the return of value from the sale of the property, TEA may distribute the personal property to open-enrollment charter schools and school districts in a manner determined by the commissioner.
 - (B) On request of TEA, the Texas Facilities Commission shall enter into a memorandum of understanding to sell personal property for TEA as required by TEC, §12.1283.
 - (i) A memorandum of understanding entered into as provided by this subparagraph may allow the Texas Facilities Commission to recover from the sale proceeds any cost incurred by the office or commission in the sale of the property.
 - (ii) Subject to the satisfaction of any security interest or lien described by TEC, §12.128(e), proceeds from the sale of personal property under this section shall be deposited in the charter school liquidation fund.
- (3) For property leased with state funds, the commissioner may direct the charter holder to assign the charter holder's interest in the lease to TEA or may direct the charter holder to cancel the lease.
- (d) Maintenance of property. TEA may approve an expenditure of remaining funds by a former charter holder for insurance or utilities for or maintenance, repairs, or improvements to property described by this section, and TEA may lease the property in its possession if TEA determines that the action is reasonably necessary to dispose of the property or preserve the property's value.
- (e) Funds and assets following termination of operations. After extinguishing all payable obligations owed by the charter school that ceases to operate, and after disposing of all real and personal property owned by the charter school that ceases to operate, the former charter holder shall:
 - (1) remit to TEA any remaining funds as described by TEC, §12.106(h), and any state reimbursement amounts as described by TEC, §12.128, to be deposited in the charter school liquidation fund;
 - (2) transfer all or a portion of the remaining funds to another charter school that has all or part of the operations of the former charter school assigned to it under TEC, §12.116(d)(2), if ordered by the commissioner, only if the charter school:
 - (A) has not received notice of possible adverse action or sanction by the commissioner;
 - (B) has an academic accountability rating at the district level of A or B and no campus with a rating of D or F;
 - (C) has a Charter FIRST rating of Meets Standard Achievement or above;
 - (D) has an accreditation rating of Accredited;
 - (E) does not have any warrant holds by which state payments issued to payees indebted to the state, or payees with a tax delinquency, are held by the comptroller until the debt is satisfied in accordance with Texas Government Code, §403.055; and

- (F) agrees to classify the property as state property; or
- (3) take any combination of the actions described by paragraphs (1) and (2) of this subsection.
- (f) Use of legal process. Notwithstanding subsection (c) of this section, the commissioner may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.
- (g) Commissioner authority. The commissioner has discretion to direct disposition of the property in the best interest of Texas students.

Statutory Authority: The provisions of this §100.1067 issued under Texas Education Code, §§12.106, 12.128, 12.1281, 12.1282, 12.1283, 12.1284, and 39A.256.

Source: The provisions of this §100.1067 adopted to be effective November 6, 2001, 26 TexReg 8828; amended to be effective September 18, 2014, 39 TexReg 7295; amended to be effective January 6, 2022, 46 TexReg 9289.

§100.1069. Rights and Duties Not Affected.

Nothing in this subchapter, and nothing in Texas Education Code (TEC), §12.128:

- (1) affects a security interest in or lien on property established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the property to the charter holder;
- (2) obligates the State of Texas or any agency of the State of Texas to fulfill any lease agreement or any other contractual or legal obligation entered into by a charter holder on behalf of an open-enrollment charter school; or
- (3) affects the right or the duty of the Attorney General to bring suit under the Texas Miscellaneous Corporations Act, the Texas Deceptive Trade Practices Act, or other law respecting Texas non-profit corporations.

Source: The provisions of this §100.1069 adopted to be effective November 6, 2001, 26 TexReg 8828.

§100.1071. Real Property Held in Trust.

- (a) This section applies to a charter holder unless alternative procedures for purchasing and selling real property held in trust have been approved by the commissioner of education under §100.1006 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.
- (b) A requirement in Government Code, Chapter 2252, Subchapter D, that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.
 - (1) A charter holder may not purchase real property held in trust until the trustee submits to the governing body of the charter holder a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to the charter holder.
 - (2) A charter holder may not sell real property to a trustee until the charter holder receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property. The trustee shall identify the person who will be the true owner of the property to the charter holder.
 - (3) A conveyance of property subject to this section is void if a charter holder fails to comply with this section.
 - (4) A trust agreement submitted to the governing body of the charter holder is confidential information excepted from the requirements of Government Code, §552.021, but must be disclosed to the Texas Education Agency under §100.1029 (relating to Agency Audits, Monitoring, and Investigations).

Source: The provisions of this §100.1071 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1073. Improvements to Real Property.

- (a) This section applies to a charter holder unless alternative procedures for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property have been approved by the commissioner of education under §100.1006 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.
- (b) A charter holder shall comply with Local Government Code, Chapter 271, Subchapter B, in awarding any contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property if the contract requires the expenditure of public funds in the amount specified by Local Government Code, §271.024. A requirement in that subchapter applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.
- (c) Local Government Code, Chapter 271, Subchapter B, does not apply to a contract executed prior to September 1, 2001.

Source: The provisions of this §100.1073 adopted to be April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

Division 5. Charter School Governance

Statutory Authority: The provisions of this Division 5 issued under the Texas Education Code, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1053, 12.1054, 12.1055, 12.1059, 12.106, 12.107, 12.112, 12.114, 12.1141, 12.115, 12.1162, 12.1163, 12.117, 12.119, 12.120, 12.121, 12.122, 12.123, 12.124, 12.125, 12.126, 12.128, 39.082, and 39.085, and Local Government Code, §171.004, unless otherwise noted.

§100.1101. Delegation of Powers and Duties.

- (a) Primary responsibility. The governing body of a charter holder has the primary responsibility for implementing the public school program authorized by the open-enrollment charter and ensuring the performance of the students enrolled in its charter schools in accordance with the Texas Education Code (TEC).
- (b) Alienation of open-enrollment charter. An open-enrollment charter grants to the governing body of a charter holder the authority to operate a charter school.
 - (1) The governing body of the charter holder shall, acting as a body corporate in meetings posted in compliance with Government Code, Chapter 551, oversee the management of the charter school.
 - (2) Except as provided by this section, the governing body's powers and duties to operate the charter school shall not be delegated, transferred, assigned, encumbered, pledged, subcontracted, or in any way alienated by the governing body of the charter holder. Any attempt to do so shall be null and void and of no force or effect and shall constitute abandonment of the contract for charter.
 - (3) A charter holder shall notify the Texas Education Agency (TEA) in writing prior to initiating any type of bankruptcy proceeding respecting the charter holder. Filing for any form of bankruptcy relief prior to such notice shall constitute abandonment of the contract for charter.
- (c) Exclusive method for delegating charter powers and duties. An open-enrollment charter must specify the powers or duties of the governing body of the charter holder that the governing body may delegate to an officer, employee, contractor, management company, creditor, or any other person. The exclusive method for making such a delegation shall be to file a request for a delegation amendment with the TEA division responsible for charter schools under §100.1033 of this title (relating to Charter Amendment), specifying the power or duty delegated and the particular person or entity to which it is delegated.
- (d) Accountability for delegated powers and duties retained. The governing body of a charter holder remains responsible for the management, operation, and accountability of the charter school operated by the charter holder, regardless of whether the governing body delegates any of its powers or duties.

Source: The provisions of this §100.1101 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1102. Training for Members of Governing Bodies of Charter Holder and School.

- (a) Training required. Unless exempted under subsection (g) or (h) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete a training course consisting of 12 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.
- (b) Timeline for completing training. Except as provided in subsection (c) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete the training course required by this section within one calendar year of appointment or election to such governing body.
- (c) Transition timeline. A member serving on the governing body of a charter holder or the governing body of a charter school on the effective date of this section must complete at least the first six hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining six hours of such training within one

- year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first six hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e) of this section.
- (d) Course content. The training course required by this section shall include the following modules, which accounts for 540 minutes (nine hours) of the required 12 hours. The remaining 180 minutes (three hours) of the required 12 hours may be selected from any of these modules:
- (1) a module consisting of at least 150 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, appropriate roles concerning internal and external audits, and the legal requirements specific to members of the governing body of a charter holder;
 - (2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;
 - (3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; safe schools; required reporting of child abuse; and criminal background checks;
 - (4) a module consisting of at least 120 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;
 - (5) a module consisting of at least 60 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in actions under TEC, §12.116 and §12.1162;
 - (6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and
 - (7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.
- (e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.
- (f) Continuing training. A member serving on the governing body of a charter holder or the governing body of a charter school who has completed the 12-hour training course required by this section must annually thereafter receive six hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a member of the governing body of a charter holder whose organization has operated charters that are all rated with an

"academically acceptable" rating or higher, as defined in §100.1001(26) of this title (relating to Definitions), for at least two out of three of the most recent ratings or a member of the governing body of a charter school whose school has been rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Furthermore, a board chair or vice chair may opt to train the remaining board members in such subjects as best fits the needs of the school or schools, provided the chair or vice chair has taken the initial 12 hours otherwise required under these rules. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) of this section as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of members of the governing body of a charter holder whose organization has operated campuses that are all rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose school has been rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than one hour of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a member serving on the governing body of a charter holder or the governing body of a charter school may be carried over to meet the following year's requirement under this section.

- (g) Exemptions. A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under TEC, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.
- (h) Limited exemptions. A member of the governing body of a charter holder whose organization has operated campuses that are all rated the highest or second highest ratings for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose campuses have all been rated the highest or second highest ratings for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1)-(5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. A rating that does not meet the criteria for "academically acceptable" as defined by §100.1001(26) of this title shall not be considered the highest or second highest academic performance rating for purposes of this section. For organizations that meet the requirements for this exception, the required amount of training is eight hours. The training courses required by this section shall include the following modules as provided in paragraphs (1)-(5) of this subsection, which account for 360 minutes (six hours) of the required eight hours. The remaining 120 minutes (two hours) of the required eight hours may be selected from any of the following modules, and can consist of self study:
- (1) a module consisting of at least 60 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, appropriate roles concerning internal and external audits, and the legal requirements specific to members of the governing body of a charter holder;
 - (2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;
 - (3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; safe schools; required reporting of child abuse; and criminal background checks;
 - (4) a module consisting of at least 90 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository

contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

- (5) a module consisting of at least 120 combined minutes of instruction in the following:
- (A) other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in actions under TEC, §12.116 and §12.1162;
 - (B) instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and
 - (C) instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

Source: The provisions of this §100.1102 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1103. Training for Chief Executive and Central Administrative Officers.

- (a) Training required. Unless exempted under subsection (g) or (h) of this section, a chief executive officer or a central administrative officer, including persons providing management services that include the functions of a chief executive officer or central administrative officer, must complete a training course consisting of 30 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.
- (b) Timeline for completing training. Except as provided in subsection (c) of this section, a chief executive officer or a central administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.
- (c) Transition timeline. A person serving as a chief executive officer or central administrative officer on the effective date of this section must complete at least the first 15 hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining 15 hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first 15 hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e) of this section.
- (d) Course content. The training course required by this section shall include the following modules, which accounts for 1,260 minutes (21 hours) of the required 30 hours. The remaining 540 minutes (nine hours) of the required 30 hours may be selected from any of these modules:
 - (1) a module consisting of at least 240 minutes of instruction in school law, with special emphasis on Texas Education Code (TEC), Chapter 12, Subchapter D, and this subchapter;
 - (2) a module consisting of at least 240 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, grant administration, audit requirements, and capital financing;
 - (3) a module consisting of at least 120 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; safe schools; required reporting of child abuse; and criminal background checks;

- (4) a module consisting of at least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;
 - (5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in actions under TEC, §12.116 and §12.1162;
 - (6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and
 - (7) a module consisting of at least 120 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.
- (e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.
- (f) Continuing training. A chief executive officer or a central administrative officer who has completed the 30-hour training course required by this section must annually thereafter receive 15 hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a chief executive or central administrative officer whose organization has operated charters that are all rated with an "academically acceptable" rating or higher, as defined in §100.1001(26) of this title (relating to Definitions), for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) of this section as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of the chief executive or central administrative officers of a charter holder whose organization has operated campuses that are all rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than three hours of continuing training. Twenty-five percent of hours earned by a chief executive officer or a central administrative officer in excess of the requirements set forth in this subsection may be carried over to meet the following year's requirement under this section.
- (g) Exemptions. A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Superintendent Certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.
- (h) Limited exemptions. A chief executive or central administrative officer whose organization has operated campuses that are all rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1)-(5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. For organizations that meet the requirements for

this exception, the required amount of training is 21 hours. The training course required by this section shall include the following modules, which accounts for 1,140 minutes (19 hours) of the required 21 hours. The remaining 120 minutes (two hours) of the required 21 hours may be selected from any of the following modules, and can consist of self-study:

- (1) a module consisting of at least 210 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D, and this subchapter;
- (2) a module consisting of at least 210 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, grant administration, audit requirements, and capital financing;
- (3) a module consisting of at least 270 combined minutes of instruction in the following:
 - (A) health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;
 - (B) open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and
 - (C) requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records;
- (4) a module consisting of at least 210 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder; and
- (5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in actions under TEC, §12.116 and §12.1162.

Source: The provisions of this §100.1103 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1104. Training for Campus Administrative Officers.

- (a) Training required. Unless exempted under subsection (g) of this section, a campus administrative officer, including persons providing management services that include the functions of a campus administrative officer, must complete a training course consisting of 10 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials.
- (b) Timeline for completing training. Except as provided in subsection (c) of this section, a campus administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.
- (c) Transition timeline. A person serving as a campus administrative officer on the effective date of this section must complete at least the first five hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining five hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1,

- 2001, may be counted toward the first five hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e) of this section.
- (d) Course content. The training course required by this section shall include the following modules (120 minutes (two hours) of the required 10 hours may be selected from any of these modules):
- (1) a module consisting of at least 90 minutes of instruction in school law, with special emphasis on Texas Education Code (TEC), Chapter 12, Subchapter D; this subchapter; students with disabilities; student records; student admissions; geographic boundaries; and residency;
 - (2) a module consisting of at least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, and grant administration;
 - (3) a module consisting of at least 90 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; safe schools; required reporting of child abuse; and criminal background checks;
 - (4) a module consisting of at least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;
 - (5) a module consisting of at least 120 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; and dropout reporting;
 - (6) a module consisting of at least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and
 - (7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.
- (e) Required course curriculum outline. The commissioner of education shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.
- (f) Continuing training. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a school officer whose school has been rated with an "academically acceptable" rating or higher, as defined in §100.1001(26) of this title (relating to Definitions), for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) of this section as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated with an "academically acceptable" rating or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a campus administrative officer may be carried over to meet the following year's requirement under this section.
- (g) Exemptions. A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Principal Certificate, or its lifetime equivalent, issued

by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

Source: The provisions of this §100.1104 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1105. Training for Business Managers.

- (a) Training required. Unless exempted under subsection (g) of this section, a business manager, including persons providing management services that include the functions of a business manager, must complete a training course consisting of 30 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials.
- (b) Timeline for completing training. Except as provided in subsection (c) of this section, a business manager must complete the training course required by this section within one calendar year of beginning service in that capacity.
- (c) Transition timeline. A person serving as a business manager on the effective date of this section must complete at least the first 15 hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining 15 hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first 15 hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e) of this section.
- (d) Course content. The training course required by this section shall include the following modules:
 - (1) a module consisting of at least 240 minutes of instruction in school law, with special emphasis on Texas Education Code (TEC), Chapter 12, Subchapter D; this subchapter; and the Financial Accountability System Resource Guide, as adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide);
 - (2) a module consisting of at least 480 minutes of instruction in school finance, with special emphasis on the Financial Accountability System Resource Guide, generally accepted accounting principles, student attendance accounting, federal funds and property management, purchasing, grant administration, audit requirements, and capital financing;
 - (3) a module consisting of at least 20 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school;
 - (4) a module consisting of at least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the fiduciary responsibility of duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;
 - (5) a module consisting of at least 160 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on PEIMS reporting, internal management controls, and audit requirements;
 - (6) a module consisting of at least 20 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on adopting and amending the budget; and
 - (7) a module consisting of at least 40 minutes of instruction in requirements relating to public records, with special emphasis on recordkeeping required by generally accepted accounting principles and applicable law.
- (e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section.

Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

- (f) Continuing training. A business manager who has completed the 30-hour training course required by this section must annually thereafter receive 15 hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. No more than three hours of continuing training may use self-instructional materials.
- (g) Exemptions. A business manager is exempt from:
- (1) the training required by this section if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials or the Texas Charter School Association, and if all other officers of the charter school comply with this division:
 - (A) Registered Texas School Business Administrator;
 - (B) Certified Texas School Business Official;
 - (C) Certified Texas School Business Specialist;
 - (D) Certified Texas School Business Administrator; or
 - (E) Charter School Business Officer Certification; and
 - (2) a module of required training, if:
 - (A) the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and
 - (B) the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

Source: The provisions of this §100.1105 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1106. Exemption for Participation in a Shared Services Cooperative.

- (a) An officer of a charter school is exempt from a module of required training on a specific duty or responsibility, if:
- (1) the charter holder is a member of a shared services cooperative;
 - (2) the written contract establishing the cooperative assigns to the cooperative the specific duty or responsibility, and assigns to the cooperative the requirement to complete that module of training, by:
 - (A) insuring that all relevant employees attend that module of required training and receive a certificate of course completion for that module from a regional education service center or course provider registered under §100.1107 of this title (relating to Course Providers); or
 - (B) if the cooperative is a registered course provider, insuring that all relevant employees attend that module of training and receive a certificate of course completion for that module from the cooperative; and

- (3) all relevant employees of the cooperative actually attend that module of training and receive a certificate of course completion for that module.
- (b) Nothing in this section affects an exemption available by virtue of another section in this division.

Source: The provisions of this §100.1106 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1107. Course Providers.

- (a) Authorized course providers. Training under this division must be provided by a regional education service center (RESC) or by a course provider registered with the commissioner of education under this section. Training provided by a course provider that is not registered under this section at the time of training does not satisfy training requirements specified in this division. The fee for a course or module of training shall be determined by the RESC or registered course provider.
- (b) Application for registration; qualifications. An applicant for course provider registration must file with the commissioner documents and information demonstrating a history of training experience and subject-matter expertise in each area covered by a training course required by this division.
 - (1) The course provider may apply to be registered as a course provider for one or more training courses, and may submit documents and information about more than one instructor. However, each instructor must be under contract to teach the course or module for the applicable period of registration.
 - (2) The course provider is not registered under this section until it receives written notice of registration under this section.
- (c) Compliance with training rules. A registered course provider that fails to comply with §§100.1102-100.1107 of this division will not be registered in any subsequent year. A person who completes a training course that does not comply with §§100.1102-100.1105 and curriculum outlines approved thereunder has not satisfied the requirements for continued service.
- (d) Annual registration; no renewal. Initial registration under this section is effective for 18 months. Thereafter, re-registration may be for a period of up to three years. Re-registration is by original application under this section, except that the process for re-registration of a registered course provider must include an opportunity for stakeholder comment on that course provider's performance. A successful application for registration in a prior registration period confers no right or expectation that the commissioner will grant an application for registration in a subsequent year.

Source: The provisions of this §100.1107 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1108. Record of Compliance and Disclosure of Non-compliance.

Record of compliance; non-compliance.

- (1) Record of compliance. It is the obligation of the charter holder to comply with this section, including compliance with §§100.1102-100.1105 of this division by each a member of the governing body of the charter holder, each member of any governing body of a charter school operated by the charter holder, and each chief executive officer, central administrative officer, campus administrative officer, and business manager of any charter school operated by the charter holder. The charter holder shall document its compliance with §§100.1102-100.1105 and this section.
- (2) Continued service. A person may not continue to serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer of a charter school, unless the person is in compliance with §§100.1102-100.1105 and this section.
- (3) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State Funds), any member of the governing body of the charter holder or a charter school, and any officer of a charter school, who fails to comply with §§100.1102-100.1105 and this section and who continues to serve in such capacity as of the date of the audit report.

- (4) Material charter violation. Failure to comply with §§100.1102-100.1105 and this section is a material charter violation that may be considered by the commissioner in any action or intervention under Division 2 of this subchapter (relating to Commissioner Action and Intervention).

Source: The provisions of this §100.1108 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1111. Applicability of Nepotism Provisions; Exception for Acceptable Performance.

- (a) Nepotism laws generally apply. Except as provided by this section, a member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school who retain final authority to select and terminate charter school employees shall comply with Government Code, Chapter 573, in the manner provided by the nepotism provisions, prohibitions, and exceptions described in §§100.1111-100.1116 of this division.
- (b) Existing charter holders partly grandfathered. A person who was not restricted or prohibited under Texas Education Code (TEC), §12.1055, before September 1, 2013, from being employed by an open-enrollment charter school and who was lawfully employed by an open-enrollment charter school before September 1, 2013, is considered to have been in continuous employment as provided by Government Code, §573.062(a), and is not prohibited from continuing employment with the school. Any break in service, however, shall render the eligibility under this subsection null and void. Continuous employment for the purposes of this subsection applies only to relationships that existed on September 1, 2013, and does not exempt relationships created after September 1, 2013.
- (c) Employment status. This section only applies to the employment of those charter employees reported to the Texas Workforce Commission (TWC) as being employees of the charter on September 1, 2013. The charter holder must supply to the Texas Education Agency (TEA) the TWC list that includes each employee's name, position held, and relationship, if any, to officer and/or board member(s). This list will serve as a baseline for determination of those individuals grandfathered under this section.
- (d) Submission requirement. The list referenced in subsection (c) of this section shall be received by the TEA division of charter schools no later than December 1, 2014. Failure to comply with this subsection constitutes a material charter violation.
- (e) No quorum of relatives. Notwithstanding any other provision of this section, persons related to one another within the third degree by consanguinity or within the second degree by affinity, as determined under §100.1113 of this title (relating to Relationships by Consanguinity or by Affinity), shall not constitute a quorum of the governing body or any committee of the governing body of the charter holder or charter school.

Source: The provisions of this §100.1111 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1112. General Nepotism Provisions.

- (a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.
- (1) Public official--a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school who retains final authority to select and terminate charter school employees.
- (2) Candidate--a person who applies for, seeks, is nominated for, or is considered for selection, appointment, employment or in any other manner to be made a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of an open-enrollment charter school.
- (3) Charter Position:
- (A) an office, employment, function, or duty that is to be directly or indirectly compensated from state funds received by a charter holder after September 1, 2001; or

- (B) a member of the governing body of a charter holder that receives state funds after September 1, 2001, or a member of the governing body or an officer of a charter school operated by such charter holder.
- (b) Degrees of relationship. Except as specifically provided by these rules, §§100.1111-100.1116 of this division apply to relationships within the third degree by consanguinity or within the second degree by affinity.

Source: The provisions of this §100.1112 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1113. Relationships By Consanguinity or By Affinity.

- (a) Method of computing degree of relationship. The degree of a relationship is computed by the civil law method.
- (b) Determination of consanguinity. Two individuals are related to each other by consanguinity if one is a descendant of the other, or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose.
- (c) Computation of degree of consanguinity. The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them.
 - (1) A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree, and so on.
 - (2) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:
 - (A) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
 - (B) the number of generations between the relative and the nearest common ancestor.
 - (3) An individual's relatives within the third degree by consanguinity are the individual's:
 - (A) parent or child (relatives in the first degree);
 - (B) brother, sister, grandparent, or grandchild (relatives in the second degree); and
 - (C) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).
- (d) Determination of affinity. Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.
 - (1) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.
 - (2) Paragraph (1) of this subsection applies only until the youngest child of the marriage reaches the age of 21 years.
- (e) Computation of degree of affinity. A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.
 - (1) If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.
 - (2) An individual's relatives within the third degree by affinity are:

- (A) anyone related by consanguinity to the individual's spouse in one of the ways named in this section; and
- (B) the spouse of anyone related to the individual by consanguinity in one of the ways named in this section.

Source: The provisions of this §100.1113 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1114. Nepotism Prohibitions.

- (a) Prohibition applicable to public official. A public official may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position if, within a degree described by Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity):
 - (1) the individual is related to the public official; or
 - (2) the public official holds the authority to hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation as a member of a governing body, and the individual is related to another member of that governing body.
- (b) Prohibition applicable to candidate. Except for a candidate's actions taken regarding a bona fide class or category of employees or prospective employees, a candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Government Code, §§573.021-573.025, and §100.1113:
 - (1) an employee of the office that the candidate seeks, applies for, is nominated for, or is considered for; or
 - (2) an employee or officer under the direction or control of a governing body, if the candidate seeks, applies for, is nominated for, or is considered for membership on that governmental body.
- (c) Prohibition applicable to trading. A public official may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position in which the individual's services are under the public official's direction or control if, within a degree described by Government Code, §§573.021-573.025, and §100.1113:
 - (1) the individual is related to another public official; or
 - (2) the hiring, selection, appointment, confirmation, or vote would be carried out in whole or partial consideration for the other public official hiring, selecting, appointing, confirming, or voting for an individual who is related to the first public official.

Source: The provisions of this §100.1114 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1115. Nepotism Exceptions.

- (a) General. Section 100.1114(a) of this title (relating to Nepotism Prohibitions) does not apply to:
 - (1) an appointment or employment of a bus driver by a charter school if:
 - (A) the charter school is located wholly in a county with a population of less than 35,000; or
 - (B) the charter school is located in more than one county and the county in which the largest part of the charter school is located has a population of less than 35,000;
 - (2) an appointment or employment of a personal attendant by a public official for attendance on the public official who, because of physical infirmities, is required to have a personal attendant; or
 - (3) an appointment or employment of a substitute teacher.

- (b) Continuous employment. A nepotism prohibition prescribed by §100.1114(a) does not apply to the hiring, selection, appointment, confirmation, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position if:
- (1) the individual was employed in the position immediately before the public official to whom the individual is related in a prohibited degree became a public official, by whatever means; and
 - (2) that prior employment of the individual was continuous for at least:
 - (A) 30 days, if the public official is an officer of a charter school;
 - (B) six months, if the public official is a member of the governing body of a charter school; or
 - (C) one year, if the public official is a member of the governing body of a charter holder.
- (c) Prohibition against deliberation or voting on continued relative. If an individual continues in a position under subsection (b) of this section, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

Source: The provisions of this §100.1115 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1116. Enforcement of Nepotism Prohibitions.

- (a) Removal by charter holder. An individual who violates §100.1114 of this title (relating to Nepotism Prohibitions) or §100.1115(c) of this title (relating to Nepotism Exceptions) shall be removed from the individual's position by the charter holder. Failure to comply with this subsection is a material charter violation.
- (1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.
 - (2) A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.
- (b) Removal by Attorney General. An individual who violates §100.1114 or §100.1115(c) may be removed from the individual's position by suit brought by the Texas Attorney General under Government Code, §573.082.
- (c) Criminal penalties. An individual who violates Government Code, Chapter 573, Subchapter C, or §573.062(b) or §573.083, as applied by these rules, may be subject to criminal penalties under Government Code, §573.084.
- (1) On final conviction of an offense under Government Code, §573.084, an individual shall immediately and summarily be removed from the individual's position by the charter holder.
 - (2) If the removal under paragraph (1) of this subsection is not made within 30 days after the date the conviction becomes final, the individual holding the position may be removed by the commissioner of education or by suit brought by the Texas Attorney General under Government Code, §573.082.

Source: The provisions of this §100.1116 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1131. Conflicts of Interest and Board Member Compensation; Exception.

- (a) Process governing conflicts of interest. A member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Local

Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131-100.1135 of this division.

- (b) Compensated board members generally prohibited. Except as provided by this section, a person who receives compensation or remuneration from a nonprofit corporation holding an open-enrollment charter may not serve on the governing body of the charter holder. As used in this subsection, compensation or remuneration includes, without limitation:
- (1) salary, bonuses, benefits, or other compensation received by the local public official pursuant to an employment relationship;
 - (2) payment of or reimbursement for personal expenses of the local public official, excluding reimbursement for allowable travel expenses;
 - (3) credit extended to the local public official by the charter holder or charter school;
 - (4) the local public official's personal use of property paid for by the charter holder or charter school;
 - (5) in-kind transfers of property to the local public official; and
 - (6) all other forms of compensation or remuneration to the local public official.
- (c) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1022(b)(2)(B) of this title (relating to Standards to Revoke and Modify the Governance of an Open-Enrollment Charter), for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.
- (d) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of academic or financial ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.
- (1) For purposes of this subsection, a charter school has a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:
 - (A) the charter school has received two consecutive academic ratings, and neither rating meets the criteria set forth in subsection (c) of this section; or
 - (B) the charter school has received three academic ratings.
 - (2) If a charter holder operates charter schools that have received a sufficient number of academic ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of academic ratings, then its eligibility to comply with subsection (f) of this section is determined by applying the criteria in subsection (c) of this section only to those schools with a sufficient number of substantive ratings.
- (e) No annual ratings assigned. For purposes of this section, two academic accountability ratings are "consecutive" as determined by §100.1022(b)(2)(C) of this title.
- (f) Exception to prohibition on compensated board members. Notwithstanding subsection (b) of this section, an employee of a charter school subject to this subsection may serve as a member of the governing body of the charter holder if:
- (1) only employees of the charter school, and not employees of the charter holder, serve on the governing body of the charter holder;
 - (2) the only compensation or remuneration received by the board member is salary, bonuses, benefits, or other compensation received pursuant to the employment relationship with the charter school;

- (3) charter school employees do not constitute a quorum of the governing body or any committee of the governing body; and
- (4) all charter school employees serving on the governing body comply with all conflict of interest provisions referenced in subsection (a) of this section.
- (g) Accounting for interested transactions. Notwithstanding compliance with this section, a charter holder shall comply fully with the requirements of §100.1047(f) of this title (relating to Accounting for State and Federal Funds).
- (h) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the prohibition on compensated board members described in subsection (b) of this section within 30 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (f) of this section.
 - (1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable accountability manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.
 - (2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

Source: The provisions of this §100.1131 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1132. General Conflict of Interest Provisions.

- (a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.
 - (1) Local public official--a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school.
 - (2) Business entity--a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, agency, political subdivision, or any other entity recognized by law.
- (b) Substantial interest in business entity. For purposes of this chapter, a person has a substantial interest in a business entity if:
 - (1) the person owns 10% or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceed 10% of the person's gross income for the previous year.
- (c) Substantial interest in real estate. A person has a substantial interest in real estate if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- (d) Substantial interest through a relative. A local public official is considered to have a substantial interest under this section if a person related to the official in the third degree by consanguinity or affinity, as determined under Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity), has a substantial interest under this section.

Source: The provisions of this §100.1132 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1133. Conflicts Requiring Affidavit and Abstention From Voting.

- (a) Affidavit and abstention required. If a local public official has a substantial interest in a business entity or in real property, the official must file, before a vote, decision, or other action on any matter involving the

business entity or the real property, an affidavit stating the nature and extent of the interest and must abstain from further participation in the matter if:

- (1) in the case of a substantial interest in a business entity, the vote, decision, or other action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
 - (2) in the case of a substantial interest in real property, it is reasonably foreseeable that a vote, decision, or other action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.
- (b) Affidavit filed. The affidavit described in subsection (a) of this section must be filed with the official recordkeeper of the charter holder.
- (c) Abstention excused. If a local public official is required to file and does file an affidavit under subsection (a) of this section, the local public official is not required to abstain from further participation in the matter requiring the affidavit if:
- (1) the local public official is a member of the governing body of the charter holder or the charter school, and
 - (2) a majority of the members of the governing body of which the local public official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.
- (d) Local public official. A member of a governing body of a charter holder, a member of the governing body of an open-enrollment charter school, or an officer of an open-enrollment charter school is considered to be a local public official for purposes of this section.
- (e) Minutes. The minutes of a meeting during which a matter subject to this section is discussed or decided must clearly identify each person participating, each person abstaining, each person voting, and the vote of each person.
- (f) Resolution. A matter subject to this section must be approved through a written resolution adopted by the governing board of the charter holder and signed by the members voting in favor of it.
- (g) Violation. A violation of this section or Local Government Code, Chapter 171, constitutes a material violation of charter contract.

Source: The provisions of this §100.1133 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1134. Conflicts Requiring Separate Vote on Budget.

- (a) Separate vote required. The governing body of a charter holder shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body of the charter holder has a substantial interest.
- (b) Abstention required. Except as provided by §100.1133(c) of this title (relating to Conflicts Requiring Affidavit and Abstention From Voting), the affected member may not participate in that separate vote. The member may vote on a final budget if:
 - (1) the member has complied with this chapter; and
 - (2) the matter in which the member is concerned has been resolved.

Source: The provisions of this §100.1134 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1135. Acting as Surety and other Conflicts; Criminal Penalties.

- (a) Acting as surety. A local public official commits a criminal offense if the official knowingly:
 - (1) acts as surety for a business entity that has work, business, or a contract with the charter holder; or

- (2) acts as surety on any official bond required of a member of the governing body or charter school, or of an officer of the charter school.
- (b) Knowing violation of requirements. A local public official commits a criminal offense if the official knowingly violates Local Government Code, §171.004, as applied by these rules.

Source: The provisions of this §100.1135 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1151. Criminal History; Restrictions on Serving.

- (a) Restrictions on serving. A person may not serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school if the person has been convicted of:
 - (1) a misdemeanor involving moral turpitude or any felony;
 - (2) an offense listed in Texas Education Code (TEC), §37.007(a); or
 - (3) an offense listed in Code of Criminal Procedure, Article 62.01(5).
- (b) Exception. Notwithstanding subsection (a) of this section, a person may be employed in any position by an open-enrollment charter school if a school district could employ the person in that position and the Texas Education Agency (TEA) approves of the employment pursuant to TEC, §12.1059.
- (c) Required criminal history checks--generally. Before the person begins service, and every third year thereafter, a charter holder shall obtain from the Texas Department of Public Safety (DPS) all criminal history record information that relates to:
 - (1) an employee or a person whom the charter school intends to employ in any capacity, or whom the charter holder intends to employ in any capacity relating to its charter school activities;
 - (2) a member of the governing body of the charter holder or charter school or a person who has agreed to serve as a member of the governing body of the charter holder or charter school; and
 - (3) a person who files, in writing, an intention to serve as a volunteer at the charter school, if the duties are or will be performed on school property or at another location where students are regularly present.
- (d) Required criminal history checks--transportation. Except as provided by paragraphs (3) and (4) of this subsection, a charter holder that contracts with a person for transportation services shall obtain from the DPS all criminal history record information that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver.
 - (1) Except as provided by paragraphs (3) and (4) of this subsection, a person or management company that contracts with a charter holder to provide transportation services shall submit to the charter holder the name and other identification data required to obtain criminal history record information of each person described by this section.
 - (2) If the charter holder obtains information that a person described by this section has been convicted of a felony or a misdemeanor involving moral turpitude, the charter holder shall inform the chief personnel officer of the person or management company with whom the charter holder has contracted, and the person or management company may not employ that person to drive a bus on which students are transported without the permission of the governing body of the charter holder.
 - (3) A commercial transportation company that contracts with a charter holder to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person employed by the commercial transportation company, or to a person it intends to employ, as a bus driver, bus monitor, or bus aide.
 - (4) If the commercial transportation company obtains information that a person employed or to be employed by the company has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus

aide on a bus on which students are transported without the permission of the governing body of the charter holder. Paragraphs (1) and (2) of this subsection do not apply if information is obtained as provided by paragraph (3) of this subsection.

- (e) Permissive criminal history checks. A charter holder may obtain from any law enforcement or criminal justice agency, including the DPS, all criminal history record information that relates to:
 - (1) a volunteer, employee, or member of a governing body under subsection (c) of this section;
 - (2) an employee of or an applicant for employment with a public or commercial transportation company that contracts with the charter holder to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported, under subsection (d) of this section; and
 - (3) an employee of or applicant for employment by a management company or other person that contracts with the charter school to provide management services or other services, if:
 - (A) the employee or applicant has or will have continuing duties related to the contracted services; and
 - (B) the duties are or will be performed on school property or at another location where students are regularly present.
- (f) Entitlement to criminal history checks. A charter holder is entitled to obtain, no more than twice each year, from the DPS all criminal history record information maintained by the DPS that the charter holder is required or authorized to obtain under this section.
- (g) Reduced fees for criminal history checks. In accordance with Government Code, §411.097, if a regional education service center or commercial transportation company that receives criminal history record information from the DPS under this section requests the information by providing to the DPS a list, including the name, date of birth, and any other personal descriptive information required by the DPS for each person, through electronic means, magnetic tape, or disk, as specified by the DPS, the DPS may not charge the service center or commercial transportation company more than the lesser of:
 - (1) the DPS's cost for providing the information; or
 - (2) the amount prescribed by another law.
- (h) Disclosure prohibited. Criminal history record information obtained by a charter holder under this section may not be released or disclosed to any person, other than the individual who is the subject of the information, the TEA, the State Board for Educator Certification (SBEC), or the chief personnel officer of the transportation company, if the information is obtained under subsection (d) of this section.
- (i) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.
 - (1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.
 - (2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.
- (j) Teaching certificate applicant or holder. A charter holder shall promptly notify the SBEC in writing if it obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under TEC, Chapter 21, Subchapter B, has a reported criminal history.
- (k) Implementation schedule and transition. Notwithstanding this section:

- (1) beginning September 1, 2001, a charter holder shall obtain, in compliance with this section, criminal history record information relating to each person identified in subsections (c) and (d) of this section; and
- (2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:
 - (A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;
 - (B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and
 - (C) the person does not perform, and is not charged with performing, any charter school functions.

Source: The provisions of this §100.1151 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1153. Substantial Interest in Management Company; Restrictions on Serving.

- (a) Restriction on serving. A person may not serve as a member of the governing body of a charter holder as a member of the governing body of a charter school, or as an officer or employee of a charter school, if the person has a substantial interest in a management company that has a contract for management services with the charter holder or a charter school. A person has a substantial interest in a management company if the person:
 - (1) has a controlling interest in the company;
 - (2) owns more than 10% of the voting interest in the company;
 - (3) owns more than \$25,000 of the fair market value of the company;
 - (4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the company;
 - (5) is a member of the board of directors or other governing body of the company;
 - (6) serves as an elected officer of the company; or
 - (7) is an employee of the company.
- (b) Management company as officer. Notwithstanding subsection (a) of this section, a person who has a substantial interest in a management company may provide management services that include the functions of a central administration officer, campus administration officer, or business manager, if:
 - (1) the person provides all management services under a contract for management services;
 - (2) the person provides all management services as an agent of the management company;
 - (3) the person does not serve as an employee or volunteer of the charter holder or charter school, and does not otherwise serve as a contractor of the charter holder or charter school;
 - (4) the person does not serve as a member of the governing body of the charter school or charter holder; and
 - (5) the management services provided by the person do not include powers or duties that are non-delegable under §100.1101 of this title (relating to Delegation of Powers and Duties).

- (c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State and Federal Funds), all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a).
- (d) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.
 - (1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.
 - (2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.
- (e) Implementation schedule and transition. Notwithstanding this section:
 - (1) beginning with the fiscal year in which September 1, 2001, falls, a charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title, all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a); and
 - (2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:
 - (A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;
 - (B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and
 - (C) the person does not perform, and is not charged with performing, any charter school functions.

Source: The provisions of this §100.1153 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 12, 2012, 37 TexReg 7097.

§100.1155. Procedures for Prohibiting a Management Contract.

- (a) Action prohibiting management contract. The commissioner of education may prohibit, deny renewal of, suspend, or revoke a contract between an open-enrollment charter school and a management company providing management services to the school if the commissioner determines that the management company has:
 - (1) failed to provide educational or related services in compliance with the company's contractual or other legal obligation to any open-enrollment charter school in Texas or to any other similar school in another state;
 - (2) failed to protect the health, safety, or welfare of the students enrolled at an open-enrollment charter school served by the company;
 - (3) violated this subchapter or a rule adopted under this subchapter; or
 - (4) otherwise failed to comply with any contractual or other legal obligation to provide services to the school.

- (b) Procedures for making determination. A determination under subsection (a) of this section shall be made through a final investigative report issued by the Texas Education Agency (TEA). In making this determination:
- (1) the commissioner may rely on one or more of the following:
 - (A) any finding or determination made by a court or other tribunal of competent jurisdiction, whether in Texas or in any other state, or by the United States, if the order or judgment is final under the rules governing such proceedings;
 - (B) any finding or determination made by the commissioner under §§100.1021 of this title (relating to Revocation and Modification of Governance of an Open-Enrollment Charter), 100.1023 of this title (relating to Intervention Based on Charter Violations), 100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), 100.1027 of this title (relating to Accountability Ratings and Sanctions), or 100.1031 of this title (relating to Renewal of an Open-Enrollment Charter), if the finding or determination is final under the rules governing such proceedings; or
 - (C) any finding or determination made by a court in an action for declaratory judgment or other action pertaining to the commissioner's determination under this section, if the order or judgment is final under the rules governing such proceedings; and
 - (2) to the extent that a finding or determination under paragraph (1) of this subsection pertains to a charter holder or charter school served by a management company, but does not directly pertain to the management company, the focus shall be on the question of whether the relevant contract for management services creates a legal duty for the management company to provide services to the charter school in areas of performance that are the subject of the finding or determination against the charter holder or charter school.
- (c) Review of proposed management contract. At least 30 calendar days prior to any performance or payments under the contract, a charter holder must file a copy of each contract for management services, and each amendment, renewal or extension thereto, with the TEA division responsible for legal services for review under this section.
- (1) A contract for management services is unenforceable, void, and of no force or effect until the expiration of 30 calendar days following the date on which it is filed with the TEA division responsible for legal services for review under this section. In addition, performance under the contract prior to the expiration of 30 calendar days following the date on which it is filed for review under this section is a material charter violation.
 - (2) Following the expiration of 30 calendar days after it is filed with the TEA division responsible for legal services for review under this section, if the commissioner takes no action within 30 days, then the parties may begin performance under the contract.
 - (3) The absence of action by the commissioner does not constitute a finding of compliance under this section, nor waive or in any other manner prevent the commissioner from acting at a later time under this section.
- (d) Implementation schedule and transition.
- (1) Notwithstanding this section:
 - (A) a copy of a contract for management services in effect during school year 2001-2002 shall be filed with the TEA division responsible for legal services on or before the expiration of 30 calendar days following the effective date of this section; and
 - (B) if a contract for management services is timely filed with the TEA division responsible for legal services for review under subparagraph (A) of this paragraph, then the parties may continue or immediately begin performance under the contract unless or until the commissioner takes action.

- (2) Notwithstanding this section, if an affected contract for management services was executed prior to September 1, 2001, then the management contract may continue in effect past September 1, 2001, if each of the following conditions is met:
 - (A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds; and
 - (B) the terms of the management contract have not been renewed, modified, or otherwise altered since September 1, 2001.

Source: The provisions of this §100.1155 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective June 22, 2009, 34 TexReg 1155; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1157. Loan from Management Company Prohibited.

- (a) Loan prohibited. Neither a charter holder or a charter school may accept any loan or credit from, or incur any debt to, a management company that has a contract to provide management services to:
 - (1) that charter school; or
 - (2) another charter school that operates under a charter granted to the charter holder.
- (b) Management contract prohibited. A charter holder or charter school that accepts a loan or credit from, or incurs a debt to, a management company, may not enter into a contract with that management company to provide management services to the school.
- (c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State Funds), all loans or credit received or indebtedness incurred by the charter holder or the charter school to any person or entity providing management services to the charter school or another charter school that operates under a charter granted to the charter holder.
- (d) Agency review. Compliance with this section shall be reviewed in conjunction with the review required by §100.1155(c) of this title (relating to Procedures for Prohibiting a Management Contract).
- (e) Implementation schedule and transition. Notwithstanding this subsection, if the affected management contract was executed prior to September 1, 2001, and the affected promissory note or other debt instrument was also executed prior to September 1, 2001, then:
 - (1) both the management contract and the indebtedness may continue in effect past September 1, 2001, if each of the following conditions is met:
 - (A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds;
 - (B) no state funds are used to pay any amounts due the management company under the promissory note or other debt instrument, and all such amounts are paid from a clearly identified source of non-state funds; and
 - (C) the terms of the management contract and the promissory note or other debt instrument have not been renewed, modified, or otherwise altered since September 1, 2001; or
 - (2) the indebtedness may be refinanced after September 1, 2001, and the management contract may be renegotiated after September 1, 2001, if each of the following conditions is met:
 - (A) on or before September 1, 2002, the charter holder and the management company shall file with the TEA division responsible for legal services the following:
 - (i) a copy of each and every contract, promissory note, debt instrument, agreement or document executed, or in effect, at any time on or after September 1, 2001, between or among: the charter holder or any of its charter schools or management companies; the management company or any of its subsidiaries,

- parents, affiliates, or related companies; and the lender or any of its subsidiaries, parents, affiliates, or related companies; and
- (ii) additional documents as requested by the TEA division responsible for legal services during its review under this subsection;
- (B) the documents filed under subparagraph (A) of this paragraph shall establish that, upon approval by the TEA division responsible for legal services, the management company will not be the lender of any funds, but will merely act as the guarantor or co-signer on loans totaling an amount equal to or less than the indebtedness owed by the charter holder to the management company prior to September 1, 2001;
- (C) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to prevent, deter, or discourage the charter holder from taking any action respecting the management company under its contract for management services;
- (D) the documents filed under subparagraph (A) of this paragraph shall establish that the term of the contract for management services between the management company and the charter holder may not extend beyond the term of the current contract for charter between the charter holder and the State Board of Education, and that the contract for management services is renewable beyond the current term of the open-enrollment charter only through negotiation and execution of a new contract for management services;
- (E) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to coerce, influence, or encourage the charter holder to negotiate or execute another contract for management services under subparagraph (D) of this paragraph; and
- (F) the TEA division responsible for legal services finds, in writing, that the documents filed under subparagraph (A) of this paragraph meet the criteria specified in paragraph (2) of this subsection, and finds that any compliance problems concerning the governance and the financial or other management of the charter holder do not prevent the approval of the arrangements reflected in the documents.

Source: The provisions of this §100.1157 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1159. Public Records Maintained by Management Company; Contract Provision.

- (a) Maintenance of records. A management company that provides, or did provide, any management services to a charter holder or charter school shall maintain, as required by §100.1203 of this title (relating to Records Management), all records related to its management services separately from any other records of the management company.
- (b) Contract provision. Any contract, including a contract renewal, between a charter holder or charter school and a management company for management services to the charter school must contain a contract provision expressly requiring the management company to comply with subsection (a) of this section.

Source: The provisions of this §100.1159 adopted to be effective April 18, 2002, 27 TexReg 3140.

Division 6. Charter School Operations

Statutory Authority: The provisions of this Division 6 issued under the Texas Education Code, §§12.101, 12.1011, 12.102, 12.103, 12.104, 12.1052, 12.1053, 12.106, 12.112, 12.115, 12.117, 12.1171, 12.120, 12.128, 12.129, 39.082, 39.085, and Local Government Code, §171.004, unless otherwise noted.

§100.1201. Voluntary Participation in State Programs.

A charter school may voluntarily participate in any of the following state programs available to school districts, if the commissioner of education approves an amendment to the open-enrollment charter describing the manner in which the charter school will comply with each term of the program:

- (1) a program under Local Government Code, Chapter 271, Subchapter D, requiring the State Purchasing and General Services Commission to perform purchasing services for school districts;
- (2) a program under Local Government Code, Chapter 271, Subchapter F, permitting a school district to participate in a cooperative purchasing program with a school district, local government, or local cooperative organization;
- (3) to the extent permitted by federal law, a program under Local Government Code, Chapter 271, Subchapter G, permitting a school district to purchase goods or services available under federal supply schedules of the United States General Services Administration;
- (4) a program under Local Government Code, Chapter 271, Subchapter E, permitting a school district to enter into an intercept agreement with the Texas Bond Review Board and the Comptroller of Public Accounts to increase its credit rating; and
- (5) a program under Texas Education Code (TEC), §29.1531, permitting a school district to offer on a tuition basis, or use school district funds to provide, an additional half-day of prekindergarten classes to children eligible for classes under TEC, §29.153, or half-day and full-day prekindergarten classes to children not eligible for classes under TEC, §29.153.

Source: The provisions of this §100.1201 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 12, 2012, 37 TexReg 7097.

§100.1203. Records Management.

- (a) Retention of government records. With respect to its operation of a charter school, a charter holder is considered to be a local government for purposes of Title 6, Subtitle C, Local Government Code, and Government Code, Chapter 441, Subchapter J.
 - (1) Government records. Records of a charter school and records of a charter holder that relate to a charter school are government records for all purposes under state law.
 - (2) Retention and destruction of records. Any requirement in Title 6, Subtitle C, Local Government Code, or Government Code, Chapter 441, Subchapter J, that applies to a school district, the board of trustees of a school district, or an officer or employee of a school district applies to a charter school, the governing body of its charter holder, the governing body of the charter school, and each officer and employee of the charter school.
 - (3) Maintained within this state. Records of a charter school shall be maintained physically within the State of Texas at all times, except that records stored electronically in accordance with the requirements of Local Government Code, Chapter 205, may be maintained outside the State of Texas if such records remain accessible from within the State of Texas during normal business hours. For purposes of this paragraph, the records of a charter school shall mean the records indicated by the Financial Accountability System Resource Guide, adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide), or its successor, or by the laws and rules summarized therein. The records of a management company related to the charter school may be audited under §100.1051(b) of this title (relating to Audit by Commissioner; Records in the Possession of a Management Company), but are not subject to this paragraph.

- (4) Records of former charter holder. Notwithstanding paragraph 2 of this subsection, and notwithstanding Local Government Code, §201.007, the records of a charter holder that ceases to operate a charter school shall be transferred in the manner prescribed by the commissioner of education under subsection (b) of this section.
- (b) Transfer of former charter holder records. The records of a charter holder that ceases to operate a charter school shall be transferred as directed by the commissioner to a custodian or custodians designated by the commissioner. The commissioner may designate any appropriate entity to serve as custodian, including the Texas Education Agency, a regional education service center, or a school district. In designating a custodian, the commissioner shall ensure that the transferred records, including student and personnel records, are transferred to a custodian capable of maintaining the records; making the records readily accessible to students, parents, former school employees, and other persons entitled to access; and complying with applicable state or federal law restricting access to the records.
- (c) Enforcement. If a charter holder, a charter school, or an officer or employee of a charter school refuses to transfer school records as directed by the commissioner under subsection (b) of this section, the commissioner may ask the Attorney General to petition a court for recovery of the records. If the court grants the petition, the court shall award attorney's fees and court costs to the state.

Source: The provisions of this §100.1203 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1205. Procurement of Professional Services.

- (a) Applicability of section. This section applies to a charter holder unless alternative procedures for selecting a provider of professional services or a group or association of providers, or awarding a contract for professional services, have been approved by the commissioner of education under §100.1006 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner to adopt the approved procedures.
- (b) Selecting professional services. A charter holder shall select a provider of professional services or a group or association of providers, and award a contract for professional services, in accordance with Government Code, Chapter 2254, Subchapter A. A requirement in that subchapter that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.
- (c) Definition. For purposes of this section, professional services are services:
 - (1) within the scope of the practice, as defined by state law, of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or
 - (2) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.
- (d) Implementation schedule and transition. Government Code, Chapter 2254, Subchapter A, does not apply to a contract executed prior to September 1, 2001.

Source: The provisions of this §100.1205 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1207. Student Admission.

- (a) Application deadline. For admission to a charter school, a charter holder shall:
 - (1) require the applicant to complete and submit an application not later than a reasonable deadline the charter holder establishes; and
 - (2) on receipt of more acceptable applications for admission under this section than available positions in the school:

- (A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or
 - (B) subject to subsection (c) of this section, fill the available positions in the order in which all timely applications were received.
- (b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (a) of this section to the extent this is consistent with the definition of a "public charter school" under the No Child Left Behind Act of 2001, P.L. 107-110, §5210 (NCLB), as interpreted by the United States Department of Education (USDE).
- (c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(2)(B) of this section only if it published a notice of the opportunity to apply for admission to the charter school. A notice published under this subsection must:
 - (1) state the application deadline; and
 - (2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline. For purposes of this chapter, a newspaper of general circulation is defined as one that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.
- (d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:
 - (1) prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law; and
 - (2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy.
- (e) Student admission and enrollment at charter schools specializing in performing arts. In accordance with the TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.
 - (1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:
 - (A) a core academic curriculum that is integrated with performing arts instruction;
 - (B) a wider array of performing arts courses than are typically offered at public schools;
 - (C) frequent opportunities for students to demonstrate their artistic talents;
 - (D) cooperative programs with other organizations or individuals in the performing arts community; or
 - (E) other innovative methods for offering performing arts learning opportunities.
 - (2) To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts may adopt an admission policy that requires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

- (3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.
- (4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.
- (f) Maximum enrollment. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. A charter school may establish a primary and secondary boundary. Students who reside outside the primary geographic boundary stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants that reside within the primary boundary and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides for a secondary boundary, the charter holder may admit students who reside within the secondary boundary to the charter school in accordance with the terms of the open-enrollment charter.

Source: The provisions of this §100.1207 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective November 9, 2006, 31 TexReg 9031; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1209. Municipal Ordinances.

- (a) Municipal ordinances apply. A charter holder is subject to federal and state laws and rules governing public schools and to zoning and all other municipal ordinances governing public schools.
- (b) When zoning ordinances do not apply. Notwithstanding subsection (a) of this section, a charter school site located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

Source: The provisions of this §100.1209 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1211. Students.

- (a) Student performance. Notwithstanding any provision in an open-enrollment charter, acceptable student performance under Texas Education Code, §12.111(a)(3), shall at a minimum require overall student performance meeting the standards for an "academically acceptable" rating as defined by §100.1001(26) of this title (relating to Definitions).
- (b) Reporting child abuse or neglect. A charter holder shall adopt and disseminate to all charter school staff and volunteers a policy governing child abuse reports required by Texas Family Code, Chapter 261. The policy shall require that employees, volunteers, or agents of the charter holder and the charter school report child abuse or neglect directly to an appropriate entity listed in Texas Family Code, Chapter 261.
- (c) Admission and enrollment. A charter holder for an open-enrollment charter school shall have an admission and enrollment policy as outlined in §100.1207 of this title (relating to Student Admission), including prohibiting discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law.
- (d) Notice of expulsion or withdrawal. A charter school shall notify the school district in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.
- (e) Data reporting. A charter holder and its charter school shall report timely and accurate information required by the commissioner of education to the Texas Education Agency (TEA), except as expressly waived by the commissioner.
- (f) Student records. Student records shall be secure and maintained physically within the state of Texas at all times. Charter school personnel shall respond to requests for records in a timely and appropriate manner.

Charter schools shall participate in the Texas Records Exchange (TREx) system and shall follow TREx data standards.

- (g) Scholastic year. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates. The charter school shall submit a copy of the charter school's campus calendars to the TEA division responsible for charter school administration prior to the first day of August of each year.

Statutory Authority: The provisions of this §100.1211 issued under the Texas Education Code, §§12.103, 12.104, 12.111, 12.129, 12.1059, 22.083, 22.0832, and 22.0833.

Source: The provisions of this §100.1211 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective September 18, 2014, 39 TexReg 7295; amended to be effective August 28, 2019, 44 TexReg 4478.

§100.1212. Personnel.

- (a) Minimum qualifications. Except as provided by subsection (b) of this section, all persons employed as a principal or teacher by an open-enrollment charter school must hold a baccalaureate degree.
- (b) Exception. In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree if the person has:
- (1) demonstrated subject matter expertise related to the subject taught, such as professional work experience; formal training and education; holding a relevant active professional industry license, certification, or registration; or any combination of work experience, training and education, and industry license, certification, or registration; and
 - (2) received at least 20 hours of classroom management training, as determined by the governing body of the open-enrollment charter school. Documentation of the training is to be maintained locally and provided to the Texas Education Agency within 10 business days upon request.
- (c) Certification. Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required by state and/or federal law.
- (d) Paraprofessionals. All persons employed as paraprofessionals must be certified as required to meet state and/or federal law.
- (e) Criminal history. A charter school shall obtain from the Department of Public Safety (DPS), prior to the hiring of personnel and at least every third year thereafter, all criminal history record information maintained by the DPS that the charter school is authorized to obtain.

Statutory Authority: The provisions of this §100.1212 issued under the Texas Education Code, §§12.103, 12.104, 12.111, 12.129, 12.1059, 22.083, 22.0832, and 22.0833.

Source: The provisions of this §100.1212 adopted to be effective August 26, 2019, 44 TexReg 4478.

§100.1213. Failure to Operate.

- (a) Continuous operation. Except as provided in this section, a charter holder shall operate the program as described in the open-enrollment charter for the full school term described in the open-enrollment charter during each year that the open-enrollment charter is in effect.
- (b) Dormant open-enrollment charter. A charter holder may not delay opening or suspend operation for longer than 21 days without an amendment to its open-enrollment charter, approved by the commissioner of education, stating that the charter school is dormant and setting forth the date on which operations shall resume and any applicable conditions for resuming operation that may be imposed by the commissioner.
- (c) Written notice. A charter holder may not suspend operation of the charter school, or any campus or site of the charter school, for a period of more than three days without mailing written notice to the parent or guardian of each student and filing such notice with the Texas Education Agency (TEA) division responsible for charter schools at least 14 days in advance of the suspension, except that in an emergency

the charter holder shall notify the TEA division responsible for charter schools by telephone or other means within 24 hours of suspending operations.

- (d) Abandonment. Delay of opening or suspension of operations in violation of this section constitutes abandonment of the open-enrollment charter and constitutes a material violation of the charter contract.

Source: The provisions of this §100.1213 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1215. Instructional Facilities.

- (a) Right to occupy facilities. A charter holder shall have and maintain throughout the term of the open-enrollment charter legally enforceable lease agreements, titles, or other legal instruments conferring on it the right to occupy and use one or more facilities suitable for use as the classrooms and other instructional facilities described in the open-enrollment charter.
- (1) The enforceable legal instruments must confer on the charter holder the right to occupy and use suitable instructional facilities for the entire school year adopted by the charter school.
 - (2) During any period of dormancy, an amendment granting the period of dormancy may waive this requirement.
- (b) Occupancy certificate. A charter holder shall comply with all state and local laws and ordinances applicable to the occupation and use of the facilities it occupies, including any special standards applicable to the instruction of public school students in the facilities.
- (1) A charter school shall not change the site of its instructional facilities or administrative offices from those listed in the open-enrollment charter without prior approval of the commissioner of education through an amendment to the open-enrollment charter.
 - (2) When approved for a new site under paragraph (1) of this subsection, the charter holder shall, prior to commencing any operations at that site, file with the Texas Education Agency division responsible for charter schools a certificate of occupancy or equivalent certificate appropriate for the proposed use of the facility at the new site.
- (c) Compliance. Failure to comply with this section will adversely affect funding and may constitute a material violation of the charter contract.

Source: The provisions of this §100.1215 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 18, 2014, 39 TexReg 7295.

§100.1217. Eligible Entity; Change in Status or Revocation.

- (a) A charter holder shall take and refrain from all acts necessary to maintain its status as an "eligible entity" within the meaning of Texas Education Code, §12.101(a), and shall notify the commissioner of education immediately in writing of any change in such status.
- (b) If a charter holder's exemption from taxation under 26 United States Code, §501(c)(3), is ever revoked by action of the Internal Revenue Service, for any reason, the charter shall be null and void and shall return to the commissioner without any further action on the part of the commissioner.
- (c) Failure to act in accordance with subsections (a) and (b) of this section shall not only affect eligibility for state funding as outlined in §100.1041(d)(1) of this title (relating to State Funding), it will also constitute a material violation of the charter contract.

Source: The provisions of this §100.1217 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective September 12, 2012, 37 TexReg 7097; amended to be effective September 18, 2014, 39 TexReg 7295.