

The Texas Education Agency (TEA) adopts amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The amendments are adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8099) and will not be republished. The adopted amendments would remove language regarding the finality of decisions under §97.1075 and §97.1079 as a result of two court cases invalidating the provisions.

REASONED JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under Texas Education Code (TEC), §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring. Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2). Each rule includes a provision regarding the finality of the commissioner of education's decisions under the rule and the inability of districts to appeal those decisions. Due to recent court cases invalidating the provisions, the adopted amendments remove §97.1075(k) and §97.1079(f).

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began December 29, 2023, and ended February 5, 2024. No public comments were received.

STATUTORY AUTHORITY. The amendments are adopted under Texas Education Code (TEC), §11.174, which requires the commissioner to adopt rules to administer the provisions for contracts regarding district campus operations; and TEC, §48.252, which requires the commissioner to adopt rules to administer the provisions for entitlements for district charter partnerships.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §11.174 and §48.252.

<rule>

**§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.**

- (a) Applicability. This section applies only to an independent school district that intends to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174 and §48.252.
- (b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.
  - (1) Operating partner--Either a state-authorized open-enrollment charter school or an eligible entity as defined by TEC, §12.101(a).
  - (2) Open-enrollment charter holder--This term has the meaning assigned in TEC, §12.1012(1).
  - (3) Governing body of a charter holder--This term has the meaning assigned in TEC, §12.1012(2).
  - (4) Governing body of a charter school--This term has the meaning assigned in TEC, §12.1012(3).
  - (5) Contract to partner to operate a campus--This term means the partner must operate the campus in accordance with subsection (c) of this section under a performance contract as outlined in subsection (d) of this section.
  - (6) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
- (c) Conferred authority. In order to qualify as operating a district campus under TEC, §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner.
  - (1) Staffing authorities.
    - (A) The operating partner must have authority to employ and manage the campus chief operating officer, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.
    - (B) The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ and/or manage all of the operating partner's own administrators, educators, contractors, or

other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

- (C) The operating partner must have sole authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus.
  - (D) The operating partner must have initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the campus. If the operating partner rescinds the assignment of any district employee or district contractor, the district must grant the request within 20 working days.
  - (E) The operating partner must directly manage the campus principal or chief operating officer, including having the sole responsibility for evaluating the performance of the campus principal or chief operating officer.
- (2) Other authorities. The operating partner must have:
- (A) initial, final, and sole authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus;
  - (B) initial, final, and sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students, and other statutorily defined populations;
  - (C) initial, final, and sole authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;
  - (D) initial, final, and sole authority to select and determine the use of any and all assessments to be used on the campus that are not required by the state of Texas;
  - (E) initial, final, and sole authority to determine how the entire campus budget, including any and all federal and state grant funds due the campus, is allocated. The governing body of the operating partner shall approve the campus budget in a meeting held under the Texas Open Meetings Act, Texas Government Code, Chapter 551. Notwithstanding such budget authority, the operating partner's expenditures must comply with applicable restrictions on the use of state and federal funds; and
  - (F) initial, final, and sole authority to implement and adjust the campus budget.
- (d) Performance contract. To contract to partner to operate under TEC, §11.174, the independent school district's board of trustees must grant the operating partner a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, §12.0531. This performance contract must include, at a minimum, the following provisions:
- (1) a clear and unambiguous description of enhanced authorities as outlined in subsection (c) of this section;
  - (2) academic performance expectations and goals, which shall include, but are not limited to:
    - (A) for campuses that are paired for accountability purposes, specific annual targets for improved student academic performance;
    - (B) for campuses issued an accountability rating under TEC, §39.054, a specific annual target for the overall campus academic rating; and
    - (C) specific consequences in the event that the operating party does not meet the academic performance expectations and goals described in the performance contract;

- (3) annual financial performance expectations and goals, which shall include, but are not limited to:
  - (A) the completion of an annual independent financial report, including an audit, of the operating partner organization, limited to matters directly related to the management or operation of the campus or campuses;
  - (B) receipt of an unqualified audit opinion, in connection with the annual financial report required in subparagraph (A) of this paragraph; and
  - (C) specific consequences in the event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract;
- (4) a description of the campus enrollment and expulsion policies that must comply with TEC, §11.174(i);
- (5) a contract term of up to 10 years as required by TEC, §12.0531, with a provision(s) specifying:
  - (A) a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and
  - (B) a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract;
- (6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;
- (7) a section that describes the funding structure of the partnership. This section must specify:
  - (A) a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year;
  - (B) the total budget for the first year of operation; and
  - (C) the authority of the partner over the entire campus budget, which includes all federal, state, and local funds due the campus as described in subparagraph (A) of this paragraph;
- (8) service-level agreements that list the resources and services the operating partner intends to purchase from the district and the specific costs of such services by pupil, square foot, campus, or the percentage of the total district budget for the specific resource or service. The resources and services may include:
  - (A) facility use and related matters;
  - (B) transportation;
  - (C) specific education program services, such as providing special education services; and
  - (D) access to other resources and services as agreed between the parties;
- (9) a section that describes the educational plan or academic model that the operating partner will implement on the campus or campuses;
- (10) an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by TEC, §11.174(c), unless the district is partnering with an entity described in TEC, §11.174(a)(2); and
- (11) a description of the specific and material consequence(s) in the instance that either the district or the operating partner breaches the contract.

- (e) Capacity to operate. In order to qualify as an eligible partnership under TEC, §11.174, the district must demonstrate that the operating partner has the necessary capacity to successfully manage campuses.
- (f) Contract notification to the TEA. In order to qualify as an eligible partnership under TEC, §11.174, notification of contracts related to TEC, §11.174(a)(1), must meet the deadlines published by the TEA staff.
- (g) Contract amendments. Eligible partnerships under TEC, §11.174, must notify the TEA of amendments to performance contracts related to TEC, §11.174(a)(1) and (2), within 30 calendar days of the amendment of the contract.
- (h) Performance ratings. The commissioner of education shall continue to evaluate and assign overall and domain performance ratings under TEC, §39.054, to the campus.
- (i) Monitoring. In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership.
- (j) Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §48.252, the district must continuously meet the requirements in subsections (c)-(i) of this section.

**§97.1079. Determination Processes and Criteria for Eligible Entity Approval under Texas Education Code, §11.174.**

- (a) Applicability. This section applies only to independent school districts that intend to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174(a)(2).
- (b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.
  - (1) Eligible entity--This term has the meaning assigned in TEC, §12.101(a).
  - (2) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
  - (3) Applicant--This term refers to an independent school district seeking approval to receive benefits for an eligible entity to contract to partner to operate a campus.
  - (4) Proposed operating partner--This term refers to the eligible entity seeking approval in coordination with an independent school district to contract to partner to operate a campus.
- (c) Institutions of higher education. This subsection applies to entities meeting the definition of an institution of higher education as described in TEC, §61.003.
  - (1) For applicants seeking eligibility approval of an institution of higher education, which has been granted a charter in accordance with TEC, Chapter 12, Subchapter E, as the proposed operating partner, the commissioner of education will treat the institution of higher education as an open-enrollment charter school under TEC, §11.174(a)(1).
  - (2) The commissioner may approve an eligibility approval request under this section if the commissioner determines that the approval of the eligibility approval request will improve student outcomes at the campus.
- (d) Private or independent institutions of higher education that are not described in subsection (c) of this section, non-profits, and governmental entities. This subsection applies to entities meeting the definitions described in TEC, §12.101(a)(2), (3), and (4).
- (e) Application requirements.
  - (1) Prior to each eligibility approval cycle, the commissioner shall approve an application package for submission by applicants seeking eligibility approval as specified in TEC, §11.174. The application package may contain, but is not limited to, any of the following:
    - (A) an application form;
    - (B) the timeline for submission of completed forms;

- (C) requirements, including mandatory training sessions for districts and proposed operating partners, that must be met in order for applications to be approved;
  - (D) scoring criteria and procedures for use by the review panel selected under paragraph (6) of this subsection; and
  - (E) eligibility approval criteria, including the minimum score necessary for approval.
- (2) The Texas Education Agency (TEA) shall review application packages submitted under this section. If the TEA determines that an application package is not complete and/or the applicant does not meet the eligibility criteria in TEC, §11.174, the TEA shall notify the applicant and allow ten business days for the applicant to submit any missing or explanatory documents.
- (A) If, after giving the applicant the opportunity to provide supplementary documents, the TEA determines that the eligibility approval request remains incomplete and/or the eligibility requirements of TEC, §11.174, have not been met, the eligibility approval request will be denied.
  - (B) If the documents are not timely submitted, the TEA shall remove the eligibility approval request without further processing. The TEA shall establish procedures and schedules for returning eligibility approval requests without further processing.
  - (C) 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.
  - (D) A decision made by the TEA to deny, remove, or return an eligibility approval request is a final administrative decision of the TEA and may not be appealed under TEC, §7.057.
- (3) Upon written notice to the TEA, an applicant may withdraw an application package.
- (4) All parts of the district's application package are releasable to the public under the Texas Public Information Act, Texas Government Code, Chapter 552, and will be posted to the TEA website. Therefore, the following must be excluded or redacted from an application package submission:
- (A) personal email addresses;
  - (B) proprietary material;
  - (C) copyrighted material;
  - (D) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the partnership 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
  - (E) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.
- (5) TEA will remove from review any application packages that:
- (A) include plagiarism;
  - (B) are from districts that did not submit a letter of intent by the TEA published deadline;
  - (C) are from districts that did not participate in TEA required trainings;
  - (D) are from districts whose proposed operating partners did not attend TEA required trainings;
  - (E) are not submitted by the TEA published deadline;
  - (F) include an operating partner that does not have the following:

- (i) a governing board with a minimum of three members. All partner governing board members must meet the requirements outlined in subsection (e)(9)(C)(vi) of this section; and
  - (ii) at least one full-time equivalent dedicated to the management of the campus or campuses. The full-time equivalent may be employed by the district only if they are under contractual obligation with the operating partner board and the district can demonstrate that they are solely dedicated to planning the launch of the campus at the time of application for benefits; or
- (G) include performance contracts that are contingent on approval of benefits under TEC, §11.174(a)(2), or a performance rating assigned to the campus based on performance that occurred prior to the operation of the campus by the operating partner.
- (6) Applicants with complete application packages satisfying the requirements in paragraph (5) of this subsection will be reviewed by a review panel selected by the commissioner. The panel may include TEA staff or external stakeholders. The panel shall review application packages in accordance with the procedures and criteria established in the application package and guidance form. Review panel members shall not discuss eligibility approval requests with anyone except 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 an application package review. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an applicant, including any current or prospective employee, agent, officer, or director of the eligible entity, an affiliated entity, or other party with an interest in the approval of the application package.
- (7) TEA staff may interview applicants, may specify individuals from the district and proposed operating partner required to attend the interview, and may require the submission of additional information and documentation prior to an interview.
- (8) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.
- (9) The commissioner will consider criteria that include the following when determining whether to approve an applicant.
  - (A) The criteria described in this subparagraph apply to all campuses. Each applicant must submit financial information that demonstrates that the proposed operating partner:
    - (i) is provided with a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year;
    - (ii) has provided the total budget for the first year of operation of the campus to the district; and
    - (iii) has authority over the entire campus budget, which includes all of the federal, state, and local funds due the campus as described in clause (i) of this subparagraph.
  - (B) The criteria described in this subparagraph apply to application packages relating to partnerships between a district and an organization authorized under TEC, Chapter 12, Subchapters D and E.
    - (i) Each applicant must demonstrate evidence of the district's adoption and implementation of the TEA model authorizing policy or a similar policy approved by TEA.
      - (I) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model policy must have the local authorizing policy approved prior to the application review.

- (II) TEA will release the authorizing policy approval timeline and process annually.
  - (III) TEA approval of local authorizing policies expires if the district changes the authorizing policy or if related sections of the Texas Administrative Code (TAC) or TEC change.
- (ii) Each applicant must submit a performance contract that demonstrates that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174).
- (C) The criteria described in this subparagraph apply to application packages relating to partnerships between a district and any other type of partner except for operating partners described in subparagraph (B) of this paragraph. Each applicant must demonstrate:
- (i) evidence of district capacity to authorize and oversee district charter campuses authorized under TEC, Chapter 12, Subchapter C, which must include:
    - (I) at least one district employee, employed prior to the district evaluation of the partnership, and fully dedicated to overseeing the authorizing and ongoing monitoring of in-district charter schools; and
    - (II) for benefits that begin in the 2021-2022 school year, evidence that the district employee has completed a TEA training program on authorizing and partnerships no later than one year from the date of benefits approval;
  - (ii) evidence of the district's adoption and implementation of a high-quality district charter authorizing process as required by TEC, §12.058, which must include the following:
    - (I) the district's adoption and implementation of the TEA model authorizing policy or a similar policy approved by TEA prior to or as part of the application review. The following provisions apply.
      - (-a-) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model policy must have the local authorizing policy approved prior to the application review.
      - (-b-) TEA will release the authorizing policy approval timeline and process annually.
      - (-c-) TEA approval of local authorizing policies expires if the district changes the authorizing policy or if related sections of the TAC or TEC change;
    - (II) evidence of the district's adoption and implementation of the TEA model campus charter application or similar application and scoring rubric or a similar application and scoring rubric approved by TEA. The following provisions apply.
      - (-a-) For application packages submitted for benefits that begin in the 2021-2022 school year, districts not using the TEA model campus application and scoring rubric must have the local campus application approved prior to the application review.
      - (-b-) TEA will release the local campus application and scoring rubric approval timeline and process annually.

- (-c-) TEA approval of a local campus application and scoring rubric expires if the district changes the authorizing policy or if related sections of the TAC or TEC change; and
- (III) evidence that, at a minimum, the district:
  - (-a-) required the proposed operating partner to complete the application without assistance from the district or a district assigned vendor;
  - (-b-) employed a review panel to read the application from the operating partner and that the review panel identified strengths and weaknesses of the application;
  - (-c-) reviewed any operating and academic performance history of the proposed operator; and
  - (-d-) conducted a capacity interview with the board and proposed staff of the partner organization;
- (iii) evidence of the capacity of the operating partner to manage the campus or campuses, including evidence that:
  - (I) the board of the operating partner includes at least three people and that their membership on the board pre-dates the submission of their application to the district;
  - (II) the operating partner has staff that will be fully dedicated to the management of the campus or campuses and that the level of staffing is reasonable given the number of campuses to be managed;
  - (III) the staff of the operating partner dedicated to the management of the campus or campuses has experience managing schools or academic programs;
  - (IV) the operating partner is provided with a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year; and
  - (V) the governing board of the operating partner will participate in board governance training provided by TEA or a vendor recommended by TEA within one year of approval of benefits;
- (iv) evidence of a clear and coherent academic model or program to be implemented by the partner organization, including evidence that:
  - (I) the partner can clearly describe a consistent school vision for the campus or all campuses, including its culture, curriculum, assessment program, instructional strategies, talent recruitment and management strategies, and professional development activities or programs;
  - (II) the partner can clearly provide evidence that the aforementioned strategies and programs can be effective with the student population served in the campus or campuses; and
  - (III) the partner can clearly describe the management routines and practices to be implemented by the operating partner in managing the staff and academic programs as the campus or campuses;
- (v) evidence that the applicant and proposed operating partner meet the requirements to contract to partner to operate, as outlined in §97.1075 of this title;

- (vi) an assurance that the governing body of the operating partner shall remain independent of the independent school district. This may include the following:
    - (I) an assurance that the governing body of the operating partner is not and shall not be comprised of any members of the independent school district's board of trustees, the superintendent, or staff responsible for granting the contract to partner to operate or overseeing the performance contract;
    - (II) an assurance that the majority of the governing body of the operating partner is not and shall not be comprised of district staff;
    - (III) an assurance that no member of the governing body of the operating partner will be related within the first degree of affinity or consanguinity with any members of the independent school district's board of trustees, the superintendent, or staff responsible for granting the charter or contract to partner to operate or overseeing the performance contract;
    - (IV) an assurance that all members of the governing body of the operating partner have passed and will continually pass the district's conflict of interest checks;
    - (V) an assurance that the district has not appointed a majority of the members of the governing board of the operating partner; and
  - (vii) an assurance that the school district will provide a list of the board members of the governing body and a description of their respective backgrounds upon approval and annually thereafter.
- (D) The criteria described in this subparagraph apply to a campus whose last preliminary or final overall performance rating was unacceptable. In addition to the criteria described in subparagraphs (A)-(C) of this paragraph, as applicable, each applicant must demonstrate evidence that the operating partner has the capacity necessary to successfully turn around campuses.
- (i) For partnership benefits applied to district charter campuses authorized under TEC, Chapter 12, Subchapter C, that are approved for the 2020-2021 or 2021-2022 school year, evidence must be provided that the operating partner has staff in leadership positions with at least three years of experience managing campuses to academic success.
  - (ii) For partnership benefits applied to all campuses approved for the 2022-2023 school year and thereafter, evidence must be provided that the operating partner:
    - (I) has been in existence for at least three years prior to undertaking the management of the district campus;
    - (II) has managed multiple campuses for multiple years; and
    - (III) has a track record of managing campuses to academic success or has significantly improved the academic performance of campuses.
- (E) In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by TEA staff to monitor the ongoing eligibility of the partnership.
- (F) To receive benefits under TEC, §11.174(f) and (g) and §48.252, the district must continuously meet the requirements in this subsection.
- (G) Notwithstanding this subsection, the commissioner will treat a campus granted a charter under TEC, Chapter 12, Subchapter C, as an open-enrollment charter school under TEC,

§11.174(a)(1), if the Subchapter C charter was granted by a high-quality district authorizer. A high-quality district authorizer is a district that has successfully completed a state-approved professional development program in high-quality authorizing and has operated at least four Subchapter C campuses that are eligible for benefits under TEC, §11.174, in the prior year with at least 75% of those campuses performing at or above an agency-identified threshold for each campus's School Progress Domain.