

# Chapter 18

## Interventions and Sanctions

### Accreditation Status Assignment

Texas Education Code (TEC) §39.051, Accreditation Status, and §39.052, Determination of Accreditation Status or Performance Rating, require the agency each year to determine the accreditation status of each school district and assign the district a status of accredited, accredited-warned, or accredited-probation or revoke the accreditation of the district and order closure of the district. In determining a district's accreditation status, the commissioner is required to evaluate and consider the student achievement and financial accountability performance of the district and may consider and evaluate certain other factors, such as the district's compliance with statutory and rule requirements related to data reporting, high school graduation, and other items and the effectiveness of the district's career and technical education program and programs for special populations. TEC §39.057, Special Accreditation Investigations, defines reasons for which the commissioner may conduct a special accreditation investigation, the results of which may result in accreditation interventions and sanctions, the lowering of a district's accreditation status or a district's or campus's accountability rating, or both.

### *Historical Background*

During the 79th Texas Legislature, Third Called Session, 2006, House Bill (HB) 1 was passed, which amended the Texas Education Code (TEC), Chapter 39, Public School System Accountability. The HB 1 changes addressed the accreditation of school districts; sanctions and interventions for school districts, charter schools, and campuses; and the review by the State Office of Administrative Hearings of certain sanctions. As a result, the Texas Education Agency adopted rules to implement these changes. Specifically, 19 Texas Administrative Code (TAC) Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, was amended, and 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, and 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, were adopted to establish new and revised rules in compliance with HB 1 and to clarify and codify TEA practice, as well as the commissioner of education's intent, regarding accreditation issues. This rule adoption was effective on January 6, 2008.

The new 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, defined the accreditation statuses of Accredited, Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked and stated how accreditation statuses would be determined and assigned to school districts. The adoption also established accreditation standards and sanctions, including definitions, purpose, and oversight appointments. As a result, and under the authority of TEC §39.071 and the newly adopted 19 TAC §97.1055, the TEA assigned accreditation statuses to school districts under the new authority for the 2007–2008 year, and accreditation status results were posted publicly to the TEA website on the *Accreditation Status* home page at <http://www.tea.state.tx.us/accredstatus/>. For 2007–2008, charter schools were not assigned accreditation

statuses under TEC, Chapter 39 because they were not included in the Financial Integrity Rating System of Texas (FIRST or School FIRST) financial accountability rating system. In November 2008, the commissioner adopted amendments to 19 TAC Chapter 97, Planning and Accountability, to include charter schools in the accreditation process and to assign charters financial performance findings in lieu of a financial accountability rating.

In 2008–2009, TEA again assigned accreditation statuses to districts, and open-enrollment charter schools were assigned accreditation statuses for the first time. In 2009–2010, accreditation statuses were assigned to both traditional districts and charter schools.

Districts that are assigned a status of Accredited are not required to take any specific action as a result of the designation. However, districts that are assigned a status of Accredited-Warned or Accredited-Probation must take specific actions to notify the parents of students enrolled in the district and property owners in the district. The requirements for public notification are specified in 19 TAC §97.1055(f), and a template that reflects the TEA-required format and language for the public notice is posted to the TEA website at <http://www.tea.state.tx.us/accredstatus/>. Districts with an accreditation status below Accredited may be subject to additional accreditation sanctions as referenced in 19 TAC Chapter 97, Planning and Accountability, Subchapter EE.

The 2009–2010 year was the first year that the statute and adopted rules resulted in the revocation of a district's accreditation status. At the current time, the accreditation of one traditional district has been revoked and the district annexed to a neighboring district, and the final accreditation revocation determination for one open-enrollment charter school has been abated pending adverse action to revoke the charter under TEC, Chapter 12.

### ***Impact of House Bill 3 on Accreditation Status Assignment***

HB 3 renumbered and revised sections of the statute that describe accreditation status assignment, special accreditation investigations, and accreditation interventions and sanctions. Furthermore, HB 3 established the requirement that a financial solvency review be conducted for districts, the results of which may have an impact on a district's assigned accreditation status.

The revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, were adopted to implement the requirements of TEC, Chapter 39, as amended by HB 3, to address these statutory changes related to accreditation investigations and statuses, plans for projected deficits, and accreditation sanctions for districts and campuses. This rule adoption was effective on July 28, 2010. The revised commissioner's rules related to accreditation may be viewed at <http://www.tea.state.tx.us/index4.aspx?id=2296> under the *Texas Administrative Code—Currently in Effect* link.

### **Determining an Accreditation Status**

The renumbered TEC §39.051 and §39.052 continue to direct the commissioner to determine the accreditation status of each district annually. The addition of TEC §39.052(d) allows a district's

accreditation status to be raised or lowered based on the district's performance or lowered based on the performance of one or more campuses within the district that are below adopted standards. Revisions to TEC §39.052(e) require that, for a district that was assigned an Accredited-Warned or Accredited-Probation status for the preceding school year, the commissioner notify the district of its subsequent designation no later than June 15.

The commissioner adopted rules at 19 TAC §97.1055(a)(7), effective on July 28, 2010, to address the TEC §39.052(d) provision that allows a district's accreditation status to be lowered based on the performance of one or more campuses within the district that are below adopted standards. In adopting the rule, the agency determined that it was not appropriate to attempt to describe every potential situation in which the performance of one or more campuses within a district may affect a district's accreditation status, and the rules adopt the language of the statute. The agency previously has adopted rules that establish a process for district appeal and review of any proposal put forth by the agency to lower a district's accreditation status based on campus performance, and those rules will apply to the new statutory provision. Specifically, 19 TAC §97.1035(a)-(b) and §97.1033(b) allow a district to request an informal review of the agency's potential finding in this regard. If, after an informal review, it is determined that the district's accreditation status would be lowered based on campus performance, a second opportunity for review would then be afforded through the rules adopted at 19 TAC §97.1037(a)(2), related to a record review.

The agency did not adopt rules that specifically address the requirement that an accreditation status be assigned no later than June 15 for a district that was assigned an Accredited-Warned or Accredited-Probation status for the preceding school year. It was not necessary to adopt a rule to implement this provision given that all districts, regardless of the previous status assigned, are assigned a subsequent status in advance of this deadline.

The changes to TEC §39.051 and §39.052, which were adopted in TEC, Chapter 39, Subchapter C, become effective with the 2011–2012 school year. Therefore, the first accreditation statuses that may be impacted by these HB 3 changes and the adopted rules will be assigned in spring 2012 for the 2011–2012 school year.

### **Financial Accountability and Financial Solvency Review Requirement**

Revisions to TEC §39.082 require that open-enrollment charter schools be included in the financial accountability rating system implemented by the agency. The agency adopted rules at 19 TAC §109.1002(e), effective May 31, 2010, to incorporate charter financial accountability requirements into FIRST. Upon initial adoption in 2010, Charter FIRST included three foundational indicators of charter financial performance. These three indicators address the timeliness of submission of the charter's annual financial audit report, a comparison of the charter's total assets to total liabilities, and whether the annual financial report indicates a qualified or adverse opinion or an opinion that is disclaimed due to a scope limitation. The agency is taking steps to expand the financial accountability indicators for charter schools through a subsequent rule adoption, with the expectation that an expanded system will be in effect for the 2010–2011 fiscal year. The goal of the expansion is to create additional

indicators that align, to the extent appropriate, with the financial accountability indicators established for traditional school districts.

The new TEC §39.0822, Financial Solvency Review Required, and §39.0823, Projected Deficit, direct the commissioner to develop a review process to anticipate the future financial solvency of each school district, including open-enrollment charter schools, and to take specific actions should a district trigger a financial solvency alert. Additional details related to development of the financial solvency review are reflected in Section VIII of this transition plan. TEC §39.0823 requires that the agency take certain actions for a district when the financial solvency review completed under TEC §39.0822 indicates a projected deficit for a school district general fund within the following three school years. Upon substantiation of that determination, a district is required to develop and submit a financial plan to the agency, which is to be approved by the agency only if the agency determines that the plan will permit the district to avoid the projected insolvency. The statute further requires that the commissioner assign an Accredited-Warning status to the district if the district fails to submit a required plan, fails to obtain agency approval of its plan, fails to comply with an approved plan, or if the agency determines in a subsequent school year that the approved plan is no longer sufficient or is not appropriately implemented.

The commissioner adopted rules at 19 TAC §97.1055, effective on July 28, 2010, to state how the statutory requirements related to a financial solvency review and projected deficit affect accreditation statuses. In adopting the rule, the agency determined that it was necessary to address those circumstances in which, due to other areas of performance or accreditation concern, a district had otherwise earned a lowered accreditation status. Therefore, the agency incorporated language at 19 TAC §97.1055(b)(4), (c)(4), and (d)(4), to implement the requirements of the statute regarding the lowering of a district's accreditation status in response to concerns related to a financial plan under TEC §39.0823 and to specifically address how concerns related to a financial plan would impact a district that had already earned a lowered accreditation status. The resulting rule establishes standards under which a district that had otherwise earned an Accredited-Warning status would be assigned an Accredited-Probation status if concerns related to the financial plan were identified. A parallel rule set is established for those districts already assigned an Accredited-Probation status.

Rules defining the financial solvency and projected deficit calculation are expected to be adopted by the agency with an effective date of December 2010, with the first financial solvency review projected to be calculated by the agency in spring 2011.

The first accreditation statuses to be assigned under new HB 3 charter school financial accountability requirements and the adopted rules will be assigned in spring 2011 for the 2010–2011 school year. However, given the timing of the initial solvency calculation and the development by districts of any subsequent financial plans, it is anticipated that the first accreditation status assignment to be impacted by the financial solvency review will be in 2011–2012.

## **Special Accreditation Investigations**

The changes to TEC §§39.056 and 39.057 address on-site investigations and special accreditation investigations of school districts. Specifically, as it relates to the on-site investigations referenced in TEC §39.056, amendments were made in HB 3 to address potential changes to district accreditation status assignment, district and campus accountability ratings, and campus distinction designations as a result of an on-site investigation. Additionally, the HB 3 changes removed previous restrictions that limited the ability of the agency to conduct a special accreditation investigation of only those campuses within a district that displayed low performance on certain academic excellence indicators.

TEC §39.057 specifies reasons for conducting a special accreditation investigation and describes the commissioner's authority to take action based on the results of the investigation, including action under Subchapter E, Accreditation Interventions and Sanctions, and/or the lowering of a school district's accreditation status or a district's or campus's accountability rating. This clarification was added to update the previous statutory reference to an "accreditation rating." In TEC §39.057, several new reasons for conducting a special accreditation investigation were specified, including:

- when a significant pattern of decreased academic performance has developed as a result of the promotion in the preceding two school years of students who did not perform satisfactorily as determined by the commissioner under Section 39.0241(a) on assessment instruments administered under Section 39.023(a), (c), or (l);
- when excessive numbers of students graduate under the minimum high school program;
- when excessive numbers of students eligible to enroll fail to complete an Algebra II course or any other course determined by the commissioner as distinguishing between students participating in the recommended high school program from students participating in the minimum high school program; and
- when resource allocation practices as evaluated under Section 39.0821 (related to the comptroller's review of resource allocation practices) indicate a potential for significant improvement in resource allocation.

The changes to TEC §§39.056 and 39.057, which were adopted in TEC, Chapter 39, Subchapter C, become effective with the 2011–2012 school year. The agency adopted revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, to update references to these renumbered sections of statute. The first accreditation statuses that may be impacted by these HB 3 changes related to investigations will be assigned in spring 2012 for the 2011–2012 school year.

### ***Accreditation Status Assignment During Transition to House Bill 3***

Subchapter C of Chapter 39 establishes the statutory authority for assigning accreditation statuses to school districts. TEC §39.116, Transitional Interventions and Sanctions, in conjunction with Section 71 of

HB 3, establishes the timelines under which new HB 3 requirements related to accreditation statuses will be implemented. Section 71(d) of HB 3 notes the following:

- (d) Except as provided by Subsection (b) of this section, Subchapter C, Chapter 39, Education Code, as amended by this Act, applies beginning with the 2011–2012 school year.

TEC §39.116(a) notes that, during the period of transition to the accreditation system established under HB 3, to be implemented in August 2013, the commissioner may suspend the assignment of accreditation statuses for the 2011–2012 school year. TEC §39.116(c) and (d) establish standards under which, beginning with the 2012–2013 school year, the commissioner is required to report and evaluate district and campus performance using the student achievement indicators adopted in HB 3 and assign district accreditation statuses and district and campus performance ratings based on that evaluation.

The commissioner adopted rules at 19 TAC §97.1055(a)(8)-(9), effective July 28, 2010, to implement the requirements of HB 3 for assigning accreditation statuses to districts and establish rules for determining consecutive years for the purposes of accreditation status assignment. The agency interprets TEC §39.116(a) to allow the assignment of 2012–2013 accreditation statuses, which are based on 2011–2012 academic performance, to be suspended. However, the agency proposes to assign accreditation statuses to districts for 2012–2013 and has adopted rules to establish a framework for accreditation status assignment during the transition period.

Specifically, the agency adopted rules that address circumstances in which an accreditation status is assigned to districts in 2012–2013, even though performance ratings will not be assigned to districts and campuses in 2012 (based on performance in the 2011–2012 school year). 19 TAC §97.1055(a)(8) establishes a framework for considering the prior academic performance results of a district when assigning a 2012–2013 accreditation status to the district and states that “An accreditation status assigned for the 2012–2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years...” as determined under previously adopted rules.

The agency notes that a district's accreditation status may be influenced by many other factors, namely the district's financial accountability rating results and other factors as referenced in TEC §39.052 and 19 TAC §97.1055. Therefore, the agency has determined that it is reasonable to use other available data for the purposes of assigning a 2012–2013 accreditation status to districts. For example, absent other concerns, a district that was assigned an Academically Unacceptable academic accountability rating in 2011 and a Substandard financial accountability rating in 2012 would earn a 2012–2013 Accredited-Warning status. Additionally, any data and information contributing to a district's 2011–2012 accreditation status results will be carried forward in assigning a 2012–2013 accreditation status to a district.

## **Sanctions and Interventions for Districts**

TEC §39.102, Interventions and Sanctions for Districts, addresses available interventions and sanctions for districts that fail to satisfy accreditation criteria under TEC §39.052, academic performance

standards under TEC §§39.053 or 39.054, or any financial accountability standard as determined by commissioner rule. Available interventions and sanctions range from the required issuance of a public notice of deficiency to the board of trustees to district closure and annexation. Other district-level sanctions referenced in TEC §39.102 include, but are not limited to, the appointment of a monitor, conservator, management team, or board of managers to a district.

### ***Historical Background***

During the 79th Texas Legislature, Third Called Session, 2006, HB 1 was passed, which amended the Texas Education Code (TEC), Chapter 39, Public School System Accountability. The HB 1 changes addressed the accreditation of school districts; sanctions and interventions for school districts, charter schools, and campuses; and the review by the State Office of Administrative Hearings of certain sanctions. As a result, the Texas Education Agency adopted rules to implement these changes. Specifically, 19 Texas Administrative Code (TAC) Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, was amended, and 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, and 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, were adopted to establish new and revised rules in compliance with HB 1 and to clarify and codify TEA practice, as well as the commissioner of education's intent, regarding accreditation issues. This rule adoption was effective on January 6, 2008.

The new 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, established accreditation standards and sanctions, including definitions, purpose, and oversight appointment procedures related to the determination and implementation of district accreditation sanctions. Although the statute regarding district interventions and sanctions did not change significantly as a result of HB 1, the agency adopted related rules that included frameworks for the appointment of monitors, conservators, and boards of managers to districts.

### ***Impact of House Bill 3 on District Interventions and Sanctions***

HB 3 renumbered and revised sections of the statute that describe accreditation interventions and sanctions for districts and campuses. TEC, Chapter 39, Subchapter E, Accreditation Interventions and Sanctions, is a newly reorganized section of the statute that specifies available interventions and sanctions to address district and campus performance concerns. Furthermore, HB 3 establishes new requirements in Subchapter D, Financial Accountability, that make open-enrollment charter schools subject to financial accountability requirements and related sanctions and establish a comptroller review of resource allocation practices for districts and campuses.

Revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, were adopted to implement the requirements of TEC Chapter 39, as amended by HB 3, to address these statutory changes related to accreditation investigations and accreditation sanctions for districts and campuses. This rule adoption was effective on July 28, 2010. The revised commissioner's rules related to accreditation sanctions may be viewed at

<http://www.tea.state.tx.us/index4.aspx?id=2296> under the *Texas Administrative Code—Currently in Effect* link.

### **Charter Financial Accountability Requirements**

The revised TEC §12.104(b)(2)(L) specifically makes open-enrollment charter schools subject to the provisions of Chapter 39, Subchapter D, Financial Accountability. More specifically, revisions to TEC §39.082 require that open-enrollment charter schools be included in the financial accountability rating system implemented by the agency. The applicability of TEC, Chapter 39, Subchapter D, to open-enrollment charters, including the addition of charters to FIRST, clarified legislative intent regarding financial accountability for charters and established that failure to meet a financial accountability standard under TEC, Subchapter D, could result in accreditation sanctions for open-enrollment charters under TEC, Chapter 39, Subchapter E.

The agency adopted rules at 19 TAC §109.1002(e), effective May 31, 2010, to incorporate charter financial accountability requirements into FIRST. Charter FIRST ratings were first assigned in 2010 and included three foundational indicators of charter financial performance. The agency is taking steps to expand the financial accountability indicators for charters through a subsequent rule adoption, with the goal that an expanded system be in effect for the 2010–2011 fiscal year as reflected in 2012 FIRST ratings. (See the *Financial Accountability and Financial Solvency Review Requirement* subsection of the *Accreditation Status Assignment* section above for additional information regarding Charter FIRST.)

It was not necessary for the agency to amend 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, in specific response to the inclusion of open-enrollment charters in FIRST. The rules related to district accreditation sanctions already addressed circumstances under which actions could be taken by the agency when financial accountability standards as determined by the commissioner were not satisfied by districts.

### **Resource Allocation Practices and Related Investigations**

The new TEC §39.0821, Comptroller Review of Resource Allocation Practices, requires the comptroller to identify school districts and campuses that use resource allocation practices that contribute to high academic achievement and cost-effective operations and rank the results of the review to identify the relative performance of districts and campuses, one purpose of which is to identify potential areas for district and campus improvement. A reference to the new TEC §39.0821 was added at TEC §39.057(a)(12), under which the commissioner may order a special accreditation investigation when resource allocation practices under TEC §39.0821 indicate a potential for significant improvement in resource allocation.

The commissioner adopted rules at 19 TAC §97.1057(f), effective on July 28, 2010, to establish factors the commissioner will consider in determining whether to impose accreditation sanctions based on resource allocation practices. Specifically, the adopted rule notes that the commissioner shall consider the

overall purposes of accreditation sanctions, as specified in 19 TAC §97.1053, Purpose, in determining appropriate sanctions for resource allocation practices.

A timeline has not yet been determined for the completion of the first review of resource allocation practices by the comptroller. The changes to TEC §39.057, including the addition of §39.057(a)(12) related to investigations for resource allocation practices, were adopted in TEC Chapter 39, Subchapter C, which becomes effective with the 2011–2012 school year. Therefore, the agency will not conduct special accreditation investigations related to resource allocation practices earlier than the 2011–2012 school year.

### **District Support to Academically Unacceptable Campuses**

The renumbered and revised TEC §39.107, Reconstitution, Repurposing, Alternative Management, and Closure, adopted in TEC Chapter 39, Subchapter E, revised intervention and sanction requirements for campuses identified as unacceptable for multiple years and added language to address the importance of district-level support to low-performing campuses. Specifically, language was added at TEC §39.107(c) that specifies that the commissioner may appoint a monitor, conservator, management team, or board of managers to a district to ensure and oversee district-level support to campuses, in addition to activities related to the implementation of required improvement plans.

The commissioner adopted rules at 19 TAC §§97.1064(a)(2) and 97.1065(b), effective on July 28, 2010, that added oversight of district-level support to low-performing campuses as an additional reason for which a monitor, conservator, management team, or board of managers may be assigned to a district.

### **Interventions for District Dropout and Completion Rates**

The renumbered and revised TEC 39.102(a)(11) adopted in TEC, Chapter 39, Subchapter E, revised the timeline under which the commissioner may order interventions and sanctions for districts failing to meet dropout and completion standards. HB 3 revisions now allow the commissioner to immediately order interventions for districts that fail to satisfy standards related to dropout and/or completion rates. The previous statute required that the district fail to meet standards for two consecutive school years before certain specific interventions and sanctions could be ordered.

It was not necessary for the agency to amend 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, in specific response to the expedited timeline for potential dropout/completion interventions and sanctions. The agency will rely on statutory authority in ordering these sanctions when appropriate.

### ***District Sanctions Under House Bill 3 Transition Requirements***

TEC §39.116, Transitional Interventions and Sanctions, in conjunction with Section 71 of HB 3, establishes the timelines under which new HB 3 requirements related to accreditation sanctions will be implemented. Sections 71(e) and (f) of HB 3 note the following:

- (e) Except as provided by Subsection (f) of this section, Subchapter E, Chapter 39, as amended by this Act, applies as provided by the transition plan adopted by the commissioner of education under Section 39.116, Education Code, as added by this Act.
- (f) Notwithstanding any other provision of this Act, the commissioner of education may immediately apply any exceptions to interventions and sanctions under Subchapter E, Chapter 39, Education Code, as amended by this Act, to interventions and sanctions under Subchapter G, Chapter 39, Education Code, as that law existed prior to amendment by this Act.

TEC §39.116(e) states that, during the 2011–2012 and 2012–2013 school years, the commissioner shall continue to implement interventions and sanctions for districts and campuses identified as having unacceptable performance in the 2010–2011 school year and may increase or decrease the level of interventions and sanctions based on an evaluation of the district’s or campus’s performance. TEC §39.116(f) further clarifies that, for the purposes of determining multiple years of unacceptable performance and required district and campus interventions and sanctions under Subchapter E, the performance ratings and accreditation statuses issued in the 2010–2011 and 2012–2013 school years shall be considered consecutive (i.e., 2011 and 2013 ratings).

The commissioner adopted revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, effective July 28, 2010, to implement the requirements of TEC, Chapter 39, as amended by HB 3, to address, among other things, statutory changes related to accreditation sanctions for districts. The agency currently is implementing, as applicable, the new TEC, Chapter 39, Subchapter E, requirements for district sanctions in accordance with the statute and adopted rules. As previously referenced, changes made in TEC, Chapter 39, Subchapter C, related to investigations for resource allocation practices, will be implemented no earlier than the 2011–2012 school year.

## **Sanctions and Interventions for Campuses**

TEC §39.103, Interventions and Sanctions for Campuses, in conjunction with TEC §39.106, Campus Intervention Team, TEC §39.107, Reconstitution, Repurposing, Alternative Management, and Closure, and TEC §39.115, Campus Name Change Prohibited, address available interventions and sanctions for campuses that do not meet performance standards under TEC §39.054(e) for one or more years. Additionally, TEC §39.105, Campus Improvement Plan, addresses available interventions for campuses that satisfy performance standards under TEC §39.054(e) for the current year but would not satisfy those standards if the standards to be used for the following school year were applied. Available interventions and sanctions range from the appointment of a campus intervention team to an unacceptable campus to campus closure. Other campus-level sanctions and interventions include, but are not limited to, a required hearing held before the commissioner or commissioner’s designee; appointment of a school community partnership team; campus reconstitution; the appointment of a monitor, conservator, management team, or board of managers to a district to oversee campus improvement activities; alternative campus management; and campus repurposing. A number of the interventions addressed in House Bill 3 (HB 3)

align with previous statutory requirements. However, certain substantive statutory changes did occur, as detailed in the sections to follow.

### ***Historical Background***

During the 79th Texas Legislature, Third Called Session, 2006, HB 1 was passed, which amended the Texas Education Code (TEC), Chapter 39, Public School System Accountability. The HB 1 changes addressed the accreditation of school districts; sanctions and interventions for school districts, charter schools, and campuses; and the review by the State Office of Administrative Hearings of certain sanctions. As a result, the Texas Education Agency adopted rules to implement these changes. Specifically, 19 Texas Administrative Code (TAC) Chapter 97, Planning and Accountability, Subchapter DD, Investigative Reports, Sanctions, and Record Reviews, was amended, and 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, and 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, Review by State Office of Administrative Hearings: Certain Accreditation Sanctions, were adopted to establish new and revised rules in compliance with HB 1 and to clarify and codify current TEA practice, as well as the commissioner of education's intent, regarding accreditation issues. This rule adoption was effective on January 6, 2008.

The new 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions established accreditation standards and sanctions, including definitions, purpose, and procedures related to the implementation of campus accreditation sanctions. The statute regarding campus interventions and sanctions changed significantly as a result of HB 1, and the agency adopted related rules that included definitions of certain campus sanctions, including campus reconstitution and campus closure. Additionally, the adopted rules addressed the assignment of technical assistance teams to campuses rated academically acceptable that would be rated academically unacceptable using the accountability standards for the subsequent year, the assignment of campus interventions teams to academically unacceptable campuses, the implementation of campus reconstitution for campuses rated academically unacceptable for multiple years, and procedures for closure or alternative management of campuses with ongoing patterns of unacceptable performance.

### ***Impact of House Bill 3 on Campus Interventions and Sanctions***

HB 3 renumbered and revised sections of the statute that describe accreditation interventions and sanctions for districts and campuses. TEC, Chapter 39, Subchapter E, Accreditation Interventions and Sanctions is a newly reorganized section of the statute that specifies available interventions and sanctions to address district and campus performance concerns. HB 3 eliminated certain campus interventions and sanctions, revised procedures for addressing campuses at risk of future unacceptable performance, provided certain additional campus intervention options, revised certain procedures related to campus interventions and improvement efforts, revised the timeline for implementation of certain campus interventions, and added provisions to support the alignment of certain state and federal interventions and sanctions.

Revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, were adopted to implement the requirements of TEC, Chapter 39, as amended by HB 3, to address these statutory changes related to accreditation sanctions for campuses. This rule adoption was effective on July 28, 2010. The revised commissioner's rules related to accreditation sanctions may be viewed at <http://www.tea.state.tx.us/index4.aspx?id=2296> under the *Texas Administrative Code—Currently in Effect* link.

### **Deletion and Reorganization of Certain Campus-Level Sanctions**

TEC §39.103, Interventions and Sanctions for Campuses, was revised to better align with other sections of the statute that specify campus intervention requirements and reorganized to delete certain interventions and sanctions that were determined to be duplicative of other sanction and intervention requirements in the subchapter. Specifically, references to the following interventions and sanctions were removed from the renumbered TEC §39.103: issuing public notice of deficiency to the board of trustees; ordering a hearing conducted by the board of trustees at the campus; ordering the preparation of a parental involvement report; ordering a report detailing the effectiveness of district- and campus-level planning and decision-making committees; and ordering the preparation of a student improvement plan. A number of these sanctions, including those related to board notice and hearings, parental involvement, and school improvement plans, are addressed in other sections of HB 3 and TEC, Chapter 39, Subchapter E.

The commissioner adopted rules at 19 TAC §97.1061 through §97.1064, effective on July 28, 2010, to specifically address these HB 3 changes to campus intervention requirements.

### **Revised Interventions for Certain Campuses with Acceptable Performance**

TEC §39.105, Campus Improvement Plan, as revised by HB 3, updated the previous requirement that the commissioner assign a technical assistance team (TAT) to a campus rated academically acceptable for the current year if the campus would be rated as academically unacceptable if the standards for the subsequent year were applied. The previous statute did not specify the composition of the TAT, and membership was established through commissioner rule.

HB 3 continues to require a campus that meets the current standards under TEC §39.054(e) but that would not satisfy the standards for the subsequent year to address these potential performance concerns. However, with the HB 3 amendments, the references to a TAT were stricken, and the group that is required to address this pattern of campus performance is specified to be the campus-level planning and decision-making committee under TEC, Chapter 11. The previously adopted commissioner rules utilized the campus-level planning and decision-making committee but specified that the team must include an additional member with the knowledge and ability to provide technical assistance in the area(s) subject to improvement planning. This additional member is no longer required under HB 3. Additionally, HB 3 continues to address required planning for campus improvement for identified campuses but specifies that the plan that must be revised in the campus improvement plan under Chapter 11, and that, upon the request of the commissioner, relevant portions of that plan must be submitted to the agency electronically.

TEC §39.105(b) further clarifies that charter campuses, which traditionally are not subject to TEC, Chapter 11 requirements, are required to develop similar teams and implement similar planning requirements if the charter is identified under this section. Specifically, charter campuses are required to create a campus-level planning and decision-making committee and develop a campus improvement plan to address identified performance concerns. Charter campuses also must submit relevant portions of the plan to the agency upon request.

The commissioner adopted rules at 19 TAC §97.1061, effective on July 28, 2010, to specifically address these HB 3 changes related to campuses at risk of becoming academically unacceptable.

### **School Community Partnership Teams**

TEC §39.103, Interventions and Sanctions for Campuses, was revised to make available to the commissioner an additional campus sanction to be implemented to the extent the commissioner determines necessary for a campus that is below any standard under TEC §39.054(e). Specifically, the HB 3 amendments to §39.103 provide for the establishment of a school community partnership team composed of members of the campus-level planning and decision-making committee established under TEC §11.251 and additional community representatives as determined appropriate by the commissioner. TEC §39.106, Campus Intervention Team, states that, if a school community partnership team (SCPT) is assigned, the SCPT will be involved in and offer its advice in conducting the on-site campus needs assessment and recommending actions relating to any area of insufficient performance. Additionally, TEC §39.103(d-1) allows the commissioner to authorize an SCPT to supersede the authority and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee under TEC, Subchapter F, Chapter 11.

The commissioner adopted rules at 19 TAC §97.1061 and §97.1063, effective on July 28, 2010, to implement statutory requirements related to SCPTs.

### **Targeted and Comprehensive Needs Assessments and Improvement Plans**

TEC §39.106, Campus Intervention Team, was revised in several instances to add references to targeted, in addition to comprehensive, needs assessments and improvement plans. Specifically, TEC §39.106(a)(1) was revised to reference a targeted, rather than comprehensive, on-site needs assessment, conducted by the campus intervention team, to determine contributing education-related and other factors resulting in low performance and lack of progress, unless the commissioner determines that a comprehensive assessment is needed. Additionally, TEC §39.106(a)(3) was revised to reference the development of a targeted improvement plan. Furthermore, TEC §39.106(d-2) was added to allow the commissioner to authorize a targeted improvement plan or updated plan developed under TEC, Chapter 39, Subchapter E, to supersede the provisions and satisfy the requirements of developing, reviewing, and revising a campus improvement plan under TEC, Chapter 11, Subchapter F.

TEC §39.106 was revised to add certain guidelines or procedures used to complete a targeted or comprehensive needs assessment, including consideration of the following: the percentage of fully certified teachers; the extent and quality of a mentoring program for experienced teachers with less than

two years of teaching experience in the subject or grade level assigned; and the comparison of needs assessment findings for the identified campus to other campuses serving the same grade levels within the district (or to other campuses within a comparison group if no other campuses exist within the district). Additionally, certain language regarding needs assessment considerations was revised, including references to the number of teachers with more than three years of experience, instead of less, and references to teacher retention rates, instead of turnover rates.

Furthermore, the language of TEC §39.106(c)(7) and (d-3) was revised to add items to be included in the recommended actions resulting from the campus needs assessment and in subsequent actions related to improvement plan implementation. Specifically, strategies and incentives to attract and retain certified, experienced teachers was added as an item to be included in recommended actions relating to any areas of insufficient campus performance. Furthermore, in executing the targeted improvement plan, a campus intervention team may now require a district to develop a teacher recruitment and retention plan to address the qualifications and retention of teachers at the campus.

The commissioner adopted rules at 19 TAC §97.1063 and §97.1064, effective on July 28, 2010, to specifically address and implement HB 3 changes related to the on-site needs assessment and recommendations and the targeted improvement plan. Specifically, adoptions related to the on-site needs assessment are primarily reflected in 19 TAC §97.1063(b)-(d), while rule language related to improvement planning is adopted throughout 19 TAC §97.1063 and §97.1064. The adopted rules reference the targeted improvement plan as a school improvement plan, or SIP, to maintain consistency with prior agency practice and rule adoptions.

### **Board of Trustees Involvement in Improvement Activities**

TEC §39.106 and §39.107 were revised to reference additional requirements for boards of trustees to be involved in public hearings and take action related to approval of targeted improvement plans and revised plans for a campus below any standard under TEC §39.054(e). Specifically, TEC §39.106(a)(4) now requires the campus intervention team to assist the campus in submitting the targeted improvement plan to the board of trustees for approval and presenting the plan in a public hearing as provided by TEC §39.106(e-1). TEC §39.106(e-1) requires that the board of trustees conduct a hearing to notify the public of a campus's insufficient performance, expected improvements, and possible interventions and sanctions and to solicit public comment on the plan or updated plan. The subsection also requires the posting of improvement plans on the district website before the public hearing.

TEC §39.107, Reconstitution, Repurposing, Alternative Management, and Closure, subsections (a-1)(2) and (b-2) require the campus intervention team to assist a campus in submitting an updated improvement plan to the board of trustees and parents of campus students and to the commissioner for approval. The requirements of TEC §39.106(e-1) apply as they relate to the board's presentation and consideration of the updated plan. Furthermore, in circumstances under which the commissioner orders the repurposing of a campus, TEC §39.107(f) requires that a campus repurposing plan be submitted to the board of trustees for approval using the procedures outlined in TEC §39.106(e-1).

The commissioner adopted rules at 19 TAC §97.1063 and §97.1064, effective on July 28, 2010, to specifically address and implement HB 3 changes related to board of trustees hearing and approval requirements. These requirements adopt statutory language in many cases but also specify certain timelines and procedures not reflected in the statute. Specifically, 19 TAC §97.1063(j)(2) establishes a timeline of 72 hours for posting an improvement plan on a district’s website prior to a board hearing, and 19 TAC §97.1063(j)(4) allows a board of trustees to establish procedures for submitting certain changes or adjustments to an improvement plan to the commissioner for approval without the necessity of further board hearing and action. These requirements are being implemented effective with the 2010–2011 school year.

### **Campus Intervention Team Role in Campus Reconstitution**

The HB 3 amendments to TEC §39.107 and deletion of TEC §39.116, Initiative for Retaining Quality Educators, (as previously numbered) also revise the campus intervention team’s role in implementing campus reconstitution. Specifically, TEC §39.107(b), in conjunction with the deletion of TEC §39.116, establishes the campus intervention team, as opposed to the district, as the entity that makes the final determination about the retention of the principal at a reconstituted campus and establishes a decision framework for the determination. The statute specifies that a principal of a campus ordered to reconstitute, who has been employed by that campus in the capacity of principal during the full two-year period described by TEC §39.107(a), may not be retained at that campus unless the campus intervention team determines that retention of the principal would be more beneficial to student achievement and campus stability than removal.

The commissioner adopted rules at 19 TAC §97.1051 and §97.1064, effective on July 28, 2010, to specifically address campus reconstitution requirements. Specifically, 19 TAC §97.1064(a)(1) establishes the requirements surrounding staff retention or removal at campuses ordered to reconstitute, and 19 TAC §97.1051(7) continues to define campus reconstitution. These requirements are being implemented effective with the 2010–2011 school year.

### **Ultimate Sanctions and Related Timelines**

The HB 3 amendments to TEC §39.107 also provide clarification of the “ultimate sanctions” of repurposing, alternative management, or closure of campuses and the timelines for ordering those sanctions. While, under TEC §39.107(a), the commissioner continues to be required to order campus reconstitution after a campus has been identified as unacceptable for two consecutive school years, the language of TEC §39.107(e) was revised to state that an “ultimate” sanction is required for a campus that is considered to have unacceptable performance for three consecutive school years (as opposed to two) after the campus is reconstituted. Therefore, an additional year is added to the timeline under which the commissioner is required to order an “ultimate” campus sanction. Additionally, TEC §39.107(e-1) allows the commissioner to waive the requirement to order an “ultimate” sanction for not more than one school year if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be assigned an acceptable performance rating for the following school year.

Additionally, TEC §39.107(d), (e), and (f) were amended to establish repurposing as an additional “ultimate” sanction that may be ordered by the commissioner and defined the requirements for campus repurposing. While, prior to HB 3, the statute did not specify repurposing as a separate “ultimate” sanction, a definition of repurposing had been established through commissioner rule as a subset of the definition of campus closure. The definition of repurposing was established in TEC §39.107(f) with certain revisions from previously adopted commissioner rules.

While TEC §39.107(e) was revised to establish a new timeline for “ultimate” campus sanctions, TEC §39.107(d) was added to allow the commissioner to order repurposing, alternative management, or closure of a multi-year unacceptable campus if the commissioner determines that the campus is not fully implementing the updated targeted improvement plan or if the students enrolled at the multi-year unacceptable campus are failing to demonstrate substantial improvement in the areas targeted by the updated plan.

In regard to the sanction of alternative campus management, TEC §39.107(h) was revised to allow the commissioner to solicit proposals from qualified for-profit entities to assume alternative management of a campus if a nonprofit entity has not responded to the commissioner's request for proposals.

Furthermore, TEC §39.115, Campus Name Change Prohibited, was added to prohibit the commissioner from requiring that the name of a campus be changed in reconstituting, repurposing, or imposing any other intervention or sanction on a campus under TEC, Chapter 39, Subchapter E. The previous statute did not address this issue; however, a requirement that the name of a closed and repurposed campus be changed previously was established through commissioner rule.

The commissioner adopted rules at 19 TAC §97.1051 and §97.1065, effective on July 28, 2010, to specifically address the requirements for implementing ultimate campus sanctions related to repurposing, alternative campus management, and campus closure. Specifically, 19 TAC §97.1065 defines campus repurposing in alignment with statutory changes and updates other rule language regarding ultimate sanctions, and 19 TAC §97.1051(3) includes a new definition of campus closure. Additional rule language establishing procedures related to alternative campus management is adopted at 19 TAC §97.1067 and §97.1069. The HB 3 changes and related rule requirements are being implemented effective with the 2010–2011 school year.

### **Provisions for Alignment of State and Federal Intervention Requirements**

TEC §39.103(c) was added in HB 3 to state that, notwithstanding the provisions of TEC, Chapter 39, Subchapter E, the commissioner may accept as being in compliance with Subchapter E any substantially similar intervention measures implemented by a campus in response to federal accountability requirements. The addition of this provision allows the commissioner to align, to the extent possible, the interventions required under the federal and state accountability systems.

In response, the agency adopted rules at 19 TAC §97.1061(f) to implement this change. Furthermore, the agency, in coordination with the Texas Center for District and School Support authorized under Rider 93 of the General Appropriations Act of the 81st Legislature, has taken steps to identify those campuses

subject to interventions in both the state and federal accountability systems and to implement strategies to align intervention requirements and, to the extent possible, eliminate duplicative intervention efforts. This alignment has included pilot activities addressing the coordination of improvement plans, the consolidation of required improvement teams and technical assistance providers, and the coordination of activities related to grants and improvement initiatives. Initial alignment activities were implemented in 2010–2011, and it is expected that additional alignment activities will be implemented in subsequent school years.

### ***Campus Sanctions Under House Bill 3 Transition Requirements***

TEC §39.116, Transitional Interventions and Sanctions, in conjunction with Section 71 of HB 3, establishes the timelines under which new HB 3 requirements related to accreditation sanctions will be implemented. Sections 71(e) and (f) of HB 3 note the following:

- (e) Except as provided by Subsection (f) of this section, Subchapter E, Chapter 39, as amended by this Act, applies as provided by the transition plan adopted by the commissioner of education under Section 39.116, Education Code, as added by this Act.
- (f) Notwithstanding any other provision of this Act, the commissioner of education may immediately apply any exceptions to interventions and sanctions under Subchapter E, Chapter 39, Education Code, as amended by this Act, to interventions and sanctions under Subchapter G, Chapter 39, Education Code, as that law existed prior to amendment by this Act.

TEC §39.116(e) states that, during the 2011–2012 and 2012–2013 school years, the commissioner shall continue to implement interventions and sanctions for districts and campuses identified as having unacceptable performance in the 2010–2011 school year and may increase or decrease the level of interventions and sanctions based on an evaluation of the district’s or campus’s performance. TEC §39.116(f) further clarifies that, for the purposes of determining multiple years of unacceptable performance and required district and campus interventions and sanctions under Subchapter E, the performance ratings and accreditation statuses issued in the 2010–2011 and 2012–2013 school years shall be considered consecutive (i.e., 2011 and 2013 ratings).

The commissioner adopted revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, effective July 28, 2010, to implement the requirements of TEC, Chapter 39, as amended by HB 3, to address, among other things, statutory changes related to accreditation sanctions for campuses. The agency currently is implementing, as applicable, the new TEC, Chapter 39, Subchapter E requirements for campus sanctions in accordance with the statute and adopted rules.

