

The Texas Education Agency (TEA) proposes amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The proposed amendment to §97.1075 would clarify which entities are subject to the requirements of Texas Education Code (TEC), §11.174(c). The proposed amendment to §97.1079 would correct a statutory reference and remove alternate authority for the commissioner to approve entity eligibility requests.

BACKGROUND INFORMATION AND JUSTIFICATION: The 85th Texas Legislature, Regular Session, 2017, implemented Senate Bill 1882, which authorizes school districts to enter into partnerships for certain entities to operate school district campuses.

TEC, §11.174(c), specifies that before a district enters into a contract with an open-enrollment charter school as provided in TEC, §11.174(a)(1), it must first consult with campus personnel regarding the provisions to be included in the contract. The statute also specifies that all rights and protections by current employment contracts or agreements may not be affected by the contract with an open-enrollment charter school.

The proposed amendment to §97.1075(d)(10) would clarify that these provisions apply only to open-enrollment charter schools, which are described in TEC, §11.174(a)(1), and do not apply to entities that are described in TEC, §11.174(a)(2), and subject to 19 TAC §97.1079.

TEC, §11.174(a)(2), specifies that the commissioner must approve entities that are described in TEC, §11.174(a)(2), and TEC, §11.174(m), grants the commissioner rulemaking authority, including standards required for an entity to receive approval under TEC, §11.174(a)(2). Section 97.1079 sets forth the requirements for such entities to be approved. Section 97.1079(e) allows the commissioner to approve an entity that did not otherwise meet the requirements set forth in §97.1079 if the commissioner determined that the approval of the entity eligibility request would improve student outcomes. After examining the initial round of eligibility determination requests, the commissioner has determined that the requirements adopted to evaluate the eligibility of such entities are sufficient and that the authority in §97.1079(e) to approve entities that would not otherwise meet the eligibility requirements is not necessary. Therefore, the proposed amendment to §97.1079(e) would remove this language.

In addition, a statutory reference in §97.1079(d)(8)(C) would be corrected.

FISCAL IMPACT: Joe Siedlecki, deputy commissioner for improvements, innovations, and charters, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation by removing the commissioner's existing authority to approve entity eligibility requests.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency;

would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Siedlecki has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarifying which entities must comply with TEC, §11.174(c), correcting a statutory reference, and removing an unnecessary provision. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 31, 2019, and ends July 1, 2019. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on May 31, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §11.174(a), which authorizes a school district to enter into a partnership to operate a school district campus under certain conditions; TEC, §11.174(c), which requires that before a district enters into a contract with an open-enrollment charter school as provided in TEC, §11.174(a)(1), it must first consult with campus personnel regarding the provisions to be included in the contract, and that all rights and protections by current employment contracts or agreement may not be affected by the contract with an open-enrollment charter school; TEC, §11.174(e), which requires the commissioner to continue to evaluate campus performance and assign overall and domain ratings for a campus operated under a partnership; TEC, §11.174(f), which prohibits the imposition of certain interventions and sanctions based on accountability performance for the first two school years for which a school district partnership operates on the campus; TEC, §11.174(g), which extends the intervention exemption to a subsequent or renewed partnership only upon approval from the commissioner; and TEC, §11.174(m), which authorizes the commissioner to adopt rules to implement TEC, §11.174.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §11.174(a), (c), (e)-(g), and (m).

<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 §42.2511.
- (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 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, as well as initial and final authority to supervise, manage, and rescind the assignment of any district employee or district contractor from the campus.
 - (D) The operating partner must directly manage the instructional staff described in subparagraphs (B) and (C) of this paragraph who provide services to at least a majority of the students.
 - (2) Other authorities. The operating partner must have:
 - (A) initial and final 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 and final 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 and final authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;
 - (D) initial and final authority to approve all assessments that are not required by the state of Texas; and
 - (E) initial and final authority to adopt and implement the campus budget. 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.
- (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 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 a specific target for student growth based on the School Progress Domain; and
 - (C) specific consequences in the event that the operating party does not meet the annual 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 financial report of the operating partner meeting the expectations outlined in §109.23 of this title (relating to School District Independent Audits and Agreed-Upon Procedures);
 - (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 ten 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) service-level agreements that describe and allocate shared resources and services the district provides to the operating partner, which 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;
- (8) a per pupil allocation from the district to the operator that provides a student-level allocation of local, state, and federal funds received by the district;
- (9) a description of the educational plan for the campus;
- (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 consequence(s) in the instance that either the district or the operating partner breaches the contract. The contract may not be contingent on any rating issued by the TEA to the campus prior to the operation of the campus by the operating partner.
- (e) 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.
- (f) 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).
- (g) Monitoring. The commissioner of education shall continue to evaluate and assign overall and domain performance ratings under TEC, §39.054, to the campus. 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.
- (h) Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §42.2511, the district must continuously meet the requirements in subsections (c)-(g) of this section.
- (i) Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.

§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).
 - (1) Prior to each eligibility approval cycle, the commissioner shall approve an eligibility approval request form for submission by applicants seeking eligibility approval as specified in TEC, §11.174. The eligibility approval request form may contain, but is not limited to, any of the following:
 - (A) the timeline for eligibility approval;

- (B) scoring criteria and procedures for use by the review panel selected under paragraph (4) of this subsection; and
 - (C) eligibility approval criteria, including the minimum score necessary for approval.
- (2) The Texas Education Agency (TEA) shall review eligibility approval requests submitted under this section. If the TEA determines that an eligibility approval request 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 eligibility approval request.
- (4) Applicants with complete eligibility approval requests shall be reviewed by an external eligibility approval request review panel selected by the commissioner. The panel shall review eligibility approval requests in accordance with the procedures and criteria established in the eligibility approval request 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 eligibility approval request 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 eligibility approval request.
- (5) No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.
- (6) All parts of the district's eligibility approval request 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 eligibility approval request:
 - (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.
- (7) TEA staff may interview applicants whose eligibility approval requests received the minimum score established in the eligibility approval request form, may specify individuals required to

attend the interview, and may require the submission of additional information and documentation prior or subsequent to an interview.

- (8) 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 demonstrate:
- (i) evidence of a high-quality district charter authorizing process as required by TEC, §12.058, which may include the following:
 - (I) the district's adoption and implementation of an authorizing policy;
 - (II) the district's adoption and implementation of a local campus charter application, including the evaluation of:
 - (-a-) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the governance, management, and educational leadership of the proposed operating partner; and
 - (-b-) any operating and academic performance history of the proposed operator; and
 - (III) the district's adoption and implementation of codified procedures for monitoring and reviewing in-district charters;
 - (ii) 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 (relating to Contracting to Partner to Operate a Campus under Texas Education Code, §11.174); and
 - (iii) 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; and
 - (V) an assurance that the district has not appointed a majority of the members of the governing board of the operating partner; and
 - (iv) an assurance that the operating partner has the staff capacity, including at least one full-time equivalent employee, necessary to oversee the operation of the campus.

- (B) 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 subparagraph (A) of this paragraph, the commissioner will consider the following:
- (i) evidence that the proposed operating partner has the capacity to operate the campus, including the following:
 - (I) an education plan;
 - (II) the capacity of the operating partner's board and leadership team; and
 - (III) if applicable, the operating partner's previous history operating campuses; and
 - (ii) evidence or an assurance that the operating partner has or will have dedicated staff capacity to operate or oversee the operation of a campus.
- (C) 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) ~~§17.174(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.

- (e) Decision finality. ~~[Notwithstanding any other provisions, 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.]~~ The approval or denial of the eligibility approval request is a final administrative decision by the commissioner and not subject to appeal under TEC, §7.057.