

The Texas Education Agency (TEA) proposes an amendment to §100.1002, concerning open-enrollment charter school application and selection procedures and criteria. The proposed amendment would revise the current rule concerning procedures for application review and criteria for advancement in the application process.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1002 sets forth the procedures pertaining to the application for an open-enrollment charter school. It describes the process by which the commissioner shall review applications initially, how the applications shall be evaluated both within TEA and by external reviewers, and procedures to be followed related to the award of a charter.

The proposed amendment to §100.1002(b) would clarify current TEA procedures for review of applications for charter. The proposed amendment would draw a clear distinction between TEA procedure when an application is incomplete and TEA procedure when an application contains a fundamental deficiency. If an application is not complete, the TEA will notify the applicant and allow five business days for missing documents to be submitted. If an application does not meet the standards in TEC, §12.101, and 19 TAC §100.1015, the TEA will remove the application without further processing.

The proposed amendment to §100.1002(h) would add fiscal soundness to the commissioner's criteria for application review. Prospects for the school's long-term financial health are an important consideration in keeping with TEA's mission to improve outcomes for all public school students.

The proposed amendment to §100.1002(j) would clarify statutory authority regarding a school's unacceptable performance rating.

The proposed amendment to §100.1002(q) would remove the term "forfeited" and instead state that if a charter does not open and serve students within the timeline established in the rule, the charter is automatically considered void and returned to the commissioner. This change would parallel language in 19 TAC §100.1015(a) and clarify that that subsection is applicable to a charter returned under the circumstances of 19 TAC §100.1002(q).

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovations, 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 expand an existing regulation. The proposed amendment would add language to specify that when determining whether to grant an open-enrollment charter, the commissioner may consider indications that the charter school will be fiscally viable from its inception.

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 limit 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 current TEA procedures for review of applications for charter and the commissioner's criteria for application review. 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 June 21, 2019, and ends July 22, 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 June 21, 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 amendment is proposed under Texas Education Code (TEC), §12.101, which authorizes the commissioner to grant a charter for an open-enrollment charter school to an eligible entity, describing procedures the commissioner must follow to thoroughly investigate and evaluate such applicants; TEC, §12.1011, which describes criteria by which the commissioner may grant charters for open-enrollment charter schools to certain high-performing entities; TEC, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.113, which sets forth the standards to be met by each charter the commissioner grants for an open-enrollment charter school; TEC, §12.152, which authorizes the commissioner to grant a charter for an open-enrollment charter school on the application of a public senior college or university or public junior college; TEC, §12.153, which authorizes the commissioner to adopt rules to implement TEC, Chapter 12, Subchapter E, College or University or Junior College Charter School; and TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.1011, 12.110, 12.113, 12.152, 12.153, and 12.154.

<rule>

§100.1002. Application and Selection Procedures and Criteria.

- (a) Prior to each selection cycle, the commissioner of education shall approve an application form for submission by applicants seeking to operate a high quality open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:
 - (1) the timeline for selection;
 - (2) required applicant conferences and training prerequisites;
 - (3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;
 - (4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and
 - (5) the earliest date an open-enrollment charter school selected in the cycle may open.

- (b) The Texas Education Agency (TEA) shall review applications submitted under this section.
- (1) If the TEA determines that an application is not complete, the TEA shall notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall remove the application without further processing. [and/or]
 - (2) If the TEA determines that an application does not meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall [notify the applicant and allow five business days for the applicant to submit the missing documents. If the documents are not timely submitted, the TEA shall] remove the application without further processing.
 - (3) The TEA shall establish procedures and schedules for returning applications without further processing.
 - (4) Failure of the TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the commissioner.
- (c) Upon written notice to the TEA, an applicant may withdraw an application.
- (d) Applications that are determined to meet the standards established under TEC, §12.101, and §100.1015 of this title shall be reviewed and scored by an external application review panel selected by the commissioner from a pool of qualified candidates identified through a request for qualification (RFQ) process. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with anyone except the TEA staff. Review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately the discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.
- (e) Applications that are not scored at or above the minimum score established in the application form are not eligible for commissioner selection during that cycle. The commissioner may, at the commissioner's sole discretion, decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the commissioner.
- (f) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website; therefore, the following must be excluded or redacted:
- (1) personal email addresses;
 - (2) proprietary material;
 - (3) copyrighted material;
 - (4) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and
 - (5) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.
- (g) The commissioner or the commissioner's designee(s) in coordination with the TEA staff shall interview applicants whose applications received the minimum score established in the application form. The commissioner may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

- (h) The commissioner may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:
- (1) indications that the charter school will improve student performance;
 - (2) innovation evident in the program(s) proposed for the charter school;
 - (3) indications that the charter school will be fiscally viable from its inception;
 - (4) ~~(3)~~ impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;
 - (5) ~~(4)~~ evidence of parental and community support for or opposition to the proposed charter school;
 - (6) ~~(5)~~ the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;
 - (7) ~~(6)~~ the history of the sponsoring entity of the proposed charter school, as defined in the application form;
 - (8) ~~(7)~~ indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and
 - (9) ~~(8)~~ indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:
 - (A) representation in urban, suburban, and rural communities;
 - (B) instructional settings;
 - (C) types of eligible entities;
 - (D) types of innovative programs;
 - (E) student populations and programs; and
 - (F) geographic regions.
- (i) In addition to the criteria specified in subsection (h) of this section, the commissioner shall approve or deny an application based on:
- (1) documented evidence gathered through the application review process;
 - (2) merit; and
 - (3) other criteria, including:
 - (A) criteria related to capability of carrying out the responsibilities as provided in the charter; and
 - (B) the likelihood of operating a high-quality charter, including previous experience operating a public school(s).
- (j) Priority shall be given to an applicant that proposes a school in an attendance zone of a school district campus assigned an unacceptable ~~["academically unacceptable"]~~ performance rating under TEC, §39.054, for two preceding years ~~[as defined by §100.1001(26) of this title (relating to Definitions)]~~ .
- (k) An applicant or any person or entity acting on behalf of an applicant for an open-enrollment charter shall not knowingly communicate with any member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. State Board of Education (SBOE) members and/or the TEA staff may initiate communications with an applicant. On finding a material violation of the no-contact period, the commissioner shall reject the application and deem it ineligible for award.

- (l) The commissioner shall notify the SBOE of each charter the commissioner proposes to grant under this subchapter. A charter proposed by the commissioner will be granted on the 90th day after the date on which the SBOE receives the notice from the commissioner unless:
 - (1) the SBOE votes against the charter in accordance with TEC, §12.101(b-0); or
 - (2) the commissioner withdraws the proposal.
- (m) The commissioner may defer granting an open-enrollment charter subject to contingencies and shall require fulfillment of such contingencies before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than two months after the date of the notification of contingencies by the commissioner or the proposal of the charter is withdrawn. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether contingencies have been met. An applicant that is not granted a charter may reapply.
- (n) The commissioner may decline to finally grant or award a charter based on misrepresentations during the application process or failure to comply with commissioner rules, application requirements, or SBOE rules.
- (o) An open-enrollment charter shall be in the form and substance of a written contract signed by the commissioner, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.
- (p) The charter contract shall be for an initial term of five years beginning on the date the contract is signed by the commissioner following the granting of the initial charter contract.
- (q) The charter must open and serve students within one school year of the awarding of the charter contract. The commissioner, in the commissioner's discretion, may grant a single-year extension. Failure to operate within one year, or two years if an extension is granted, constitutes an automatic abandonment of the charter contract and the charter is automatically considered void and returned to the commissioner ~~forfeited~~.