

The Texas Education Agency (TEA) proposes an amendment to §100.1015, concerning applicants for an open-enrollment charter, public senior college or university charter, or public junior college charter. The proposed amendment would clarify terminology; remove the exception to the minimum school size requirement; establish an exception to the minimum qualification requirements for schools that serve youth referred to or placed in a residential trade center by a local or state agency; amend the timeframe for charter schools to have at least 50% of their students in tested grades; and modify the list of content that, if included, would cause an application to be removed from consideration.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1015 describes requirements of an application for open-enrollment charter, public senior college or university charter, or public junior college charter. It sets forth requirements for an entity to be eligible to apply, and it details financial, governing, educational, and operational standards that must be thoroughly addressed in the application in order for it to be considered by the commissioner.

The proposed amendment to §100.1015 would clarify the commissioner's criteria for review of an application for charter by adding language to help explain what is meant by the term *financial standards* in subsection (b)(1), *governing standards* in subsection (b)(2), and *educational and operational standards* in subsection (b)(3).

In subsection (b)(1)(C)(iii), the proposed amendment would parallel a statutory change involving minutes of instruction rather than days.

In subsection (b)(1)(D), the proposed amendment would remove an allowance for a lower-than-prescribed number of students. The rule currently states that an entity applying for a charter must commit to serving a minimum of 100 students at all times to ensure financial viability but allows the entity to provide an explanation if that number is not optimum and/or attainable. Removal of the allowance in the proposed amendment would help eliminate ambiguity with regard the commissioner's criteria for financial viability.

The proposed amendment would set forth an exception to subsection (b)(3)(F)(ii), which currently mandates that all teachers at the school have a baccalaureate degree regardless of subject matter taught and add new subsection (b)(3)(F)(iv) to state that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree subject to the requirements described in 19 TAC §100.1212, Personnel. This change would align the rule with House Bill 1469, 85th Texas Legislature, Regular Session, 2017.

The proposed amendment would modify subsection (b)(3)(G) to require that schools have at least 50% of their students in tested grades by the start of the charter school's third year of operation rather than the fifth year of operation currently specified in the rule. Requiring that at least 50% of students be in tested grades by a school's third year would accelerate progress toward TEA's goal to increase transparency, fairness, and rigor in academic performance.

Finally, the proposed amendment to subsection (b)(4)(E) would add items to the list of improper content in an application that, if included, would cause the application to be removed from consideration. This would clarify TEA's procedure in response to an applicant's plagiarism infractions or other unauthorized use of third parties' work product, in addition to its procedure regarding violations of state or federal law.

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 beyond what is required by statute. TEC, §12.129, requires charter schools employing teachers for noncore vocational courses without a baccalaureate degree to ensure those teachers obtain 20 hours of training in classroom management. This statutory requirement may impose a cost on open-enrollment charter schools.

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 and increase the number of individuals subject to its applicability. The proposed amendment would reflect an exception to the requirement of TEC, §12.129, that all open-enrollment charter school principals and teachers have a baccalaureate degree by specifying that in an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree as long as certain criteria are met. In addition, the proposed amendment would remove an allowance for an entity applying for a charter to explain fully why serving a minimum of 100 students is not optimum and/or attainable, require that charter schools have at least 50% of their students in tested grades by the start of the charter school's third year of operation, and add items to the list of content that, if included, would cause an application to be removed from consideration.

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 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 criteria for review of an application for charter and parallel already-existing statutory authority. The proposed amendment may impose a cost on persons, but not beyond what is required by statute. TEC, §12.129, requires charter schools employing teachers for noncore vocational courses without a baccalaureate degree to ensure those teachers obtain 20 hours of training in classroom management. This statutory requirement may impose a cost on individuals.

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, §12.110, which requires the commissioner to adopt an application form and procedures around application for a charter for an open-enrollment charter school; TEC, §12.129, which describes minimum qualifications for principals and teachers

in 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; TEC, §12.154, which specifies the content of an application for charter from a public senior college or university or a public junior college; and TEC, §12.156, which provides that TEC, Chapter 12, Subchapter D, Open-Enrollment Charter School, applies to a college or university charter school or junior college charter school except where otherwise indicated in TEC, Chapter 12, Subchapter E.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.110, 12.129, 12.152, 12.153, 12.154, 12.156.

<rule>

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

- (a) No applicant will be considered that has, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned or that is considered to be a corporate affiliate of, or substantially related to, an entity that, within the preceding ten years, had a charter under Texas law or similar charter under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. The commissioner of education may not grant more than one charter for an open-enrollment charter school to any charter holder.
- (b) Notwithstanding any other provisions in this chapter, the following provisions apply to open-enrollment charter applicants and successful charter awardees authorized by the commissioner under requests for applications adopted after November 1, 2012.
 - (1) Financial standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following financial standards to demonstrate the financial viability of the charter, as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.
 - (A) Any existing entity applying for the charter must be in good standing with the Internal Revenue Service (IRS), the Texas Secretary of State, and the Texas Comptroller of Public Accounts. An existing entity must also be in good standing with all regulatory agencies in its home state.
 - (B) Each entity must provide evidence of financial competency and sustainability by providing evidence of an appropriate business plan that includes each of the following:
 - (i) a succinct long-term vision for the proposed school;
 - (ii) three to five core values or beliefs, with succinct explanations, for the operation of the proposed school;
 - (iii) a brief analysis of the target location(s) for the proposed school with a succinct explanation of the reasons for choosing the location(s);
 - (iv) a brief analysis of the competition in the area(s) for the same students and the methods that the proposed school will use to recruit and retain students;
 - (v) a brief narrative of the growth plan for the first five years of operation of the proposed school that matches all projections included in the budget and considers the potential expansion of competition in the area for the same student population;

- (vi) a list of risk factors, with brief explanations, that could jeopardize the viability of the proposed school;
 - (vii) a list of success factors, with brief explanations, that the proposed school founders have analyzed and determined will outweigh the risks;
 - (viii) an unqualified opinion as provided in the most recent audited financial statements of the applicant if the entity has been in existence at least a year;
 - (ix) a five-year budget projection of revenue and expenditures for the proposed charter using the template that will be provided in the request for applications (RFA);
 - (x) a narrative response, based on the revenue and expenditures provided in the template that will be provided in the RFA, detailing the ways in which the budget projections were derived, including any assumptions used; and
 - (xi) support documentation for budget projections as detailed in the budget template that will be provided with the RFA.
- (C) Loans and lines of credit are liabilities that must be repaid and will be considered as available funding. Loans or lines of credit may be characterized as assets and as cash on hand. The applicant must identify in the template provided in the RFA available funding for start-up costs, as documented by current assets listed in the balance sheet and/or pledges for donations that do not require repayment, meeting or exceeding the following amounts:
- (i) the total amount of funds available;
 - (ii) the amount per student proposed to be served in the first year of operation; and
 - (iii) the amount of ~~minutes~~ days of operation funded by the amount in this subparagraph, defined by the total annual budget divided by 75,600 minutes ~~[180 days]~~ .
- (D) To ensure financial viability, the entity must commit to serving a minimum of 100 students at all times ~~[or shall explain fully why such a number is not optimum and/or attainable]~~ .
- (E) The entity applying for the charter must have liabilities that are less than 80% of its assets.
- (F) The aggregate of projected budgeted expenses must be less than the aggregate of projected total revenues by the end of the first year of operation provided that:
- (i) projected revenues are documented and use the amount per student designated in the RFA when calculating Foundation School Program (FSP) funding that will begin during the first year of operation, or the applicant provides compelling evidence as to the reasons that its FSP will be higher than the rate designated in the RFA; and
 - (ii) all reasonable start-up and first-year expenditures are included in the budgets or an explanation for not needing to include them is included in the budget narratives.
- (G) No more than 27% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of 500 or fewer students, or no more than 16% of the budget may be allocated for administrative costs for charters with an anticipated first-year enrollment of more than 500 students. Administrative costs are those costs identified as such in Texas Education Agency (TEA) financial publications for charter schools.
- (2) Governing standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall meet each of the following governing

standards to demonstrate sound establishment and oversight of the charter's educational mission , as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation, except as provided by Texas Education Code (TEC), §12.1054(a)(2).

- (A) To qualify as an eligible entity in accordance with TEC, §12.101(a)(3), as an organization that is exempt under 26 United States Code (USC), §501(c)(3), the applicant must have its own 501(c)(3) exemption in its own name, as evidenced by a 501(c)(3) letter of determination issued by the IRS. Thus, an applicant cannot attain status as an eligible entity that is exempt under 26 USC, §501(c)(3), as a disregarded entity, a supporting organization, or a member of a group exemption of a currently recognized 501(c)(3) tax-exempt organization. A religious organization, sectarian school, or religious institution that applies must have an established separate non-sectarian entity that is exempt under 26 USC, §501(c)(3), to be considered an eligible entity. Entities that have applied for 501(c)(3) status, but have yet to receive the exemption from the IRS, must provide the letter of determination of the 501(c)(3) status issued by the IRS prior to consideration for interview. Failure to secure 501(c)(3) status deems an entity ineligible.
 - (B) The articles of incorporation, the Certificate of Filing, the Certificate of Formation, and the bylaws of the applicant must vest the management of the corporate affairs in the board of directors. The management of the corporate affairs shall not be vested in any member or members nor shall the corporate charter or bylaws confer on or reserve to any other entity the ability to overrule, remove, replace, or name the members of the board of the charter holder during the duration of the charter's existence. However, if the applicant or its affiliate is a high performing entity, then it may vest management in a member provided that the entity may change the members of the governing body of the charter holder prior to the expiration of a member's term only with commissioner's written approval. An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section. Any other change in the aforementioned governance documents pursuant to the management of the corporate affairs of the nonprofit entity may only occur with the approval of the commissioner in accordance with §100.1033(b) of this title (relating to Charter Amendment) or in accordance with any other power granted to the commissioner in state law or rule.
 - (C) If the sponsoring entity is a 501(c)(3) nonprofit corporation, its bylaws must clearly state that the charter holder and charter school will comply with the Texas Open Meetings Act and will appropriately respond to Texas Public Information Act requests.
 - (D) No family members within the third degree of consanguinity or second degree of affinity shall serve on the charter holder or charter school board.
 - (E) No family member within the third degree of consanguinity or third degree of affinity of any charter holder board member, charter school board member, or superintendent shall receive compensation in any form from the charter school, the charter holder, or any management company that operates the charter school.
 - (F) The applicant shall specify that the governing body accepts and will not delegate ultimate responsibility for the school, including academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school.
- (3) Educational and operational standards. An applicant for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall successfully meet each of the following educational and operational standards to ensure careful alignment of curricula to the Texas Essential Knowledge and Skills , as determined by the commissioner or the commissioner's designee, prior to being considered for award of a charter and must understand

that any failure to maintain ongoing compliance with these requirements, if awarded a charter, will be considered a material violation of the charter contract and may be grounds for revocation.

- (A) The charter applicant must clearly explain the overall educational philosophy to be promoted at the school, if authorized.
- (B) The charter applicant must clearly explain in succinct terms the specific curricular programs that the school, if authorized, will provide to students and the ways in which the charter staff, board members, and others will use these programs to maintain high expectations for and the continuous improvement of student performance.
- (C) The charter applicant must clearly explain in succinct terms the ways in which the school, if authorized, will differ from the traditional neighborhood schools or charter schools that currently operate in the area where the school or schools would be located.
- (D) The charter applicant must clearly explain how classroom practices will reflect the connections among curriculum, instruction, and assessment.
- (E) The charter applicant must describe in succinct terms the specific ways in which the school, if authorized, will:
 - (i) address the instructional needs of students performing both below and above grade levels in major content areas;
 - (ii) differentiate instruction to meet the needs of diverse learners;
 - (iii) provide a continuum of services in the least restrictive environment for students with special needs as required by state and federal law;
 - (iv) provide bilingual and/or English as a second language instruction to English language learners as required by state law; and
 - (v) implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English.
- (F) As evidenced in required documentation, the charter applicant must commit to hiring personnel with appropriate qualifications as follows.
 - ~~(i) Teachers in all core subjects must be degreed and have demonstrated competency in the subjects in which they will be assigned to teach as required in federal law.~~
 - (i) ~~(iii)~~ Except as provided in clause (iv) of this subparagraph, all ~~(A)~~ teachers, regardless of subject matter taught, must have a baccalaureate degree.
 - (ii) ~~(iii)~~ Special education teachers, bilingual teachers, and teachers of English as a second language must be certified in the fields in which they are assigned to teach as required in state and/or federal law.
 - (iii) ~~(iv)~~ Paraprofessionals must be certified as required to meet state and/or federal law.
 - (iv) In an open-enrollment charter school that serves youth referred to or placed in a residential trade center by a local or state agency, a person may be employed as a teacher for a noncore vocational course without holding a baccalaureate degree, subject to the requirements described in §100.1212 of this title (relating to Personnel).
- (G) The charter applicant must commit to serving, by its third ~~(fifth)~~ year of operation, at least as many students in grades assessed for state accountability purposes as those served in grades not assessed for state accountability purposes.

- (H) The charter applicant must provide a final copy of any management contract, if applicable, that will be entered into by the charter holder that will provide any management services, including the monetary amount that will be paid to the management company for providing school services.
- (4) Additional requirements. An applicant for a competitive open-enrollment charter to be considered for award, as authorized by TEC, Chapter 12, Subchapter D, must ensure that each of the following occur or the application will be disqualified.
- (A) The application is complete and meets all of the requirements set forth in paragraphs (1)-(3) of this subsection, as determined by the commissioner or the commissioner's designee.
 - (i) The commissioner or the commissioner's designee may conclude the review of an application once it is apparent that the application is incomplete or that the application fails to meet one or more of the requirements set forth in paragraphs (1)-(3) of this subsection.
 - (ii) Any applicant who submits an incomplete application, an application that fails to meet one or more of the requirements as set forth in paragraphs (1)-(3) of this subsection, or an application that contains information referenced in subparagraph (D)(i)-(iii) of this paragraph will be notified pursuant to §100.1002(b) of this title (relating to Application and Selection Procedures and Criteria) by the TEA division responsible for charter schools that the application has been removed from consideration of award and will not be sent forward for scoring by the external review panel.
 - (I) An applicant that is notified that the application has been removed from consideration of award by the commissioner or the commissioner's designee will have five business days to respond in writing and direct TEA staff responsible for charter schools to the specific parts of the application, which was received by the application deadline, that address the identified issue or issues, or to submit missing attachments.
 - (II) Once any additional review is complete, the decision of the commissioner or the commissioner's designee is final and may not be appealed.
 - (B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.
 - (C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.
 - (D) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following must be excluded from all applications:
 - (i) personal email addresses;
 - (ii) proprietary material;
 - (iii) copyrighted material;
 - (iv) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of

existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

- (v) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(E) Any application that includes material referenced in subparagraph (D)(ii)-(v) [~~(D)(iv) and (v)~~] of this paragraph will be removed from consideration without any further opportunity for review [as described in subparagraph (A)(ii)(I) of this paragraph] .