

## ATTACHMENT I

### **Statutory Citations Relating to New 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1002, Accountability Rating System Provisions Related to Hurricane Harvey**

#### **Texas Education Code (TEC), §39.052, Determination of Accreditation Status or Performance Rating (excerpts):**

- (a) Each year, the commissioner shall determine the accreditation status of each school district.
- (b) In determining the accreditation status of a school district, the commissioner:
  - (1) shall evaluate and consider:
    - (A) performance on achievement indicators described by Section 39.053

#### **TEC, §39.053, Performance Indicators: Achievement:**

- (a) The commissioner shall adopt a set of indicators of the quality of learning and achievement, including the indicators under Subsection (c). The commissioner periodically shall review the indicators for the consideration of appropriate revisions.
- (a-1) The indicators adopted by the commissioner under Subsection (a) must measure and evaluate school districts and campuses with respect to:
  - (1) improving student preparedness for success in:
    - (A) subsequent grade levels; and
    - (B) entering the workforce, the military, or postsecondary education;
  - (2) reducing, with the goal of eliminating, student academic achievement differentials among students from different racial and ethnic groups and socioeconomic backgrounds; and
  - (3) informing parents and the community regarding campus and district performance.
- (b) Performance on the achievement indicators adopted under Subsection (c) shall be compared to state-established standards. The indicators must be based on information that is disaggregated by race, ethnicity, and socioeconomic status.
- (c) School districts and campuses must be evaluated based on three domains of indicators of achievement adopted under this section that include:
  - (1) in the student achievement domain, indicators of student achievement that must include:
    - (A) for evaluating the performance of districts and campuses generally:
      - (i) an indicator that accounts for the results of assessment instruments required under Sections 39.023(a), (c), and (l), as applicable for the district and campus, including the results of assessment instruments required for graduation retaken by a student, aggregated across grade levels by subject area, including:
        - (a) for the performance standard determined by the commissioner under Section 39.0241(a), the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; and

- (b) for the college readiness performance standard as determined under Section 39.0241, the percentage of students who performed satisfactorily on the assessment instruments, aggregated across grade levels by subject area; and
    - (ii) an indicator that accounts for the results of assessment instruments required under Section 39.023(b), as applicable for the district and campus, including the percentage of students who performed satisfactorily on the assessment instruments, as determined by the performance standard adopted by the agency, aggregated across grade levels by subject area; and
  - (B) for evaluating the performance of high school campuses and districts that include high school campuses, indicators that account for:
    - (i) students who satisfy the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section 51.3062(f) on an assessment instrument in reading or mathematics designated by the Texas Higher Education Coordinating Board under Section 51.3062(c);
    - (ii) students who satisfy relevant performance standards on advanced placement tests or similar assessments;
    - (iii) students who earn dual course credits in the dual credit courses;
    - (iv) students who enlist in the armed forces of the United States;
    - (v) students who earn industry certifications;
    - (vi) students admitted into postsecondary industry certification programs that require as a prerequisite for entrance successful performance at the secondary level;
    - (vii) students whose successful completion of a course or courses under Section 28.014 indicates the student's preparation to enroll and succeed, without remediation, in an entry-level general education course for a baccalaureate degree or associate degree;
    - (viii) students who successfully met standards on a composite of indicators that through research indicates the student's preparation to enroll and succeed, without remediation, in an entry-level general education course for a baccalaureate degree or associate degree;
    - (ix) high school graduation rates, computed in accordance with standards and definitions adopted in compliance with the Every Student Succeeds Act (20 U.S.C. Section 6301 et seq.) subject to the exclusions provided by Subsections (g), (g-1), (g-2), and (g-3);
    - (x) students who successfully completed an OnRamps dual enrollment course;
    - (xi) students who are awarded an associate's degree; and
    - [(xii) the percentage of students who successfully completed a practicum or internship approved by the State Board of Education.]
- (2) in the school progress domain, indicators for effectiveness in promoting student learning, which must include:

- (A) for assessment instruments, including assessment instruments under Subdivisions (1)(A)(i) and (ii), the percentage of students who met the standard for improvement, as determined by the commissioner; and
  - (B) for evaluating relative performance, the performance of districts and campuses compared to similar districts or campuses; and
- (3) in the closing the gaps domain, the use of disaggregated data to demonstrate the differentials among students from different racial and ethnic groups, socioeconomic backgrounds, and other factors, including:
  - (A) students formerly receiving special education services;
  - (B) students continuously enrolled; and
  - (C) students who are mobile.
- (c-1) An indicator adopted under Subsection (c) that would measure improvements in student achievement cannot negatively affect the commissioner's review of a school district or campus if that district or campus is already achieving at the highest level for that indicator.
- (c-2) The commissioner by rule shall determine a method by which a student's performance may be included in determining the performance rating of a school district or campus under Section 39.054 if, before the student graduates, the student:
  - (1) satisfies the Texas Success Initiative (TSI) college readiness benchmarks prescribed by the Texas Higher Education Coordinating Board under Section 51.3062(f) on an assessment instrument designated by the Texas Higher Education Coordinating Board under Section 51.3062(f); or
  - (2) performs satisfactorily on an assessment instrument under Section 39.023(c), notwithstanding Subsection (d).
- (c-3) Any standard for improvement determined by the commissioner as described by Subsection (c)(2)(A) must allow for appropriately crediting a student for growth if the student performs at the highest achievement standard in the previous and current school year.
- (d) For purposes of Subsection (c), the commissioner by rule shall determine the period within which a student must retake an assessment instrument for that assessment instrument to be considered in determining the performance rating of the district under Section 39.054.
- (d-1) In aggregating results of assessment instruments across grade levels by subject in accordance with Subsection (c)(1)(A)(i), the performance of a student enrolled below the high school level on an assessment instrument required under Section 39.023(c) is included with results relating to other students enrolled at the same grade level.
- (e) For purposes of Subsection (c)(3)(A), a student formerly receiving special education services means a student whose enrollment information:
  - (1) for the preceding school year, as reported through the Public Education Information Management System (PEIMS), indicates the student was enrolled at the campus and was participating in a special education program; and
  - (2) for the current school year, as reported through the Public Education Information Management System (PEIMS) and as reported on assessment instruments administered to the student under Section 39.023, indicates the student is enrolled at the campus and is not participating in a special education program.

- (f) Annually, the commissioner shall define the state standard for the current school year for each achievement indicator adopted under this section. In consultation with educators, parents, and business and industry representatives, as necessary, the commissioner shall establish and modify standards to continuously improve student performance to achieve the goals of eliminating achievement gaps based on race, ethnicity, and socioeconomic status and to ensure this state is a national leader in preparing students for postsecondary success.
- (g) In computing dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner may not consider as a dropout a student whose failure to attend school results from:
  - (1) the student's expulsion under Section 37.007; and
  - (2) as applicable:
    - (A) adjudication as having engaged in delinquent conduct or conduct indicating a need for supervision, as defined by Section 51.03, Family Code; or
    - (B) conviction of and sentencing for an offense under the Penal Code.
- (g-1) In computing dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner shall exclude:
  - (1) students who are ordered by a court to attend a high school equivalency certificate program but who have not yet earned a high school equivalency certificate;
  - (2) students who were previously reported to the state as dropouts, including a student who is reported as a dropout, reenrolls, and drops out again, regardless of the number of times of reenrollment and dropping out;
  - (3) students in attendance who are not in membership for purposes of average daily attendance;
  - (4) students whose initial enrollment in a school in the United States in grades 7 through 12 was as an unschooled asylee or refugee as defined by Section 39.027(a-1);
  - (5) students who are detained at a county pre-adjudication or post-adjudication juvenile detention facility and:
    - (A) in the district exclusively as a function of having been detained at the facility but are otherwise not students of the district in which the facility is located; or
    - (B) provided services by an open-enrollment charter school exclusively as the result of having been detained at the facility; and
  - (6) students who are incarcerated in state jails and federal penitentiaries as adults and as persons certified to stand trial as adults.

*Text of subsection as amended by HB 22, 85th Texas Legislature, Regular Session, 2017:*

- (g-2) In computing completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), the commissioner shall exclude students who:
  - (1) are at least 18 years of age as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission and have satisfied the credit requirements for high school graduation;
  - (2) have not completed their individualized education program under 19 T.A.C. Section 89.1070(b)(2) and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and

- (3) are enrolled and receiving individualized education program services.

*Text of subsection as amended by HB 890, 85th Texas Legislature, Regular Session, 2017:*

- (g-2) In computing completion rates under Subsection (c)(4)(A)(i), the commissioner shall exclude students who:
  - (1) are at least 18 years of age as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission and have satisfied the credit requirements for high school graduation;
  - (2) have not completed their individualized education program under 19 T.A.C. Section 89.1070(b)(2) and the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.); and
  - (3) are enrolled and receiving individualized education program services.
- (g-3) In the computation of dropout and completion rates such as high school graduation rates under Subsection (c)(1)(B)(ix), a student who is released from a juvenile pre-adjudication secure detention facility or juvenile post-adjudication secure correctional facility and fails to enroll in school or a student who leaves a residential treatment center after receiving treatment for fewer than 85 days and fails to enroll in school may not be considered to have dropped out from the school district or campus serving the facility or center unless that district or campus is the one to which the student is regularly assigned. The agency may not limit an appeal relating to dropout computations under this subsection.
- (h) Each school district shall cooperate with the agency in determining whether a student is a dropout for purposes of accreditation and evaluating performance by school districts and campuses under this chapter.
- (i) Each school district shall submit the data required for the indicators adopted under this section to the commissioner.

**TEC, §39.054, Methods and Standards for Evaluating Performance:**

- (a) The commissioner shall adopt rules to evaluate school district and campus performance and assign each district and campus an overall performance rating of A, B, C, D, or F. In addition to the overall performance rating, the commissioner shall assign each district and campus a separate domain performance rating of A, B, C, D, or F for each domain under Section 39.053(c). An overall or domain performance rating of A reflects exemplary performance. An overall or domain performance rating of B reflects recognized performance. An overall or domain performance rating of C reflects acceptable performance. An overall or domain performance rating of D reflects performance that needs improvement. An overall or domain performance rating of F reflects unacceptable performance. A district may not receive an overall or domain performance rating of A if the district includes any campus with a corresponding overall or domain performance rating of D or F. If a school district has been approved under Section 39.0544 to assign campus performance ratings and the commissioner has not assigned a campus an overall performance rating of D or F, the commissioner shall assign the campus an overall performance rating based on the school district assigned performance rating under Section 39.0544. A reference in law to an acceptable rating or acceptable performance includes an overall or domain performance rating of A, B, C, or D or performance that is exemplary, recognized, or acceptable performance or performance that needs improvement.
- (a-1) For purposes of assigning an overall performance rating for a district or campus under Subsection (a), the commissioner shall:

- (1) consider either the district's or campus's performance rating under the student achievement domain under Section 39.053(c)(1) or the school progress domain under Section 39.053(c)(2), whichever performance rating is higher, unless the district or campus received a performance rating of F in either domain, in which case the district or campus may not be assigned a performance rating higher than a B for the composite for the two domains; and
  - (2) attribute not less than 30 percent of the performance rating to the closing the gaps domain under Section 39.053(c)(3).
- (a-2) The commissioner by rule may adopt procedures to ensure that a repeated performance rating of D or F or unacceptable in one domain, particularly performance that is not significantly improving, is reflected in the overall performance rating of a district or campus under this section or a campus under Section 39.0544 and is not compensated for by a performance rating of A, B, or C in another domain.
- (a-3) Not later than August 15 of each year, the performance ratings of each district and campus shall be made publicly available as provided by rules adopted under this section.
- (a-4) For performance ratings issued in August 2018 for the 2017-2018 school year for campus performance, the commissioner shall issue only a rating of improvement required or met standard, as applicable, to a campus. This subsection expires January 1, 2019.
- (b) For purposes of assigning school districts and campuses an overall and a domain performance rating under Subsection (a), the commissioner shall ensure that the method used to evaluate performance is implemented in a manner that provides the mathematical possibility that all districts and campuses receive an A rating.
- (b-1) Consideration of the effectiveness of district programs under Section 39.052(b)(2)(B) or (C):
- (1) must:
    - (A) be based on data collected through the Public Education Information Management System (PEIMS) for purposes of accountability under this chapter; and
    - (B) include the results of assessments required under Section 39.023; and
  - (2) may be based on the results of a special accreditation investigation conducted under Section 39.057.
- (c) [Repealed.]
- (d), (d-1) [Repealed by Acts 2015, 84th Leg., ch. 1094 (H.B. 2804), § 22, effective June 19, 2015.]
- (e) Each annual performance review under this section shall include an analysis of the achievement indicators adopted under Section 39.053, including Subsection (c) of that section, to determine school district and campus performance in relation to standards established for each indicator.
- (f) [Renumbered to § 39.053(g-3), effective June 15, 2017.]

**TEC, §39.0541, Adoption of Indicators and Standards:**

The commissioner may adopt indicators and standards under this subchapter at any time during a school year before the evaluation of a school district or campus.

**TEC, §39.0548, Evaluating Dropout Recovery Schools:**

- (a) For purposes of evaluating performance under Section 39.053(c), the commissioner shall designate as a dropout recovery school a school district or an open-enrollment charter school or a campus of a district or of an open-enrollment charter school:
  - (1) that serves students in grades 9 through 12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and
  - (2) that meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.
- (b) Notwithstanding Section 39.053(c)(1)(B)(ix), the commissioner shall use the alternative completion rate under this subsection to determine the graduation rate indicator under Section 39.053(c)(1)(B)(ix) for a dropout recovery school. The alternative completion rate shall be the ratio of the total number of students who graduate, continue attending school into the next academic year, or receive a high school equivalency certificate to the total number of students in the longitudinal cohort of students.
- (c) Notwithstanding Section 39.053(c)(1)(B)(ix), in determining the performance rating under Section 39.054 of a dropout recovery school, the commissioner shall include any student described by Section 39.053(g-1) who graduates or receives a high school equivalency certificate.
- (d) Notwithstanding Section 39.053(c), for purposes of evaluating a dropout recovery school under the accountability procedures adopted by the commissioner to determine the performance rating of the school under Section 39.054, only the best result from the primary administration or any retake of an assessment instrument administered to a student in the school year evaluated may be considered.

**TEC, §39.055, Student Ordered by a Juvenile Court or Student in Residential Facility Not Considered for Accountability Purposes:**

Notwithstanding any other provision of this code except to the extent otherwise provided under Section 39.053(g-3), for purposes of determining the performance of a school district, campus, or open-enrollment charter school under this chapter, a student ordered by a juvenile court into a residential program or facility operated by or under contract with the Texas Juvenile Justice Department, a juvenile board, or any other governmental entity or any student who is receiving treatment in a residential facility is not considered to be a student of the school district in which the program or facility is physically located or of an open-enrollment charter school, as applicable. The performance of such a student on an assessment instrument or other student achievement indicator adopted under Section 39.053 or reporting indicator adopted under Section 39.301 shall be determined, reported, and considered separately from the performance of students attending a school of the district in which the program or facility is physically located or an open-enrollment charter school, as applicable.

**TEC, §39.151, Review by Commissioner: Accountability Determination:**

- (a) The commissioner by rule shall provide a process for a school district or open-enrollment charter school to challenge an agency decision made under this chapter relating to an academic or financial accountability rating that affects the district or school.
- (b) The rules under Subsection (a) must provide for the commissioner to appoint a committee to make recommendations to the commissioner on a challenge made to an agency decision relating

to an academic performance rating or determination or financial accountability rating. The commissioner may not appoint an agency employee as a member of the committee.

- (c) The commissioner may limit a challenge under this section to a written submission of any issue identified by the school district or open-enrollment charter school challenging the agency decision.
- (d) The commissioner shall make a final decision under this section after considering the recommendation of the committee described by Subsection (b). The commissioner's decision may not be appealed under Section 7.057 or other law.
- (e) A school district or open-enrollment charter school may not challenge an agency decision relating to an academic or financial accountability rating under this chapter in another proceeding if the district or school has had an opportunity to challenge the decision under this section.

**TEC, §39.201, Distinction Designations:**

- (a) Not later than August 8 of each year, the commissioner shall award distinction designations for outstanding performance as provided by this subchapter. A distinction designation awarded to a district or campus under this subchapter shall be referenced directly in connection with the performance rating assigned to the district or campus and made publicly available together with the performance ratings as provided by rules adopted under Section 39.054(a).
- (b) A district or campus may not be awarded a distinction designation under this subchapter unless the district or campus has acceptable performance under Section 39.054.
- (c) In addition to the condition prescribed by Subsection (b), an open-enrollment charter school may not be awarded a distinction designation under this subchapter if the charter school is evaluated under alternative education accountability procedures adopted by the commissioner.

**TEC, §39.2011, Applicability to Charter Schools:**

In this subchapter:

- (1) a district includes an open-enrollment charter school that operates on more than one campus; and
- (2) a campus includes an open-enrollment charter school campus.

**TEC, §39.202, Academic Distinction Designation for Districts and Campuses:**

The commissioner by rule shall establish an academic distinction designation for districts and campuses for outstanding performance in attainment of postsecondary readiness. The commissioner shall adopt criteria for the designation under this section, including:

- (1) percentages of students who:
  - (A) performed satisfactorily, as determined under the college readiness performance standard under Section 39.0241, on assessment instruments required under Section 39.023(a), (b), (c), or (l), aggregated across grade levels by subject area; or
  - (B) met the standard for annual improvement, as determined by the agency under Section 39.034, on assessment instruments required under Section 39.023(a), (b), (c), or (l), aggregated across grade levels by subject area, for students who did not perform satisfactorily as described by Paragraph (A);
- (2) percentages of:



- (A) students who earned a nationally or internationally recognized business or industry certification or license;
  - (B) students who completed a coherent sequence of career and technical courses;
  - (C) students who completed a dual credit course or an articulated postsecondary course provided for local credit;
  - (D) students who achieved applicable College Readiness Benchmarks or the equivalent on the Preliminary Scholastic Assessment Test (PSAT), the Scholastic Assessment Test (SAT), the American College Test (ACT), or the ACT-Plan assessment program; and
  - (E) students who received a score on either an advanced placement test or an international baccalaureate examination to be awarded college credit; and
- (3) other factors for determining sufficient student attainment of postsecondary readiness.

**TEC, §39.203, Campus Distinction Designations:**

- (a) The commissioner shall award a campus a distinction designation for outstanding performance in improvement in student achievement if the campus is ranked in the top 25 percent of campuses in the state in annual improvement in student achievement as determined under Section 39.034.
- (b) In addition to the distinction designation described by Subsection (a), the commissioner shall award a campus a distinction designation for outstanding performance in closing student achievement differentials if the campus demonstrates an ability to significantly diminish or eliminate performance differentials between student subpopulations and is ranked in the top 25 percent of campuses in this state under the performance criteria described by this subsection. The commissioner shall adopt rules related to the distinction designation under this subsection to ensure that a campus does not artificially diminish or eliminate performance differentials through inhibiting the achievement of the highest achieving student subpopulation.
- (c) In addition to the distinction designations described by Subsections (a) and (b), a campus that satisfies the criteria developed under Section 39.204 shall be awarded a distinction designation by the commissioner for outstanding performance in academic achievement in English language arts, mathematics, science, or social studies.
- (d) In addition to the distinction designations otherwise described by this section, the commissioner may award a distinction designation for outstanding performance in advanced middle or junior high school student achievement to a campus with a significant number of students below grade nine who perform satisfactorily on an end-of-course assessment instrument administered under Section 39.023(c).

**TEC, §29.081, Compensatory, Intensive, and Accelerated Instruction (excerpt):**

- (e) A school district may use a private or public community-based dropout recovery education program to provide alternative education programs for students at risk of dropping out of school. The program may be offered:
  - (1) at a campus; or
  - (2) through the use of an Internet online program that leads to a high school diploma and prepares the student to enter the workforce.
- (e-1) A campus-based dropout recovery education program must:
  - (1) provide not less than four hours of instructional time per day;

- (2) employ as faculty and administrators persons with baccalaureate or advanced degrees;
  - (3) provide at least one instructor for each 28 students;
  - (4) perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and
  - (5) comply with this title and rules adopted under this title except as otherwise provided by this subsection.
- (e-2) An Internet online dropout recovery education program must:
- (1) include as a part of its curriculum credentials, certifications, or other course offerings that relate directly to employment opportunities in the state;
  - (2) employ as faculty and administrators persons with baccalaureate or advanced degrees;
  - (3) provide an academic coach and local advocate for each student;
  - (4) use an individual learning plan to monitor each student's progress;
  - (5) establish satisfactory requirements for the monthly progress of students according to standards set by the commissioner;
  - (6) provide a monthly report to the student's school district regarding the student's progress;
  - (7) perform satisfactorily according to performance indicators and accountability standards adopted for alternative education programs by the commissioner; and
  - (8) comply with this title and rules adopted under this title except as otherwise provided by this subsection.

**TEC, §12.104, Applicability of the Title (excerpt):**

- (b) [2 Versions: As amended by Acts 2017, 85<sup>th</sup> Leg., chs. 324 and 522] An open-enrollment charter school is subject to:
  - (2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:
    - (L) public school accountability under Subchapters B, C, D, F, G, and J, Chapter 39, and Chapter 39A