

The Texas Education Agency (TEA) proposes amendments to §97.1075 and §97.1079, concerning contracting to partner to operate a district campus. The proposed amendments would remove language regarding the finality of decisions under 19 TAC §97.1075 and §97.1079 as a result of two court cases invalidating the provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under Texas Education Code (TEC), §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring. Section 97.1079 describes the criteria and determination processes for districts applying for benefits under TEC, §11.174(a)(2). Each rule includes a provision regarding the finality of the commissioner of education's decisions under the rule and the inability of districts to appeal those decisions. Due to recent court cases invalidating the provisions, the proposed amendments would remove §97.1075(k) and §97.1079(f).

FISCAL IMPACT: Kelvey Oeser, deputy commissioner of educator support, 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 existing regulations by removing the inability to appeal final decisions of the commissioner under the affected regulations.

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: Ms. Oeser 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 to reflect current law regarding appeals rights under the affected rules, as determined by the courts. 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: 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 December 29, 2023, and ends February 5, 2024. 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 December 29, 2023. 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/).

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §11.174, which requires the commissioner to adopt rules to administer the provisions for contracts regarding district campus operations; and TEC, §48.252, which requires the commissioner to adopt rules to administer the provisions for entitlements for district charter partnerships.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §11.174 and §48.252.

<rule>

§97.1075. Contracting to Partner to Operate a Campus under Texas Education Code, §11.174.

(a)-(j) (No change.)

~~[(k) 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)-(e) (No change.)

~~[(f) Decision finality. 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.]~~