

The Texas Education Agency (TEA) proposes new §100.1033 and amendments to §§100.1035, 100.1037, and 100.1039, concerning commissioner action, performance monitoring, and intervention for open-enrollment charter schools. The revisions would establish performance frameworks for charter schools established under Texas Education Code (TEC), Chapter 12, Subchapter G, including adult charter schools and adult charter schools in correctional facilities, by defining evaluation criteria in the new Adult Charter School Performance Framework (ACSPF) Manual. The manual would tie charter amendments, renewals, and expansions to these performance standards, including enrollment caps and discretionary renewal. The proposed revisions would also update existing rules regarding expansion and renewal to reference the new performance frameworks.

**BACKGROUND INFORMATION AND JUSTIFICATION:** The proposed revisions would add new §100.1033 to specify performance frameworks for Subchapter G charter schools and amend §§100.1035, 100.1037, and 100.1039 to include information relevant to Subchapter G charter schools.

New §100.1033(a) would be added to establish performance frameworks for adult charter schools, including adult charter schools in correctional facilities. It would provide the foundation for creating the ACSPF Manual, detailing the timeframe for updates, performance domains, criteria for assigning performance levels, and indicators used to evaluate academic, operational, and governance performance.

New §100.1033(b) would be added to detail the measures the ACSPF Manual would include for Subchapter G charter schools. It would also encompass performance domains that evaluate academic growth, career readiness, one-year post-graduation outcomes, longitudinal postsecondary results, longitudinal wage and career growth, and operational performance.

New §100.1033(c) would be added to outline the performance levels for charter schools in the ACSPF report according to the criteria defined in the ACSPF Manual. These criteria include academic, financial, operational, and governance indicators.

The proposed amendment to §100.1035(b)(3) would add language to include Subchapter G charter schools, incorporating their performance under §100.1033 into the evaluation criteria for charter amendment requests.

The proposed amendment to §100.1035(c)(1)(B) would insert language that establishes a deadline for when expansion requests must be submitted for Subchapter G charter schools.

The proposed amendment to §100.1035(5)(A)(i) would add language that grants the commissioner of education authority to approve expansion amendment requests related to increasing maximum allowable enrollment, with a specific limitation that Subchapter G charter schools cannot exceed an enrollment cap of 2,000 students.

The proposed amendment to §100.1037(d)(2)(A) would insert language that requires the commissioner to consider the results of a Subchapter G charter school's annual evaluation under the ACSPF Manual when evaluating a petition for discretionary renewal.

The proposed amendment to §100.1037 would add new subsection (f) to specify the criteria, requirements, or special conditions Subchapter G charter schools must meet to qualify for renewal.

New §100.1037(f)(1) would be added to clarify the process for discretionary renewal. This change would allow adult high school charters to submit petitions for discretionary renewal, which must be evaluated through the discretionary renewal process. Under this new paragraph, these schools would not be eligible to apply for expedited renewal.

New §100.1037(f)(2) would be added to establish the criteria for discretionary renewal. It would clarify the standard by which the commissioner will evaluate petitions for discretionary renewal. The overall evaluation process would be based on the academic performance criteria outlined in the ACSPF Manual.

New §100.1037(f)(3) would clarify the commissioner's authority to revoke a Subchapter G charter school's charter if the charter school's adult education program fails to meet the minimum performance standards established in the ACSPF for three consecutive school years after the second year of operation.

The proposed amendment to §100.1039(3)(F) would insert language specifying that Subchapter G charter schools must meet the performance measures outlined in the ACSPP or risk revocation of their charter.

**FISCAL IMPACT:** Marian Schutte, deputy associate commissioner for authorizing, 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 assessed the Government Growth Impact Statement for the proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation and expand existing regulations by establishing standards for evaluating the performance of Subchapter G charter schools, including adult charter schools and adult charter schools in correctional facilities.

The proposal 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 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:** Ms. Schutte 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 create clear performance frameworks and evaluation criteria for Subchapter G charter schools, including adult charter schools and adult charter schools in correctional facilities, ensuring accountability and consistent quality standards that meet the needs of adult learners and workforce readiness. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would introduce data and reporting responsibilities for authorized Subchapter G adult high school charter schools. This framework would expand upon the existing Charter School Performance Framework by incorporating additional metrics specifically tailored to the performance and accountability standards for adult high school programs. Schools would be required to submit annual data through various collection methods, including survey tools and school-provided data, ensuring comprehensive reporting at the district level. Compliance with this mandatory reporting would be grounded in legal mandates such as TEC, §12.262, with data informing state oversight and decision-making processes.

**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 March 21, 2025, and ends April 21, 2025. 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 March 21, 2025. 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 new section and amendments are proposed under Texas Education Code (TEC), §12.262, which requires the commissioner, working alongside the advisory committee established under TEC, §12.254, to develop and adopt an accountability framework. This framework must establish standards to evaluate the performance of adult education programs operating under charters granted under TEC, Chapter 12, Subchapter G; and TEC, §12.265, which requires the commissioner to adopt rules necessary to administer the program under TEC, Chapter 12, Subchapter G, including rules to implement and administer TEC, §12.262, and allows the commissioner to establish maximum number of students who may be enrolled in an adult education program under TEC, Subchapter G.

CROSS REFERENCE TO STATUTE. The new section and amendments implement Texas Education Code, §12.262 and §12.265.

<rule>

§100.1033. Performance Frameworks for Subchapter G Charter Schools.

- (a) The performance of an adult high school charter school program will be measured annually against criteria set forth in the Adult Charter School Performance Framework (ACSPF) Manual established under Texas Education Code (TEC), §12.262. The ACSPF Manual also contains the framework for a school located in a correctional facility, as that term is defined by Texas Penal Code, §1.07. Notwithstanding substantial modifications to the framework, the manual will be updated annually to reflect the requirements and data sources for each indicator.
- (b) The ACSPF Manual will include measures for Subchapter G charter schools and include performance domains that measure:
  - (1) academic growth;
  - (2) career readiness;
  - (3) one-year post-graduation and longitudinal postsecondary outcomes;
  - (4) longitudinal wage and career growth; and
  - (5) operational performance.
- (c) The assignment of performance levels Tier 1, Tier 2, or Tier 3 for charter schools on the ACSPF report is based on specific criteria described in the ACSPF Manual, which include:
  - (1) Academic Indicators: the charter school's performance on academic growth, career readiness, one-year post-graduation and longitudinal postsecondary outcomes, and longitudinal wage and career growth;
  - (2) Financial Indicator: the charter school's overall financial rating as assigned under TEC, Chapter 39, Subchapter D;
  - (3) Operational Indicators, which evaluate each charter school's compliance with educational, operational, safety, and reporting requirements as required by federal law, state law, state rules or regulations, and/or the charter contract, including those outlined in TEC, Chapter 12, and this chapter; and
  - (4) Governance Indicators, which evaluate each charter school's compliance with state law and state rules or regulations with governance requirements, including those outlined in TEC, Chapter 12, and this chapter.

§100.1035. Charter Amendment.

- (a) Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by expansion or non-expansion amendment as approved by the commissioner of education.
- (b) Information relevant to all amendment requests.
  - (1) Filing of amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools.
  - (2) Board resolution. The request must be attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.
  - (3) Relevant information considered. As directed by the commissioner, a charter holder requesting an amendment shall submit current information required by the prescribed amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its performance on the Charter School Performance Frameworks (CSPF) adopted by rule in §100.1031 of this title (relating to Performance Frameworks for Subchapters D and E Charter Schools) and §100.1033 of this title (relating to Performance Frameworks for Subchapter G Charter Schools) ; student and other performance; compliance, staff, financial, and organizational data; and other information.
  - (4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of students. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.
  - (5) Conditional approval. The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of students.
  - (6) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.
  - (7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the commissioner's intent to allow the expiration of the charter or intent to revoke the charter. This subsection does not limit the commissioner's authority to accept the surrender of a charter.
- (c) Expansion amendments.
  - (1) Timeline for submission. A charter holder may submit a request for approval for an expansion amendment:
    - (A) up to 36 months before the date on which the expansion will be effective; and
    - (B) no later than the first day of March before the school year for which the expansion will be effective or no later than June 30 of each year for which the expansion will be effective for Subchapter G charter schools .
  - (2) Notification.
    - (A) Upon receipt of an expansion amendment request by a charter holder, the TEA division responsible for charter schools will notify the following:
      - (i) the superintendent and the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as defined in §100.1013 of this title (relating to Notification of Charter Application); and

- (ii) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as defined in §100.1013 of this title.
  - (B) To be considered a school district for purposes related to land development standards, licensing, zoning, and various purposes and services, a charter school must meet the notification requirements as outlined in §100.1209 of this title (relating to Municipal Ordinances).
  - (C) Should a change in the location of a campus be approved after notification but prior to opening, the commissioner of education or the commissioner's designee is required to notify as required by subparagraph (A) of this paragraph based on the zip code of the new location.
- (3) Expansion types. A charter holder of an open-enrollment charter may submit, as described by this section, a request for approval for either:
- (A) expedited expansion; or
  - (B) discretionary expansion.
- (4) Expedited expansion amendments. An expedited expansion amendment allows for the establishment of a new charter campus under Texas Education Code (TEC), §12.101(b-4).
- (A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements:
    - (i) an accreditation status of Accredited;
    - (ii) currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years;
    - (iii) is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five ratings;
    - (iv) at least 75% of the campuses rated under the charter school also received a rating in the highest or second highest performance rating category in the most recent ratings; and
    - (v) no campus received a rating in the lowest performance rating category in the most recent ratings.
  - (B) Unless the commissioner provides written notice that the charter holder does not meet the requirements outlined in TEC, §12.101(b-4), within 60 days of the date the charter holder submits a completed expedited expansion amendment, the amendment is considered enacted. If the commissioner denies the amendment, the commissioner must identify the legal and factual basis for denial, including the specific criteria under TEC, §12.101(b-4), that was not met.
- (5) Discretionary expansion amendments. A discretionary expansion amendment permits commissioner-approved changes to the terms of an open-enrollment charter school related to expansion.
- (A) Discretionary expansion amendment types. There are three types of discretionary amendments.
    - (i) Maximum enrollment. The commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment. For Subchapter G charter schools, the maximum enrollment may not exceed more than 2,000 students.

- (ii) Grade span. The commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A, of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.
  - (iii) Adding a campus or site. The commissioner may approve an expansion amendment request seeking to add a new campus or site under a campus only if it meets the following criteria:
    - (I) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years; and
    - (II) a new site under an existing campus will be located within 25 miles of the campus with which it is associated.
- (B) Board certification. Before voting to request a discretionary expansion amendment, the charter holder governing board must certify that they have considered a business plan and has determined by majority vote of the board that the growth proposed is financially prudent relative to the financial and operational strength of the charter school and includes such a statement in the board resolution. The commissioner may request submission of the business plan, which must be comprised of the following components:
  - (i) a statement discussing the need for the expansion;
  - (ii) a statement discussing the current and projected financial condition of the charter holder and charter school;
  - (iii) an unaudited statement of financial position for the current fiscal year;
  - (iv) an unaudited statement of financial activities for the current fiscal year;
  - (v) an unaudited statement of cash flows for the current fiscal year;
  - (vi) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;
  - (vii) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;
  - (viii) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;
  - (ix) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment;
  - (x) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed;
  - (xi) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;
  - (xii) there are no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve as reported in the Governance Reporting Forms submitted to TEA for the previous three years; and
  - (xiii) the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.
- (C) Requirements. The commissioner may approve a discretionary expansion amendment only if:

- (i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a district rating of an A, B, or C and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings of an A, B, or C;
  - (ii) the charter school has an accreditation status of Accredited;
  - (iii) the most recent district rating for the charter school is an A, B, or C;
  - (iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas for charter schools is "satisfactory" as defined by §100.1001(9) of this title (relating to Definitions);
  - (v) a charter holder that operates multiple charter campuses meets the criteria in subclause (I) or (II) of this clause. When calculating the percentages described, campuses that receive a 'Not Rated' rating shall not be included in the calculation.
    - (I) At least 90% of the campuses that receive an accountability rating are rated as an A, B, or C.
    - (II) If 75-89% of campuses that receive an accountability rating under the charter school are rated as an A, B, or C, the charter holder must provide additional information with the expansion request; and
  - (vi) the most recent designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1031 of this title.
- (D) Discretionary expansion amendment determination timeline. Notice of the commissioner's decision regarding a discretionary expansion amendment will be made within 60 calendar days of the date the charter holder submits a completed amendment request. The notice of the commissioner's determination may be sent electronically.
- (6) High-quality campus designation. A high-quality campus designation is a separate designation and must be requested prior to the opening of a new campus associated with an approved expansion amendment. Charter holders of charter schools that receive high-quality campus designation from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.
  - (A) The commissioner may approve a high-quality campus designation for a charter only if:
    - (i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;
    - (ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System), has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has an "A" or "B" rating at the local education agency level, and has an "A" or "B" rating in the previous two years in which ratings were issued with each campus that received a rating and operated under the charter also receiving an "A" or "B" rating as defined by §100.1001(8) of this title in the most recent state accountability ratings;
    - (iii) no charter campus has been identified for federal interventions in the most current report;
    - (iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

- (v) is rated "Tier 1" in the most recent CSPF and meets the requirements of federal law and TEC, §12.111(a)(3) and (4);
    - (vi) the charter holder completes an application approved by the commissioner;
    - (vii) the amendment complies with all requirements of this paragraph; and
    - (viii) the commissioner determines that the designation is in the best interest of students.
  - (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:
    - (i) satisfies each element of the definition of a public charter school as set forth in federal law, including:
      - (I) admits students on the basis of a lottery, consistent with Elementary and Secondary Education Act, §4303(c)(3)(A), if more students apply for admission than can be accommodated; or
      - (II) in the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in subclause (I) of this clause;
    - (ii) is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a separate facility and county-district-campus number; and
    - (iii) holds a valid charter contract issued by TEA.
  - (C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:
    - (i) the terms of the open-enrollment charter school as a whole, as modified by the high-quality campus designation; and
    - (ii) whether the campus with the proposed designation shall be established and recognized as a separate school under Texas law.
  - (D) Failure to meet any standard or requirement for high-quality campus designation or agreed to in a performance agreement shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the high-quality campus designation.
  - (E) Notice of the commissioner's decision regarding a high-quality campus designation will be made within 60 calendar days of the date the charter holder submits a completed request. The notice of the commissioner's determination may be sent electronically.
- (d) Non-expansion amendment. A non-expansion amendment permits changes to the terms of an open-enrollment charter school not related to expansion.
- (1) Timeline for submission. All non-expansion amendments may be filed with the commissioner at any time throughout the year.
  - (2) Non-expansion amendment types. A non-expansion amendment is either material or non-material.
    - (A) Material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: relocation of a campus, campus or charter dormancy,



closing or returning an active campus or site, charter holder governance, articles of incorporation, corporate bylaws, management company, admission and enrollment policy, shared services cooperatives or shared services agreements, and curriculum programs not already approved by TEA.

- (i) Relocation amendment. A material non-expansion amendment to relocate solely permits a charter holder to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address of the relocation shall not be in excess of 25 miles from the existing campus address.
  - (ii) Material charter language change. Any material non-expansion amendment that requires changes to charter language shall set forth the text and page references in electronic format of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language.
- (B) Non-material non-expansion amendments include changes to the terms of an open-enrollment charter, including the following: charter holder name, charter school (district) name, charter campus name, grade levels served on a campus, campus start date change, closing or returning a dormant campus or site, and fiscal year change.
- (C) Any non-expansion amendment not identified in subparagraph (A) or (B) of this paragraph is subject to commissioner determination as material or non-material.
- (D) The following timelines apply to non-expansion amendment requests.
  - (i) Charter holders that submit material non-expansion requests will receive notice of the commissioner's decision within 60 calendar days of a completed amendment request.
  - (ii) Charter holders that submit non-material non-expansion requests may proceed with the request 30 calendar days after the date the charter holder submits a completed amendment request unless otherwise notified by the commissioner.

§100.1037. Renewal of an Open-Enrollment Charter.

- (a) Petition for renewal.
  - (1) A charter holder of an open-enrollment charter may submit, as described by this section, a petition for:
    - (A) expedited renewal; or
    - (B) discretionary renewal.
  - (2) A petition for renewal of the charter must be submitted on the date provided by the Texas Education Agency (TEA) annually, prior to the expiration of the charter contract.
  - (3) A petition for renewal must be in the form provided by TEA and shall include all information and documentation required by the form.
  - (4) If a charter holder fails to submit a timely and sufficient petition for renewal of an open-enrollment charter, the existing charter may expire at the end of its term.
- (b) Expedited renewal. If a charter holder submits the petition for expedited renewal, the commissioner of education will approve or deny the expedited renewal not later than the 30th day after the date of the charter holder submission. A charter holder may submit a petition for expedited renewal if:
  - (1) the charter holder has been assigned the highest or second highest performance rating under Texas Education Code (TEC), Chapter 39, Subchapter C, for the three preceding school years;

- (2) the charter holder has been assigned a financial performance accountability rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is satisfactory or better for the three preceding school years; and
  - (3) no campus operating under the charter has been assigned an unacceptable performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years or such a campus has been closed.
- (c) Expiration. Notwithstanding any other law and in accordance with TEC, §12.1141(e), a determination by the commissioner of education under this subsection is final and may not be appealed. The commissioner may not renew the charter and must allow the charter to expire if:
  - (1) the charter holder has been assigned the unacceptable performance rating under TEC, Chapter 39, Subchapter C, for any three of the five preceding school years;
  - (2) the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;
  - (3) the charter holder has been assigned any combination of the ratings described by paragraph (1) or (2) of this subsection for any three of the five preceding school years. For purposes of determining a combination, a school that earned a financial and academic rating as described in paragraphs (1) and (2) of this subsection in the same year will count once; or
  - (4) any campus operating under the charter has been assigned an unacceptable performance rating under TEC, Chapter 39, Subchapter C, for the three preceding school years and such a campus, and if applicable, all sites associated with the campus, has not been closed.
- (d) Discretionary renewal.
  - (1) A charter holder may submit a petition for discretionary renewal if it:
    - (A) does not qualify to submit the petition for expedited renewal; or
    - (B) is not subject to an expiration under subsection (c) of this section.
  - (2) In evaluating the petition for discretionary renewal, the commissioner shall consider:
    - (A) the results of the charter's annual evaluation under the performance framework set forth in the Charter School Performance Framework (CSPF) Manual established under TEC, §12.1181 , or the results of the charter's annual evaluation under the performance framework set forth in the Adult Charter School Performance Framework (ACSPF) Manual established under TEC, §12.262 ; and
    - (B) the criteria described under §100.1039 of this title (relating to Standards for Discretionary Renewal).
- (e) Special rules for alternative education accountability (AEA) charters. The following provisions apply to the renewal of the charter of an open-enrollment charter school that is registered under the TEA AEA procedures for evaluation under TEC, Chapter 39.
  - (1) Discretionary renewal of AEA charters. An AEA charter may submit the petition for discretionary renewal and the petition must be considered under the discretionary renewal process. An AEA charter may not submit a petition for expedited renewal.
  - (2) Academic criteria for discretionary renewal of AEA charters.
    - (A) In considering a petition for discretionary renewal by an AEA charter such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria as outlined in the CSPF Manual established under TEC, §12.1181, that is appropriate to measure the specific goals of the school.

- (B) For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school that:
  - (i) serves students in Grades 9-12 and has an enrollment of which at least 60% of the students are 16 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System submission or applies for and receives designation as a dropout recovery school in accordance with commissioner rule; and
  - (ii) meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.
- (3) Expiration of AEA charters. The commissioner may not renew and must allow an AEA charter to expire if the charter holder has been assigned a financial accountability performance rating under TEC, Chapter 39, Subchapter D, indicating financial performance that is lower than satisfactory for any three of the five preceding school years.
- (f) Special rules for adult high school charter school program charters. The following provisions apply to the renewal of the charter of an adult high school charter school authorized under TEC, Chapter 12, Subchapter G.
  - (1) Discretionary renewal of adult high school charter school charters. An adult high school charter school may submit the petition for discretionary renewal, and the petition must be considered under the discretionary renewal process. An adult high school charter school may not submit a petition for expedited renewal.
  - (2) Academic criteria for discretionary renewal of adult high school charter school program charters. In considering a petition for discretionary renewal by an adult high school charter school, the commissioner shall use academic criteria as outlined in the ACSPF Manual established under TEC, §12.262.
  - (3) Revocation of adult high school charter school charters. The commissioner may revoke a charter to operate an adult education program if the charter's adult education program fails to meet the minimum performance standards established in the ACSPF adopted by rule in §100.1033 of this title (relating to Performance Frameworks for Subchapter G Charter Schools) for three consecutive school years after the second year of operation.
- ~~(g)~~ [(f)] Notice and content of renewal decision or determination.
  - (1) Expedited renewal decision. Not later than the 30th day after the submission of a petition for expedited renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the expedited renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the decision.
  - (2) Discretionary renewal decision. Not later than the 90th day after the submission of a petition for discretionary renewal, the commissioner shall provide written notice to the charter holder of the commissioner's decision to grant or deny the petition. If the discretionary renewal is denied, the notice shall include an explanation of the factual and legal basis for the decision, a description of the legally relevant factors considered, an explanation of why the result reached is reasonable, and a description of the procedures to seek a review of the determination.
  - (3) Expiration determination. The commissioner shall provide written notice to the charter holder of the commissioner's determination that the charter must expire. In the event a charter holder that meets the criteria for expiration submits a petition for renewal, the commissioner, not later than the 90th day after the submission, shall provide written notice to the charter holder of the commissioner's decision to deny the petition. Determinations made by the commissioner are final and may not be appealed. The notice shall include an explanation of the factual and legal basis for

the determination, a description of the legally relevant factors considered, and an explanation of why the result reached is reasonable.

- (4) Delivery and effective date of notice. The commissioner shall provide written notice electronically to the charter holder. Notice is effective on the sent date of the electronic notification.
- (h) ~~(g)~~ Appeal of renewal decisions and determinations. A decision by the commissioner to deny the petition for an expedited renewal or the petition for a discretionary renewal is subject to review by the State Office of Administrative Hearings under an arbitrary and capricious or clearly erroneous standard as described under Chapter 157, Subchapter EE, Division 4, of this title (relating to State Office of Administrative Hearings Arbitrary and Capricious or Clearly Erroneous Review).
- (i) ~~(h)~~ Use of ratings and data. The following provisions apply to the petition for renewal or expiration under this section.
  - (1) If a rating is not issued during one or more of the preceding school years, then the term "three preceding school years" means the most recent three school years during which a rating was issued, and the term "three of the five preceding school years" means three out of the most recent five school years during which a rating was issued, not to exceed more than the six most recent years.
  - (2) A rating that does not meet the criteria for "academically acceptable" as defined by §100.1001(8) of this title (relating to Definitions) shall not be considered the highest or second highest academic performance rating for purposes of this section.
  - (3) For purposes of renewal or expiration under this section, the term "unacceptable performance" means an unacceptable academic performance rating as defined by §100.1001(8) of this title.
  - (4) For purposes of renewal under this section, the term "financial performance lower than satisfactory" means a financial performance rating as defined by §100.1001(9) of this title.
- (j) ~~(i)~~ Conflict of rule. Except as provided by subsection (c) of this section, a contract term that conflicts with any rule in Part 2 of this title (relating to Texas Education Agency) is superseded by the rule to the extent that the rule conflicts with the contract term.
- (k) ~~(j)~~ Conditional approval. Notwithstanding any other rule in Part 2 of this title, the commissioner may require, as a condition of renewal, that the charter holder amend a contract under TEC, §12.114(a), to correct any ambiguities, defects, or other infirmities.

#### §100.1039. Standards for Discretionary Renewal.

Criteria for discretionary renewal. The following criteria shall be considered by the commissioner of education during the discretionary renewal process. The commissioner may non-renew a charter contract based on any of the following.

- (1) Academic:
  - (A) assignment of an "academically unacceptable" rating as defined in §100.1001(8) of this title (relating to Definitions);
  - (B) failure to meet academic performance standards for students not measured in the accountability system;
  - (C) unsatisfactory academic performance of subpopulations; and
  - (D) failure to meet program requirements for special populations, including, but not limited to, special education, bilingual/English as a second language, and career and technical education.
- (2) Financial:
  - (A) failure to use state funds for purposes for which a school district may use local funds under Texas Education Code (TEC), §45.105(e);

- (B) failure to hold state funds in trust for the benefit of the students of the charter school;
- (C) failure to satisfy generally acceptable accounting standards of fiscal management;
- (D) failure to resolve a lien, levy, or other garnishment within 30 days;
- (E) existence of a Foundation School Program (FSP) allotment subject to a warrant hold and that warrant has not been removed within 30 days;
- (F) failure to timely file annual financial report required under TEC, §44.008;
- (G) existence of an annual financial report containing adverse, qualified, or disclaimed opinion(s);
- (H) assignment of a lower than satisfactory financial performance rating as defined in §100.1001(9) of this title;
- (I) submission of attendance accounting data resulting in an overallocation from the FSP;
- (J) existence of the following interested transactions:
  - (i) failure to comply with Local Government Code, Chapter 171;
  - (ii) failure to record and report on the governance reporting forms all financial transactions between charter school and non-charter activities of charter holder; and
  - (iii) failure to timely and accurately record and report on the governance reporting forms all financial transactions required in the governance reporting form;
- (K) failure to post all financial information, including the salary of the chief executive officer (CEO), annual financial statement, most current annual financial report, and approved budget, on the charter school's website;
- (L) payment of salaries of the CEO and/or other administrative position(s) that exceed reasonable fair market value for the services provided. Fair market value shall be based on size of school, individual's education, prior salary history, job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn;
- (M) renting or purchasing property for amounts in excess of fair market value;
- (N) loss of eligibility to participate in the child nutrition program for more than 30 days;
- (O) charter holder being imminently insolvent as defined by this chapter;
- (P) failure to conduct fiscal management, including, but not limited to, the loss of financial records or a material non-compliance with State Board of Education or commissioner accounting requirements and failure to comply with the Financial Accountability System Resource Guide adopted under §109.41 of this title (relating to Financial Accountability System Resource Guide); and
- (Q) failure to comply with applicable purchasing requirements, including Local Government Code, Chapter 271, if applicable.

(3) Operational:

- (A) Governance:
  - (i) failure to timely file accurate and complete governance reporting forms;
  - (ii) non-compliance with required charter board training;
  - (iii) failure to timely and accurately report board training in the annual financial report;
  - (iv) failure to maintain verification of criminal history check/fingerprinting;

- (v) failure to maintain verification of compliance with reporting requirements of the Secretary of State, the Texas Family Code, the Texas Open Meetings Act, the Texas Public Information Act, government and local records, applicability of public purchasing and contracting, and conflicts of interest and nepotism;
  - (vi) allowing a person with a criminal record to be employed or serve as a volunteer, officer, or board member in violation of TEC, Chapters 12 and 22;
  - (vii) failure of an employee or officer of the charter school to report child abuse or neglect as required by the Texas Family Code, Chapter 261;
  - (viii) failure to disclose and report all conflict of interest and nepotistic relationships to the Texas Education Agency (TEA) in the applicable minutes of the charter holder's corporate records;
  - (ix) failure to submit to the Secretary of State a listing of all current members of the charter holder, the articles of incorporation, the by-laws, assumed name, and any other matter of the corporate business required to be reported to the Secretary of State; and
  - (x) failure to maintain the 501(c)(3) status of the charter holder at all times;
- (B) Complaints: failure to timely respond to and correct any complaints as directed by TEA;
- (C) Property and campus operations (campuses of charter holders that provide instructional services within residential detention, treatment, or adjudication facilities are not subject to clauses (ii) and (iii) of this subparagraph):
  - (i) operation of any campus that does not meet the definition of a campus according to §100.1001(6)(B) of this title and that does not serve a minimum of 100 students as reflected in the Public Education Information Management System (PEIMS) fall snapshot;
  - (ii) failure of the charter holder to serve a minimum of 100 students, as reflected in the PEIMS fall snapshot, unless a lower number is declared and approved in the charter contract or approved by the commissioner;
  - (iii) failure to document and fully disclose any step transactions in the purchase or sale of property; and
  - (iv) failure to ensure that all charter holder buildings used for educational purposes have a valid certificate of occupancy for educating children;
- (D) Activity fees and volunteer requirements:
  - (i) requiring any activity fees or any compulsory fees that are not authorized by TEC, §11.158, or other law; and
  - (ii) requiring any parental involvement, donation, or volunteerism as a condition of enrollment or continued enrollment;
- (E) Management contracts:
  - (i) charter holder board allowing any entity to exercise control or ultimate responsibility for the school, including the academic performance, financial accountability, or operational viability;
  - (ii) charter holder board not retaining or exercising ultimate responsibility for the management of the charter school without regard to execution of a management contract with a charter management organization (CMO);
  - (iii) failure to timely file a current copy of the executed management contract, including any and all amendments, with TEA;

- (iv) failure of the board of directors of the charter holder to ensure that both the charter holder and CMO are compliant with all the rules applicable to charter schools, including, but not limited to:
    - (I) financial accounting;
    - (II) record retention;
    - (III) health, safety, and welfare of students;
    - (IV) educational program accountability;
    - (V) Texas Open Meetings Act;
    - (VI) Texas Public Information Act; and
    - (VII) policies, procedures, and legal requirements found in state and federal laws/guidelines and the charter contract; and
  - (v) failure to comply with requirements in §100.1155 of this title (relating to Substantial Interest in Management Company; Restrictions on Serving) prohibiting a board member from having a substantial interest in the CMO; and
- (F) Charter school performance framework: failure to satisfy applicable performance framework measures as prescribed in the Charter School Performance Framework Manual established under TEC, §12.1181 or Adult Charter School Performance Framework established under TEC, §12.262 .