

The Texas Education Agency (TEA) adopts the repeal of §105.1011 and new §105.1011, concerning additional state aid for open-enrollment charter school facilities. The proposed repeal is adopted without changes to the proposed text as published in the April 24, 2026 issue of the *Texas Register* (51 TexReg 2580) and will not be republished. The proposed new section is adopted with changes to the proposed text as published in the April 24, 2026 issue of the *Texas Register* (51 TexReg 2580) and will be republished. The adopted repeal and new rule implement changes made by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, by defining eligibility criteria and implementing an annual certification provision to receive funding.

**REASONED JUSTIFICATION:** HB 2, 89th Texas Legislature, Regular Session, 2025, amended Texas Education Code (TEC), §12.106(d), to repeal the \$60 million appropriation cap and amend the formula for the allotment to be either the lesser of the state average interest and sinking tax rate imposed by school districts for the current school year multiplied by the guaranteed level of state and local funds per student per cent of tax effort or the basic allotment multiplied by \$0.06.

HB 2 amended TEC, §12.106(e), to expand the criteria under which a charter holder is not eligible to receive facilities funding. As amended, a charter holder is ineligible for funding if it has been assigned an unacceptable academic performance rating under TEC, Chapter 39, Subchapter C; a financial accountability performance rating lower than satisfactory under TEC, Chapter 39, Subchapter D; or any combination of these ratings during the two preceding school years. Additionally, HB 2 added new TEC, §12.106(e-2), which requires charter holders to annually certify that no individual associated with the charter school, including administrators, governing body members, or their close relatives, receives a financial benefit from a real estate transaction with the school.

To implement HB 2, the adopted repeal removes the previous requirements and adopted new §105.1011 establishes eligibility criteria and funding determination processes for open enrollment charter schools under TEC, §12.106(d), accountability rating standards, funding timelines, and the requirement for an annual certification.

In response to public comment, the adopted rule was revised to clarify that a charter school assigned a "Not Rated" designation for academic performance or financial accountability is not considered to have received an unacceptable rating for purposes of determining eligibility for facilities funding. Specifically, new subsection (a)(3) was added to describe and clarify eligibility criteria in TEC, §12.106(e).

In response to public comment, the adopted rule was revised to clarify the treatment of charter schools in their first two years of operation. Specifically, §105.1011(c) includes revised language at adoption that charter schools in their first two years of operation will automatically receive estimated funding based on the eligibility provisions in TEC, §12.106(e-1).

Also, in response to public comment, TEA revised §105.1011(e) to replace final eligibility determinations occurring only at settle-up with a process that allows TEA to update estimated funding upon the availability of final data.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began April 24, 2026, and ended May 26, 2026. Following are the public comments received and the agency responses.

**Comment:** An administrator raised concerns regarding equity, fiscal risk, and oversight related to the proposed repeal and replacement of §105.1011. The concern highlighted that the proposal did not provide comparable support for independent school districts, potentially creating funding imbalances and diverting state resources. Additionally, the commenter was concerned about increased long-term costs and insufficient safeguards for long-term performance. The administrator also noted that expanded charter growth could disrupt local school systems and that the proposal lacked sufficient transparency and oversight for the use of facilities funding.

**Response:** This comment is outside the scope of the proposed rulemaking. The issues raised by the commenter relate to broader state funding policy and statutory provisions determined by the Texas Legislature. HB 2 implements applicable law regarding charter school facilities funding and does not address the broader school finance policy issues raised in the comment. No changes to the rules were made in response.

**Comment:** The Texas Public Charter School Association (TPCSA) raised concerns with the proposed repeal and replacement of §105.1011. Specifically, TPCSA contended that an assigned "Not Rated" academic or financial

accountability rating should not affect a charter school's eligibility for facilities funding, since statutory language of HB 2 under TEC, §12.106(e), identifies only "unacceptable" as the basis for disqualification. TPCSA advised that TEA clarify in rule that a "Not Rated" designation is not considered an unacceptable rating for purposes of determining facilities funding eligibility.

Response: The agency agrees and the rule has been revised at adoption to clarify that a "Not Rated" designation is not considered an unacceptable rating for purposes of determining eligibility under TEC, §12.106(e).

Comment: TPCSA advised that TEA include language in the rule to specify that schools are eligible for facilities funding unless they have unacceptable ratings academically, financially, or a combination of both for the two preceding school years.

Response: TEA disagrees that the suggested language is necessary. Eligibility for facilities funding, including the academic accountability and financial rating criteria, is established in TEC, §12.106(e). Because the eligibility requirements are prescribed in statute, additional language is not needed. Further, TEA has clarified in rule that a "Not Rated" academic or financial accountability designation is not considered an unacceptable rating for purposes of determining eligibility under TEC, §12.106(e). TEA has determined that this clarification adequately addresses eligibility determinations and that no further rule language is necessary.

Comment: TPCSA suggested that charter schools in their first two years of operation receive estimated facilities funding prior to settle-up, consistent with the automatic eligibility provided under TEC, §12.106(e-1).

Response: The agency agrees and the rule was revised at adoption to clarify that newly established charter schools will receive estimated funding calculations before settle-up.

Comment: TPCSA recommended that final eligibility determinations occur as soon as TEA has access to the necessary final data and that funding estimate calculations be updated accordingly, rather than delaying those updates until settle-up.

Response: TEA agrees that final eligibility determinations and corresponding funding estimate updates should occur as soon as the data necessary to make those determinations becomes available.

STATUTORY AUTHORITY. The repeal is adopted under TEC, §12.106(c), as amended by HB 2, 89th Texas Legislature, Regular Session, 2025, which authorizes the commissioner of education to adopt rules necessary for the administration of state funding under TEC, §12.106(d), for open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The repeal implements TEC, §12.106, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025.

<rule>

§105.1011. Additional State Aid for Open-Enrollment Charter School Facilities.

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STATUTORY AUTHORITY. The new section is adopted under TEC, §12.106(c), as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025, which authorizes the commissioner to adopt rules necessary for the administration of state funding under TEC, §12.106(d), for open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The new section implements TEC, §12.106, as amended by House Bill 2, 89th Texas Legislature, Regular Session, 2025.

<rule>

**§105.1011. Additional State Aid for Open-Enrollment Charter School Facilities.**

- (a) For the purpose of determining a Texas Education Code (TEC), Chapter 12, Subchapter D open-enrollment charter school's eligibility to receive funding as provided under TEC, §12.106(d), the following apply under TEC, §12.106(e):
  - (1) an unacceptable academic performance rating under TEC, Chapter 39, Subchapter C, is defined as an overall score below 60, an overall "F" rating, or an overall "D" rating that is considered an unacceptable rating under TEC, §39.0543;
  - (2) a financial accountability rating lower than satisfactory under TEC, Chapter 39, Subchapter D, is defined as a score below 70 or substandard achievement; and
  - (3) a rating of "Not Rated" for academic performance or financial accountability is not considered an unacceptable rating.
- (b) If ratings under TEC, Chapter 39, Subchapter C or D, were not issued for prior school years due to a declared natural disaster affecting the charter school's county, the most recent two available final accountability ratings from preceding school years will be used to determine eligibility.
- (c) For charter schools that operated during the previous school year, the estimated funding under TEC, §12.106(d), for the current school year will be based on the school's eligibility status from the immediate prior year, and for charter schools in their first two years of operation, estimated funding will be automatically based on eligibility provisions under TEC, §12.106(e-1).
- (d) During the school year for which funding under TEC, §12.106(d), is provided, the charter holder will provide an annual certification, in a manner prescribed by the commissioner of education, that no individual covered under TEC, §12.106(e-2)(1), (2), or (3), derives any financial benefit from a real estate transaction with the charter school.
- (e) Upon the availability of final data for which funding under TEC, §12.106(d), would be provided, the Texas Education Agency will update estimated funding to reflect final eligibility using the two most recent preceding school years' final accountability ratings assigned under TEC, Chapter 39, Subchapters C and D, and the applicable annual certification to determine eligibility for funding under TEC, §12.106(e).