

The Texas Education Agency (TEA) proposes an amendment to §97.1051 and new §97.1060, concerning accreditation status, standards, and sanctions. The proposed amendment to §97.1051 would expand the definition for *campus turnaround*, remove the definition for *professional service provider*, and add definitions for *chain of unacceptable performance ratings* and *intervention pause*. Proposed new §97.1060 would implement and clarify the interventions that will result from an assignment of a "D" rating to a public school in accordance with statutory provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1051 establishes the definitions used throughout the rules implementing interventions and sanctions in Chapter 97, Subchapter EE. The proposed amendment would modify existing definitions and add new definitions to ensure clarity when implementing statutory requirements. Specifically, the following changes would be made. The definition of *campus turnaround* in paragraph (4) provides references to various ratings that constitute an unacceptable performance rating. The proposed amendment would add a rating of needs improvement in accordance with proposed new §97.1060. The definition of *professional service provider* in paragraph (10) would be removed because the new Effective Schools Framework does not utilize a professional service provider and the definition is no longer necessary. New paragraph (12) would be added to provide a definition of *chain of unacceptable performance ratings* since different interventions are required after certain numbers of consecutive unacceptable performance ratings. New paragraph (13) would be added to define *intervention pause* as one that continues interventions from the prior year but does not increase or break the chain of consecutive unacceptable performance ratings.

Proposed new §97.1060 would provide for implementation of the needs improvement ("D") rating established under Texas Education Code (TEC), Chapter 39.

Proposed new subsection (a) would provide clarification regarding an initial and subsequent assignment of needs improvement as statute treats the consequences of a "D" rating differently depending on whether it is the first assignment after receiving a "C" rating or higher or a subsequent assignment. A first assignment requires a targeted improvement plan, while a subsequent assignment requires interventions based on an increased chain of consecutive unacceptable performance.

Proposed new subsection (b) would implement the statutory provision requiring a school district or campus that receives any assignment of a "D" rating, whether in a domain or overall, to implement a targeted improvement plan. The proposed new rule would require these schools to comply with 19 TAC §97.1061(a)-(d), which implements targeted improvement plans that include the assignment of campus intervention teams, campus leadership teams, and root cause analysis.

Proposed new subsection (c) would make clear than an initial "D" rating (the first "D" rating since receiving a rating of "C" or higher) that occurs the year following the receipt of a "C" or higher rating does not constitute unacceptable performance. This provision would implement the statutory provisions that treat a "D" rating as acceptable performance unless, per TEC, §39.101, it comes after the assignment of a previous "D" or "F" rating.

Proposed new subsection (d) would implement a pause of intervention when the initial "D" rating (the first "D" rating since receiving a rating of "C" or higher) occurs the year following the receipt of an "F" rating. The pause of intervention does not count toward consecutive years of unacceptable performance but does not break the count of consecutive years of unacceptable performance. This provision would implement the statutory provisions that treat a "D" rating as acceptable performance unless, per TEC, §39.101, it comes after the assignment of a previous "D" or "F" rating.

Proposed new subsection (e) would make clear that subsequent assignments of a "D" rating constitute unacceptable performance and are included in the chain of unacceptable performance. This provision would implement the statutory provisions that require interventions for additional "D" ratings after an initial assignment of a "D" rating.

Proposed new subsection (f) would itemize the campus-level interventions that could be applied to a school district that is assigned a "D" rating after the initial assignment of a "D" rating. In accordance with statute, campus-level interventions may be applied to a school district when the intervention, based on the years of consecutive unacceptable performance, is due to the assignment of a "D" rating.

Proposed new subsection (g) would make clear that the campus-level intervention applied to a school district would be based on the years of consecutive performance of either an "F" or a "D" rating. This provision would implement the statutory provisions that require increased interventions based on consecutive years of unacceptable performance to account for both "D" and "F" ratings.

Proposed new subsection (h) would apply proposed new §97.1060 to campus performance with the 2018-2019 school year in accordance with statutory application of A-F ratings in the 2018-2019 school year.

FISCAL IMPACT: Tim Regal, associate commissioner for instructional 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 beyond what is required by statute. TEC, §39.101(a)(1), requires a district or campus receiving its first overall or domain rating of "D" to develop a targeted improvement plan. In addition, TEC, §39.101(c), specifies that districts or campuses that are required to prepare a targeted improvement plan may be required to prepare a turnaround plan based on future ratings of "D" or "F." Districts may incur costs to prepare the targeted improvement plan or turnaround plan required by statute.

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 create a new regulation. Proposed new §97.1060 would implement and clarify the interventions that will result from an assignment of a "D" rating to a public school in accordance with statutory provisions. The proposed rulemaking would also expand an existing regulation. In §97.1051, the definition for *campus turnaround* would be amended to include an additional performance rating, and definitions for *chain of unacceptable performance ratings* and *intervention pause* would be added. In addition, the proposed rulemaking would limit an existing regulation by removing the definition for *professional service provider* from §97.1051.

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 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: Mr. Regal 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 ensuring appropriate interventions and sanctions for school districts and campuses. 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: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins June 28, 2019, and ends July 29, 2019. A public hearing on the proposal will be held at 9:30 a.m. on July 15, 2019, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at the hearing must sign in between 9:00 a.m. and 9:30 a.m. on the day of the hearing. The hearing will conclude once all who have signed in have been given the opportunity to comment. A form for submitting public comments is available on the TEA website at

[https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment and new section are proposed under Texas Education Code (TEC), §39.001, which authorizes the commissioner to adopt rules necessary to administer TEC, Chapter 39; TEC, §39.054, which requires the commissioner to evaluate and assign ratings to public schools. The section defines a rating of "D" as "needs improvement" and includes a rating of "D" within the ratings that qualify as acceptable performance. TEC, §39.054(a-4), applies A-F performance ratings to campuses in the 2018-2019 school year; TEC, §39.101, which requires a public school assigned a "D" rating to implement a targeted improvement plan and prescribes interventions imposed under TEC, Chapter 39, Subchapter E, for those public schools. Once required to implement a targeted improvement plan due to the assignment of a "D" rating, TEC, §39.101, requires that interventions and sanctions that apply to an unacceptable rating apply to public schools that receive a subsequent "F" or "D" rating; TEC, §39A.115, which authorizes the commissioner to adopt rules to implement campus interventions, including the application of campus turnaround plans; TEC, §39A.251, which applies the interventions and sanctions to charters in the same manner as they apply to school districts and campuses; TEC, §39A.252, which requires the commissioner to adopt rules applying the interventions and sanctions to open-enrollment charter schools; and TEC, §39A.901, which requires the commissioner to annually review performance of public schools and determine the appropriate levels of sanctions or interventions. It prohibits the commissioner from raising the accreditation or performance rating unless the district has demonstrated improved student performance. It also requires the commissioner to increase the level of sanction or intervention due to lack of improvement.

CROSS REFERENCE TO STATUTE. The amendment and new section implement Texas Education Code, §§39.001, 39.054, 39.101, 39A.115, 39A.251, 39A.252, and 39A.901.

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§97.1051. Definitions.

For purposes under Texas Education Code (TEC), Chapters 39 and 39A, and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

- (1) Board of managers--A board appointed by the commissioner of education to serve as a governing body that must, if possible, include:
 - (A) community leaders;
 - (B) business representatives who have expertise in leadership; and
 - (C) individuals who have knowledge or expertise in the field of education.
- (2) Board of trustees--The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.
- (3) Campus--An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated or Not Rated: Data Integrity Issues. The definition of this term includes a charter school campus as defined by §100.1001(3)(C) of this title (relating to Definitions).

- (4) Campus turnaround--A comprehensive change in an academically unacceptable campus that produces significant and sustainable gains in achievement within two years. For the purposes of this ~~subchapter~~ ~~chapter~~, the term "academically unacceptable" performance means a rating of:
- (A) Academically Unacceptable ; [5]
 - (B) AEA: Academically Unacceptable ; [5]
 - (C) Improvement Required ; [~~5~~]
 - (D) Unacceptable Performance ; [~~5~~]
 - (E) Academically unacceptable as [otherwise] indicated in the applicable year's academic accountability manual ; or [5]
 - (F) Needs improvement in accordance with §97.1060 of this title (relating to Considerations Regarding Needs Improvement Rating).
- (5) Charter school--This term has the meaning assigned by §100.1001(3) of this title. References to a charter school in TEC, Chapters 39 and 39A, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.
- (6) Charter school site--This term has the meaning assigned by §100.1001(3)(D) of this title.
- (7) District coordinator of school improvement (DCSI)--An employee of a school district in a leadership position in school improvement, in curriculum and instruction, or in another position with responsibility for student performance.
- (8) Newspaper of general circulation--A newspaper, as defined in Texas Government Code, §2051.044, that has more than a minimum number of subscribers among a particular geographic region, that has a diverse subscribership, and that publishes some news items of general interest to the community.
- (9) Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.
- ~~[(10) Professional service provider (PSP) An approved service provider who has been vetted through an application or a request for qualifications (RFQ) process to provide on-site technical assistance for underperforming schools and districts either by the Texas Education Agency (TEA) or the TEA's technical assistance provider.]~~
- (10) ~~[(11)]~~ Root cause--The education-related factors resulting in a campus's low performance and lack of progress.
- (11) ~~[(12)]~~ School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.
- (12) Chain of unacceptable performance ratings--A set of consecutive performance ratings that authorizes sanctions, interventions, or other actions.
- (13) Intervention pause or pause of intervention--The result of a performance rating:
- (A) where the Texas Education Agency does not pursue additional interventions or sanctions for the applicable school year but may continue interventions and sanctions from the prior year;
 - (B) that does not increase the count of consecutive years of unacceptable performance; and
 - (C) that does not break the chain of performance ratings.

§97.1060. Considerations Regarding Needs Improvement Rating.

(a) In this section:

- (1) an initial assignment of a needs improvement ("D") rating means the first assignment of a "D" rating after the most recent assignment of "C" or higher rating; and

- (2) a subsequent assignment of a "D" rating means an assignment of a "D" rating during any year after an initial assignment of a "D" rating where no intervening assignment of a "C" or higher rating occurs.
- (b) A school district or campus assigned an initial "D" rating shall assign a campus or district intervention team and develop and implement a targeted improvement plan addressing campus-level or district-level needs and root cause analysis that is approved by the board of trustees and complies with the requirements of §97.1061(d) of this title (relating to Interventions and Sanctions for Campuses), except that the district is not required to submit the plan to the commissioner of education for approval. This subsection applies to an overall or domain "D" rating.
- (c) An initial assignment of an overall "D" rating the year after receiving an overall rating of "C" or higher does not constitute unacceptable performance.
- (d) An initial assignment of an overall "D" rating the year after receiving an overall rating of "F" shall constitute an intervention pause, except for implementing the requirements specified in subsection (b) of this section.
- (e) Each subsequent assignment of an overall "D" rating shall constitute unacceptable performance and be included in a chain of unacceptable performance ratings.
- (f) In addition to interventions authorized by other law, interventions and sanctions applicable for the year of unacceptable performance of a campus may be applied at the school district level if a needs improvement rating is the most recent performance rating assigned to the school district, including:
- (1) ordering the development or updating of a targeted improvement plan;
 - (2) ordering the preparation and need for approval of a turnaround plan and its subsequent elements, from which the commissioner will issue modified timelines as necessary to implement the intervention;
 - (3) ordering alternative management at the school district level or at any campus;
 - (4) ordering closure and, if applicable, annexation of the school district or of any campus; and
 - (5) ordering a board of managers for the school district.
- (g) The commissioner may pursue an intervention under subsection (f) of this section based on the number of consecutive years of unacceptable performance without regard to whether a previous year's associated intervention was ordered or required.
- (h) This section applies to campus performance ratings assigned for the campus performance starting with the 2018-2019 school year.