

The Texas Education Agency (TEA) proposes an amendment to §100.1033, concerning charter amendment. The proposed amendment would modify the existing rule to reflect Senate Bill (SB) 668, 86th Texas Legislature, 2019, and clarify existing procedures.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 100.1033 was established under the commissioner's rulemaking authority to provide guidance pertaining to amendments of a charter holder's contract, including the growth or expansion of an existing charter school.

SB 668, 86th Texas Legislature, 2019, amended Texas Education Code (TEC), Chapter 12, to allow a charter holder to provide written notice of a new open-enrollment charter school campus or request approval of an expansion amendment up to 18 months in advance of the campus's anticipated opening or the expansion's effective date. In addition, the bill requires notification to the superintendent of each school district from which a proposed open-enrollment charter school or campus is likely to draw students.

The proposed amendment to §100.1033 would implement SB 668 as well as update procedures, align the rule with statute, provide clarification, and make technical edits. Specifically, the following changes would be made.

The proposed amendment to §100.1033(b)(2), relating to timeline, would clarify applicable timelines for different types of amendments.

The proposed amendment to §100.1033(b)(3), relating to relevant information considered, would add that relevant information considered by the commissioner for charter amendment includes the Charter School Performance Frameworks (CSPF). Use of the CSPF to measure the performance of charter schools is important for TEA's goal of ensuring high-quality learning opportunities for Texas students.

The proposed amendment to §100.1033(b)(5)-(8), relating to relocation amendment, ineligibility, and amendment determination, respectively, would revise the rule text to remove redundant text and to clarify rule text.

The proposed amendment to §100.1033(b)(9), relating to expansion amendment standards, would establish an 18-month timeline for charter school expansion pursuant to TEC, §12.101(b-10), as added by SB 668, 86th Texas Legislature, 2019; specify that, as part of TEA's goal to ensure high-quality learning opportunities for Texas students, the commissioner would approve an expansion amendment only if the charter school is designated as "Tier 1" or "Tier 2" under the CSPF; and add language to align §100.1033 with 19 TAC §100.1035, Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

The proposed amendment to §100.1033(b)(10), relating to expansion amendments, would clarify the meaning of rule language.

The proposed amendment to §100.1033(b)(11), relating to expedited expansion, would implement SB 668, 86th Texas Legislature, 2019, by establishing an 18-month timeline for charter school expansion and adding to the list of entities required to be notified of an expansion.

The proposed amendment to §100.1033(b)(12), relating to new school designation, would clarify rule language regarding the definition of and qualification for new school designation. For a charter school to obtain such a designation, and thus be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available, the charter school will be required to operate a new campus with a new educational program.

The proposed amendment to §100.1033(b)(13), relating to High-Quality Campus Designation, would clarify rule language regarding the definition of and qualification for high-quality campus designation. The proposed amendment to §100.1033(b)(13)(A)(vi) would change the requirement that a school seeking high-quality designation serve at least 100 students in its first year to its third year to allow for a charter's planned grade phase-in over the school's first three years.

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovations, 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 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 expand, limit, and repeal an existing regulation by revising and adding provisions to clarify rule language and align the rule with other rules in the TAC, make the rule consistent with new legislation passed by the 86th Texas Legislature, 2019, and remove redundant text. The proposed rulemaking would also increase the number of individuals subject to its applicability by requiring expansion amendment notice to district superintendents pursuant to new legislation passed by the 86th Texas Legislature, 2019.

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 any increase or decrease in fees paid to the agency; would not create a new regulation; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Siedlecki 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 that rule language is based on current law and updated to clarify the rule's applicability. 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 November 29, 2019, and ends December 30, 2019. 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 November 29, 2019. 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 is proposed under Texas Education Code (TEC), §12.101, which authorizes the commissioner of education to grant and oversee charters for open-enrollment charter schools; TEC, §12.1101, which directs the commissioner of education to adopt a procedure for providing notice of an application for charter or the establishment of a campus; TEC, §12.114, which describes the circumstances under which a revision of a charter of an open-enrollment charter school may be made; TEC, §12.1181, which requires the

commissioner to develop a set of performance frameworks by which open-enrollment charter schools' performance is to be measured; and TEC, §29.259, which includes a description of performance frameworks by which adult high school diploma and industry certification charter schools' performance is to be measured.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.101, 12.1101, 12.114, 12.1181, and 29.259.

<rule>

§100.1033. Charter Amendment.

- (a) Amendments in writing. 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 written amendment approved by the commissioner of education in writing.
- (b) Types of amendments. An amendment includes any change to the terms of an open-enrollment charter, including the following: maximum enrollment, grade levels, geographic boundaries, approved campus(es), approved sites, relocation of campus, charter holder name, charter school (district) name, charter campus name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. An amendment must be approved by the commissioner under this subsection. Expanding prior to receiving the commissioner's approval will have financial consequences as outlined in §100.1041(d)(1) of this title (relating to State Funding).
 - (1) Charter 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. As applicable, the request shall set forth the text and page references, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. 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.
 - (2) Timeline. All non-expansion ~~[charter amendment requests, with the exception of expansion]~~ amendments ~~[]~~ may be filed with the commissioner at any time. All other amendments must be filed within the timeframe specified on the relevant amendment form.
 - (3) Relevant information considered. As directed by the commissioner, a charter holder requesting an ~~[a substantive]~~ 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 §100.1010 of this title (relating to Performance Frameworks); 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 the students enrolled in the charter school. 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 the students enrolled in the charter school. ~~[An amendment receiving conditional approval shall not be effective until a written resolution accepting all conditions and/or requirements, adopted by the governing body of the charter holder and signed by the members voting in favor, is filed with the TEA division responsible for charter schools.]~~
 - (6) Relocation amendment. An amendment to relocate an existing campus or site ~~[with the same administration and staff while still serving the same students and grade levels]~~ is not an expansion amendment subject to paragraphs (9)(A) and (10)(D) of this subsection. An 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 of [in] the relocation [request] shall not be in excess of 25 miles from the existing campus address.

- (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 [or nonrenew] the charter. This [Nothing in this] subsection does not limit [limits] the commissioner's authority to accept the surrender of a charter.
- (8) Amendment determination. The commissioner's decision on an amendment request shall be final and may not be appealed. The same amendment request may not be submitted prior to the first anniversary of the submission of the original [submitted] amendment request .
- (9) Expansion amendment standards. An expansion amendment is an amendment that permits a charter school to increase its maximum allowable enrollment, extend the grade levels it serves, change its geographic boundaries, or add a campus or site.
 - (A) In addition to the requirements of this subsection, the commissioner may approve an 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 rating of "academically acceptable" as defined by §100.1001(26) of this title (relating to Definitions) as its most recent rating and is operated by a charter holder that operates multiple charter campuses and all of that charter holder's most recent campus ratings are "academically acceptable" as defined by §100.1001(26) of this title;
 - (ii) the amendment request under paragraph (1) of this subsection is received no earlier than the first day of January [February] and no later than the first day of March, not to exceed 18 months [April] preceding the effective date of [school year in which] the expansion [will be effective. An additional year to implement the expansion may be granted if the expansion amendment requestor demonstrates a need for the additional year] ;
 - (iii) the most recent district rating for the charter school is "academically acceptable" and the most recent campus rating for at least 90% of the campuses operated under the charter school is "academically acceptable" as defined by §100.1001(26) of this title;
 - (iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas (FIRST) for Charter Schools is "satisfactory" as defined by §100.1001(27) of this title;
 - (v) the charter school has an accreditation status of Accredited;
 - (vi) the most recent district designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1010 of this title;
 - (vii) ~~(vi)~~ before voting to request an expansion amendment, the charter holder governing board has considered a business plan, 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. Upon request by the TEA, the business plan must be filed within ten business days. The business plan 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; and
- (XI) the required statement that the growth proposed is financially prudent relative to the financial and operational strength of the charter school;

(viii) ~~(vii)~~ the charter holder submits a signed statement attesting that within the last three years there have been no instances of nepotism, conflicts of interest, or revelations in criminal history checks that deemed any board member or employee ineligible to serve or submits, for the last three years ~~[most recent year]~~ of operation, copies of documents required by [the compliance information relating to] §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving) , including [to include] documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, ~~[and]~~ affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees , and affidavits or other documentation that board members or employees whose criminal history checks deemed them ineligible to serve were removed from service ;

(ix) ~~(viii)~~ the commissioner determines that the amendment is in the best interest of the students of Texas; and

(x) ~~(ix)~~ the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

- (B) Notice of the approval or disapproval of expansion amendments will be made by the commissioner within 60 days of the date the charter holder submits a completed expansion amendment request. The commissioner may provide notice electronically. The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements that may be in the best interest of the students of Texas.

(10) Expansion amendments.

- (A) Maximum enrollment. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment not more than once each calendar year [only if

~~within the calendar year preceding the request, the charter holder has not requested another expansion amendment seeking to increase maximum allowable enrollment] .~~

- (B) Grade span. In addition to the requirements of paragraph (9)(A) of this subsection, 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.
 - (C) Geographic boundary. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to expand the geographic boundaries of the charter school only if it is accompanied by evidence of notification, electronic or otherwise, to the relevant district(s).
 - (D) Additional campus. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new 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;
 - (ii) the charter school under which the proposed new campus will be assigned currently has at least 50% of the student population in tested grades assessed under TEC, Chapter 39, Subchapter B . For charter schools serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title (relating to High-Quality Prekindergarten Grant Program) and the addition of the prekindergarten students meets the 50% threshold; and
 - (iii) the charter holder has provided evidence, via certified mail documented by return receipt, that each school district affected by the expansion was sent a notice to the district's central office of the proposed location and , if available, the address of any new campuses or sites, including proposed grade levels to be served and projected likely maximum enrollment.
 - (E) Additional site. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new site under an existing campus only if it meets the following criteria:
 - (i) the charter school campus under which the proposed new site will be assigned currently has at least 50% of the student population in tested grades assessed under TEC, Chapter 39, Subchapter B . For charter school campuses serving students in prekindergarten, the charter school may include the students in prekindergarten to count toward the 50% requirement if the charter school can demonstrate acceptable performance on a commissioner-approved prekindergarten assessment or monitoring tool as determined under §102.1003 of this title and the addition of the prekindergarten students meets the 50% threshold; and
 - (ii) the site will be located within 25 miles of the campus with which it is associated.
- (11) Expedited expansion. An expedited expansion amendment allows for the establishment of a new charter campus under TEC, §12.101(b-4).
- (A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements.
 - (i) The charter school must have an accreditation status of Accredited and meet the following criteria:

- (I) 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; and
 - (II) 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 [years] with:
 - (-a-) at least 75% of the campuses rated under the charter school also receiving a rating in the highest or second highest performance rating category in the most recent ratings; and
 - (-b-) no campus receiving a rating in the lowest performance rating category in the most recent ratings.
- (ii) The charter holder must submit an expedited expansion amendment request in the time, manner, and form prescribed to the TEA division responsible for charter schools. The expansion amendment request will be:
- (I) effective no earlier than the start of the fourth full school year at the affected charter school;
 - (II) received no earlier than the first day of January [February] and no later than the first day of March, not to exceed 18 months [April] preceding the effective date of [school year in which] the expansion [will be effective. An additional year to implement the expansion may be granted if the expansion amendment requestor demonstrates a need for the additional year];
 - (III) communicated via certified mail with a return receipt to the following entities:
 - (-a-) the superintendent and board of trustees of each school district affected by the expedited expansion as described in the amendment request form; and
 - (-b-) the members of the legislature who represent the geographic area affected by the expedited expansion as described in the amendment request form, noting that each entity has an opportunity to submit a statement regarding the impact of the amendment to the TEA division responsible for charter schools;
 - (IV) voted on by the charter holder governing body after consideration of a business plan determined by majority vote of the board affirming the growth proposed in the business plan is financially prudent relative to the financial and operational strength of the charter school. Such a statement must be included in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days; and
 - (V) submitted with copies of the most recent compliance information relating to §100.1035 of this title to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees.

- (B) Notice of eligibility to establish an expedited campus under this section will be made by the commissioner within 60 days of the date the charter holder submits a completed expedited expansion amendment.
- (12) New school designation. A new school designation is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to establish a new charter school campus when it proposes to offer a new educational program at the new campus ~~[an expansion amendment that permits a charter holder to establish an additional charter school campus under an existing open enrollment charter school]~~ pursuant to federal non-regulatory guidance in the Elementary and Secondary Education Act (ESEA), § ~~[Section]~~ 5202(d)(1), as amended. Charter holders of charter schools that receive new school designations 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 new school 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) currently with at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, and meets the following:
 - (I) is currently evaluated under the standard accountability procedures currently has the highest or second highest district rating, and received the highest or second highest district rating in two of the last four ratings ~~[for three of the last five years]~~ with at least 75% of the campuses operated under the charter also receiving the highest or second highest rating and no campus with an "academically unacceptable" rating, as defined by §100.1001(26) of this title, in the most recent state accountability ratings. A rating that does not meet the criteria for "academically acceptable" as defined in §100.1001(26) of this title shall not be considered the highest or second highest academic performance rating for purposes of this section; or
 - (II) is currently evaluated under the alternative education accountability (AEA) procedures and received the highest or second highest AEA district rating for five of the last five ratings ~~[years]~~ with:
 - (-a-) in the most recent applicable state accountability ratings, all rated campuses under the charter receiving an "academically acceptable" or higher rating, as defined by §100.1001(26) of this title; and
 - (-b-) if evaluated using AEA procedures, the district-level assessment data corresponding to the most recent accountability ratings demonstrate that at least 35% of the students in each of the following student groups (if evaluated) met the standard as reported by the sum of all grades tested on the standard accountability indicator in each subject area assessed: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient, and at risk;
 - (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) the charter holder completes an application approved by the commissioner;
 - (vi) the new charter school campus that receives the new school designation will serve at least 100 students in its third ~~[first]~~ year of operation;
 - (vii) the amendment complies with all requirements of this paragraph; and
 - (viii) the commissioner determines that the designation is in the best interest of the students of Texas.
- (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school designation only if the campus with the proposed designation ~~[on making the following written findings]~~ :
- (i) ~~[the proposed school]~~ satisfies each element of the definition of a public charter school as set forth in federal law;
 - (ii) ~~[the proposed school]~~ is not merely an extension of an existing charter school;
 - (iii) ~~[the proposed school campus]~~ is separate and distinct from the existing charter school campus(es) established under the open-enrollment charter school with a new facility and county-district-campus number; and
 - (iv) is governed, in the school's amended contract, by ~~[the open enrollment charter school, as amended, includes]~~ a separate written performance agreement ~~[for the proposed school campus]~~ that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).
- (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 new school designation; and
 - (ii) whether the ~~[proposed school]~~ campus with the proposed designation shall be established and recognized as a separate school under Texas law.
- (D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the ~~[proposed school]~~ campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the ~~[proposed school]~~ campus with the proposed designation will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.
- (E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:
- (i) whether the ~~[proposed school]~~ campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements; and
 - (ii) the extent to which the performance agreement for the ~~[proposed school]~~ campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).
- (F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iv) of this paragraph 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 new school designation.

- (13) High-quality campus designation [~~High Quality Campus Designation~~]. A high-quality campus designation [~~High Quality Campus Designation~~] is a separate designation and must be paired with an expansion amendment. If approved by the commissioner, this designation permits a charter holder to establish an additional charter school campus under an existing open-enrollment charter school pursuant to federal non-regulatory guidance. Charter holders of charter schools that receive high-quality campus designation [~~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 [~~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 , currently has [~~with~~] at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, [~~and~~] is currently evaluated under the standard accountability procedures , currently has [~~and received~~] the highest or second highest district rating , and received the highest or second highest rating in two of the last four ratings [~~for three of the last five years~~] with all of the campuses operated under the charter also receiving the highest or second highest rating as defined by §100.1001(26) 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) the charter holder completes an application approved by the commissioner;
 - (vi) the new charter school campus that receives the high-quality campus designation will serve at least 100 students in its third [~~first~~] year of operation;
 - (vii) the amendment complies with all requirements of this paragraph; and
 - (viii) the commissioner determines that the designation is in the best interest of the students of Texas.
- (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation [~~High Quality Campus Designation~~] only if the campus with the proposed designation [~~on making the following written findings~~]:
- (i) [~~the proposed school~~] satisfies each element of the definition of a public charter school as set forth in federal law;
 - (ii) [~~the proposed school campus~~] 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) is governed, in the school's amended contract, by [~~the open-enrollment charter school, as amended, includes~~] a separate written performance agreement [~~for the proposed school campus~~] that meets the requirements of federal law and TEC, §12.111(a)(3) and (4).

- (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 [~~High Quality Campus Designation~~]; and
 - (ii) whether the [~~proposed school~~] campus with the proposed designation shall be established and recognized as a separate school under Texas law.
 - (D) In making the findings required by subparagraph (B)(ii) of this paragraph, the commissioner shall consider whether the [~~proposed school~~] campus with the proposed designation and the existing charter school campus(es) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the [~~proposed school~~] campus with the proposed designation will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.
 - (E) In making the finding required by subparagraph (B)(iii) of this paragraph, the commissioner shall consider:
 - (i) whether the [~~proposed school~~] campus with the proposed designation and the existing charter school campus(es) have distinctly different requirements in their respective written performance agreements;
 - (ii) whether an annual independent financial audit of the [~~proposed school~~] campus with the proposed designation is to be conducted. The high-quality campus must have a plan for a separate audit schedule apart from the open-enrollment charter school audit; and
 - (iii) the extent to which the performance agreement for the [~~proposed school~~] campus with the proposed designation imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).
 - (F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iii) of this paragraph 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 [~~High Quality Campus Designation~~].
- (14) Delegation amendment. A delegation amendment is an amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.
- (A) The commissioner may approve a delegation amendment only if:
 - (i) the charter holder meets all requirements applicable to delegation amendments and amendments generally;
 - (ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5, of this title (relating to Charter School Governance); and
 - (iii) the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school.
 - (B) 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 the students enrolled in the charter school.
 - (C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this

subparagraph, setting forth good cause why a specific function listed in clauses (i)-(vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

- (i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;
- (ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;
- (iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;
- (iv) final authority to adopt policies governing charter school operations;
- (v) final authority to approve audit reports under TEC, §44.008(d); or
- (vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer.

(D) The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(iii) of this subparagraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school, the commissioner may not grant an amendment permitting the superintendent/chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief executive officer of the charter school shall not delegate final authority:

- (i) to organize the charter school's central administration;
- (ii) to approve reports or data submissions required by law; or
- (iii) to select and terminate charter school employees or officers.

(c) 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.