

The Texas Education Agency (TEA) proposes an amendment to §97.1075, concerning contracting to partner to operate a campus under Texas Education Code (TEC), §11.174. The proposed amendment would modify the rule to provide clarifications to existing statutory provisions.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1075 describes the requirements for contracting to partner to operate a campus under TEC, §11.174, including requirements related to conferred authorities, performance contracts, and ongoing monitoring.

The proposed amendment to §97.1075(a) and relettered (j) would reflect the renumbering of TEC, §42.2511, to TEC, §48.252, by House Bill 3, 86th Texas Legislature, 2019.

The proposed amendment to subsection (c) would clarify the authorities over staffing at partner-operated campuses in a district to ensure that the operator has sole authority over staffing and prevent confusion in operation between the district and the operating partner. Subsection (c)(1)(C) would stipulate that the operating partner has sole authority over assignment of district employees to the campus. The amendment would move the requirement for initial and final authority to supervise, manage, and rescind assignment of district employees from the campus from subsection (c)(1)(C) to new subsection (c)(1)(D). The new subsection would also clarify that the authority resides solely with the operating partner and add a provision that district must grant requests to rescind assignments within 15 working days. Subsection (c)(1)(E) would clarify that the operating partner directly manages and has sole responsibility for the evaluation of the campus principal or chief operating officer.

Proposed changes in subsection (c)(2) would further clarify the operating partner's authority over campus decisions to ensure that the operator has sole authority over the decisions as described in TEC, §11.174, and prevent confusion in operation between the district and the operating partner. Paragraph (2) would specify that the operator has initial, final, and sole authority over curriculum decisions (subparagraph (A)), educational programs for specific student groups (subparagraph (B)), calendar and daily schedule (subparagraph (C)), use of assessments (subparagraph (D)), and campus budget (subparagraphs (E) and (F)). Subparagraph (E) would further clarify that decisions for budget allocations under the authority of the operator include federal and state grants that the campus receives. New subparagraph (F) would be established to provide clarity regarding the existing requirement for the operator to have sole authority over the implementation of the campus budget.

Proposed changes in subsection (d) would clarify requirements for the performance contract. Subsection (d)(1) would be amended to require the performance contract between the district and the operating partner include a clear and unambiguous description of the enhanced authorities described in subsection (c) to ensure that these authorities are operationalized.

Subsection (d)(2) would be amended to clarify the academic expectations and goals to be included in the contract. The provision to include a target for the School Progress Domain and the requirement for annual academic performance expectations would be removed. Since the overall campus rating is an annual goal that is required in subparagraph (B) of subsection (d)(2), this would allow the partner and district the flexibility to establish more frequent academic goals and expectations in the performance contract.

Subsection (d)(3) would be amended to clarify that the annual financial report must be independent.

New subsection (d)(7) would be added to require the performance contract to include a section describing the funding structure for the partnership. This would ensure that the partner has the necessary resources to operate the campus.

Renumbered subsection (d)(8) would be amended to include existing rule language to specify that the performance contract must include which resources the operating partner intends to purchase from the district, including the cost of services. This would ensure that the costs and resources needed to operate the campus are clear to both the operating partner and the district.

Subsection (d)(9) would be amended to require that the performance contract include the operating partners' academic model description to ensure that this model is already established and that districts are aware of it prior to entering into the partnership.

Subsection (d)(11) would be amended to require that the performance contract include details about the actions the district and/or operating partner will take in the case that the performance contract is breached. The amendment would require the "specific and material" consequences to be described so that both parties are aware of and can take required actions. The provision stating that the contract may not be contingent on any rating issued by TEA would be moved to subsection (d).

New subsection (e) would be added to ensure that the district has done due diligence in ensuring that the operating partner has the capacity to manage the campus successfully.

The amendment to relettered subsection (g) would provide a time limit for notifying TEA of contract amendments to ensure the notification is timely submitted.

New subsection (h) would be established to allow existing language related to performance ratings to be in a separate subsection. The language is currently included in the subsection on monitoring.

Subsection (j) would be amended to make conforming changes to cross references.

FISCAL IMPACT: Joe Siedlecki, associate commissioner for charters and innovation, 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. The budget specifications included in the proposed amendment are costs that are already required by the rule; the amendment clarifies that the district and operating partner must include these costs in the performance contract.

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 an existing regulation. The proposed amendment would revise existing provisions by refining some aspects of the rule and adding new provisions, such as requiring several new sections to be included in the performance contract.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not 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: 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 providing school districts with clarifications on the requirements for operating a campus with an operating partner. 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 or 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 December 27, 2019, and ends January 27, 2020. A public hearing on the proposal will be held at 8:30 a.m. on January 10, 2020, 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 8:00 a.m. and 8:30 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. Questions about the hearing should be directed to Lindsay Denman, Texas Partnerships Manager, at (512) 463-9658. 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-Váladez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §11.174, which provides benefits to a campus whose district contracts with a TEC, Chapter 12, Subchapter C or D, charter school to operate the campus; and TEC, §48.252, which entitles districts to receive increased funding for students at campuses contracting with TEC, Chapter 12, Subchapter C or D, charter operators.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.174 and §48.252.

<rule>

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

- (a) Applicability. This section applies only to an independent school district that intends to contract to partner to operate a campus and receive benefits under Texas Education Code (TEC), §11.174 and ~~§48.252~~ ~~§42.2511~~.
- (b) Definitions. For purposes of this division, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise.
 - (1) Operating partner--Either a state-authorized open-enrollment charter school or an eligible entity as defined by TEC, §12.101(a).
 - (2) Open-enrollment charter holder--This term has the meaning assigned in TEC, §12.1012(1).
 - (3) Governing body of a charter holder--This term has the meaning assigned in TEC, §12.1012(2).
 - (4) Governing body of a charter school--This term has the meaning assigned in TEC, §12.1012(3).
 - (5) Contract to partner to operate a campus--This term means the partner must operate the campus in accordance with subsection (c) of this section under a performance contract as outlined in subsection (d) of this section.
 - (6) Campus--This term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
- (c) Conferred authority. In order to qualify as operating a district campus under TEC, §11.174, the district must confer, at a minimum, the following enhanced authorities to the operating partner.
 - (1) Staffing authorities.
 - (A) The operating partner must have authority to employ and manage the campus chief operating officer, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.
 - (B) The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ

and/or manage all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.

(C) The operating partner must have sole authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus ~~[as well as initial and final authority to supervise, manage, and rescind the assignment of any district employee or district contractor from the campus]~~ .

~~(D)~~ The operating partner must have initial, final, and sole authority to supervise, manage, evaluate, and rescind the assignment of any district employee or district contractor from the campus. If the operating partner rescinds the assignment of any district employee or district contractor, the district must grant the request within 15 working days.

~~(E)~~ (D) The operating partner must directly manage the campus principal or chief operating officer, including having the sole responsibility for evaluating the performance of the campus principal or chief operating officer [the instructional staff described in subparagraphs (B) and (C) of this paragraph who provide services to at least a majority of the students] .

(2) Other authorities. The operating partner must have:

(A) initial ~~[and]~~ , final , and sole authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus;

(B) initial ~~[and]~~ , final , and sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students, and other statutorily defined populations;

(C) initial ~~[and]~~ , final , and sole authority to set the school calendar and the daily schedule, which may differ from those in other district campuses;

(D) initial ~~[and]~~ , final , and sole authority to determine the use of any and [approve] all assessments to be used on the campus that are not required by the state of Texas; ~~[and]~~

(E) initial ~~[and]~~ , final , and sole authority to determine how the entire [adopt and implement the] campus budget , including any and all federal and state grant funds due the campus, is allocated . The governing body of the operating partner shall approve the campus budget in a meeting held under the Texas Open Meetings Act, Texas Government Code, Chapter 551. Notwithstanding such budget authority, the operating partner's expenditures must comply with applicable restrictions on the use of state and federal funds ; and [.]

~~(F)~~ initial, final, and sole authority to implement and adjust the campus budget.

(d) Performance contract. To contract to partner to operate under TEC, §11.174, the independent school district's board of trustees must grant the operating partner a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, §12.0531. The contract may not be contingent on any rating issued by the TEA. This performance contract must include, at a minimum, the following provisions:

(1) a clear and unambiguous description of enhanced authorities as outlined in subsection (c) of this section;

(2) academic performance expectations and goals, which shall include, but are not limited to:

(A) for campuses that are paired for accountability purposes, specific annual targets for improved student academic performance;

- (B) for campuses issued an accountability rating under TEC, §39.054, a specific annual target for the overall campus academic rating ~~[and a specific target for student growth based on the School Progress Domain]~~ ; and
 - (C) specific consequences in the event that the operating party does not meet the ~~[annual]~~ academic performance expectations and goals described in the performance contract;
- (3) annual financial performance expectations and goals, which shall include, but are not limited to:
- (A) the completion of an annual independent financial report of the operating partner meeting the expectations outlined in §109.23 of this title (relating to School District Independent Audits and Agreed-Upon Procedures);
 - (B) receipt of an unqualified audit opinion, in connection with the annual financial report required in subparagraph (A) of this paragraph; and
 - (C) specific consequences in the event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract;
- (4) a description of the campus enrollment and expulsion policies that must comply with TEC, §11.174(i);
- (5) a contract term of up to 10 ~~[ten]~~ years as required by TEC, §12.0531, with a provision(s) specifying:
- (A) a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and
 - (B) a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract;
- (6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract;
- ~~(7) a section that describes the funding structure of the partnership. This section must specify:~~
- ~~(A) a reasonable per pupil amount or percentage of the revenue generated by attendance at the campus from the district to the operating partner of all federal, state, and local funds due the campus, to be paid to the operating partner for managing the campus or campuses each year;~~
 - ~~(B) the total budget for the first year of operation; and~~
 - ~~(C) the authority of the partner over the entire campus budget;~~
- ~~(8) [(7)] service-level agreements that list the [describe and allocate shared] resources and services the operating partner intends to purchase from the district and the specific costs of such services by pupil, square foot, campus, or the percentage of the total district budget for the specific resource or service. The resources and services [district provides to the operating partner, which] may include:~~
- ~~(A) facility use and related matters;~~
 - ~~(B) transportation;~~
 - ~~(C) specific education program services, such as providing special education services; and~~
 - ~~(D) access to other resources and services as agreed between the parties;~~
- ~~[(8) a per pupil allocation from the district to the operator that provides a student level allocation of local, state, and federal funds received by the district;]~~

- (9) a section that describes ~~[description of]~~ the educational plan or academic model that the operating partner will implement on ~~[for]~~ the campus or campuses ;
- (10) an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by TEC, §11.174(c), unless the district is partnering with an entity described in TEC, §11.174(a)(2); and
- (11) a description of the specific and material consequence(s) in the instance that either the district or the operating partner breaches the contract. ~~[The contract may not be contingent on any rating issued by the TEA to the campus prior to the operation of the campus by the operating partner.]~~
- ~~(e)~~ Capacity to operate. In order to qualify as an eligible partnership under TEC, §11.174, the district must demonstrate that the operating partner has the necessary capacity to successfully manage campuses.
- ~~(f)~~ ~~(e)~~ Contract notification to the TEA. In order to qualify as an eligible partnership under TEC, §11.174, notification of contracts related to TEC, §11.174(a)(1), must meet the deadlines published by the TEA staff.
- ~~(g)~~ ~~(f)~~ Contract amendments. Eligible partnerships under TEC, §11.174, must notify the TEA of amendments to performance contracts related to TEC, §11.174(a)(1) and (2) , within 30 calendar days of the amendment of the contract .
- ~~(h)~~ Performance ratings. The commissioner of education shall continue to evaluate and assign overall and domain performance ratings under TEC, §39.054, to the campus.
- ~~(i)~~ ~~(g)~~ Monitoring. ~~[The commissioner of education shall continue to evaluate and assign overall and domain performance ratings under TEC, §39.054, to the campus.]~~ In order to qualify for ongoing benefits, subsequent to initial eligibility validation or approval, the eligible partnership campus must comply with all information requests or monitoring visits deemed necessary by the TEA staff to monitor the ongoing eligibility of the partnership.
- ~~(j)~~ ~~(h)~~ Continued eligibility. To receive benefits under TEC, §11.174(f) and (g) and §48.252 ~~[\$42.2511]~~ , the district must continuously meet the requirements in subsections ~~(c)-(i)~~ ~~(e)-(g)~~ of this section.
- ~~(k)~~ ~~(i)~~ Decision finality. A decision of the commissioner made under this section is a final administrative decision and is not subject to appeal under TEC, §7.057.