

The Texas Education Agency (TEA) adopts an amendment to §100.1010, concerning charter school performance frameworks. The amendment is adopted with changes to the proposed text as published in the November 22, 2019 issue of the *Texas Register* (44 TexReg 7124) and will be republished. The amendment adopts in rule excerpted sections of the *2019 Charter School Performance Frameworks (CSPF) Manual*, which has been updated to comply with statutory provisions and clarify the operation of the CSPF to rate the performance of open-enrollment charter schools in Texas.

REASONED JUSTIFICATION: Section 100.1010 was adopted effective September 18, 2014, and was last amended effective July 22, 2019. The rule is issued under Texas Education Code (TEC), §12.1181, which requires the commissioner to develop and adopt frameworks by which the performance of open-enrollment charter schools is measured. The performance frameworks consist of several indices within academic, financial, and operational categories with data drawn from various sources, as reflected in the CSPF Manual adopted as a figure in the rule and updated every year.

The adopted amendment replaces and updates excerpted sections of the 2018 CSPF Manual with excerpted sections of the 2019 CSPF Manual as Figure: 19 TAC §100.1010(c). The 2019 version of the manual includes the following significant changes from the 2018 version.

The weight of component frameworks for a school's overall CSPF score was altered to 70% academic indicators, 20% financial indicators, and 10% operational indicators. The alteration is intended to further emphasize the importance of academic achievement in establishing high-quality learning opportunities for Texas students.

The calculation method of a school's performance on its academic framework indicators was updated to be based 80% on a school's overall academic accountability (A-F) score, 10% on achievement status for student groups, and 10% on campus status score. For charter schools evaluated under alternative education accountability (AEA) provisions of the Texas Accountability Rating System, the weighting of their academic framework scores was 80% overall A-F score (AEA scaling), 10% Closing the Gaps score (AEA scaling), and 10% campus status score. These changes emphasize the goals set forth in Texas's A-F accountability system to establish high-quality learning opportunities for Texas students.

The financial framework solvency indicators were renamed to be more accurate, and the weighting of a school's performance on financial framework indicators was altered to be based 70% on its score on the Financial Integrity Rating System of Texas (Charter FIRST) and 7.5% on each of the other four indicators.

In the operational framework indicators, the description of the "not applicable" rating under indicator 3a was clarified to explain that such a rating would result from a school's data being masked due to small numbers. The rating of "far below" was eliminated for indicators 3b and 3c to standardize rating categories across indicators. Indicator 3d, "Program requirements: Career and technical education populations," was removed because TEA will report on such information under different criteria. To help ensure that charter school board members and officers are prepared to provide quality learning opportunities for Texas students, indicator 3e was amended to require that in order to achieve a "meets expectations" rating for training requirements, all affected charter board members and school officers must provide TEA with documentation of such training. The explanation of "meets expectations" in indicator 3l was amended to pertain to the student body makeup at the charter school level rather than at the campus level to be consistent with other rule language. Indicator 3n, which addresses appropriate handling of secure assessment materials, was amended to clarify which data would be reviewed to obtain rating information.

The Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks was amended to cite statutory authority for each indicator. The explanation of "meets expectations" for indicator 1 was revised to require 50% of the school's students to perform at or above the passing score on the Texas Success Initiative Assessment (TSIA) to meet statutory requirements for satisfactory performance on an exit-level exam. In keeping with statutory requirements to measure how many program participants successfully complete the program, indicator 2 was revised to delete unnecessary language and explain that "meets expectations" could be achieved if the number of a school's graduates were equal to or greater than the number of students classified as 12th graders on its Texas Student Data System Public Education Information Management System (TSDS PEIMS) snapshot date in the same academic year. The language of indicator 3 was revised to clarify that graduates would be the group

addressed by that indicator, and the data source was revised to take into account that the school may provide special industry-based certifications not necessarily delineated by TEA.

The 2019 CSPF Manual introduces and details a tiering system by which charter schools' CSPF scores will be used to designate them as falling into one of three tiers, which will in turn inform TEA's authorizing decisions, including assigning appropriate levels of oversight and determining eligibility for expansion amendments as described in 19 TAC §100.1033; making decisions related to renewal or non-renewal for schools in the discretionary category as defined by TEC, §12.1141(c); and revoking charters that have failed to meet CSPF standards as described in TEC, §12.115(a)(5).

Throughout the manual, language was revised to reflect the way Charter School Performance Frameworks are referred to in statute and include other technical edits.

In response to public comment, the following changes were made to the manual since published as proposed.

The overview section of the figure was revised to refer to charter school "expansion" pursuant to 19 TAC §100.1033 as a purpose for the CSPF, rather than charter school "growth."

Academic Frameworks indicator 1c of the figure, Campus Status, was revised to refer to "each" of a charter school's campuses, rather than "all." Academic Frameworks indicator 1c (AEA Provisions), was revised in the same way.

Operational indicators 3h and 3k of the figure were removed, and the remaining operational indicators were renumbered accordingly.

Operational indicator 3m was revised to include a "not applicable" rating category for those schools that do not participate in child nutrition programs and have obtained any required waivers.

In the Tiering Framework of the figure, clarifying language was added to the titles of the tiers, and language regarding charter renewal and commissioner review of charter school-submitted amendments was removed. The definition of Tier 3 was revised to include those schools having an overall academic accountability rating of D or F.

In response to public comment, the Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks were revised as follows.

The five performance indicators described in TEC, §29.259(o), were renamed academic indicators. In the figure as adopted, academic indicator 1a (student achievement on exit-level assessment) will now be drawn from the Student Achievement Domain STAAR Component Score, and academic indicator 1b (completion of high school diploma program) will be calculated by the number of graduates divided by the number of students classified as 12th graders. The remaining three indicators from TEC, §29.259(o), were designated 1c, 1d, and 1e and scored collectively as the CCMR component; the score for the CCMR component will be calculated by the number of graduates who accomplished at least one of the indicators divided by the total number of graduates.

The overall academic framework score will now be calculated with indicator 1a being weighted at 20%, indicator 1b weighted at 50%, and indicators 1c, 1d, and 1e (the CCMR component) weighted at 30%.

The footnote to indicator 1c was revised to clarify the data source for industry-based certification.

The financial and operational frameworks applicable to open-enrollment charter schools were made applicable to the Adult High School Diploma and Industry Certification Public Charter School Performance Frameworks.

Finally, a change was made at adoption to clarify that the figure adopted in §100.1010 is excerpted sections of the *2019 Charter School Performance Frameworks Manual*.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began November 22, 2019, and ended December 23, 2019, and included a public hearing on January 13, 2020. Following is a summary of public comments received and corresponding agency responses.

Comment: Concerning §100.1010 and the CSPF generally, Leadership4School, A+ Charter Schools, Texans Can Academies, Arlington Classics Academy, Rise Academy, Lone Star Language Academy, Academy for Academic Excellence, the Texas Charter School Association (TCSA), Legacy Preparatory Charter Academy District, Odyssey Academy, Life School, Newman International Academy, and an individual commented that the CSPF constitutes an unnecessary accountability system that need not exist alongside the agency's A-F accountability system and Financial Integrity Rating System of Texas (Charter FIRST). Commenters argued that the CSPF academic framework contains rating indicators that detail data already taken into account in a school's A-F accountability rating used by agency; that the CSPF financial framework contains rating indicators that detail data already taken into account in a school's Charter FIRST report; and because of these factors a school's CSPF score may be significantly different from that school's scores on A-F accountability and FIRST.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into account the achievement of a charter school's student groups, which has long been part of CSPF evaluation criteria and in keeping with national best practices; similarly, the CSPF highlights solvency information from Charter FIRST because acceptable performance on those indicators is deemed essential to the school's ability to educate Texas students well into the future. Schools' scores on A-F accountability, Charter FIRST, and the CSPF may very well be different because these reports are designed to shed light on aspects of charter school performance using varieties of criteria.

Comment: Concerning the CSPF generally, an individual commented that TEA's generating charter school ratings using the CSPF is unfair, because TEC, §12.1181, already provides the necessary monitoring for charter school performance.

Agency Response: The agency disagrees. Section 100.1010 is the rule established to carry out the mandate of TEC, §12.1181, in as clear and straightforward a way as possible: The statutory bases of each indicator are cited, sources of data informing the indicators are clearly noted, and expectations for schools are explicitly established.

Comment: Concerning the CSPF generally, an Arlington Classics Academy, Leadership4School, and A+ Charter Schools commented that the CSPF should be used to provide information only, not punish charter schools with its assignment of a score.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of open-enrollment charter schools in Texas. The CSPF was created and is revised every year to carry out that mandate in as clear and straightforward a way as possible. The calculation and reporting of scores based on charter schools' performance is logical to inform parents and students seeking high-quality educational opportunities.

Comment: Concerning the CSPF generally, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that for the overall CSPF score and for each framework, the target for "meets expectations" should be increased from 60% to 70%. Commenters reason that poor student performance at a level lower than 70% would be masked.

Agency Response: The agency disagrees. Section 100.1001(26)(A)(iii) currently defines acceptable performance as "a grade of A, B, or C, or as otherwise indicated in the applicable year's academic accountability manual." A rating of "D" reflects performance that needs improvement but is not necessarily considered failing performance. Districts and campuses that receive a "D" rating are required to prepare a Targeted Improvement Plan. See TEC, §39A.0545.

Comment: Concerning the CSPF generally, Life School commented that the score of any indicator or overall score on the CSPF should be appealable, especially when a clerical error results in a score adverse to the charter school.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for

instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning the Overview section of the CSPF in the figure to 19 TAC §100.1010, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the commissioner's using a school's tier designation to determine "eligibility for growth" should instead be termed, "eligibility for expansion."

Agency Response: The agency agrees, and the Overview section of the CSPF will be modified at adoption.

Comment: Concerning the academic framework of the CSPF in the figure to 19 TAC §100.1010 (hereinafter "the academic framework"), Texas Urban Council of Superintendents, Ysleta ISD, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fastgrowth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), and Intercultural Development Research Association (IDRA) commented that an indicator evidencing the performance of a school's English learner population, drawing from the Closing the Gaps domain calculation of the agency's A-F accountability rating, should be restored to the CSPF. The commenters maintain that charter schools are not being held accountable for equitably serving all students or for the academic performance of English learners, and such an indicator is necessary to cast light on how well schools are serving this population.

Agency Response: The agency disagrees. The specific academic performance indicator appropriately measures the performance of student groups against the established set of quality standards established in the state's Closing the Gaps domain and reflects accountability for the performance of this student group sufficiently.

Comment: Concerning the Academic framework, IDRA, Texas School Alliance Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the weights for Closing the Gaps indicators in the standard accountability and Alternative Education Accountability (AEA) academic frameworks should be increased to the higher levels of the 2018 CSPF.

Agency Response: The agency disagrees. The changes between the 2018 and 2019 CSPF reflect an overall framework emphasis on academic accountability. There is an increase from 60% to 70% of the overall weight. Additionally, the academic framework reflects this emphasis by increasing the weight of indicator 1a from 70% to 80%. These changes highlight the need for all student groups to perform well.

Comment: Concerning the Academic framework, Richard Milburn Academy commented that an indicator should be added for dropout credit recovery schools that would allow additional points if the district mobility rate is higher than 25%, or if 50% or more of a the school's students are 17 years of age or older.

Agency Response: The agency disagrees. Special accountability considerations are already available for schools operating as credit recovery schools, in the form of Alternative Educational Accountability standards in Texas law.

Comment: Concerning Indicator 1b of the academic framework, Rise Academy commented that the indicator pertains to "subgroups" of students, which would largely address low-income, especially minority students. The commenter reasoned that these students are already highly represented in Texas charter schools, therefore focusing on them in Indicator 1b is unnecessary.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into account the achievement of a charter school's student groups, which has long

been part of CSPF evaluation criteria and in keeping with national best practices. While the student groups referenced by the commenter do comprise a significant portion of charter school students in Texas, they have historically not been sufficiently well-served and therefore deserve additional attention in the CSPF.

Comment: Concerning Indicators 1b and 1c, of the academic framework, Legacy Preparatory Charter Academy District, Lone Star Language Academy, Life School, La Academia de Estrellas, Arlington Classics Academy, Odyssey Academy, Lumin Education, A+ Charter Schools, Leadership4School, International Leadership of Texas (ILT), Schulman, Lopez, Hoffer and Adelstein (SLHA), TCSA, and four individuals commented that the data detailed there is already measured within a school's A-F accountability score reported in indicator 1a, and is therefore redundant. Commenters maintain that indicator 1a should be the only indicator in the academic framework; to rate schools academically with scores in addition to their A-F accountability scores would be confusing.

Agency Response: The agency disagrees. The Texas legislature in TEC, §12.1181, clearly mandated that the TEA consult national best practices to develop and adopt a CSPF with a variety of standards that would be used concurrently with other accountability systems to evaluate the performance of charter schools in Texas. In keeping with this mandate, the CSPF takes into account the achievement of a charter school's student groups, which has long been part of CSPF evaluation criteria and in keeping with national best practices. Therefore, schools' scores on A-F accountability and the CSPF may be different, because these two reports are designed to shed light on aspects of charter school performance using varieties of criteria.

Comment: Concerning Indicator 1c, Responsive Education Solutions, SLHA, and Richard Milburn Academy commented that charter schools' campuses' performance should be assigned to a score category based on what percentage of the campuses were above a certain threshold, instead of disqualification from a given category if the charter school had any individual campuses scoring below the threshold.

Agency Response: The agency disagrees. Assigning points related to the performance of a charter school's individual campuses is necessary to highlight deficient campuses a school may have that need special attention. Aggregating levels of performance based on a percentage of campuses above a certain threshold may mask that relevant information.

Comment: Concerning Indicator 1c, Leadership4Learning and SLHA commented that tying the indicator's score to the performance of individual campuses could discourage charter schools from opening campuses in high-poverty areas because, the commenter maintains, high poverty tends to negatively affect test scores.

Agency Response: The agency disagrees. Texas public schools are replete with examples showing that socioeconomic level is not necessarily a determinant of student performance, and it is a firm policy of TEA that students of all backgrounds should have the opportunity to succeed. The Agency has an alternate accountability system to address the challenges of various student demographics.

Comment: Concerning Indicator 1c, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fastgrowth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Texas School Alliance Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that if the agency's intention with the indicator was to take into account the performance of every single campus of a charter school, it should change the language of the indicator to refer to "each" of a school's campuses, rather than "all."

Agency Response: The agency agrees. Indicator 1c of the CSPF academic framework will be modified at adoption.

Comment: Concerning Indicator 1c, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that language should be added to the effect that any charter schools with a D or F campus would not be eligible for Tier 1 or Tier 2 status.

Agency Response: The agency disagrees. The Academic Framework's campus status indicator provides evidence of a high-quality charter operation. Low-performing campuses are concurrently monitored by TEA as part of its school improvement oversight. Any campus that continues to miss accountability targets would already be subject to action from TEA.

Comment: Concerning Indicator 1c, ILT commented that the indicator should be a standalone indicator or moved to the Operational framework.

Agency Response: The agency disagrees. The rating of a campus's status based on the academic performance of its students is appropriately located in the CSPF framework designed to address academic performance.

Comment: Concerning Indicator 2a, Leadership4Learning, Lumin Education, Odyssey Academy, A+ Charter Schools, Arlington Classics Academy, La Academia de Estrellas, SLHA, Rise Academy, Life School, TCSA, Legacy Preparatory Charter Academy District, ILT, Lone Star Language Academy, and four individuals commented that this indicator, based on a school's overall Charter FIRST rating, should be the only Financial framework indicator.

Agency Response: The agency disagrees. Charter FIRST provides an evaluation of numerous general indicators of a school's financial and operational health. Data indicative of the school's solvency are among them, but the school's performance on those may be masked by its overall performance on FIRST. With Indicators 2b-2e the CSPF focuses on those solvency indicators as a means to provide a picture of whether the school will be able to fulfill its mission to serve Texas students going forward.

Comment: Concerning the Operational framework, Rise Academy commented that the number of indicators should be reduced to only those indicators that have a rational basis.

Agency Response: The agency disagrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the CSPF are carefully reviewed, adopted, and updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility.

Comment: Concerning the Operational framework, Lumin Education, Newman International Academy, and an individual commented that charter schools should have the ability to appeal the score of any indicator.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a short amount of time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning the Operational framework, IDRA commented that to promote equity an indicator should be added that states the percentage of students with disabilities served at a charter school.

Agency Response: The agency disagrees. Indicators for the CSPF are chosen based upon their applicability to most or all charter schools, to provide as uniform and consistent a rating system as possible. Reporting on schools' number of students with disabilities would result in a wide range of numbers that would vary from school to school, and such reporting would not readily fit with the uniformity and consistency required by the CSPF.

Comment: Concerning the Operational framework, Arlington Classics Academy and an individual commented that it is unfair to have "all or nothing" indicators rating whether schools do or do not meet expectations. The individual

argued that justifiable reasons could prevent a charter school from receiving full credit on an indicator, but it should not therefore fail the indicator.

Agency Response: The agency disagrees. Many of the operational indicators are based upon a school's compliance with a statute or regulation: Either it did comply, or it did not. Of the few indicators that are not based on compliance in the same way, allowance for varying degrees of performance is provided in the description of the indicator.

Comment: Concerning the Operational framework, SLHA and Life School commented that the framework should incorporate a "dashboard" or other means by which charter school operators can monitor their compliance or appeal indicator scores.

Agency Response: The agency partially agrees. The agency already strives to make the CSPF as transparent as possible, so data informing all indicators is obtainable not just by TEA, but by the schools being rated. The data for many of the operational indicators is sourced from information submitted by the charter schools themselves; the rest are found in the Texas Academic Performance Report (TAPR), the state's testing vendor, or other state agencies. The data for one indicator (TREx usage), however, is not easily attainable by charter schools being rated, so that indicator will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas State Teachers Association commented that a "does not meet expectations" rating for any indicator related to state or federal law should automatically disqualify a charter school from Tier 1 status.

Agency Response: The agency partially agrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue. With regard to Operational indicator 3k, 501(c)(3) status, the agency acknowledges that failure to comply with that law constitutes a breach of the charter contract on its own, and through operation of that law the charter holder is no longer eligible to operate an open-enrollment charter school in the state of Texas. Therefore, Operational indicator 3k will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas School Alliance, Alief ISD, Texas AFT, and an individual commented that a "does not meet expectations" rating for any indicator related to state or federal law should automatically disqualify a charter school operating in Texas at all.

Agency Response: The agency partially agrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue. With regard to Operational indicator 3k, 501(c)(3) status, the agency acknowledges that failure to comply with that law constitutes a breach of the charter contract on its own, and through operation of that law the charter holder is no longer eligible to operate an open-enrollment charter school in the state of Texas. Therefore, Operational indicator 3k will be removed from the rule at adoption.

Comment: Concerning the Operational framework, Texas AFT, Texas Urban Council of Superintendents and Ysleta ISD commented that the CTE indicator should be restored to the framework.

Agency Response: The agency disagrees and offers the following clarification. Charter schools' administration of Career and Technical Education (CTE) curriculum is an important component of high-quality educational opportunities for Texas students. The structure of reporting on CTE by the agency is in the process of changing, however; and because the CSPF is intended to be a collection of readily-obtainable, consistent data, and it would not have been possible to assign a score to every school to which it would apply, an indicator for CTE was left out of the CSPF this year.

Comment: Concerning Indicator 3a, Leadership4Learning commented that the indicator was not fair in that did not take into account the possibility of teacher qualification reporting errors.

Agency Response: The agency disagrees and offers the following clarification. As a matter of policy TEA rarely grants appeals of ratings resulting from a school's error in data reporting. The 2019 Accountability Manual, for instance, states that charter school responsibility for data quality is the cornerstone of a fair and uniform rating determination. As a matter of past practice, however, the agency has made CSPF reports available to schools for their review for a short amount of time before the reports have become available to the public; schools may informally contact the agency during that time and request to correct errors.

Comment: Concerning Indicator 3a, Life School commented that there should be a margin of error in reporting of a school's total number of degreed teachers and principals.

Agency Response: The agency disagrees. Except for a narrow exception, TEC, §12.129, requires that all people employed as principals and teachers at open-enrollment charter schools hold a baccalaureate degree. Operational indicator 3a is designed to reflect that clear mandate.

Comment: Concerning Indicators 3b and 3c, A+ Charter Schools commented that the indicators rating special population and bilingual program performance unfairly penalize schools that serve challenging student populations.

Agency Response: The agency disagrees. Whether a school is meeting program requirements for its special populations or bilingual students, is the province of TEA specialists in those areas. The CSPF appropriately reports the outcomes of those specialists' assessment.

Comment: Concerning Indicators 3b and 3c, Life School commented that addressing those groups in the Operational indicators unfairly counts adverse scores twice, as such groups are already addressed in A-F accountability.

Agency Response: The agency disagrees. Assessment of performance with regard to these special populations is not the same in the two frameworks: The Academic framework measures a school's student outcomes in those areas, while the Operational framework rates the quality of that school's programs serving the students.

Comment: Concerning Indicators 3b and 3c, Raise Your Hand Texas commented that a "does not meet expectations" rating for those indicators should automatically disqualify a charter school from Tier 1 status.

Agency Response: The agency disagrees. Texas Education Code, §12.1181, directed the commissioner of education to create framework indicators using national best practices that charter school authorizers use in developing and applying standards for charter school performance, with advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons. The operational indicators of the current proposed rule were adopted and are updated every year in keeping with that mandate. The operational indicators are selected because best practices show they are evidence of a high-quality charter operation; and each of these indicators is concurrently monitored by TEA as part of its charter authorizing responsibility. Any school that fails to meet any operational indicator could already be subject to adverse authorizer action through the CSPF or some other avenue.

Comment: Concerning indicator 3e, Leadership4Learning, A+ Charter Schools, and an individual commented that the training evidence indicator was unworkable and should be removed.

Agency Response: The agency partially agrees. At adoption the language of the indicator will be revised to clarify the nature of the training evidence required.

Comment: Concerning Indicator 3h, Leadership4Learning, A+ Charter Schools, Legacy Preparatory Charter Academy District, Richard Milburn Academy, Lumin Education, Odyssey Academy, Arlington Classics Academy, La Academia de Estrellas, SLHA, Rise Academy, Life School, Lone Star Language Academy, Academy for Academic Excellence, TCSA, Legacy Preparatory Charter Academy District, ILT, Newman International Academy, and three individuals commented that the TREx usage indicator was unworkable and should be eliminated.

Agency Response: The agency agrees, and the indicator will be removed from the rule at adoption.

Comment: Concerning Indicator 3j, ILT commented that the administrative cost ratio indicator is redundant as it is already measured in Charter FIRST.

Agency Response: The agency disagrees. Although it is an indicator in Charter FIRST and hence is related to a school's financial health, it also provides evidence of whether the state's money is being spent in a responsible way for the benefit of students, as the school is required to do by law and its own contract, making it appropriate as an operational indicator.

Comment: Concerning Indicator 3l, Leadership4Learning, Odyssey Academy, Rise Academy, Life School, Lone Star Language Academy, TCSA, A+ Charter Schools, and an individual commented that meeting expectations on the "50% of students in tested grades" indicator may be unattainable for some open-enrollment charter schools. For example, open-enrollment charter schools are required to accept students they are approved to serve regardless of what grade they are in, and a school may end up with more than half its students in non-tested grades through no fault of its own; or a school has a growth plan that does not include serving tested grades in its early years. The commenters maintain that the indicator should be revised to specify an exception for such schools.

Agency Response: The agency disagrees. To address concerns such as those expressed by the commenters, the agency has already modified the indicator to accommodate exceptional scenarios: The indicator now measures students in tested grades at the charter school level, as opposed to campus level; the amount of students being in tested grades is not required to "meet expectations" until the school's fifth year of operation to accommodate those schools who grow by adding grade levels in each subsequent year; and the indicator makes specific reference to the opportunity for a school to obtain a waiver of the requirement.

Comment: Concerning Indicator 3m, Rise Academy commented that the child nutrition indicator should not be applicable to those schools that do not participate in a child nutrition program.

Agency Response: The agency agrees, and the indicator will be modified at adoption.

Comment: Concerning Indicators 3d, 3e, 3f, 3g, 3h, 3i, 3k, 3l, 3m, and 3n, ILT commented that the indicators do not have easily accessible data sources. The commenter maintained it should be able to monitor this data and have access to a rubric indicating what "acceptable" performance means.

Agency Response: The agency partially agrees. The agency strives to make the CSPF as transparent as possible, so data informing all indicators is obtainable not just by TEA, but by the schools themselves. Of the indicators described by the commenter, the data for one indicator (3h - TREx usage) is not easily attainable by charter schools being rated, so that indicator will be removed in the adopted version of this rule. However of the other indicators listed by the commenter, data for six of them (3d, 3e, 3f, 3g, 3i, and 3k) is sourced from information submitted by the charter schools themselves; one is found in the Texas Academic Performance Report (TAPR, 3l); one is available from the Texas Department of Agriculture (3m), and one would come to charter schools in the form of correspondence from the testing vendor well prior to generation of the CSPF report (3n).

Comment: Concerning the Tiering framework, an individual commented that the framework should be eliminated as underperforming charter schools are already subject to the "three strikes" rule of TEC, §12.115(c).

Agency Response: The agency disagrees. The Tiering Framework was conceived of to increase transparency, clearly communicate performance ratings, and identify low-performing schools that should be subject to increased oversight. Tier designations and CSPF scores would be used to inform TEA's authorizing decisions, including

assigning appropriate levels of oversight, determining eligibility for expansion amendments, making decisions related to renewal or non-renewal for schools in the discretionary category, and revoking charters that have failed to meet CSPF standards (as described in TEC, §12.115(a)(5)). The CSPF is clearly intended by law to work in addition to the "three strikes" process described in TEC, §12.115(c). Texas Education Code, §12.1181, specifically precludes the CSPF from being considered as part of that process.

Comment: Concerning the Tiering framework, Responsive Education Solutions, SLHA, Lone Star Language Academy, TCSA, and Legacy Preparatory Charter Academy District commented that it should become a four-tier framework that would have a category for "above average" schools in between proposed Tiers 1 and 2.

Agency Response: The agency partially agrees. Two goals in conceiving the Tiering Framework were to increase transparency and clearly communicate performance ratings. The three-level structure, with straightforward designations analogous to "high," "medium," and "low" performance, each level clearly defining the category and describing the level of oversight to be exercised by the commissioner, best meets the agency's goals. However, the agency will revise explanatory language and titles of the Tiers to clarify the status of schools in each category, as well as remove language relating to charter renewal as it will be treated separately from the CSPF.

Comment: Concerning the Tiering framework, Texas School Alliance, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that the overall CSPF thresholds necessary to be placed in the categories be raised by 10%; and oversight of schools in the 2nd and 3rd should additionally require that all schools in those categories submit Targeted Improvement or other action plans.

Agency Response: The agency partially agrees. Tiering assignments are intended to be based on fair oversight for charter schools with CSPF scores of A or B, C, and D or F. The agency has determined that these scores will align with the High-Quality Performance, Average Performance, and Deficient Performance commensurately. The Agency disagrees that tier 1 should only include "A" rated charter or that tier 2 should include "B" rated charters. However, the Agency agrees that tier 3 should include "D" and "F" rated charters and has changed the CSPF accordingly. Sanctions including targeted improvement plans are required and outlined under other statutory authority and as such are not part of the CSPF.

Comment: Concerning the Tiering framework, Leadership4learning, A+ Charter Schools, Lumin Education, Arlington Classics Academy, and an individual commented that the use of the tiers to inform TEA on matters of charter school expansion, renewals, and revocation may be prohibited by current law: TEC, §12.1181, states, "The performance of a school on a performance framework may not be considered for purposes of renewal of a charter under Section 12.1141(d) or revocation of a charter under Section 12.115c."

Agency Response: The agency disagrees. TEC, §12.1141(d) and §12.115(c), were specifically designed by the Texas legislature to operate solely on the results of accountability reports other than the CSPF; but the CSPF clearly carries weight as an evaluative tool as it is referenced in TEC, §12.1141(c) and §12.115(a).

Comment: Concerning Tier 1 of the Tiering framework, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators, Texas State Teachers Association/National Education Association (TSTA/NEA), Texas American Federation of Teachers (Texas AFT), Texas Classroom Teachers Association (TCTA), Raise Your Hand Texas, Pastors for Texas Children, Texas Association of Community Schools (TACS), CPPP, Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fastgrowth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA) commented that expansion amendments for Tier 1 schools should not be granted automatically.

Agency Response: The agency offers the following clarification. At no point in the application of the Tiering Framework would the commissioner's approval of expansion be automatic. To clarify the issue, however, language in the Tiering framework will be revised in the adopted version of the rule.

Comment: Concerning Tier 3 of the Tiering framework, La Academia de Estrellas commented that schools in Tier 3 could potentially be closed before the "three strikes rule" of TEC, §12.115(c), would go into effect, and stated that Tier 3 should provide that three consecutive years of Tier 3-level performance may lead to revocation.

Agency Response: The agency disagrees. Tier 3 was designed to provide notice to chronically underperforming charter schools that the commissioner could take into account the totality of schools' performance over time when exercising oversight. A school might rate an F on A-F accountability five times over a 10-year period, but not risk closure under the "three strikes" rule of TEC, §12.115(c), as long as those Fs were nonconsecutive. The Tier 3 language of this rule regarding multi-year underperformance would clarify to the public that the commissioner has discretion to act in addition to TEC, §12.115(c).

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the Frameworks description should be clarified to specify to what extent the school would be rated with academic, financial, and operational indicators, and suggested that the school's overall score on the frameworks should be weighted at 70% for the academic framework, 20% for the financial framework, and 10% for the operational framework.

Agency Response: The agency appreciates the input of the commenter and offers the following clarification. The Adult High School Diploma and Industry Certification Public Charter School is subject to performance standards consistent with those required in TEC, §12.1181, and it is required to include the indicators outlined in TEC, §29.259(o), along with other indicators currently used to rate the performance of open-enrollment charter schools. The scoring and weighing of this expanded list of indicators applicable to the Adult High School Diploma and Industry Certification Public Charter School will be revised in the rule as adopted.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the indicators' rating system of Meets Expectations/Does Not Meet Expectations does not take into account a school's varying levels of success or progress toward the goals of those indicators; and that all the indicators are weighted equally in the proposed frameworks whereas some indicators should be weighted more heavily than others.

Agency Response: The agency agrees. The scoring and weighing of indicators applicable to the Adult High School Diploma and Industry Certification Public Charter School will be revised in the rule as adopted.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Frameworks, The Excel Center for Adults commented that the overall rating threshold to Meet Expectations should be a score of 60%, and the threshold for each framework should be 60% as well.

Agency Response: The agency partially agrees. Placement in the three tiers of the proposed rule is intended to be based on fair oversight for schools with CSPF scores of A or B, C or D, and F. The agency has determined that the quality of educational opportunities at both A- and B-rated schools are high; excluding B-rated schools from the highest tier would unduly limit replication of good educational programs to serve Texans. The agency has determined that schools scoring between 60% and 80% on the CSPF bear increased oversight, but schools in that range are not necessarily so substandard that they should be deemed failing their students.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Student Achievement on Exit-Level Assessment indicator, the assessment in question should be the STAAR exam, not the Texas Success Initiative Assessment (TSIA).

Agency Response: The agency appreciates the input of the commenter. Based on this input the agency will use STAAR assessment data for the Student Achievement on Exit-Level Assessment indicator. Calculation for the indicator will be the same as for the Student Achievement Domain STAAR Component Score as described in the Accountability Manual.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Completion of High School Diploma Program indicator, the score should be computed with the number of graduates as a percentage of the total number of students classified as 12th graders, multiplied by 100 and converted to a scale score using a table in the 2019 Accountability Manual.

Agency Response: The agency appreciates the input of the commenter. Based on this input, the agency will score this indicator using the graduation rates for the most recent-available school year's cohort and cross-cohort members who graduated in that same year. This calculation is the same as for the Federal Graduation Status Component.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the Student Performance on the Completion of Industry-Based Certification, Graduates Enrolled in Institutions of Higher Education, and Significant Income Increase indicators should be in the alternative of one another. In other words, for the school to meet expectations on the CSPF its graduates need only to have achieved one of the three, not all three.

Agency Response: The agency disagrees. Texas Education Code, §29.259(o), states that all five indicators delineated there shall be included in performance frameworks to measure the performance of an adult high school program, and subsection (p) directs the commissioner to evaluate the performance of a school in the adult high school program based on these standards.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the data sources and metrics for the Graduates Enrolled in Institutions of Higher Education and Significant Income Increase indicators should be more clearly defined.

Agency Response: The agency agrees and offers the following clarification. The Graduates Enrolled in Institutions of Higher Education and Significant Income Increase indicators were not set for reporting when the proposed 2019 CSPF was drafted, because data for those indicators were not available at the time. Data for the Graduates Enrolled in Institutions of Higher Education indicator are now available, so outcomes will be reported and the data source identified in the adopted version of the rule. Data for the Significant Income Increase indicator are still insufficient, however, so results for that indicator will not be reported until sufficient data can be collected for future CSPF reports.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that the Student Performance on the Completion of Industry-Based Certification, Graduates Enrolled in Institutions of Higher Education, and Significant Income Increase indicators should give special consideration to its Justice Education campuses, where incarcerated students might not have access to such programs.

Agency Response: The agency disagrees. The CSPF rating is scored at the level of district performance, not campus performance. While campus performance on particular indicators may be reflected in the overall performance of the district, it would be inconsistent with the structure of the CSPF to include language in the indicators directed at particular campuses.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Student Achievement on Exit-Level Assessment, Completion of High School Diploma Program, and Completion of Approved Industry-Based Certification indicators, the data sources cited in the proposed rule were not appropriate in light of the modifications to the CSPF sought by the school.

Agency Response: The agency offers the following clarification. The standard data sources for all indicators on the CSPF, both for traditional open-enrollment charter schools and the adult high school diploma and industry certification charter school, will be the most recently available, agency-approved information.

Comment: Concerning the Adult High School Diploma and Industry Certification Charter School Academic Framework, The Excel Center for Adults commented that for the Completion of Approved Industry-Based Certification indicator the description was not inclusive of industry-based certifications pursued by students at that school, which may not appear on TEA's list of certifications approved for traditional public high schools. Language in the CSPF should allow for such variance.

Agency Response: The agency partially agrees. In response to previous feedback on this question TEA has already acknowledged that the adult high school diploma and industry certification charter school 's list of industry certifications may be different than the state's general list; therefore the Completion of Approved Industry-Based Certification indicator data source in the proposed rule was "Adult High School Diploma and Industry Certification Public Charter School-submitted data." However, the language of the footnote associated with this indicator will be revised at adoption to provide more clarity.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §12.1181, which directs the commissioner of education to develop and adopt open-enrollment charter school performance frameworks; and TEC, §29.259, which directs the commissioner of education to establish an adult high school diploma and industry certification charter school program, including adoption of frameworks to measure the performance of such a school.

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

<rule>

§100.1010. Performance Frameworks.

- (a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Frameworks (CSPF) Manual established under Texas Education Code (TEC), §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).
- (b) The performance of an adult high school diploma and industry certification charter school will be measured annually in the CSPF against a set of criteria established under TEC, §29.259.
- (c) The assignment of performance levels for charter schools on the 2019 CSPF report is based on specific criteria, which are described in the excerpted sections of the *2019 Charter School Performance Frameworks Manual* provided in this subsection.

Figure: 19 TAC §100.1010(c)