

The Texas Education Agency (TEA) adopts an amendment to §100.1033, concerning charter amendment. The amendment is adopted with changes to the proposed text as published in the November 29, 2019 issue of the *Texas Register* (44 TexReg 7286) and will be republished. The adopted amendment reflects Senate Bill (SB) 668, 86th Texas Legislature, 2019, and clarifies existing procedures.

REASONED 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 adopted amendment to §100.1033 implements SB 668 and updates procedures, aligns the rule with statute, provides clarification, and makes technical edits. Specifically, the following changes were made.

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

The adopted amendment to §100.1033(b)(3), relating to relevant information considered, adds 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 adopted amendment to §100.1033(b)(5)-(8), relating to relocation amendment, ineligibility, and amendment determination, respectively, revises the rule text to remove redundant text and clarify rule text.

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

The adopted amendment to §100.1033(b)(10), relating to expansion amendments, clarifies the meaning of rule language.

The adopted amendment to §100.1033(b)(11), relating to expedited expansion, implements 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 adopted amendment to §100.1033(b)(12), relating to new school designation, clarifies 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 adopted amendment to §100.1033(b)(13), relating to High-Quality Campus Designation, clarifies rule language regarding the definition of and qualification for high-quality campus designation. The adopted amendment to §100.1033(b)(13)(A)(vi) changes 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.

In response to public comment, the amendment was modified at adoption as follows.

References to commissioner considerations throughout §100.1033(b) pertaining to students were revised to read "best interest of students."

Section 100.1033(b)(2) was revised to further clarify the timeline for submission of amendment requests.

Section 100.1033(b)(9)(A)(vi) was revised to clarify the operation of the tiering structure of 19 TAC §100.1010 as it pertains to §100.1033.

Section 100.1033(b)(12) and (b)(13) were revised to clarify the definition of and criteria for meeting requirements for new school designation and high-quality campus designation.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began November 29, 2019, and ended December 30, 2019, and included a public hearing on January 13, 2020. Following is a summary of public comments received and corresponding agency responses.

**Comment:** Concerning expansion generally pursuant to 19 TAC §100.1033, Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators (ATPE), 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), Center for Public Policy Priorities (CPPP), Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fast Growth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Intercultural Development Research Association (IDRA), Coalition for Education Funding, and an individual commented that the proposed rule, read in conjunction with the CSPF adopted under 19 TAC §100.1010, could be interpreted to provide automatic granting of expansion amendment requests for schools deemed Tier 1 as describe in the CSPF.

**Agency Response:** The agency offers the following clarification. At no point in the application of the Tiering Framework of 19 TAC §100.1010 would the commissioner's review of expansion amendments submitted pursuant to 19 TAC §100.1033 result in automatic action. Proposed subsection (b)(9)(A)(vi) of the rule states only that schools in tiers 1 and 2 would be eligible for an expansion amendment.

**Comment:** Concerning expansion generally pursuant to 19 TAC §100.1033, TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, Coalition for Education Funding, Texas School Alliance, and Alief ISD commented that the automatic granting of expansion amendments could result in an unfettered increase in the number of charter school campuses in the state, causing dramatic state budget growth and impose significant costs on school districts.

**Agency Response:** The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure, nor construed to be automatic. Whether the commissioner will grant or deny any charter school expansion amendment is still within his discretion. The agency does not anticipate the sort of unfettered state budget growth and cost imposition contemplated by the commenter.

**Comment:** Concerning expansion generally pursuant to 19 TAC §100.1033, Newman International Academy commented that charter schools' expansion needs should not be tied to academic scores. Students at both successful and struggling campuses may benefit from a school's expansion or other amendment such as relocation.

**Agency Response:** The agency disagrees. TEA strives to ensure that Texas students have the opportunity to obtain a high-quality education. A charter school's test scores are one measure used to demonstrate how well the school is serving its students. Allowing a charter school to expand and serve more students, when the school has not demonstrated it can offer a high-quality education to all the students it has, would be inconsistent with TEA's goal.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, TASB and TASA commented that the charter school expansion process is not transparent and does not provide sufficient opportunities for input from the community. TEA needs to ask for more specific evidence of charter schools' expansion plans, such as the zip code of where new campus would open.

Agency Response: The agency partially agrees. Detailed location information contemplated by the commenter would not necessarily be available when expansion amendments are submitted. Charter schools must apply for an expansion amendment and receive commissioner approval in advance of determinations about the location of the new campus. Securing a facility to rent or buy would require a charter holder to negotiate a lease or purchase property which would be premature and is contingent on the commissioner's approval of the amendment. The agency will consider amending the expansion amendment form to gather information regarding the address with more specificity.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Raise Your Hand Texas, Texas Urban Council of Superintendents, Ysleta ISD, ATPE, Urban Education Institute, and TSTA asserted that certain student groups are being underserved by charter schools, and that existing campuses in the vicinity of newly-opening campuses following an expansion amendment are being unduly impacted without sufficient oversight by TEA. They argued that any noncompliance with the law, particularly that pertaining to special education, should automatically disqualify charter schools from expanding.

Agency Response: The agency disagrees and offers the following clarification. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. The legal requirements such as those cited by the commenters are also concurrently monitored by divisions across TEA as part of the agency's responsibility to increase the number of high-quality learning opportunities for students in Texas.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, TSA, Texas Urban Council of Superintendents, and Fast Growth School Coalition commented that charter schools with low-performing campuses should not be allowed to expand at all, until the academic performance at those campuses has improved.

Agency Response: The agency disagrees and offers the following clarification. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. To that end, §100.1033(b)(9)(a)(iii)-(vi) specify that a school applying to expand must meet certain standards on A-F accountability, Charter FIRST, and CSPF reports. The commissioner understands the need for exercising due diligence to ensure that any new campus opened as a result of an expansion amendment would serve Texas students well.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Northside ISD, Texas Association of School Administrators, and Texas School Alliance commented that rules for expansion of charter schools should be in line with rules for opening new campuses pertaining to districts.

Agency Response: The agency disagrees. TEC, §12.114, provides for expansion and charter contract revision as a matter separate from laws pertaining to districts.

Comment: Concerning expansion generally pursuant to 19 TAC §100.1033, Northside ISD, Texas Association of School Administrators, and Texas School Alliance commented that the Texas State Board of Education should have the authority to permit or deny all charter school expansion requests.

Agency Response: The agency disagrees. The provisions in TEC, §7.102, were repealed removing the State Board of Education's powers and duties related to charter school revisions. TEC, §12.114(c), specifically provides that charter expansion shall be allowed only with commissioner approval.

Comment: Concerning 19 TAC §100.1033(b)(3), Newman International Academy commented that the inclusion of the CSPF as information to be considered by the commissioner with regard to a school's amendment request, might unduly restrict the applying school from expanding and serving more students in need.

Response: The agency disagrees. The agency's goal is to increase the number of high-quality learning opportunities for Texas students, and whether a charter school should be allowed to expand or not is part of the agency's drive toward that goal. Adding the CSPF to 19 TAC §100.1033(b)(3) as one of the measures the commissioner considers when making his determination, is consistent with this goal.

Comment: Concerning 19 TAC §100.1033(b)(4), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the language is inconsistent concerning whether, when making an approval or denial decision about a school's application for amendment, the commissioner is taking into account the best interest of students or the best interests of students at the charter school. The commenters maintained that all the subsection's references to students should be changed to the best interests of the students of Texas.

Agency Response: The agency agrees. TEA's mission is to improve outcomes for all public-school students in the state by providing leadership, guidance, and support to school systems. To align with that goal, at adoption 19 TAC §100.1033 will provide that in making amendment decisions the commissioner will take into the account the interests of all students.

Comment: Concerning 19 TAC §100.1033(b)(5), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that a provision requiring board approval of any amendment should not be removed.

Agency Response: The agency provides the following clarification. Section 100.1033(b)(1) requires all amendment requests to be submitted with governing board approval and is maintained for all amendment requests. The amended language in §100.1033(b)(5) related to the acceptance of the conditional approval of an amendment removes the need for a second written resolution by the governing board accepting the condition. As a matter of practice, the notification of commissioner action on an amendment will include the condition and the appropriate parameters of the commissioner's conditional approval.

Comment: Concerning 19 TAC §100.1033(b)(6), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that relocation amendment requested under that subsection should be classified as an expansion amendment.

Agency Response: The agency disagrees. A relocation amendment is substantively different from an expansion amendment in that the applying charter school is not planning to add to the number of students it is approved to serve, so it is appropriate to apply a distinct set of requirements.

Comment: Concerning 19 TAC §100.1033(b)(6), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the distance classified under the rule as relocation--25 miles--should be reduced to 10 miles.

Agency Response: The agency disagrees. Most charter schools in Texas are located in large urban areas, and twenty-five miles is the distance chosen to designate relocation because it roughly corresponds to the distance one might travel and remain within that urban area.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(ii), Schulman, Lopez, Hoffer & Adelstein commented that the agency should clarify which version of 19 TAC §100.1033 would apply to expansion amendment requests in 2020: The version prior to this proposal, or the new version scheduled to be adopted in March of 2020.

Agency Response: The agency offers the following clarification. The application of any administrative rule is based on the effective date of the rule. The agency has taken into account the timeline for adoption of 19 TAC §100.1033, and notes that the rule's effective date will be after the window for expansion amendment requests has closed for 2020.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(ii) and (11)(A)(ii)(II), Responsive Education Solutions (RES) noted the removal of a provision to allow an extra year to open a new campus approved pursuant to an expansion amendment request, and maintained that it should be restored.

Agency Response: The agency disagrees and provides the following clarification. The agency has determined that this provision is an exercise in lawful authority as determined under TEC, §12.114, to establish an 18-month window of time from when a charter school could submit a request for an expansion amendment, to when it would be expected to put that expansion into effect. The amended rule as it pertains to the time of effectiveness of an expansion amendment is essentially unchanged. Prior language in 19 TAC §100.1033 provided for a charter school to submit a request for such an amendment approximately six months before the expansion was to take effect. If a school demonstrated that it could not implement the expansion six months after the expansion amendment request, the commissioner could give the school an extension of one more year thereby providing for 18 months to implement its expansion.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(iii) and (vi), RES commented that a school's overall "Tier" (identified by the operation of 19 TAC §100.1010) should dictate whether it should be allowed to expand, and the requirement in 19 TAC §100.1033(b)(9)(A)(vi) that at least 90% of the school's campuses be academically acceptable was confusing and could conflict with a Tier 1 school's "automatic" expansion.

Agency Response: The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure nor construed to be automatic. The two provisions are not in conflict. At no point in the application of the Tiering Framework of 19 TAC §100.1010 would the commissioner's review of expansion amendments result in automatic action; a school's Tier 1 status would never guarantee approval of its expansion request. Furthermore §100.1033(b)(9)(A)(iii) is consistent with the agency's goal of increasing high-quality learning opportunities for Texas students.

Comment: Concerning 19 TAC §100.1033(b)(9)(A), Texas Charter School Association (TCSA) commented that the subsection's references to "acceptable performance" as defined in §100.1001 of this title should be replaced with citation of 19 TAC §97.1001(b), which relates directly to the agency's accountability manual. The commenter maintained that any schools' achieving acceptable performance as indicated by application of the accountability manual should be allowed to expand.

Agency Response: The agency disagrees. The reference to the definition section of the commissioner's rules related to charter school is sufficient and references the accountability manual. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure nor construed to be automatic. Academic, fiscal, operational, and governing performance are factored into a determination of whether a charter school is capable of carrying out the responsibilities of the charter and is likely to operate a school of high-quality.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(iii), Odyssey Academy commented that the requirement that 90% of a charter school's campuses meet accountability standards was unfair to charter schools that may have only a handful of campuses. The commenter maintained that a charter school's overall district accountability score should be used to determine whether it should be allowed to expand, not the scores of its campuses.

Agency Response: The agency disagrees. The focus on campus performance in §100.1033(b)(9)(A)(iii) is consistent with the agency's goal of increasing high-quality learning opportunities for Texas students. A charter school should not be allowed to expand if a significant number of students at the school are on a campus with an unacceptable rating.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(vi), TCSA commented that the subsection's allowing expansion only for Tier 1 or Tier 2 charter schools, as described in the CSPF adopted under 19 TAC §100.1010, should be revised to include expansion for charter schools in Tier 3, since even schools not in Tier 1 or 2 may also have met minimum A-F accountability standards.

Agency Response: The agency disagrees. The commissioner's action on expansion amendments submitted pursuant to 19 TAC §100.1033 takes into account several factors and is not dependent upon one measure. The addition of the CSPF measure is one more accountability measure for the commissioner to take into consideration. TEC, §12.1181, mandated that the commissioner develops and adopts performance frameworks that establish standards by which to measure the performance of open-enrollment charter schools. These performance frameworks were clearly intended by the legislature to be applied in addition to the agency's general accountability measure. The commissioner has the authority, therefore, to decide that a charter school--rated poorly but still passing under A-F accountability--may still not be acceptable for expansion.

Comment: Concerning 19 TAC §100.1033(b)(9)(A)(x), Texas Association of School Boards (TASB), Texas Association of School Administrators (TASA), Association of Texas Professional Educators (ATPE), 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), Center for Public Policy Priorities (CPPP), Texas School Alliance (TSA), Texas Association of Midsize Schools (TAMS), Fast Growth School Coalition, Texas Association of Rural Schools (TARS), Texas Elementary Principals and Supervisors Association (TEPSA), Intercultural Development Research Association (IDRA), and Coalition for Education Funding commented that among the commissioner's criteria for approving an expansion amendment, a school must meet "all other requirements applicable to expansion amendment requests and other amendments." The commenters maintained that "all other requirements" should include provisions of the school's charter.

Agency Response: The agency disagrees and offers the following clarification. The language "all applicable requirements" in 19 TAC §100.1033(b)(9)(A)(x) pertains to whether a school has met all the requirements of that rule, and it is one of the criteria to be met initially by a school in order to advance to commissioner consideration of an amendment request. It is the commissioner's practice to hold all charters to the provisions set forth in the school's charter; the commissioner has the authority to sanction a school for failure to meet said provisions as provided for in the TEC.

Comment: Concerning 19 TAC §100.1033(b)(10)(D)(ii)(I), TCSA commented that the language refers to the "accountability rating system established in TAC §97.1001," and that it is ambiguous regarding the accountability rating system to which it is referring; the commenter stated that the language requires an applying school to have achieved the highest- or second-highest accountability rating, but that it is unclear as to what those ratings would be.

Agency Response: The agency offers the following clarification. The accountability rating system established in 19 TAC §97.1001 is found twice in the proposed rule, in §100.1033(b)(12)(A)(ii) and (13)(A)(ii). In both instances, the rating system referred to is commonly known as "A-F accountability." Currently, the highest and second-highest scores in A-F accountability are A and B.

Comment: Concerning 19 TAC §100.1033(b)(10)(D)(ii)(I), TCSA commented that the requirement that applying schools have at least 50% of their students in grades assessed under TEC, Chapter 39, Subchapter B, was unfair to those schools that serve only grades not assessed under TEC, Chapter 39, Subchapter B. The commenter maintained that the subsection should be changed to state that the 50% requirement was not applicable to those schools serving only grades pre-K, K, 1, or 2.

Agency Response: The agency disagrees. The State Board of Education and the commissioner of education in the granting of charters have historically outlined a requisite number of students to be in tested grades in order to generate accountability ratings. This enables the state, parents, and public to be informed of the charter school's academic performance. Special consideration for schools serving prekindergarten students is already part of §100.1033(b)(10)(D)(ii) (E)(i).

Comment: Concerning 19 TAC §100.1033(b)(12)(A)(ii)(I) and (13)(A)(ii), TASB, TASA, ATPE, TSTA/NEA, Texas AFT, TCTA, Raise Your Hand Texas, Pastors for Texas Children, TACS, CPPP, TSA, TAMS, Fast Growth School Coalition, TARS, TEPSA, IDRA, and Coalition for Education Funding commented that the requirement that applying schools have achieved acceptable ratings in "two of the last four years" inappropriately gave these schools an opportunity to choose what ratings would apply to them. The commenters maintained that the language should be changed to make the applicable ratings the most recent three consecutive ratings.

Agency Response: The agency agrees. In keeping with TEA's goal of encouraging the highest-quality learning opportunities possible, it would be appropriate to award such designations to those charter schools with a consistent record of meeting high academic standards. The language of the rule will be revised for adoption.

STATUTORY AUTHORITY. The amendment is adopted 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 amendments may be filed with the commissioner at any time throughout the year. Expansion amendment requests must be received no earlier than the first day of January and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion.
  - (3) Relevant information considered. As directed by the commissioner, a charter holder requesting an 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 students. 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 students.
- (6) Relocation amendment. An amendment to relocate an existing campus or site 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 the relocation 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 the charter. This subsection does not limit 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 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 and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;
    - (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 designation for the charter school under the CSPF is "Tier 1" or "Tier 2" as defined by §100.1010 of this title;
    - (vii) 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) 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 of operation, copies of documents required by §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving), including 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, 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) the commissioner determines that the amendment is in the best interest of students; and
- (x) 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 students.
- (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.

- (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 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 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 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 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 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 and no later than the first day of March, not to exceed 18 months preceding the effective date of the expansion;
  - (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 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 the previous two ratings 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. 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 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 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 students.

- (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:
  - (i) satisfies each element of the definition of a public charter school as set forth in federal law;
  - (ii) is not merely an extension of an existing charter school;
  - (iii) 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 a separate written performance agreement 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 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 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 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 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 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. A 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 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 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 at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, is currently evaluated under the standard accountability procedures, currently has the highest or second highest district rating, and received the highest or second highest rating in the previous two ratings 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; 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 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 students.
- (B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a high-quality campus designation only if the campus with the proposed designation:
- (i) satisfies each element of the definition of a public charter school as set forth in federal law;
  - (ii) 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 a separate written performance agreement 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; and
  - (ii) whether the 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 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 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 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 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 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.
- (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 students.
  - (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 students.
  - (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.