

The Texas Education Agency (TEA) proposes an amendment to §97.1055, concerning accreditation status. The proposed amendment would modify the rule to indicate that TEA will not issue accreditation statuses in the 2020-2021 academic year due to the lack of accountability ratings for the prior academic year and that, for purposes of issuing lowered accreditation statuses based on consecutive years of performance, the 2019 and the 2021 academic accountability ratings are consecutive.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 97.1055(a)(1) requires the commissioner to annually assign each school district an accreditation status. Subsections (a)(1)(A) and (b)-(e) set forth the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked are determined. In years in which the applicable academic rating cannot be issued to school districts due to extraordinary public health and safety circumstances, the commissioner does not have both applicable ratings necessary to issue an Accreditation status, as required. Due to extraordinary public health and safety circumstances related to COVID-19 and the closure of schools during the state's testing window, academic accountability ratings were not issued for the 2019-2020 school year. The 2020 rating label issued to all districts and campuses is Not Rated: Declared State of Disaster.

The proposed amendment to §97.1055 would amend subsection (a)(9) to clarify that the academic accountability ratings issued for the 2018-2019 and 2020-2021 school years are consecutive when determining multiple years of academically unacceptable or insufficient performance. In addition, subsection (a)(11) would be amended to clarify that accreditation statuses issued for the 2019-2020 and 2021-2022 school years are consecutive.

The proposed amendment would add new subsection (a)(12) to clarify how a rating of Not Rated-Data Integrity or similar rating is issued to a school district will affect accreditation. When such a rating is issued, the commissioner may withhold or withdraw a previously issued accreditation rating. In the following school year, the commissioner will issue an accreditation rating based on the applicable school years.

The proposed amendment would also add new subsection (a)(13) to clarify that when there is a rating in only the financial accountability rating system or the academic accountability rating system, the commissioner may elect whether to consider the available rating when assigning a future accreditation status. This will allow the commissioner flexibility to determine the proper accreditation status when the district has a chain of failures in both accountability systems and breaks the chain when only one rating is available.

**FISCAL IMPACT:** Jeff Cottrill, deputy commissioner for governance and accountability, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

**LOCAL EMPLOYMENT IMPACT:** The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

**SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT:** The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

**COST INCREASE TO REGULATED PERSONS:** The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

**TAKINGS IMPACT ASSESSMENT:** The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit and expand an existing regulation. The proposed amendment would limit the requirement that the agency issue accreditation statuses annually by enabling the agency not to assign statuses for the 2020-2021 school year due to the lack of academic accountability ratings for the 2019-2020 school year. The proposed amendment would expand

the regulation by clarifying that academic accountability ratings for the 2018-2019 and 2020-2021 school years will be consecutive for the purposes of determining multiple years of unacceptable or insufficient academic performance and that the accreditation statuses issued for the 2019-2020 and 2021-2022 school years will be consecutive.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

**PUBLIC BENEFIT AND COST TO PERSONS:** Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts continue to receive an accreditation status on an annual basis and provide a clear process by which the agency will assign statuses in years in which the applicable ratings used to determine statuses are not issued. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no new data and reporting impact.

**PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS:** TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

**PUBLIC COMMENTS:** The public comment period on the proposal begins November 13, 2020, and ends December 14, 2020. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 13, 2020. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The amendment is proposed under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; and TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §39.051 and §39.052.

<rule>

### **§97.1055. Accreditation Status.**

(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

- (C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.
  - (D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.
- (2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).
  - (3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:
    - (A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and
    - (B) encourage other districts to improve their performance so as to retain their accreditation.
  - (4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39 or 39A, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.
  - (5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:
    - (A) specifically authorized by commissioner rule;
    - (B) timely requested under and in compliance with such rule; and
    - (C) applicable to the accreditation status under review.
  - (6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.
  - (7) The commissioner may withhold the assignment of an accreditation status to an open-enrollment charter school that is subject to TEC, §12.115(c) or §12.1141(d), or has otherwise surrendered its charter.
  - (8) An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.
  - (9) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section. Additionally, for purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2018-2019 school year and for the 2020-2021 school year are consecutive. An accreditation status assigned for the 2020-2021 school year shall be based on assigned academic and financial accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

- (10) If a lowered accreditation status is assigned and a sanction is imposed, the subsequent issuance of a new accreditation status does not affect the commissioner's authority to proceed with the previously imposed sanction.
  - (11) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive. Additionally, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2020-2021 school year, then the accreditation statuses issued for the 2019-2020 school year and for the 2021-2022 school year are consecutive.
  - ~~(12) If a rating of Not Rated-Data Integrity or similar rating is issued to a school district, the commissioner may withhold the assignment of an accreditation status or withdraw a previously issued accreditation status. For purposes of determining multiple years of unacceptable or insufficient performance, the rating issued for the prior and subsequent school year are consecutive. The next accreditation status assigned shall be based on assigned accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.~~
  - ~~(13) When an accreditation status is withheld because either a financial or academic accountability rating is not available or the district is not rated due to data integrity, the commissioner may, but is not required to, consider the rating that is issued when assigning subsequent accreditation statuses in order to achieve the purposes specified in §97.1053(a) of this title. If the commissioner elects not to consider a rating, then the previous and subsequent rating is consecutive.~~
- (b) Determination of Accredited-Warned status.
- (1) A district shall be assigned Accredited-Warned status if the district is assigned:
    - (A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System);
    - (B) for two consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Ratings);
    - (C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.
  - (2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:
    - (A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:
      - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
      - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);
      - (iii) other reports required by state or federal law or court order;
      - (iv) awarding high school graduation under TEC, §28.025; or

- (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
  - (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
    - (i) the district's programs monitored under §97.1005 of this title (relating to Results Driven Accountability [~~Performance-Based Monitoring Analysis System~~]) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or
    - (ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.
  - (3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warning status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (c) Determination of Accredited-Probation status.
- (1) A district shall be assigned Accredited-Probation status if the district is assigned:
    - (A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;
    - (B) for three consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;
    - (C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.
  - (2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:
    - (A) to an extent established under subsection (c) of this section, the district has failed to comply with requirements related to:
      - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
      - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;
      - (iii) other reports required by state or federal law or court order;
      - (iv) awarding high school graduation under TEC, §28.025; or
      - (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
    - (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
      - (i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or
      - (ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.

- (3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (d) Determination of Not Accredited-Revoked status; Revocation of accreditation.
- (1) The accreditation of a district shall be revoked if the district is assigned:
    - (A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;
    - (B) for four consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;
    - (C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.
  - (2) Notwithstanding paragraph (1) of this subsection, the commissioner may abate the assignment of a Not Accredited-Revoked status, issue another accreditation status, or elect to appoint a board of managers to govern the district in lieu of revoking the district's accreditation if the commissioner determines that revocation of the district's accreditation is not reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
  - (3) Notwithstanding this section, if the commissioner appoints a board of managers under paragraph (2) of this subsection or as a result of a special accreditation investigation, the commissioner shall assign the district accreditation statuses during the period of the appointment of the board of managers as follows.
    - (A) In the school year following the appointment of the board of managers, the commissioner shall assign the district an accreditation status of Accredited.
    - (B) In the school years following the issuance of the accreditation rating under subparagraph (A) of this paragraph, the commissioner shall assign the accreditation status as provided by subsections (a)-(d) of this section. However, the commissioner shall not consider any academic rating that was issued for a school year in which the district was operated, in whole or in part, by the suspended board of trustees. The commissioner shall also not consider any financial accountability rating that was issued based on financial data from a fiscal year in which the district was operated, in whole or in part, by the suspended board of trustees. Notwithstanding this provision, the commissioner may consider academic or financial ratings attributable to performance that occurred in a school year in which the district was operated, in whole or in part, by the suspended board of trustees if the commissioner, in his sole discretion, determines such consideration is necessary to achieve the purposes of TEC, §39.051 and §39.052.
    - (C) For any district subject to this paragraph, the commissioner may lower the district's accreditation rating to Not Accredited-Revoked at any time if the commissioner determines that the district is not making acceptable progress to correct its academic or financial performance and that closure and annexation is necessary to achieve the purposes of TEC, §39.051 and §39.052, unless the district has earned an Accredited status absent the application of subparagraph (A) or (B) of this paragraph.
    - (D) For purposes of this subsection, the period of appointment of the board of managers includes any school year in which any member of the board of managers serves, including the school year during which the appointment of the board of managers expires.
  - (4) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve

the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

- (A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:
  - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
  - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;
  - (iii) other reports required by state or federal law or court order;
  - (iv) awarding high school graduation under TEC, §28.025; or
  - (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
- (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
  - (i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or
  - (ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.
- (5) Notwithstanding paragraph (3) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (6) The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.
- (7) Issuance of an accreditation status of Not Accredited-Revoked does not invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the effective date of the annexation of the district.
- (e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1001 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:
  - (1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;
  - (2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and
  - (3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).
- (f) Required notification of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked status.
  - (1) A district assigned an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.
  - (2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.

- (3) Notice under this subsection must:
- (A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and
  - (B) appear in a newspaper of general circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:
    - (i) from Sunday through Tuesday of the second week following assignment of the status; or
    - (ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or
  - (C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or
  - (D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.
- (4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:
- (A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and
  - (B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or
  - (C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or
  - (D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.