

The Texas Education Agency (TEA) proposes amendments to §§97.1055, 97.1057, 97.1059, 97.1072, and 97.1073, concerning accreditation status, standards, and sanctions. The proposed amendments would modify the rules to clarify the applicability of a district's last issued accreditation status during years in which a district's accreditation status is withheld pending completion of an appeal or review and to indicate which academic accountability ratings and accreditation statuses are consecutive as a result of the learning disruptions caused by the COVID-19 pandemic. The proposed amendments would also implement Senate Bill (SB) 1365, 87th Texas Legislature, Regular Session, 2021, by reflecting changes related to the Not Rated accountability rating and updating statutory references.

**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.

The proposed amendment to §97.1055 would add new subsection (a)(8) to clarify that when a district's accreditation status is withheld pending completion of an appeal or review, the district's last issued accreditation status remains in effect until otherwise finalized or changed. The subsequent paragraphs would be renumbered due to the addition of proposed new subsection (a)(8).

Due to the learning disruptions caused by the extraordinary public health and safety circumstances related to COVID-19, academic accountability ratings were not issued for the 2019-2020 and 2020-2021 school years. The proposed amendment to §97.1055 would amend renumbered subsection (a)(10) to clarify that the academic accountability ratings issued for the 2018-2019 and 2021-2022 school years are consecutive when determining multiple years of academically unacceptable or insufficient performance for the purposes of accreditation. In addition, renumbered subsection (a)(12) would be amended to clarify that accreditation statuses issued for the 2019-2020 and 2022-2023 school years are consecutive.

Due to the passage of SB 1365, 87th Texas Legislature, Regular Session, 2021, the proposed amendment to §97.1055 would incorporate the accountability label of Not Rated as it relates to the commissioner's authority to withhold the assignment of an accreditation status or withdraw a previously issued accreditation status. Previously, only the label of Not Rated-Data Integrity was specified in this section. SB 1365 enables the commissioner to assign an accountability rating of Not Rated for reasons inclusive of but not limited to data integrity. The proposed amendment to renumbered subsections (a)(13) and (14) would reflect this change and clarify that when a rating of Not Rated or similar rating is issued to a school district, 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 amendments to §§97.1055, 97.1057, 97.1059, and 97.1073 would update statutory references to align with SB 1365, 87th Texas Legislature, Regular Session, 2021, which recodified Texas Education Code (TEC), Chapter 39, §39.057, into TEC, Chapter 39, §39.003, and changed "Special Accreditation Investigation" to "Special Investigation." In addition, the proposed amendments to §97.1059 and §97.1072 would update a cross reference title to 19 TAC §97.1071.

**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 rulemaking would limit the requirement that the agency issue accreditation statuses annually by enabling the agency not to assign statuses for the 2021-2022 school year due to the lack of implementation of academic accountability ratings for the 2020-2021 school year and for any year during which a rating of Not Rating is issued to a school district. The proposed rulemaking would expand an existing regulation by clarifying that academic accountability ratings for the 2018-2019 and 2021-2022 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 2022-2023 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: Dr. 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 ensure 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 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 October 8, 2021, and ends November 8, 2021. 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 October 8, 2021. 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 amendments are proposed under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses; and TEC §39.054(a-5), as added by Senate Bill 1365, 87th Texas Legislature, Regular Session, 2021, which states that when a "not rated" rating is issued, the "not rated" rating is not included in the count of consecutive unacceptable ratings and is also not considered to be a break in the count of consecutive unacceptable ratings.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, TEC, §§39.051, 39.052, and 39.054(a-5).

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#### **§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) If an accreditation status is withheld pending completion of an appeal or review as provided by this section, the district's last issued accreditation status remains in effect until otherwise finalized or changed.
- (9) ~~(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.
- (10) ~~(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 2021-2022 ~~[2020-2021]~~ school year are consecutive. An accreditation status assigned for the 2022-2023 ~~[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.
- (11) ~~(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.
- (12) ~~(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 2022-2023 ~~[2021-2022]~~ school year are consecutive.
- (13) ~~(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.
- (14) ~~(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-Warning 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, §39.003 or §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) 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 (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, §39.003 or §39.056 [~~§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, §39.003 or §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.

**§97.1057. Interventions and Sanctions; Lowered Rating or Accreditation Status.**

- (a) The provisions of Texas Education Code (TEC), Chapters 39 and 39A, and this subchapter shall be construed and applied to achieve the purposes of accreditation sanctions, which are specified in §97.1053 of this title (relating to Purpose).
- (b) If the commissioner of education finds that a district or campus does not satisfy the accreditation criteria under TEC, §39.051 and §39.052, the academic performance standards under TEC, §39.054, or any financial accountability standard as determined by the commissioner, the commissioner may lower the district's accreditation status, academic accountability rating, or financial accountability rating, as applicable, and take appropriate action under this subchapter.
- (c) Regardless of whether the commissioner lowers a district's status or rating under subsection (b) of this section, the commissioner may take action under TEC, Chapters 39 and 39A, or this section if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.
- (d) Regardless of whether a district has satisfied the accreditation criteria, if for two consecutive school years, including the current school year, a district has had a conservator or management team assigned, the commissioner may appoint a board of managers, a majority of whom must be residents of the district, to exercise the powers and duties of the board of trustees. For purposes of this subsection, a school year begins on the first day of instruction and includes any portion of the school year.
- (e) Subject to subsections (h)-(k) of this section, once the commissioner takes action under this subchapter, the commissioner may impose on the district or campus any other sanction under TEC, Chapter 39 or 39A, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title.
- (f) In determining whether to impose a particular sanction under TEC, Chapters 39 and 39A, or this subchapter, the commissioner may consider the costs and logistical concerns of the district [ ] but shall give primary consideration to the best interest of the district's students. The sanction selected shall be reasonably calculated to address the district's or campus' deficiencies immediately or within a reasonable time, in the best interest of its present and future students. The following shall be considered as being contrary to the best interests of the district's students:
  - (1) inefficient or ineffectual use of district funds or property;
  - (2) failure to adequately account for funds;
  - (3) receipt of a substantial over-allocation of funds for which the district has failed to plan prudently in light of its obligation to repay the funds under TEC, §42.258; and
  - (4) inability to implement effective change to improve the performance of students in the district or at the campus.
- (g) In determining whether to impose a particular sanction under TEC, Chapters 39 and 39A, or this subchapter based on resource allocation practices as authorized by TEC, §39.003(a)(12) and (d) and §39.0821 ~~and §39.057(a)(12), (d), and (e)~~, the commissioner shall consider the factors specified in §97.1053 of this title.
- (h) The commissioner shall notify the school district or open-enrollment charter school in writing of a sanction imposed under this subchapter or §100.1023 of this title (relating to Intervention Based on Charter Violations). The notice must state the basis for finding that the district or open-enrollment charter school does not satisfy the applicable criteria as indicated in this subchapter or §100.1023 of this title. The finding(s) may be made in the notice or in a final investigative report or based on a final investigative report.

- (i) If a finding is made for the first time in the notice required by subsection (h) of this section, the Texas Education Agency shall comply with Chapter 157, Subchapter EE, Division 1, of this title (relating to Informal Review) with respect to the new finding.
- (j) A determination under this section must be made in writing and may be included in a written notice under subsection (h) of this section. The determination may be made in the notice or in a final investigative report or based on a final investigative report. A determination under this section may be based on a report on the progress of a prior action under this subchapter.
- (k) The commissioner shall annually review a sanction imposed under subsection (h) of this section and shall increase the sanction, as required by TEC, §39A.901. The commissioner shall quarterly review the need for a conservator or a management team imposed under this subchapter, as required by TEC, §39A.003. If reviews are required under both TEC, §39A.901 and §39A.003, a quarterly review under TEC, §39A.003, may satisfy the annual review under TEC, §39A.901. An annual or quarterly review is not subject to the requirements of this section.

**§97.1059. Standards for All Accreditation Sanction Determinations.**

- (a) The commissioner of education shall impose district and campus accreditation sanctions under this subchapter individually or in combination as the commissioner determines necessary to achieve the purposes identified in §97.1053 of this title (relating to Purpose).
- (b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA) and shall impose one or more accreditation sanctions on a district and its campuses as needed to address:
  - (1) each material deficiency identified by the TEA through its systems for district and campus accountability, including:
    - (A) an accreditation status under §97.1055 of this title (relating to Accreditation Status);
    - (B) an academic accountability rating under §97.1001 of this title (relating to Accountability Rating System);
    - (C) a financial accountability rating under §109.1001 of this title (relating to Financial Accountability Ratings) or a financial audit or investigation;
    - (D) program effectiveness under §97.1071 of this title (relating to Special Program Performance; Monitoring, Review, and Supports [~~Intervention Stages~~] ) or other law;
    - (E) the results of a special [~~accreditation~~] investigation under Texas Education Code, §39.003 [~~§39.057~~] ;
    - (F) the results of an investigative report under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings); complaint investigation; special education due process hearing; or data integrity investigation, including an investigation of assessment or financial data;
    - (G) an inability to implement effective change to improve the performance of students in the district or at the campus; or
    - (H) other information related to subparagraphs (A)-(G) of this paragraph.
  - (2) any ongoing failures to address deficiencies previously identified or patterns of recurring deficiencies;
  - (3) any lack of district responsiveness to, or compliance with, current or prior interventions or sanctions; and
  - (4) any substantial or imminent harm presented by the deficiencies of the district or campus to the welfare of its students or to the public interest.

- (c) If the commissioner identifies a district and one or more of its campuses for accreditation sanction under subsection (a) of this section, the commissioner may elect to combine activities to be undertaken at the district and campus levels as needed to achieve the purposes of each sanction.
- (d) When making any campus-level determination under this subchapter, the commissioner shall also consider the district-level performance of the district on applicable academic, fiscal, and compliance standards.
- (e) The commissioner must review at least annually the performance of a district for which the accreditation status or academic accountability rating has been lowered due to insufficient student performance and may not raise the accreditation status or rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

**§97.1072. Residential Facility Monitoring; Determinations, Investigations, and Sanctions.**

- (a) Students with disabilities residing in residential facilities (RFs) are a unique and vulnerable population that often has limited access to family members who can advocate for their educational needs. Accordingly, the commissioner of education hereby establishes the Residential Facility Monitoring (RFM) system, through which the Texas Education Agency (TEA) will meet its federal and state special education monitoring obligations under 34 Code of Federal Regulations §300.149 and §300.600 and Texas Education Code (TEC), §29.010, for this population. The definition of an RF for purposes of the RFM system will be included in the Residential Facility Monitoring (RFM) Manual provided in subsection (f) of this section. Districts serving students with disabilities residing in RFs located within the districts' geographic boundaries and/or jurisdictions will be subject to the RFM system. These districts are referred to as RF districts.
- (b) RF districts shall report data, as directed by the TEA, in a data collection system accessible through the TEA secure website.
- (c) The commissioner shall determine which RF districts will be subject to RFM activities based on a review of available information according to the following general criteria or other factors set forth in the Residential Facility Monitoring (RFM) Manual:
  - (1) the degree to which the district's data reflect a need for monitoring and intervention, as indicated by the number of RF students with disabilities enrolled in the district; the presence of new RFs within the district; and the district's performance on certain critical indicators related to compliance with special education program requirements;
  - (2) a comparison of the district's performance to aggregated state performance and to the performance of other districts;
  - (3) a review of the district's longitudinal performance;
  - (4) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and
  - (5) the length of time since the district was last subject to RFM activities.
- (d) In addition to the criteria under subsection (c) of this section, the commissioner may use random district selection as a method of system validation and/or may consider any other applicable information such as:
  - (1) complaints investigation results;
  - (2) special education due process hearing decisions;
  - (3) data validation activities;
  - (4) monitoring results under §97.1071 of this title (relating to Special Program Performance; Monitoring, Review, and Supports [Intervention Stages] );
  - (5) the degree to which the district has achieved timely correction of previously identified noncompliance with program requirements;
  - (6) longitudinal intervention history; and

- (7) other relevant factors.
- (e) The commissioner may use graduated monitoring and intervention activities to implement the RFM system. In addition to any investigation, intervention, or sanction authorized by TEC, Chapter 39, or §89.1076 of this title (relating to Interventions and Sanctions), such intervention may require an RF district to implement and/or participate in:
  - (1) focused analysis of district data;
  - (2) reviews of district program effectiveness;
  - (3) public meetings;
  - (4) focused compliance reviews conducted by review teams established by the TEA;
  - (5) on-site reviews; and/or
  - (6) corrective action planning.
- (f) The specific criteria, standards, and procedures for implementing the RFM system are described in the Residential Facility Monitoring (RFM) Manual, dated August 2011, provided in this subsection. The specific criteria, standards, and procedures used in the RFM manual adopted for use prior to 2011 remain in effect for all purposes with respect to the applicable period of adoption.

Figure: 19 TAC §97.1072(f) (No change.)
- (g) RFM activities under this section are intended to assist the RF district in achieving compliance with federal and state special education requirements and do not preclude or substitute for a sanction under another provision of this subchapter.
  - (1) The TEA will implement sanctions authorized under TEC, Chapter 39, or this subchapter as necessary to promote timely and complete correction of identified noncompliance.
  - (2) A decision to impose sanctions shall be based on the accreditation and compliance performance of the district, as determined under §89.1076 of this title, §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status), and this subchapter.
- (h) RFM actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA such as:
  - (1) assignment of required professional services, paid for by the district;
  - (2) required submission of an improvement and/or corrective action plan, including the provision of compensatory services as appropriate, paid for by the district;
  - (3) expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or a corrective action plan, and submission of district/program data;
  - (4) public release of RFM review findings;
  - (5) issuance of a public notice of deficiencies and planned corrective actions to the district's board of trustees;
  - (6) denial of requests under TEC, §7.056 and/or §12.114;
  - (7) appointment of a monitor, conservator, management team, or board of managers under TEC, Chapter 39, and/or §97.1073 of this title (relating to Appointment of Monitor, Conservator, or Board of Managers);
  - (8) reduction, suspension, redirection, or withholding of program funds;
  - (9) lowering of the district's special education monitoring status; and/or
  - (10) lowering of the district's accreditation status.

- (i) As a system safeguard, the TEA will conduct desk review or on-site verification activities through random or other means of selection to verify system effectiveness and/or district implementation of RFM requirements, including, but not limited to, accuracy of data reported through the data collection system accessible through the TEA secure website and other data reporting, timely and sufficient implementation of monitoring and intervention activities, implementation of corrective action plans, and continued district compliance after completion of a corrective action plan.

**§97.1073. Appointment of Monitor, Conservator, or Board of Managers.**

- (a) The commissioner of education shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by this section. Action under any other section of this subchapter is not a prerequisite to acting under this section.
- (b) The commissioner may appoint a monitor under Texas Education Code (TEC), §39A.002, when:
  - (1) the district has an accreditation rating of Accredited-Warned or Accredited-Probation;
  - (2) a monitor is needed to ensure district-level support to low-performing campuses and the implementation of the updated targeted improvement plan; or
  - (3) all of the following exist:
    - (A) the deficiencies identified under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) require a monitor to participate in and report to the commissioner on the activities of the district's board of trustees and superintendent;
    - (B) the deficiencies identified under §97.1059 of this title are not of such severity or duration as to require direct Texas Education Agency (TEA) oversight of district operations;
    - (C) the district has been responsive to and generally compliant with previous commissioner sanctions and TEA interventions; and
    - (D) stronger intervention is not required to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.
- (c) The commissioner may appoint a conservator or management team under TEC, §§39A.002, 39A.003, 39A.006, and 39A.102, when:
  - (1) the district has an accreditation rating of Accredited-Probation;
  - (2) a conservator or management team is needed to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan;
  - (3) the nature or duration of the deficiencies require that the TEA directly oversee the operations of the district in the area(s) of deficiency;
  - (4) the district has not been responsive to or compliant with TEA intervention requirements; or
  - (5) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest.
- (d) The decision whether to appoint a conservator or management team under subsection (c) of this section may be based on logistical concerns, including the competencies required and the volume of work involved. The addition of a conservator to form a management team or the addition of additional members to the management team is not a new sanction and does not entitle the district to an additional review.
- (e) The commissioner may appoint a board of managers under TEC, §§39A.004, 39A.006, 39A.102, 39A.107, 39A.111, 39A.256, or 12.116(d)(1), as applicable, when:
  - (1) sanctions under subsection (b) or (c) of this section have been ineffective to achieve the purposes identified in §97.1057 of this title (relating to Interventions and Sanctions; Lowered Rating or Accreditation Status);
  - (2) the commissioner has initiated proceedings to close or annex the district;

- (3) the commissioner has initiated proceedings to close a campus, and such intervention is needed to cease operations of the campus;
  - (4) such intervention is needed to prevent substantial or imminent harm to the welfare of the district's students or to the public interest;
  - (5) a board of managers is needed to ensure and oversee district-level support to low-performing campuses and the implementation of the updated targeted improvement plan;
  - (6) the district has a campus that is subject to TEC, §39A.111, and the commissioner does not order the closure of the campus;
  - (7) deficiencies identified in a special accreditation investigation warrant the appointment of a board of managers; or
  - (8) a failure in governance results in an inability to carry out the powers and duties of the board of trustees as outlined in TEC, §11.151 and §11.1511.
- (f) Not later than the second anniversary date of the appointment of the board of managers, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire.
- (g) A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the district in accordance with applicable provisions of law. Except as provided by this subsection, the members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.
- (1) An individual elected to the board of trustees at an election ordered under this subsection assumes and may exercise all powers and duties of that office at the first official board meeting where the replacement of the member of the board of managers with the elected board of trustees member occurs and after satisfying all legal and procedural prerequisites to take office.
  - (2) Any member of the board of trustees elected during the appointment of the board of managers who has not yet assumed the powers and duties of a member of the board of trustees will not be considered for purposes of constitution of a quorum.
  - (3) A board of managers shall order elections for trustees with three-year terms to be held annually in accordance with TEC, §11.059(b). Following each of the last three years of the period of appointment, one-third of the members of the board of managers shall be replaced by the number of members of the school district board of trustees who were elected at an election ordered under this paragraph that constitutes, as closely as possible, one-third of the membership of the board of trustees.
  - (4) A board of managers shall order elections for trustees with four-year terms to be held biennially in accordance with TEC, §11.059(c). Following each of the last three years of the period of appointment, one-third of the members of the board of managers shall be replaced by the number of members of the school district board of trustees who were elected at an election ordered under this paragraph that constitutes, as closely as possible, one-third of the membership of the board of trustees.
  - (5) Upon the appointment of a board of managers to a school district, the commissioner will designate the sequence in which the board of managers' member groups and eligible board of trustees' member groups, the number of which constitutes, as closely as possible, one-third of the membership of the board of trustees, will be replaced by an equal number of elected board of trustees members. The commissioner may modify the composition or number of members constituting those groups at any time during the period of the appointment.
  - (6) The commissioner may at any time remove and/or replace a member of the board of managers and may expand or reduce the number of the board of manager members at any time during the appointment of the board of managers.
  - (7) On the expiration of the appointment of the board of managers, the board of trustees assumes all of the powers and duties assigned to a board of trustees of the school district.

- (8) The commissioner may designate the sequence in which an eligible trustee of the board of trustees will replace a member of the board of managers. If the commissioner makes such designation, a trustee replacing a manager would complete the remainder of his or her elected term upon placement to the transitioning board. In the absence of a designation by the commissioner, the trustees elected in an election following each of the last three years of the board of managers' appointment, as determined by the commissioner, shall replace the designated members of the board of managers, except as follows.
  - (A) In the event that the number of trustees elected in the first election exceeds one-third of the total board of trustees membership, the board of managers shall determine by lot which of those trustees shall be selected to initially replace members of the board of managers and assume positions on the board.
  - (B) Any remaining trustees elected at the first election ordered under this paragraph shall replace an equivalent number of members of the board of managers and assume positions on the board in the following year, together with any trustees elected in the second election ordered by the board of managers under this paragraph.
  - (C) In the event that the total number of previously elected trustees who have not yet assumed positions on the board exceeds one-third of the total board of trustees membership, the trustees elected at the first election ordered under this paragraph shall receive priority in the order of placement on the board, followed by trustees elected at the second election, who shall be selected by lot by the board of managers.
  - (D) Any trustees elected in the third election ordered by the board of managers under this paragraph shall replace an equivalent number of members of the board of managers and assume positions on the board following the last year of the period of the board of managers' appointment.
- (h) The training in effective leadership strategies required under TEC, §39A.205, shall be provided by TEA-approved authorized providers of school board training to each individual appointed by the commissioner to a board of managers, including board of trustees members appointed under subsection (g)(4) of this section, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district.
- (i) A board of trustees member appointed under subsection (g)(4) of this section must complete the training required in subsection (h) of this section prior to or within 10 days of the appointment. Failure to do so may result in the removal of the board of trustees member from the board of managers.