

The Texas Education Agency (TEA) proposes the repeal of §97.1066 and new §97.1066, concerning campus repurposing and closure. The proposed repeal and new rule would reflect changes to Texas Education Code (TEC), §39A.113, by House Bill 4205, 86th Texas Legislature, 2019, and provide clarification to statutory provisions.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 97.1066, Campus Closure, was adopted in 2016 to outline the process and procedures in the event the commissioner orders campus closure. Due to statutory changes and the need for more specificity around closure and campus repurposing, the section would be repealed and replaced with new §97.1066, Campus Repurposing and Closure. Following is a summary of the proposed new rule.

New subsection (a) would define terms used throughout the proposed new section.

New subsection (b) would establish that the proposed new section applies to campuses that are ordered closed by the commissioner under TEC, §39A.111, or to campuses that are closed by the district.

New subsection (c) would establish what qualifies as a repurposed campus. New subsection (c)(3)(A)(iii) would add clarity to the provision found in TEC, §39A.113(a)(1)(A), by including how many grade levels can be added to a newly repurposed campus each year.

New subsection (d) would define the criteria for the distinctly different academic program described in TEC, §39A.113(a)(1). Subsection (d)(1) and (2) would specify the staffing requirements for a campus that is considered to have a distinctly different academic program: the principal and assistant principals must be new to the campus unless they are in their first year of assignment at the campus (and, therefore, did not oversee the campus when it received consecutive unacceptable ratings); and teachers employed at the campus prior to repurposing must apply for a position at the repurposed campus and have demonstrated instructional effectiveness in the prior year. Subsection (d)(3) would specify that the campus must be an open-enrollment campus in the district. Subsection (d)(4) would clarify that the district must establish plans to implement a new academic experience, including plans for high-quality instructional materials, school culture, staffing, and services for special populations. Language would also be added in subsection (d) to clarify that if a campus is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), the campus will be considered to meet the requirements of a distinctly different academic program.

New subsection (e) would establish the criteria for campus repurposing after a campus is ordered closed by the commissioner due to continued unacceptable ratings. Subsection (e)(1) would clarify that, if the commissioner orders campus closure, the closure takes place at a date specified by the commissioner, and, if the commissioner appoints a board of managers to govern the school district, the commissioner may assign a new county-district-campus number (CDCN) to the campus that caused the sanction, if the campus meets the requirements in subsection (e). Subsection (e)(2) would clarify that the new CDCN takes effect no later than September 1. Subsection (e)(3) would allow the commissioner to issue a label of Not Rated to a campus subject to TEC, §39A.111.

Subsection (e)(4) would clarify the criteria that a facility that housed a closed campus must meet to receive a new CDCN for a repurposed campus in the same facility. The proposed new language would specify that the campus must meet the requirements in TEC, §39A.113, related to the students and grade levels that can be served at the repurposed campus and would require that the repurposed campus meet the criteria for a distinctly different academic program that is defined in subsection (d). The new language would further clarify that a campus that is operated under a qualifying contract as an in-district charter with an entity that meets the requirements in TEC, §39A.113(a)(1)(B), may receive a new CDCN, but if the district terminates the contract before the end of the 3-year term, the commissioner may order closure of the campus or appoint a board of managers to govern the district. The new subsection would also stipulate that the district must complete governance training and create a student tracking plan no later than June 30 of the year that the campus begins operation under the new CDCN. The student tracking plan would require that, unless the campus is to be operated under contract by a qualifying non-profit entity, students who were assigned to the closed campus attend a higher performing campus and not the repurposed campus.

New subsection (f) would address the assignment of a new CDCN to a campus that is closed by the district. New subsection (f)(1) would clarify that all criteria in subsection (f) must be met for a district to receive the new CDCN.

New subsection (f)(2) would clarify that districts may not receive a new CDCN to evade state or federal accountability sanctions and interventions, and if a district is determined to have requested the new CDCN to evade sanctions and interventions, the commissioner may deny the request, assign students under a new CDCN to the campus's prior CDCN, and open a special investigation into the district. New subsection (f)(2)(B) would clarify some of the scenarios in which a district would be considered to be attempting to evade accountability sanctions and interventions.

Subsection (f)(3) would clarify that if a campus's most recent rating was an acceptable rating, the district may close the campus, repurpose the facility, and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions as described in subsection (f)(2)(A).

Subsection (f)(4) would establish the timelines under which the district may close a campus with an unacceptable rating, repurpose the facility, and receive a new CDCN. It would clarify that the district board of trustees must order closure of the campus by January 31 of the year that the campus could receive its fourth or less consecutive unacceptable rating and that the repurposed campus and the district would have to meet the criteria in subsection (f)(4). Subsection (f)(5) would clarify that, once a campus has begun operating in the school year in which it could earn its fifth consecutive unacceptable rating, the district cannot order closure of that campus.

New subsection (g) would clarify that, regardless of prior rating, if a district facility has not been used for direct education services for at least one school year, the district may receive a new CDCN for a new campus in that facility without having to meet the requirements in new §97.1066.

New subsection (h) would clarify that the commissioner may allow students assigned to the closed campus to attend the repurposed campus if there are no other campuses in which the students may enroll in accordance with TEC, §39A.113(d).

New subsection (i) would establish that if the district reassigns the majority of students from a campus that was closed due to an unacceptable rating to another single campus, that campus may be assigned the CDCN of the closed campus (and, therefore, be subject to the sanctions for the closed campus) if the commissioner determines that the reassignment threatens the integrity of the accountability system.

**FISCAL IMPACT:** Kelvey Oeser, deputy commissioner for educator support, has determined that 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 repeal an existing regulation and create a new regulation. The proposed rule action would establish new criteria that campuses closed due to unacceptable ratings must meet if the district wants to repurpose the facility to house a new campus under TEC, §39A.113.

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 expand or limit 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:** Ms. Oeser 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 providing school districts with clarifications on the criteria to repurpose a closed campus. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact. Districts that intend to repurpose a campus that has been closed must submit plans describing the campus's new academic program and student tracking plans to ensure that students who attended the closed, unacceptable campus will attend a higher-performing campus.

**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 December 2, 2022, and ends January 9, 2023. 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 December 2, 2022. 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 repeal is proposed under Texas Education Code (TEC), §39A.111, which establishes that a campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

<rule>

### **§97.1066. Campus Closure.**

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §39A.111, which establishes that a campus that receives a fifth consecutive unacceptable rating is subject to a board of managers or closure; TEC, §39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019, which establishes the requirements for a campus that has been closed by commissioner action to be repurposed; and TEC, §39A.115, which allows the commissioner to adopt rules to implement TEC, Chapter 39A, Subchapter C.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §§39A.111; 39A.113, as amended by House Bill 4205, 86th Texas Legislature, 2019; and 39A.115.

<rule>

### **§97.1066. Campus Repurposing and Closure.**

- (a) Definitions. For purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Acceptable and unacceptable ratings--the terms acceptable and unacceptable ratings have the meanings assigned in Texas Education Code (TEC), §39.0543. The accountability rating is for the year in which the performance occurs, not the year in which the preliminary or final rating is issued.
  - (2) Campus--this term has the meaning assigned in §97.1051(3) of this title (relating to Definitions).
  - (3) County-district-campus number (CDCN)--the 9-digit number assigned to instructional campuses.
  - (4) Facility--a facility includes a building, a group of buildings, portable buildings, or any combination thereof that the commissioner of education determines would comprise a campus.
- (b) Campus closure. A campus may be closed by:
- (1) the commissioner as described in TEC, §39A.111, and §97.1065 of this title (relating to Commissioner Determinations for Decisions Preceding Alternative Management, Campus Closure, or Board of Managers) if it is assigned an unacceptable performance rating for five consecutive school years, regardless of whether the school district closes or orders the closure of the campus before the fifth consecutive unacceptable accountability rating is issued; or
  - (2) the school district, subject to the provisions in this section.
- (c) Repurposing. A campus is considered to be repurposed if:
- (1) a CDCN assigned to a campus is closed;
  - (2) the school district operates a new campus in the same facility as the closed campus; and
  - (3) the new campus meets the criteria in TEC, §39A.113. The campus must:
    - (A) serve a majority of grade levels not served at the original campus.
      - (i) The school district must have a grade level plan approved by Texas Education Agency (TEA) staff.
      - (ii) The campus may repurpose starting with one or more grade spans (elementary, middle school, and/or high school).
        - (I) If the campus repurposes with only one grade span, the campus must repurpose with the lowest grade level or levels to be served and include no more than three elementary grade levels, including prekindergarten-Grade 5; one middle school grade level, including Grades 6-8; or one high school grade level, including Grades 9-12.
        - (II) If the campus repurposes with more than one grade span (elementary, middle school, and/or high school), the campus may repurpose starting with the lowest grade level in each grade span.



(4) A school district may repurpose a facility that housed a campus that was closed by order of the commissioner under TEC, §39A.111, and receive a new CDCN if one of the following requirements is met.

(A) The campus and school district meet the following criteria:

(i) the campus meets the criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, or subsection (d) of this section; and

(ii) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:

(I) the district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new campus number is open;

(II) the district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus, unless the campus is to be operated under contract as described in subparagraph (B) of this paragraph. The plan must ensure that students who attended the closed campus:

(-a-) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is a campus whose most recent performance rating is an A, B, or C; and

(-b-) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and

(III) the district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

(B) The campus is operated under contract with a non-profit entity as described in TEC, §39A.113(a)(1)(B), and the contract:

(i) meets the requirements described in §97.1075(d) of this title; and

(ii) has a term of at least three years. If the contract is terminated prior to the end of the contract term, the commissioner may order closure of the campus or appoint a board of managers as described in TEC, §39A.111.

(f) Repurposing after school district closure.

(1) A school district may repurpose a facility that housed a closed campus and receive a new CDCN if the district meets the criteria in this subsection.

(2) Regardless of the campus's most recent rating, a school district may not repurpose a facility and receive a new CDCN if the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions.

(A) If a school district is determined to have requested a new CDCN to evade state or federal accountability sanctions and interventions, the commissioner may:

(i) deny the approval of the new CDCN or assign students enrolled under the new CDCN to the prior CDCN; and

(ii) open a special investigation of the school district under TEC, §39.003.

- (B) Changing a CDCN to evade sanctions and interventions may include, but is not limited to, the following scenarios:
- (i) enrolling zero students in a CDCN and reassigning students to one or more other campuses in the school district;
  - (ii) requesting closure of a CDCN and then serving students in that facility under a different CDCN;
  - (iii) relocating the majority of students to a new facility without prior TEA approval;
  - (iv) requesting closure of a CDCN and repurposing the campus with the same grade configuration; or
  - (v) requesting significant modification of grade levels at a campus with an unacceptable rating even if campus closure is not requested.
- (3) A school district that closes a campus whose most recent academic accountability rating is acceptable or higher, including a rating of D that meets the criteria in TEC, §39.0543(b), may repurpose the facility that housed that campus and receive a new CDCN unless the commissioner determines that such an assignment would allow the district or campus to evade state or federal accountability sanctions and interventions as described in paragraph (2)(A) of this subsection.
- (4) A school district that closes a campus whose most recent academic accountability rating is unacceptable may repurpose a facility and receive a new CDCN if:
- (A) the school district board of trustees ordered the campus closed no later than January 31 of the school year in which the campus could earn its second, third, or fourth consecutive unacceptable rating, as defined in TEC, §39.0543(a) and (c), regardless of whether the facility was used for direct educational services in the school year prior to the proposed operation of the new campus under a new CDCN;
  - (B) the campus meets all criteria in TEC, §39A.113(a)(1)(A), subsection (c)(3) of this section, and subsection (d) of this section related to campus repurposing; and
  - (C) the school district meets the following criteria by June 30 of the year in which the operation of the campus with a new CDCN will begin:
    - (i) the school district completes initial training in a TEA-approved governance framework supporting continuous improvement and engages in ongoing implementation for at least the duration of the school year in which the new CDCN is open;
    - (ii) the school district is issued a final closure order that is not subject to any contingency;
    - (iii) the school district develops and implements a plan to ensure that the students who attended the closed campus do not attend the repurposed campus. The plan must ensure that students who attended the closed campus:
      - (I) are assigned to a campus whose most recent performance rating is an A, B, or C or have access to nearby school choices that are higher performing than the closed campus. For purposes of this subsection, a higher performing campus is campus whose most recent performance rating is an A, B, or C; and
      - (III) must be allowed to attend the new campus until the student would have stopped attending the closed campus by reason of matriculation to another campus or graduation; and
    - (iv) the school district timely submits all information required by the commissioner to make a determination under this subsection. Failure to submit information by June 30 may result in non-approval of the new CDCN.

- (5) A school district cannot close or order the closure of a campus in the year that the fifth or higher consecutive unacceptable accountability rating could be earned.
- (g) Repurposing a campus that has not been in operation. Regardless of school district or commissioner closure, the district may repurpose the campus with a new CDCN if the facility has not been used for any direct educational services for at least one complete school year without having to meet requirements in this section.
- (h) Exemptions. The commissioner may grant an exemption allowing students assigned to a closed campus to attend the repurposed campus if there is no other campus in the school district at which the students may enroll.
- (i) Reassignment. Notwithstanding the provisions in this section, if the school district reassigns a majority of the students that attended a campus that was closed due to an academically unacceptable rating in the prior year to another campus in the district, the receiving campus may be assigned the CDCN of the closed campus and shall be subject to any sanction or intervention applicable to the closed campus if the commissioner determines that this is necessary to preserve the integrity of the accountability system.