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October 17, 2014

Mr. Ken Levine, Director  
Sunset Advisory Commission  
PO Box 13066  
Austin, TX 78711

RE: Comments on the Sunset Advisory Commission Staff Report on the Texas Education Agency

Dear Mr. Levine,

On behalf of more than 202,000 charter school students in 588 charter school campuses and more than 101,000 students on waiting lists to be enrolled in a charter school, I thank you for the opportunity to comment on the Sunset Advisory Commission's staff report on the Texas Education Agency ("TEA" or "the Agency"). Formed six years ago, the Texas Charter Schools Association ("TCSA") aims to improve student achievement in Texas by advocating for and strengthening a diverse set of high quality charter schools. TCSA continues to make a positive impact on public charter schools in Texas, and we speak for the diverse mission types including college preparatory, drop out recovery, specialized mission for STEM, fine arts, etc, students in residential treatment centers/juvenile detention facilities and early childhood education-focused charters.

#### **TCSA Commends the Sunset Advisory Commission Staff**

The Texas Charter Schools Association commends the Sunset Advisory Commission staff for continued outreach to stakeholders as they report on the Texas Education Agency. We provide the following comments to aid the staff on this significant project.

#### **TCSA Comments on Staff Recommendations and Status of 2012 Sunset Commission Recommendations**

The Texas Charter Schools Association writes today to specifically comment on Issue 4 and on the Status of 2012 Sunset Commission Recommendations as they directly relate to open-enrollment charter schools. Our comments aim to give the Sunset Advisory Commission a perspective on how the Agency should operate in light of the changes made by the enactment of Senate Bill 2 (83<sup>rd</sup> Regular), the most significant amendments to Texas charter law since the inception of charter schools in 1995. While TCSA remains steadfast in its support of Senate Bill 2's design to permit the increased flourishing of successful charter schools, we are highly concerned about the Agency's capacity to faithfully implement Senate Bill 2 as the Legislature intended, particularly in light of the recently adopted Agency rules implementing its provisions.

- **Staff Recommendations from 2014 Report**

***Recommendation 4.3: Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.***

TCSA agrees with the Commission that the open-enrollment charter school evaluation under Tex. Educ. Code §12.118 is not an effective tool for evaluating charter school performance. However, TCSA disagrees with the Commission's proposed recommendation. TCSA recommends that the evaluations under Tex. Educ. Code §12.118 be repealed because of the annual evaluation requirements imposed by Senate Bill 2 with the addition of §12.1013 (Charter Authorizer Accountability). We believe the Charter Authorizer accountability provision in newly adopted §12.1013 is an annual evaluation tool that can be used not only to measure the performance and costs of charter schools compared to traditional districts,

but also to provide a performance comparison of schools authorized by the Commissioner to those authorized by the State Board of Education and school districts.

***Recommendation 4.8: Require school districts and open-enrollment charter schools to submit information about their depository contracts to TEA, instead of filing copies of their depository contracts and related documents with the Agency.***

TCSA supports this recommendation, and agrees with the Commission that submitting a direct deposit form that identifies their depository is sufficient to ensure charter holders directly receive state education funds.

- **Status of 2012 Sunset Commission Recommendations**

***Recommendation 5.1: Incorporate the Financial Solvency Review into the FIRST financial accountability system (Implemented by House Bill 5).***

TCSA supports the changes made by the Legislature through House Bill 5 (83<sup>rd</sup> Regular) to incorporate the financial solvency review into the FIRST financial accountability system. TCSA is concerned that the Agency, in implementing this mandate, has not adequately taken into account the unique aspects of charter school finance in developing the revised Charter FIRST standards. TCSA has actively sought to provide stakeholder input on behalf of its members to the Agency regarding the changes that need to be made to Charter FIRST, and we hope that TEA will incorporate these recommendations as it implements this House Bill 5 mandate. Attached are TCSA's comments to the Agency's draft FIRST targets for charter schools. TCSA would be happy to provide the Commission with additional stakeholder comments regarding the Agency's draft FIRST targets for charter schools.

Because Senate Bill 2 imposed mandatory performance-based revocations for open-enrollment charters, it is imperative that the Agency adopt a financial accountability system that accurately and fairly measures the financial health of an open-enrollment charter. Failure to do so may result in the wrongful revocation of good charter operators, those that are not only successfully educating students, but that are financially sound and proper stewards of public funds. House Bill 5 recognized the need to reevaluate the financial accountability system, and we implore the Agency to use this opportunity to reevaluate and revise the Charter FIRST system so that it contains accountability standards that are fair, accurate and recognize the distinct nature of how a charter school financially operates.

***Recommendation 7.1: Require revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row (Statutory Alternative Implemented).***

TCSA agrees with the Commission that the Legislature, through Senate Bill 2, adopted Recommendation 7.1, and as such, no further legislative action is needed to provide TEA with the power to effectively revoke a chronically underperforming charter school. TCSA remains highly concerned regarding the Agency's implementation of the mandatory revocation process, and in particular, the lack of any meaningful due process for an open-enrollment charter subject to revocation under Tex. Educ. Code §12.115(c), or a charter subject to revocation under Tex. Educ. Code §12.115(a), or the denial of a charter renewal under Tex. Educ. Code §12.1141(c).

Under the new statutory framework, the informal review process is the only opportunity for the charter school to have a meaningful opportunity to be heard by the Commissioner regarding the decision to revoke or deny renewal of a charter. The Agency has adopted an informal review process<sup>1</sup> that is woefully insufficient and unnecessarily antagonistic, as it completely removes the charter's ability to participate in the process in any meaningful way. The informal review process does not give charter representatives the right to be present at the informal review or require the Agency to consider information such as corrective actions, mitigating factors or other information submitted by the charter

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<sup>1</sup> The informal review process is codified in rule at 19 Tex. Admin. Code §157.1123

for consideration at the informal review. Such a one-sided, extremely limited process does not align with the intent of Senate Bill 2, is fundamentally unfair, and creates an unnecessarily antagonistic relationship between the charter school and its authorizer. At a minimum, the charter holder should have an opportunity to present evidence of mitigating factors, corrective measures, or other compelling evidence to the Commissioner to reconsider the action against the charter or to discuss with charter representatives the assignment of the operations of the charter to a different charter holder as authorized under Tex. Educ. §12.116(d) in order to best serve students.

***Recommendation 7.2: Authorize the Commissioner to suspend operations and pursue revocation of an imminently insolvent charter to ensure it does not open without sufficient funding to complete the term. (Statutory Alternative Implemented).***

TCSA agrees with the Commission that the Legislature, through Senate Bill 2, adopted Recommendation 7.2, and as such, no further legislative action is needed to ensure that an open-enrollment charter school does not continue to operate without sufficient funding to sustain operations.

The Agency, however, has adopted a rule that contains too broad of a definition of “imminently insolvent” under 19 Tex. Admin. Code §100.1022(h) and as such, an open-enrollment charter school may have its charter revoked or be subject to reconstitution of the governing board in situations when it is not facing insolvency. TCSA provided comments to the Agency during the rule-making process to this effect and unfortunately, the Agency did not make any changes to the definition. TCSA urges the Commission to recommend an appropriate statutory definition of “imminently insolvent”, as a charter should be revoked or subject to reconstitution only when it is truly on the verge of financial demise.

***Recommendation 7.3: Set eight-year terms for charters and restructure the renewal process to ensure failure to meet basic standards for accountability can lead to nonrenewal. (Statutory alternative implemented).***

TCSA agrees with the Commission that the Legislature, through Senate Bill 2, adopted Recommendation 7.3 and as such, no further legislative action is needed regarding the term of a charter contract or the charter renewal process. Senate Bill 2 established a five (5) year initial term and a ten (10) year renewal term in statute for a charter contract.

Concerning charter renewal, Senate Bill 2 established a streamlined and performance-based, tiered renewal process that requires expedited renewal for charters with continual high performance, discretionary renewal for charters that merit renewal based upon growth and other objective criteria, and mandatory non-renewal for chronically low-performing charters. TCSA believes the tiered renewal structure imposed by Senate Bill 2, along with a firm deadline for TEA to approve or deny a renewal within a maximum of 60 days, has resolved a long-standing problem of the Agency holding certain charters in a perpetual state of pending renewal or using renewal as a sanction when another sanction would otherwise be appropriate.

TCSA is disappointed however, in how the Agency has initially adopted the discretionary renewal process in rule. The Agency adopted 50-plus different possible criteria, a violation of any one of which may be a basis for non-renewal of the charter contract, without providing any guidance or requirement in rule addressing if, or how, these criteria will be weighed by the Agency. This approach to renewal does not reflect the intent of Senate Bill 2, is not consistent with sound charter authorizing principles, and certainly is not aligned with the Commission’s prior recommendation that charter renewal should not be used as a sanction.

In our public comments to the Agency regarding the proposed rules, TCSA recommended that in lieu of this approach, the Agency use the Performance Frameworks to be developed by the Agency under Senate Bill 2 and the annual evaluations thereunder as the sole discretionary renewal tool. Currently, it is our understanding that the Agency is going to incorporate the Performance Frameworks as part of the

discretionary renewal process once completed, and we hope that it will be a performance-based tool that will replace the laundry list of compliance or technical reasons the Agency has currently adopted in rule for charter renewal. We appreciate the Agency's efforts thus far in developing the Performance Frameworks with the charter community and look forward to continuing to work with the Agency in developing the Performance Frameworks as a comprehensive and effective tool for evaluating the renewal of a charter contract.

***Recommendation 7.4: Provide for objective criteria and flexibility in applying sanctions to charter schools. (Agency Alternative Implemented, no action needed).***

TCSA continues to support the staff's recommendation to provide objective criteria and flexibility in applying sanctions to charter schools, but disagrees that recently adopted Agency rules include objective criteria in applying sanctions to charter schools.

The Agency has chosen to adopt rules regarding charter sanctions that do not align with the intent and purpose of the statutory changes made by Senate Bill 2, and do not provide any assurance that these sanctions will be applied objectively, consistently, or fairly. As adopted, both the rules regarding revocation and discretionary renewal read as a laundry list of compliance matters a violation of any one of which allows the Commissioner to close a charter, without any requirement for the Commissioner to consider corrective actions, mitigating factors or a lesser sanction. While Senate Bill 2 sought to streamline the process for the Agency to intervene or close a chronically underperforming charter school, its intent and purpose was not to provide the Agency with carte blanche authority to revoke or deny renewal of a charter without a clear and objective process for determining that closure of the charter is what is in the best interests of the school and its students.

**Recommendation 7.5: Authorize TEA to reconstitute the governing board of a charter holder (Statutory Alternative Implemented).**

TCSA agrees with the Commission that the Legislature, through Senate Bill 2, adopted Recommendation 7.5 and as such, no further Legislative action is needed.

Unfortunately, the Agency has adopted rules (19 Tex. Admin. Code §100.1022) that do not distinguish between the standards for revocation of a charter and the standards for reconstitution of the governing board. Because revocation of the charter is the most significant penalty the Commissioner can impose, the Agency should distinguish in rule between the types of violations that warrant revoking the charter and when a lesser sanction of reconstitution of the board will be imposed. As adopted, the rule sets forth numerous criteria (many for relatively minor compliance matters) a single violation of which may trigger revocation or reconstitution, leaving the distinction entirely within the Commissioner's sole discretion on a case-by-case basis. At a minimum, the Agency should set forth in rule a requirement for the Commissioner to consider mitigating factors and before a determination that an open-enrollment charter school has committed a violation that requires revocation of the charter. As written, the Commissioner has exclusive discretion and authority, and can revoke a charter without considering any lesser sanction for a myriad of compliance violations, without any requirement to consider mitigating factors or other input from the charter holder.

#### ***Management Action***

**Recommendation 7.8: TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor performing charters. (Agency alternative implemented, no action needed)**

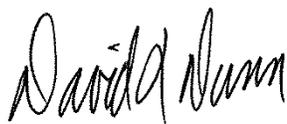
TCSA continues to support the recommendation that the Agency provide objectivity and clarity in applying sanctions to charter schools, and we believe that the comprehensive changes made by Senate Bill 2 have provided the Agency with the statutory framework necessary to be consistent in applying sanctions under Chapter 12 of the Education Code.

Unfortunately, the Agency has adopted rules regarding charter sanctions that do not provide clear or objective standards that ensure appropriate action against poor performing charters. Application of the adopted rules regarding charter sanctions will almost certainly result in an inconsistent practice of the Agency using any one of the myriad of technical and compliance violations to close a charter without having to first consider the performance of the school or what is in the best interests of the students overall.

### **Conclusion**

Once again, TCSA commends the Sunset Commission and is grateful for the opportunity to comment on the 2014 report. Senate Bill 2 was the first major revision of the state's charter law since its inception, and we recognize that proper implementation takes time and that the Commission has not had the opportunity to evaluate the impact of the Agency's implementation of Senate Bill 2. We hope the Commission will have the opportunity to do so, and look forward to working with the Commission, TEA and the Legislature to ensure Senate Bill 2's success as an effective strengthening of the state's charter law that will drive further improvement in the charter school movement.

Regards,

A handwritten signature in black ink that reads "David Dunn". The signature is written in a cursive, flowing style.

**David Dunn**  
Executive Director  
Texas Charter Schools Association



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DAVID DUNN

**Statement by David Dunn  
Sunset Recommendations  
Regarding Texas Education Agency  
November 13, 2014**

I'm pleased to provide written feedback on the Sunset Advisory Commission's staff report on the Texas Education Agency (TEA). I submit testimony today on behalf of more than 200,000 students attending charter schools on 628 campuses, and the more than 100,000 students on waiting lists to attend a charter. The Sunset Commission began its review of the TEA prior to the passage of Senate Bill 2 and House Bill 5 – two laws that significantly impact the agency's charter school responsibilities. TCSA supports Senate Bill 2, a law designed to speed the opening of effective and proven charter schools while giving the commissioner the ability to close schools that chronically fail to accomplish their mission. We are concerned however the agency is failing to implement Senate Bill 2 as the Legislature intended. Our primary concerns are highlighted below:

**CHARTER FIRST**

- House Bill 5 incorporates the financial solvency review into the FIRST financial accountability system – a move we support, but the agency hasn't taken into account the unique aspects of charter school finance in developing the revised Charter FIRST standards.
- Because Senate Bill 2 imposes mandatory performance-based revocations for charters, it is critical the TEA adopts a financial accountability system that accurately and fairly measures the financial health of charters.
- As it stands now, it is possible and even likely financial sound charter operators will face revocation.

**REVOCAION & DUE PROCESS AT TEA**

- Senate Bill 2 provides the TEA with the power to effectively revoke chronically underperforming charter schools, but the agency's mandatory revocation process is flawed.
- Under the new statute, the informal review process is the only opportunity for the charter school to be heard by the commissioner.
- Yet the TEA removes a charter's ability to participate in any meaningful way. Charters don't have the right to be present and the agency isn't required to consider corrective actions, mitigating factors, or other information submitted by the school.
- Also troubling is the agency's definition of "imminently insolvent." It's vague and could trigger a charter school revocation or reconstitution of its governing board when in fact the school is not facing insolvency.

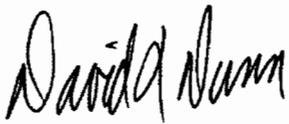
**RENEWALS**

- The renewal structure created in Senate Bill 2, along with a firm deadline for the TEA to approve or deny a renewal within 60 days, has resolved a long-standing problem of the agency trapping charters in a cycle of pending renewal.
- Unfortunately the agency has adopted a laundry list of 50+ ways to lose your charter, of which a violation of any one way can be a basis for non-renewal.

- This is not consistent with sound charter authorizing principles, and certainly is not aligned with the Commission's prior recommendation that charter renewal shouldn't be used as a sanction.
- The TEA should instead use the Performance Framework being developed under Senate Bill 2 and the annual evaluations created by them as the renewal criteria.
- Senate Bill 2 sought to streamline the process to close chronically underperforming charter schools, but not to provide the agency with unchecked authority to revoke or deny renewal of a charter without a clear and objective process.
- The TEA and commissioner should determine that closure of a charter is what is in the best interests of the school and its students as a last resort and not a first step.

We appreciate the opportunity to provide this feedback and stand ready to assist the Sunset Commission as it finalizes the staff report.

Sincerely,



David Dunn  
Executive Director  
Texas Charter Schools Association