

From: [Sunset Advisory Commission](#)
To: [Dawn Roberson](#)
Subject: FW: TCTA comments on Sunset Staff Report on TEA
Date: Friday, October 17, 2014 4:16:56 PM

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From: Holly Eaton [<mailto:heaton@tcta.org>]
Sent: Friday, October 17, 2014 4:16 PM
To: Sunset Advisory Commission
Cc: Karen Latta
Subject: TCTA comments on Sunset Staff Report on TEA

To Whom It May Concern:

The Texas Classroom Teachers Association, representing approximately 50,000 classroom teachers and instructional personnel statewide, has the following response to the 2014 Sunset Staff Report on the Texas Education Agency:

Issue 1: While TEA Has Improved Oversight of Its Large and Complex Student Assessment Contract, Further Work Is Needed.

Recommendations
Management Action

1.1 TEA should provide comprehensive information online about the student assessment procurement process and contracts to improve transparency. TCTA supports this recommendation but would suggest going further by recommending that TEA provide comprehensive information online about all of its major contracts. In fact, Sunset staff makes the statement in its recommendation that “TEA should consider using this transparent approach for its other major contracts” but then goes on to state that “TEA should determine which contracts are considered major for the purposes of this recommendation.” Rather than limiting the recommendation for transparency to just the student assessment procurement process and contract, we suggest expanding the recommendation to include all major TEA contracts, as defined in the recommendation. In fact, the remaining two management action recommendations made by Sunset staff under Issue #1 pertain to all major TEA contracts, defined in management action 1.3 as “all contracts worth more than \$5 million over the length of the contract.” Although TEA does provide a list of Listing of contracts worth \$100,000 or more<<http://www.tea.state.tx.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=25769808662&libID=25769808664>> with a beginning date of September 1, 2013 through the end of 2013 on its website, it is just that – a list of vendor names and the contract amount for 2013, with no other information. According to the July, 2013 TEA Sunset Final Report states, TEA’s largest contracts in fiscal year 2011 were as follows: Student assessment NCS Pearson, Inc. \$468 million; Texas educator assessment Educational Testing Service \$85 million; Summer remediation study guide NCS Pearson, Inc. \$36 million; Advanced Placement and college entrance exams, The College Board \$24 million; and School Readiness Program University of Texas Health Science Center — Houston \$15 million. Given that TEA routinely executes contracts with both private and governmental entities that are of great interest to the public both in terms of the significant amount of expenditures and the subject matter associated with the contracts, TEA should be required to post information, including at a minimum, the solicitation, contracts, and contract amendments for all contracts over \$5 million over the length of the contract on its website in a timely manner.

1.2 TEA should allow sufficient time for vendors to submit proposals for major contracts. TCTA supports this recommendation but would suggest defining “major contracts” as those worth over \$5 million over the length of the contract, consistent with recommendation 1.3, rather than leaving it up to TEA to define.

1.3 TEA should provide more centralized contract oversight and develop monitoring plans for all major contracts. TCTA supports this recommendation.

Issue 2: TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input.

Recommendation 2.1 — Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts. TCTA supports this recommendation.

Recommendation 2.2 — Require TEA to adopt rules for its use of advisory committees to ensure the committees meet standard structure and operating criteria. TCTA supports this recommendation as long as it allows for the formation of ad hoc committees and informal input as the need arises.

Issue 3: Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission Key Recommendations: TCTA supports these recommendations.

Recommendation 3.1 — Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation (TDLR).

Recommendation 3.2 — Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.

Recommendation 3.3 — Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.

Recommendation 3.4 - Remove fixed driver training fee amounts and fee caps from statute.

Recommendation 3.5 - Require TDLR to maintain information on driver training complaints.

Recommendation 3.6 Increase the driver training statute's maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.

Recommendation 3.7 Require TDLR to use the State Office of Administrative Hearings to conduct hearings on driver training enforcement cases.

Issue 4: Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions During a Time of Limited Resources.

Recommendation 4.1 Eliminate one academic performance indicator that is no longer applicable under the current testing system. TCTA supports this recommendation.

Recommendation 4.3 Restructure the open-enrollment charter school evaluation to provide flexibility for the agency. TCTA supports this recommendation in part but opposes changing the report from an annual report to one that is done every four years, especially given the increasing numbers of students in charter schools.

Recommendation 4.4 Limit TEA's involvement in appointing hearing examiners for teacher contract cases. TCTA opposes this recommendation. Currently, Texas Education Code 21.254 requires the commissioner to maintain a list of all persons who have been certified as hearing examiners and assign them within ten business days after the date on which the commissioner receives the request for a hearing. The Sunset staff recommendation would allow the teacher and district to request the assignment of a hearing examiner only in cases when they do not agree on a

hearing examiner within 25 days of the teacher receiving notice of the district's proposed action. TCTA objects to this proposed change because it places the parties, who are preparing for litigation and have assumed an adversarial stance, in a position where they must agree to an IHE without objective TEA oversight. This is akin to requiring parties in litigation to go to mediation without a mediator. It also could unnecessarily prolong the hearing process, as either party could delay the hearing process by simply refusing to agree to an IHE. Finally, the proposed system is unfair to the IHEs who submit their names to be placed on the list. Currently, TEA assigns IHE's based on a simple rotation of names within the geographical area of the hearing. Requiring the parties to agree would create a system in which IHE's that are new or unknown to the parties are placed at a disadvantage.

Recommendation 4.6 Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making. TCTA opposes this recommendation. Since the district-and-campus-level decision-making committees are the statutorily-designated avenue for teachers and parents to give input on items of major importance in their schools, such as planning, budgeting, curriculum, staffing patterns, staff development, and school organization, we believe it is imperative for the Agency to assess the effectiveness of these committees in the way the current statute requires, via the annual statewide survey. With the current state of technology and online capability, we believe that any potential costs associated with distribution of a statewide survey could be greatly mitigated.

Recommendation 4.9 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the commissioner. TCTA opposes this recommendation. The stated rationale for this recommendation was that "superintendent severance payments are not consistently reported to the agency and TEA has no ability to take action if a board of trustees does not report the severance payment. While TEA withholds a minimal amount of state funding each year as a result of these reviews, agency resources could be better used to audit funds with a higher risk to the State." We believe that superintendent severance pay is of interest at both the state and local levels and that TEA's suggestion in its Self-Report that consideration should be given to aligning this section of statute to TEC §39.083 and/or §44.001(b) is a good one. Each district should be required to annually report through the Public Education Information Management System (PEIMS), or some other means, the status of a superintendent's contract and any severance amount paid to a terminated or departing superintendent. We urge its inclusion in the Sunset Commission's recommendation as well.

Recommendation 4.10 Replace the prescriptive audit methodology for compensatory education funds with a requirement for TEA to audit all aspects of state education funding through a risk-based approach. TCTA understands the constraints under which TEA is operating with regard to its ability to audit district expenditures of state funds and thus the recommendation for TEA to develop a standard, risk-based approach to auditing these funds in rule, and provide guidance to districts and open-enrollment charter schools in any training or reference materials it provides, such as the Financial Accountability System Resource Guide. However, given that the 83rd legislature amended the law to require that districts which are required to provide accelerated instruction under Section 29.081(b-1) may not budget compensatory education funds for any other purpose until the district adopts a budget to support additional accelerated instruction, there is now more of a need for TEA to carefully audit compensatory education funds. Accordingly, an auditing system in which further investigation is prompted only by problems indicated by a select few indicators will not be sufficient to enable proper state oversight of district expenditures of large sums of state funds. Instead, any auditing approach used by the Agency should include an indicator regarding district prioritizing of funds for accelerated instruction before budgeting compensatory education funds for any other purpose. Additionally, rather than resort to a purely risk-based approach, we would urge that at a minimum, any such approach should include any information received from complaints made to the Agency and provide for random audits/investigations of school districts by the Agency.

TCTA additionally supports these recommendations:

Recommendation 4.11 Eliminate the requirement for TEA to recognize schools' use of high school allotment funds.

Recommendation 4.12 Eliminate the Best Practices Clearinghouse

Recommendation 4.13 Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative

Recommendation 4.14 Eliminate four unnecessary reporting requirements, but continue 19 that still serve a purpose.

Issue 5: TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.

TCTA supports these recommendations:

Recommendation 5.1 Authorize the Commissioner of Education to work with county commissioners courts to ensure the timely annexation of an insolvent school district.

Recommendation 5.2 Authorize the commissioner to adjust the effective date for a district's annexation.

Recommendation 5.3 Provide the commissioner with flexibility to annex a school district to a non-adjointing district.

Recommendation 5.4 Provide the commissioner with limited authority to use a board of managers beyond two years for the purpose of overseeing the annexation process.

Recommendation 5.5 Clarify conflicting provisions to ensure that the commissioner may annex a school district for failure to meet financial accountability standards or loss of accreditation status.

Issue 6: Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board

Recommendation 6.1 Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education. TCTA opposes this recommendation. The Legislature created SBEC in 1995 to provide educators with a strong role in governing the preparation and standards of their profession. The Board's composition places a majority of educators in a policymaking position while ensuring representation of other key state entities, such as the TEA. It is critical that real practitioners – who are going to understand the impact and implications – should have more than an advisory role in making the rules governing their own profession, just like other professions.

Recommendation 6.2 Remove the State Board of Education's authority to reject proposed educator certification and educator preparation rules. TCTA opposes this recommendation. Although unusual, the current structure of having elected State Board of Education oversight of SBEC rules serves as a good check and balance for rules promulgated by SBEC as an appointed body. The balance of authority between the appointed and elected boards is carefully structured so that SBOE only has the authority to accept or reject SBEC rules. This process has proven to be effective as evidenced by the fact that only on rare occasions when the public interest in/controversy over a proposed SBEC rule has risen to extreme levels has the SBOE rejected an SBEC rule. Thus, the current structure incentivizes TEA staff to be more inclusive of stakeholders throughout the rule development process, which in turn has led to more carefully crafted rules, more comprehensive buy-in from the education community, and less need for the SBOE to reject a rule and send it back to SBEC.

Recommendation 6.3 Require the commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs. TCTA opposes this recommendation. Although certainly TEA staff is to be commended for consistently soliciting the involvement of stakeholders in their policy formulation process, having an advisory committee of educators does not rise to the level of giving real practitioners who are uniquely positioned to best understand the impact and implication of policies governing their profession, policy-making ability with regard to the regulation of their profession.

Issue 7: Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.

Recommendation 7.1 Clarify the statutory requirements for school administrators to report misconduct by certified

educators to TEA.

- Require charter school directors to meet the same certified educator misconduct reporting and investigation requirements as superintendents. Although TCTA supports this recommendation, we question the enforceability of it given that charter school directors are not necessarily certified. Accordingly we recommend that alternative sanctions be proposed.
- Require superintendents and charter school directors to report any termination or resignation based on a determination that the certified educator solicited or engaged in sexual conduct or was involved in a romantic relationship with a student or minor. TCTA opposes this recommendation. Again, there is an enforceability issue with regard to charter school directors. Additionally, current law already requires superintendents to report to SBEC any time an educator resigns or is terminated if there is reasonable cause to believe that the educator committed an unlawful act with a student or minor. Relevant provisions of the Penal Code make it a crime for an educator to engage in an inappropriate relationship with a minor. If the underlying issue is underreporting by superintendents, then the appropriate remedy is for SBEC to exercise its ability to sanction such superintendents, which to our knowledge has never been exercised.
- Require superintendents and charter school directors to complete an investigation of a certified educator if they have a reasonable suspicion, rather than the higher standard of reasonable cause to believe, that a certified educator abused or solicited or engaged in sexual conduct or a romantic relationship with a student or minor; and direct TEA to establish guidelines outlining the procedures schools must follow during an investigation. TCTA opposes this recommendation as there is no standard in rule or law for what constitutes reasonable suspicion. Districts already must complete an investigation if they intend to propose contract termination and are required to report this type of misconduct to SBEC in the case of a resignation. Additionally, although the statute and rules do not provide guidance to schools about how to conduct investigations, the procedures and body of law surrounding contract termination and nonrenewal have been in place for many years. Moreover, investigations regarding allegations of improper conduct with a student or minor are often extremely sensitive in nature. Districts should have the ability to determine the appropriate course of action to take when conducting an investigation so as not to jeopardize pending criminal investigations, violate confidentiality of witnesses and protect the integrity of the process. Such determinations must be made on a case by case basis. For these reasons, TCTA believes that the creation of guidelines for investigation would impede rather than enhance the investigative process.

Recommendation 7.2 Grant the commissioner administrative subpoena power to fully investigate certified educator misconduct cases. This power lies properly with the State Board for Educator Certification. TCTA does not necessarily have an objection to this recommendation, so long as the information remains confidential and the educator is given an opportunity to inspect all documents and witness statements obtained via subpoena.

Recommendation 7.3 Require the commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule. This power lies properly with the State Board for Educator Certification and appears to be largely resolved: SBEC adopted into rule general principles of SBEC disciplinary actions derived from the SBEC disciplinary policy guidelines previously approved by SBEC and published in the Texas Register (19 TAC Section 249.5) in Dec. 2013.

Issue 8: Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.

Recommendation 8.1: Establish a five-year renewal process for EPPs in statute. TCTA supports this recommendation.

Recommendation 8.2: Require the commissioner to adopt rules to make information about how to file a complaint about an EPP accessible to EPP students and the public. TCTA supports this recommendation.

Recommendation 8.3: Require the Commissioner to establish a comprehensive risk-assessment model to guide the

monitoring of EPPs. TCTA supports this recommendation.

Recommendation 8.4 Strengthen and clarify the commissioner's authority to sanction EPPs for violations of law or rules. TCTA supports this recommendation.

Issue 9: TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.

Recommendation 9.1: Apply three standard Sunset across-the-board recommendations to the Texas Education Agency.

Conflicts of interest. This recommendation would define "trade association" as a cooperative and voluntarily joined statewide association of business or professional competitors. The recommendation would prohibit high-level TEA employees from being an officer, employee, or paid consultant of a professional trade association in the field of elementary or secondary education, and prohibit high-level employees' spouses from being an officer, manager, or paid consultant of such a professional trade association. It would also update statute to prohibit TEA's general counsel from lobbying on behalf of interests related to the field of elementary or secondary education. TCTA supports this recommendation.

Information on complaints. This recommendation would require TEA to maintain a system for acting on complaints and to make information regarding its complaint procedures available to the public. The agency must also maintain documentation on complaints and periodically notify complaint parties of the status of complaints. This recommendation applies to all complaints that concern matters on which TEA can take action. TCTA supports this recommendation.

Negotiated rulemaking and alternative dispute resolution. This recommendation would ensure that TEA develops and implements a policy to encourage alternative procedures for rulemaking and dispute resolution that conforms, to the extent possible, to model guidelines by the State Office of Administrative Hearings. The agency should also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. The recommendation would only apply to the Commissioner of Education, not the State Board of Education, which has independent policymaking and rulemaking authority. TCTA supports this recommendation.

Issue 10: Texas Has a Continuing Need for the Texas Education Agency.

Recommendation 10.1 Continue the Texas Education Agency for 12 years. TCTA supports this recommendation.

Recommendation 10.2 Redefine the commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system. TCTA supports this recommendation in part; we oppose the component of the recommendation that the duty to "ensure the quality of public school educators by certifying educators, regulating educator preparation programs, and taking enforcement action in cases of educator misconduct" be transferred from the State Board of Educator Certification to the Commissioner.

New issues:

Ensuring adaptable assessment contracts: all testing contracts of two or more years duration shall include a provision providing proportional reductions in contracted work and compensation in the event changes to state or federal law or rules result in a reduction of tests required.

Transparency in contracting: As the July, 2013 TEA Sunset Final Report states, "The Texas Education Agency relies heavily on contracts with outside vendors to fulfill its responsibilities for implementing and monitoring federal and state educational programs. In fiscal year 2011, the agency's contracted expenditures totaled an estimated \$241 million." "...Sunset staff found that TEA has many contracting standards in place, but the agency does not always follow its own processes. The agency also had difficulty producing a list of its active contracts and expenditures associated with those contracts." Given that TEA routinely executes contracts with both private and governmental entities that are of great interest to the public both in terms of the significant amount of expenditure associated with the contracts, as well as significant impact on state and local policy*, TEA should be required to

post information about these contracts on its website in a timely manner.

*An example includes the TEA contract with NCS Pearson, Inc. for nearly all of its testing functions through a five-year contract worth \$468.4 million.

Agency agreements impacting major policy areas and laws: On a related matter, the Commissioner/TEA also commonly enter into agreements with other governmental entities, many of which implement, interpret, or prescribe law or policy. A recent example is the NCLB waiver agreement that the Commissioner executed with the U.S. Department of Education. The waiver agreement has enormous implications for federal, state, and local policies and laws in the areas such as school accountability and teacher evaluation. Although the initial waiver request was published for public comment, the contents of the waiver agreement changed significantly from that point to when, almost a year later, the conditions of final waiver agreement were agreed upon. The public was never allowed to weigh in on the significantly changed final agreement, nor was there an opportunity for broad stakeholder input into that version. Additionally, the Commissioner made commitments in the final waiver agreement that are not allowable under current state law, such as requirement to use student growth on state tests for an individual teacher's evaluations; the requirement for districts using locally developed systems to include student growth on state tests for individual teachers' evaluations; and the commitment to ensure annual evaluation for all teachers. Given the sweeping policy and statutory implications of agreements such as these, the Commissioner and TEA should be directed to follow the Administrative Procedures Act when entering into these agreements, and the Commissioner should be prohibited from entering into agreements in which commitments are made that are not allowable and/or violative of current state law.

Financial accountability: Since the chief mechanism for upon which financial accountability is assessed is via PEIMS submissions, it is critical that PEIMS codes be accurate and transparent; accordingly, TEA's data system should provide for ways to validate the accuracy of district coding of PEIMS categories, and the accountability system, including financial accountability, should provide for sanctions for districts submitting inaccurate data. Additionally, new statutory requirements regarding the definition of "teacher" for purposes of financial accountability indicators should be publicized (see TEC section 39.082(b)).

Monitoring: With regard to TEA's monitoring functions, due to lack of resources, TEA has had to resort to more desk audits and fewer on-site visits. We are concerned that a monitoring system in which on-site visits are prompted only by problems indicated by a select few indicators will not yield an entire or accurate picture to the Agency about the status of education in schools. We would therefore urge that the Agency consider combining a performance-based monitoring system with random, on-site visits to schools to look beyond the data to see what is really happening in schools.

Paperwork burdens on educators: One of the most common complaints we receive from our members is the overwhelming amount of paperwork they are required to complete, which takes away from valuable instructional or planning time. We believe that in implementing new rules, TEA should be required to perform an assessment of additional paperwork requirements the rule would potentially impose upon educators. If the rule does impose additional paperwork requirements, TEA should revise the rule to minimize such paperwork requirements.

Charter schools: Charter applications should be public in order to introduce more transparency into the selection process; additionally boiler-plate charter applications should be precluded. Charter schools were originally intended to be laboratories of innovation. Form submissions go against the purpose of the charter school system.

We have general concerns about granting current charter holders the fast-tracked ability to add additional charter campuses, given the limited resources TEA has to monitor existing charter schools and the problems many charters have experienced.

Audits of the accuracy of fiscal information provided by charter schools via PEIMS should include an identification of all sources of funding, including private funding.

TEA rules should specify that any and all paid endorsements or commission-based endorsement contracts are prohibited.

Charters operating for less than a full instructional day should have their funding be pro-rated. Many charter schools offer half-day programs, and yet receive full-day funding for each half-day program. Students end up being in school for only short amounts of time and presumably at a lower cost to the school under this scenario.

Commissioner's waiver authority re charters: The Commissioner should be prohibited from using his waiver authority to effectively overrule a decision by the elected State Board of Education to deny a charter school's application for approval to operate in Texas. In a recent example of this, after the SBOE voted 9 to 6 to veto Great Hearts Academies' application to open a new school in Dallas, the school chose another route, applying to the Commissioner to request an expansion of their existing charter in San Antonio by adding campuses in other locations. In approving the request, the Commissioner waived a state law requiring that charter schools must have been operating for at least four years or hold an "acceptable" or higher accountability rating before being granted an expansion. This action by the Commissioner in effect circumvented the careful structure of checks and balances the legislature put into law regarding approval of charter school applications, in which the Commissioner compiles a list of charter school applications he has approved and then submits that list to the SBOE for a final vote on the matter. Accordingly, the Commissioner should be prohibited from using his waiver authority in this manner. It should also be clarified whether the Commissioner actually has waiver authority at all with regard to charters.

We also have concerns regarding the criteria TEA uses to determine what charter holders are eligible for the expansion amendments. While we understand the desire to allow consistently high performing charters to expand without undue scrutiny, these campuses are only required to show "Required Improvement" measures showing growth or improvement by comparing prior-year performance to current-year performance. Charters wishing to fast-track expansion should be subject to the standard accountability system to fully measure their progress and achievement in the Texas public school system.

We recommend eliminating the expansion amendment option for charters using the alternative accountability standards. These schools are serving at-risk students whose needs require significant expertise to meet. The alternative accountability thresholds for acceptable performance are simply too low to serve as a basis for authorizing additional charter locations. Further, limiting the availability of expansion amendments to charter schools succeeding under the regular accountability system will provide an incentive for charters to move towards a more rigorous system.

Thank you for this opportunity for input; we look forward to working with the Sunset staff and Commission throughout this process.

Holly Eaton

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Holly Eaton

**Testimony to the Sunset Advisory Commission
Regarding the Texas Education Agency
By Holly Eaton
Director of Professional Development and Advocacy
November 13, 2014**

Thank you for this opportunity to testify about the Texas Education Agency. We have a keen interest in TEA given the numerous and profound ways that TEA's actions affect the daily lives of classroom teachers and instructional personnel.

Although we agree with many of the recommendations in the Sunset staff report, especially the recommendations concerning TEA contracts, there are several recommendations, some major and others more minor, with which we disagree and some that we think should be modified or expanded. Additionally, we disagree with some of the Sunset staff recommendations, including the abolishment of the State Board for Educator Certification. A full rendering of our comments on the Sunset staff recommendations are included in your hearing materials, so below are just some highlights.

Recommendations that we strongly suggest be modified or expanded:

- **TEA contracts**

We strongly support Sunset staff's recommendation in Issue #1 that TEA should provide comprehensive information online about the student assessment procurement process and contracts to improve transparency. However, we believe that this recommendation should not be limited to just TEA's assessment contracts but rather, *all* its major contracts. According to the July, 2013 Sunset Final Report for TEA, "*The Texas Education Agency relies heavily on contracts with outside vendors to fulfill its responsibilities for implementing and monitoring federal and state educational programs. In fiscal year 2011, the agency's contracted expenditures totaled an estimated \$241 million.*" TEA's largest contracts in fiscal year 2011 were: Student assessment NCS Pearson, Inc. \$468 million; Texas educator assessment Educational Testing Service \$85 million; Summer remediation study guide NCS Pearson, Inc. \$36 million; Advanced Placement and college entrance exams, The College Board \$24 million; and School Readiness Program University of Texas Health Science Center — Houston \$15 million. Sunset staff described "all major contracts" as "*all contracts worth more than \$5 million over the length of the contract*" in Management Action 1.3. **Given that TEA routinely executes contracts with both private and governmental entities that are of great interest to the public both in terms of the size of expenditures and the subject matter associated with the contracts, TEA should be required to post information, including at a minimum, the solicitation of bids for, contracts, and contract amendments for all contracts over \$5 million over the length of the contract on its website in a timely manner.**

- **Agency agreements impacting major policy areas and laws**

On a related matter, the Commissioner/TEA also commonly enters into agreements or arrangements with other governmental entities, many of which implement, interpret, or prescribe law or policy. Recent examples include the NCLB waiver agreement that the Commissioner executed with the U.S. Department of Education (USDE) in September 2013, and the Preschool Development Grant Application that the Commissioner submitted to USDE in October 2014.

The NCLB waiver agreement has enormous implications for federal, state, and local policies and laws in the areas such as school accountability and teacher evaluation. Although the initial waiver request was published for public comment, the contents of the waiver agreement changed significantly from that point to when, almost a year later, the conditions of final waiver agreement were agreed upon. The public was never allowed to weigh in on the significantly changed final agreement, nor was there an opportunity for broad stakeholder or legislative input into that version. Additionally, the Commissioner made commitments in the final waiver agreement that are not allowable under current state law.

In another example, in the Preschool Development Grant Application, the Commissioner proposed four delivery models, one of which provided for an \$8,000 vouchers per student to be issued to 3,000-5,0000 eligible students per year to use to attend accredited private (or public) preschool programs of their choice.

Not only is this a major sea change in public policy but is contrary to the position consistently taken by the Texas legislature. Legislators from both political parties have consistently refused to support vouchers for private schools and the legislature has expressed an explicit desire to prohibit the use of state monies for vouchers in adopting language to that effect in the state budget.

Given the sweeping policy and statutory implications of agreements/arrangements such as these, the Commissioner and TEA should be directed to follow the Administrative Procedures Act when entering into agreements or arrangements that implement, interpret, or prescribe law or policy; and the Commissioner should be prohibited from entering into agreements or providing assurances in which commitments are made that are not allowable under and/or violate current state law.

- **Monitoring/Enforcement.**

One of the chief functions for which we believe that TEA is responsible, yet which has struggled to accomplish, is the monitoring and enforcement of key state and federal education laws. Due in part to statutory changes made by the legislature as well as diminished state funding, the state of affairs is such that there's virtually no ability to enforce the bulk of Texas education law (absent narrowly prescribed appeal opportunities to the agency) or to ensure accountability for the local expenditure of state funds. Consequently, TEA has resorted to desk audits of school district funding expenditures and a risk-based monitoring approach for ensuring school district compliance with a narrowly defined set of laws.

Accordingly, we urge that Sunset recommendations include requiring the Agency to combine a performance-based monitoring system with random, unannounced on-site visits to schools to look beyond the data to see what is really happening in schools.

Related to this, we commend Sunset staff recommendation 9.1 that TEA maintain a system for acting on complaints and to make information regarding its complaint process available to the public.

However, we would recommend going further and require the Agency to connect its complaint process with its monitoring systems so that information from complaints is part of the criteria considered in the monitoring process and in deciding which districts may need more scrutiny.

Recommendations with which we disagree:

- **State Board for Educator Certification**

We oppose the recommendations in Issue #6 to abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education; to require the Commissioner to establish an advisory committee of practitioners and educator preparation program directors to provide input to the Commissioner about the regulation of educators; and to eliminate State Board of Education oversight of SBEC rules.

The Legislature created SBEC in 1995 to provide educators with a strong role in governing the preparation and standards of their profession via placement on a policymaking board. *It is critical that real practitioners – who are going to understand the impact and implications – have more than an advisory role in making the rules governing their own profession, just like other professions. Simply having an advisory committee of educators does not accomplish this.*

Moreover, the recommendation to eliminate elected State Board of Education oversight of SBEC rules is problematic. *Although unusual, the current structure of elected State Board of Education oversight of SBEC rules allows for appropriate parameters of review by an elected body over rules promulgated by SBEC as an appointed body. This structure has actually worked to introduce more efficiency in the rulemaking process by incentivizing TEA staff to be more inclusive of stakeholders in the initial phases of and throughout the rule development process, leading to more carefully crafted rules, more comprehensive buy-in from the education community, and less need to use the rulemaking process for revisions.*

- **Educator Reporting Requirements**

Another set of recommendations with which we disagree has to do with the series of educator reporting requirements made in Issue #7. Although on their face, recommendations requiring superintendents and charter school directors to report various acts of misconduct by educators to TEA sound reasonable, *in many cases these recommendations require duplicative reporting of information the agency already receives from other sources.* Additionally, we suspect that the root problem that these recommendations are attempting to address is the underreporting of existing requirements by superintendents – in which case we maintain the appropriate remedy is for SBEC to exercise its ability to sanction such superintendents – which to our knowledge has never been exercised by SBEC. Regarding the recommendation to require charter school directors to meet the same certified educator reporting and investigation requirements as superintendents, although we support this recommendation *we note there's the issue of enforceability needs to be addressed since charter school directors are often not certified.*

Likewise, we oppose the recommendation to require superintendents and charter school directors to complete an investigation of a certified educator if they have a reasonable suspicion, rather than the higher standard of reasonable cause to believe, that a certified educator abused or solicited or engaged in sexual conduct or a romantic relationship with a student or minor. ***There is no standard in rule or law for what constitutes reasonable suspicion. Districts already must complete an investigation if they intend to propose contract termination and are required to report this type of misconduct to SBEC in the case of a resignation.***

- **Independent Hearing Examiners**

Regarding recommendations contained in Issue 4, we oppose recommendation 4.4 to limit TEA's involvement in appointing hearing examiners for teacher contract cases. The Sunset staff recommendation would allow the teacher and district to request the assignment of a hearing examiner only in cases when they do not agree on a hearing examiner within 25 days of the teacher receiving notice of the district's proposed action. ***TCTA objects to this proposed change because it places the parties, who are preparing for litigation and have assumed an adversarial stance, in a position where they must agree to an IHE without objective TEA oversight. This is akin to requiring parties in litigation to go to mediation without a mediator. It also could unnecessarily prolong the hearing process, as either party could delay the hearing process by simply refusing to agree to an IHE.***

- **Site-based decision-making committee survey**

Finally, in this area, we're opposed to recommendation 4.6 to eliminate the requirement for TEA to assess the effectiveness of district and campus site-based decision-making via an annual statewide survey. District and campus site-based committees are the statutorily-designated avenue for teachers and parents to give input on items of major importance in their schools, and as such, should be assessed for effectiveness. ***Given the current state of technology and online capability, it doesn't seem that an online statewide survey would be unduly burdensome on the agency. The data collected from the survey could then be used to inform the agency's monitoring procedures for school districts.***

Issues not addressed in the Sunset Staff recommendations:

- **Charter schools**

Charter applications should be public in order to introduce more transparency into the selection process; additionally boiler-plate charter applications should be precluded. ***Charter schools were originally intended to be laboratories of innovation. Unoriginal submissions go against the purpose of the charter school system.***

We have general concerns about granting current charter holders the fast-tracked ability to add additional charter campuses, given the limited resources TEA has to monitor existing charter schools and the problems many charters have experienced.

Audits of the accuracy of fiscal information provided by charter schools via PEIMS should include an identification of all sources of funding, including private funding.

TEA rules should specify that any and all paid endorsements or commission-based endorsement contracts are prohibited.

Charters operating for less than a full instructional day as defined in law, should have their funding pro-rated. Many charter schools offer half-day programs, and yet receive full-day funding for each half-day program. Students end up being in school for only short amounts of time and presumably at a lower cost to the school under this scenario.

Commissioner's waiver authority re charters: The Commissioner should be prohibited from using his waiver authority to effectively overrule a decision by the elected State Board of Education to deny a charter school's application for approval to operate in Texas. In a recent example of this, after the SBOE voted 9 to 6 to veto Great Hearts Academies' application to open a new school in Dallas, the school chose another route, applying to the Commissioner to request an expansion of their existing charter in San Antonio by adding campuses in other locations. In approving the request, the Commissioner waived a state law requiring that charter schools must have been operating for at least four years or hold an "acceptable" or higher accountability rating before being granted an expansion. This action by the Commissioner in effect circumvented the careful structure of checks and balances the legislature put into law regarding approval of charter school applications, in which the Commissioner compiles a list of charter school applications he has approved and then submits that list to the SBOE for a final vote on the matter. Accordingly, the Commissioner should be prohibited from using his waiver authority in this manner. It should also be clarified whether the Commissioner actually has waiver authority at all with regard to charters.

We also have concerns regarding the criteria TEA uses to determine what charter holders are eligible for the expansion amendments. While we understand the desire to allow consistently high performing charters to expand without undue scrutiny, these campuses are only required to show "Required Improvement" measures showing growth or improvement by comparing prior-year performance to current-year performance. Charters wishing to fast-track expansion should be subject to the standard accountability system to fully measure their progress and achievement in the Texas public school system.

We recommend eliminating the expansion amendment option for charters using the alternative accountability standards. These schools are serving at-risk students whose needs require significant expertise to meet. The alternative accountability thresholds for acceptable performance are simply too low to serve as a basis for authorizing additional charter locations. Further, limiting the availability of expansion amendments to charter schools succeeding under the regular accountability system will provide an incentive for charters to move towards a more rigorous system.

Thank you for your consideration of our views.