

# TEXAS EDUCATION AGENCY

*Karen Latta, Project Manager*

## Agency at a Glance

The Texas Education Agency (TEA) oversees the state's elementary and secondary public education system, providing leadership, guidance, and resources to help schools meet the educational needs of all students. The agency's key functions include:

- distributing state and federal funding to public schools;
- administering the statewide standardized testing program and accountability systems;
- providing assistance to and imposing interventions and sanctions on schools that consistently fail to meet state or federal accountability standards;
- providing support to the State Board of Education with regards to curriculum standards, instructional materials, and the Permanent School Fund;
- collecting a wide array of educational and financial data from public schools;
- administratively supporting the State Board for Educator Certification's regulation of educators and educator preparation programs; and
- monitoring schools for compliance with certain federal and state requirements.

During the 2011–2012 school year, Texas' public education system consisted of 1,235 local education agencies, including 198 charter school districts. More than 324,000 teachers in about 8,500 schools taught nearly five million students.

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*With one-third less funding and staff, Sunset recommendations focus on reshaping TEA's role and priorities.*

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## Summary

One of the major questions revolving around education circles after the last legislative session was how TEA would do its job with about one-third less General Revenue funding and staff. As a result of these cuts, the Sunset Commission found the agency in a period of significant transition, unsettled by seemingly perpetual reorganizations, the departure of numerous long-tenured, high-level managers, and finally the appointment of a new Commissioner. Recognizing these significant changes, Sunset focused on evaluating the effectiveness of the agency in reshaping its role and priorities within the education system.

With a statewide investment of \$24.8 billion, Texas needs an organization such as TEA to ensure the system provides a quality education and that taxpayers' dollars are well spent. More than 99 percent of that money is sent directly to school districts and charter schools, which must be held accountable for those funds. However, TEA lacks sufficient tools to address schools with serious academic and financial accountability problems, in particular the chronic poor performance of a few charter schools. Other TEA functions also need improvement, including the agency's efforts to gather stakeholder input, its management of \$241 million in contract expenditures, and the regulation of certified educators and educator preparation programs.

Spread too thin, TEA struggles to perform all its functions well. Redefining the agency's powers and duties in statute and eliminating a variety of outdated and unnecessary statutory provisions would allow TEA to focus its resources on key functions. Moving both management of the adult education program and regulation of the private driver training industry to other, more appropriate agencies would allow TEA to focus more on its mission of ensuring the delivery of quality primary and secondary education. The following material summarizes the Sunset Commission's recommendations on TEA.

## ***Issue 1***

### **TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input.**

TEA has a large and diverse group of stakeholders interested in and affected by the policy decisions of the agency. While TEA makes many efforts to gather stakeholder input, including the use of many advisory committees and workgroups, the agency lacks a comprehensive approach to managing these efforts to ensure it gets the most benefit from the input provided.

## **Recommendations**

### ***Change in Statute***

#### **1.1 Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts.**

This recommendation would require TEA to develop a new policy to guide its overall approach to public involvement, including consideration of more proactive stakeholder engagement, formal and informal methods of stakeholder input, easy access to meetings and meeting materials, and clear information about opportunities for stakeholder input and the results of those efforts.

#### **1.2 Require TEA to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.**

TEA would have to adopt rules, in compliance with Chapter 2110 of the Texas Government Code, regarding the purpose, tasks, manner of reporting, and abolishment dates for each of its advisory committees, regardless of whether the committee was created in statute or by the Commissioner. This recommendation would apply to any committee or council whose primary function is advising the Commissioner or TEA staff.

## ***Issue 2***

### **Misplaced at TEA, Texas Lacks Clear Leadership on Adult Education, Threatening the State's Ability to Meet Future Workforce Demands.**

Educating adults is not part of the agency's mission, and for almost 10 years, TEA has outsourced administration of the program without having clearly defined oversight of its contractor. TEA meets federal requirements, but has not directed the program's major providers to focus on specific goals, such as getting adult Texans educated and employed more quickly. Despite the enormous need for adult education services, many providers have left adult education funds unspent and little coordination exists between agencies responsible for the State's adult education programs.

### **Recommendations**

#### ***Change in Statute***

#### **2.1 Transfer responsibility for adult education from TEA to the Texas Workforce Commission (TWC).**

This recommendation would ensure more effective oversight and more targeted use of Texas' adult education funds. After holding public hearings to receive a broad range of input, TWC would develop rules establishing a new allocation formula for adult education provider grants across the state beginning in school year 2014–2015.

#### **2.2 Create an adult education advisory committee at the Texas Workforce Commission.**

The committee, appointed by TWC's governing board, would advise on the development of policies and priorities that support the adult education program in developing an educated and skilled workforce. The advisory committee would consist of not more than seven members representing experts in the adult education field.

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

#### **2.3 TEA and TWC should develop a transition plan for the transfer of the adult education program.**

Transition planning should begin upon passage of the legislation, and the transition plan should include a timetable with specific steps and deadlines needed to fully implement the transfer; a method to transfer all program and personnel records to TWC; steps to ensure against any unnecessary disruption to services at the local level; and other steps necessary to complete the transition of the program.

## ***Issue 3***

### **Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission.**

TEA regulates almost 1,000 private driver education and driving safety schools and more than 3,000 instructors who teach at those schools. The public schools that still teach driver education are exempt from this state-level regulation. As a result, this activity is simply a business regulatory function. Due to its ties to the safety of citizens and the court system, this regulation is still needed. However, the regulation does not fit TEA's mission. The Sunset Commission also applied licensing best practices

to the driver training statute, resulting in several recommendations to increase the effectiveness and fairness of the regulation.

## **Recommendations**

### ***Change in Statute***

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

Under this recommendation, TEA would continue to maintain rules regarding driver education in public schools, but TDLR would regulate the private driver training industry and develop driver education curriculum, with help from the advisory committee established below.

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

This recommendation would ensure the board that governs TDLR can obtain expertise, when needed, on rules and standards related to the driver training industry. The presiding officer of the Commission, with the Commission's approval, would appoint seven members to the advisory committee for six-year staggered terms. Representation on the committee would include one driver education school, one driving safety school, one course provider, one instructor, one Department of Public Safety employee, and two public members.

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

This recommendation would eliminate from statute the unnecessary requirement that these administrative staff at driver training schools meet education and experience requirements, be licensed, and pay application fees.

#### **3.4 Remove fixed driver training fee amounts and fee caps from statute.**

This recommendation would provide more flexibility to TDLR to set licensing fees at a level necessary to recover program costs. All fees would be set by rule, allowing for public comment on any fee adjustments.

#### **3.5 Require TDLR to maintain information on driver training complaints.**

This recommendation would require TDLR to develop and maintain files on all complaints received, ensure that all parties to a complaint are made aware of the status of the complaint until resolution, and ensure all parties are made aware of the agency's policies and procedures pertaining to complaint investigation.

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

This recommendation would make the driver training statute consistent with other licensing agencies' statutes by increasing the maximum administrative penalty amount from \$1,000 to \$5,000 per day, per violation. As a cap, this maximum penalty would be applied only to the most serious offenses.

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

This recommendation would require TDLR to use the State Office of Administrative Hearings for its driver training enforcement hearings, with the Commission of Licensing and Regulation holding final authority on decisions, as is standard in the Administrative Procedure Act.

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

### **3.8 TEA and TDLR should develop a transition plan for the transfer of driver training regulation.**

Transition planning should begin upon passage of the legislation, and the transition plan should include a timetable with specific steps and deadlines needed to carry out the transfer; a method to transfer all program and personnel records to TDLR; steps to ensure against any unnecessary disruption in services to licensees and driver training students; and other steps necessary to complete the transition of programs.

### **3.9 TDLR should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.**

This recommendation directs TDLR to develop performance measures to gauge how long it takes to resolve complaint investigations to help encourage their timely conclusion.

### **3.10 TDLR should make public final driver training school disciplinary orders and sanctions on its website.**

Under this recommendation consumers would have easier access to disciplinary information on driver training schools.

## ***Issue 4***

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

TEA's loss of staff necessitates a reduction in its responsibilities, especially those that are not key to overseeing the State's public education system. Several statutory requirements are no longer necessary or useful, and several functions and required reports are redundant or do not provide value to the State.

#### **Recommendations**

##### ***Change in Statute***

### **4.1 Allow the Commissioner to decide the most appropriate academic accountability indicators to report on the quality of learning in the state.**

This recommendation would give the Commissioner flexibility in reporting on key indicators of student academic achievement, instead of having to report on *all* indicators listed in statute. This recommendation would also allow the Commissioner to add other indicators as necessary to provide a complete assessment of the quality of learning in the state.

#### **4.2 Eliminate campus distinction designations and the committees charged with their development.**

This recommendation would remove the resource-intensive and unfunded requirement for the Commissioner to award campus distinction designations for academic achievement in English language arts, mathematics, science, and social studies; fine arts; physical education; 21st century workforce development; and second language acquisition. The Commissioner would also no longer establish standards for awarding the distinctions or establish committees to develop criteria for each distinction.

#### **4.3 Make the *Comprehensive Annual Report to the Legislature on Texas Public Schools* biennial.**

TEA would produce the *Comprehensive Annual Report* every other year, rather than every year. The report would be due by December 1 of each even-numbered year, in time for the next legislative session, and the report would contain information covering the previous two years.

#### **4.4 Merge the *Campus Report Card* with the *Performance Reports* and require TEA to distribute the reports to school districts for dissemination to campuses and parents.**

This recommendation would abolish the duplicative *Campus Report Card* by requiring TEA to include key indicators from the *Report Card* in the agency's existing annual *Performance Reports*. This recommendation would also require campuses to provide this information to parents in whatever form of communication the campus typically uses for communicating with parents.

#### **4.5 Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.**

This recommendation would remove the prescriptive statutory list of items required to be considered in the evaluation of open-enrollment charter schools. In its place, statute would require the agency to designate an impartial organization to evaluate the cost, performance, or other aspects of charter school regulation, as determined by the Commissioner. TEA would conduct the evaluation and report findings to the Legislature once every four years instead of annually, and include recommendations for statutory change to improve charter school performance or regulation as the agency deems appropriate.

#### **4.6 Limit TEA's involvement in appointing hearing examiners for teacher contract cases.**

For cases in which a teacher contests a decision to prematurely terminate the teacher's contract, this recommendation would remove the requirement for TEA to appoint a hearing examiner when the parties to the case fail to agree on a choice. For the initial hearing, the parties would choose a hearing examiner from TEA's list. In the absence of a local agreement, the Commissioner would assign the next hearing examiner on the list of certified examiners in that region.

#### **4.7 Eliminate the requirement that the Commissioner approve shared services arrangements for special education services.**

This recommendation would remove the duplicative requirement that a contract for a shared services arrangement for special education services be approved by the Commissioner.

**4.8 Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making.**

This recommendation would remove the requirement for TEA to oversee training and support to all districts and campuses for site-based decision making processes. This recommendation would also remove an unfunded and potentially costly requirement for TEA to conduct an annual statewide survey of types of decision making and planning processes, the involvement of stakeholders in those processes, and the perceptions of those persons as to the effectiveness of decisions.

**4.9 Eliminate the ability of school districts to seek and receive a foreign exchange student waiver from TEA.**

TEA would no longer grant waivers from the requirement that a district admit a foreign exchange student placed with a host family that resides in the district. This recommendation would not prevent a school district from denying admission to foreign students who are residing in their countries of origin and seeking to enroll in the district as allowed for under federal law.

**4.10 Eliminate the requirement for school districts and charter schools to file a copy of their depository contracts and related documents with the agency.**

These documents serve no purpose at TEA. This recommendation would also remove the requirement that district bidding documents be on a form provided by the State Board of Education.

**4.11 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the Commissioner.**

Such matters are the province of local officials. TEA would no longer use this information to reduce state education funds in an amount exceeding one year's salary and benefits for the superintendent.

**4.12 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.**

This recommendation would remove the specific requirements to audit compensatory education funds in Chapter 42 of the Texas Education Code. Instead, TEA would audit any appropriate aspects of state education funding, including compensatory education, on a risk basis. TEA would 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.

**4.13 Eliminate the requirement for TEA to recognize schools' use of High School Allotment funds.**

Since very few schools apply for recognition, this recommendation would remove the requirement that TEA develop standards for evaluating and recognizing best use of High School Allotment funds. This recommendation would not affect the ongoing disbursement of these funds to school districts, but simply eliminate TEA's recognition program.

**4.14 Eliminate the Best Practices Clearinghouse.**

This recommendation would remove the Best Practices Clearinghouse and all provisions related to TEA's maintenance of the Clearinghouse from statute, as many other more effective options exist for schools to share best practices.

#### **4.15 Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.**

This recommendation would abolish the High School Completion and Success Initiative Council, whose job is completed and whose broader concerns are covered by the work of the State P-16 Council. The recommendation would also eliminate the Council's various reporting requirements and its six unfunded grant and pilot programs.<sup>1</sup>

#### **4.16 Eliminate five unnecessary reporting requirements, but continue 14 that still serve a purpose.**

Statute would be amended to eliminate the following reports: *International Assessment Instrument Program Report*, *Intensive Mathematics and Algebra Intervention Pilot Program Report*, *Report on Exemption of Courses for Extracurricular Activities*, *Reporting of Bus Accidents*, and *Physical Fitness Assessment Report*. This recommendation would also remove the unfunded Intensive Mathematics and Algebra Intervention Pilot Program from statute. While this recommendation eliminates the requirement for TEA to produce a report of its analysis of physical fitness assessment data and its correlation to certain student achievement indicators, TEA would still post fitness data collected from schools on its website.

## **Issue 5**

### **Separate Reviews Hinder TEA's Comprehensive Assessment of School District and Charter Finances.**

Separate review processes and ratings to evaluate the financial health of school districts and charter schools are duplicative and confusing. Statutory guidance for identifying districts and charters at risk of insolvency is unclear and does not provide adequate tools to ensure districts and charters appropriately plan to address their financial concerns.

## **Recommendations**

### **Change in Statute**

#### **5.1 Incorporate the financial solvency review into the FIRST financial accountability system.**

This recommendation would remove the financial solvency review from statute as a stand-alone review and require TEA to incorporate the financial solvency review indicators into its annual Financial Integrity Rating System of Texas (FIRST). TEA would adopt the indicators for the process in rule, and would make any needed adjustments to issue one rating that would reflect a comprehensive view of a district's or charter's finances.

#### **5.2 Require TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years.**

This recommendation would require TEA to project revenues and expenditures for any district or charter the agency has reason to believe may have a deficit in its general fund within three years. If an identified district or charter does not provide adequate information, or if TEA determines the district's or charter's information is not reliable, TEA would be authorized to require the district or charter to obtain professional services, such as for an audit, to verify the school's financial condition.



**5.3 Require districts and charters that fail FIRST to prepare a corrective action plan, and authorize TEA to apply its standard set of sanctions to schools that fail to submit or implement adequate plans.**

This recommendation would require all districts and charters failing FIRST to prepare a corrective action plan to address the financial weaknesses causing them to fail FIRST. This recommendation would also provide TEA authority to apply the standard set of sanctions and interventions available to the agency for accountability purposes for failure to submit or implement an adequate financial improvement plan.

**5.4 Require TEA to re-evaluate all FIRST indicators every three years.**

This recommendation would require TEA to re-evaluate all indicators in FIRST at least every three years to ensure they reflect current thinking related to financial management.

## *Issue 6*

### **TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.**

Statute lacks a process to require a school district's annexation if a district will not have sufficient funding to make it through another school year and fails to act on its own to plan for its students' education. Similarly, no mechanism exists to facilitate annexation when a district is unable to consolidate on its own. The Commissioner also needs adequate flexibility in the agency's annexation process to allow it to adapt to unique circumstances of school districts with varying academic, financial, or accreditation problems.

## **Recommendations**

### ***Change in Statute***

**6.1 Authorize the Commissioner to work with county commissioners courts to ensure the timely annexation of an insolvent school district.**

This recommendation would authorize the Commissioner of Education to work with county commissioners courts to facilitate the annexation of a district that has failed to operate for 10 or more days, or that has formally requested the Commissioner's assistance, due to insolvency. The Commissioner of Education would notify each appropriate commissioners court of the failure to operate or formal request, and each commissioners court would be required to annex the territory of the district within its county to one or more school districts in the same county or to any contiguous district in an adjacent county. In the unlikely event that a commissioners court fails to order annexation of the district's territory within 60 days, statute would authorize the Commissioner of Education to order annexation of the insolvent school district.

**6.2 Authorize the Commissioner to adjust the effective date for a district's annexation.**

This recommendation would allow the Commissioner to provide for an effective date other than July 1 for a district's annexation. While July 1 should still be the target date for district annexations, this recommendation would allow the Commissioner to adjust the date if in the best interest of students.

### **6.3 Provide the Commissioner with flexibility to annex a school district to a non-adjointing district.**

Under this recommendation, the Commissioner would be authorized to annex a school district to a non-adjointing district if that annexation is in the best interest of students.

### **6.4 Provide the Commissioner with limited authority to use a board of managers beyond two years for the purpose of overseeing the annexation process.**

This recommendation would allow the Commissioner to extend the appointment of an existing board of managers beyond the two-year limit solely to oversee the process for closure and annexation of a school district. The board of managers would serve during the transition period to help direct operations of a district as it winds down and transfers assets to the receiving district.

### **6.5 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.**

This recommendation would clarify conflicting statutory provisions to ensure that, in addition to annexation for an academically unacceptable district, the Commissioner may annex a school district to one or more districts for failure to meet financial accountability standards for two consecutive years or for loss of district accreditation.

## ***Issue 7***

### **TEA Lacks a Full Range of Tools to Effectively Address Poor Academic Performance and Financial Mismanagement at Low-Performing Charter Schools.**

Many charter schools meet the Legislature's expectations for higher, innovative performance and provide an excellent education to students. However, poor performance by some charter schools threatens a quality education for their students and the reputation of charter schools as a whole. TEA does not have sufficient regulatory tools to ensure charters meet minimum academic and financial performance standards or to revoke a charter without lengthy and protracted litigation, during which time students may continue to receive a substandard education. Another practice of some charter schools, nepotism, is an exception among publicly funded entities and can place public funds at risk.

## **Recommendations**

### ***Change in Statute***

#### **7.1 Require revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row.**

This recommendation would require the Commissioner to revoke a charter without an agency hearing, if, for three consecutive years, the charter fails to satisfy academic accountability standards; or for three consecutive years, the charter fails to satisfy financial accountability standards. A charter could contest the current year's rating under existing processes for academic or financial rating appeals. However, a charter could not appeal the Commissioner's revocation order through either an agency review or contested case hearing at the State Office of Administrative Hearings (SOAH).

## **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.**

This recommendation would authorize the Commissioner to suspend the operations of all campuses under a charter on an effective date that would prevent the charter from opening for a new school year or term, and pursue revocation if the Commissioner determines the charter is imminently insolvent and does not have sufficient funding to complete the next school year.

A charter would be entitled to challenge the suspension of its operations through a hearing at TEA. If the Commissioner determines, after a hearing, that the charter is imminently insolvent, the Commissioner would order revocation of the charter. The Commissioner's order could be appealed to SOAH as a contested case hearing under current processes, except that the charter's operations would remain suspended pending the outcome of the appeal.

## **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.**

This recommendation would specify in statute that the initial and renewal term for a charter is eight years, at the end of which authority to operate a charter school would expire unless renewed by TEA. For charters with a proven record of high academic and financial performance, with no interventions or sanctions, TEA would provide the charter greater autonomy through a streamlined review and renewal process. For all other charters, TEA would examine the extent to which the charter has met academic, financial, and governance standards, as well as the extent to which the charter school has operated in compliance with its charter. TEA would be required to adopt in rule clear academic, financial, governance, or any other standards for renewal.

If TEA does not renew a charter, TEA would be authorized to impose conditions or requirements for improvement during a one-year probationary period. If a charter fails to meet TEA conditions or standards within the one-year period, TEA must deny renewal of the charter. The charter holder would then be entitled to a contested case hearing under current processes. TEA would have one year to implement this new renewal process.

## **7.4 Provide for objective criteria and flexibility in applying sanctions to charter schools.**

This recommendation would require TEA to establish separate performance standards for each of its different types of sanctions, such as for denying renewal of, modifying, probating, or revoking a charter. This recommendation would establish more objective criteria in law for taking adverse action against a charter based on previous violations, efforts to correct the violation, and action needed to deter future violations. This recommendation would also grant TEA additional flexibility to apply a range of sanctions for health and safety violations, instead of limiting TEA to either ceasing its suspension or revoking a charter after a hearing.

## **7.5 Authorize TEA to reconstitute the governing board of a charter holder.**

This recommendation would authorize the Commissioner to reconstitute the governing board of a charter holder if the Commissioner finds that the board is not providing adequate oversight of a charter school and other intermediate sanctions have not been effective in remedying the problems. The Commissioner would make all appointments to the new charter holder board, in accordance with terms and other provisions of the charter holder's bylaws.

## **7.6 Apply standard prohibitions on nepotism to all charter schools.**

This recommendation would remove the statutory exception to the prohibition on nepotism for charter schools. As a publicly funded entity, all restrictions, requirements, and prohibitions on the appointment, employment, or confirmation of employees within the third degree of consanguinity and second degree of affinity, would apply to all members of the charter holder board or employees of a charter school. This recommendation would also make the provision related to conflicts of interest for members of the charter holder board consistent with provisions related to nepotism.

## **7.7 Prohibit family members from serving on a charter holder board together.**

Under this recommendation, persons related to each other within the third degree of consanguinity and second degree of affinity would be prohibited from serving on a charter holder board at the same time.

### ***Management Action***

## **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.**

This recommendation directs TEA to revise its enforcement policies and practices to ensure consistency with requirements and performance standards in rule for nonrenewal, revocation, or other interventions and sanctions. TEA should ensure its rules for taking enforcement action set clear performance expectations and the agency should use its full range of remedies in a timely manner to ensure charter schools meet accountability and performance expectations.

## ***Issue 8***

### **Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board.**

In 2005, the Legislature abolished the separate state agency that regulated educators and transferred its functions to TEA under the Commissioner of Education, while maintaining the agency's separate Governor-appointed board. Having two Governor-appointed entities involved in overseeing work that is largely performed by TEA staff can lead to confusion and a lack of clear accountability for ensuring that the certification and oversight of educators is effective. In addition, statute requires educator certification and educator preparation program rules to go for review by a second board, the State Board of Education. The Sunset Commission concluded this multilayered bureaucracy is inefficient and unnecessary.

## **Recommendations**

### ***Change in Statute***

## **8.1 Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education.**

Under this recommendation, the Board would cease to exist and the Commissioner of Education would perform its limited functions. The Commissioner would approve all rule changes for the regulation and standards of certified educators and educator preparation programs. The Commissioner would have

the ultimate responsibility of disciplining certified educators and sanctioning educator preparation programs found out of compliance with state law and rules.

### **8.2 Remove the State Board of Education's authority to reject proposed educator certification and educator preparation rules.**

This recommendation would remove the duplicative review of educator rules by two different entities.

### **8.3 Require the Commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.**

This recommendation would create an advisory committee to provide input and ensure the involvement of public school educators in setting the standards for and governing all aspects of educator oversight. The advisory committee would not be involved in educator discipline. The Commissioner would be directed to appoint a balanced representation of teachers, administrators, and counselors from the public education field; and traditional and alternative certification educator preparation programs.

## ***Issue 9***

### **Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.**

Certain educator certification licensing provisions do not follow model licensing and enforcement practices, hindering the agency's ability to provide consistent regulation and to take enforcement action as needed to protect the public.

## **Recommendations**

### ***Change in Statute***

#### **9.1 Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.**

This recommendation would make changes to statute, as follows.

- Require charter school directors to meet the same certified educator misconduct reporting and investigation requirements as superintendents.
- 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.
- Authorize the Commissioner of Education to establish rules to govern superintendents' and charter school directors' reporting of changes in certified educators' criminal records to TEA, rather than statutorily mandating the reporting of *all* changes to TEA.
- Clarify that superintendents and charter school directors must report arrests, terminations, or resignations of certified educators, rather than incidents of misconduct, within seven days of first learning of the action.
- 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.

## **9.2 Grant the Commissioner administrative subpoena power to fully investigate certified educator misconduct cases.**

This recommendation would provide administrative subpoena power for the production of records, papers, and other objects related to a certified educator misconduct investigation. All information and materials subpoenaed or compiled in connection with an investigation would remain confidential and not be subject to disclosure.

## **9.3 Require the Commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule.**

A disciplinary matrix for certified educator violations would ensure fair and consistent application of sanctions. In developing the matrix, TEA would strive to cover the range of violations by certified educators and relate the range of appropriate sanctions to different violations based on their severity. This recommendation would only set up guidelines and would not take away the Commissioner's ability to use discretion in making disciplinary decisions based on the specific circumstances of an individual case.

### ***Management Action***

## **9.4 Direct the Commissioner to adjust fees in rule for educator certification and educator preparation programs to ensure they adequately cover costs and are equitable across fee payers.**

TEA should evaluate its fee structure and make changes to cover the cost of administering the educator regulatory programs, while also ensuring the equity of fees across the different types of fee payers. TEA should also reconsider a previous decision by the State Board for Educator Certification not to require lifetime certificate holders to renew their licenses and pay the standard renewal fee every five years.

## **9.5 TEA should provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification.**

This recommendation directs TEA to provide, upon request, a more in-depth investigation of an individual's background, before certification, to ensure the individual's eligibility to become an educator. To remove a disincentive to use this service, TEA should consider adjusting its preliminary criminal history evaluation fee to simply cover the agency's cost of completing an evaluation and the fee for a basic background check.

## **9.6 Direct TEA staff to comprehensively track and analyze enforcement case data.**

All TEA staff involved in educator discipline cases should regularly communicate to ensure the agency consistently processes its investigations and sanctions of educators. TEA should also combine, track, and analyze all educator enforcement case data to identify trends and issues and adjust its regulatory approach as appropriate.

### **9.7 TEA should encourage the use of mediation in educator misconduct cases as an alternative to formal administrative hearings.**

TEA should support mediation as a means to resolve certain contested cases that the agency determines are appropriate for mediation by the State Office of Administrative Hearings. Although not all cases are suitable for mediation, TEA should develop and implement a policy to encourage mediation in cases that may be open to compromise.

## ***Issue 10***

### **Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.**

Several areas of statute, rules, and procedures regarding the accreditation and regulation of educator preparation programs (EPPs) do not follow model licensing standards, hindering the agency's ability to effectively sanction programs and ensure candidates are fully prepared to enter the classroom.

## **Recommendations**

### ***Change in Statute***

#### **10.1 Establish a five-year renewal process for EPPs in statute.**

Statute would set a five-year renewal requirement for EPPs and require the Commissioner of Education to adopt, in rule, an evaluation process tied to EPPs' compliance with basic standards and requirements to adequately prepare candidates for educator certification. As part of this recommendation, the Commissioner would have to repeal the rules specifying the ten-year reapplication process and five-year compliance audit.

#### **10.2 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.**

This recommendation would require the Commissioner to adopt rules requiring EPPs to inform their students about the EPP complaint process and post TEA's contact information along with the complaint process in their facilities. Statute would also require TEA to provide the public with instructions for contacting the agency about a complaint against an EPP on the agency's website.

#### **10.3 Require the Commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.**

This recommendation would require the Commissioner to establish a risk-based approach to conducting on-site monitoring and inspections that would adjust the amount of time staff spends on site during compliance audits, including visits associated with the EPP renewal process. The Commissioner would use the assessment model to determine risk, such as a program's compliance history, operational standards, accountability measures, and accreditations by other organizations.

#### **10.4 Strengthen and clarify the Commissioner's authority to sanction EPPs for violations of law or rules.**

Under this recommendation, the Commissioner would have the same range of sanctions as currently in law for EPPs not meeting accreditation standards. The Commissioner would also make sanctioning information accessible to all EPPs and counsel at-risk programs.

## ***Management Action***

### **10.5 Direct TEA to develop procedures outlining all phases of the EPP complaint process and track and analyze complaint data.**

TEA staff would develop procedures for complaint receipt, investigation, adjudication, resulting sanctions, disclosure to the public, and handling of non-jurisdictional complaints. The agency would also track and analyze all EPP complaint information to identify trends and issues, report on these trends to the public, and adjust EPP regulation and monitoring efforts accordingly.

## ***Issue 11***

### **Better Adherence to Contracting Policies Would Help TEA Handle Contracts Consistently and Maximize the Value of Its Expenditures.**

TEA relies heavily on contracts with outside vendors to fulfill its responsibilities and spent an estimated \$241 million on contracts in fiscal year 2011. While TEA has many contracting standards in place, the agency does not always follow its own processes or certain best practices.

## **Recommendations**

### ***Management Action***

#### **11.1 TEA should improve collection and reporting of all contract sanctions.**

This recommendation directs TEA to develop a centralized method for tracking overall contract sanction activity and reporting the information to senior management. The agency's Purchasing and Contracts Division should have documentation of any contractor nonperformance and the resulting action from TEA.

#### **11.2 TEA should ensure staff follow guidelines regarding contracting with education service centers.**

TEA should provide staff with training that emphasizes the importance of conducting and documenting a cost-benefit analysis when contracting with education service centers, which are by law noncompetitive procurements.

#### **11.3 TEA should complete training of the agency's contract managers by April 1, 2013.**

This recommendation would require TEA management to expedite and ensure all contract staff receive necessary training by April 1, 2013.

#### **11.4 Direct TEA to include a section on ethics in contracting in its contracting manual.**

TEA should add to its contracting manual the state ethics policy and standards of conduct in the *State of Texas Contract Management Guide*, and any other ethics guidelines appropriate to contracting.



### **11.5 Direct TEA to ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management.**

TEA should require staff to complete forms that assess contractor performance and lessons learned for every contract upon close-out. Any contractor deficiencies should be documented and communicated to all appropriate parties. TEA should include in its contracting manual and training the requirement to report to senior management on contractor performance and lessons learned for all major contracts.

## ***Issue 12***

### **TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review, the Sunset Commission adopts Across-the-Board Recommendations as standards for state agencies to reflect criteria in the Sunset Act designed to ensure open, responsive, and effective government. Three of these provisions are missing from TEA's statute and should be applied.

## **Recommendation**

### ***Change in Statute***

#### **12.1 Apply three standard Sunset Across-the-Board Recommendations to the Texas Education Agency.**

- **Conflicts of interest.** This 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.
- **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.
- **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.

## ***Issue 13***

### **Texas Has a Continuing Need for the Texas Education Agency.**

Ensuring the provision of public education is a key state responsibility. TEA's constitutional and statutory role is to ensure that the billions of dollars spent to educate the children of Texas provide a quality education that meets the needs of all students. TEA's functions of distributing and ensuring the proper use of education funds, measuring student and school performance, and informing the public about the quality of schools are vital to the State. However, TEA's enabling law lacks a clear, concise description of these duties.

## Recommendations

### *Change in Statute*

#### **13.1 Continue the Texas Education Agency for 12 years.**

This recommendation would continue TEA as an independent agency responsible for overseeing the state's public education system.

#### **13.2 Redefine the Commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.**

This recommendation would replace the lengthy section of the Texas Education Code that defines the Commissioner of Education's powers and duties with a concise list of the major duties of that position. In place of the current statutory language, the Commissioner would:

- serve as the educational leader of the State, with rulemaking authority as specified in statute;
- serve as the executive head of the agency and oversee its day-to-day operations, with authority to:
  - employ staff necessary to perform the duties of the agency;
  - delegate functions to agency staff;
  - appoint advisory committees as necessary to advise the Commissioner in carrying out the duties and mission of the agency;
  - appoint an internal auditor for the agency; and
- carry out the duties imposed on the Commissioner by the Legislature.<sup>2</sup>

This recommendation would also replace the section of the Texas Education Code that defines TEA's powers and duties with a concise list of the agency's major duties. In place of the current statutory language, the agency would:

- distribute state and federal funding to public schools and ensure the proper use of those funds;
- monitor public schools for compliance with federal and state guidelines;
- administer the statewide standardized testing program and accountability systems;
- provide assistance to and impose interventions and sanctions on schools that consistently fail to meet state or federal accountability standards;
- provide support to the State Board of Education in developing statewide curriculum standards, adopting instructional materials, managing the instructional materials allotment and distribution process, and carrying out duties related to the Permanent School Fund;
- collect, analyze, and make accessible a wide array of educational and financial data from public schools;
- ensure the quality of public school educators by certifying educators, regulating educator preparation programs, and taking enforcement action in cases of educator misconduct; and
- carry out any other duties imposed on the agency by the Legislature, consistent with the agency's appropriations and mission.<sup>3</sup>

## Management Action

### 13.3 TEA should develop and implement a succession plan to prepare for impending retirements and other potential workforce changes.

The agency should establish a comprehensive strategy for preparing staff to assume the responsibilities of positions critical to TEA's operations. TEA should identify all critical positions at risk of becoming vacant in the near future, formally document the skills needed to fill these vacancies, and prepare staff to assume top-level management roles by ensuring they receive the necessary training and development opportunities.

## Fiscal Implication Summary

Overall these recommendations would result in a small positive net fiscal impact to the State of \$8,615 per year. Many issues are likely to result in savings in time and effort on the part of TEA staff, if not monetary savings, as the agency's duties are adjusted to better match its previously reduced funding. In addition, the transfer of driver training regulation to the Texas Department of Licensing and Regulation (TDLR) would ultimately result in a reduction in fees to licensees and students. Recommendations with a fiscal impact are summarized below.

**Issue 2** — Transferring TEA's adult education program to the Texas Workforce Commission (TWC) would not have a fiscal impact to the State, but would result in a cost-neutral transfer of about \$70 million in federal and state funds from TEA to TWC, along with authority to fill 19 full-time equivalent positions.

**Issue 3** — Transferring regulation of driver training would initially involve a cost-neutral transfer of about \$2.9 million from TEA to TDLR, along with authority to fill 10.5 full-time equivalent positions. However, once transferred, TDLR's expected adjustment of fees to match its costs of regulation could result in a reduction of about \$1 million in fee revenue, depending on TDLR's actual operating costs. These fee changes would reduce costs to driver training businesses and the students paying the fees, not the State. In addition, because TEA incorrectly used excess driver training revenue to cover costs unrelated to driver training, it would have to find other revenue to pay these costs in the future. Finally, eliminating the regulation of certain driver training administrative staff would result in a small revenue loss of \$2,385 per year in fees.

**Issue 4** — These 16 recommendations should result in significant administrative efficiencies, but due to TEA's recent reduction in funding and staff, no further savings are anticipated. Rather, these changes aim to match the agency's workload to its reduced resources.

**Issue 8** — Although cost savings are not the reason the Sunset Commission recommends abolishing the State Board for Educator Certification, the recommendation would result in eliminating the Board member travel costs, saving the State about \$11,000 a year.

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<sup>1</sup> A full list of the six unfunded programs associated with the High School Completion and Success Initiative that the Sunset Commission has recommended eliminating is available on page 44 of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.

<sup>2</sup> A detailed accounting of the changes recommended for this section of statute is located in Appendix G of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.

<sup>3</sup> A detailed accounting of the changes recommended for this section of statute is located in Appendix H of the *Sunset Staff Report with Commission Decisions for the Texas Education Agency*, January 2013.

