

SUNSET ADVISORY COMMISSION

FINAL REPORT
WITH LEGISLATIVE ACTION

*Texas Education
Agency*

JULY 2013

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Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.

TEXAS EDUCATION AGENCY

SUNSET FINAL REPORT WITH LEGISLATIVE ACTION
JULY 2013

This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, October 2012* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff’s extensive evaluation of the agency.
 - *Sunset Staff Report with Hearing Material, November 2012* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.
 - *Sunset Staff Report with Decision Material, December 2012* – Adds additional responses, testimony, or new issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
 - *Sunset Staff Report with Commission Decisions, January 2013* – Adds the decisions of the Sunset Commission on staff recommendations and new issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
 - *Sunset Final Report with Legislative Action, July 2013* – Adds action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
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SUMMARY

SUMMARY

One of the major questions revolving around education circles after the last legislative session was how the Texas Education Agency (TEA) would do its job with about one-third less General Revenue funding and staff. As a result of these cuts, the Sunset review of TEA found the agency in a period of significant transition, often unsettled by staff reductions and seemingly perpetual reorganizations. Agency leadership also changed with the appointment of a new Commissioner and the departure of numerous long-tenured, high-level managers.

Several of the agency's core functions are in transition as well, with the implementation of the new STAAR (State of Texas Assessments of Academic Readiness) standardized tests and development of a new academic accountability system based on those tests. Another core function of TEA — the distribution of state funds to support public education — is currently the subject of six lawsuits and may very well see significant change as a result of judicial or legislative actions next year.

With one-third less funding and staff, TEA must reshape its role and priorities.

TEA shares much of its role in supporting and overseeing the State's public education system with the State Board of Education (SBOE), but SBOE is no longer subject to Sunset review. While the review attempted to concentrate on those functions statutorily assigned solely to TEA, major functions of the agency are performed at the direction of SBOE, including curriculum and instructional materials development, Permanent School Fund investments, and charter school approvals. The line between the two roles is not always clear, but Sunset staff made a significant effort to fully evaluate the agency's responsibilities without affecting SBOE's authority.

The Sunset review focused on evaluating the effectiveness of the agency in reshaping its role and priorities within the education system. With nearly five million students and costs 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, the Sunset review found that TEA lacks sufficient tools to address schools with serious academic and financial accountability problems. Recent examples of school districts and charters that reach a point of being nearly insolvent and unable to continue operations have brought to light TEA's lack of authority and flexibility to address these situations and ensure students' educational needs are met. Even more troubling is the agency's inability to address issues of chronic poor performance in a few charter schools. While charter schools provide a beneficial alternative for some students, the State must be able to ensure they provide quality education and are legally and responsibly using the state funds they receive.

Sunset staff also identified several other TEA functions needing improvement, including the agency's efforts to gather stakeholder input, its management of \$241 million in contract expenditures, and its regulation of certified educators and educator preparation programs. In particular, the review found unnecessary layers of bureaucracy in the area of educator certification, concluding that the Commissioner of Education could perform the functions of the separate State Board for Educator Certification, allowing the Commissioner to take the lead on all educator quality functions within the agency.

Although the agency has recently experienced a drastic downsizing of its staff, its responsibilities have not been similarly reduced. Spread too thin, TEA struggles to perform all these functions well. The agency dedicates resources to functions that no longer fit within its core mission and are not vital to the oversight and support of the State's public education system. 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 regulation of the private driver training industry and management of the adult education program to other, more appropriate agencies, would allow TEA to focus more on its mission of ensuring the delivery of quality primary and secondary education.

Ultimately this review is not about the agency's processes and challenges — it is about the impact TEA has on Texas children and their education. While many of the recommendations in this report deal with changes to processes at TEA, staff tried to keep in mind that the reason for change should always focus on improving the educational environment for students. The following material summarizes Sunset staff recommendations on the Texas Education Agency.

Issues and Recommendations

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, the agency lacks a comprehensive approach to managing these efforts to ensure it gets the most benefit from the input provided. Adopting a formal public involvement policy, and featuring related strategies prominently on TEA's website, would help promote understanding of how stakeholders can engage with the agency and ensure staff's efforts to gather and use input are meaningful and consistent.

Key Recommendations

- Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts.
- Require TEA to adopt rules for its use of advisory committees, ensuring the committees meet standard structure and operating criteria.

Issue 2

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

TEA disperses almost \$70 million in federal and state funds for the adult education program that serves just 3 percent of those in need. 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. Further, many providers have left adult education funds unspent, despite the enormous need.

Sunset staff examined the relationship between Texas' adult education program and its workforce development system and found much overlap in the populations served, but continuing problems with coordination. Staff concluded that transferring TEA's adult education program to the Texas Workforce Commission would help improve coordination and better position the State to ensure that adult Texans have the basic education and skills necessary to succeed in the workplace and obtain jobs to support their families.

Key Recommendations

- Transfer responsibility for adult education from TEA to the Texas Workforce Commission.
- Create an adult education advisory committee at the Texas Workforce Commission.

Issue 3

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

Through a contract with Education Service Center 13 in Austin, 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. Transferring the regulation to the Texas Department of Licensing and Regulation would offer better industry oversight and allow TEA to better focus its limited resources. Sunset staff also applied licensing best practices to the driver training statute, resulting in several recommendations to increase the effectiveness and fairness of the regulation.

Key Recommendations

- Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation.
- Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.
- Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.

- Remove fixed driver training fee amounts and fee caps from statute.
- Increase the driver training statute's maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.

Issue 4

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

Over the years, the Legislature has added numerous programs, reports, and requirements to TEA's statute, the accumulation of which has the potential to become a distraction from the agency's core mission, especially during a time in which the agency has experienced severe reductions in staffing and funding. The agency's loss of staff necessitates a reduction in its responsibilities, especially those that are not key to overseeing the State's public education system.

Sunset evaluated the ongoing need for and usefulness of several statutory requirements, such as those related to academic accountability reporting and distinctions, TEA's involvement in certain local affairs, and financial reviews of school districts and charter schools. Sunset staff also identified several functions and required reports that are redundant or do not provide value to the State. Eliminating a variety of outdated and unnecessary statutory provisions would allow TEA to focus more on its core functions.

Key Recommendations

- Eliminate unworkable statutory requirements regarding academic accountability indicators and campus distinction designations.
- Provide flexibility to the agency for academic accountability reporting requirements, including the *Comprehensive Annual Report*, *Campus Report Card*, and annual evaluation of charter schools.
- Limit TEA's involvement in local affairs through changes to the selection of hearing examiners for teacher contract cases, approval of shared services arrangements for special education, site-based decision making, and foreign exchange student waivers.
- Eliminate unnecessary TEA review of local depository contracts and superintendent severance payments, and allow the agency to audit compensatory education funds using a risk-based approach.
- Eliminate the High School Completion and Success Initiative Council, whose job is completed, along with its related reporting requirements and programs, as well as five other unnecessary reports.

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, and TEA lacks adequate tools to ensure districts and charters appropriately plan to address their financial concerns. Incorporating the financial solvency review into the FIRST (Financial Integrity Rating System of Texas) financial accountability system would provide for a streamlined, strengthened, and more comprehensive analysis of districts' and charters' finances.

A combined rating system would also eliminate any confusion caused by separate and potentially conflicting ratings.

Key Recommendations

- Incorporate the financial solvency review into the FIRST financial accountability system.
- Require TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years.
- 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.

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. Authorizing the Commissioner of Education and county commissioners courts to ensure the timely annexation of an insolvent school district would promote local oversight of the annexation process in the event that the local school board of trustees does not or cannot act to address its financial issues. In addition, the Commissioner needs adequate flexibility in the annexation process to allow TEA to adapt to unique circumstances of school districts with varying academic, financial, or accreditation problems.

Key Recommendations

- Authorize the Commissioner to work with county commissioners courts to ensure the timely annexation of an insolvent school district.
- Grant the Commissioner greater flexibility in annexing districts and clarify conflicting provisions to ensure that the Commissioner may annex a school district for financial and accreditation problems.

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. Statutory changes to remove barriers to address chronic poor performance, nepotism, and insolvency would ensure better educational opportunities for affected charter school students.

Key Recommendations

- Require revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row.
- 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.
- Set eight-year terms for charters and restructure the renewal process to ensure failure to meet basic standards for accountability can lead to nonrenewal.
- Authorize TEA to reconstitute the governing board of a charter holder.
- Apply standard prohibitions on nepotism to all charter schools and prohibit family members from serving on a charter holder board together.

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. This multilayered bureaucracy is unnecessary. Sunset staff concluded that the Commissioner could perform the State Board for Educator Certification's duties, with assistance from a formal advisory committee, thus resolving the confusion and overlap of duties and providing greater consistency in the regulation of certified educators and educator preparation programs.

Key Recommendations

- Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education.
- Remove the State Board of Education's authority to reject proposed educator certification and educator preparation program rules.
- Require the Commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.

Issue 9

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

For more than 30 years, Sunset staff has reviewed numerous agencies performing licensing and regulatory activities, and has identified standards that are common practices throughout these agencies' statutes, rules, and procedures. Certain educator certification licensing provisions do not follow model

licensing and enforcement practices, hindering the agency's ability to provide consistent regulation and enforcement of certified educators and to protect the public.

Key Recommendations

- Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.
- Grant the Commissioner administrative subpoena power to fully investigate certified educator misconduct cases.
- Require the Commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule.
- 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 provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification.

Issue 10

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

In assessing the accreditation and regulation of educator preparation programs (EPPs), Sunset staff found several areas where statute, rules, and procedures do not follow model licensing standards. Based on these variations, staff identified changes needed to bring EPP regulation in line with model standards to effectively sanction programs and ensure educator certification candidates are fully prepared to enter the classroom.

Key Recommendations

- Establish a five-year renewal process for EPPs in statute.
- 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.
- Require the Commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.
- Strengthen and clarify the Commissioner's authority to sanction EPPs for violations of law or rules.

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. Sunset staff evaluated TEA's contracting practices and determined that while TEA has many contracting standards in place, the agency does not always follow

its own processes. Directing the agency to expand its contracting manual and training to emphasize important processes, and requiring contract sanction and contract close-out information to be reported to senior management would help the agency get the most value from its numerous contracts.

Key Recommendations

- TEA should improve collection and reporting of all contract sanctions.
- TEA should ensure staff follow guidelines regarding contracting with education service centers.
- TEA should complete training of the agency's contract managers by April 1, 2013.

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 entirely from TEA's statute and should be applied.

Key Recommendation

- Apply Across-the-Board Recommendations to the Texas Education Agency regarding conflicts of interest, complaint information, and negotiated rulemaking and alternative 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. No significant benefits would justify consolidation with or transfer of TEA's functions to another agency, other than the adult education program and driver training regulation as discussed in Issues 2 and 3.

Key Recommendations

- Continue the Texas Education Agency for 12 years.
- Redefine the Commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.

Fiscal Implication Summary

Overall, these recommendations would not result in a significant fiscal impact to the State. 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 to eliminate certain non-core activities at TEA should result in significant administrative efficiencies, but due to TEA's reduction in funding and staff last session, 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 report 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.

SUMMARY OF FINAL RESULTS

S.B. 218 Patrick (Dutton) — Not Enacted

Despite the inclusion of major changes to reshape the role and priorities of the Texas Education Agency (TEA), the Legislature did not pass the agency's Sunset bill, instead continuing it for another two years through separate legislation. Through its review of TEA, the Sunset Commission concluded that Texas clearly needs a state-level agency to oversee public education, but that changes are needed to allow TEA to focus on its key duties and improve its effectiveness. To focus more on the agency's mission of ensuring the delivery of quality primary and secondary education, the Sunset Commission recommended moving both regulation of the private driver training industry and management of the adult education program to other, more appropriate agencies, and eliminating a variety of outdated and unnecessary statutory requirements. Sunset also found that TEA would benefit from better tools to address schools with serious academic and financial accountability problems, in particular the few chronically poor-performing charter schools. In addition, the Sunset Commission determined that the remaining duties of the State Board for Educator Certification could be performed by the Commissioner of Education without the need for a separate Governor-appointed board.

The Sunset Commission's 56 statutory recommendations were incorporated into Senate Bill 218. The Senate Education Committee discussed a significant number of changes and additions to the bill, but pended those amendments for consideration by the full Senate. However, in the end, S.B. 218 never came up on the Senate floor.

Although S.B. 218 failed passage, the Legislature did adopt several Sunset Commission recommendations related to adult education, charter school regulation, and financial accountability in other legislation, as described below. The following material also lists management actions recommended by the Sunset Commission for implementation by the agency that do not require statutory changes. These management actions address contracting practices, educator certification, driver training regulation, and succession planning. Some of these recommendations have been modified to work within existing agency structures when suggested transfers were not enacted in law.

Continuation

- Continues TEA until 2015 and places the agency under a limited-scope Sunset review in the 2014–15 biennium. (H.B. 1675)

Adult Education

- Transfers responsibility for adult education from TEA to the Texas Workforce Commission. (S.B. 307)
- Creates an adult education and literacy advisory committee at the Texas Workforce Commission. (S.B. 307)

Charter Schools

- Requires revocation of a charter for failure to meet basic academic or financial accountability standards for three years in a row. (S.B. 2)
- Authorizes the Commissioner to revoke a charter that is on the verge of insolvency. (S.B. 2)
- Sets an initial five-year term and subsequent 10-year terms for charters and restructures the renewal process to ensure that failure to meet basic standards for accountability can lead to nonrenewal. (S.B. 2)
- Authorizes the Commissioner to reconstitute the governing board of a charter holder in certain circumstances. (S.B. 2)
- Applies standard prohibitions on nepotism to all charter schools, while providing an exception for existing employees. (S.B. 2)
- TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor-performing charters. (management action – nonstatutory)

Financial Accountability

- Incorporates the financial solvency review into the FIRST financial accountability system. (H.B. 5)
- Requires TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years. (H.B. 5)
- Requires districts and charters that fail FIRST to prepare a corrective action plan, and authorizes TEA to apply its standard set of sanctions to schools that fail to submit or implement adequate plans. (H.B. 5)
- Requires TEA to re-evaluate all FIRST indicators every three years. (H.B. 5)

Reporting Requirements

- Makes the *Comprehensive Annual Report to the Legislature on Texas Public Schools* biennial. (S.B. 59)

Contracting

- TEA should improve collection and reporting of all contract sanctions. (management action – nonstatutory)
- TEA should ensure staff follow guidelines regarding contracting with education service centers. (management action – nonstatutory)
- TEA should complete training of the agency's contract managers by April 1, 2013. (management action – nonstatutory)

- Direct TEA to include a section on ethics in contracting in its contracting manual. (management action – nonstatutory)
- Direct TEA to ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management. (management action – nonstatutory)

Educator Certification

- Direct the State Board for Educator Certification (SBEC) to adjust fees in rule for educator certification and educator preparation programs to ensure they adequately cover costs and are equitable across fee payers. Originally written for the Commissioner of Education, this recommendation would now apply to SBEC. (management action – nonstatutory)
- TEA should provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification. (management action – nonstatutory)
- Direct TEA staff to comprehensively track and analyze enforcement data for educator misconduct cases. (management action – nonstatutory)
- TEA should encourage the use of mediation in educator misconduct cases as an alternative to formal administrative hearings. (management action – nonstatutory)
- Direct TEA to develop procedures outlining all phases of the educator preparation program complaint process and track and analyze complaint data. (management action – nonstatutory)

Driver Training

- TEA should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner. Originally written for the Texas Department of Licensing and Regulation (TDLR), this recommendation would now apply to TEA. (management action – nonstatutory)
- TEA should make public final driver training school disciplinary orders and sanctions on its website. Originally written for TDLR, this recommendation would now apply to TEA. (management action – nonstatutory)

Succession Planning

- TEA should develop and implement a succession plan to prepare for impending retirements and other potential workforce changes. (management action – nonstatutory)

Fiscal Implication

None of these provisions will have a significant fiscal impact to the State.

AGENCY AT A GLANCE
OCTOBER 2012

AGENCY AT A GLANCE

The Legislature created the first state public school system in Texas in 1854 and the Bureau of Education in 1867. The form and function of the state's education agency has changed many times over the decades. In 1949, the Legislature created the Central Education Agency — consisting of the State Board of Education (SBOE), the Commissioner of Education, and the State Department of Education — to oversee the state's primary and secondary public education system. The Legislature abolished the Central Education Agency in 1995 and transferred its duties to the Texas Education Agency (TEA), and specified powers and duties for the Commissioner of Education and SBOE separately. The mission of TEA today is to provide 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 the state or federal accountability standards;
- providing support to SBOE 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;
- collecting a wide array of educational and financial data from public schools;
- performing the administrative functions and services of the State Board for Educator Certification to certify educators, regulate educator preparation programs, and take enforcement action in cases of educator misconduct; and
- monitoring schools for compliance with certain federal and state guidelines.

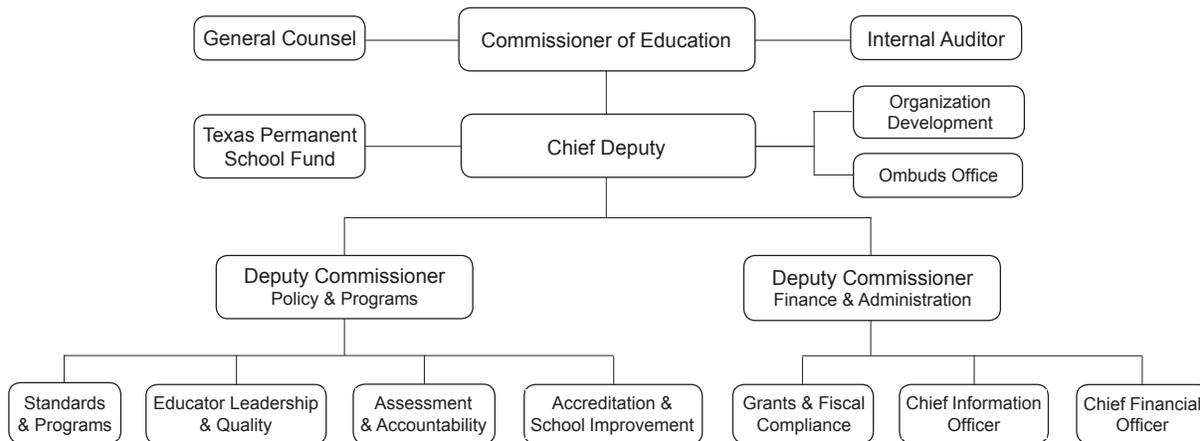
During the 2011–2012 school year, Texas' public education system consisted of 1,235 active local education agencies, including 1,029 traditional school districts, 198 charter school districts, six Texas Juvenile Justice Department districts, and the Texas schools for the deaf and for the blind and visually impaired. Statewide, this system served nearly five million students with more than 324,000 classroom teachers in about 8,500 schools.

Key Facts

- **Commissioner of Education.** Appointed by the Governor, the Commissioner oversees the day-to-day operations of the agency and, by law, makes policy and rules on specific subjects. The State Board of Education, by law, also makes policy and adopts rules for certain aspects of public education, but does not directly oversee the Commissioner or the agency.
- **Staffing.** Due to recent budget cuts, TEA cut its staff from 1,060 in January 2011 to 688 by January 2012, a 35 percent reduction overall. For fiscal year 2012, the agency was capped at 826 full-time equivalent employees, although it has maintained a staff of around 700 due to retirements and turnover, plus another 29 contracted employees. Despite the overall cuts to the agency, the

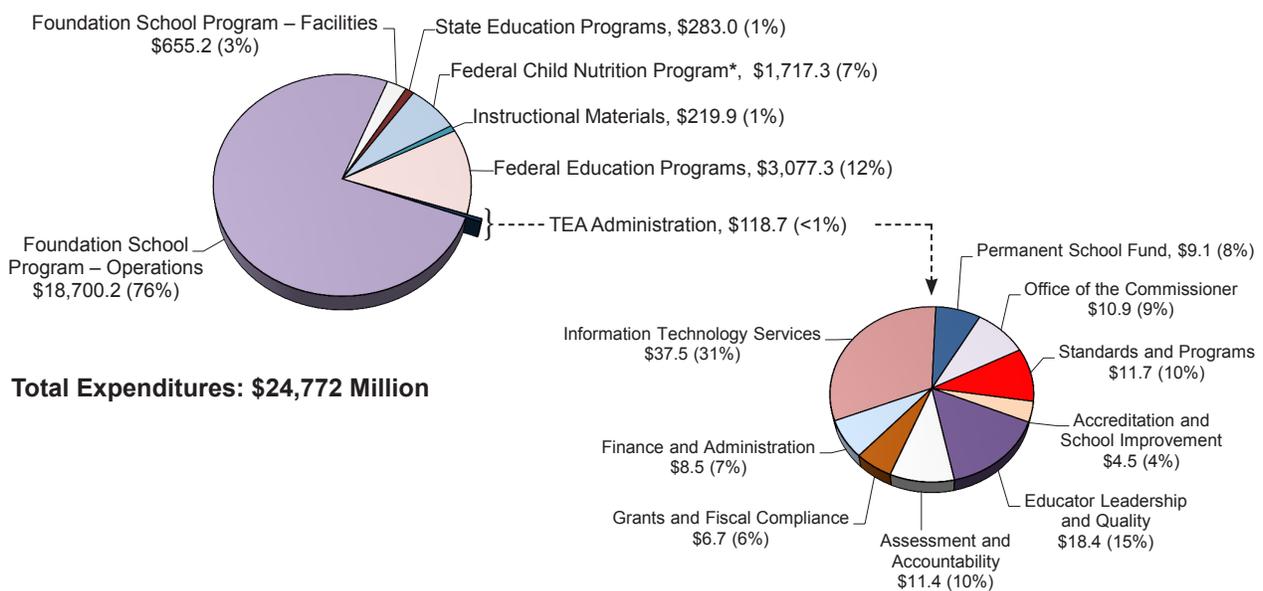
Legislature authorized 31 additional positions to perform more in-house investment management for the Permanent School Fund Division with the intent of lowering fees paid to private fund managers. All of the agency’s staff are located in Austin. The *Texas Education Agency Organizational Chart* depicts the agency’s structure.

Texas Education Agency Organizational Chart



- Funding.** For fiscal year 2012, TEA oversaw a budget totaling \$24.8 billion. The agency passes more than 99 percent of these funds through to public schools for operations, facilities, instructional materials, school lunches, and educational programs, as shown in the chart, *Expenditures by Function*. Less than 1 percent, \$118.7 million, funds the agency’s operations. The chart on the following page, *Sources of Revenue*, shows that 66 percent of the total budget comes from the General Revenue Fund.

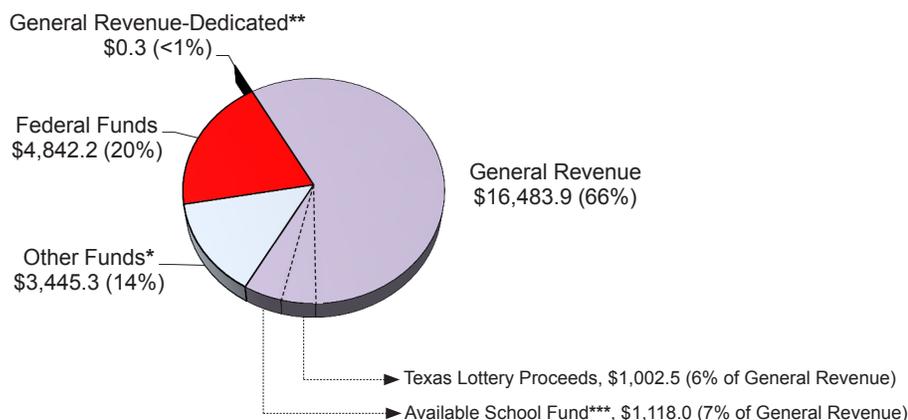
**Expenditures by Function (in Millions)
FY 2012**



Total Expenditures: \$24,772 Million

* TEA passes this funding through to the Texas Department of Agriculture, which administers the Federal Child Nutrition Program to provide free and reduced cost meals to school children.

Sources of Revenue (in Millions) FY 2012



Total Revenue: \$24,772 Million

* Other Funds includes revenue from the Property Tax Relief Fund, Permanent School Fund, recapture payments from property wealthy school districts, and interagency contracts.

** General Revenue–Dedicated includes revenue from the sale of education-related license plates.

*** The Available School Fund includes revenue from the Permanent School Fund and motor fuel taxes.

- School finance.** One of TEA's key functions is to distribute state and federal funds to schools to fulfill the State's responsibility of supporting the public education system. In fiscal year 2012, TEA distributed \$19.4 billion in state funds through the Foundation School Program, including \$18.7 billion for the operation of school districts and open-enrollment charter schools and \$655.2 million in facilities funding for school districts. TEA distributed \$219.9 million to school districts and charter schools for the instructional materials allotment and \$283 million in other state funded grant programs. TEA also distributed \$4.8 billion in federal grant funds. At the direction of SBOE, TEA provides investment and funds management support for the Permanent School Fund, valued at \$25.2 billion. The Fund currently provides about \$1 billion a year to the Foundation School Program.
- Curriculum and instructional materials.** TEA staff assists SBOE as it reviews and adopts curriculum requirements, known as TEKS (Texas Essential Knowledge and Skills), and instructional materials for use in Texas classrooms. Both processes involve numerous review panels and opportunities for public input, all managed by TEA staff. These processes can take up to three years to complete for each subject under review. TEA staff also assists schools with allotments the agency distributes for instructional materials.
- Student testing.** TEA manages and oversees standardized testing statewide to measure students' mastery of the state-mandated curriculum. During the 2010–2011 school year, Texas students took more than 8 million tests. In the 2011–2012 school year, TEA began replacing TAKS (Texas Assessment of Knowledge and Skills) with STAAR (State of Texas Assessments of Academic Readiness), introducing a new set of assessments for reading, writing, social studies, math, and science in grades three through eight, and end-of-course assessments in 12 high school subjects. TEA contracts with NCS Pearson, Inc. for nearly all of its testing functions through a five-year contract worth \$468.4 million.

- **Data collection.** TEA oversees and coordinates the collection of statewide elementary and secondary public education data and information. The agency collects data primarily through the Public Education Information Management System (PEIMS) for state and federal reporting and school finance administration. PEIMS encompasses data on the demographics and academic performance of all students, and personnel, financial, and organizational information for schools.
- **Accountability.** TEA assigns an accreditation status annually to every school district and charter school based on its academic and financial performance. TEA determines academic accountability ratings and publishes profiles on each campus and district in Texas. TEA bases state academic accountability ratings mainly on test scores, but also on drop out and completion data. Under this system, TEA rated 5 percent of school districts and charter schools as exemplary, 35 percent as recognized, 53 percent as acceptable, and 7 percent as unacceptable in 2011. TEA manages a wide array of accountability standards and programs to comply with the federal No Child Left Behind Act, including determining whether schools make adequate yearly progress.
- **School improvement.** TEA oversees a system of monitoring, support, interventions, and sanctions to ensure schools meet performance and operational standards. The agency monitors schools for compliance with academic and financial accountability standards, as well as requirements tied to certain state and federal programs, such as bilingual education, special education, and career and technical education. For schools not meeting standards, TEA implements a graduated series of interventions designed to improve performance. If performance does not improve, or operational problems exist, TEA may impose sanctions to ensure proper oversight of a struggling school, including assignment of a monitor, conservator, management team, or board of managers. In fiscal year 2012, 27 charter schools and 11 school districts had a monitor, conservator, or management team in place.
- **Charter school regulation.** The State Board of Education authorizes new open-enrollment and college- and university-based charters. By law, the number of open-enrollment charters in Texas cannot exceed 215, and currently 201 charters are active. Four college and university charters are currently active. Charter schools educate about 155,000 students, or 3 percent of the total number of public school students statewide, and operate predominantly in urban areas. Once SBOE authorizes the charters, the Commissioner of Education reviews and approves all charter amendments, monitors the academic and financial accountability of charters, and intervenes to assist or sanction low-performing charter schools.
- **Educator certification.** The State Board for Educator Certification adopts rules governing educator certification and educator preparation programs, and sanctions certificate holders. The Board consists of 11 voting members appointed by the Governor and three nonvoting members. TEA staff, on behalf of the Board, certifies and oversees about 1.2 million teachers, administrators, and other professional student services providers and monitors educator preparation programs at 151 institutions. TEA also ensures educators meet certification standards by conducting criminal background checks and investigating incidents of educator misconduct.

ISSUES

ISSUE 1

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

Background

Federal and state laws recognize the importance of open, responsive government by requiring agencies to meet basic standards for public information and public input. Texas statutes, such as the Texas Public Information Act and Texas Open Meetings Act, require all state agencies to follow basic guidelines ensuring minimum standards for public involvement and public information.¹ Standard provisions applied to most agencies' statutes through the Sunset process also require basic systems for tracking and analyzing complaints and policies for negotiated rulemaking, as discussed in Issue 12. Federal education laws also provide for public involvement, particularly with regard to school improvement and special education. The Elementary and Secondary Education Act and the Individuals with Disabilities Education Act require public involvement such as committees of parents, teachers, school administrators, and state and local officials to advise TEA on the development and implementation of rules and policies.

The Texas Sunset Act directs the Sunset Commission and staff to consider the efficiency and effectiveness with which advisory committees operate.² State agencies use advisory committees to provide independent, external expertise on how the agency's policies and procedures affect certain entities or stakeholders or to help develop recommendations for new agency or state policy directives. The textbox, *Advisory Committees*, provides additional information on the use and structure of these bodies. In addition to advisory committees created in statute, the Commissioner of Education has general authority to create committees as necessary to advise the Commissioner in carrying out the duties and mission of the agency.³

Advisory Committees

An advisory committee is defined as a committee, council, commission, task force, or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Typically, advisory committees are standing committees with broad-based jurisdiction that can be created in statute or by a state agency. The Legislature has adopted specific requirements for advisory committees contained in Chapter 2110 of the Texas Government Code.

TEA has a multitude of stakeholders, including school board members, school administrators, teachers, and parents at more than 1,200 school districts and open-enrollment charter schools; the business community; local, state, and federal policymakers; nonprofit entities and advocacy groups with an interest in children's issues; and the public at large. These stakeholders are diverse and spread out across the state, and many have limited time or resources to travel to Austin or provide in-depth, detailed input on complex subject matter. Given the importance of public education to the state's economy and Texans' daily lives and the level of public interest in TEA and its functions, public involvement is vital to the agency's operations.

Findings

TEA lacks a comprehensive approach to gathering and using stakeholder input.

Despite the importance of stakeholder input to TEA's mission and functions, the agency does not provide sufficient guidance to its staff on how to involve stakeholders on a regular basis, resulting in inconsistent public involvement efforts. As an agency headed by a single Governor-appointed Commissioner, TEA does not have a governing body to hold regular public meetings to set policy, make decisions, and hear from stakeholders. Instead, TEA relies on numerous advisory committees, work groups, and the rulemaking process to gather stakeholder input. However, TEA has no rule or policy to guide stakeholder input.

TEA's efforts to gather stakeholder input are inconsistent.

Involving the public, to be meaningful, should be more than simply following minimum requirements set out in laws and regulations. These efforts should include early and frequent contact with stakeholders, beginning with planning and continuing through implementation of a new rule, policy, or program. Activities should include outreach tied to decision making and use a variety of techniques targeting different groups and individuals, and must include clear buy-in from senior management and the Commissioner to be effective. While TEA makes many efforts to gather and use stakeholder input, those efforts are not consistent over time or throughout the agency, as seen in the following examples.

- **Advisory committee oversight.** Federal and state law require TEA to maintain several advisory committees and the Commissioner, over time, has created several more. Although the agency has rules and operating procedures governing its committees, they have not been updated in many years and only list the name, general purpose, statutory authority, number of members, and staff contact for some committees. Agency staff also routinely create informal workgroups to obtain stakeholder input on very specific topics, which are not governed by any rule or policy.
- **Advisory committee use.** TEA tends to create narrow, topic-specific advisory committees, as opposed to most state agencies that establish several standing committees that have broad jurisdiction over certain functions, programs, or related topics. The broader approach allows agencies to assign any number of specific topics to one standing committee, enabling the committee to consider cumulative impacts of related topics on both the agency and its stakeholders. Advisory committees often establish subcommittees within the standing committee if more specific input or expertise is needed.
- **Advisory committee transparency.** Information about TEA's advisory committees and their meetings is not easily accessible to the public. TEA does not have a central location on its website to provide information about its advisory committees, such as the purpose, membership, staff contact, agendas, or meeting minutes. TEA also does not provide a

Information about TEA's advisory committees is not easily accessible to the public.

calendar of upcoming committee meetings or other opportunities to provide stakeholder input. Only one of TEA's advisory committees posts notifications of its meetings in the *Texas Register*. Although advisory committees are generally not subject to the Open Meetings Act, many agencies post notifications of these meetings in the *Register* to inform the public. Typically, the only way for a stakeholder to know about upcoming opportunities to provide input is to get on one of the agency's many email lists.

- **Rulemaking.** Some divisions within TEA make more significant attempts to gather stakeholder input early in the development of rules than others. Further, in the past four years, TEA has only held public hearings on six proposed rule changes, despite the fact that the agency reviews all of its rules every four years and implements significant rule changes on a regular basis. The agency has no policy directing staff as to when or how to seek stakeholder input or when to hold public hearings on rules other than the minimum requirements in law for all agencies' rulemaking processes.⁴
- **Strategic planning process.** In developing its 2011–2015 strategic plan, TEA sought input from its external customers and stakeholders through new methods, such as webinars and online surveys.⁵ This use of technology allowed the agency to gather input in a more efficient and cost-effective manner and allowed more stakeholders from throughout the state to participate. In contrast, in developing its most recent strategic plan, for 2013–2017, TEA did not seek any stakeholder input due to budget cuts and loss of staff, even though the agency's previous use of webinars and online surveys was meant to allow stakeholder input with minimal expenditure of time or resources.⁶

Adopting a formal public involvement policy, and featuring related strategies prominently on its website, would help promote understanding of how stakeholders can engage with the agency and what to expect from these interactions. By making the effort more comprehensive and proactive, TEA could consider ways to develop regular and more meaningful public interactions through all of its activities and programs. By formally providing people affected by its policies and activities real opportunities for meaningful input, TEA gains additional information and perspective to improve the overall decision-making process. Further, considering TEA's recent budget and staff cuts, stakeholder involvement can serve a valuable role of providing expertise and developing policy options, freeing agency staff from having to both develop and then implement policy and rule changes.

TEA's advisory committees do not meet standard operating criteria.

Chapter 2110 of the Texas Government Code lays out the basic structure and duties of state agency advisory committees. The chapter creates guidelines for committee membership and reimbursement. The chapter further requires

TEA has only held public hearings on six proposed rules in the past four years.

Adopting a formal public involvement policy would help stakeholders understand how to engage with TEA.

state agencies to define the purpose of each committee, and to regularly evaluate committees to determine their continued usefulness. To ensure that committees remain useful, the chapter creates automatic expiration dates for committees four years from their creation, and requires agencies to act, through rulemaking, to continue needed committees.

TEA generally does not comply with the requirements of Chapter 2110 for its advisory committees, although the lack of distinction between what is an advisory committee and what is an informal workgroup creates confusion about how extensively this chapter should be applied. Without regular evaluation and clear purposes and timeframes, the agency cannot ensure its system of advisory committees is efficient or effective. The textbox, *Noncompliant Components of TEA's Advisory Committee Structure*, describes the ways in which the agency is not in compliance with statute. Obtaining stakeholder input through advisory committees is an important tool for an agency, but advisory committees must be well-managed to ensure they provide value to the agency and efficiently use the time staff and stakeholders contribute to them.

Advisory committees must be well-managed to provide value and use people's time efficiently.

Noncompliant Components of TEA's Advisory Committee Structure

- Agency staff preside over many advisory committees, rather than the members selecting their own presiding officer. The practice of having staff chair an advisory committee undermines the advisory role of committees, as staff may influence actions or decisions of the groups. Staff should also not be involved in selection of the chair.
- Agency rules do not consistently include the purpose, tasks, manner of reporting, or abolishment dates for each committee.
- The agency does not annually evaluate the work, usefulness, or costs and associated staff time of its committees or report this information to the Legislative Budget Board.

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 an official policy providing a clear structure for its overall approach to public involvement including each of the areas described below. In implementing this provision, TEA should consider specifically addressing the elements described to encourage a comprehensive and proactive effort across the agency.

- **Stakeholder engagement.** The policy should include a description of how TEA will seek to proactively engage stakeholders, including through strategic planning efforts and the use of advisory committees, workgroups, webinars, or other more formal and ongoing strategies.

- **Different types of stakeholder input.** TEA should clearly distinguish between the purpose and appropriate use of advisory committees and informal workgroups. Informal groups would not be required to adhere to the requirements of Chapter 2110, but should have well-defined purposes and timelines for completing their tasks.
- **Open meetings.** TEA should develop specific actions it will take to go beyond minimum Open Meetings Act requirements, such as considering requiring all advisory committees to hold open meetings, unless specific reasons covered by the Act would justify an exception; providing additional opportunities for public input to the agency; and posting audio, minutes, and meeting agendas in a timely fashion on the agency's website and through electronic notifications.
- **Online information.** TEA should develop a strategy for how it will use its website to provide clear, updated information on issues of concern to stakeholders, such as clear summary information about how the public can interact with the agency overall, and ensuring topics of major interest are adequately addressed on the site. TEA should also provide information about its advisory committees and other opportunities for stakeholder input on its website. This information could include a list of all advisory committees with the purpose, membership, and staff contact for each and a calendar of all stakeholder involvement opportunities, including advisory committee and workgroup meetings, webinars, teleconferences, as well as comment periods and public hearings on proposed rules.
- **Results.** TEA should work to clearly tie stakeholder input to decision making and provide clear information to the public about the specific outcomes of their input. This recommendation should apply to all types of public input and to all of the agency's rulemaking procedures.

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

TEA should 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, to ensure its mechanisms for stakeholder feedback are well-managed and as efficient and effective as possible. The agency should also annually evaluate each committee's work, usefulness, and costs related to the committee's existence — including costs of staff time spent in support of committee activities, and report the results of its evaluation to the Legislative Budget Board.

Given the importance of stakeholder feedback to TEA's mission, the agency should consider including other important structural criteria, that are not required by law, in either its rules or policy, such as:

- size and quorum requirements of the committees;
- qualifications of the members, such as experience or geographic location;
- appointment procedures for the committees;
- terms of service; and
- compliance with the Open Meetings Act.

Fiscal Implication

While these recommendations would require existing staff to develop new policies and rules related to stakeholder input and advisory committees, the agency would not require additional financial resources to improve its public involvement efforts.

¹ Chapters 551 and 552, Texas Government Code.

² Section 325.011, Texas Government Code.

³ Section 7.055(b)(11), Texas Education Code.

⁴ Section 2001.029, Texas Government Code.

⁵ Texas Education Agency, *Strategic Plan for the Fiscal Years 2011–2015*, Appendix A (Austin, July 2, 2010), p. 73.

⁶ Texas Education Agency, *Strategic Plan for the Fiscal Years 2013–2017*, Appendix A (Austin, July 6, 2012), p. 60.

RESPONSES TO ISSUE 1

Recommendation 1.1

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

Agency Response to 1.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 1.1

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Jackie Lain, Associate Executive Director, Government Relations – Texas Association of School Boards, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Linda Frasher Meigs, Child and Mental Health Advocate – Georgetown

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Zach Rozell, Vice President – iteachTEXAS, Denton

Karen Slay, President – Texas PTA, Austin

Against 1.1

None received.

Modification

1. Expand the Superintendent's Cabinet to include other stakeholder perspectives, including teachers. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)

Recommendation 1.2

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

Agency Response to 1.2

The agency generally agrees with the recommendations, but with two limitations. First, the agency understands the recommendations not to apply to the appeals committees established under Section 39.151 of the Texas Education Code, as well as the analogous committee established for federal accountability purposes under the No Child Left Behind Act. Those committees have statutorily defined quasi-judicial roles that, while advisory, must be completed in a short period of time to meet legal deadlines. Second, the agency understands the recommendations not to apply to committees served by TEA staff but operating under procedures adopted by the Texas State Board of Education. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Staff Comment: Sunset staff concur with the agency's clarifications.

For 1.2

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Linda Frasher Meigs, Child and Mental Health Advocate – Georgetown

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Zach Rozell, Vice President – iteachTEXAS, Denton

Karen Slay, President – Texas PTA, Austin

Against 1.2

None received.

COMMISSION DECISION ON ISSUE 1

(JANUARY 2013)

Adopted Recommendations 1.1 and 1.2.

FINAL RESULTS ON ISSUE 1

(JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory recommendations.

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

Recommendation 1.2 — Require TEA to adopt rules for its use of advisory committees to ensure the committees meet standard structure and operating criteria.

ISSUE 2

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

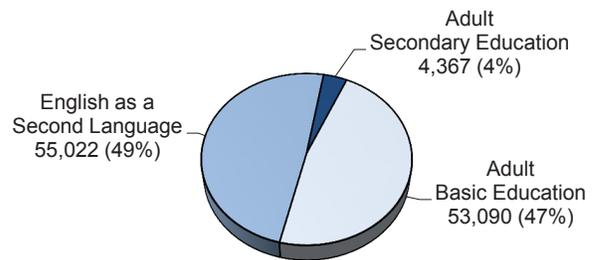
Background

The Texas Education Agency has primary responsibility for adult education programs in Texas that provide training in literacy, English as a second language, and basic academic skills up through the high school level.¹ In fiscal year 2011, TEA received about \$56 million in federal adult education funds, mostly through Title II of the Workforce Investment Act and \$13.8 million in General Revenue funds to provide a match for the federal dollars.

Individuals who are at least 16 years old and not enrolled in school are eligible for adult education services if they have not earned a high school diploma or its equivalent, or are unable to speak, read, or write English. Federal law directs the funds to be used for two purposes: helping adults become literate and obtain the knowledge and skills necessary for employment and self-sufficiency, and helping adults complete secondary school education.²

In fiscal year 2011, TEA-funded providers served almost 112,500 students. The chart, *Adult Education Students by Service Type*, shows how many students received each type of service, and the table, *Adult Education Services*, describes the services.

**Adult Education Students by Service Type
FY 2011**



Total Students: 112,479

Adult Education Services

<p>Adult Basic Education Instruction in basic skills for adults who have competencies below the high school level in reading, writing, and math.</p>
<p>Adult Secondary Education Instruction for adults with competencies at or below the college credit level, and who do not have a high school diploma or its equivalent. Usually prepares adults for high school completion or the General Education Development (GED) test.</p>
<p>English as a Second Language Instruction for adults who lack competence and proficiency in English.</p>

TEA awards most adult education funding through grants to 55 cooperatives that provide services across the state. The cooperatives are administered by community colleges, education service centers, school districts, community-based organizations, and a county department of education. While the cooperatives initially competed for grants in 2002, TEA, like many of its counterparts in other states,

has simply continued funding these same providers since 2003 in anticipation of major program changes tied to Congress' reauthorization of the Workforce Investment Act. However, Congress has not, as yet, taken action to reauthorize the Act.

In 2003, TEA also contracted with the Harris County Department of Education (HCDE) for the grants administration and technical assistance functions of the adult education program, while TEA retained the functions of policymaking and awarding grants. The contract with HCDE totals about \$2 million annually, which pays for 15 staff. TEA maintains the equivalent of about four staff positions working on adult education, but dedicates no single staff person solely to the program. TEA awarded the contract to help improve the program's poor performance and because the agency faced a significant reduction in staff in 2003.³

Though TEA distributes the majority of federal adult education funds in Texas, the Texas Workforce Commission (TWC) and the Texas Higher Education Coordinating Board also contribute to adult education in Texas by funding special pilot projects and other ongoing, related services. For many years, the Legislature and the Governor's Office have directed TEA, TWC, and the Coordinating Board to work together, especially to align adult education and postsecondary education, and the agencies have developed a tri-agency plan to improve adult education.⁴ The Texas Workforce Investment Council, located in the Governor's Office, also plays a role required by statute in helping the agencies coordinate services for adult learners through the *Strategic Plan for the Texas Workforce System*.⁵

Findings

Millions of adult Texans lack basic education and literacy skills, yet current programs serve only a small fraction of those in need.

In fiscal year 2011, state and federally funded adult education programs in Texas served just 3 percent of the estimated 3.5 million people who are eligible.⁶ By 2040, population trends indicate that more than 7.9 million Texans will be eligible for adult education services.⁷ Texas has some of the highest illiteracy rates in the United States, and in some counties along the border with Mexico, illiteracy rates reach as high as 65 percent.⁸

Texans' ability to read, write, and speak English, and compute and solve math problems at appropriate levels is critical to finding employment and functioning well on the job and in society. Without these basic skills, individuals cannot compete for higher paying jobs to support their families. In addition, businesses are demanding new skill sets from workers due to changing technologies — such as those associated with emerging energy industries — and global competition.⁹ Workers cannot advance into technical training or higher education programs that lead to increased earnings without basic educational skills and high school credentials. Unfortunately, Texas tied for last among the states in the percent of adults over 25 with a high school degree or its equivalent.¹⁰ This fact causes particular concern given that employment projections indicate 80 percent of the top 20 growth occupations in Texas over the next four years will require education above the high school level.¹¹

By 2040, more than 7.9 million Texans will be eligible for adult education services.

Educating adults is not part of TEA's core mission, and TEA lacks a clear focus on, and adequate oversight of, its adult education program.

TEA's mission to help public schools meet the education needs of elementary and secondary students stands in contrast to the adult education program that only serves individuals who are not enrolled in school. Given the recent significant reductions in TEA's budget and staff, focusing the agency on accomplishing its core mission becomes even more important.

Though TEA staff publicly state their support for the adult education program, the agency has chosen to outsource the program's administration — something no other state has done — clearly reducing TEA's direct involvement and engagement with the program. In addition, since the budget and staffing cuts in 2011, TEA no longer dedicates any staff person to solely oversee the program or ensure the effectiveness of its contract. Instead, the person assigned to adult education also manages two other programs, and therefore works on adult education only part time.

- **Questions about outsourcing program administration.** Federal data shows that program performance has improved under the contract with the Harris County Department of Education, but legislators and other stakeholders have raised questions since its inception about the appropriateness of contract staff representing the State, and whether those staff can be completely unbiased in their actions. Since HCDE itself provides adult education services to almost 10,000 students annually, its contract with TEA requires separate staff, budget, and even buildings from the HCDE division, Texas LEARNS, that performs the work of administering the program to help avoid conflicts of interest. While state law does not explicitly require contracts between state agencies and local governments to be competitively bid, TEA's noncompetitive award of a contract worth \$2 million a year to an existing adult education provider raises questions of fairness and transparency.

In addition, although the contract assigns several duties to HCDE, the contract does not contain clear, objective performance measures that would demonstrate whether the contractor is performing those duties as expected. While the contract specifies that Texas LEARNS produce a quarterly progress report, TEA requires only a simple list of items on which the contractor has spent funds. As discussed in Issue 11, the agency did not follow its own contracting guidelines to complete performance evaluation and lessons learned documents before issuing the latest contract to HCDE, so TEA is unable to document whether it evaluated HCDE's performance. TEA also did not conduct its usual monthly coordination meetings between TEA staff and Texas LEARNS staff for much of 2011 and 2012 as the agency juggled oversight of the program among different staff amid a major agency reorganization, further illustrating TEA's limited focus on monitoring this important program and the contractor it selected to run it.

TEA no longer dedicates any staff person to solely oversee the adult education program.

Legislators and stakeholders have raised questions about the appropriateness of contract staff representing the State.

Between 30 and 50 percent of providers failed to use all of their funding in each of the last three years.

- **Stagnant providers.** Pending reauthorization of federal legislation, TEA has issued continuation grants to the same 55 provider cooperatives for the past ten years, which prevents advances in performance and innovation that competition can spark. For example, between 30 and 50 percent of providers failed to use all of their funding in each of the last three years, with one provider leaving more than \$570,000 unspent one year and almost \$800,000 the next. Given the vast unmet need for adult education, failure to spend the limited funds is inexcusable. Further, TEA exacerbates the problem by allowing providers who failed to use all of their funding in one year to receive reallocated funding the following year.

The inability of providers to spend all their funds clearly indicates a need to open up the program to additional providers. Competitive grant awards would allow other providers an opportunity to increase the number of students served. In addition, while the number of students taking courses online has increased over the past several years, less than 1 percent of students receive at least half of their contact hours via distance learning.¹² New providers could potentially offer more online learning to help increase the number of students served across the vast areas of Texas.

In 2011, the Legislature indicated impatience with TEA awarding continuation grants to the same providers and required the agency to begin competitively awarding the grants.¹³ But despite having recently written the rules required by the Legislature that will guide the competitive process, TEA staff have not yet determined the program goals on which to judge grant applicants when the agency issues new grant guidelines in early 2013. Unfortunately, TEA cannot draw on the expertise of its contracted program administrator in developing the request for applications because contract provisions prohibit Texas LEARNS' involvement in any grant for which HCDE may compete.

TEA provides adult education funding on a first-come, first-served basis, rather than encouraging innovation.

- **Lack of program direction.** Though federal guidance encourages states to prioritize their adult education funds, current Texas grant guidelines do not include any specific program goals or strategies that providers must achieve beyond basic requirements in federal law. Providers must meet federal and state performance measure targets, but in general those measures simply gauge educational advancement and do not have an overall direction or focus set by the State. Additionally, the formula TEA uses to allocate funds to the cooperatives does not target specific program goals or strategies important to the State, such as getting students educated and employed more quickly. A number of other states use performance funding to help encourage innovation and achieve certain program outcomes.¹⁴ Instead of simply serving adult education students on a first-come, first-served basis as it currently does, TEA could better target its funding and build on various existing pilot projects to help students more quickly gain employment or get better paying jobs to support their families.

Texas' adult education program and workforce development system serve much of the same population, but have had difficulty coordinating effectively over the years.

Despite numerous efforts to enhance collaboration between adult education and workforce development partners in Texas, different priorities and system inefficiencies persist. For example, TEA has not updated activities outlined in the federally required *State Plan for Adult Education and Family Literacy* regarding adult education and workforce development collaboration since 2004–2005. Though federal guidelines do not require the full plan to be updated regularly, TEA's lack of attention to these collaborative activities is notable.

- **Different program focus.** TWC manages several large programs providing education and training to low-skilled workers through 28 workforce development boards across the state, and many customers who enter workforce centers operated by the boards need the basic skills that adult education services provide. However, many adult education providers focus solely on long-term goals, failing to incorporate more immediate short-term goals of getting students educated and job-ready as quickly as possible.
- **Lack of data sharing.** Workforce centers administer tests to determine a client's skill level and then may refer the client to a local adult education provider for services. That provider may also administer a test — perhaps the very same test — because adult education providers and workforce centers do not formally share test scores due to privacy concerns. In addition, the management information systems used by TEA and TWC to track their clients, many of whom receive services through both agencies, cannot share data because of privacy concerns, further increasing inefficiency.
- **Lack of strong relationships.** State law requires local workforce development boards to have an adult basic and continuing education member and a local literacy council member serve on their oversight bodies, and State Board of Education rules require adult education providers to form advisory committees that include workforce development representatives.¹⁵ Despite these requirements, however, a recent study of the relationship between local workforce boards and adult education providers found that just three boards have a robust relationship with their adult education providers, and only one-third of boards participating in the study strongly agreed that their adult education provider regularly shared information and official communications.¹⁶ Without better communication between these two groups, services are unlikely to evolve and improve.

Adult education providers are often focused on long-term goals and not on getting students educated and job-ready as quickly as possible.

Making the Texas Workforce Commission responsible for adult education would better position the State to effectively ensure that adult Texans have the basic skills necessary to succeed in the workplace.

As the State's workforce agency, TWC helps match employers with individuals who have the necessary skills to do the job. If job seekers do not have basic skills, TWC cannot meet two of its key performance measures that it shares with adult education — entered employment and retained employment rates — making effective adult education services critical to TWC accomplishing its mission.

Students could benefit from stronger partnerships between TWC, local workforce boards, and adult education providers. Students could register for adult education services, take assessments, and even attend classes through workforce centers across the state. This would make participation more convenient for students, and allow for more communication between instructors and center staff on student progress. Housing adult education at TWC would also eliminate privacy concerns about sharing test data and other student information as data would no longer be shared across agencies.

With more than 3,000 employees statewide, TWC has the capacity to assume responsibility for this additional workforce-related program and could provide the oversight that TEA currently lacks. TWC oversees more than \$800 million in contracted programs, primarily for services delivered at the local level. TWC has established contractual relationships with many adult education providers, such as community colleges and school districts, to provide skills development and apprenticeship programs. Overseeing an additional \$70 million in adult education funds would be consistent with the agency's other contract monitoring and oversight duties.

TWC also staffs the Interagency Literacy Council established by the Legislature in 2009 that is responsible for the improvement of literacy in Texas, further making TWC an appropriate agency to manage the State's adult education program. The Council is responsible for developing a statewide action plan for the improvement of literacy in Texas. Membership on the Council includes representation from TWC, TEA, the Coordinating Board, and leaders in the business or nonprofit communities engaged in literacy promotion.

Though the Texas Higher Education Coordinating Board could also potentially absorb TEA's adult education program, the program's current population of students likely to seek post-secondary education is just 4 percent. In addition, the Sunset Commission noted in its recent report on the Coordinating Board that the agency already has many duties, programs, initiatives, and expectations that distract from its core function as a coordinating entity.

Effective adult education services are critical to TWC accomplishing its mission.

Recommendations

Change in Statute

2.1 Transfer responsibility for adult education from TEA to the Texas Workforce Commission.

This recommendation would ensure more effective oversight and more targeted use of Texas' adult education funds by requiring TWC to administer the program. TWC would assume all statutory authority over the program, including the general rulemaking authority currently assigned to the State Board of Education, as well as the more specific rulemaking authority assigned to TEA regarding competitive service provider grants. The effective date for the program's transfer would be September 1, 2013. TWC should bring the grant administration function in-house as soon as practical after Harris County Department of Education's contract expires in August 2013.

Under TWC's enabling statute, the agency must use each of its program's federal funding formulas to allocate funds across its 28 local development workforce boards.¹⁷ Therefore, as part of this recommendation, statute would be amended to allow TWC the flexibility to determine the best method to divide adult education funding among the state's workforce regions. 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. This timing would allow the competitive grants TEA plans to award in May 2013 to be in place for one year to help minimize service disruption.

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 and any other issues defined by the Commission. The advisory committee should consist of not more than seven members representing experts in the adult education field. Experts may include adult educators, providers, advocates, and current or former adult education and literacy program students.

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.

Fiscal Implication

These recommendations would result in a cost-neutral transfer of state and federal funds from TEA to TWC. As part of the transfer, TWC's employee cap should be increased by 19 full-time equivalent positions based on 15 positions at Texas LEARNS and the equivalent of four full-time positions at TEA. The intent of the recommendations is to increase efficiencies in serving individuals with low education and skill levels, and to ensure full use of all available funding. However, these efficiencies are not likely to result in any cost savings to the State. Instead, they would allow additional investment in adult education services. The recommendation to create an advisory committee would not have a cost to the State unless the Legislature specifically grants committee members reimbursement for their service through the General Appropriations Act.

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¹ Section 29.252, Texas Education Code.

² Federal funding for the Even Start program that helped adults become full partners in the education of their children was eliminated beginning August 2012.

³ Testimony by Lizzette Reynolds, Deputy Commissioner for Policy and Programs, Texas Education Agency, joint hearing of the House Committee on Higher Education and House Appropriations Subcommittee on Education regarding adult basic education and post-secondary developmental education, June 12, 2012.

⁴ "Meeting Agenda Item IX-B," Texas Higher Education Coordinating Board, January 2005, http://www.theccb.state.tx.us/GeneralPubs/Agenda/Ag2005_01/IXB/.

⁵ Texas Workforce Investment Council, *Advancing Texas: Strategic Plan for the Texas Workforce System, FY 2010 – FY 2015* (Austin: Texas Workforce Investment Council, 2009).

⁶ U.S. Census Bureau, American Community Survey, accessed September 20, 2012, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_5YR_S1501&prodType=table.

⁷ Texas Workforce Investment Council, *A Companion Paper to a Primer on Adult Education in Texas: Identifying the Current and Future Population in Need of Adult Education* (Austin: Texas Workforce Investment Council, 2010), p. 9.

⁸ "State and County Estimates of Low Literacy," National Center for Education Statistics, U. S. Department of Education, accessed September 12, 2012, <http://nces.ed.gov/naal/estimates/StateEstimates.aspx>.

⁹ Texas Workforce Commission, *2013–2017 Strategic Plan* (Austin: Texas Workforce Commission, 2012), p. 13.

¹⁰ U.S. Census Bureau, American Community Survey, accessed September 21, 2012, http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_GCT1501.US01PR&prodType=table.

¹¹ Texas Workforce Investment Council, *A Primer on Adult Education in Texas* (Austin: Texas Workforce Investment Council, 2010), p. 28.

¹² Texas Education Agency and Texas LEARNS, *Texas Narrative Report 2010–2011*, submitted to the U.S. Department of Education, Office of Vocational and Adult Education, undated, p. 4.

¹³ Section 29.2535, Texas Education Code.

¹⁴ Marcie Foster with Lennox McLendon, *Sinking or Swimming: Findings from a Survey of State Adult Education Tuition and Financing Policies* (CLASP and National Council of State Directors of Adult Education, June 2012), p. 10.

¹⁵ Section 2308.256(a)(3), Texas Government Code; 19 T.A.C. Section 89.28.

¹⁶ Texas Workforce Commission, *Assessing the Robustness of the Relationship Between Local Workforce Development Boards and Adult Basic Education Providers* (Austin: Texas Workforce Commission, 2010), p. 3.

¹⁷ Section 302.062(b), Texas Labor Code.

RESPONSES TO ISSUE 2

Recommendation 2.1

Transfer responsibility for adult education from TEA to the Texas Workforce Commission.

Agency Response to 2.1

The agency agrees with this recommendation.

Agency Modification

1. Transfer the General Education Development (GED) exam program to the Texas Workforce Commission along with the adult education program.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 2.1

Juan Carlos Aguirre, Director of Continuing Education – South Texas College, McAllen

Blas Castañeda, Chair of Workforce Development Committee – Texas Border Coalition, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Wanda F. Garza, Vice President Student Affairs and Enrollment Management – South Texas College, McAllen

Richard James Golsan, Policy Analyst – Texas Public Policy Foundation, Austin

Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission

Peggy Venable – Americans for Prosperity-Texas, Austin

Colleen Vera, retired Texas teacher – Houston

Against 2.1

Teresa Alaniz, M.S. Instructional Technology/Adult Education Distance Learning Teacher/
Texas A&M Adjunct Instructor – Adult and Continuing Education and Family Literacy
Program, Corpus Christi Independent School District, Corpus Christi

Debbie Alford – Brownsville ISD Adult Continuing Education, Brownsville

George Alvarez del Castillo – Cleburne ISD, Cleburne

Fred Anaya – Ysleta ISD, El Paso

Suzanne Berg – Region 6 Education Service Center Adult ESL Classes, Spring

Robin Booth – Region 6 Education Service Center, The Woodlands

Rebekah Burkhalter – Panola College Adult Basic Education, Center

Brian Clutter – Bryan Adult Learning Center, College Station

Becky Collet – Region 6 Education Service Center, Bryan

Nancy Crawford, Executive Director – Tyler Junior College and Literacy Council of Tyler, Tyler

Angela Dalrymple – Region 6 Education Service Center, Brenham

Paul Diehl – Region 1 Education Service Center, Harlingen

Charyl Durbin – Region 6 Education Service Center, Conroe

Octaviano Garza – Region 9 Education Service Center Adult Education Program, Wichita Falls

Kristi Hayman – Region 6 Education Service Center, Dodge

Marvel Hayman, Huntsville

Janis Heebner – Region 9 Education Service Center, Wichita Falls

Jane Heidt, Laredo

Angie Kaldro – Bryan Adult Learning Center, Bryan

Dr. Ana H. Macias – University of Texas at El Paso, El Paso

Bobbie McGee-Benson – Kilgore College Adult Basic Education, Longview

Alma Mendoza – Region 1 Education Service Center, Harlingen

Kaye Mitchell – Region 6 Education Service Center, Conroe

Aida Morossini Martinez, Program Coordinator – Fort Worth ISD, Fort Worth

Benney Raley, Huntsville

Gay Roden – Cleburne ISD Adult Education Advisory Council, Cleburne

Sally Ryan – Region 6 Education Service Center, Bryan

Melissa Sadler-Nitu – Texas Council for Adult Basic Education, Seguin

Dr. Don F. Seaman, Former Professor, Research Scientist, and Director – Texas Center for Adult Literacy and Learning, College Station

Ida Trompeter – Subcontractor to Corpus Christi ISD, Corpus Christi

Resa Wingfield – Literacy Council of Tyler, Tyler

Barbara Yoder – Cleburne ISD, Burleson

Modifications

2. When transferring the adult education program to the Texas Workforce Commission, maintain current funding and resources and allocate them to the areas of greatest need. (Blas Castañeda, Chair of Workforce Development Committee – Texas Border Coalition, Austin)
3. Provide TEA with the 19 staff positions proposed for transfer to the Texas Workforce Commission. (Dr. Ana H. Macias – University of Texas at El Paso, El Paso)

Staff Comment: The 19 positions are currently contract positions managing the adult education program at Texas LEARNS.

4. If the adult education program is transferred to the Texas Workforce Commission, keep the program's current leadership at Texas LEARNS. (Aida Morossini Martinez, Program Coordinator – Fort Worth ISD, Fort Worth)

Recommendation 2.2

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

Agency Response to 2.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 2.2

Blas Castañeda, Chair of Workforce Development Committee – Texas Border Coalition, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Wanda F. Garza, Vice President Student Affairs and Enrollment Management – South Texas College, McAllen

Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission

Against 2.2

None received.

Modification

5. Direct the adult education advisory committee to (1) advocate for continued and increased support for adult basic education programs along the Texas border; (2) involve local workforce boards and community colleges in the adult basic education transition process to harness their expertise in the local employment landscape; and (3) reform the adult basic education funding allocations so that funds are directed to the areas of greatest need, such as the border region. (Blas Castañeda, Chair of Workforce Development Committee – Texas Border Coalition, Austin)

Recommendation 2.3

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

Agency Response to 2.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 2.3

Blas Castañeda, Chair of Workforce Development Committee – Texas Border Coalition, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Wanda F. Garza, Vice President Student Affairs and Enrollment Management – South Texas College, McAllen

Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission

Against 2.3

None received.

COMMISSION DECISION ON ISSUE 2

(JANUARY 2013)

Adopted Recommendations 2.1 through 2.3.

FINAL RESULTS ON ISSUE 2

(JULY 2013)

Legislative Action

Recommendation 2.1 — The Legislature adopted through separate legislation, Senate Bill 307, this recommendation to transfer responsibility for adult education from TEA to the Texas Workforce Commission (TWC).

Recommendation 2.2 — The Legislature adopted through S.B. 307 this recommendation to create an adult education advisory committee at TWC.

Management Action

Recommendation 2.3 — This recommendation for TEA and TWC to develop a transition plan for the transfer of the adult education program does not need to be implemented because S.B. 307 requires the two agencies to enter into a memorandum of understanding relating to a timetable and specific steps for the transfer.

ISSUE 3

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

Background

The Texas Education Agency (TEA) has regulated the private driver training industry since 1989 when the Legislature transferred the function from the Department of Public Safety, and TEA recently contracted out this function to the education service center in Austin. The textbox, *Driver Training in Texas*, provides information on the major types of driver training licenses and certificates TEA issues. While *driving safety* schools aim to improve drivers' knowledge, perception, and attitude about driving generally to allow for traffic ticket dismissal, *driver education* schools teach the skills and knowledge necessary to obtain a driver license. Public schools that offer driver education are exempt from licensure and instead follow guidelines established by TEA in administrative rules.

Driver Training in Texas

Type of Instruction	Licensed Schools*	Licensed Instructors*	Approved Courses*	Certificates Issued, FY 11	Revenue From Certificates Sold, FY 11
Driving safety	572	1,225	99	743,057	\$1,263,197 (\$1.70 per certificate)
Driver education	388	1,819	655	386,118	\$942,950 (\$2 or \$3 per certificate, depending on school type)

* As of September 2012.

In addition to issuing licenses, TEA regulates course content by licensing 62 driving safety course providers that develop courses from which schools must choose. TEA approves driver training courses to ensure they meet requirements set in law and rule, and develops a driver education curriculum. TEA also sells certificates to schools that in turn award the certificates for a fee to students who complete driver training courses. The certificates allow students to obtain a driver license, traffic ticket reduction or dismissal, or an insurance discount. In fiscal year 2011, students paid about \$2.2 million for 1.1 million certificates. Licensing and certificate fees more than cover the costs of regulation with TEA collecting almost \$2.9 million in fees in fiscal year 2011 and spending about \$1.9 million on regulation.

Driver training regulation includes visiting the training schools to ensure compliance with facility specifications, instructor requirements, and other regulations. TEA made 167 site visits and observed 147 classes in fiscal year 2011. That same year, TEA received about 100 complaints alleging violations such as false advertising, inappropriate remarks by instructors, and failure to teach a course's required number of hours. TEA took 58 enforcement actions against licensees who violated laws or rules, collecting \$23,150 in administrative penalties and revoking 16 school and instructor licenses.

Since March 2011, due to significant reductions in TEA's budget and staff, TEA has contracted with Education Service Center 13 (ESC-13) in Austin to perform driver training regulation. About 9.5 staff at ESC-13 handle most licensing and enforcement duties, while the equivalent of about one staff position at TEA continues to receive and process application fees, provide legal assistance on enforcement cases, and oversee administrative rulemaking. The amount of the current one-year contract between TEA and ESC-13 is \$742,000.

In 2011, the Texas Legislature questioned whether TEA is the appropriate agency to regulate the driver training industry and directed the Sunset Commission to review TEA's oversight of driver training and recommend whether another state agency should have that oversight.¹ Sunset staff evaluated the need for regulation and the appropriateness of its current location at TEA, while also exploring the possible benefits of transferring this regulation to the Texas Department of Licensing and Regulation or the Department of Public Safety. Staff also evaluated the driver training statute against licensing standards to better align the regulation with common best practices.

Findings

The State continues to have an interest in regulating the private driver training industry.

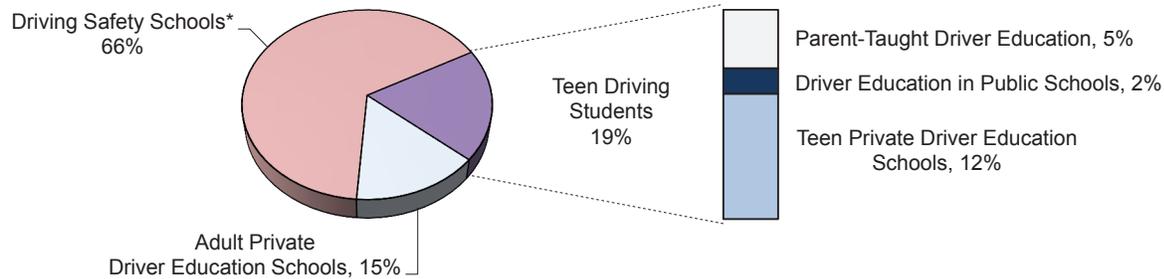
Regulating private driver training continues to be important for consumer protection and public safety in Texas. Driver education courses can cost up to \$500, and because schools in this industry may close abruptly, schools must post bonds up front to enable the State to help consumers get their tuition refunded. In fiscal year 2011, 21 driver training schools closed. Regulation also helps ensure schools and courses meet requirements to provide students with the training necessary to become safe, licensed drivers and to become better drivers through driving safety courses. Finally, regulation helps ensure the security of course completion certificates that are used in the Texas court system and to obtain driver licenses.

While learning to drive safely is important, it is not the responsibility of the public school system.

Regulating the private driver training industry falls outside TEA's core mission and expertise.

TEA's mission is to help public schools meet the education needs of elementary and secondary students. Thus, regulating a private industry that has evolved to largely serve adults outside the public school system is no longer the best fit. As public schools have targeted their efforts, most have eliminated driver education programs, with private industry taking up the slack. As shown in the chart on the following page, *Driver Training Course Completion Certificates Sold*, the public school segment of driver training now comprises just 2 percent of all certificates sold in fiscal year 2011. More than 80 percent of all certificates were issued for driving courses taken mostly by adults. While learning to drive safely is important, it is not the responsibility of the public school system.

Driver Training Course Completion Certificates Sold FY 2011



* Mostly adult students.

Total Certificates Sold: 1,129,175

With cuts to its staff, TEA has outsourced driver training regulation and struggles to effectively oversee this function.

In contracting with ESC-13, TEA has taken a hands-off approach to driver training regulation and no longer even has a single full-time staff dedicated to the regulation or its oversight. However, the appropriateness of contract staff determining licensure qualifications and enforcement actions on behalf of the State is questionable. In addition, TEA's contract with ESC-13 does not contain performance measures typically used to evaluate a regulatory program, such as whether the ESC is timely issuing licenses and resolving complaints. TEA has no clear mechanisms in place to objectively track the program's efficiency or effectiveness.

While TEA outsources several functions to education service centers for the benefit of public schools, performing a regulatory function is uncommon for an education service center. TEA also failed to follow its own internal contracting requirement to write a justification and cost-benefit analysis before awarding the noncompetitive contract to ESC-13, and therefore cannot document whether contracting the function made good business sense.

Finally, TEA reduced its costs for driver training regulation when it outsourced the function to ESC-13, but continued collecting far more in fee revenue than needed to cover its reduced costs. While rider authorizes the agency to keep fee revenue from the program, using funds collected for driver training regulation to support other areas of the agency is not appropriate or fair to driver training licensees or the students who pay for certificates.²

TEA does not track the outsourced program's efficiency or effectiveness.

Evaluation of options for housing the regulation of driver training showed that the Texas Department of Licensing and Regulation offered the best fit.

- **Texas Department of Licensing and Regulation (TDLR).** The Legislature created TDLR as the State’s occupational licensing agency in 1989. TDLR started out with six licensing programs but has expanded to regulate 29 occupations and industries. With a staff of 390, the agency organizes its work by function — licensing, enforcement, compliance, and administrative support — to streamline processes for each program. This organization allows staff to develop expertise in these functions in a way that the small staff at ESC-13 cannot. Sunset staff concluded that TDLR has the best framework and expertise to perform the regulatory functions of the driver training program and ensure overall effectiveness. In fact, the agency often lowers licensing fees in the programs it acquires because of its streamlined process.

As the State’s occupational licensing agency, TDLR has the expertise to effectively regulate driver training.

TDLR has a statewide presence with three regional offices and more than 45 field investigators and inspectors who can perform onsite investigations and inspections across the state. The agency ensures access to appropriate subject matter expertise through advisory committees for specific regulatory programs and would use one to assist with driver training topics such as curriculum development, to help ensure that driver training courses continue to cover critical subject matter. TDLR also has experience helping students recover their tuition from schools that close abruptly before completion of their studies.

- **Department of Public Safety (DPS).** Sunset staff also studied the potential benefits of returning regulation of the driver training industry to DPS, which continues to approve 12 parent-taught driver education courses. While DPS could perform these additional duties, Sunset staff concluded that regulating the private driver training industry could divert the agency from its many vital law enforcement functions. DPS is not an occupational or business licensing agency and while it could regulate driver training, transferring the regulation to DPS would not result in any greater efficiencies. In fact, DPS states it would need significantly more staff to operate the program.

Sunset staff concluded that TDLR’s expertise in licensing private businesses and consumer protection makes it the most appropriate agency to handle driver training regulation.

As currently structured, the driver training statute contains several nonstandard licensing and enforcement provisions that could reduce the program’s effectiveness and fairness.

Sunset Commission staff has observed and documented common licensing practices during more than 30 years of experience and compiled them into a set of licensing and regulatory standards. The following material highlights areas where the driver training statute differs from the model standards and

describes the potential benefits of conforming to standard practices. These changes would apply to the regulation, wherever the function is housed.

- **Level of regulation.** Licensing standards suggest implementing regulation at the minimum level necessary to protect the public. In examining driver training regulation, Sunset staff found that, beyond the owner of a school, statute requires licensure of many administrative staff who work in the school but have no responsibilities that necessitate regulation. These staff include directors, assistant directors, and administrative staff who pay a one-time fee of \$15 to \$30. TEA has rarely taken enforcement action against any of these individuals as school owners are generally held accountable for violations of laws or rules. Eliminating these licensing requirements would reduce unnecessary regulation and free staff to focus on more important regulatory matters. In fiscal year 2011, staff processed 115 of these school staff applications and collected \$2,385 in fees.
- **Flexible fees.** Over time, the Legislature has removed many fixed fee amounts and fee caps from statute to give agencies flexibility to set fee levels in rule to cover the cost of regulation. In these cases, the Legislature's appropriation authority serves to ensure agencies do not set fee levels too high. In contrast, most driver training fees are set or capped in statute, limiting TEA's or, if transferred, TDLR's ability to adjust fee levels as needs change. Appendix A lists all driver training fees and their set or capped amounts.
- **Complaints.** Statute should require regulatory programs to maintain adequate information about complaints they receive. At a minimum, programs should 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 program's policies and procedures for complaint investigation. While TEA's contract staff at ESC-13 generally track and respond to complaints about driver training entities, placing these requirements in statute would help ensure they continue in the future.

Regulatory programs should also ensure that complaint investigations are completed in a reasonable amount of time. Although some investigations require more time than others, programs should monitor time elapsed to keep investigations within reasonable time limits. TEA's contract staff do not track the length of time taken to investigate complaints or have performance measures to guide investigation efforts. Developing such measures would help ensure timeliness of investigations and would allow staff to better track and report on their enforcement efforts.

Many regulatory programs make final disciplinary orders and sanctions readily available to the public. This practice helps provide the public with information to make informed choices when obtaining services. TEA's contract staff currently do not provide information about driver training school sanctions on their website.

Eliminating licensing requirements for administrative staff would reduce unnecessary regulation.

TEA does not provide information about driver training school sanctions to the public.

- **Administrative penalties.** An agency's administrative penalty authority should include penalty amounts that reflect the severity of the violation and serve as a deterrent to violations of the law. Statute currently authorizes TEA to impose an administrative penalty of up to \$1,000 a day for each violation of driver training statute or rules. Increasing the maximum penalty amount to \$5,000 per day, per violation would match licensing program standards and ensure that the most severe violations of driver training regulation can be appropriately sanctioned.
- **Hearings at the State Office of Administrative Hearings.** Texas law requires many state agencies to use the State Office of Administrative Hearings (SOAH) for their contested case hearings to ensure independence and professionalism. Statute requires the Commissioner of Education to conduct driver training hearings, but also allows the agency to contract with another entity to conduct the hearings, which it does through SOAH. Clearly specifying in law what happens in practice would keep the hearings process fair for licensees.

Recommendations

Change in Statute

3.1 Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation.

This recommendation would eliminate the need for TEA to contract for driver training regulation through ESC-13 by transferring the function to TDLR. The effective date for the program's transfer would be September 1, 2013. As part of this recommendation, regulatory provisions in the driver training statute should be aligned with TDLR's enabling statute to streamline administration. TEA would continue to maintain rules regarding driver education in public schools, but TDLR would develop driver education curriculum, with help from the advisory committee established below.

This transfer should increase the administrative efficiency of driver training regulation because of TDLR's expertise at licensing and enforcement. The transfer would also allow TEA and ESC-13 to better focus on elementary and secondary education.

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, and would designate one member of the committee as the presiding officer. Representation on the committee should include one driver education school, one driving safety school, one course provider, one instructor, one Department of Public Safety employee, and two public members. In addition to rules and standards, the committee would advise the Commission on the driver education curriculum as needed.

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

This recommendation would eliminate from statute the requirement that directors, assistant directors, and administrative staff at driver training schools be licensed and pay application fees. The recommendation would also remove requirements that driver education school directors and administrators meet education, experience, and good reputation and character requirements while leaving in place those requirements for instructors and owners. Eliminating these unnecessary licenses would allow staff to focus on more important enforcement issues while still holding school owners accountable for following laws and rules.

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. The Legislature would maintain control over fee amounts by setting spending levels in the General Appropriations Act.

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 driver training statute consistent with licensing standards 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 SOAH for its driver training enforcement hearings and would repeal current provisions that allow the Commissioner of Education to hear appeals of enforcement actions. The Commission of Licensing and Regulation would hold final authority to accept, reverse, or modify a proposal for decision made by a SOAH judge, as is standard in the Administrative Procedure Act.³

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 to 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.

Under this recommendation, TDLR should 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 easy access to disciplinary information on driver training schools on the agency's website.

Fiscal Implication

Transferring regulation of driver training from TEA to TDLR would initially involve a cost-neutral transfer of about \$2.9 million in license and certificate fee revenue to cover TDLR's cost to regulate the program. As part of the transfer, TDLR's employee cap should be increased by 10.5 full-time equivalent positions based on the 9.5 positions at ESC-13 who perform driver training regulatory functions and the equivalent of one position at TEA for accounting, legal, and rulemaking support. TDLR could request authority from the Legislature to hire additional staff, which fee revenue would fund.

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 students paying the fees, not the State. The recommendation to remove fee caps from statute would facilitate this process.

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.

The recommendation to eliminate driver training director, assistant director, and administrative staff licensure would result in a small loss to General Revenue. In fiscal year 2011, TEA received \$2,385 in fees for processing these applications for employees at driver training schools. The loss in revenue would be offset by a decrease in workload for staff who would no longer process the applications.

Finally, the recommendation to create an advisory committee would not have a cost to the State unless the Legislature specifically grants committee members reimbursement for their service through the General Appropriations Act.

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¹ Section 1001.006, Texas Education Code.

² Rider 26, page III-12, Article III (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act).

³ Section 2001.058(e), Texas Government Code.

RESPONSES TO ISSUE 3

Recommendation 3.1

Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation.

Agency Response to 3.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.1

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.1

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Cindi Garrett, President and Director – The Drive Trainers Campus, Lubbock

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Richard James Golsan, Policy Analyst – Texas Public Policy Foundation, Austin

Against 3.1

None received.

Modifications

1. To maintain consistency among all the driver education materials, consider transferring the responsibility for approving parent-taught driver education courses from the Department of Public Safety to TDLR, too. (Steven C. McCraw, Director – Texas Department of Public Safety)
2. In the event an oversight and/or program development transfer occurs, assign all educational and regulatory components of driver training to one agency. Authorize TDLR, or whatever agency is chosen, to regulate or establish:
 - private driver education schools, driving safety course providers, and instructors;
 - standards and curriculum for driver education programs and driving safety courses;
 - standards and curriculum for the certification of professional and paraprofessional personnel who teach driver education in public and private schools;

- public driver education;
- parent-taught courses;
- online driver training courses; and
- certificates needed for certifying completion of training for driver licensing or for meeting court-required traffic ticket dismissal.

(Carlos Reyna, Director of Program Development – I Drive Safely, LLC)

3. Transfer private driver training regulation to the Texas Department of Public Safety. (Peggy Venable – Americans for Prosperity-Texas, Austin)
4. Transfer driver training staff experts currently at Education Service Center 13 to the Texas Department of Licensing and Regulation. (Cindi Garrett, President and Director – The Drive Trainers Campus, Lubbock)

Recommendation 3.2

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

Agency Response to 3.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.2

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.2

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.2

None received.

Recommendation 3.3

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

Agency Response to 3.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.3

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.3

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.3

None received.

Recommendation 3.4

Remove fixed driver training fee amounts and fee caps from statute.

Agency Response to 3.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.4

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.4

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.4

None received.

Recommendation 3.5

Require TDLR to maintain information on driver training complaints.

Agency Response to 3.5

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.5

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.5

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.5

None received.

Recommendation 3.6

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

Agency Response to 3.6

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency).

Affected Agency Response to 3.6

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.6

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.6

Carlos Reyna, Director of Program Development – I Drive Safely, LLC

Modification

- Specify where administrative penalties are directed once collected. (Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin)

Staff Comment: The Legislature typically directs administrative penalties from licensing programs to the General Revenue Fund and does not directly appropriate them back to the agency that collected them.

Recommendation 3.7

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

Agency Response to 3.7

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.7

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.7

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.7

None received.

Recommendation 3.8

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

Agency Response to 3.8

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.8

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.8

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.8

None received.

Recommendation 3.9

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

Agency Response to 3.9

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Affected Agency Response to 3.9

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.9

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.9

None received.

Recommendation 3.10

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

Agency Response to 3.10

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency).

Affected Agency Response to 3.10

The Texas Department of Licensing and Regulation is ready to take on the responsibilities outlined in Issue 3. (William H. Kuntz, Jr., Executive Director – Texas Department of Licensing and Regulation)

For 3.10

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 3.10

None received.

COMMISSION DECISION ON ISSUE 3

(JANUARY 2013)

Adopted Recommendations 3.1 through 3.10.

FINAL RESULTS ON ISSUE 3

(JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory 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.

Management Action

Recommendation 3.8 — This recommendation for TEA and TDLR to develop a transition plan for the transfer of driver training regulation does not need to be implemented because it is tied to a statutory recommendation that did not pass.

Recommendation 3.9 — Since the Legislature did not adopt the recommendation to transfer driver training regulation, TEA, rather than TDLR, should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.

Recommendation 3.10 — Since the Legislature did not adopt the recommendation to transfer driver training regulation, TEA, rather than TDLR, should make public final driver training school disciplinary orders and sanctions on its website.

ISSUE 4

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

Background

The Legislature has added numerous programs, reports, and requirements to TEA's statute over the years, the accumulation of which has the potential to become a distraction from the agency's core mission, especially during a time in which the agency has experienced severe reductions in staffing and funding. For the 2012–2013 biennium, TEA's administrative budget was reduced by \$48 million in General Revenue funding. As a result, from January 2011 to January 2012, TEA reduced its staff by 35 percent. The agency's loss of staff necessitates a reduction in its responsibilities, especially those which are not key to overseeing the state's public education system. Sunset evaluated the ongoing need for and usefulness of all of these statutory requirements and identified the following problems.

Findings

Certain statutory requirements related to academic accountability reporting and distinctions place an unworkable burden on TEA.

In 2009, the Legislature created in law the new State of Texas Assessments of Academic Readiness (STAAR) standardized testing program and required TEA to develop a system to measure schools' performance based on STAAR. TEA is currently developing the new accountability system, which is intended to better align with the federal accountability system while also being more comprehensible to the public and painting a more complete, accurate picture of school performance. Performing all of the work involved with this testing and accountability system requires significant resources on TEA's part. However, statute limits the agency's flexibility to adjust its performance reporting to the new system and requires significant additional resources for a related program that is not key to the State's interest in ensuring the quality of education, as discussed below.

- **Performance indicators.** Statute requires the Commissioner of Education to report on a specific set of indicators of the quality of learning.¹ TEA reports data on these indicators through the Academic Excellence Indicator System (AEIS), which compiles multiple types of annual student performance information for each campus, district, and region in the state, as well as statewide. TEA makes *Performance Reports* from AEIS available to schools and the public each fall.² With the implementation of STAAR and the development of the new accountability system, some of the statutorily required indicators will no longer be applicable. For example, the indicator regarding the percentage of students of limited English proficiency exempted from the state standardized test is obsolete,

Some statutorily required academic performance indicators will be obsolete under the new accountability system.

as STAAR does not allow an exemption for limited English proficiency students. However, TEA does not have flexibility to adjust the AEIS indicators to fit the new testing and accountability systems.

- **Campus distinction designations.** As part of the legislation creating STAAR, the Legislature also created a program to distinguish campuses for academic achievement in English language arts, mathematics, science, and social studies; for fine arts; for physical education; for 21st century workforce development; and for second language acquisition.³ To develop the criteria for awarding these designations, statute directs TEA to establish a separate committee for each performance category.⁴ While originally intended to acknowledge school performance beyond what is assessed on the statewide standardized tests, this program requires a great deal of time and effort on the part of TEA staff, and will require extensively more staff resources in the future. Further, the process of evaluating campuses and awarding distinctions is complicated by its highly subjective nature, since criteria for distinctions are based on information outside of standardized test scores.

Distinction designations will require extensive TEA staff time to develop and award, detracting from other critical activities.

To date, TEA has only established one of the five distinction designations committees — the committee for academic achievement. However, this committee's work has already consumed considerable staff time and resources in the development of the distinction criteria, including research and administrative work of 16 TEA employees over the course of 10 months. The workload is likely to increase once the agency begins to evaluate schools against the criteria and award distinctions. The Legislature could not have anticipated the recent funding and staff reductions when adopting this program in 2009. Further, this distinction designation function distracts the agency from the more critical activities of developing a new accountability system.

Overlapping and inflexible statutory requirements for certain academic accountability reports create redundancies without providing useful information to the public about school performance.

TEA's two main sources of information for schools, the public, and the Legislature on the academic success of public school students are the *Comprehensive Annual Report to the Legislature on Texas Public Schools* and the *Performance Reports* derived from AEIS, which are publicly available on TEA's website.⁵ The *Comprehensive Annual Report* describes the status of public education in Texas, covering a wide range of topics, as described in the textbox on the following page, *Contents of the Comprehensive Annual Report*.⁶ In addition to these two reports, TEA also produces an annual evaluation of charter school performance. Sunset staff identified the following problems with these statutorily required accountability reports.

- **Frequency of the annual report.** The requirement that TEA produce the *Comprehensive Annual Report* every year is unnecessary since the report is primarily intended for the Legislature, which convenes biennially. Further, the report is time consuming for TEA to produce, so much so that the agency did not produce the report in 2011 due to budget and staffing reductions.
- **Redundancy of the *Campus Report Card*.** Statute requires TEA to prepare and distribute to each school district a report card for each campus with campus performance compared to previous campus and district performance, current district performance, and state standards.⁷ Campuses must distribute the report cards to parents.⁸ This report card differs very little from the *Performance Reports* in look and content. Both reports consist exclusively of tables of data and the report card provides a subset of data from AEIS plus a few other pieces of information, such as administrative and instructional costs and expenditure ratios. Although statute requires TEA to prepare the *Campus Report Card* for the purpose of informing schools and parents about their students' performance, statute does not require the information to be presented in an accessible, easy-to-understand format. As such, the *Campus Report Card* provides only a few extra pieces of information beyond the *Performance Reports*, but requires additional staff time and resources on the part of TEA and schools to prepare and distribute.
- **Inflexibility of the evaluation of charter schools.** Statute requires the agency to designate an impartial organization to conduct an annual evaluation of open-enrollment charter schools.⁹ Because of the prescriptive nature and frequency of the evaluation in statute, and the limited amount of available funding to pay for it, the agency cannot adapt or change the focus of the evaluation. As such, the agency has received the same results for the past 11 years. While a continued need exists to research charter school performance and cost, the lack of flexibility in statute prevents the agency from researching other areas of interest related to charter schools. For example, the agency could contract to compare the performance of charter schools by their different missions, or research the extent to which certain regulatory requirements affect trends in charter school performance.

Contents of the *Comprehensive Annual Report*

This report contains 15 chapters on the following topics:

- state performance on the academic excellence indicators;
- student performance on state assessments;
- performance of students at risk of dropping out of school;
- students in disciplinary alternative education settings;
- secondary school completion and dropouts;
- grade-level retention of students;
- district and campus performance in meeting state accountability standards;
- status of the curriculum;
- charter schools and waivers;
- school district expenditures and staff hours used for direct instructional activities;
- district reporting requirements;
- TEA funds and expenditures;
- performance of open-enrollment charters in comparison to school districts;
- character education programs; and
- student health and physical activity.

TEA's involvement in certain local affairs is unnecessary.

In the past decade, the Legislature has limited much of TEA's authority to oversee the operations of school districts, opting for local control instead. However, statute still requires TEA to be involved in some local matters. Three such areas, and arguments for why TEA's involvement is no longer necessary, are discussed below.

School districts can select hearing examiners without involving TEA.

- **Teacher contract cases.** Statute establishes a process for teachers to request a hearing with their school district to settle a complaint about a prematurely terminated contract.¹⁰ To begin the hearing process, the teacher must contact TEA and request a hearing.¹¹ As required by statute, the district and teacher must choose a hearing examiner from a list of certified examiners maintained by TEA to conduct the hearing.¹² For cases in which the parties do not select a hearing examiner, TEA must assign one, notify the parties, and schedule the hearing. Either party can appeal the examiner's ruling to the Commissioner of Education.¹³ TEA has assigned examiners in an average of 252 hearings each year over the past three years. In that same time period, educators appealed an average of 23 cases to the Commissioner each year.

While the parties may choose the hearing examiner, in most cases they do not, thus requiring TEA to assign one. Since a large number of cases settle before being heard by the hearing examiner — more than 80 percent — requiring TEA to assign a hearing examiner and perform the associated administrative tasks is a waste of agency resources. Since these are local cases between teachers and school districts, the parties should choose a hearing examiner without TEA's involvement.

ESCs support and train schools on decision-making practices without TEA assistance.

- **Shared services arrangements.** Shared services arrangements (SSAs) are contracts among school districts or charter schools to jointly operate a particular service, such as special education services. While both federal and state law allow schools to enter into these arrangements as necessary without oversight from TEA, statute requires the Commissioner of Education to approve SSAs specifically for special education services.¹⁴ The agency already has other safeguards in place to ensure the appropriateness of all SSAs. TEA staff conduct an application review for all SSAs to determine how to distribute federal and state funding to the SSA partners and to verify compliance with federal special education requirements. As such, TEA and the Commissioner do not need to devote time and resources to these arrangements through an additional approval process.
- **Site-based decision making.** Statute requires TEA to oversee the provision of training and technical support to school districts and campuses for planning and site-based decision making and to conduct an annual statewide survey of how schools are using these processes.¹⁵ Training and support for local decision making and planning processes are already available at education service centers, and continued oversight

of this training by TEA is not necessary. The agency has not conducted the statewide survey of local planning structures and local perception of site-based decision making in at least five years. The agency cannot recall a time when either the Legislature or a school has asked about or for assistance regarding site-based decision making.

- **Foreign exchange student waivers.** Statute allows school districts to seek a waiver from the Commissioner so they may deny foreign exchange students admission.¹⁶ School districts already have the power to limit the number of foreign exchange students they accept under federal law, which requires these students to have an acceptance form signed by the receiving district to obtain a foreign exchange visa.¹⁷ In instances when a foreign exchange student has already entered the country and ends up living in a district that did not sign an acceptance form, state law requires the school district to admit the student, even if the district has a waiver denying admission to foreign exchange students.¹⁸ Although the waiver is meaningless, 140 districts have requested and received the waiver from TEA during the last five years.

Districts can limit foreign exchange students through the visa process, making a TEA waiver unnecessary.

Unnecessary financial reviews divert agency resources from higher-risk activities with greater potential for misuse of funds.

TEA's Division of Financial Audits performs a variety of audits and reviews of financial documents to ensure school districts and open-enrollment charters are receiving and spending state education funding appropriately. In fiscal year 2012, TEA distributed more than \$24 billion in state and federal funding to schools. TEA's recent budget cuts resulted in a reduction of staff from 46 employees to 21 in the section overseeing audits of state funding, even as the agency's workload continues to increase. As a result, the time to complete audits of student attendance, the self-reported data representing the largest source of financial risk to the State at TEA, has increased and the agency has had to eliminate most on-site audits in favor of desk audits to avoid travel costs. These workload issues make it increasingly important that TEA focus its efforts on financial reviews with the highest risk.

With cuts to TEA's audit staff, targeting efforts is critical.

Sunset staff identified several activities, described below, that distract the agency from more important financial reviews, such as attendance audits, with greater potential for misuse of funds and larger financial impacts to the State.

- **Depository contracts.** Statute requires each district and charter school to file with TEA a copy of its depository contract with the bank it selects to receive the school's funds from the State. School districts, but not charters, must also submit to TEA a copy of a bond or other security for public funds, as well as documents related to the district's bid or proposal for the depository.¹⁹ TEA's review of these documents is strictly for completeness of the forms. TEA does not review the content of these documents. TEA does not have enforcement authority to make a district or charter comply with any of these statutory processes. However,

schools' external auditors must check for compliance with these statutory requirements before issuing their annual financial report. TEA's review of these documents does not add benefit to the State or schools, and the schools themselves are best-suited to make their local banking decisions.

Accountability for superintendent severance pay is a local matter.

- **Superintendent severance payments.** Statute requires boards of trustees of school districts to report the terms of superintendent severance payments to the Commissioner, and requires TEA to reduce state funds to the district by any severance amount above one year's salary and benefits under the superintendent's contract.²⁰ 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. TEA reviews 10 to 20 severance contracts per year, recovering an average of \$11,600 per review over the past three years. Accountability for superintendent severance payments is a local matter, and TEA's review provides little benefit to the State.

TEA cannot audit compensatory education funds according to risk.

- **Audits of compensatory education funding.** School districts receive compensatory education funding for students at risk of dropping out based on the number of economically disadvantaged students in the district. TEA must identify districts at high risk for misuse of compensatory education funds and determine any misuse through an audit, as prescribed in statute.²¹ As resources at both the local and state levels have become more constrained, the Legislature has provided greater flexibility for school districts' use of compensatory education funds, significantly reducing the risk to the State of districts spending their allotment on ineligible expenditures. Further, the confidentiality of records used to establish eligibility for these funds limits the agency's ability to determine whether districts have properly reported students as economically disadvantaged and eligible to generate the allotment. The lowered risk for misuse of funds no longer justifies the prescriptive audit methodology in statute, and audits of these funds should match the agency's approach for other aspects of state funding. Further, while TEA's 2013 *Financial Audit Plan* proposes a risk-based approach to audits of all state funds, the agency lacks statutory guidance to develop such an approach.

Certain functions prescribed in TEA's statute are redundant or meaningless.

TEA has obligations in law that sound valuable but duplicate other TEA functions or do not provide value to the State, as described below.

- **Recognition of High School Allotment use.** Created by the Legislature in 2006, the High School Allotment provides every school district \$275 for each high school student in attendance to encourage

high school completion and college readiness. Districts may use funds for campus-level or district-wide initiatives for students in grades nine through 12.²² Statute requires TEA to develop standards for evaluating the success of the High School Allotment and to recognize districts and campuses that use these funds for exceptional programs.²³ The High School Allotment recognition process has never generated much interest from districts, likely because a simple recognition does not merit the work necessary to apply for the program and all schools receive the allotment regardless of how they use it. TEA only received 22 applications in the first year of the recognition program and nine applications for the 2010–11 school year. The recognition program does not generate sufficient participation to justify TEA's time and resources in administering it.

- **Best Practices Clearinghouse.** In 2006, the Legislature required TEA, in coordination with the Legislative Budget Board (LBB), to establish an online clearinghouse for best practices of campuses, school districts, and charter schools and make it publicly accessible. TEA must solicit and collect examples of best practices from LBB, education research centers, school districts, campuses, and charter schools to add to the clearinghouse.²⁴ While TEA received funding from 2007 to 2011 to produce the Best Practices Clearinghouse and make it available to the public online, the agency did not receive funding for the 2012–2013 biennium to continue updating the clearinghouse. As a result, since 2011, TEA has kept the Clearinghouse website online, but no longer adds best practices. Today, the website provides only 37 best practices.²⁵

Results of a survey Sunset staff conducted of all superintendents across the state revealed that they do not typically seek guidance on best practices from the State, as they are more likely to seek such guidance from their education service centers or other sources. These other sources include various school-related associations, which hold conferences and other forums dedicated to sharing best practices, and LBB's A+ Ideas for Managing Schools, which contains thousands of best practices entries gleaned from performance reviews of school districts across the state.²⁶ TEA is considering incorporating entries from the Best Practices Clearinghouse into Project Share, the agency's online collection of development resources for elementary and secondary teachers. Since many other options exist for schools to share best practices, the Best Practices Clearinghouse is no longer necessary.

No ongoing need for the High School Completion and Success Initiative exists.

The Legislature created the High School Completion and Success Initiative in 2007 to help schools align their high school curriculum and instruction with state standards and expectations for college and career readiness. The legislation also intended to improve the oversight of funds devoted to these efforts.²⁷ To provide this oversight, the Legislature created the High School

Only nine schools applied for recognition in 2010-2011.

Many other options exist for effectively sharing best practices.

***High School Completion and
Success Initiative Programs***

- Mathematics Instructional Coaches Pilot Program²⁹
- Higher Education and Workforce Readiness Program³⁰
- Grants for Student Clubs³¹
- Collaborative Dropout Reduction Pilot Program³²
- Intensive Technology-Based Academic Intervention Pilot Program³³
- Intensive Summer Programs³⁴

Completion and Success Initiative Council to develop and manage the implementation of a strategic plan to coordinate high school improvement initiatives.²⁸ In conjunction with the initiative, the Legislature established six pilot and grant programs — listed in the textbox, *High School Completion and Success Initiative Programs* — designed to reduce high school dropout rates while increasing high school completion rates and college and career readiness. Statute requires TEA to prepare two reports related to the initiative:

- a progress report twice a year to the Governor and Legislature on the implementation of the grant and pilot programs and their alignment to the Council’s strategic plan;³⁵ and
- a biennial report to the Legislature that recommends any statutory changes the Council considers appropriate to promote high school completion and college and career readiness.³⁶

The Council completed its work by adopting a strategic plan in March 2008. The strategic plan has guided TEA’s spending priorities on the pilot and grant programs. Although TEA’s evaluations of these programs determined they were largely successful, the Legislature did not provide any funding for the programs for the 2012–2013 biennium. As a result, the Council, reporting requirements, and associated programs no longer serve an ongoing purpose. However, the benefits of the initiative continue as TEA has applied what it learned through the programs to other ongoing programs. Further, the composition and purpose of the High School Completion and Success Initiative Council largely parallels that of the State P-16 Council, which statute requires to meet at least once a quarter to examine and make recommendations regarding the alignment of secondary and postsecondary education.³⁷

*TEA’s initiative
identified several
successful
programs,
but failed to
secure funding
due to budget
constraints.*

Statute requires TEA to prepare several reports that are redundant or no longer necessary.

As required by the Sunset Act, Sunset staff reviewed TEA’s statutory reporting requirements, and found that the agency is required to produce 24 reports, many of which continue to be useful.³⁸ Appendix B provides a comprehensive list of all reporting requirements and Sunset staff’s analysis. Some reporting requirements are addressed earlier in this issue. For the remaining requirements, Sunset staff spoke with report recipients and agency staff to assess each report’s necessity. The analysis showed that five reporting requirements are no longer necessary, take focus away from more important agency functions, and potentially waste agency resources. A discussion of these five reporting requirements follows.

- **International Assessment Instrument Program Report.** Statute requires the Commissioner to prepare a report each biennium for the Governor, Legislature, and each school district describing the results of student performance on the international assessment instrument.³⁹ TEA has never produced this report due to costs and other concerns involved with hiring a contractor to prepare the report. The U.S. Department of Education will produce comparisons of the international assessment instrument program and other established international studies in 2013 to enable states to measure their performance against international benchmarks in the areas of math and science. As such, the requirement for TEA to conduct a similar study is unnecessary.
- **Intensive Mathematics and Algebra Intervention Pilot Program.** In 2007, the Legislature directed TEA to develop a pilot program to provide intensive math education to poor-performing students. TEA was to contract for the evaluation of the program's effectiveness and recommend to the Legislature each biennium statutory changes to promote improved math readiness in Texas schools.⁴⁰ Since the Legislature never appropriated funding to the agency for this pilot program, the report, as well as the entire program, should be removed from statute.
- **Exemption of courses for extracurricular activities.** Statute requires the State Board of Education to adopt rules governing the "No Pass, No Play" requirement for students participating in extracurricular activities. In adopting these rules, the Board lists advanced placement, international baccalaureate, honors, and dual credit courses that are exempt from the requirement. Statute also requires TEA to review, and report to the Legislature on a biennial basis, other such courses not already approved by the Board to determine if they should also be excluded from the requirement.⁴¹ However, in 2008, the Board defined these types of courses so broadly in rule that TEA's biennial report does not change over time and is not necessary.⁴²
- **Reporting of bus accidents.** Statute requires school districts to annually report to TEA the number of school bus accidents in the district. TEA must then publish this information on its website.⁴³ However, the Texas Department of Transportation already collects information related to accidents involving motor vehicles, including school buses.⁴⁴ Further, TEA does not receive questions or legislative requests regarding this data.
- **Physical fitness assessment.** Statute requires school districts to provide TEA the results of individual student performance on the physical fitness assessment.⁴⁵ TEA must then analyze the results and identify, for each school district, any correlation between the results and student academic achievement levels, student attendance levels, student obesity, student disciplinary problems, and school meal programs. TEA must annually report its analysis to the School Health Advisory Committee.⁴⁶ TEA has never produced this report due to the expense of conducting

TxDOT collects information on bus accidents without the need for districts to also report them to TEA.

the correlation analysis. While the agency does collect and post data from school districts on physical fitness assessment results on its website, it does not have the resources to conduct the in-depth analysis currently required in statute.⁴⁷

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 remove the requirement for the Commissioner to include *all* of the quality indicators listed in statute for reporting on student academic achievement.⁴⁸ The Commissioner would be allowed 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. Since TEA already has the flexibility to enable the new accountability system to account for schools' successes not considered under previous systems, the distinction designation process is of limited value. This recommendation would also eliminate any ambiguity over various State-assigned labels and what they mean for schools while freeing up agency resources needed for implementing the new accountability system.

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

Under this recommendation, 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. Requiring the production of the *Comprehensive Annual Report* every two years would guarantee the Legislature receives the report in time for the legislative session while enabling TEA to produce the report with existing resources.

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 *Campus Report Card*. However, in its place, statute would require that TEA include the indicators featured in the *Campus Report Card* — average class size by grade level and subject, administrative and instructional costs per student, district instructional expenditures ratios and instructional employees ratios, and statewide averages of these ratios — in the

annual *Performance Reports*. This recommendation would also require campuses to provide *Performance Reports* to parents in whatever form of communication the campus typically uses for communicating with parents. Incorporating the *Campus Report Card* into the *Performance Reports* would provide parents more extensive information on the status of their schools, while freeing TEA staff and resources for other functions.

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. Rather than annually, this recommendation would require TEA to conduct the evaluation once every four years. TEA would report the findings of the evaluation to the Legislature every other biennium, 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.

Teacher employment decisions are a local matter. 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. TEA would still train hearing examiners and provide a list of certified examiners. The Commissioner would still hear appeals of hearing examiner decisions to ensure a consistent approach to final decision making in teacher contract disputes statewide. However, for the initial hearing, the parties would have to choose a hearing examiner from TEA's list and could not rely on TEA to choose and set the hearing.

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. This recommendation would not affect the ability of school districts and charter schools to enter into a written contract to jointly operate special education programs, nor would it affect the funds to which the cooperating districts are entitled or any other types of shared services arrangements. This recommendation would alleviate TEA time and resources for this approval while also expediting the process for districts and charter schools entering into a shared services arrangement for special education services.

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.

Under this recommendation, school districts would no longer be able to seek, and TEA would no longer be required to grant, a waiver from the requirement that the 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. This recommendation removes TEA from becoming unnecessarily involved in a matter between a school district and a foreign exchange student or organization representing a foreign exchange student.

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.

This recommendation would remove the unnecessary requirement for school districts to file a copy of their depository contract, including documents relating to the bid or proposal of the depository and the bond, with the agency. Open-enrollment charter schools would also no longer be required to file a copy of their depository contract with the agency. The recommendation would also remove the requirement that district bidding documents be on a form provided by the State Board of Education, as this information would no longer be required for submission to TEA. TEA should continue to ensure charter holders, and not a designee, receive state education funds by reviewing the charter's direct deposit form.

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

This recommendation would remove the requirement to report superintendent severance payments to the Commissioner. 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. This recommendation would not impact a local board of trustees' ability to determine the amount of severance it chooses to pay a superintendent. The recommendation would remove the State's role in a local decision and allow TEA to focus on activities presenting a higher risk to state funds.

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 should 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*. This recommendation would promote a consistent approach to audits of state funds, prioritizing those schools presenting the highest risk.

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

Since schools have generally not applied for recognition through this program, this recommendation would remove the requirement that TEA develop standards for evaluating the success of high school

completion and college readiness programs implemented with use of the High School Allotment. TEA would no longer provide school districts and campuses with a system for recognizing best use of High School Allotment funds, thereby further freeing up TEA resources. This recommendation would not affect the actual High School Allotment or how the State distributes it to school districts.

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. TEA would not be prevented under this recommendation from using contributions to the Clearinghouse for other programs.

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 eliminate the biennial report to the Legislature on the Council's recommendations for improving high school completion and college and career readiness. This recommendation would also eliminate the initiative's six unfunded grant and pilot programs as listed in the textbox on page 44, *High School Completion and Success Initiative Programs*, as well as the semi-annual progress report on the initiative and its related programs.

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

This recommendation would continue all necessary reporting requirements and remove five unnecessary reports currently in statute. Specifically, this recommendation would 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*
- *Physical Fitness Assessment Report*

In addition to eliminating the evaluation report for the Intensive Mathematics and Algebra Intervention Pilot Program, this recommendation would also remove the unfunded 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.

This change would remove all statutory language related to these reporting requirements. Appendix B provides detail on each reporting requirement and Sunset staff's recommendation on whether to eliminate or continue the requirements. To comply with a recent change in law, the agency should ensure that all of its reports, and notices that reports are available, are provided to the Legislature in an electronic format only.⁴⁹

Fiscal Implication

Rather than generating additional savings, these recommendations are aimed more at adjusting TEA's workload to match its available resources, given how the agency has already undergone a significant reduction in funding and staff. While each individual recommendation may not result in calculable savings in time and effort, taken together, the recommendations should allow TEA's reduced staff to spend their time on more critical functions of the agency.

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- 1 Section 39.301, Texas Education Code.
- 2 "Academic Excellence Indicator System," Texas Education Agency, accessed October 8, 2012, <http://ritter.tea.state.tx.us/perfreport/aeis/>.
- 3 Section 39.203, Texas Education Code.
- 4 Section 39.204, Texas Education Code.
- 5 Texas Education Agency, *2010 Comprehensive Annual Report on Texas Public Schools: A Report to the 82nd Legislature from the Texas Education Agency* (Austin, TX: Texas Education Agency, 2010).
- 6 Section 39.332, Texas Education Code.
- 7 Section 39.305, Texas Education Code.
- 8 19 T.A.C. Section 61.1021(d).
- 9 Section 12.118, Texas Education Code.
- 10 Section 21.251, Texas Education Code.
- 11 Section 21.253, Texas Education Code.
- 12 Section 21.254, Texas Education Code.
- 13 Subchapter G, Chapter 21, Texas Education Code.
- 14 Section 29.007, Texas Education Code.
- 15 Section 11.254, Texas Education Code.
- 16 Section 25.001(e), Texas Education Code.
- 17 22 U.S.C. Chapter 62.
- 18 Section 25.001(b)(4), Texas Education Code.

- 19 Sections 45.208(e) and 12.107, Texas Education Code.
- 20 Section 11.201(c), Texas Education Code.
- 21 Section 42.152, Texas Education Code.
- 22 Section 39.234, Texas Education Code.
- 23 Section 39.233, Texas Education Code.
- 24 Section 7.009, Texas Education Code.
- 25 “Best Practices Clearinghouse,” Texas Education Agency, accessed October 4, 2012, http://www.tea.state.tx.us/best_practices/.
- 26 “A+ Ideas for Managing Schools,” Legislative Budget Board, accessed October 9, 2012, <http://aims.lbb.state.tx.us/?type=ISD>.
- 27 H.B. 2237, 80th Texas Legislature, Regular Session, 2007.
- 28 Sections 39.402 and 39.407, Texas Education Code.
- 29 Section 21.4541, Texas Education Code.
- 30 Sections 29.081(d) and 21.917, Texas Education Code.
- 31 Section 29.095, Texas Education Code.
- 32 Section 29.096, Texas Education Code.
- 33 Section 29.097, Texas Education Code.
- 34 Section 29.098, Texas Education Code.
- 35 Section 39.415(b), Texas Education Code.
- 36 Section 39.415(a), Texas Education Code.
- 37 Section 61.076, Texas Education Code.
- 38 The Texas Sunset Act, in Sections 325.0075, 325.011, and 325.012(a)(4) of the Texas Government Code, establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished. The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reports required by rider to the General Appropriations Act are included as a matter of law, but under a presumption that the appropriations committees have vetted these requirements each biennium. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements.
- 39 Section 39.037(g), Texas Education Code.
- 40 Section 29.099(i), Texas Education Code.
- 41 Section 33.081(d-1), Texas Education Code.
- 42 19 T.A.C. Section 74.30.
- 43 Section 34.015(c), Texas Education Code.
- 44 Sections 550.061, 550.62, and 601.004, Texas Transportation Code.
- 45 Section 38.103, Texas Education Code.
- 46 Section 38.104, Texas Education Code.
- 47 “Fitness Data,” Texas Education Agency, last modified September 20, 2012, <http://www.tea.state.tx.us/FitnessData.html>.
- 48 Section 39.301, Texas Education Code.
- 49 Section 2052.0021, Texas Government Code.

RESPONSES TO ISSUE 4

Recommendation 4.1

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

Agency Response to 4.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.1

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.1

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Peggy Venable – Americans for Prosperity-Texas, Austin

Modifications

1. Eliminate inapplicable academic accountability indicators in statute and allow the Commissioner to add indicators as needed. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
2. Require the State Board of Education to determine the appropriateness of academic indicators. (Peggy Venable – Americans for Prosperity-Texas, Austin)

Staff Comment: The intent of Recommendation 4.1 is to provide the agency with flexibility in the academic accountability information it reports, so that this information can align with current state and federal requirements.

Recommendation 4.2

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

Agency Response to 4.2

TEA takes no position on this recommendation. TEA acknowledges that the development of distinction designations is resource-intensive and has not been funded. The Agency has spent a considerable amount of time working with advisory committee members to develop the academic achievement distinctions that will award campuses for outstanding academic achievement in English Language Arts and mathematics. The framework developed for those distinctions can be easily replicated for the science and social studies distinctions. Because of the complexity of developing indicators for fine arts, physical education, 21st century workforce development, and second language acquisition and because this work has not been funded, the agency has taken a more deliberate approach to developing these indicators. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.2

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.2

Robert Floyd, Executive Director – Texas Music Educators Association, Austin

JD Janda, Director of Fine Arts – Georgetown ISD, Georgetown

Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Jim Van Zandt, Director of Fine Arts – Round Rock ISD, Round Rock

Peggy Venable – Americans for Prosperity-Texas, Austin

Modifications

3. Maintain the fine arts distinction designation as currently required by statute. (Robert Floyd, Executive Director – Texas Music Educators Association, Austin; Jim Van Zandt, Director of Fine Arts – Round Rock ISD, Round Rock)
4. Limit distinction designations to fine arts, physical education, 21st century workforce development, and second language acquisition. (Karen Slay, President – Texas PTA, Austin)

Recommendation 4.3

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

Agency Response to 4.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.3

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.3

None received.

Recommendation 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.

Agency Response to 4.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.4

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.4

Jackie Lain, Associate Executive Director – Texas Association of School Boards, Austin

Recommendation 4.5

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

Agency Response to 4.5

The agency agrees with the recommendation, contingent on the availability of funding to conduct the evaluation. The agency understands that the evaluation, as it currently exists, provides little actionable information to address a broad range of substantive questions and shape policy changes to improve the charter school environment in Texas. A more flexible evaluation strategy, with the evaluation to be conducted by an impartial external organization on a four-year cycle, will promote more informed recommendations for statutory and policy changes to the State's charter school framework. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.5

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.5

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Modifications

5. Maintain the necessary statutorily required components of the charter school evaluation while allowing the independent entity conducting the evaluation to provide additional information it believes to be relevant. (Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin)
6. Require TEA to produce the charter school evaluation every two years. (Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin)
7. Continue to produce the evaluation annually, rather than every four years. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)

Recommendation 4.6

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

Agency Response to 4.6

The agency agrees with replacing the current cumbersome system of appointing local hearing examiners but would request that some default appointment be considered in the event that the two parties to the dispute cannot agree on an examiner.

Agency Modification

8. Allow TEA to assign the next hearing examiner on the list of certified examiners in that region in the absence of a local agreement.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.6

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.6

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Recommendation 4.7

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

Agency Response to 4.7

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.7

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.7

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Recommendation 4.8

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

Agency Response to 4.8

The agency agrees with this recommendation. Training and support for site-based decision-making and planning processes is readily available should a school district determine that a local need exists and seek out the support of a technical assistance provider. The agency further agrees that it is appropriate to remove the requirement that the State conduct an annual statewide survey and believes that, if feedback is necessary to improve the quality of a local school district's collaborative decision-making processes, a local survey or evaluation would be a more appropriate method to gather this information. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.8

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.8

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Modification

9. Specify who can sanction a school district if site-based decision making is not occurring. (Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin)

Staff Comment: Elected boards of trustees are responsible for ensuring their districts comply with state law.

Recommendation 4.9

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

Agency Response to 4.9

The agency concurs that the current waiver requirement, in practice, is not meaningful and that limited TEA and district resources should not be directed to the development and review of related requests. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.9

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.9

None received.

Recommendation 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.

Agency Response to 4.10

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.10

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.10

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Recommendation 4.11

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

Agency Response to 4.11

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.11

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.11

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Peggy Venable – Americans for Prosperity-Texas, Austin

Modifications

10. Require school districts to report to TEA the status of superintendent contracts and any amount paid to a terminated or departing superintendent. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
11. Require superintendent severance payment reports to the Commissioner be made publicly available online. (Peggy Venable – Americans for Prosperity-Texas, Austin)

Recommendation 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.

Agency Response to 4.12

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.12

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 4.12

None received.

Modification

12. Require TEA to include in any risk-based auditing approach information received from complaints made to the agency, and combine risk-based auditing with random audits or investigations of school districts by the agency. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)

Recommendation 4.13

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

Agency Response to 4.13

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.13

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 4.13

None received.

Recommendation 4.14

Eliminate the Best Practices Clearinghouse.

Agency Response to 4.14

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.14

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 4.14

None received.

Recommendation 4.15

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

Agency Response to 4.15

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.15

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 4.15

None received.

Modification

13. Retain the High School Completion and Success Initiative Council and require it to convene once a year for updates and programmatic information. (Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin)

Recommendation 4.16

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

Agency Response to 4.16

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 4.16

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 4.16

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Modifications

14. Continue the statutory requirement for TEA to produce the Physical Fitness Assessment Report. (Ray Campos, Physical Education Instructor – HV Helbing Elementary, Ft. Worth; Karen Slay, President – Texas PTA, Austin; Jonathan Lewis, Food Policy Specialist – Center for Public Policy Priorities, Austin; Stephen Pont, M.D., MPH, FAAP, Medical Director – Texas Center for the Prevention and Treatment of Childhood Obesity, Texas Medical Association, Texas Pediatric Society, and Texas Academy of Family Physicians, Austin; Carrie Kroll, Steering Committee Chair – Partnership for a Healthy Texas, Austin; Kenneth Cooper, M.D., Founder – Cooper Clinic, Dallas; Lauren Dimitry, Health Policy Coordinator – Texans Care for Children, Austin)
15. TEA should explore all internal and external support opportunities and partnerships with, for example, research entities, other state agencies, and public academic institutions of higher learning to conduct the correlation analysis and fulfill the statutory requirement to produce the Physical Fitness Assessment Report. (Carrie Kroll, Steering Committee Chair – Partnership for a Healthy Texas, Austin; Lauren Dimitry, Health Policy Coordinator – Texans Care for Children, Austin)

COMMISSION DECISION ON ISSUE 4

(JANUARY 2013)

Adopted Recommendations 4.1 through 4.5, 4.6 with Modification 8, and 4.7 through 4.16.

FINAL RESULTS ON ISSUE 4

(JULY 2013)

Legislative Action

Recommendation 4.1 — The Legislature did not adopt this recommendation to allow the Commissioner to decide the most appropriate academic accountability indicators to report on the quality of learning in the state.

Recommendation 4.2 — The Legislature did not adopt this recommendation to eliminate campus distinction designations and the committees charged with their development. However, the Legislature adopted through separate legislation, House Bill 5, a provision limiting these campus distinction designations to only academic achievement.

Recommendation 4.3 — The Legislature adopted through separate legislation, Senate Bill 59, this recommendation to make the *Comprehensive Annual Report to the Legislature on Texas Public Schools* biennial.

The Legislature did not adopt the following statutory recommendations.

Recommendation 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.

Recommendation 4.5 — Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.

Recommendation 4.6 with Modification 8 — Limit TEA's involvement in appointing hearing examiners for teacher contract cases.

Recommendation 4.7 — Eliminate the requirement that the Commissioner approve shared services arrangements for special education services.

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

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

Recommendation 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.

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

Recommendation 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.

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

Recommendation 4.14 — Eliminate the Best Practices Clearinghouse.

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

Recommendation 4.16 — Eliminate five unnecessary reporting requirements.

ISSUE 5

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

Background

Statute requires TEA to provide financial oversight of school districts and open-enrollment charters through two processes, detailed below.

- **Financial accountability ratings.** In 2003, TEA began issuing annual Financial Integrity Rating System of Texas (FIRST) ratings to school districts based on their performance meeting standards of financial management.¹ TEA began issuing FIRST ratings for charter schools in 2009.² FIRST ratings are based on a snapshot of a district's or charter's overall performance on certain financial measurements, ratios, and other indicators to evaluate areas such as a school's budgeting, personnel, or cash management, as well as any qualified opinions noted in the annual financial report for a given fiscal year.

TEA awards FIRST ratings, which serve as the agency's financial accountability system, based on points scored for each indicator. Ratings include superior, above standard, standard, below standard, or suspended for data quality concerns. Districts and charters fail FIRST if they are rated below standard achievement or suspended for data quality. Each school district and charter is required to report financial accountability ratings and other financial information to parents and taxpayers through a financial management report and to hold a hearing to allow public comment on the report.³ TEA's rules require districts and charters failing FIRST to submit a corrective action plan to address factors that contributed to the failing rating. Financial ratings also feed into a schools' accreditation ratings and can prompt a series of interventions or sanctions for poor performance.

- **Financial solvency reviews.** In 2009, the Legislature required TEA to separately review school districts' financial soundness through financial solvency reviews.⁴ TEA, by rule, also conducts financial solvency reviews of charter schools.⁵ TEA uses financial indicators, such as financial data, student enrollment counts, and staffing information, to identify districts and charters with trends that could lead to financial distress, or if unaddressed, potential insolvency. Insolvency is a very serious situation for a district or charter, as it could not have sufficient revenues to pay its expenses, such as employee and teacher salaries, rent, bonds or other debt, utilities, or contracts for essential services to continue educating students.

If a district or charter fails too many indicators or meets other financial conditions indicating potential insolvency, TEA requests the school to provide additional information and may require it to submit a financial plan to address any concerns. If a district or charter does not submit an adequate financial solvency plan, statute provides for TEA to assign the school an accredited-warned status. As this is the first year for TEA to issue financial solvency review results and require districts and charters to prepare financial solvency plans, TEA has not yet lowered a district's or charter's accreditation status for failure to submit an adequate plan.

Findings

Statutory guidance for, and the agency's implementation of, the financial solvency review does not provide a clear and practical approach for identifying at-risk districts and charters.

The Legislature intended the solvency review process to provide a mechanism to look at prospective data early in the school year, to serve as an early warning system to districts or charters whose budget is outside of standard financial ratios. For example, to warn a district or charter at the beginning of a school year that it does not have enough students, and thus enough revenue, to warrant the number of employed staff. However, TEA does not collect any prospective financial data to provide such warnings.

All of TEA's systems are designed to collect and review retrospective data for accountability purposes. TEA does not even have access to district and charter budget data until March, more than halfway through the school year and nearly a year after schools adopt their budgets. Without a new mechanism to collect timely data on a school's finances, TEA will not be able to provide an early warning system for potential financial distress. TEA's difficulties with statutory guidance for, and the agency's implementation of, the solvency review are described in more detail below.

Projection is challenging and may not be practical to do for all schools.

- **Projected data.** Statute requires TEA to analyze revenues and expenditures for the preceding school year and projected data for the current and subsequent two school years to anticipate the future financial solvency of districts.⁶ In practice, the agency does not project any data for use in the financial solvency review. Projection of revenues and expenditures is challenging, as local tax revenues and school finance methodologies change often, and TEA is not well-positioned to predict changes in local decisions that affect local finances. Data projections could be useful for districts or charters with indications of dire financial circumstances on the verge of potential insolvency. However, the time and resources needed to project data that may not be useful for most districts and charters is not a practical approach for identifying schools at risk of insolvency.
- **First-quarter data.** To obtain more up-to-date data, statute requires TEA to collect first-quarter data for the current fiscal year. However, first-quarter data includes expenditures from the summer, and doesn't provide a good indication of typical expenditure patterns during the school year. As a result, TEA collects, but does not use, first-quarter data in its solvency evaluation.
- **Solvency plans.** Statute requires a district to develop a financial solvency plan if it has a projected deficit in its general fund in the next three years. Because the agency does not project three years' worth of revenues and expenditures as required by statute, it cannot identify schools with a projected deficit. Instead, TEA requires schools with certain financial

conditions to prepare a financial solvency plan. As such, the agency's basis for requiring districts to prepare a financial solvency plan is not in line with statute.

- **Electronic-based program.** For the solvency review, statute requires the agency to develop an electronic-based program with the capability of importing past data and providing alerts when data is outside of the norm. This provision is intended to be an early warning system, but statute does not provide clear guidance as to how this system, the creation of which could be costly, should work without duplicating existing data collection systems.

As such, the agency's implementation of this provision does not meet statutory intent. Rather than using a software program, TEA has created an electronic survey to collect data from schools, as well as a separate, voluntary Excel worksheet for schools to use that can incorporate the previous year's financial data and provide alerts if data seems unusual.

A voluntary survey is not effective when districts or charters most at risk for insolvency do not respond to the survey. Eleven of the 44, or 25 percent, of districts or charters identified through the solvency review as potentially insolvent did not respond to the survey. Moreover, the use of self-reported data without any form of verification can be problematic for TEA, as the agency's analysis may be based on unreliable data.

Instead of a prospective approach, the agency performs a more in-depth analysis of data it already receives to evaluate trends in a district's or charter's financial management that will likely result in financial distress, and even potential insolvency, if uncorrected. Insolvency is a rare occurrence among districts and not common among charters. However, when districts or charters near insolvency, the condition typically results from failure to adjust financial management strategies to address indicated trends, such as expenditures outpacing revenues over time or depletion of a school's general fund balance. The agency's retrospective approach to the solvency review still provides districts and charters a warning to adjust their financial management, if the school has not already acted to address the problem on its own.

Separate financial review processes and ratings to evaluate a district's or charter's financial health are duplicative and confusing.

Neither FIRST nor the solvency review process provides a comprehensive analysis of a district's or charter's finances. These two separate processes result in confusion and duplication, discussed in more detail below.

- **Confusing ratings.** FIRST and solvency ratings, which TEA issues at the same time of the year, may appear to conflict and can be confusing for schools and the public. While the FIRST and solvency reviews use some of the same data, the processes as a whole are not aligned, meaning

TEA's review can still indicate trends that, if not acted on, can lead to insolvency.

financial data for similar indicators may pass one process and fail the other, creating disparate ratings.

The table, *Comparison of FIRST and Solvency Indicators*, provides an example in which a school might pass a FIRST indicator, but fail a similar solvency indicator. Specifically, this example shows that a school could budget for expenditures to be less than revenues and pass FIRST, but if the school ultimately spends more than its revenues beyond certain thresholds, it would fail solvency. Separate ratings that do not reflect a comprehensive view of a district’s or charter’s finances make it difficult to clearly assess its financial standing.

**Comparison of FIRST and Solvency Indicators
Expenditure to Revenue Ratios**

FIRST Indicator	Solvency Indicators
Budgeted expenditures are less than total revenues, other resources, and fund balance in the General Fund.	Expenditures exceed revenues by more than 6 percent.
	Expenditures exceed revenues by more than 4 percent and expenditures exceeded revenues by more than 3 percent in the prior year.
	Expenditures exceed revenues by any amount, the fund balance declined from the prior year, and the fund balance is less than 4 percent of expenditures.

Twenty-five schools failing solvency had not only passed FIRST, but were rated superior.

Of the districts and charters initially failing the solvency review, 68 percent had no concerns based on their passing FIRST rating. In fact, 25 of these schools failing solvency had superior FIRST ratings. This year, at least one district that was previously known to be near insolvency was not identified through the process. Because the solvency review is new and has not yet matured, TEA chose to re-evaluate the list as the two processes were not aligned. Ultimately, TEA only asked for additional information from a smaller set of districts and charters — 44 as opposed to 77. As TEA gathers more data and evaluates more trends, the process should mature to improve its accuracy.

- **Duplicative data collection and use.** Statute requires TEA to gather financial information for the solvency review, which the agency accomplishes through the solvency survey. However, none of the data gathered through the survey is used in the actual solvency evaluation, as the survey asks mostly for data already collected through other sources, such as the annual financial report and the Public Education Information Management System (PEIMS). FIRST and solvency evaluations depend on much of the same financial data, such as fund balances, staff-to-student ratios, and expenditures compared to revenues. Requiring TEA to administer, and schools to respond to, a duplicative financial survey is an inefficient use of time and resources.

Statute does not provide adequate tools, and TEA does not enforce its current requirements, to ensure districts and charters plan to address their financial concerns.

While statute authorizes TEA to apply interventions and sanctions to districts and charters for failing FIRST, in practice, TEA does not take such actions automatically based only on a failing FIRST rating. The agency typically only applies sanctions for financial concerns, such as appointment of a monitor or requirement to obtain professional services, when on-site investigations show deficiencies or due to consistent failure to meet financial accountability standards. In 2012, 46, or 3.7 percent of, districts and charters failed FIRST. While TEA's rules require districts and charters failing FIRST to submit a corrective action plan, in practice, the agency does not require these schools to submit such a plan. In comparison, TEA does require districts and charters failing to meet academic accountability standards to prepare a student performance improvement plan to identify weaknesses contributing to poor performance and strategies to improve performance.

For the solvency review, districts and charters with trends that could lead to insolvency must prepare a financial solvency plan.⁷ However, statute does not provide practical sanctions or interventions for failure to prepare or implement a meaningful plan. In addition, failing the solvency review, which includes analysis critical to financial management, does not currently affect a district's or charter's financial accountability rating.

Statute provides for TEA to lower an accreditation rating to accredited-warned for failure to submit an adequate solvency plan, but does not specify interventions or sanctions for a district already rated accredited-warned.⁸ If TEA were to lower the accreditation status for a district or charter already rated accredited-warned, this action would result in revocation of the school's accreditation and trigger school closure. In reality, TEA is not likely to pursue school closure simply for failure to submit a financial solvency plan. Other tools or sanctions, such as appointment of a monitor or assignment of professional services to help draft and implement a plan, would be more appropriate and ensure districts and charters properly plan to address financial concerns.

Another inconsistency relates to charter schools. While statute directs the agency to conduct a financial solvency review and require a plan to address potential insolvency for school districts, statute does not similarly direct, or otherwise authorize, the agency to do so for charter schools. TEA's rules, however, apply these processes to both districts and charter schools. Given the history of poor financial performance by some charter schools, described further in Issue 7, clear statutory authority to conduct financial solvency reviews and to require planning would benefit these schools and better protect state funds.

While called for in rules, TEA does not require schools failing FIRST to submit a corrective action plan.

Failing the solvency review does not affect a school's financial accountability rating.

Recommendations

Change in Statute

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

This recommendation would require TEA to incorporate the indicators that are currently used in the financial solvency review into its financial accountability system, FIRST. Both districts and open-enrollment charters would be subject to the unified FIRST process. The unified system would work as follows.

- TEA would adopt all of the indicators for the unified process in rule, and would make any needed adjustments to similar indicators to ensure the unified system is aligned and reflects a comprehensive view of a district's or charter's finances.
- TEA would assign points to all of the indicators and revise its scoring matrix. Districts or charters failing critical indicators or categories of indicators that suggest trends leading to financial distress would fail FIRST, similar to how the solvency review is administered currently. In other words, districts and charters with conditions serious enough to warrant failing the current solvency review would also fail FIRST under these proposed changes. Serious financial conditions revealed through the solvency review should result in a district's or charter's failure of the State's financial accountability system, as the data essentially gauges the school's ability to continue its operations.
- The FIRST process would have one rating that would reflect a district's or charter's comprehensive performance on all indicators. TEA would not issue separate solvency results.

As currently provided through the FIRST process, districts and charters would still have the opportunity to provide additional documentation in response to their preliminary FIRST rating to explain any data irregularities or reasons for failure of certain indicators before a final rating is released. If a district or charter provides information that TEA determines negates the concern raised by the failed indicator, the school would not be penalized for accountability purposes. For example, if a district or charter fails an indicator related to a rapidly declining general fund balance, but provides documentation to show the school did so purposefully to save up for and finally purchase an item, this indicator should not count against a district or charter for accountability purposes.

This recommendation would remove the financial solvency review from statute as a stand-alone review, including separate solvency indicators, such as first-quarter expenditures. This recommendation would also remove requirements for TEA to conduct an electronic-based program, or financial solvency survey, to gather financial information from districts and charters. TEA would be required to adopt rules to implement the unified FIRST process no later than March 1, 2015, in time for use in the 2015 financial ratings.

A FIRST financial rating for districts and charters that includes the indicators currently used in the solvency review presents an opportunity for a streamlined, strengthened, and more comprehensive analysis of a school's finances. The incorporation of more meaningful indicators in FIRST will increase district and charter school accountability for management of their finances. Similarly, despite the fact that the indicators rely on historical data, the unified process still serves as a warning system for districts and charters when trends in their financial data could indicate future financial distress. A combined rating system would also eliminate any confusion on the part of districts and charters caused by separate and potentially conflicting ratings.

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 be nearing insolvency. The agency's decision should be based on failure of critical FIRST indicators or other identified trends to such a degree that the agency believes the district or charter may have a deficit in its general fund within three years. In these cases, TEA should have the authority to require a district or charter to submit additional information to aid in the agency's evaluation of potential insolvency. If an identified district or charter does not provide additional 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, through statute instead of rule, all districts and charters failing FIRST to prepare a corrective action plan to address the financial weaknesses causing them to fail FIRST. A district or charter would be required to identify problems and include strategies to improve these areas in its corrective action plan. This recommendation would take the place of financial solvency plans required for those districts or charters with a projected deficit.⁹

This recommendation would provide TEA authority to apply its standard set of sanctions and interventions for failure to submit or implement an adequate financial improvement plan. TEA would have all available sanctions and interventions available to the agency for accountability purposes, including appointment of a monitor or conservator or requiring professional services to assist the district or charter in developing a plan.¹⁰ This recommendation would also remove the requirement for TEA to lower a school's accreditation to accredited-warned. Issues 6 and 7 further address district closure and charter revocation, respectively, in circumstances in which a district or charter fails to, or otherwise cannot, address imminent insolvency concerns.

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

Statute 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. As the agency learns more about conditions that can lead to poor financial performance, it should adapt the FIRST indicators to reflect these trends and provide districts and charters a warning for patterns that could lead to financial distress.

Fiscal Implication

These recommendations would clearly increase the efficiency of financial oversight processes for districts, charters, and TEA, but would not have a direct fiscal impact to the State. Combining the solvency review process with the FIRST process would be more efficient and clearly convey results to districts, charters, and the public. Removing TEA staff efforts on a duplicative process would free up staff time to better focus on their financial oversight role.

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- 1 Section 39.082, Texas Education Code.
 - 2 Open-enrollment charter schools underwent a limited financial review in 2008, but were not added to FIRST until 2009.
 - 3 19 T.A.C. Section 109.1005.
 - 4 Section 39.0822, Texas Education Code.
 - 5 19 T.A.C. Section 109.1101.
 - 6 Section 39.0822(a)(2), Texas Education Code.
 - 7 Section 39.0823(b), Texas Education Code.
 - 8 Section 39.0823(c), Texas Education Code.
 - 9 Section 39.0823, Texas Education Code.
 - 10 Subchapter E, Chapter 39, Texas Education Code.

RESPONSES TO ISSUE 5

Recommendation 5.1

Incorporate the financial solvency review into the FIRST financial accountability system.

Agency Response to 5.1

The agency agrees with combining the financial solvency review and FIRST accountability system into one report. However, the use of multi-year projections in the solvency review makes much of that data inappropriate for sanctions under the state accreditation system. The agency understands the recommendation to be one to combine the two financial evaluations but not to impose accreditation sanctions based on projected financial data. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 5.1

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Jackie Lain, Associate Executive Director – Texas Association of School Boards, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 5.1

None received.

Modifications

1. Combine the two systems as described in Recommendation 5.1, but also revise the FIRST standards for charters to more appropriately measure their financial viability and integrity, as the standards are currently calibrated toward the standards applicable to traditional public districts. (David Dunn, Executive Director – Texas Charter Schools Association, Austin)
2. Combine the two systems for data collection, but also create a new rating between Standard and Substandard, such as “Standard with Financial Review” for those schools that would have passed had it not been for the solvency indicators. If there are issues with compliance, or presenting remediation plans, the Commissioner could then drop school districts into Substandard without waiting for the annual review. (Jackie Lain, Associate Executive Director – Texas Association of School Boards, Austin)

Recommendation 5.2

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

Agency Response to 5.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 5.2

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 5.2

None received.

Recommendation 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.

Agency Response to 5.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 5.3

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 5.3

None received.

Recommendation 5.4

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

Agency Response to 5.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 5.4

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 5.4

None received.

COMMISSION DECISION ON ISSUE 5

(JANUARY 2013)

Adopted Recommendations 5.1 through 5.4.

FINAL RESULTS ON ISSUE 5

(JULY 2013)

Legislative Action

Recommendation 5.1 — The Legislature adopted through separate legislation, House Bill 5, this recommendation to incorporate the financial solvency review into the FIRST financial accountability system.

Recommendation 5.2 — The Legislature adopted through H.B. 5 this recommendation to require TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years.

Recommendation 5.3 — The Legislature adopted through H.B. 5 this recommendation to 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.

Recommendation 5.4 — The Legislature adopted through H.B. 5 this recommendation to require TEA to re-evaluate all FIRST indicators every three years.

ISSUE 6

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

Background

In the 2010–2011 school year, Texas had 1,029 school districts, ranging in size from 16 students to more than 203,000 students. While annexation and consolidation of school districts does not occur frequently, clear procedures are needed for when this complex and often lengthy process occurs. The textbox, *Annexation and Consolidation of Districts*, lists all of the processes for district annexation or voluntary consolidation.

A school district may voluntarily choose to consolidate with another district for any reason. Voluntary consolidation of school districts is most commonly motivated by financial concerns, including solvency, and often results from a decline in population and student enrollment. In the past 10 years, six districts voluntarily consolidated with another district. TEA has no involvement with voluntary consolidations among school districts.

Statute authorizes the Commissioner of Education to annex a school district if a district meets any of the following criteria for two consecutive years:

- receives an accreditation status of accredited-warned or accredited-probation;
- fails to satisfy academic performance standards; or
- fails to satisfy financial accountability standards.²

A school district's academic or financial performance problems are generally addressed through a series of interventions and sanctions, such as appointment of a monitor or conservator. However, if a district fails to improve through intermediate sanctions, the Commissioner may order closure and annexation of a school district to one or more adjoining districts.³ In the past 10 years, the Commissioner has closed and annexed four districts.

Beyond poor performance on academic or financial accountability systems, financial solvency issues at a school district also threaten the State's ability to ensure delivery of education services to students. The Texas Constitution requires that the State provide an efficient system of public free schools.⁴ TEA also has a legal obligation, through federal law, to ensure that students receive the educational services, such as in special education, they need.⁵ District insolvency threatens the ability to meet these obligations.

Annexation and Consolidation of Districts¹

Statute provides the following methods for annexation or voluntary consolidation.

- The Commissioner of Education may annex a school district that fails to meet certain standards for a period of two years to one or more adjoining districts.
- A district may voluntarily consolidate with another district if both districts vote in favor of consolidation.
- A district may detach a portion of its territory and another district may annex that territory.
- A county commissioners court may annex a dormant school district within the county to an adjoining district, if the Commissioner of Education determines the district has failed to operate for one year.
- For wealth equalization purposes, two or more school districts may voluntarily consolidate or detach and annex a portion of their territory, using processes listed above.

Findings

Statute lacks a mechanism to require a school district's annexation when it has not acted to address concerns of imminent financial insolvency and plan for its students' education.

Statute does not provide any mechanism to require annexation of a school district that is imminently insolvent or to intervene to ensure students will be educated if that district has failed to plan for the situation. Except in cases in which the Commissioner is authorized to annex a district for failing to meet accreditation, academic, or financial accountability standards, an independent school district must act voluntarily to consolidate with another district. This process requires a successful consolidation election in both districts. If a voluntary consolidation election fails in either district, districts must wait three years before holding another election.

No process exists for TEA to step in if a district will likely not have sufficient funding to make it through another school year and fails to act in time to meet statutory timelines for voluntary consolidation. If a school district opens in the fall and shuts down mid-year, instruction and student academic progress may be halted; teachers may not be paid or may lose their jobs; teachers, students, and their families may be displaced to other schools; and difficulties arise related to completing student records and transferring them to new schools. When a district fails to plan or address insolvency on its own, students are at risk of not having new schools to attend, as other districts are not required to teach the displaced students.

When a district fails to address insolvency on its own, student education is at risk.

The textbox on the following page, *Example Timeline of an Imminently Insolvent District*, details TEA's work recently with a school district that failed to take action to address its imminent insolvency. After two years of TEA letters, prodding, and placement of a conservator to prompt local action to address the situation, this school district finally took action in July 2012, weeks before school started. Because the district acted too late to use the statutory provisions for voluntary consolidation, which typically starts a year in advance and includes an effective consolidation date of July 1, TEA had to find creative ways to ensure students received a suitable education for this school year. Some of the difficult issues TEA has worked to resolve include funding issues with assuming the district's debt, tax assessment and any implications for property wealth recapture, incentive aid, submission of data, and other state and federal requirements. The receiving district's board of trustees may also face difficulties until it can obtain full control over property, student data, funding, and other components critical to effectively taking over the district's operations.

The Legislature has expressed growing concern about the financial health of school districts. In 2009, the Legislature saw the need for TEA to evaluate the solvency of school districts, as discussed further in Issue 5.⁶ In 2011, the

Example Timeline of an Imminently Insolvent District

The following timeline describes one school district's actions related to its imminent insolvency.

May 2010: TEA elevates the academic monitor to a conservator because of concerns about the district's long-term financial viability.

June 2010: TEA staff visit the district superintendent and board president in person to convey the seriousness of the district's predicted insolvency by summer 2012.

November 2010: TEA staff visit the district to present their financial concerns to the district's full board of trustees.

2010–2011 School Year: The community rejects a proposed tax increase and the district fails to take any other proactive action to address its imminent insolvency.

August 2011: TEA determines the conservator's presence can no longer rectify the district's financial issues and removes the conservator. TEA notes the conservator's concern that the community has not been adequately informed of the district's dire financial situation.

2011–2012 School Year: The community rejects another proposed tax increase. Final attendance counts reveal that the district owes the State more than \$500,000, almost an entire year's worth of state education funding, for over-reporting student enrollment.

December 2011: The board of trustees votes to close its high school the following year and only operate a K–8 school.

June 2012: The board of trustees votes to consider district consolidation. The media discovers the seriousness of the district's financial troubles.

July 2012: The board of trustees votes to hold a consolidation election in November. A neighboring district agrees to educate students through an unconventional method, a memorandum of understanding, until full consolidation can occur.

September 2012: A different neighboring school district adopts a petition to detach and annex a significant portion of the district, which could threaten passage of a consolidation election.

October 2012: A district judge issues a temporary restraining order against the district, preventing it from considering action on the petition to detach land from the district until after the consolidation election.

November 2012: A consolidation election will be held. If the resolution does not pass in both districts, the districts cannot hold another election for three years.

Legislature also required TEA to develop a process by which districts can declare financial exigency, allowing districts in financial crisis to more easily reduce expenses through termination of staff.⁷ However, statute still lacks a mechanism to require annexation when TEA finds imminently insolvent districts that fail to act on their own.

Given reductions in funding and declining student enrollment in parts of the state, more schools may face insolvency in the next few years. In addition, thresholds built into the school finance system through the sparsity adjustment can lead to dramatic drops in funding if a district enrolls less students in certain circumstances.⁸ In 2012, TEA identified 24 school districts as having conditions that could lead to insolvency.

In 2012, TEA identified 24 districts as having conditions that could lead to insolvency.

Statute lacks a mechanism for TEA to facilitate annexation upon request of a school district.

No process exists for TEA to assist a district that requests TEA to facilitate its annexation if it is unable to consolidate on its own. For example, if a district recognizes the need, but cannot meet the statutory timelines for voluntary consolidation. A school district should ideally begin arrangements for voluntary consolidation approximately a year ahead of time to allow time for transition of students during the summer before a new school year starts. However, financial solvency concerns can come about quickly and make it difficult to meet statutory timelines. Without adequate statutory tools to assist districts in their consolidation efforts, TEA cannot be certain a district would not just continue operations until it is insolvent, thus displacing teachers and students, and threatening students' access to and quality of education.

Solvency concerns can come about quickly, making it difficult to meet statutory timelines for consolidation.

An imminently insolvent school district recently approached TEA because, while proactively trying to consolidate, the district was unable to work within the existing statutory framework. In this case, the district's enrollment consisted almost entirely of transfer students, with students equally coming from three different districts. As such, the community was split between hopes to consolidate with three different districts, and an election to consolidate with any one of them was expected to fail by two-thirds. Statute limits voluntary consolidation to one district, and if a consolidation election fails, districts must wait three years before holding another election.

Ultimately, the district consulted with TEA and decided to keep transfer students in their home district and allow the commissioners court to abolish the district using a provision designed to dissolve dormant school districts. To allow for this process, all of the districts involved requested the Commissioner waive the provision requiring one year of dormancy to allow the local commissioners court to abolish the district and annex it to another district within the county. Any one of the districts, by not requesting a waiver, could have prevented the Commissioner from waiving the dormancy provision.

The Commissioner's annexation process lacks clarity and flexibility to adapt to unique circumstances in a school district.

Several provisions of the Education Code, discussed below, restrict TEA's ability to annex a school district.

- **Limits the effective date of district annexation to July 1.**⁹ TEA lacks authority to adjust the effective date of annexation. Annexation dates trigger a series of statutory requirements that affect the district during the school year, including taxes, property and title transfers, elections, and authority over district operations. Flexibility in the effective annexation date could allow annexation to occur more quickly or more slowly, as needed to ease the transition. For example, if the districts involved

request the process to be accelerated or delayed, or if a district challenges the decision and litigation ends in the middle of the school year, they would require unusual timeframes for closure and annexation.

- **Limits TEA's annexation authority to adjoining districts.**¹⁰ Statute provides no option for annexation to a non-adjoining district, even if the adjoining districts are very small and lack capacity themselves, serve only limited grade levels, are academically unacceptable, or are subject to other agency sanctions. In other circumstances, unique boundaries and shapes of school districts can create transportation problems with annexing a district to an adjoining district.
- **Limits TEA's use of boards of managers to two years.** Statute requires a TEA-appointed board of managers, a sanction to temporarily replace a majority of a district's board of trustees, to order an election of members of the board of trustees not later than the second anniversary of appointment.¹¹ A board of managers can also be useful to ensure financial accountability and oversee other matters during the transition period for closure and annexation of a district. However, if a board of managers is already in place before TEA orders closure and annexation of a school district, TEA cannot use it to help oversee the annexation process if it will exceed the two-year provision. TEA has found a board of managers valuable for overseeing the annexation process in the past, before statute limited it to two years.
- **Conflicting provisions may limit TEA's authority.** Statute includes conflicting provisions related to TEA's closure and annexation authority. In one provision, statute authorizes the Commissioner to order closure and annexation for a district's failure to meet standards for accreditation, academic, or financial accountability.¹² This closure provision references the Commissioner's annexation process, a separate provision that only allows the Commissioner to annex academically unacceptable districts.¹³ The Commissioner's annexation process does not reflect more recent changes made elsewhere in statute. As such, this provision does not authorize annexation for all of the reasons for which the Commissioner may order closure and annexation, such as loss of accreditation or failure to meet financial accountability standards.

While statute authorizes the Commissioner to waive most of these requirements of the Education Code, the waiver request must be submitted by all districts involved.¹⁴ If even one district involved chooses not to request a waiver of a provision, the Commissioner cannot waive the requirement. If a district contests annexation, the district is not likely to request that the Commissioner waive any requirements.

Adjoining districts often have their own problems, making annexation unworkable.

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 annexation process, detailed below, could be triggered in two ways.

- 1. Failure to operate.** If the Commissioner finds that a district has failed to operate for ten consecutive days of its regular school year, the Commissioner would notify the district that it is eligible for closure, and allow the district ten days to submit an acceptable plan explaining how the district will complete the current and subsequent school year. If the district fails to submit a plan, or if the Commissioner determines that the district cannot reasonably complete the current or subsequent school year, the Commissioner would make a determination that the district has become insolvent, and report the district to each appropriate county commissioners court for annexation.
- 2. District request.** A board of trustees of a school district may formally request the Commissioner's assistance in the closure and annexation process if the district is unable to complete the current or subsequent school year for financial or other reasons. After receiving the request from a district, the Commissioner would investigate the finances and other circumstances of the district. If the Commissioner determines that a district is unable to complete the current or subsequent school year, the Commissioner must report the district to each appropriate county commissioners court for annexation.

Annexation by a commissioners court. Upon receiving notification from the Commissioner of Education, each appropriate 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. Annexation by a commissioners court would occur in an open meeting with opportunity for public comment. A commissioners court could annex territory of a district to a contiguous district in an adjacent county only if the commissioners court of the other county consents to the annexation.

Annexation by the Commissioner of Education. In the unlikely event that a commissioners court fails to order annexation of the district's territory within 60 days of the Commissioner's determination that the district is insolvent, the Commissioner would order the annexation. Statute would authorize the Commissioner to annex territory to any district in the same county or to any contiguous district in an adjacent county.

Annexation order. The commissioners court or the Commissioner, as applicable, would be required to issue an annexation order to address the following.

- Set an effective date for the annexation not more than one year from the date of the annexation order.
- Determine which district or districts would serve the students residing in the insolvent district through any school year that begins before the effective date of the annexation. A district required to serve students must provide services equivalent to those provided to its current students, and

would be entitled to funding for the attendance and transportation of students from the insolvent district.

- Define the new legal boundaries of the district or districts, to be recorded in the minutes of the commissioners court.
- Provide for taxation of the territory annexed during the year in which the annexation takes place. The order would provide for a levy of tax at least equal to the lower of the maintenance and operations tax rate of the district subject to annexation and the district to which the territory is annexed, plus any required interest and sinking fund tax.

Consistent with the current statutory provisions guiding the voluntary consolidation process, the board of trustees of the district to which an insolvent school district is annexed would be the governing board for the district receiving the annexed territory. Title to the real property of the insolvent district would also vest in each district to which the property is annexed. Each district to which territory is annexed would assume and be liable for any portion of the insolvent district's debt, as specified in the annexation order. The receiving district or districts would also be entitled to incentive aid, as determined by the Commissioner.

Option for voluntary consolidation. A local school board of trustees could still choose to pursue voluntary consolidation or a consolidation for wealth equalization purposes, in lieu of annexation by a commissioners court or the Commissioner, within 60 days of an annexation order by the Commissioner or a commissioners court.¹⁵ The Commissioner or the commissioners court could still adopt actions pending the outcome of this election. The proposition for consolidation must be adopted in both districts. A district required to serve students of the insolvent district must allow any student to attend school through the completion of the school year in which the effective date of consolidation occurs.

Appeals and rulemaking. A determination by the Commissioner or a commissioners court would be final and not appealable. This recommendation would grant rulemaking authority to the Commissioner to implement this process.

This new process would replace the statutory provision allowing a commissioners court to dissolve a dormant district.¹⁶ The use of a local commissioners court in this process would ensure local oversight of the annexation process, in the event that the local school board of trustees does not or cannot act to address its operational or financial issues in the first place. However, in the event that the local school board and local commissioners court fail to ensure the proper education of students, the Commissioner of Education would be authorized to ensure students have access to education through annexation of an 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. This recommendation

would ensure that if the Commissioner orders closure of a school district, the Commissioner would not be required to annex to a district that is unable to provide a better education to local 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. The board of managers term would end on the effective date of annexation.

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 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. This recommendation would ensure consistency between the statutory provision specifying the Commissioner's authority to close a district, and the provision that authorizes the Commissioner's annexation process.

Fiscal Implication

These recommendations would not result in additional costs to the State.

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- 1 Subchapters B and C, Chapter 13 and Chapter 41, Texas Education Code.
 - 2 Section 39.102(a)(10), Texas Education Code.
 - 3 Sections 39.102(a)(10) and 13.054, Texas Education Code.
 - 4 Section 1, Article VII, Texas Constitution.
 - 5 34 C.F.R. Section 300.228.
 - 6 Section 39.0822, Texas Education Code.
 - 7 Section 44.011, Texas Education Code.
 - 8 Section 42.105, Texas Education Code.
 - 9 Section 13.005(a), Texas Education Code.
 - 10 Section 13.054(a), Texas Education Code.
 - 11 Section 39.112(e), Texas Education Code.
 - 12 Section 39.102(a)(10), Texas Education Code.
 - 13 Section 13.054, Texas Education Code.
 - 14 Section 7.056, Texas Education Code.
 - 15 Section 13.004 and Subchapter B, Chapter 41, Texas Education Code.
 - 16 Section 13.052, Texas Education Code.

RESPONSES TO ISSUE 6

Recommendation 6.1

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

Agency Response to 6.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 6.1

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 6.1

None received.

Recommendation 6.2

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

Agency Response to 6.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 6.2

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 6.2

None received.

Recommendation 6.3

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

Agency Response to 6.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 6.3

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 6.3

None received.

Recommendation 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.

Agency Response to 6.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 6.4

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 6.4

None received.

Recommendation 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.

Agency Response to 6.5

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 6.5

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 6.5

None received.

COMMISSION DECISION ON ISSUE 6

(JANUARY 2013)

Adopted Recommendations 6.1 through 6.5.

FINAL RESULTS ON ISSUE 6

(JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory recommendations.

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

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

Recommendation 6.3 — Provide the Commissioner with flexibility to annex a school district to a non-adjointing district.

Recommendation 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.

Recommendation 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.

ISSUE 7

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

Background

Charter schools are public schools meant to improve student learning, allow for teacher innovation, and increase the number of quality education choices for families. Charters operate under decreased state regulation in exchange for increased accountability for results. While charter schools do not have a local tax base, they receive state funding for operations, just like traditional school districts, but not for facilities. In the 2011–2012 school year, charter schools educated about 155,000 students, or roughly 3 percent of Texas students, and expended state funds totaling approximately \$938 million.

Statute provides for four types of charter schools: open-enrollment charters, campus charters, home-rule school district charters, and college, university, or junior college charters.¹ This issue focuses solely on open-enrollment charters, because they are regulated by TEA.²

Statute authorizes the State Board of Education (SBOE) to grant an open-enrollment charter to an applicant that meets financial, governance, and operational standards adopted by the Commissioner.³ TEA just adopted these standards, effective for the next group — or generation — of charters, in 2013. Most open-enrollment charters are self-governed 501(c)(3) nonprofit organizations with an appointed board to oversee operations of the charter school. State law caps the number of charters at 215, but existing charter holders may expand the number of campuses they operate without getting a new charter and affecting this cap.⁴ As of September 2012, 201 charters are in effect, representing 549 campuses.

- **State oversight.** After SBOE grants a charter, TEA regulates charter schools, including a charter renewal process, amendment and expansion process, and monitoring financial and academic performance through accountability ratings. TEA may apply interventions and sanctions to those charters that fail to meet academic or financial accountability standards, or that violate certain provisions of law or rule through two enforcement processes in separate chapters of the Education Code. Chapter 12 governs charter schools and requirements for charter contracts, and Chapter 39 governs TEA's academic and financial accountability requirements, including intervention and sanction authority, for both districts and charters.
- **Sanction authority.** The charter school statute, Chapter 12, authorizes TEA to revoke a charter, after a process for a full contested case hearing at the State Office of Administrative Hearings (SOAH), if the charter holder:
 - commits a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;
 - fails to satisfy generally accepted accounting standards of fiscal management;

- fails to protect the health, safety, or welfare of the students enrolled at the school; or
- fails to comply with a law or rule.⁵

The accountability statute, Chapter 39, provides TEA with a range of interventions and sanctions for application to both districts and charters, including appointment of a monitor, conservator, or board of managers.⁶ A charter holder can challenge certain decisions of the Commissioner, including closure, under the accountability statute through a formal record review process at the agency, which is subject to review by SOAH, under a substantial evidence standard of review.⁷ If the Commissioner orders the charter closed under the accountability statute, the charter is automatically revoked.⁸ Neither chapter's enforcement process provides for a judicial appeal of the Commissioner's final decision.

Findings

Statute frees charter schools from certain state restrictions in exchange for an expectation of higher, more innovative, performance.

The Legislature has an expectation that charter schools will satisfy performance standards, particularly academic performance, and that expanded autonomy through freedom from certain state restrictions that apply to traditional school districts will enable charter schools to achieve high performance in innovative ways. Because charter contracts are subject to certain limitations, such as compliance with academic and financial accountability standards, charter schools essentially operate on performance contracts. Appendix C provides more detail on which state restrictions apply to charter schools and which do not.

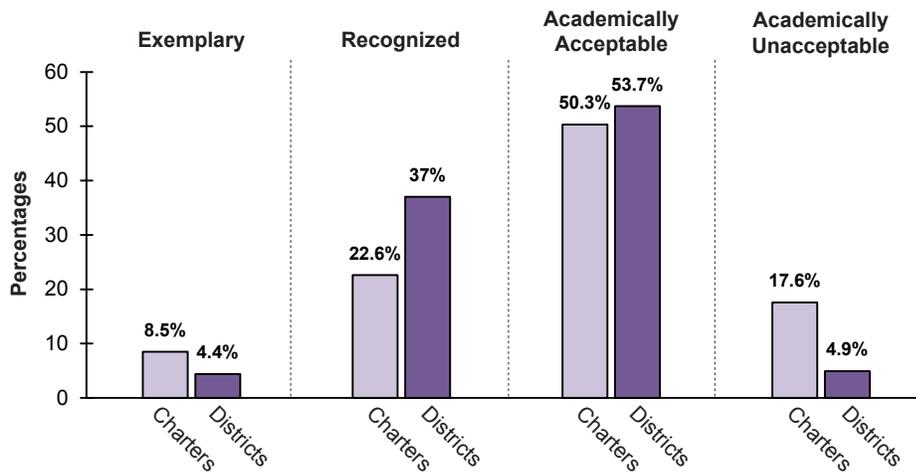
Charter schools essentially operate on performance contracts.

The Legislature's performance expectation is reflected in TEA's approach to school closure. The Legislature created charter schools to be vehicles for innovation and to offer families choices in educational settings. However, traditional districts serve as the school of last resort for students. If a charter school closes, students may be displaced, but are still afforded an education by attending their local school district. If a school district closes, students likely do not have another local education option, and could be required to travel some distance to another district, at additional cost. In the past 15 years, TEA has shut down 48 charters, but has closed only four traditional districts.⁹

While many charter schools perform well, poor performance by some charter schools threatens provision of a quality education for their students.

Many charter schools clearly meet the Legislature's expectations for innovation and success. In fact, in 2011, 8.5 percent of charters received exemplary academic ratings, as compared to only 4.4 percent of school districts. However, as can be seen in the bar chart on the following page, *Academic Accountability Ratings for Charters and Districts*, a higher rate of charter schools performed at an academically unacceptable level than school

**Academic Accountability Ratings
for Charters and Districts
2011**



districts. Of the 1,029 districts and 199 charters rated, a higher percentage of charters — 17.6 percent versus 4.9 percent — were academically unacceptable in 2011.

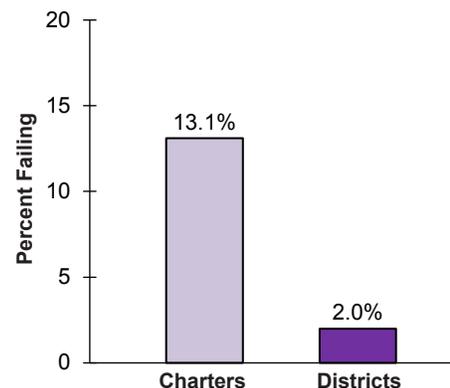
Many individual charter school campuses have also demonstrated poor academic performance for years. Appendix D shows the number of years individual charter campuses, by generation, have been ranked academically unacceptable, including four charter campuses that have been ranked academically unacceptable for six or more years.¹⁰

Many charter schools also have poor financial performance, underscoring the importance of oversight for expenditure of state funds. Charter schools receive about 80 percent of their revenues in state aid, as compared to 41 percent for traditional school districts.¹¹ Beginning in 2012, TEA expanded the FIRST financial accountability ratings for charter schools from three to 19 indicators, consistent with the indicators used to rank districts, minus one indicator related to facilities. The bar chart, *Failing Financial Accountability Ratings*, illustrates that 13.1 percent of charter schools failed TEA’s financial accountability system in 2012, significantly higher than the 2 percent of districts.

Continued poor performance on academic and financial accountability ratings can lower a district’s or charter’s accreditation status or lead to a series of interventions and sanctions, including TEA appointment of a monitor or conservator. Charter schools have far more accountability problems requiring assignment of interventions and sanctions and, ultimately, revocation of the charter. Charter schools represent more than two-thirds, 71 percent, of schools with assigned sanctions, even though charter

Charters receive 80 percent of their funding from the State, compared to 41 percent for traditional schools.

**Failing Financial
Accountability Ratings
2012**



schools make up only 17 percent of the total number of districts and charters. In the last three years, TEA has revoked or not renewed 10 charters, and accepted the surrender of five others in lieu of enforcement action.

Charters represent 71 percent of schools with sanctions, but only 17 percent of all schools.

TEA cannot act quickly to revoke a charter for chronic poor performance, placing student education at risk.

Because charter schools are expected to meet performance standards in exchange for greater autonomy, demonstrated records of continuous poor performance should not warrant the State spending significant time and resources to shut these charters down. Revocation of these charters should occur more quickly to protect students from an inadequate education. Despite the many instances of poor performance and interventions and sanctions among charter schools, TEA cannot act quickly, particularly in circumstances warranting revocation, to address charter schools that have failed to improve over time or through intermediate sanctions. The table, *Academically Unacceptable Charters and Districts for Consecutive Years*, shows that more charter schools have unacceptable academic performance over consecutive years than traditional school districts.

Academically Unacceptable Charters and Districts for Consecutive Years 2010–2011 School Year

Years Academically Unacceptable	Charters	Districts
3 Years	5	1
2 Years	5	2
1 Year	25	47

While the agency has statutory authority to close a charter school and revoke the charter, TEA's actions are subject to protracted litigation, unlike with traditional school districts, because a charter is considered a legal contract or property right. Revocation of a charter under the charter school statute typically takes two to

three years, on top of several years of poor performance, during which time a charter school remains open. While TEA's ability to revoke a charter under the accountability statute can move more quickly, it is not always workable, does not address health, safety, or welfare violations, and does not grant TEA the ability to suspend funding and operations. In one case, TEA has been working to revoke a charter for 12 years. A long revocation process leaves students to be educated at underperforming charter schools.

In one case, TEA has been working to revoke a charter for 12 years.

Beyond the practical challenges of winding down a school's operations, TEA typically faces opposition to revocation on several fronts. Students and their families often have an emotional attachment to their school or fear that closure reflects poorly on their decision to attend the school; teachers and school employees have professional or financial stakes in the operation of their school; and opposition from elected officials can create high political costs for the agency. TEA is unlikely to hear vocal support for school closure or revocation, as parents dissatisfied with the charter have likely already left the school to pursue other education options.

Protracted hearings and litigation can also result in closure of a charter school during the middle of the school year, which can displace teachers, students, and their families. Further, poor-performing charter schools threaten the

reputation of the many high-performing charter schools, and, because of the statutory cap on the number of charters the State may issue, limit opportunities for new charter schools that may perform well.

TEA lacks authority to intervene when a charter fails to address its imminent financial insolvency.

TEA lacks authority to revoke a charter for a school that is imminently insolvent and fails to plan for its students' education. If a charter school opens in the fall and then runs out of funds, it could then be forced to shut down mid-year, with instruction and students' forward academic progress halted; teachers not paid or losing their jobs; teachers, students, and their families displaced to other schools; and student records not completed or transferred to new schools. However, TEA has no statutory authority to prevent such a situation.

In one recent example, TEA suspended an imminently insolvent charter's operations and prevented it from opening for school this fall. However, TEA based its actions on the charter's failure to submit its annual financial report — a material violation of its charter — and not on the charter's inability to show a positive cash flow to continue its operations. In 2012, TEA identified 20 charter schools with circumstances that could lead to insolvency. Of the charters TEA revoked in the last three years, six of the 10 were likely imminently insolvent, in addition to demonstrating other problems that led to revocation.

As currently structured, charter renewal is not an effective oversight tool.

While TEA reviews a charter's performance after five years to determine whether it should be renewed for up to 10 years, the agency's process fails to accomplish the purpose of standard renewal processes. In practice, the process leaves charters pending in renewal for years until TEA can justify either revocation or renewal. In other regulatory agencies, renewal processes exist to ensure a regulated entity continues to meet standards for operation. Renewal processes provide an alternative to the sanctioning process when an entity no longer meets standards for continued operation.

While TEA has statutory authority to deny renewal of a charter, statute combines the basis for all adverse actions, including denying renewal and revocation, under the same provision.¹² The agency has interpreted this statutory grouping to mean that TEA must set the same performance standards and meet the same burden of proof for both actions: denying renewal and revoking the charter. Because TEA cannot always meet this high standard, especially for charters with intermittent poor performance, TEA generally no longer attempts to deny renewal of a charter. As a result, the agency has no process to shut down a poor performing charter short of revocation.

Poor-performing charters threaten the reputation of the many high-performing charters.

TEA has no process to close a poor-performing charter short of revocation.

Non-renewal and revocation should not have the same performance standard; the tools should be used for two separate purposes. Revocation should be used when a charter’s performance is so poor, or a violation is so egregious, that the situation puts students’ education at risk and a charter school should be shut down during its authorized term. Non-renewal should occur when a charter’s performance record is not bad enough to stop operations mid-term, but ongoing deficiencies do not warrant renewal of a charter for another term. Similarly, while the State must prove its case for revocation of a charter, for renewal, the burden is typically on the regulated entity, the charter holder in this case, to prove why its charter should be renewed. Because statute does not distinguish the basis for revocation from denying renewal, this burden is reversed onto the State, instead of the charter holder, to prove why a charter’s authority to operate should not be renewed.

Some charters have been pending in renewal for nine years.

While the process reauthorizes strong performers, it holds weak performers in a perpetual state of pending renewal until the agency can justify the higher standards for either renewal or revocation. For example, if a charter has a few years of poor academic or financial ratings, or has a monitor or conservator in place, TEA may delay renewal of a charter until performance either improves or deteriorates further. As a result, charters may linger in a state of pending renewal for years. The chart, *Outstanding Charter Renewals*, illustrates that some charters have been pending in renewal for up to nine years. Without more flexibility in setting performance standards for renewal, TEA also cannot offer an incentive or benefit to charters exceeding performance standards.

Outstanding Charter Renewals

Years Left Pending	Number of Charters
1	16
2	5
3	1
4	3
5	0
6	3
7	5
8	0
9	4

Without more flexibility, TEA cannot offer an incentive to charters to exceed performance standards.

While a charter can continue to operate while it is waiting for renewal, the uncertainty of the charter’s status can still affect its operations. For example, charter schools report that it is difficult to access loans for new facilities while their charter is left pending in the renewal process.

Certain statutory provisions limit the agency’s ability to scale sanctions to the nature of the violation.

The charter school statute provides too little discretion for certain sanctions, and too much for others, restricting TEA’s flexibility to apply sanctions appropriate to the violation. Criteria for applying sanctions should be clear, objective, and scaled to the nature of the violation. Similar to renewal, as discussed in the previous finding, TEA’s interpretation of its sanction authority in the charter statute also makes the use of modification and probation meaningless. TEA must meet the same burden of proof to modify

or probate a charter as for revocation. As such, TEA lacks the flexibility to use these lesser sanctions for less egregious violations.¹³

Requirements in the charter school statute similarly limit the agency's discretion in applying sanctions for health and safety violations. If TEA finds that a charter fails to protect the health and safety of its students, TEA may suspend its operations. Statute requires that TEA hold a hearing within three days of the suspension, after which TEA must either cease its suspension or seek revocation of the charter.¹⁴ Other intermediate sanctions in the accountability statute would, in most cases, allow the agency to more appropriately address a charter school's deficiencies and still ensure the health and safety of students without seeking revocation of the charter.

Conversely, the charter school statute specifies that adverse action by the Commissioner be based on the best interest of the school's students, any previous violations, and the severity of those violations.¹⁵ The subjective criterion of acting in the best interest of students does not provide either TEA or charter holders clear guidance on a threshold for applying sanctions and could exclude sanctions for some clear statutory violations. For example, if a school performs acceptably academically, but has clear financial management violations, a charter holder could argue that certain sanctions, including closure, are not in the best interests of students, despite the violations. The best interest of a school's students is a valuable principle that should be considered in guiding actions of both the charter and the agency. However, the inclusion of such a subjective criterion in determining appropriate sanctions is not a standard practice of other regulatory entities, as it can lead to inconsistent and unfair application of sanctions.

TEA lacks the flexibility to use less severe sanctions for less egregious violations.

Differences between the agency's rules and its practice create unclear performance expectations for charter schools.

While TEA's rules provide for revocation or denial of renewal for failure to meet certain performance standards, in practice, TEA's policies are more lenient than its rules. The agency does not typically revoke or deny renewal of a charter for failure to meet performance standards in rule. For example, TEA's rules provide for revocation after two consecutive years of unsatisfactory, or unacceptable, academic performance, but TEA's matrix guiding accreditation sanctions, used for both districts and charters, does not provide for revocation until after four years of unacceptable academic performance.¹⁶ The inconsistency between rule and practice results in uncertainty regarding the level of performance charters must maintain for renewal or to avoid sanctions or interventions. TEA may also have difficulty ensuring its decisions, and perception of its decisions, are fair, consistent, and transparent.

Agency practices that are inconsistent with, and more lenient than, agency rules reflect TEA's cautious approach to seeking revocation of a charter. While TEA regularly applies interventions and sanctions to poor performing charters, TEA waits and builds strong cases before pursuing revocation

instead of taking more immediate action to revoke based on serious violations or chronic poor performance. As a result of the agency not taking more immediate action to revoke a charter, a high number of charters remain pending in renewal and with interventions and sanctions over long periods of time.

TEA lacks authority to address inadequate oversight by the governing board of a charter.

Short of revoking the charter, TEA does not have any tools to address inadequate oversight by a charter holder board, especially when it results in performance or operational problems. Charter schools' freedom from certain state restrictions requires strong oversight to ensure charter schools operate consistent with their charters and missions to achieve acceptable performance. Unlike traditional school boards of trustees, which TEA can require to hold new school board elections with use of a board of managers, TEA lacks a similar tool to address appointed charter holder governing boards that fail to remedy operational and accountability concerns for the school.

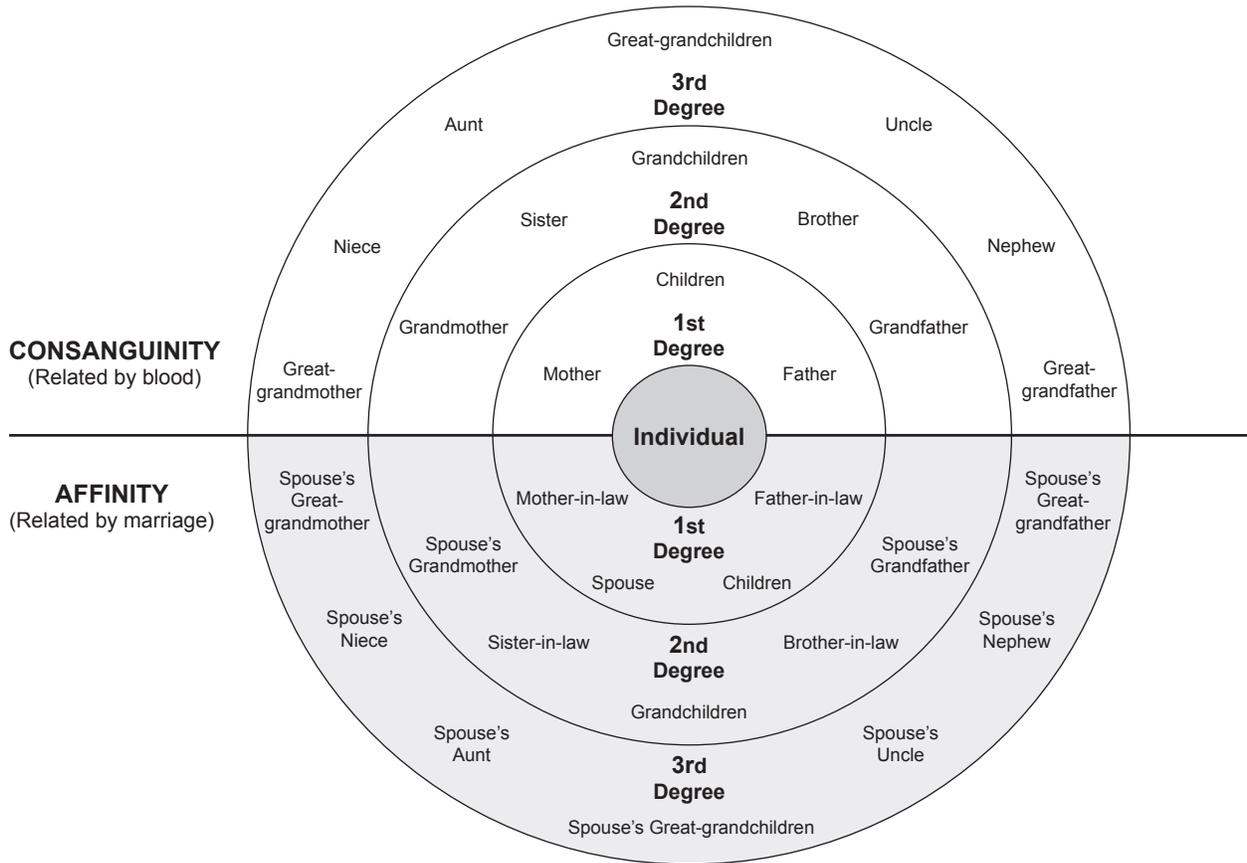
Regular charter board oversight is critical to ensuring a school's accountability.

In several examples, after a TEA-appointed conservator and board of managers addressed a charter school's concerns, TEA had to turn the school's oversight back over to the exact same people who failed to ensure the school met accountability standards in the first place. TEA also regularly encounters situations at charter schools in which the governing boards fail to meet regularly or cannot reach a quorum. Without regular board oversight, even routine activities like approval of the school's budget and annual financial report can negatively affect a charter school's accountability ratings. These situations increase the likelihood of continued operational and performance problems. Without appropriate enforcement tools to strengthen the leadership and oversight capacity of a charter school's governing board, TEA's only remedy is to seek revocation of the charter.

Statutory provisions related to nepotism at charter schools are confusing, and allowance of this practice is an exception among publicly funded entities.

State law prohibits officers or members of a board of the State, or a district, precinct, school district or other political subdivision of the State, from appointing or employing a person directly or indirectly compensated with public funds if the person is closely related within certain degrees of blood kinship or marriage.¹⁷ Statute exempts charter schools from standard restrictions on nepotism as long as the school remains academically acceptable for two of the last three years. When a charter fails to meet the academic standard set in law for nepotism, TEA requires a charter school to change its organizational structure to eliminate direct reporting or supervision of family members within the third degree of consanguinity and second degree of affinity. The chart on the following page, *Consanguinity and Affinity Relationships*, defines these relationships.

Consanguinity and Affinity Relationships



Note: A spouse of an individual listed in the consanguinity portion of the chart is related to the individual to the same degree by affinity.

- Allowance of nepotism is uncommon.** While nepotism does not always lead to problems in an organization, state law prohibits nepotism in governmental or publicly funded entities because of the inherent conflicts of interests the practice can present, detailed further in the textbox, *Potential Effects of Nepotism*. While charter schools are predominantly publicly funded, averaging 94 percent funded with state or federal funds in fiscal year 2011, statute provides charter schools with an exception to laws prohibiting nepotism. Thus, some charters still use family extensively in the school's operations and oversight. One charter school reported eight family members, including a sibling, a daughter, and several nieces and nephews of the same individual employed as staff at the school.

Potential Effects of Nepotism

Nepotism can give the appearance of, or result in, the following.

- Conflicts of interest
- Misuse of office
- Preferential treatment or patronage
- Bad morale or resentment among other employees, including potential discrimination claims
- Employees who are not qualified or lack appropriate training or expertise for their positions
- Undermining of public trust — the public may perceive that actions of the organization are not always in the best interest of the community or students

- **Confusing standards.** Separate from nepotism provisions, board members are required to abstain from voting on contracts or other items if they are related to a person within the third degree of consanguinity or affinity. While this conflict of interest provision applies within the third degree of affinity, nepotism requirements apply within the second degree of affinity if a charter does not meet academic standards for the exception. Differing standards for conflict of interest and nepotism laws can be confusing to both charter schools and the public.
- **Risk to public funds.** Confusion over which standards or exceptions apply in which circumstances can lead to violations of law and create a culture where preferential treatment occurs more frequently. Public funds are most at risk from this confusion, which can lead to contracting or conflict of interest violations. In such cases, the State cannot ensure competitive bidding requirements are met or arms-length transactions ensure efficient use of public funds. Charter schools sometimes pay disproportionately large salaries or have substantial financial contracts with family members. One charter school with just over 450 students pays its superintendent and board president \$214,000; his wife, the personnel director, \$164,000; his brother, the assistant superintendent, \$175,000, and a daughter, a principal, \$60,000. As a comparison, superintendent salaries in similarly sized districts range from \$73,000 to \$99,000.¹⁸
- **Current nepotism provision is hard to enforce.** While intended to target low-performing charters, TEA cannot enforce provisions allowing exceptions to standard nepotism prohibitions. TEA does not have the resources to monitor this practice at every charter school, and even when TEA investigates complaints, it cannot be sure that forced reorganizations to prohibit direct reporting relationships change the actual practices or culture of a charter school. The agency finds that nepotism is present, often when prohibited, in most charter revocation cases. In fact, of the 10 charters revoked in the past three years, only two self-reported nepotism, but TEA found nepotism present in six others. Although TEA has started collecting self-reported data on nepotism, TEA is unaware of the true number of schools with nepotism present.
- **Governing board conflicts of interest.** While statute requires governing board members to abstain from votes in which a conflict of interest is presented, this provision is also not enforceable by TEA. Statute also prohibits family members from making up a quorum on the governing board. Despite these statutory provisions to prevent self-dealing and substantial contracts with family members, TEA finds occurrences of these practices regularly during investigations or through reports from assigned monitors or conservators. For example, one charter school superintendent, who is also the governing board president, contracts with herself for transportation services for more than \$900,000 for only 778 students.

Some charters have substantial contracts with family members or staff.

Allowing family members and relatives to serve on a charter holder board together to direct the operation and oversight of publicly funded charter schools can present difficult situations in which the interests of family members and their own financial interests can be pitted against the best interests of the students. Governing board members have a strong influence over appointments to, and removal from, the board. The prevalence of several family members on a board can make it difficult for the governing board to maintain independence in its decision making for the charter. Strong oversight at the governance level, especially given the greater levels of autonomy, is essential to ensure charter schools achieve acceptable performance and act in the best interest of students.

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.

If a charter meets either of the above-listed criteria, the Commissioner would order closure of all campuses under the charter and revoke the charter. A charter would not be able to appeal the Commissioner's revocation order through either an agency review or contested case hearing at SOAH. However, a charter could contest the current year's rating under existing processes for academic or financial rating appeals.¹⁹

TEA would be required to issue academic and financial accountability ratings by June 15 for those charters in jeopardy of triggering automatic revocation based on academic or financial performance. This date would allow time for a charter subject to automatic revocation to appeal its rating, and to provide as much notice as possible to the charter, students and their families, and teachers, that the school will not open the next school year, while also providing the agency a limited amount of time to collect and evaluate data needed to issue the ratings. TEA should evaluate its current financial and academic appeal processes and make any rule changes necessary to accommodate earlier ratings and appeals for charters in jeopardy of automatic revocation by June 1, 2014. As a result, TEA could automatically revoke a charter based on three consecutive years of poor academic or financial performance after the issuance of ratings in summer 2014.

Mandatory revocation of charters demonstrating continuing poor performance would allow the State to more quickly shut down the poorest performing charters, without years of litigation during which time the school remains open. The recommendation would also ensure students do not continue to attend a school lacking a quality education or with serious financial problems that could affect the school and, ultimately, a student's academic progress. Clear statutory authority to revoke a charter after chronic poor performance will speed up the charter revocation process by removing agency discretion and local politics from the decision, as well as clearly demonstrate the Legislature's expectation for high performance.

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. This recommendation would require the agency to define, in rule, conditions under which a charter would be considered imminently insolvent. TEA would be required to adopt these rules by March 1, 2014.

A charter would be entitled to challenge the suspension of its operations through a hearing at TEA, similar to the process the agency currently provides for health, safety, and welfare issues. TEA would be required to hold a hearing at the agency within 10 days of its suspension order. After the suspension hearing, if the Commissioner still determines the charter is imminently insolvent and cannot make it through the next school year, the Commissioner would order revocation of the charter. The Commissioner's order could be appealed to SOAH as a contested case hearing in the same manner as an appeal of any other order of the Commissioner under Chapter 12, except that the charter's operations would remain suspended pending the outcome of the appeal. Consistent with current processes, a charter could not appeal the Commissioner's final decision following the SOAH hearing.

This recommendation would allow the Commissioner to prevent a charter from opening for the next school year when the Commissioner believes the charter is at high risk of shutting down in the middle of the school year or term and displacing students, as well as placing state funds at risk. As is TEA's current practice, if TEA were to discover a charter's imminent insolvency in the middle of a school year, TEA would work with the charter to help it complete the school year or term, or help the charter deal with actual insolvency as it occurs.

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. A longer, eight-year authorization term for initial and renewal terms would provide consistency in term lengths, and implementation of an automatic revocation process in Recommendation 7.1 should provide a mechanism for TEA to address the poorest performing charters that consistently fail accountability requirements. Charter holders would apply for renewal in advance of the eight-year expiration, under terms and timelines adopted by TEA in rule. TEA would be required to issue a decision on renewal of a charter before the expiration of the charter.

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. TEA would be required to adopt clear standards for eligibility for this streamlined renewal in rule. 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. TEA would have authority to ask for any additional information it deems necessary to determine whether a charter should be renewed. 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.

If TEA does not renew a charter, the charter holder would be entitled to a contested case hearing at SOAH, under the framework outlined in the charter school statute. A charter school may stay open until the Commissioner makes a final decision to close and not renew the charter. If litigation results in final decision in the middle of a school year, existing statutory provisions allowing a charter that is not renewed to complete the school year would continue to apply. TEA would be required to adopt rules by September 1, 2014.

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

This recommendation would separate authority to deny renewal, revoke, probate, or modify a charter, and require the agency to establish separate performance standards or violations warranting each sanction. This recommendation would also change the bases for taking adverse action against a charter under the charter school statute to remove the subjective requirement to take action in the best interest of the school's students, and replace it with the following objective criteria:

- the charter's history of violations or performance on accountability systems;
- the severity of the charter's previous violations or poor performance on accountability systems;
- efforts by the charter to correct the violations or poor performance on accountability systems; and
- actions the Commissioner deems necessary to deter future violations or poor performance.

Statute would maintain the best interest of the school's students as a general principle, but it would no longer be a criterion for determining sanctions.

This recommendation would also grant TEA additional flexibility in applying sanctions for health and safety violations. After the agency holds a hearing, it would no longer be required to either cease its suspension or revoke the charter. Instead, TEA could apply any of the sanctions listed in the accountability statute, such as requiring professional services or appointment of a monitor or conservator.

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. Before making appointments to the charter holder board, TEA would be required to gather local input from community members and parents. The Commissioner should consider appropriate expertise and credentials for appointment to the board, such as financial expertise, whether the person lives in the charter district, or if the person is an educator. This recommendation would allow TEA to re-appoint current members of the charter holder board.

If the charter holder board also oversees other enterprises of the nonprofit, this recommendation would authorize TEA to require the charter holder to create a new, single-purpose 501(c)(3) organization to oversee the charter school. TEA would appoint the members of that board and transfer the charter to that separate nonprofit. The charter holder would also have the option of surrendering the charter in

lieu of reconstitution. None of the authority that would be granted to TEA in this recommendation would supersede the Attorney General's authority over charitable organizations. Reconstituting a charter holder's board to be composed of qualified and interested board members would provide TEA with a tool to strengthen oversight of a charter, in lieu of seeking the charter's revocation. TEA would be required to adopt rules by September 1, 2014.

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 with acceptable academic performance for two of the last three years. As a publicly funded entity, all restrictions, requirements, and prohibitions of Chapter 573 of the Government Code, such as 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 change the provision related to conflicts of interest for members of the charter holder board to the second degree of affinity, from the third degree of affinity, to be consistent with the nepotism requirements and reduce confusion on the part of charter schools.

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

Under this approach, 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. A charter holder would have two years from the effective date of this recommendation to replace any persons serving on a charter holder board to comply with this recommendation. This recommendation would ensure the charter holder board is free from situations in which the interests of family members on the board may conflict with the best interest of students.

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 would direct the agency to revise its policies or practices for applying enforcement actions to be consistent with requirements or performance standards in rule for non-renewal, revocation, or other interventions and sanctions. TEA should ensure its rules for taking enforcement action set clear performance expectations and that the agency acts in accordance with those rules. TEA should use its full range of remedies in a timely manner to ensure charter schools meet accountability and performance expectations and provide a quality education for students. TEA would be required to adopt rules by September 1, 2014.

Fiscal Implication

These recommendations should not result in additional costs to the State. While TEA would need to devote staff time to develop the changes to rules required by these recommendations, no new staff would be required.

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- 1 Chapter 12, Texas Education Code.
 - 2 College and university charters are also regulated by TEA, and subject to most of the same rules as open-enrollment charters. However, college and university charters are granted under a different subchapter, and do not count against the statutory cap on open-enrollment charters.
 - 3 Section 12.101(b), Texas Education Code.
 - 4 Ibid.
 - 5 Section 12.115, Texas Education Code.
 - 6 Subchapter E, Chapter 39, Texas Education Code.
 - 7 Section 39.152, Texas Education Code; 19 T.A.C. Sections 97.1037 and 157.1151.
 - 8 Section 39.104(c), Texas Education Code.
 - 9 In the last 15 years, TEA revoked or denied renewal of 27 charters, and charter holders surrendered 21 charters in lieu of enforcement action.
 - 10 Following the 2010–2011 school year, TEA revoked one of these four charters and another charter was surrendered in lieu of revocation.
 - 11 Texas Education Agency, *Snapshot 2011 Summary Tables*, accessed August 31, 2012, <http://ritter.tea.state.tx.us/perfreport/snapshot/2011/state.html>.
 - 12 Section 12.115, Texas Education Code.
 - 13 Ibid.
 - 14 Section 12.1162, Texas Education Code.
 - 15 Section 12.115(b), Texas Education Code.
 - 16 19 T.A.C. Section 100.1022(b)(1); Texas Education Agency, *Accreditation Status Matrix*, accessed October 2, 2012, http://www.tea.state.tx.us/index2.aspx?id=2147494532&menu_id=2147483702.
 - 17 Chapter 573, Texas Government Code.
 - 18 The Texas Tribune, *Interactive: How Much Does Your Superintendent Make?*, accessed September 17, 2012, <http://www.texastribune.org/library/data/texas-superintendent-salaries-2011/>.
 - 19 Section 39.151, Texas Education Code.

RESPONSES TO ISSUE 7

Recommendation 7.1

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

Agency Response to 7.1

The agency agrees with this recommendation. The agency agrees that the proposed statutory framework establishes a clear expectation for TEA intervention practices. However, the agency notes that the expedited timeline for completion of the accountability appeal process presents a logistical challenge and may require the agency to implement a separate appeal process for those charter schools at risk of potential automatic revocation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.1

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.1

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Modifications

1. Do not implement this recommendation until such time as an alternative accountability system is created for drop-out prevention and drop-out recovery charter schools. (David Dunn, Executive Director – Texas Charter Schools Association, Austin)

Staff Comment: TEA's accountability system currently includes an alternative accountability system with lower academic achievement standards for any campus of either a traditional district or charter with at least 75 percent of its student population at-risk of dropping out of school.

2. Require TEA to consider the current status and recent progress of a charter school's academic and financial state before automatically shutting down a charter school, rather than base closures on an evaluation system that is so far backward looking. (Parc Smith, CEO – American YouthWorks, Austin)

Staff Comment: Academic accountability ratings are based on current year assessments. Financial accountability ratings are based on prior year data to allow time for an independent audit of a district or charter's financial statements.

Recommendation 7.2

Authorize the Commissioner to suspend operations and pursue revocation of an imminently insolvent charter to ensure it does not open without sufficient funding to complete the term.

Agency Response to 7.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.2

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.2

Parc Smith, CEO – American YouthWorks, Austin

Recommendation 7.3

Set eight-year terms for charters and restructure the renewal process to ensure failure to meet basic standards for accountability can lead to nonrenewal.

Agency Response to 7.3

The agency agrees with this recommendation. The agency agrees that the charter renewal process, as it currently exists, does not provide the most effective framework for oversight of charter schools. The agency concurs that restructuring of the renewal process will require statutory changes to establish both a new renewal timeline and, as referenced in Recommendation 7.4, a statutorily-allowed distinction between the bases for nonrenewal and revocation. Further, while

the agency acknowledges the prudence of issuing a decision on charter renewal prior to the expiration of the charter, it notes that the number of charters awarded has varied significantly across generations.

Agency Modification

3. Allow TEA flexibility in the transition to the new charter renewal system to spread out and, to the extent possible, equalize the annual renewal workload.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.3

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.3

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Modification

4. Eliminate the charter renewal process altogether. The charter contract should be an ongoing concern unless and until the charter school receives a sanction from TEA.
(David Dunn, Executive Director – Texas Charter Schools Association, Austin)

Recommendation 7.4

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

Agency Response to 7.4

The agency agrees with this recommendation, but provides a modification. The agency agrees that statutory distinctions should be established between the bases for adverse actions against charter schools and concurs that the current standard for taking action in the best interest of the charter school's students is subjective. However, the agency suggests certain modifications to the objective criteria proposed in this recommendation to address circumstances in which the sheer number, as opposed to severity, of violations should be considered and to account for actual correction, as opposed to efforts to correct, as an objective consideration. The agency concurs that additional flexibility is appropriate in applying sanctions for charter health and safety violations.

Agency Modification

5. In taking adverse action against a charter school, provide for the objective criteria to include the number, in addition to the severity, of identified violations and performance concerns. Also provide for the objective criteria to include actual correction of, in addition to efforts to correct, identified violations and performance concerns.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.4

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.4

None received.

Recommendation 7.5

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

Agency Response to 7.5

The agency agrees with the recommendation. Serious performance and compliance problems in charter schools often stem from lack of oversight by the charter holder governing board. As a result, it can be difficult to produce meaningful and lasting changes using the current sanctions and interventions available. Providing the agency with the authority to reconstitute a charter holder governing board could address some of these concerns and preclude the need for more extensive sanctions. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.5

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.5

Parc Smith, CEO – American YouthWorks, Austin

Recommendation 7.6

Apply standard prohibitions on nepotism to all charter schools.

Agency Response to 7.6

The agency agrees with this recommendation. The agency agrees that it is appropriate to hold charter schools accountable for the standard nepotism restrictions applied to traditional school districts and other governmental and publicly funded entities. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.6

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.6

None received.

Recommendation 7.7

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

Agency Response to 7.7

The agency agrees with this recommendation. The agency acknowledges that this recommendation establishes a higher standard that would address both actual and certain perceived charter school governance concerns. However, the agency requests that the Commission additionally consider and/or clarify its intent regarding the statutory conflict of interest exemption at TEC §12.1054(a)(2), which currently allows some charter schools to operate with employees as board members.

Agency Modification

6. Prohibit charter school employees from serving on a charter holder board.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.7

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.7

None received.

Recommendation 7.8

TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor performing charters.

Agency Response to 7.8

The agency agrees with this recommendation. The agency acknowledges that the criteria established in rule for adverse charter action do not cleanly align to the adopted accreditation status framework, which is often more lenient. The agency concurs that this could lead to a weaker enforcement posture and the perception of inconsistency in charter enforcement actions. While noting that it will remain necessary for the Commissioner to retain appropriate discretion to address unique and unforeseen circumstances, the agency agrees that clear performance expectations accompanied by more immediate agency action will improve the enforcement framework for charter schools. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 7.8

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

David Dunn, Executive Director – Texas Charter Schools Association, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Karen Slay, President – Texas PTA, Austin

Against 7.8

None received.

COMMISSION DECISION ON ISSUE 7

(JANUARY 2013)

Adopted Recommendations 7.1, 7.2, 7.3 with Modification 3, 7.4 with Modification 5, and 7.5 through 7.8.

FINAL RESULTS ON ISSUE 7

(JULY 2013)

Legislative Action

Recommendation 7.1 — The Legislature adopted through separate legislation, Senate Bill 2, a provision requiring the Commissioner to revoke a charter for failure to meet academic or financial accountability standards for three consecutive years. Although S.B. 2 contains the same basic provision requiring mandatory revocation as recommended by the Sunset Commission, the bill establishes different administrative and appellate processes for revoking a charter.

Recommendation 7.2 — The Legislature adopted through S.B. 2 a provision requiring the Commissioner to revoke the charter or reconstitute the governing board of a charter that is imminently insolvent, as determined by the Commissioner. While S.B. 2 addresses the issue of revoking a charter for imminent insolvency, the bill does not provide the agency authority to suspend the operations of a charter before a new school year or term begins, as provided in the Sunset recommendation.

Recommendation 7.3 with Modification 3 — The Legislature adopted through S.B. 2 a provision establishing a five-year initial term and 10-year subsequent renewal terms for charters. S.B. 2 also requires the Commissioner to develop, in rule, a procedure for renewal, denial of renewal, or expiration of a charter at the end of the charter's term. The bill specifies criteria by which the Commissioner must determine whether to grant expedited renewal or discretionary consideration of renewal, or to deny renewal, or to allow a charter to expire. Although S.B. 2 addresses the issue of charter renewal, the bill establishes detailed processes for renewal in statute that the Sunset Commission recommended be adopted in rule.

Recommendation 7.4 with Modification 5 — The Legislature did not adopt this recommendation to provide for objective criteria and flexibility in applying sanctions to charter schools.

Recommendation 7.5 — The Legislature adopted through S.B. 2 a provision requiring the Commissioner to reconstitute the governing body of a charter under certain circumstances. S.B. 2 provides considerations for the Commissioner in appointing members to the charter’s reconstituted governing board. S.B. 2 also requires a charter holder that oversees enterprises other than the charter school to set up a single-purpose 501(c)(3) organization to oversee the charter and requires the Commissioner to transfer the charter to that entity.

Recommendation 7.6 — The Legislature adopted through S.B. 2 the provision to remove the exception to nepotism requirements for charters with acceptable academic performance. S.B. 2 adds a grandfather provision to allow existing employees to continue working at charter schools that would otherwise fall under the nepotism prohibition. The Legislature did not adopt the recommendation to change charter school governing board members’ conflict of interest requirements from the third degree of affinity to the second degree of affinity.

Recommendation 7.7 — The Legislature did not adopt this recommendation to prohibit family members from serving on a charter holder board together.

Management Action

Recommendation 7.8 — TEA should revise its practices for applying interventions and sanctions to clarify expectations and ensure appropriate and timely action against poor performing charters.

ISSUE 8

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

Background

Texas sets high standards for student achievement, and qualified teachers are key to ensuring student success. To meet these educational goals, the State certifies educators and regulates the programs that prepare them for the classroom. TEA, with guidance from the State Board for Educator Certification (the Board), oversees more than 1.2 million certified educators, including teachers, educational aides, principals, superintendents, school counselors, school librarians, educational diagnosticians, and reading specialists. Educators work in close daily contact with the nearly five million school children in Texas, so the State enforces strict professional standards of conduct.

How Texas ensures the quality of educators in its public schools has gone through several changes over the years. Initially, the responsibility for overseeing the preparation, certification, and oversight of teachers resided with TEA. In 1995, the Legislature created a separate state agency to perform these functions — the State Board for Educator Certification. With a limited budget and staff, the agency struggled to perform its basic duties.¹ Teachers complained about the backlogs in processing credentials and investigating educator misconduct. In response, the Legislature, in 2005, abolished the independent agency and transferred its functions back to TEA — while maintaining the agency’s separate Governor-appointed board.²

The structure of a separate policy board with TEA staff providing the administrative functions and services remains today. The Board sets policy, adopts rules, and hears certain cases of educator misconduct. The textbox, *Composition of the State Board for Educator Certification*, details the structure of the Board.³

Composition of the State Board for Educator Certification

Eleven Governor-appointed voting members.

- Four classroom teachers
- Four public members
- Two school or district administrators
- One school counselor

Three nonvoting members.

- A dean of a college of education appointed by the Governor.
- A staff member of TEA appointed by the Commissioner of Education.
- A staff member of the Higher Education Coordinating Board appointed by the Commissioner of Higher Education.

In fiscal year 2012, TEA staff performed all the day-to-day operations of overseeing educator quality with a budget of about \$23.8 million and a staff of 59 full-time employees. The staff’s key duties include the following.

- **Certification.** TEA staff certifies individuals who successfully complete educator preparation programs and related examinations to ensure educators are knowledgeable, competent, and meet state-level standards. In fiscal year 2012, TEA issued more than 25,000 new certificates to educators.
- **Enforcement.** TEA staff helps to ensure that classrooms are safe environments by screening certification applicants and investigating complaints of educator misconduct. Although certified educators are employees of school districts and charter schools and subject to disciplinary action by

their employers, the State has an interest in documenting an educator's history of misconduct and making that information public to prevent unfit educators from gaining employment in another school. In fiscal year 2012, TEA investigated 847 certified educators and issued 579 sanctions, including 93 revocations.

- **Accreditation.** TEA staff accredits and monitors educator preparation programs (EPPs) to ensure educators are well trained to teach and manage their classrooms. In fiscal year 2012, TEA regulated 241 EPPs — located in 151 colleges, universities, education service centers, and privately-run alternative certification programs.

Findings

Maintaining a separate policy-setting board over educator certification functions within TEA leads to confusion and a lack of clear accountability.

The ongoing role of the Board involves setting policy, adopting rules, and deciding a limited number of disciplinary cases. As an entity within TEA, the Board no longer supervises staff or develops a budget request for the regulation of educators.⁴ Instead, TEA employs the staff that administers these duties and the Legislature appropriates the funding for educator certification through TEA's budget, based on a request from the agency, not the Board. This unusual organizational structure can present some very real challenges.

- **Conflicting governance.** This structure can lead to confusion as staff must carry out regulatory activities according to policies and rules set by the Board, but are employed by and accountable to the Commissioner of Education. This organizational structure results in a disconnect between policymaking and program administration. As a major function of the agency, TEA incorporates the activities and costs of educator certification and EPP regulation into its planning and budgeting efforts. Further, the regulation has realized many benefits from being part of TEA, including support for functions such as accounting, legal, and information technology. However, still having the independent Board directing staff activities through policymaking can lead to inefficiencies and limit the Commissioner's ability to control the workload of his own staff. If problems arise, who is ultimately responsible for ensuring that the certification and oversight of teachers is done properly — TEA or the Board?
- **Funding disconnects.** The current structure can lead to disconnects between the Board and the impact of its decisions on the work of the staff. For example, by law, the Board continues to set fees for educator certification and EPP monitoring.⁵ These fees are set in rule to ensure flexibility to adjust them as needed to cover the costs of regulation. However, despite declining revenues, the Board has not adjusted its certification fees in many years. In addition, as described further in Issue 9, the Board set a new fee for educator preparation programs in 2010, but

Having an independent board directing TEA staff can limit the Commissioner's control of his own staff.

fell significantly short of covering the costs involved.⁶ Thus, the Board controls fees and the overall level of revenue generated for this regulation, but is not directly involved in budgeting for these costs.

- **Overlapping duties.** No clear, comprehensive leadership exists on issues related to educator quality. While the Board sets the broad policy for educator certification, the Commissioner also has numerous duties that impact educators working in the public school system in Texas. The Commissioner has specific statutory authority to establish statewide standards to certify that school districts and charter schools are preparing, training, and recruiting highly qualified teachers to meet the requirements of the federal No Child Left Behind Act.⁷ Statute also directs the Commissioner to adopt rules and oversee the initiatives to evaluate the performance of educators, including the statewide teacher appraisal system — the Professional Development and Appraisal System — and the new principal appraisal system. By law, the Board is not involved in any step of the appraisal system development process, even though it sets statewide standards for educators.⁸
- **Outdated statute.** The State Board for Educator Certification’s enabling statute continues to reflect the time when it was an independent agency. The law provides for the Board to supervise the executive director’s performance, approve an operating budget for the Board and make a request for appropriations, and develop and implement policies that clearly define the respective responsibilities of the Board and its staff.⁹ As previously described, the Board no longer has its own staff or budget. Instead, TEA and the Commissioner perform most of these functions as part of their administration of the regulation.

With TEA staff performing the key aspects of the regulation, the Board’s workload is limited and could easily be handled by the Commissioner of Education.

Having two Governor-appointed entities, the Board and the Commissioner of Education, responsible for educator certification is unnecessary. The Board fulfills its responsibilities by meeting four times a year, for an average of three hours per meeting — relying on staff to prepare fully developed information on rules, stakeholder input, and sanctions for final Board action. Sunset staff examined these duties to determine the ability of the Commissioner of Education to perform them, without the need for a separate educator certification board.

- **Rulemaking.** The Board relies on TEA’s stakeholder process for the development of rules. TEA staff facilitates many stakeholder meetings with content experts and other professionals working in the field to help develop rules for the Board’s approval. While the Board appoints a 23-member Educator Certification and Standards Advisory Committee to provide input on educator standards, the committee reports to TEA staff and not the Board.¹⁰ The advisory committee members often meet as

The Commissioner oversees many key components of educator oversight, including the appraisal system.

The Board completes its work in about 12 hours each year.

part of larger stakeholder groups convened by TEA staff when developing rules. TEA staff listens to the stakeholders' ideas and thoughts about new rules and rule amendments, writes proposals incorporating the input, and then reports their recommendations to the Board for approval.

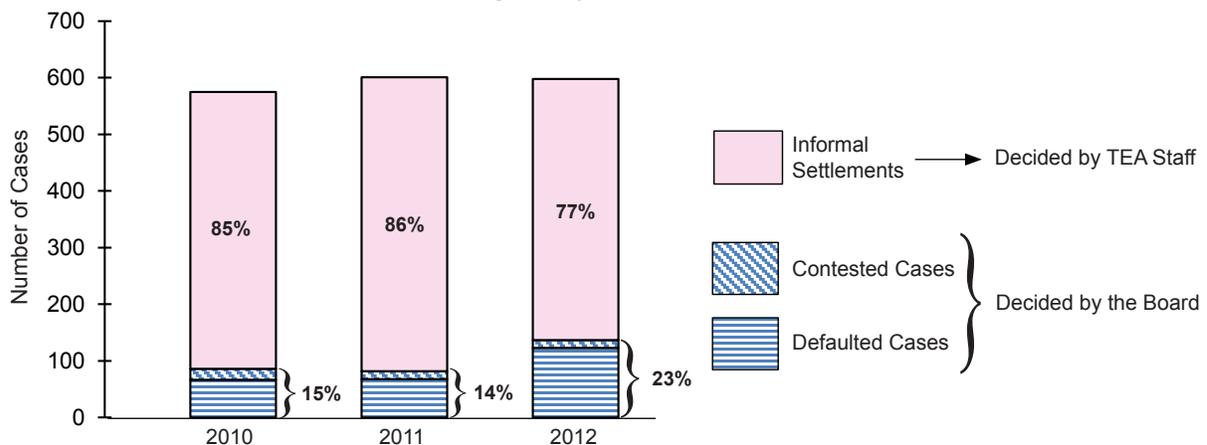
Since 2005, the Board has provided input but has not asked staff to make significant changes to the content of a new or amended rule. Given the Commissioner of Education's extensive rulemaking experience and the large role TEA staff plays, the Commissioner could easily take over the final approval of rules related to educator certification and educator preparation programs.

Rules generally do not require approval by two separate boards.

Statute also requires the State Board for Educator Certification to submit each proposed rule to the State Board of Education (SBOE) for review. The law authorizes SBOE to reject, but not modify, a proposed rule.¹¹ In the last three years, the State Board for Educator Certification proposed 19 rules and SBOE did not reject any of them. In contrast, statute does not provide for SBOE to review rules adopted by the Commissioner of Education. This additional level of review of rules is not necessary as the agency regularly solicits stakeholder input in the rule development process and having more than one policymaker involved in rulemaking is inefficient. Rulemaking processes do not generally provide the public and interest groups with the opportunity to oppose or comment on proposed rules before two separate decision-making boards.

- Sanctioning.** The Board's role in sanctioning educators also relies significantly upon staff, with only 15 to 23 percent of cases requiring a direct decision by Board members. The Board has designated two TEA staff members to issue sanctions against certified educators without Board approval. TEA staff can settle and decide sanctions for educator assessment cheating, contract abandonment cases, and all other misconduct cases during the settlement process. Over the last three years, the majority of sanctions have been determined by TEA staff, as shown in the chart, *Educator Disciplinary Cases*.

Educator Disciplinary Cases, FYs 2010–2012



Sanctions decided directly by the Board involve either contested or defaulted cases. For example, in fiscal year 2012, the Board decided 14 contested cases that first went through the formal hearing process at the State Office of Administrative Hearing (SOAH). In these cases, the Board considers both the administrative law judge's proposal for decision and staff's recommendation for sanction. The Board also approved another 123 sanctions in defaulted cases in which the educator failed to respond to the agency's notice about the investigation or disciplinary case. The Board usually has limited discussion of defaulted cases and agrees with the staff's recommended sanction.

Again, given the extensive role of the staff and the limited number of cases requiring the direct involvement of a final decision maker, the Commissioner of Education could clearly handle these duties. In other agencies headed by single commissioners, including the Texas Department of Insurance and Texas Department of Agriculture, the commissioners discipline license holders. During this process, the agency litigates contested cases at SOAH, then the Commissioner considers the judge's proposal and staff's recommendation when making sanctioning decisions. Licensees can file a motion with the Commissioner to have their case reheard at SOAH if they disagree with the decision.¹²

- **Accreditation of educator preparation programs.** The Board's responsibilities also include approving new EPPs and new certification fields at existing EPPs.¹³ In fiscal year 2012, the Board approved three new certification fields at existing university EPPs, but did not approve any new alternative certification programs. TEA staff screens EPP applications and assesses whether a program has met all the requirements for approval. Staff presents the Board with a recommendation to approve or not approve a program. The Board rarely discusses EPP approvals, and with the ongoing involvement of staff, the Commissioner could easily handle this function without the need for a separate board.

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, with ample stakeholder input in the development of rules, as addressed further in Issue 1. 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. This recommendation would fully integrate the Board's functions into TEA.

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

This recommendation would amend statute to remove the requirement for the State Board for Educator Certification to submit proposed rules to SBOE and the authority for SBOE to reject those rules. Having two Governor-appointed decision makers involved in rule adoption is time-consuming, unnecessary, and quite unusual in administrative rule development. Also, since TEA staff collect a significant amount of stakeholder input in the development of rules, the SBOE review process does not add to the public's access to the process.

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 of 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. The committee could report directly to the Commissioner on a regular basis. The committee should select a presiding officer from among its members. The Commissioner should establish the committee in compliance with Government Code provisions regarding advisory committees.¹⁴ Under this recommendation, the existing Educator Certification and Standards Advisory Committee would be abolished, as the new committee would provide a formal mechanism for stakeholder input.

Fiscal Implication

While dollar savings are not the purpose of this recommendation, abolishing the Board would result in a small savings of about \$11,000, based on eliminating the travel costs of the 11 voting Board members. The new advisory committee members would not be reimbursed for their service, unless the Legislature specifically grants reimbursement through the General Appropriations Act.

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¹ Associated Press, "Two education agencies to become one next month" *Houston Chronicle*, August 12, 2005, <http://www.lrl.state.tx.us/scanned/clips/2005/08/05081210.pdf>.

² Section 21.035, Texas Education Code.

³ Section 21.033, Texas Education Code.

⁴ Section 21.040, Texas Education Code.

⁵ Sections 21.041(c) and (d), Texas Education Code.

⁶ 19 T.A.C. Section 229.9.

⁷ Section 21.005, Texas Education Code.

⁸ Sections 21.351, 21.354, and 21.3541, Texas Education Code.

⁹ Section 21.040, Texas Education Code.

¹⁰ Sections 21.040(3) and (4), Texas Education Code.

¹¹ Section 21.042, Texas Education Code.

¹² Section 2001.146, Texas Government Code.

¹³ Section 21.045, Texas Education Code.

¹⁴ Chapter 2110, Texas Government Code.

RESPONSES TO ISSUE 8

Recommendation 8.1

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

Agency Response to 8.1

The agency takes no position on this recommendation. It is not appropriate for TEA to take such a position because the State Board for Educator Certification (“SBEC” or “the Board”) is a separate governmental entity that is not a part of TEA and that TEA does not supervise or control. The relationship between TEA and SBEC is solely based on the statutory requirement that TEA provide the administrative services and functions of the Board and the MOA executed to implement that requirement. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Board Response to 8.1

The State Board for Educator Certification disagrees with this recommendation. Teachers should be treated like other professionals with their own licensing boards. It is counter-productive to take away the right for teachers and other educators to play a strong role in setting standards about entry into and preparation for their own profession, as well as once in the profession. The Board’s unique composition has extensive experience to determine whether or not an educator is worthy to instruct the children of this state. (Bonny Cain, Ed.D., Chair – State Board for Educator Certification; Brad W. Allard, Member – State Board for Educator Certification; Grant W. Simpson, Ph.D., Member – State Board for Educator Certification)

For 8.1

Diann Huber, Ed.D., CEO — iteachTEXAS, Denton

Zach Rozell, Vice President — iteachTEXAS, Denton

Against 8.1

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

John Grey, Government Relations Specialist – Texas State Teachers Association, Austin

Jackie Lain, Associate Executive Director of Governmental Relations – Texas Association of School Boards, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Modifications

1. If the Legislature agrees to dissolve the State Board for Educator Certification, transfer educator certification duties to the State Board of Education. (Barbara Cargill, Chair – State Board of Education, The Woodlands)
2. Abolish the State Board for Educator Certification and give its responsibilities to the State Board of Education. (Peggy Venable – Americans for Prosperity-Texas, Austin)
3. Maintain the State Board for Educator Certification but with a majority of the Board’s voting members being public educators elected by the profession. (Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin)
4. Maintain the State Board for Educator Certification as a governing board for rulemaking, but transfer educator discipline and educator preparation program accreditation to the Commissioner of Education. (Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin)
5. Create an appeals committee to hear appeals of educator disciplinary cases and provide due process, but integrate the educator certification rulemaking process into TEA. (Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin)
6. Strengthen the State Board for Educator Certification by directing the Board to conduct retreats and agenda reviews, oversee TEA’s educator certification staff, and thoroughly review educator discipline cases, as well as by allowing TEA’s general counsel to provide counsel to the Board. (Laurie Bricker, M.Ed., Member – State Board for Educator Certification)

Staff Comment: The Board already has authority to conduct retreats and agenda reviews and to thoroughly review educator discipline cases. The Board currently receives legal counsel from the Attorney General’s Office.

Recommendation 8.2

Remove the State Board of Education’s authority to reject proposed educator certification and educator preparation rules.

Agency Response to 8.2

The agency agrees with this recommendation. The SBEC rule process involves multiple opportunities for input from the public, stakeholders, and the Commissioner of Education, and TEA agrees that further review by the State Board of Education is time-consuming and redundant. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Board Response to 8.2

The State Board for Educator Certification has no objection to maintaining the current rule-making structure with oversight from the State Board of Education. Having oversight of an elected board of an appointed board’s rules lends legitimacy and public buy-in to the process of how the profession is regulated. (Bonny Cain, Ed.D., Chair – State Board for Educator Certification)

For 8.2

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Zach Rozell, Vice President – iteachTEXAS, Denton

Against 8.2

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

John Grey, Government Relations Specialist – Texas State Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Peggy Venable – Americans for Prosperity-Texas, Austin

Recommendation 8.3

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

Agency Response to 8.3

The agency takes no position on this recommendation since it is related to the recommendation to abolish the State Board for Educator Certification. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Board Response to 8.3

The State Board for Educator Certification states that an advisory committee is not a sufficient substitute for a separate board of practitioners who actually have a hand in regulating their own profession. The recommended process is not a substitute for giving practitioners real ownership of and investment in policies related to their profession via a policy-setting board. (Bonny Cain, Ed.D., Chair – State Board for Educator Certification)

For 8.3

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Zach Rozell, Vice President – iteachTEXAS, Denton

Against 8.3

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

John Grey, Government Relations Specialist – Texas State Teachers Association, Austin
Peggy Venable – Americans for Prosperity-Texas, Austin

COMMISSION DECISION ON ISSUE 8 (JANUARY 2013)

Adopted Recommendations 8.1 through 8.3.

FINAL RESULTS ON ISSUE 8 (JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory recommendations.

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

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

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

ISSUE 9

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

Background

The State Board for Educator Certification (the Board) sets the requirements for educator certification and standards of conduct of public school teachers and administrators. TEA carries out the administrative functions of this regulation by certifying educators, reviewing criminal histories of school employees, and investigating allegations of educator abuse and misconduct. By fiscal year 2012, TEA had certified 1.2 million educators in the state. The table, *Educator Certificates*, details the number and types of certificates and the initial and renewal fees for each certificate.

Educator Certificates – FY 2012

Type of Certification*	Number of Certificates	Initial Fee	Five-Year Renewal Fee ¹
Standard Teaching	507,800	\$75	\$20
Standard Educational Aide	68,461	\$30	\$10
One-Year	5,451	\$50	Not Renewable
Probationary	11,459	\$50	\$20
Principal	33,899	\$75	\$20
Superintendent	15,900	\$75	\$20
Counselor	38,445	\$75	\$20
Librarian and Learning Resources	14,667	\$75	\$20
Other Student Services**	14,062	\$75	\$20
Provisional Teaching	1,221,208	No Longer Issued	N/A
Mid-Management Administrator	33,388	No Longer Issued	N/A
Professional Teacher	93,022	No Longer Issued	N/A
Total	2,057,834		

* Individual educators may hold several types of certifications.

** This category includes school psychologists, associate school psychologists, educational diagnosticians, and school nurses.

Sunset Commission staff has observed and documented common licensing practices during more than 30 years of experience and compiled them into a set of licensing and regulatory standards. The findings below compare these licensing standards with the educator certification statute and rules in an effort to make them more consistent with common licensing practices.

Findings

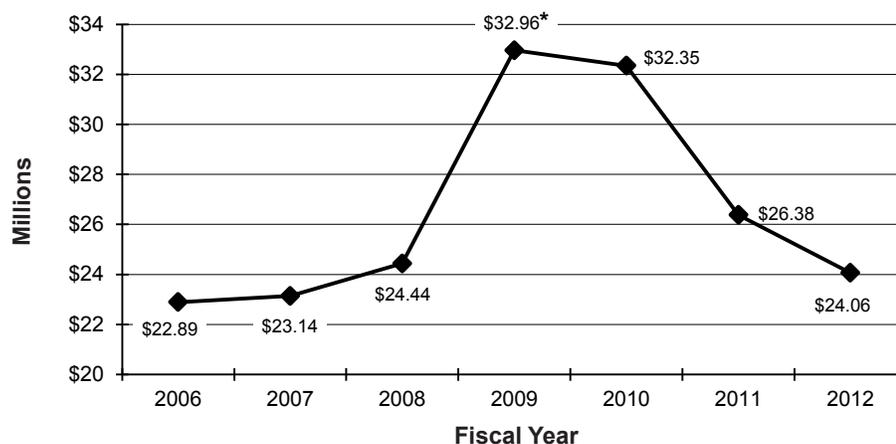
Educator certification fees do not adequately cover the cost of regulation and are not equitable across fee payers.

Without proper funding, regulatory agencies cannot perform their public protection responsibilities. The ability to take enforcement action is especially important to ensure that agencies properly deal with violations of state law and agency rules to encourage compliance with desired standards of conduct and operations. An agency's fee structure should also be equitable across all types of regulated parties.

The Board has not considered a change in fee amounts in the past eight years.

Statute requires the Board to set fees in rule that are adequate to cover the cost of regulating both certified educators and educator preparation programs (EPPs).² During the last three years, the amount of revenue generated from educator certification and EPP fees has declined by 27 percent, as shown in the graph, *Educator and EPP Fee Revenue*. As a result of declining revenue and budget cuts, TEA reduced expenditures associated with regulating educators and EPPs, and requested an additional \$2.1 million for fiscal years 2014 and 2015 to fix critical problems with the agency's educator certification information system.³ To cover the cost of these technology improvements, TEA will need to generate additional revenue from fees. However, the Board has not considered a change in certification or EPP fee amounts in the past eight years, despite declining revenue and significant funding needs.

**Educator and EPP Fee Revenue
FYs 2006–2012**

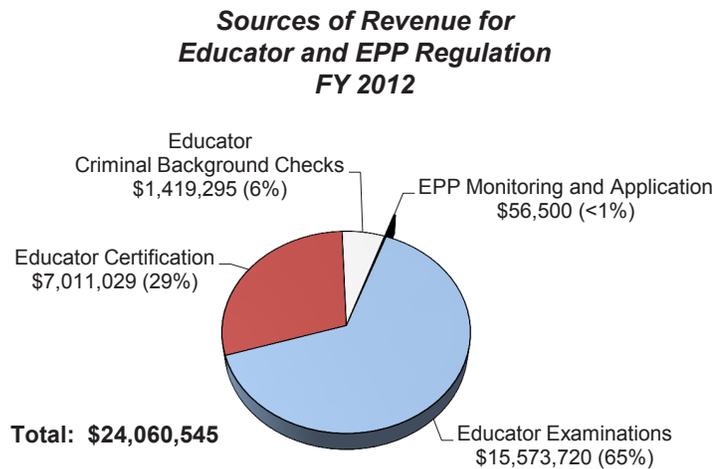


* In fiscal year 2008, TEA, not the Board, increased the exam fee from \$82 to \$120, and the increase in revenues in fiscal year 2009 reflects this change.

The Board has also not set fees equitably between the two groups it oversees — educators and EPPs. When the Board first passed rules to impose fees on EPPs in 2011, it set fee amounts solely to cover the travel costs involved with conducting monitoring visits. The Board did not consider other costs associated with EPP regulation, such as the salaries of TEA staff to conduct

monitoring visits, analyze accountability data, provide technical assistance, and maintain the necessary information technology systems. In fiscal year 2012, TEA collected \$56,500 in fees from EPPs. However, the annual salaries of the four staff who conduct EPP monitoring visits alone total more than \$223,400.

To cover the costs for EPP regulation, TEA uses educator certification and examination fee revenue. The pie chart, *Sources of Revenue for Educator and EPP Regulation*, shows that less than one percent of the revenue for TEA's administration of educator quality programs comes from EPP fees with the remaining revenue all generated through various fees tied to educator certification. TEA does not disaggregate expenditures between educator and EPP regulation, but fees paid by educators are covering a significant portion of the costs to regulate EPPs. As institutions of higher education or private alternative certification programs, these entities should equitably cover the costs tied to their oversight.



The Board also fails to set educator certification fees equitably among different classes of educators. In 1998, the Board passed a rule exempting educators who held certificates before September 1, 1999 from a new requirement to renew their certification every five years.⁴ As such, the Board does not require these lifetime certificate holders to pay renewal fees or comply with any of the other renewal requirements. In the 2011-2012 school year, more than a quarter of all certified teachers and administrators employed in Texas public schools were lifetime certificate holders. Although these educators do not pay any fees to TEA, the agency must still regulate them, including maintaining data about their certificates, investigating allegations of misconduct, and taking enforcement action when necessary. As a result, TEA uses revenue from fees paid by educators certified since 1999 to subsidize the cost of regulating lifetime certificate holders.

TEA's preliminary criminal history evaluation provides an inadequate up front check for all people considering taking steps to become a teacher.

Assessing criminal history helps protect the public by not issuing a state occupational license to people who have certain criminal histories. In 2009, the Legislature enacted new provisions in the Texas Occupations Code to allow individuals to find out before applying for a license or certification whether they would likely be denied a license due to criminal history. This was due to the time and expense involved in applying for a license, which in some

*Lifetime
certificate holders
do not pay fees,
so TEA covers
their costs with
fees paid by
other educators.*

cases includes completing required education and taking an examination.⁵ The Legislature intended for the licensing authority to investigate individuals' eligibility as if they were actually applying for a license. In response, the Board allows people considering becoming teachers to request a preliminary criminal history evaluation.⁶

During the background investigation process for certification, TEA requires applicants to submit their fingerprints for state and national criminal history database checks. In contrast, TEA bases the preliminary criminal history evaluation solely on information provided by the requestor without checking the information through any criminal history databases. Self-reported information is not reliable because potential educators may not know what types of violations make them ineligible for educator certification, and they may not report their entire criminal history to the agency. Also, as part of the evaluation, TEA staff consider deferred adjudications for felony or misdemeanor offenses, but people requesting the evaluation may not report deferred adjudications because they are not convictions. After reviewing requestors' self-reported information, TEA sends a letter advising them of their eligibility for educator certification. In fiscal year 2012, TEA staff completed 49 preliminary criminal history evaluations, and they found one requestor ineligible for certification. TEA charges a fee of \$150 for this evaluation.⁷

TEA's fee of \$150 may pose a barrier to potential licensees seeking an up-front criminal background check.

In comparison, the Texas Department of Licensing and Regulation (TDLR) allows individuals to request a criminal history evaluation before applying for a license, but TDLR conducts a more thorough investigation and only charges \$25.⁸ A TDLR investigator determines requestors' eligibility by assessing their self-reported information, as well as by conducting a name-based check with the Department of Public Safety's criminal history clearinghouse. Without an adequate preliminary criminal history evaluation by TEA, prospective licensees cannot be assured that the money and time spent on training will translate into being employed as a certified educator at a public school, and the high fee may bar potential licensees from seeking the evaluation.

Nonstandard enforcement provisions could reduce the agency's effectiveness in protecting students and ensuring fairness and consistency for educators.

- **Superintendent notification.** Agencies should provide clear information to licensees, and to people who come in contact with licensees, about procedures for filing complaints if and when a problem arises. Clearly communicated procedures in laws, rules, and websites promote awareness both among members of the public and within the regulated community. The majority of complaints against certified educators come from school district superintendents and charter school directors who are required to report any certified educator who is arrested or involved in misconduct that leads to termination or resignation.^{9,10} Statute also requires a

superintendent to complete an investigation when there is reasonable cause to believe that an educator may have engaged in misconduct involving abuse or other unlawful acts with a student or minor.¹¹

The Board has authority to sanction administrators who fail to report the required information.¹² However, the language of these laws is open to interpretation and outdated, causing confusion among school administrators about the type of information that must be reported to TEA. The following examples describe some of the confusion surrounding these requirements.

- Although statute does not require charter school directors to report certified educator misconduct or complete investigations of certain kinds of misconduct, by rule the Board requires them to do so.¹³ While state statute does not require charter schools to employ certified educators, many of them do, and thus these directors should be responsible for reporting misconduct to the Board and for investigating incidences of misconduct by certified educators working in their schools, similar to school districts.
- Statute requires superintendents to notify the Board when they terminate an educator or an educator resigns due to committing an unlawful act with a student or minor.¹⁴ While a school may terminate an educator or an educator may resign due to a relationship with a student that went beyond appropriate boundaries, that relationship may not be unlawful. Statute is unclear as to whether superintendents are required to report or investigate this type of misconduct.
- Statute requires superintendents to report all arrests to the Board.¹⁵ However, due to limited resources, TEA staff, by policy, only investigates educators arrested for felony crimes and for misdemeanor crimes when the crime involves a student or minor, or happens on school time or property. Further, TEA staff receives the same criminal history notifications from the Department of Public Safety (DPS) as do schools. As such, schools do not need to report arrests to the Board that are already reported through DPS. Since arrests in other states or by federal law enforcement agencies are not reported through DPS, TEA would still benefit from schools reporting these types of arrests.
- Statute separately requires superintendents to notify the Board within seven days of first learning about an *incident* of misconduct.¹⁶ This statute also requires the superintendent to report arrests and terminations or resignations resulting from misconduct.¹⁷ Superintendents are not sure if they should report in seven days of when the incident occurred or to wait until the misconduct results in the person's arrest, termination, or resignation.

The requirements to report educator misconduct are open to interpretation, outdated, and confusing.

- Statute requires superintendents to conduct an investigation of an educator if they have reasonable cause to believe the educator engaged in misconduct. In some cases, superintendents may not believe they have enough evidence to support the “reasonable cause” standard to open an investigation, and the term “reasonable cause” is subjective. Further, neither statute nor rules provide schools with any guidance in how to conduct these investigations.

Educator misconduct cannot be fully investigated without access to school records.

- **Subpoena authority.** An occupational licensing agency should have authority to take appropriate enforcement action for violations of its rules or statute. However, TEA staff often has difficulty gathering evidence in educator misconduct cases because they do not receive sufficient information to conduct a thorough investigation. Some school districts refuse to provide the names of student witnesses and victims to TEA during an educator investigation due to concerns about violating the federal Family Education Rights and Privacy Act (FERPA), which could result in a loss of federal funding or a lawsuit by a student or parent.¹⁸ However, FERPA allows school districts to share confidential student information with a state education agency, in this case TEA, for educational purposes. Despite this, some school districts still believe federal law restricts sharing confidential student information without the issuance of a subpoena or consent from the parents of the students.¹⁹

When investigating cases of misconduct, statute also does not allow TEA to review teacher or administrator appraisals, including reprimands, further limiting the agency’s ability to assess the risk an educator poses to students.²⁰ The agency does not keep data on how many schools or districts have redacted vital information from documents during an investigation due to concerns about FERPA restrictions or the confidentiality of educator appraisals. However, TEA reports that it commonly occurs in cases involving a sexual or romantic relationship between an educator and student. While the Commissioner of Education has authority to issue a subpoena during an investigation of an educator for violations of an assessment instrument security procedure, this authority does not extend to other, more common, types of educator misconduct investigations.²¹

Two TEA divisions issue sanctions, but they do not discuss cases or jointly analyze data.

- **Enforcement case tracking.** Licensing agencies should comprehensively track and analyze the results of enforcement cases across the agency to better understand the regulatory environment and to identify problem areas and trends. TEA lacks procedures to guide enforcement case tracking and analysis. Two separate groups of TEA staff issue sanctions. Both the Investigations Division and the Legal Division use a settlement process to sanction educators, but the two divisions do not regularly discuss sanctions or cases. Also, they do not combine their data to analyze the total number and types of sanctions issued to certified educators or present the total sanction numbers to the Board, the Commissioner, or the public. Sunset staff chose to assemble total sanctions issued to certified educators in the last three years in the table on the following page, *Sanctions Against Certified Educators*.

**Sanctions Against Certified Educators
FYs 2010–2012**

Type of Sanction	FY 2010	FY 2011	FY 2012
Warning*	8	8	0
Confidential Reprimand	92	89	135
Public Reprimand	121	119	131
Suspension	82	119	105
Probated Suspension	7	11	9
Revocation	83	84	93
Voluntary Surrender	111	137	106
Totals	504	567	579

* The Board and agency no longer issue warnings.

- **Disciplinary matrix.** An occupational licensing agency should scale its disciplinary sanctions to the nature of the violation and should maintain consistency in the types of sanctions assessed. Establishing a matrix to guide an agency's decisions on disciplinary actions provides board members and agency staff with a method to help ensure consistent enforcement decisions in line with agency precedence.

Certified educators can receive a range of sanctions from reprimand to permanent revocation, but the Board has not adopted a disciplinary matrix to guide the sanctioning of educators. The Board's existing decision-making guidelines, outlined in rule, only connect sanctions to a limited number of offenses. The guidelines direct the Board to permanently revoke or deny a certificate if an educator has engaged in or solicited any sexual contact or romantic relationship with a student or minor; possessed or distributed child pornography; was registered as a sex offender; committed criminal homicide; or sold or distributed a controlled substance on school property.²² However, the Board can revoke a certification for many other reasons. The Board also developed a disciplinary policy, which it prints in each of its meeting agendas, but the policy only lists the reasons behind the Board's authority to sanction certified educators and is not readily available to the public.²³ The Board also established, in practice, one other standard sanction for certified educators on felony probation, in which their certificate is suspended for the entire length of their probation, but this standard is not included in any rule or written policy.

With no clear disciplinary matrix, the Board and TEA staff assess precedence primarily on staff's memory of past sanctions. The Board, TEA, and the administrative law judges at the State Office of Administrative Hearings (SOAH) cannot turn to any documents during

Disciplinary matrices help ensure greater consistency in the assessment of sanctions.

the disciplinary process that show the connection between the range of sanctions and violations of rules or laws, which can lead to inconsistent sanctions. Further, the Board does not adequately inform the public and educators about the consequences of violating its rules. While TEA provides information on its website detailing the investigation process and the range of sanctions available, this information does not clearly define for the public what actions the Board considers misconduct or the possible sanctions connected to each type of violation.

In comparison, the Texas Board of Nursing certifies and regulates nurses to ensure they are competent to practice the nursing profession safely and holds nurses to similar standards of trustworthiness in working with vulnerable populations as teachers. The Texas Board of Nursing successfully uses a disciplinary matrix to determine the appropriate sanctions for vocational and registered nurses who have violated rules or laws.²⁴

The Texas Board of Nursing successfully uses a disciplinary matrix.

- **Mediation.** An agency should use methods other than formal hearings whenever possible to resolve complaints. Formal hearings often require significant expenditure of time and resources, both for a regulatory agency and the licensee. Texas has developed alternative means for resolving complaints, such as settlement conferences conducted by agency staff and mediation conducted by SOAH. A more collaborative approach, mediation engages an independent third-party to mediate between the two sides. Since mediation is not binding, if the parties do not reach agreement, they still have the right to a formal hearing at SOAH.

TEA regularly uses settlement conferences in educator misconduct cases, but rarely uses mediation for cases that it cannot settle. These unsettled cases then go on to SOAH as contested cases. In the last four years, TEA has used mediation in only two educator cases. While not appropriate in all cases, SOAH mediation would be beneficial in certain cases. In mediation, an impartial person facilitates communication between the parties and helps them explore settlement options. In comparison, the Texas Board of Nursing uses the SOAH mediation process as a way to negotiate sanctions with licensed nurses.

Mediation can be a less costly option worth exploration. SOAH mediation costs less in time and resources than a full hearing. In fiscal year 2011, TEA spent an average of \$2,015 on each educator disciplinary case hearing at SOAH, but the most recent mediation cost the agency \$530. Also, mediation rarely lasts more than one day, but in fiscal year 2012, an average educator disciplinary hearing lasted two to three days.

Recommendations

To conform with Issue 8 that recommends transferring the Board's duties to the Commissioner of Education, the following recommendations assume the Commissioner performing these oversight functions.

Change in Statute

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

This recommendation would clarify the statutory requirement to report certified educator misconduct to TEA to make it easier for school administrators to interpret the law. 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 superintendent's and charter school director's 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. A settlement with a departing employee would not alter the responsibility to report the information to the agency.
- 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.

Under this recommendation, superintendents and charter school directors could continue to notify TEA of any other certified educator misconduct that they believe may be subject to sanctions by the agency, even if the statute does not specifically include the offense.

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. With such authority, the Commissioner could compel an individual or public entity in the state to furnish information necessary for a certified educator investigation. All information and materials subpoenaed or compiled in connection with an investigation would remain confidential and not subject to disclosure. Under this recommendation, the Commissioner could not issue a subpoena to compel the attendance of

a witness for the purposes of a certified educator investigation. While the agency would likely use this subpoena power rarely, the authority could be critical to effectively investigating certain types of misconduct involving serious harm or threat to a child.

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.

Under this recommendation, the Commissioner of Education would establish a disciplinary matrix for certified educator violations to ensure fair and consistent application of sanctions. In developing the matrix, TEA should strive to cover the range of violations by certified educators and relate the range of appropriate sanctions to different violations based on their severity. The sanctions should be scaled to the severity of the violation and number of repeat violations and serve as a deterrent to future violations. The matrix should also provide consideration for aggravating or mitigating factors in disciplinary cases. A disciplinary matrix would provide certified educators access to the enforcement guidelines to inform them of the potential consequences of violations.

This recommendation only sets 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. The Commissioner should provide the public with the opportunity to comment on the matrix's development and ensure the matrix is accessible to the public through the agency's website and other means of communication. This recommendation would promote more widespread public knowledge and transparency of expectations for certified educator conduct by clearly laying out which actions violate statute and rules and the sanctions that *could* result from the violations. The Commissioner should use the Texas Board of Nursing's disciplinary matrix as an example when developing a disciplinary matrix for certified educators.

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.

Under this recommendation, TEA should evaluate its fee structure and make changes to cover the cost of administering the educator certification and EPP regulatory programs, while also ensuring the equity of fees across the different types of fee payers. TEA should reevaluate these costs on a regular basis to keep with any changes. TEA should also reconsider whether to require lifetime certificate holders to renew their licenses and pay the standard renewal fee every five years, or, at least, pay a one-time fee to help cover the cost of their regulation.

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

This recommendation would require 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. At a minimum, TEA should conduct a name-based criminal history check with DPS's criminal history clearinghouse. This process should be available to individuals before they commit to the time and cost of an educator preparation program. This recommendation would provide a more accurate assessment of certification eligibility than the current process, which is limited to self-reported data. To remove the 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 amount DPS charges 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.

Under this recommendation, TEA should support mediation as a means to resolve certain contested cases that the agency determines are appropriate for mediation by SOAH. The agency should develop and implement a policy to encourage mediation, including conforming to the extent possible to model guidelines by SOAH.²⁵ Not all cases are suitable for mediation, but TEA should consider this alternative in cases that may be open to compromise.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the State. The recommendation directing the Commissioner of Education to assess and make adjustments to educator certification and EPP fees would equalize the fees among the agency's licensed entities but would not have a fiscal impact to the State. Any increase in fees would be limited to a level necessary to cover the cost of regulation. If TEA reduces its preliminary background check fee solely to cover the cost, the agency could see a slight reduction in revenue, but this would not have any significant impact to the State. Using SOAH's mediation services, instead of holding a full contested case hearing for educator certification cases, should result in savings, but any savings would depend on how often and successfully TEA uses this alternative.

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 1 Educators certified after September 1, 1999 only pay one renewal fee, even if they hold several types of certifications. The Board does not require educators certified before September 1, 1999 to renew their certification or pay a renewal fee.

2 Section 21.041, Texas Education Code.

3 Texas Education Agency, *Legislative Appropriations Request for Fiscal Years 2014 and 2015*, accessed September 14, 2012, http://www.tea.state.tx.us/index2.aspx?id=2147488035&menu_id=645.

4 19 T.A.C. Sections 230.31(b) and 232.3.

5 Subchapter D, Chapter 53, Texas Occupations Code.

6 19 T.A.C. Subchapter B, Chapter 227.

7 19 T.A.C. Section 230.101(a)(20).

8 Section 51.4012, Texas Occupations Code.

9 Section 21.006, Texas Education Code; 19 T.A.C. Section 249.14 (d).

10 Statute also requires directors of school districts, regional education service centers, and shared services arrangements to report educator misconduct, but TEA rarely receives reports from these administrators.

11 Section 21.006(b-1), Texas Education Code.

12 Section 21.006(f), Texas Education Code.

13 Section 21.006(b), Texas Education Code; 19 T.A.C. Sections 249.14(d) and (d)(3)(C).

14 Sections 21.006(b)(2), (b)(3), and (b-1), Texas Education Code.

15 Section 21.006(b)(1), Texas Education Code.

16 Section 21.006(c), Texas Education Code.

17 Section 21.006(b), Texas Education Code.

18 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.

19 20 U.S.C. Section 1232g(b)(1)(C)(i); 34 C.F.R. Section 99.31(a)(3)(iv).

20 Section 21.355, Texas Education Code.

21 Section 39.0302, Texas Education Code.

22 19 T.A.C. Section 249.17.

23 Texas Education Agency, *State Board for Educator Certification Board Meeting Agenda* (Austin: Texas Education Agency, October 5, 2012), Item 7.

24 "Adopted Disciplinary Matrix," Texas Board of Nursing, accessed October 4, 2012, <http://www.bon.texas.gov/disciplinaryaction/pdfs/disp-matrix.pdf>.

25 "Guidelines for the Use of Alternative Dispute Resolution (ADR) by Texas State Agencies," State Office for Administrative Hearings, accessed August 31, 2012, http://www.soah.state.tx.us/about-us/mediations/model_guidelines.asp.

RESPONSES TO ISSUE 9

Recommendation 9.1

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

Agency Response to 9.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.1

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Against 9.1

None received.

Modifications

1. Adopt the first bulleted recommendation to require charter school directors to meet the same reporting and investigation requirements as superintendents, but require TEA to create sanctions, which TEA would enforce, for uncertified charter school directors who fail to report educator misconduct to TEA; and do not adopt the remaining four bulleted recommendations. (Holly Eaton, Director of Development and Advocacy – Texas Classroom Teachers Association, Austin)
2. Require school administrators to report educator misconduct to the State Board for Educator Certification, rather than TEA. (Jackie Lain, Associate Executive Director of Governmental Relations – Texas Association of School Boards, Austin)
3. Do not adopt the last bulleted recommendation to change the standard for completing an investigation from “reasonable cause” to “reasonable suspicion.” (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Recommendation 9.2

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

Agency Response to 9.2

The agency agrees with this recommendation. To fully investigate allegations of educator misconduct, TEA has a pressing need for administrative subpoena power. Some schools believe that FERPA, the federal student privacy law, prevents them from identifying students who are victims or witnesses to educator misconduct. In a case involving allegations of inappropriate sexual relationships between an educator and a student, the only evidence may be the testimony of student victims and witnesses. The FERPA statute does not provide a means for TEA to obtain such information without a subpoena. Currently, TEA has authority to obtain a subpoena only after a contested case has been filed, and in situations such as that described above, there is no evidence to support a contested case filing. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.2

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Against 9.2

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

John Grey, Government Relations Specialist – Texas State Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Modifications

4. Require the Commissioner to make any information obtained through a subpoena available to the certified educator who is being investigated. (Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin)
5. Grant the State Board for Educator Certification administrative subpoena power to fully investigate certified educator misconduct, and make any information obtained through a subpoena available to the certified educator who is being investigated. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin; Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)
6. Grant the State Board for Educator Certification, rather than the Commissioner, administrative subpoena power to fully investigate certified educator misconduct cases. (Jackie Lain, Associate Executive Director of Governmental Relations – Texas Association of School Boards, Austin)

Recommendation 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.

Agency Response to 9.3

TEA agrees with the recommendation but notes that the use of a disciplinary matrix in matters that involve the safety and welfare of Texas schoolchildren requires different considerations than the use of a disciplinary matrix in other licensing settings. The most important of those considerations is that educators have an unparalleled degree of unsupervised access to students. Educator disciplinary cases necessarily involve an assessment of conduct that may or may not be criminal and an assessment of the risk that conduct presents for continuing harm to students. The factors that must be evaluated in those assessments are often unique to the particular fact situation. Therefore, any educator certification disciplinary matrix would have to be broad and would have to account for a wide range of aggravating and mitigating circumstances for a variety of conduct. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.3

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Against 9.3

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Modifications

7. Direct the State Board for Educator Certification to establish the disciplinary matrix with meaningful stakeholder input. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
8. Require the State Board for Educator Certification, rather than the Commissioner, to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule. (Jackie Lain, Associate Executive Director of Governmental Relations – Texas Association of School Boards, Austin)

Recommendation 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.

Agency Response to 9.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.4

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 9.4

John Grey, Government Relations Specialist – Texas State Teachers Association, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Modifications

9. Require the State Board for Educator Certification to set fees, but do not consider requiring lifetime certificate holders to renew their licenses. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
10. Direct the State Board for Educator Certification, rather than 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. (Jackie Lain, Associate Executive Director of Governmental Relations – Texas Association of School Boards, Austin)
11. Direct TEA to consider changes to rules governing educator certification and educator preparation program fees only after the Sunset bill for the agency passes and becomes effective. (Diann Huber, Ed.D., CEO – iteachTEXAS, Denton)
12. Provide statutory guidance to TEA on how to develop educator certification and educator preparation program fees, what should be included in the calculation of the fees, and how the fees should be distributed. (Zach Rozell, Vice President – iteachTEXAS, Denton)

Staff Comment: Mr. Rozell did not provide additional detail about what statutory guidance would be necessary to accomplish the goals of his recommendation.

Recommendation 9.5

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

Agency Response to 9.5

The agency agrees in part and disagrees in part with this recommendation. A name-based criminal history check would be of limited use because it would not provide any information on criminal history in any of the 49 states other than Texas. The self-reporting model specified in the Occupations Code provisions relating to preliminary criminal evaluations often provides more of the information TEA needs to evaluate whether an applicant is eligible for certification than would a name-based criminal history check. TEA agrees that all fees related to educator certification, including the fee for a preliminary criminal history evaluation, should be reviewed to reflect TEA's actual costs. This fee was set higher than that of many other agencies because TEA sometimes has to conduct additional investigation and research to evaluate the underlying conduct for the danger it presents to students, rather than merely relying on a particular criminal conviction, deferred adjudication, or other outcome. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Staff Comment: This recommendation would not prohibit TEA from continuing to obtain self-reported information, but it would require the agency to, at a minimum, perform a name-based criminal history check.

For 9.5

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 9.5

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Recommendation 9.6

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

Agency Response to 9.6

The agency agrees with this recommendation. TEA would note that the two types of reprimand authorized by State Board for Educator Certification rules are inscribed and non-inscribed, rather than public and confidential as indicated in the chart on page 99 of the Staff Report. In both types of reprimands, the Board order providing for the reprimand is not confidential and may be requested by the public. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.6

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 9.6

None received.

Recommendation 9.7

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

Agency Response to 9.7

TEA agrees with this recommendation with the understanding that educator misconduct cases do not involve monetary sanctions that are more successfully mediated than sanctions against a certificate. In addition, the majority of educator misconduct cases that are not settled involve fact disputes that implicate the safety and welfare of students, and given TEA's duty to protect students, such cases are rarely appropriate for mediation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 9.7

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Against 9.7

None received.

COMMISSION DECISION ON ISSUE 9

(JANUARY 2013)

Adopted Recommendations 9.1 through 9.7.

FINAL RESULTS ON ISSUE 9

(JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory recommendations.

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

Recommendation 9.2 — Grant the Commissioner administrative subpoena power to fully investigate certified educator misconduct cases.

Recommendation 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.

Management Action

Recommendation 9.4 — Since the Legislature did not adopt the recommendation to abolish the State Board for Educator Certification, that Board, rather than the Commissioner, should adjust fees in rule for educator certification and educator preparation programs to ensure they adequately cover costs and are equitable across fee payers.

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

Recommendation 9.6 — TEA should comprehensively track and analyze enforcement case data.

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

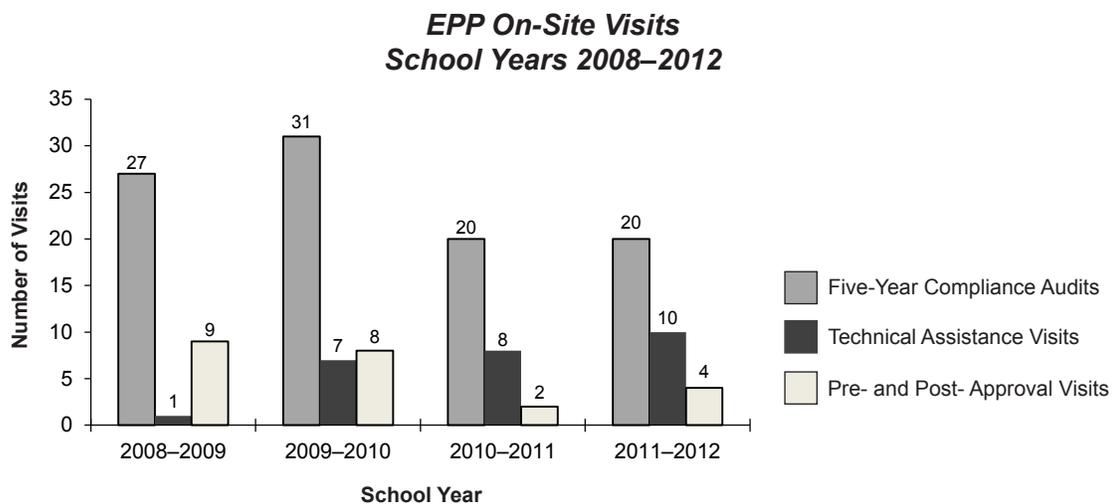
ISSUE 10

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

Background

The State Board for Educator Certification (the Board) approves educator preparation programs (EPPs) and adopts the rules for EPP regulation.¹ TEA staff administers this regulation on behalf of the Board by monitoring 241 programs at 151 institutions in the state. Educator certification candidates can receive training through two types of programs: traditional four-year university or college programs and alternative certification programs. Alternative programs offer a nontraditional route to certification for individuals who already have a baccalaureate degree and are more likely to be midcareer. Approximately 60 percent of initially certified teachers in Texas attended alternative programs, and 40 percent attended traditional programs.

To ensure quality performance, TEA staff visits each program before and after initial approval. For at-risk or low-performing EPPs, staff offers technical assistance, both on site and over the phone. Every five years after initial approval, staff also conducts an on-site compliance audit to ensure the EPP's ongoing adherence with established standards and requirements. The chart, *EPP On-Site Visits*, illustrates the type and number of visits conducted by staff over the last four years.



In 2009, the Legislature raised the standards for educator preparation in Texas by implementing an accountability system for existing and new programs.² Under this system, the Board assigns each EPP an accreditation status based on their students' educator certification examination pass rates. The accreditation statuses are: accredited, accredited with action plan, accredited-warned, accredited-probation, not accredited-revoked, and not rated.³ During the 2010–2011 school year, the Board required 18 low-performing EPPs to create an action plan for their program's improvement, and placed three EPPs on accredited-warned status because they failed to improve their pass rates after completing an action plan. In addition to pass rates, over the next two years the Board will also begin using the following standards to determine an EPP's accreditation status:

- beginning teacher performance based on an appraisal system;
- achievement of students taught by teachers in their first three years, including improvement in achievement; and
- compliance with the Board's rules regarding the frequency, duration, and quality of field supervision of first-year teachers.

Regulating EPPs requires common activities that the Sunset Commission staff has observed and documented over more than 30 years of reviews and compiled into a set of standards for licensing and regulatory programs. The following material highlights areas where EPP statute and rules differ from the model standards and describes the potential benefits of conforming to standard practices.

Findings

The Board's rules fail to provide for regular renewal of EPPs and place greater burdens for continuing approval on some programs, creating inequities.

A licensing agency should have a renewal process that helps ensure adequate oversight of regulated activities and continued competence of licensees on a regularly scheduled basis. Before renewing a license, a licensing agency should be aware of any past compliance issues, and the licensee's efforts to resolve those problems.

EPPs do not have to regularly prove their ongoing competence to prepare educator candidates.

In regulating EPPs, statute authorizes the Board to adopt rules to establish minimum standards for renewing EPPs.⁴ However, the Board's rules do not provide for a standard, period renewal process; or the standards that an EPP should meet for renewal. Thus, in practice, EPPs do not have to regularly prove their ongoing competence to adequately prepare educator candidates or face non-renewal for failure to meet basic standards.

Instead, the Board's rules create two different processes for the continuing approval of EPPs: one for programs approved before September 1, 2008 and another for programs approved after that date.⁵ For EPPs approved before 2008, currently representing about 90 percent of institutions, TEA staff conducts on-site compliance audits every five years, at which time each program must submit a status report regarding compliance with existing standards and the entity's original proposal. These rules allow TEA staff to conduct this review at any time at their discretion, but do not address procedures if the review indicates that an EPP fails to meet the standards. Thus, the process does not have a predictable timeframe, as with most renewal processes, but, more importantly, staff have no clear authority to not renew an EPP that no longer meets basic requirements.

For EPPs approved after 2008, the Board's rules add another requirement — that these EPPs only be granted approval to operate for 10 years. After 10 years, these EPPs must reapply for approval in the same manner as a new program. This includes filling out a new application, paying the program approval fee, and receiving a pre- and post-approval visit from TEA. While

ensuring compliance after 10 years, this approach goes well beyond the minimal assurance of ongoing compliance necessary for renewal. In contrast, the timeframe is much longer than generally provided for renewal, allowing the EPPs to operate for a long period of time with no renewal requirements.

While only 10 percent, or 15 institutions, currently fall into the requirement to reapply, that number will grow over time. Having approvals expire for this subset of EPPs places a much heavier administrative and cost burden on this group of EPPs, in comparison to programs approved before 2008. Subjecting EPPs to two different criteria for continuing approval creates inequities among regulated entities and, since programs compete with each other for students, also creates the potential for an unfair competitive advantage for one group over the other.

Nonstandard enforcement provisions could reduce TEA's effectiveness in protecting students enrolled at EPPs, schools that later hire these educators, and the public school students these educators eventually teach.

- **Complaint filing.** The public should be able to file a written complaint against a licensed entity on a simple form provided by the agency, and the process should be clearly communicated in rules, brochures, and websites to promote awareness both among members of the public and within the regulated community.

While TEA provides the public with information on how to file complaints with the agency generally, it does not specifically address how to file a complaint against an educator preparation program.⁶ TEA's general complaint process allows the public to submit a written allegation of non-compliance with school laws and rules that fall under the jurisdiction of the agency, but a member of the public would not know this includes EPPs, especially since EPPs are technically under the Board's jurisdiction.

Because the agency has no process for informing EPP students about how to file a complaint, TEA staff reports receiving a total of only 10 complaints against EPPs over the last several years. The ability to file a complaint with an outside oversight body is especially important for students attending an alternative certification program, as many of these programs may not have the same kind of established governance structure as a traditional EPP at a college or university.

In comparison, the Texas Workforce Commission (TWC) requires approved career schools and colleges to adopt a policy for handling complaints from students and post a notice about filing complaints on the school's website and in several centrally located areas within the facility. The notice must state that the school is certified by TWC and include instructions for filing a complaint against the school with the agency.⁷

Subjecting EPPs to two different renewal criteria could create an unfair competitive advantage.

A student would not know who to file a complaint with regarding an EPP.

TEA has no process for addressing EPP complaints.

- **Complaint procedures.** Agencies should adopt rules that clearly lay out policies for all phases of the complaint process. These rules should include complaint intake, preliminary evaluation, investigation, adjudication, resulting sanctions, disclosure to the public, and handling of non-jurisdictional complaints. Having rules that clearly explain the complaint process protects consumers, increases administrative efficiency, and ensures fairness for licensed entities. Neither the Board nor TEA staff have developed a process for addressing EPP complaints.

Licensing agencies should track, analyze, and report the sources, types, and resolutions of jurisdictional complaints. TEA lacks procedures to guide EPP complaint tracking and analysis. While the Ombuds Office at TEA receives and tracks formal complaints across the agency, TEA's educator certification staff separately handles informal complaints about EPPs. They do not combine their data to analyze the total number of EPP complaints, and therefore cannot use the data identify problems and trends to target regulation and monitoring.

- **Efficient monitoring.** A licensing agency should have processes in place to evaluate the risk level of entities subject to inspection and target staff time and resources to the highest-risk areas. As described earlier, the staff perform several types of on-site monitoring audits of EPPs. During its five-year audits, staff check the accuracy of the program's data, course materials, and the educator certification qualifications the program reported to the agency. These audits generally target one certification area at each program, for example, teacher, counselor, or principal preparation.⁸ Staff interview the EPP's staff and current students and review documentation, including the curriculum, admission criteria, course materials, syllabi, credentials of faculty, duties and composition of the governing board, and certificate candidate records.

Although TEA staff follow a risk-assessment tool to guide the questions and documentation requested, the agency does not adjust the amount of time, staff, or effort dedicated to these audits based on the EPP's status or risk. For each program, TEA sends at least two of its four monitoring staff on site for two to three days, even if the program exceeds the operational requirements, meets accountability standards, and has no history of non-compliance. Further, some EPPs are accredited by associations, such as the National Council for Accreditation of Teacher Education, but without a process to factor in risk, TEA staff cannot consider outside accreditation ratings in targeting its audit efforts. In some instances, TEA staff cannot assist at-risk EPPs because much of their time is dedicated to conducting the five-year audits.

- **Sanctioning authority.** A licensing agency should have the authority to enforce its rules and law. For EPP enforcement, statute only authorizes the Board to sanction EPPs based on their accreditation status, which is based solely on four measures: exam pass rates, teacher appraisals,

TEA's ability to assist at-risk EPPs is limited due to the staff time spent on five-year audits.

achievement of students taught, and field supervision.⁹ For problems with accreditation, statute allows the Board to revoke the approval of a program having a status of accredited-probation for at least one year. If a program has an accredited-probation status for three consecutive years, statute requires the Board to revoke its approval. Also, the agency can require an EPP to obtain and pay for professional services or appoint a monitor to help improve their program.¹⁰

These sanctions do not extend to problems uncovered through monitoring or complaints. TEA may find operational issues during its five-year compliance audits or technical visits, but the agency does not have clear statutory authority to take enforcement action to address those concerns. TEA may also receive complaints with valid concerns about an EPP, but it does not have authority to take enforcement action against an EPP in response to a complaint. TEA often finds problems unrelated to accreditation status, such as not keeping adequate student documentation, not providing student teachers or teachers of record with proper supervision, or not incorporating the Texas Essential Knowledge and Skills into their curriculum.¹¹ While these problems may be violations of rule, the agency has no authority to take enforcement action when staff identifies such problems.

TEA lacks authority to take enforcement action against an EPP based on complaints or problems identified by staff.

Recommendations

To conform with Issue 8 that recommends transferring the Board's duties to the Commissioner of Education, the following recommendations assume the Commissioner performing these oversight functions.

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 should repeal the rules specifying the ten-year reapplication process and five-year compliance audit. The new renewal process could include a risk-based compliance visit, but it would not be a necessary condition for renewal. EPPs would have to meet all renewal requirements every five years in order to remain a fully accredited program. These changes would eliminate differences across programs, as EPPs approved before August 31, 2008 would have to adhere to the same renewal standards as EPPs approved after that date.

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 of Education 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. The Commissioner should refer to TWC's *School Policy*

Regarding Complaints as an example when developing complaint process requirements for EPPs. As part of this recommendation, the agency should also 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 of Education 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 should use the assessment model to determine risk, such as a program's compliance history, operational standards, accountability measures, and accreditations by other organizations. This recommendation would allow the small number of EPP staff to focus their monitoring efforts on programs that need assistance.

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

This recommendation would authorize the Commissioner of Education to sanction EPPs that fail to comply with statute and rules, including program admissions, operations, coursework, training, recommendations for certification, and integrity of data submissions; in addition to sanctioning EPPs for not meeting the accreditation standards set in statute. The Commissioner should have the same range of sanctions as he currently has for not meeting accreditation standards. In implementing this change in statute, the agency should establish procedures to ensure that all sanctions are applied fairly. The Commissioner should also make sanctioning information accessible to all EPPs and counsel at-risk programs about the possible sanctions their program could face by not meeting accreditation standards or complying with the rules; the consequences of those sanctions on their program's existence; a timeline to come into compliance with the rules and meet the accreditation standards; and how they can appeal the sanctioning process.

Management Action

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

Under this recommendation, TEA staff should develop procedures that clearly lay out all phases of the EPP complaint process, including complaint receipt, investigation, adjudication, resulting sanctions, disclosure to the public, and handling of non-jurisdictional complaints. TEA should encourage students to go through their institutions' grievance process before filing a complaint with the agency and inform students about TEA's jurisdiction to investigate complaints. For example, TEA has no authority to investigate payment or refund disputes. The recommendation would also require the agency to 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.

Fiscal Implication

These recommendations would not have a significant fiscal impact to the State.

¹ Section 21.045(a), Texas Education Code.

² Sections 21.045 and 21.0451, Texas Education Code.

³ Section 21.0451(1), Texas Education Code; 19 T.A.C. Section 229.4.

⁴ Section 21.045(c), Texas Education Code.

⁵ 19 T.A.C. Section 228.10(c).

⁶ “Correspondence and General Complaints,” Texas Education Agency, accessed on September 3, 2012, <http://www.tea.state.tx.us/index.aspx?id=5032>.

⁷ 40 T.A.C. Section 807.301.

⁸ 19 T.A.C. Section 228.10.

⁹ Section 21.0451, Texas Education Code.

¹⁰ Sections 21.0451(2) and (3), Texas Education Code.

¹¹ 19 T.A.C. Section 229.6.

RESPONSES TO ISSUE 10

Recommendation 10.1

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

Agency Response to 10.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 10.1

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 10.1

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Zach Rozell, Vice President – iteachTEXAS, Denton

Modification

1. Require the State Board for Educator Certification, rather than the Commissioner, to adopt all rule changes necessary to implement the five-year renewal process for educator preparation programs. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Recommendation 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.

Agency Response to 10.2

TEA agrees with this recommendation with the understanding that the complaint process must be limited to complaints regarding the delivery of educator preparation in accordance with SBEC rules, since TEA has no authority to arbitrate or resolve contractual or commercial issues between candidates and EPPs.

Agency Modification

2. Clarify that TEA has no authority to arbitrate or resolve contractual or commercial issues between candidates and EPPs.

(Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 10.2

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 10.2

None received.

Modification

3. Require the State Board for Educator Certification, rather than the Commissioner, to adopt rules to make information about how to file a complaint about an educator preparation program accessible to students and the public. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Recommendation 10.3

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

Agency Response to 10.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 10.3

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 10.3

None received.

Modifications

4. Require the agency to bring in experts to assist with the development of the risk-based model, seek extensive stakeholder input for the model's development, and adopt the model in rule. (Diann Huber, Ed.D., CEO – iteachTEXAS, Denton)
5. Direct TEA to create an annual or biennial process where programs submit information for the risk-based model and pay a regularly scheduled fee. (Zach Rozell, Vice President – iteachTEXAS, Denton)
6. Require the State Board for Educator Certification, rather than the Commissioner, to establish a comprehensive risk-assessment model to guide the monitoring of educator preparation programs. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Recommendation 10.4

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

Agency Response to 10.4

The agency agrees with this recommendation. Specific statutory authority should be provided to the Commissioner and the Board to act quickly and effectively when EPPs go out of business or otherwise cease to provide a minimum level of acceptable educator preparation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 10.4

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 10.4

None received.

Modification

7. Strengthen and clarify the State Board for Educator Certification's authority to sanction educator preparation programs for violation of law or rules, rather than assigning this function to the Commissioner. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Recommendation 10.5

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

Agency Response to 10.5

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 10.5

Jennifer Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Diann Huber, Ed.D., CEO – iteachTEXAS, Denton

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 10.5

None received.

COMMISSION DECISION ON ISSUE 10

(JANUARY 2013)

Adopted Recommendations 10.1, 10.2 with Modification 2, and 10.3 through 10.5.

FINAL RESULTS ON ISSUE 10

(JULY 2013)

Legislative Action

The Legislature did not adopt the following statutory recommendations.

Recommendation 10.1 — Establish a five-year renewal process for educator preparation programs (EPPs) in statute.

Recommendation 10.2 with Modification 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.

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

Recommendation 10.4 — Strengthen and clarify the Commissioner's authority to sanction EPPs for violations of laws or rules.

Management Action

Recommendation 10.5 — TEA should develop procedures outlining all phases of the EPP complaint process and track and analyze complaint data.

ISSUE 11

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

Background

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. The table, *Top TEA Contracts*, provides information about the agency's largest contracts in fiscal year 2011. In addition to these top five contracts, TEA has about 180 other contracts each worth \$100,000 or more over the length of the contract.

Top TEA Contracts*

Contract	Vendor	Total Contract Amount
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
School Readiness Program	University of Texas Health Science Center — Houston	\$15 million

* Excludes interagency contracts with the Department of Information Resources for data center consolidation services (\$43 million) and the Department of Assistive and Rehabilitative Services for early childhood intervention services (\$33 million).

The Legislature has established basic, statutory contracting requirements and standards for state agencies to follow, such as the *State of Texas Contract Management Guide*, which includes model contract provisions and solicitation procedures, and the Contract Advisory Team, which reviews high-risk contract solicitations.¹ When evaluating an agency's contracting practices, Sunset staff uses the general framework established in statute and in the *Guide*, as well as other documented contracting standards and best practices, such as those developed by other oversight entities. Sunset staff has compiled a list of high-level contracting standards to help evaluate an agency's contracting practices, recognizing the individual circumstances, risks, and needs of each agency and contract. Staff also looks for other opportunities to improve contracting practices specific to each agency's unique situation. In this context, 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.

TEA recently undertook an initiative to improve the effectiveness and efficiency of its contract development functions by restructuring its contracting processes.² This initiative came after a State

Auditor's Office report in 2006 cited TEA for not following established contracting policies and procedures and for not having baseline expectations for the contract monitoring that occurs across the agency.³ TEA now has a more comprehensive contracting manual in place to guide its contracting process, but the following material highlights areas in need of further improvement.

Findings

The agency does not have a comprehensive system for gathering and reporting information about contract sanctions to senior management.

Agencies should have available to them a range of sanctions that can be invoked for noncompliance with contract terms. Agencies should centrally track and report information about the use of sanctions to management to help provide an overall picture of contract management issues and inform future contract solicitations.

The formal actions TEA may take against nonperforming contractors include withholding payments until the contractor complies, deducting payments, and suspending or terminating contracts. TEA reports that in the last three years it has taken formal action two times by terminating contracts, but the agency does not centrally track sanctions and staff had to rely on their memory to produce this information. Many TEA contracts also contain provisions that require vendors to issue credits to the agency for failing to meet certain levels of service. For example, TEA received \$225,000 in credits from its largest vendor for problems with online access during student assessment administration in fiscal year 2011. The agency did not initially report these credits to Sunset staff because TEA does not regard them to be sanctions, but rather a routine agreement between the agency and the vendor.

Ensuring that TEA centrally tracks all contractor nonperformance, whether contract termination or lesser penalties, would help inform oversight of the agency's contract management activities. This information is also useful to identify or evaluate needed changes to a contract's scope or structure when contemplating contract amendments or a new solicitation for similar services.

TEA does not consistently follow its own procedures when awarding noncompetitive contracts to education service centers.

Unless exempt by statute or dollar amount, an agency should always use competitive methods of procurement whenever possible to foster a fair purchasing environment and help ensure the State finds the best vendors at the best price.

State law allows TEA to contract with the 20 regional education service centers (ESCs), but does not explicitly require the contracts to be competitively bid. Instead, TEA's contracting manual includes a policy that encourages, but

Tracking contractor nonperformance provides an overall picture of contract management and informs future solicitations.

does not require, staff to notify all ESCs about upcoming contract awards to provide some competition at least among the 20 ESCs. The manual also requires a written justification and cost-benefit analysis when a contract with an ESC will exceed \$100,000 and when the agency chooses not to notify all ESCs of the pending opportunity. However, when contracting with the Austin ESC, in February 2011 to perform driver training regulation, TEA did not prepare a cost-benefit analysis to determine whether contracting for the function made good business sense, even though the contract award was for \$750,000.

Consistently performing and documenting these analyses would help ensure these noncompetitively awarded contracts provide the best value to the State. Past TEA contracts with ESCs have drawn attention from the State Auditor's Office because they appeared to favor certain subcontractors.⁴ SAO found no evidence of illegal activity but concluded that some ESC contracts resulted in the appearance of favoritism. Better analysis and documentation of these contracts would help TEA avoid appearing biased in the future.

Many TEA contract managers have not completed all required training.

Texas law requires state agencies' contract managers to complete training on managing contracts.⁵ In addition to staff specifically assigned to oversee the contracting process, all agency personnel involved in the contracting process — from solicitation development to contract close-out — should receive training on effective contracting. Training enables staff to manage contracts in an efficient and ethical manner.

TEA's Purchasing and Contracts Division staff receive training and contract management certifications from the Office of the Comptroller, and TEA policy requires program staff throughout the agency who manage contracts to obtain in-house contract management training. However, a recent internal audit revealed only half of TEA's approximately 60 program staff who act as contract managers had received all the required training.⁶ The audit recommended that by July 31, TEA prepare a master list of contract managers and track which managers need to attend the required training. While TEA has compiled a preliminary list, ensuring that appropriate staff receive training would help make certain contracts across the agency are managed effectively and consistently.

TEA's contracting manual does not contain a section on ethics in contracting.

An agency should develop guidelines to help ensure that state officers or employees are not improperly influenced by contractors. The nature of contracting makes it critical that everyone in the process remain independent and free from even the perception of impropriety.

TEA did not analyze whether contracting for driver training regulation made good business sense.

A recent internal audit revealed only half of TEA's contract managers had received all required training.

While TEA has agencywide operating procedures regarding standards of conduct and conflicts of interest, the agency's primary source of guidance on contracting — its contract development and administration manual — does not contain a section specific to ethics in contracting. The manual does reference state law regarding hiring former employees and several documents important to maintaining ethical standards in contracting, but does not contain any specific language setting ethical standards. While Sunset staff did not identify any ethics violations during its review of TEA, adding this language to the manual would help ensure that TEA staff working on contracts continue to uphold high standards.

TEA does not always document and report on its evaluations of important contracts during the close-out process.

An agency should formally close out a contract in writing after verifying receipt of all deliverables, verifying the completion of all contract terms, and assessing the overall success of the contract. Closing out a contract allows an agency to determine if there are any lessons learned for future contracting.

TEA has a contract close-out process in which staff rate vendors based on the number of contract amendments, whether a project finishes within its budget, how well the contractor managed the project overall, and other factors. Agency staff report final results of major contracts to senior management, although this reporting is not required in the agency's contracting manual or training. The agency did not follow its own contract close-out guidelines to complete contractor performance evaluations and lessons learned documents before issuing new contracts to vendors for two very important programs — the \$90 million per year statewide student assessment contract and the \$2 million per year contract for administration of adult education.

TEA states that it evaluated all performance issues in the previous student assessment contract but could provide no written documentation of the evaluation, and the agency simply relied on its good relationship with the adult education vendor and the vendor's hard work in lieu of completing the documents for the adult education contract. Ensuring staff complete these key documents for all contracts, and report on the results of major contracts to senior management, would lend integrity and thoroughness to the contracting process and also allow the agency to incorporate lessons learned into future contracts.

TEA did not follow its own close-out guidelines before issuing new contracts to two major vendors.

Recommendations

Management Action

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

This recommendation would direct 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 training that emphasizes the importance of conducting and documenting a cost-benefit analysis when contracting with an education service center in a noncompetitive procurement. This recommendation would help TEA document an aspect of its contracting process that has drawn negative scrutiny in the past and ensure that these contracts are an effective use of state funds.

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. Training all staff managing contracts should be a priority for the agency. The agency should also ensure that staff newly assigned to managing contracts receive training within one month of assuming responsibility for a contract.

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. TEA should determine which contracts are major for purposes of this recommendation.

Fiscal Implication

Given the significant dollar value of TEA contracts, ensuring appropriate contract management training, improving contracts through evaluation, and conducting analyses before issuing noncompetitive procurements should result in future savings. However, the value of increasing attention paid to best contracting practices cannot be estimated.

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¹ Chapters 2261 and 2262, Texas Government Code.

² Texas Education Agency, *Self-Evaluation Report to the Sunset Advisory Commission*, September 2011, p. 190.

³ State Auditor’s Office, *Contract Management at the Texas Education Agency*, Report No. 06-064, August 2006.

⁴ State Auditor’s Office, *A Special Investigations Unit Report on Contracting at the Texas Education Agency and Education Service Centers*, Report No. 08-011, November 2007.

⁵ Section 2262.053, Texas Government Code.

⁶ Texas Education Agency, *Internal Audit Report of Contracts Compliance Review of Agency Requirements*, TEA Audit #12-02, June 2012, p. 9.

RESPONSES TO ISSUE 11

Recommendation 11.1

TEA should improve collection and reporting of all contract sanctions.

Agency Response to 11.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 11.1

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 11.1

None received.

Recommendation 11.2

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

Agency Response to 11.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 11.2

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 11.2

None received.

Recommendation 11.3

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

Agency Response to 11.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 11.3

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 11.3

None received.

Recommendation 11.4

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

Agency Response to 11.4

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 11.4

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 11.4

None received.

Recommendation 11.5

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

Agency Response to 11.5

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 11.5

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 11.5

None received.

COMMISSION DECISION ON ISSUE 11

(JANUARY 2013)

Adopted Recommendations 11.1 through 11.5.

FINAL RESULTS ON ISSUE 11

(JULY 2013)

Management Action

Recommendation 11.1 — TEA should improve collection and reporting of all contract sanctions.

Recommendation 11.2 — TEA should ensure staff follow guidelines regarding contracting with education service centers.

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

Recommendation 11.4 — TEA should include a section on ethics in contracting in its contracting manual.

Recommendation 11.5 — TEA should ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management.

ISSUE 12

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

Background

Sunset reviews include a number of standard elements that have resulted either from direction provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material summarizes Sunset staff's analysis of applicable standard elements for the Texas Education Agency.

- **Sunset Across-the-Board provisions.** The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These Across-the-Board Recommendations (ATBs) reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards for state agencies. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Equal Employment Opportunities and Historically Underutilized Businesses.** The Sunset Act requires the Sunset Commission and its staff to consider agencies' compliance with applicable federal and state requirements regarding equal employment opportunities (EEOs) and historically underutilized businesses (HUBs).¹ Staff routinely evaluates agency performance regarding these requirements in the course of a Sunset review, but only reports significant deficiencies.

Findings

TEA's statute does not reflect standard language typically applied across the board on Sunset reviews.

Because a Sunset bill for TEA has not passed since the 1980s, several ATBs are missing entirely from the agency's statute. However, since an appointed commissioner helms TEA, rather than a board, only three of the nine ATBs are applicable to the agency.

- **Conflicts of interest.** The agency's governing statute does not include standard language to help prevent potential conflicts of interest by high-ranking agency employees with professional trade organizations. Specifically, the agency's statute does not prohibit the agency's general counsel from lobbying on behalf of certain interests, or prohibit high-ranking agency employees and their spouses from being closely affiliated with a professional trade association in the field of elementary or secondary education.

- **Information on complaints.** TEA's statute does not require the agency to maintain complete information about complaints received. Having such language in law would require TEA to maintain a system for acting on complaints and keeping proper documentation of complaints, thus helping to ensure that problems are addressed and in a timely fashion.
- **Negotiated rulemaking and alternative dispute resolution.** TEA's statute does not include a standard provision relating to establishing policies for rulemaking and dispute resolution that the Sunset Commission routinely applies to agencies under review. This provision helps improve rulemaking and dispute resolution through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

TEA has failed to meet statewide EEO performance guidelines for technical jobs over the last three years.

TEA fell short on its employment of Hispanics and African Americans in technical positions.

While TEA met or exceeded many statewide civilian workforce percentages for fiscal years 2009 to 2011, the agency fell short on its employment of Hispanics and African Americans in technical positions. To address the situation, TEA broadened its advertising of open positions, while also targeting recruitment efforts to certain minority markets. As result, while still below the statewide civilian workforce percentage, TEA has increased the agency's percentage of African Americans in technical positions over the three years. However, the percentage of Hispanic employees in technical positions at TEA has remained significantly lower than the statewide civilian workforce. Appendix E shows TEA's EEO performance in each job category for fiscal years 2009 to 2011.

TEA has not met the State's HUB purchasing goals in two categories for the last three years.

While TEA has met HUB program requirements, such as appointing a HUB coordinator and establishing a HUB policy, the agency has had difficulty meeting several statewide HUB purchasing goals, two of which are highlighted below. Appendix F details TEA's HUB spending for fiscal years 2009 to 2011 in all purchasing categories.

- **Professional services.** TEA has failed to meet the statewide goal of 20 percent for HUB contracting for professional services during the last three fiscal years. TEA explains that this is due to its long-established contracts with non-HUB firms to conduct investment transactions for the Permanent School Fund. TEA plans to hold a specialized HUB forum this fall to seek HUB financial brokers. The agency says the qualifications required to manage investments the size of the Permanent School Fund provide a challenge for smaller brokers and money managers, even those that are non-HUB firms.

- **Other services.** During the last three fiscal years, TEA has also failed to meet the statewide goal for HUB contracting for the other services category. This category includes large expenditures such as the agency's contract with NCS Pearson, Inc. for the development and administration of the statewide standardized tests. TEA explains that few HUB vendors offer such highly specialized education-related services. In recent years, TEA has required Pearson to take several steps to increase the number of HUB subcontractors it uses, and the agency continually monitors these efforts.

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 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.
- **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.
- **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.

Fiscal Implication

These recommendations would not have a fiscal impact to the State.

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¹ Section 325.011(a), Texas Government Code.

RESPONSES TO ISSUE 12

Recommendation 12.1

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

Agency Response to 12.1

TEA agrees, with the exception that mediation should not be available in appeals under state or federal accountability and accreditation systems where uniformity and strict timelines are required. The agency also believes its existing settlement procedures for educator certification are successful in resolving most disputes with less cost than formal mediation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Staff Comment: Recommendation 12.1 only requires TEA to develop a policy for dispute resolution. The agency would continue to have full authority to determine the appropriate use of dispute resolution.

For 12.1

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Dineen Majcher – Texans Advocating for Meaningful Student Assessment

Ken McCraw, Executive Director – Texas Association of Community Schools, Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 12.1

None received.

Modifications

1. Prohibit any high-level TEA employee or their spouse from being an officer, employee, or paid consultant of any TEA vendor that provides education-related products or services to TEA. (Dineen Majcher – Texans Advocating for Meaningful Student Assessment, Austin)
2. Prohibit members of TEA advisory committees and their spouses from being officers, employees, or paid consultants of any vendor that provides education related products or services to TEA. (Dineen Majcher – Texans Advocating for Meaningful Student Assessment, Austin)

3. Apply the conflict-of-interest prohibition to agency advisory committee members. Prohibit representatives of businesses with agency contracts from serving on advisory committees that influence matters related to those contracts. (Ken McCraw, Executive Director – Texas Association of Community Schools, Austin)

COMMISSION DECISION ON ISSUE 12

(JANUARY 2013)

Adopted Recommendation 12.1.

FINAL RESULTS ON ISSUE 12

(JULY 2013)

Legislative Action

Recommendation 12.1 — The Legislature did not adopt this recommendation to apply standard Sunset Across-the-Board Recommendations related to conflicts of interest, complaint information, and alternative dispute resolution to TEA.

ISSUE 13

Texas Has a Continuing Need for the Texas Education Agency.

Background

The Legislature created the Texas Education Agency to oversee the state's elementary and secondary public education system. The mission of TEA is to provide 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 the state or federal accountability standards;
- providing 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;
- collecting a wide array of educational and financial data from public schools;
- performing the administrative functions and services of the State Board for Educator Certification to certify educators, regulate educator preparation programs, and take enforcement action in cases of educator misconduct; 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 1,029 traditional school districts, 198 charter school districts, six Texas Juvenile Justice Department districts, and the Texas schools for the deaf and for the blind and visually impaired. Statewide, this system served nearly five million students with more than 324,000 classroom teachers in about 8,500 schools.

Findings

Texas has a constitutional mandate to oversee and support the state's public education system.

Ensuring the provision of public education is a key state responsibility. The Texas Constitution requires the Legislature “to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.”¹ Additionally, state law requires a thorough and efficient education system be provided so that each student has access to programs and services that are appropriate to the student's educational needs.² Although they are separate entities with their own distinct responsibilities, TEA and the State Board of Education jointly manage and oversee the public education system in Texas. 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.

To meet its educational mandate, the State must ensure some very basic activities are carried out.

- Distribute money and materials fairly and ensure neither is wasted.
- Ensure children have appropriate opportunity to learn.
- Ensure schools teach children effectively.
- Take action when necessary to enforce accountability for the above.

The Legislature has assigned most of these activities to TEA as described below.

TEA distributes and ensures proper use of state and federal education funding to public schools. In fiscal year 2012, TEA distributed \$19.4 billion in state funds through the Foundation School Program, including \$18.7 billion for the operation of school districts and open-enrollment charter schools and \$655.2 million in facilities funding for school districts. TEA distributed \$219.9 million to school districts and charter schools for the instructional materials allotment and \$283 million in other state funded grant programs. TEA also distributed \$4.8 billion in federal grant funds. TEA assesses the financial accountability of school districts and charter schools by reviewing the quality of their financial management practices using the Financial Integrity Rating System of Texas (FIRST). At the direction of the State Board of Education, TEA provides investment and funds management support for the Permanent School Fund, which is worth \$25.2 billion and provides about \$1 billion a year to the Foundation School Program.

To ensure students receive a quality education, the State must measure student and school performance. TEA manages and oversees the administration of statewide standardized tests and assigns accountability ratings based on test scores and other factors. Through its contract with NCS Pearson Inc, TEA develops, administers, scores, analyzes, and reports on the standardized tests. During the 2010–2011 school year, Texas administered more than eight million tests to students.³ Measuring and reporting this performance allows TEA and the State to determine whether schools are meeting the educational needs of students based on their academic proficiency.

To inform parents, the business community, and the public about the quality of schools, TEA determines campus and district academic accountability ratings under state and federal law, and compiles and publishes school performance and profile data. TEA bases state academic accountability ratings mainly on test scores, but also on drop out and completion data. Under this system, TEA rated 5 percent of school districts and charter schools as exemplary, 35 percent as recognized, 53 percent as acceptable, and 7 percent as unacceptable in 2011. TEA also manages a wide array of accountability standards and programs to comply with the federal No Child Left Behind Act.

TEA distributed more than \$24 billion in state and federal funds to public schools in FY 2012.

TEA performs many other functions vital to ensuring the quality of Texas' public education system. However, the Sunset review identified two TEA functions that are not essential to its core mission — the administration of adult education programs and the regulation of the private driver training industry, as discussed in Issues 2 and 3.

No substantial benefits would result from merging TEA's functions with another agency.

The most commonly discussed alternative for the structure and governance of public education is the consolidation of all statewide responsibilities for elementary, secondary, and higher education sectors — often referred to as P-16 education — under a single agency. Sunset staff determined no substantial benefits would result from merging TEA with the Texas Higher Education Coordinating Board. A single entity would not necessarily lead to improved state-level policy coordination or institution-level coordination among the various education sectors. Even if coordination did improve, the potential problems arising from operating a much larger bureaucracy and the loss of focus on problems within the elementary and secondary education system could have the potential to decrease efficiency and effectiveness rather than increase it. Some small administrative savings could result from this consolidation, but these savings would not outweigh the disadvantages.

Creating a single P-16 education agency would not necessarily improve policy coordination.

Every state has an agency that supports and oversees the public education system.

Each of the 50 states has an education agency that performs functions similar to TEA. While administrative and governance structures vary, these state education agencies are typically Departments of Education or Departments of Public Instruction. Like TEA, these agencies oversee elementary and secondary education and work with school districts to administer the state's public education system. Most states oversee the operations and performance of local education entities and provide funding, educational leadership, and technical assistance through their state education agency or department, similar to Texas.

TEA's statutory powers and duties do not reflect its role and functions in the state's public education system.

TEA's enabling statute lacks a clear, concise description of the agency's major functions. Instead, statute contains two lengthy sections that separately define the powers and duties of the Commissioner of Education and of the agency.^{4,5} The Commissioner's section defines at least 41 different duties and the agency's section defines 15. Most of these items are simply references to other sections of statute where the Commissioner or agency is directed to perform administrative functions for specific education programs. Some of them are duplicated on both lists, and others are obsolete.

The statute prescribes 41 duties for the Commissioner and 15 more for TEA.

Texas has no long-range plan for public education.

Without a clear definition of the agency’s duties in statute, agency management and staff, the Legislature, and stakeholders may have different interpretations of the agency’s priorities. Further, Texas does not have a long-range plan for public education, which further impairs TEA’s and the Legislature’s ability to define the core functions and mission of the agency. While the State Board of Education has a statutory responsibility to develop such a long-range plan, it has not done so since November 2000.^{6,7}

Sunset staff concluded that TEA best serves the state by performing functions that cannot be objectively carried out by local education agencies and that only its position as a statewide entity allow. Statute specifically limits TEA’s authority to functions specifically delegated to it by the Legislature, and assigns all other educational functions to school districts and open-enrollment charter schools.⁸ As such, TEA’s core functions include distributing and ensuring the proper use of state and federal funding; assessing the quality of public education through testing and accountability systems; providing support to the State Board of Education; ensuring the quality of public school educators; and aggregating statewide educational data.

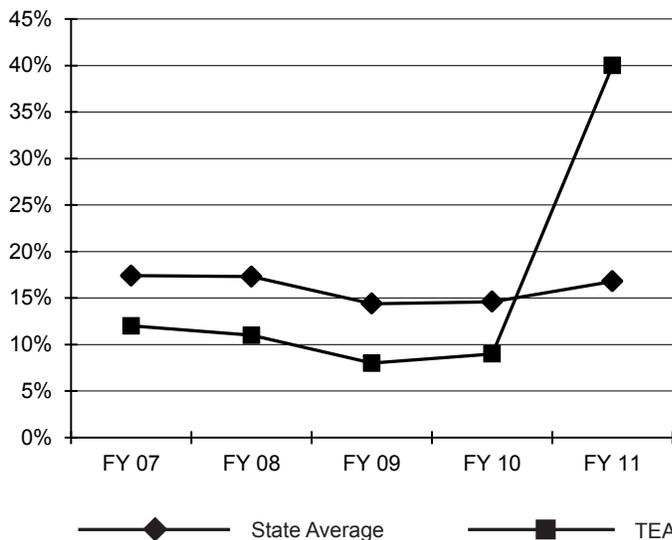
Recent and anticipated changes in TEA’s workforce could leave the agency vulnerable to a significant loss of institutional knowledge critical to its operations.

TEA’s ability to maintain staff with sufficient knowledge and experience to carry on the essential functions of the agency is jeopardized by turnover, retirements, and tenure of existing staff. Due to significant budget cuts in fiscal year 2011, TEA completed two reductions in force resulting in the loss of 269 employees, or about a third of its staff. For that year, TEA’s turnover rate was 40 percent, as compared to the State’s average of 16.8 percent, as shown in the chart, *TEA Turnover*.⁹ Further, 155 employees, approximately 22

percent of TEA’s staff, are currently eligible to retire or will become eligible within the next five years.¹⁰ Many of TEA’s education-related professional positions require several years of public education experience, which contributes to the relatively high average age of TEA staff — 79 percent are over the age of 40 and 49 percent are over the age of 50.¹¹ All of these factors together could result in a significant shortage of experienced staff in the near future.

While TEA has identified certain key positions where retirements are imminent and groomed new staff to fill those positions, the agency has not conducted an agencywide succession planning effort. The agency does offer a training series on

TEA Turnover



management effectiveness to all interested employees and certain divisions within the agency have created clear career ladders. Further, TEA lays out several strategies for minimizing the impact of retirements in its strategic plan, such as encouraging mentoring, attempting to capture and codify knowledge, and cross-training staff.¹² However, the effectiveness of these efforts will be limited unless the agency takes a comprehensive approach of involving all divisions of the agency and ensuring all affected staff receive the necessary training and development opportunities to assume top-level management roles.

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 for the standard 12-year period.

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 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.¹³ 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.

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.¹⁴ 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.

A detailed accounting of what changes are needed to these sections of statute is located in Appendices G and H.

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 develop a succession plan to prepare for both anticipated and unanticipated departures of key staff by establishing a comprehensive strategy for preparing staff to assume the responsibilities of positions critical to TEA's operations. The purpose of succession planning is to ensure that there are experienced and capable employees who are prepared to assume strategic organizational roles as they become open. As such, 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. A succession plan would reposition TEA to address future needs with current resources and ensure continuity of leadership.

Fiscal Implication

If the Legislature continues the current functions of TEA, the agency would require continuation of its annual administrative appropriation of approximately \$119 million for agency operations.

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- 1 Section 1, Article VII, Texas Constitution.
 - 2 Section 4.001, Texas Education Code.
 - 3 NCS Pearson, Inc., *2010–2011 Year-End Review: Contracted Services for Texas Student Assessments 2010–2015*, p. 1.
 - 4 Section 7.055, Texas Education Code.
 - 5 Section 7.021, Texas Education Code.
 - 6 Section 7.102(c)(1), Texas Education Code.
 - 7 State Board of Education, *Long-Range Plan for Public Education 2001–2006: Updated November 2000*.
 - 8 Section 7.003, Texas Education Code.
 - 9 Texas Education Agency, *Strategic Plan for the Fiscal Years 2013–2017* (Austin, July 6, 2012), p. 16.
 - 10 *Ibid.*, p. 16 and p. 124.
 - 11 *Ibid.*, p. 16.
 - 12 *Ibid.*
 - 13 Section 7.055, Texas Education Code.
 - 14 Section 7.021, Texas Education Code.

RESPONSES TO ISSUE 13

Recommendation 13.1

Continue the Texas Education Agency for 12 years.

Agency Response to 13.1

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 13.1

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin

Against 13.1

None received.

Recommendation 13.2

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

Agency Response to 13.2

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 13.2

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Janna Lilly, M.Ed., Director of Governmental Relations – Texas Council of Administrators of Special Education, Inc., Austin

Against 13.2

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Modification

1. Redefine the Commissioner's and TEA's powers and duties as suggested by Sunset staff except leave educator certification duties with the State Board for Educator Certification. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)

Recommendation 13.3

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

Agency Response to 13.3

The agency agrees with this recommendation. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

For 13.3

Jennifer M. Canaday, Governmental Relations Manager – Association of Texas Professional Educators, Austin

Priscilla Aquino Garza, Deputy Director – Stand for Children-Texas, Austin

Against 13.3

None received.

COMMISSION DECISION ON ISSUE 13

(JANUARY 2013)

Adopted Recommendations 13.1 through 13.3.

FINAL RESULTS ON ISSUE 13

(JULY 2013)

Legislative Action

Recommendation 13.1 — The Legislature adopted through separate legislation, House Bill 1675, a provision to continue TEA until 2015 and place the agency under a limited-scope Sunset review in the 2014-15 biennium.

Recommendation 13.2 — The Legislature did not adopt this recommendation to redefine the Commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.

Management Action

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

NEW ISSUES

NEW ISSUES

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

14. Clarify that the Commissioner's hearings extend only to disputes between public schools and individuals by removing the ability for persons to appeal to the Commissioner if they are aggrieved by the school laws of this state. (Michael L. Williams, Commissioner of Education – Texas Education Agency)
15. Limit appeals to court to only an appeal of a decision of the Commissioner, not any action of the agency. (Michael L. Williams, Commissioner of Education – Texas Education Agency)
16. Grant TEA comprehensive rulemaking authority under Chapter 42 of the Texas Education Code, related to the Foundation School Program, unless otherwise delegated to the State Board of Education. (Michael L. Williams, Commissioner of Education – Texas Education Agency)

Charter School Regulation

17. Require charter applications to be public to introduce more transparency into the selection process; and preclude boiler-plate charter applications. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
18. Require criteria for approving or disapproving an application for charter renewal of an open-enrollment charter to specify that charters meet the student performance standards on assessment instruments set forth in their applications for at least the two years immediately preceding consideration of renewal requests. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
19. Require charters wishing to fast-track expansion to be subject to the standard accountability system, and eliminate the expansion amendment option for charters using the alternative accountability system. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
20. Require audits of the accuracy of fiscal information provided by charter schools via the Public Education Information Management System (PEIMS) to include an identification of all sources of funding, including private funding. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
21. Require TEA by rule to prohibit any and all paid endorsements or commission-based endorsement contracts. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
22. Pro-rate state funding for charter schools operating for less than a full instructional day. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)

23. Clearly assign responsibility for charter school outcomes to the charter school authorizer. (Jim Thompson, Attorney – James C. Thompson PLLC, Austin)
24. Encourage independent school districts to develop locally granted and controlled charters, especially in areas underserved by charters, by studying how other states have used this type of charter effectively and enacting measures to foster their growth in Texas. (Jim Thompson, Attorney – James C. Thompson PLLC, Austin)
25. Establish a body, separate and apart from TEA or the State Board of Education, to authorize state-granted charter schools. (Jim Thompson, Attorney – James C. Thompson PLLC, Austin)
26. Hold all charter authorizers accountable for their success in the authorizer function by reporting indicators of performance to voters clearly and at intervals and in the manner that student performance is reported now. (Jim Thompson, Attorney – James C. Thompson PLLC, Austin)
27. Require TEA to establish a Dropout Recovery Designation, as an alternative accountability rating system, for charter schools that take on the challenge of working with high percentages of dropout students. (Parc Smith, CEO – American YouthWorks, Austin; David Claus, YouthBuild Program Director – American YouthWorks, Austin)
28. Require the academic accountability system to include a fair accounting for progress of significantly challenged and at-risk youth. (Parc Smith, CEO – American YouthWorks, Austin)
29. Require higher standards than acceptable academic performance for the Commissioner's approval of applications for charter expansion. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)
30. Limit the number of charter expansions consistent with TEA's ability to oversee them. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

Driver Training

31. Establish a fee for approval of a driver education instructor development program curriculum. (Richard O. Reyna – Austin Driving Schools, Austin)
32. Authorize driver training instructors to complete continuing education requirements online. (Richard O. Reyna – Austin Driving Schools, Austin)
33. Authorize driver training schools to retain tuition for any portion of a driver education program completed by a student in the event the student cancels an enrollment contract before the third day after signing the contract. (Richard O. Reyna – Austin Driving Schools, Austin)
34. Amend the requirement that driver education schools terminate enrollment and refund tuition to certain students by eliminating the portion of the requirement that applies to students who fail to attend class for ten days. (Richard O. Reyna – Austin Driving Schools, Austin)

35. Modify the current statutory prohibition on when a driver training school may begin to advertise or operate by specifying that schools may not advertise or operate before the earlier of 30 days after the school applies for a license or the date the school receives its license. Also add a provision specifying that a driver training school that holds a driver training school license may not advertise or operate at a branch location of the school before the earlier of 15 days after the school applies for a driver training school license for the branch location or the date the school receives the branch location license. (Richard O. Reyna – Austin Driving Schools, Austin)
36. Promote the use of technology by driver education schools and driving safety course providers for communication with the oversight agency to include information such as license renewals, reporting student attendance, and graduation data. (Richard O. Reyna – Austin Driving Schools, Austin)
37. Direct driver education schools to electronically submit the same data relating to certificates of course completion that driving safety course providers are statutorily required to submit electronically. (Richard O. Reyna – Austin Driving Schools, Austin)
38. Eliminate the parent-taught driver education course offered by Education Service Center 13 in Austin. (Carlos Reyna, Director of Program Development – I Drive Safely, LLC)
39. In the event the parent-taught driver education course offered by Education Service Center 13 continues, the Department of Public Safety should require the course to meet the same requirements to verify students have passed the course as are currently placed on all other parent-taught driver education courses. (Carlos Reyna, Director of Program Development – I Drive Safely, LLC)

Staff Comment: DPS policy requires all parent-taught driver education instructors to sign an affidavit swearing to the fact that instruction requirements have been met.

40. Prohibit licensed driver education instructors from providing any driver education services for hire or compensation outside the auspices of a licensed driver education school. (Carlos Reyna, Director of Program Development – I Drive Safely, LLC)

Testing and Academic Accountability

41. Replace state standardized tests with nationally normed examinations. (Tom Pauken, Commissioner Representing Employers – Texas Workforce Commission)
42. Create one accountability system, rather than one that complies with federal requirements and another that complies with state requirements. (Ken McCraw, Executive Director – Texas Association of Community Schools, Austin; Eddie Bland, Superintendent – Bridgeport ISD, Bridgeport; Dr. Rodney D. Cavness, Superintendent – Port Neches-Groves ISD, Port Neches; Dave Plymale, Superintendent – Trinity ISD, Trinity)

Staff Comment: The issue of how to reform the accountability system in this state will require major policy decisions on the part of the Legislature, perhaps during the upcoming session.

43. Authorize local education agencies to determine whether to include STAAR end-of-course exam scores in student grades. (Dineen Majcher – Texans Advocating for Meaningful Student Assessment, Austin)

Special Education

44. Require TEA to ensure appropriate transition information, planning, and services — including real work experiences — are provided to all students with disabilities beginning by age 14. (Rona Statman, Director of Family Support Services – The Arc of Texas, Austin)
45. Require local school districts and Department of Assistive and Rehabilitation Services transition/vocational rehabilitation counselors to collaborate, provide training for school districts, and work together to share costs for providing appropriate transition services for special education students. (Rona Statman, Director of Family Support Services – The Arc of Texas, Austin)
46. Require each independent school district or special education co-op to designate a transition specialist with working knowledge of the transition process as well as local and state transition resources. (Rona Statman, Director of Family Support Services – The Arc of Texas, Austin)
47. Require TEA to collect data relating to the number of individual education plans for eligible transition-aged students that include coordinated transition activities and the instructional arrangement of the student receiving these services. (Rona Statman, Director of Family Support Services – The Arc of Texas, Austin)
48. Require TEA to develop a statewide alternative dispute resolution system/continuum that includes a statewide independent individual education plan facilitation process. (Rona Statman, Director of Family Support Services – The Arc of Texas, Austin)
49. Require TEA, as part of its special education intervention process, to provide incentives for school districts to implement best practices in areas such as positive behavioral interventions and supports or supported employment opportunities as part of transition planning. (Jeffrey Miller, Education Policy Specialist – Disability Rights Texas, Austin)
50. Require TEA to make monitoring and accountability data regarding special education readily available on its website in a manner easily understood by parents and the public. (Jeffrey Miller, Education Policy Specialist – Disability Rights Texas, Austin)
51. Require TEA to consolidate and simplify accountability data collected across different accountability systems to make information easier for school districts to report and for parents and local policy makers to understand. (Jeffrey Miller, Education Policy Specialist – Disability Rights Texas, Austin)
52. Require TEA to intervene when school districts are not in compliance with laws regarding discipline of special education students, transition planning, or provision of the least restrictive environment, even if the district has no other areas of noncompliance. (Jeffrey Miller, Education Policy Specialist – Disability Rights Texas, Austin)

53. Require TEA to review all accountability, monitoring, and compliance systems related to special education in order to identify any areas of duplication and confusion and make recommendations through a stakeholder group process for a more streamlined and simplified system. (Janna Lilly, Director of Government Relations – Texas Council of Administrators of Special Education, Inc., Austin)

Other

54. Subject the State Board of Education to regular review by the Sunset Commission. (Jim Thompson, Attorney – James C. Thompson PLLC, Austin)
55. Prohibit TEA from contracting out the management of any state services to governmental entities that are not allowed by statute to accept state funds for their upper management, such as the Harris County Department of Education. (Colleen Vera, retired Texas teacher – Houston)
56. Require TEA, as part of its data system, to validate the accuracy of district coding of Public Education Information Management System (PEIMS) categories. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
57. Require TEA, as part of its financial accountability system, to include sanctions for districts that submit inaccurate data. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
58. Require TEA to include random, on-site visits to schools to look beyond data as part of its performance-based monitoring system. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
59. During the rulemaking process, require TEA to perform an assessment of additional paperwork requirements each new rule would potentially impose on educators. If a rule does impose additional paperwork requirements, require TEA to revise the rule to minimize the paperwork requirements. (Holly Eaton, Director of Professional Development and Advocacy – Texas Classroom Teachers Association, Austin)
60. Require TEA to produce School District Snapshot reports, post Snapshots online, and include the latest data available. (Peggy Venable – Americans for Prosperity-Texas, Austin)
61. As a management action, direct TEA to continue producing the annual Snapshot. (Jackie Lain, Associate Executive Director – Texas Association of School Board, Austin)
62. As a management action, direct TEA to ensure that the prices it pays for contracted services are in line with those paid by other states for items of similar value. (Dineen Majcher – Texans Advocating for Meaningful Student Assessment, Austin)
63. Remove state funding for the 20 regional education service centers, making them completely self-funded. (Richard James Golsan, Policy Analyst – Texas Public Policy Foundation, Austin)
64. Transfer teacher certification to school districts and allow administrators at the local level to place teachers in the classroom as the need arises. (Richard James Golsan, Policy Analyst – Texas Public Policy Foundation, Austin)

65. Allow teachers from out of state to be certified immediately, rather than going through a formal probationary process. (Richard James Golsan, Policy Analyst – Texas Public Policy Foundation, Austin)
66. Provide leadership within TEA in the form of a highly qualified director of health and safety who will report directly to the Commissioner of Education. (Kenneth Cooper, M.D., Founder – Cooper Clinic, Dallas)
67. Require the Commissioner of Education to establish an explicit methodology for making the determination as to whether funding is sufficient under the Student Success Initiative. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)
68. Set a reasonable time limit in statute for the issuance of the Commissioner of Education's decisions in grievance appeals under Section 7.057, Texas Education Code. (Patty Quinzi, Legislative Counsel – Texas American Federation of Teachers, Austin)

COMMISSION DECISION ON NEW ISSUES

(JANUARY 2013)

The Commission did not adopt any new issues.

FINAL RESULTS ON NEW ISSUES

(JULY 2013)

No action needed. (No new issues adopted by the Commission.)

APPENDICES

APPENDIX A

Driver Training Fees in Statute

Fee Description	Amount	Education Code Section
Driver education course completion certificates	Not more than \$4	1001.055(c)*
Driving safety course completion certificates	Not more than \$4	1001.056(e)
Initial driver education school license	\$1,000 plus \$850 for each branch location	1001.151(b)
Initial driving safety school license	Not to exceed \$200	1001.151(c)
Initial course provider license	Not to exceed \$2,000	1001.151(d)
Renewal of license for course provider, driving safety school, driver education school, or branch location	Not to exceed \$200	1001.151(e)
Late renewal — driver education and driving safety school and course provider	At least \$100	1001.303(b)
Approval of driving safety course not previously evaluated by the Commissioner of Education	\$9,000	1001.151(j)
Each additional driver education or driving safety course	\$25	1001.151(h)
Original driver education or driving safety instructor processing fee	\$50	1001.151(k)
Driver education or driving safety instructor annual fee	\$25	1001.151(k)
Late renewal — instructors	\$25	1001.304(c)
Director application**	\$30	1001.151(i)(1)
Assistant director or administrative staff application**	\$15	1001.151(i)(2)
Change of owner of a driver training school or course provider	\$500 plus \$200 for each branch location	1001.213(c)
Change of address — driver education school	\$180	1001.151(f)(1)
Change of address — driving safety school or course provider	\$50	1001.151(f)(2)
Change of name — driver education school or course provider or owner	\$100	1001.151(g)(1)
Change of name — driving safety school or owner	\$50	1001.151(g)(2)

* Also in Section 543.113(a), Texas Transportation Code.

** Recommendation 3.3 would eliminate this fee.

APPENDIX B

Texas Education Agency Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
Eliminate				
1. Campus Report Card	Section 39.305, Texas Education Code	Requires TEA to prepare a report card with campus performance compared to previous campus and district performance, current district performance and state standards.	School Districts	Eliminate – See Recommendation 4.4, to merge the <i>Campus Report Card</i> with the <i>Performance Report</i> .
2. Exemption of Courses for Extracurricular Activities	Section 33.081(d-1), Texas Education Code	Requires TEA to biennially review courses to determine if they should be excluded from the requirement that a student be suspended from extracurricular activities.	Legislature	Eliminate – See Recommendation 4.16, to abolish unnecessary reports.
3. High School Completion and Success Initiative Council Report	Section 39.415(a), Texas Education Code	Requires TEA to prepare a report that recommends any statutory changes the Council considers appropriate to promote high school completion and college and workforce readiness.	Legislature	Eliminate – See Recommendation 4.15, to eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.
4. High School Completion and Success Initiative Progress Report	Section 39.415(b), Texas Education Code	Requires TEA to prepare a progress report regarding the implementation of programs under the High School Completion and Success Initiative and the alignment of programs to the strategic plan.	Governor, Legislative Budget Board, and Legislative Education Committees	Eliminate – See Recommendation 4.15, to eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.
5. Intensive Mathematics and Algebra Intervention Pilot Program Report	Sections 29.099(h) and 29.099(i), Texas Education Code	Requires TEA to contract out for an evaluation of the Intensive Mathematics and Algebra Intervention Pilot Program, and requires the Commissioner to recommend any statutory changes the Commissioner considers appropriate to promote improved mathematics and algebra readiness.	Legislature	Eliminate – See Recommendation 4.16, to abolish unnecessary reports. Under this recommendation, the pilot program would also be eliminated.
6. International Assessment Instrument Program Report	Section 39.037(g), Texas Education Code	Requires the Commissioner to prepare a report describing the results of student performance on the international assessment instruments.	Legislature and School Districts	Eliminate – See Recommendation 4.16, to abolish unnecessary reports.

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
7. Physical Fitness Assessment	Section 38.104, Texas Education Code	Requires TEA to analyze the results of the physical fitness assessment and identify, for each school district, any correlation between the results and the following: student academic achievement levels, student attendance levels, student obesity, student disciplinary problems, and school meal programs.	School Health Advisory Committee	Eliminate – See Recommendation 4.16, to abolish unnecessary reports.
8. Reporting of Bus Accidents	Section 34.015(c), Texas Education Code	Requires TEA to publish on its website data collected from school districts on school bus accidents.	General Public	Eliminate – See Recommendation 4.16, to abolish unnecessary reports.
Restructure				
9. Annual Evaluation of Charter Schools	Section 12.118, Texas Education Code	Requires the Commissioner to designate an impartial organization with experience in evaluating school choice programs to conduct an annual evaluation of open-enrollment charter schools.	Not specified	Restructure – See Recommendation 4.5, to restructure the open-enrollment charter school evaluation to be done once every four years and provide flexibility for the agency to target the evaluation appropriately.
10. Comprehensive Annual Report	Section 39.332, Texas Education Code	Requires TEA to prepare a report that includes state performance on the academic excellence indicators; student performance on state assessments; performance of students at risk of dropping out of school; students in disciplinary alternative education settings; secondary school completion and dropouts; grade-level retention of students; district and campus performance in meeting state accountability standards; status of the curriculum; charter schools and waivers; school district expenditures and staff hours used for direct instructional activities; district reporting requirements; TEA funds and expenditures; performance of open-enrollment charters in comparison to school districts; character education programs; and student health and physical activity.	Governor, Legislature, Legislative Budget Board, and Legislative Education Committees	Restructure – See Recommendation 4.3, to make the Comprehensive Annual Report to the Legislature on Public Schools biennial.

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
Continue				
11. Annual Report on the Permanent School Fund	TEA Rider 22, General Appropriations Act, 82nd Legislature	Requires TEA to report on the actual and projected cost of administering the Permanent School Fund for the year covered by the report and the following three years.	Not specified	Continue
12. Comparison for Annual Performance Assessments	Section 39.302, Texas Education Code	Requires TEA to report to each school district the comparison of student performance.	School Districts	Continue
13. Early Childhood School Readiness Program	TEA Rider 54, General Appropriations Act, 82nd Legislature	Requires TEA or any entity with which the agency contracts for purposes of administering programs under this rider to submit a report providing detailed information on the expenditure of state funds for purposes of the Early Childhood School Readiness Program.	Governor, Lieutenant Governor, Speaker, Legislative Budget Board, and Legislative Education Committees	Continue
14. Evaluations for General Revenue Programs	TEA Rider 47, General Appropriations Act, 82nd Legislature	Requires TEA to conduct a performance evaluation of any General Revenue-funded program initiated by the 81st or 82nd Legislature, and deliver a report to the Legislature in January of the first odd-numbered year after the fourth fiscal year of the program's implementation.	Legislature	Continue
15. Foundation School Program Funding	TEA Rider 3, General Appropriations Act, 82nd Legislature	Requires TEA to submit reports on the prior month's expenditures on Foundation School Program Funding programs no later than the 20th day of each month.	Governor and Legislative Budget Board	Continue
16. Funding for Regional Education Service Centers	TEA Rider 39, General Appropriations Act, 82nd Legislature	Requires the Commissioner to provide a consolidated report on the annual data education service centers report to the Commissioner.	Governor, Lieutenant Governor, Speaker, Legislative Budget Board, and Legislative Education Committees	Continue
17. Measure of Annual Improvement in Student Achievement	Section 39.034(d-1), Texas Education Code	Requires TEA to report the expected level of improvement and the actual level of improvement in student achievement from one school year to the next on an assessment instrument.	School Districts	Continue

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
18. Permanent School Fund Distribution Rate	TEA Rider 46, General Appropriations Act, 82nd Legislature	Requires TEA to report the State Board of Education's distribution rates from the Permanent School Fund to the Available School Fund; assumption of methodology used in determining the rate; annual amount of distribution under consideration that is estimated to provide and the differences between them and the annual distribution amounts for the preceding three biennia; and the optimal distribution amount for the preceding biennium and the difference between it and the actual distribution amount.	Governor and Legislative Budget Board	Continue
19. Program Transfers and Contracts with Education Service Centers	TEA Rider 14, General Appropriations Act, 82nd Legislature	Requires TEA to submit a report describing all programs and funding amounts transferred to regional education service centers during the fiscal year.	Governor, Legislative Budget Board, and Legislative Education Committees	Continue
20. Receipt and Use of Grants, Federal Funds, and Royalties	TEA Rider 40, General Appropriations Act, 82nd Legislature	Requires TEA to report on grants or earnings received pursuant to the provision of this rider, and the planned use of those funds.	Governor and Legislative Budget Board	Continue
21. Regional and District Level Report	Section 39.333, Texas Education Code	Requires TEA to prepare a report that includes a summary of school district compliance with the student/teacher ratios and class-size limitations; a summary of the exemptions and waivers granted to campuses and school districts and a review of the effectiveness of each campus or district following deregulation; an evaluation of regional education service centers; an evaluation of accelerated instruction programs; and the number of classes at each taught by individuals who are not certified in the content areas of their respective classes.	Governor, Legislature, Legislative Budget Board, and Legislative Education Committees	Continue
22. Reporting Schedule	Section 7.037, Texas Education Code	Requires TEA to develop and maintain a comprehensive schedule of reporting requirements for school districts in a format and delivery method of TEA's choice.	School Districts	Continue
23. School District Fiscal Management Report	Sections 7.055(36) and 44.001(b), Texas Education Code	Requires the Commissioner to report to the State Board of Education the status of school district fiscal management.	State Board of Education	Continue

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
24. Technology Report	Section 39.334, Texas Education Code	Requires TEA to report on the status of implementation of and revisions to the long-range technology plan.	Governor, Legislative Budget Board, and Legislative Education Committees	Continue

APPENDIX C

*Charter School Requirements and Exceptions**

Requirements	Exceptions
<p>Charter schools must comply with the following statutory provisions:</p> <ul style="list-style-type: none"> ● Submission of Public Education Information Management System (PEIMS) Data ● High School Graduation Requirements ● Special Education Requirements ● Bilingual/English as a Second Language Requirements ● Prekindergarten Program Requirements ● State Curriculum ● Statewide Assessments ● Open Government Laws ● Health and Safety Regulations ● Extracurricular Activity Requirements ● Academic and Financial Accountability Requirements ● Accelerated and Intensive Programs 	<p>Charter schools do not have to comply with the following statutory provisions except as noted in sub-bullets:</p> <ul style="list-style-type: none"> ● Student/Teacher Ratio and Class Size <ul style="list-style-type: none"> – Must be implemented as specified in charter. ● Teacher Certification Requirements <ul style="list-style-type: none"> – Must have a high school diploma. ● School Governance Requirements <ul style="list-style-type: none"> – Non-profit rather than elected board with bylaws guiding terms of office, composition, and selection and removal. – Nepotism exemption for charters rated acceptable two out of the last three years. – Criminal history restrictions for board members and employees. ● Student Discipline Rules <ul style="list-style-type: none"> – Confinement, restraint, seclusion, and time-out rules still apply. ● School Calendar <ul style="list-style-type: none"> – Must provide at least 180 days of instruction for state funding. ● Admission Policies <ul style="list-style-type: none"> – Lottery or first-come, first-served basis. – Can exclude students with documented criminal offense, juvenile court adjudication, or other specified discipline problems. ● Pledge of Allegiance/Moments of Silence

* This list reflects requirements and exceptions of state law, and does not include any requirements of federal law.

APPENDIX D

Charter Campuses With Number of Non-Consecutive Years Academically Unacceptable (AU) by Generation Inception Through the 2010–2011 School Year ^{1,2}

Generation	Total Number of Campuses	1 Year AU	2 Years AU	3 Years AU	4 Years AU	5 Years AU	6 Years AU	7 Years AU	Percent AU Two or More Years
1	40	12	5	4	3	2	1		38%
2	87	20	11	5	3			1	23%
3	152	24	28	14	8	1	2		35%
4	61	10	2	1					5%
5	10	2	2	1					30%
6	29	6	5	3	1				31%
7	19	8	3	2					26%
8	3								0%
9	16	4		1					6%
10	10	2	1						10%
11	25	2							0%
12	12	1							0%
13	21	5							0%
14	7	3							0%

¹ This chart reflects ratings of individual charter campuses, as opposed to the charter itself, because TEA only assigned academic accountability ratings at the campus level before 2004. Similarly, because TEA did not issue a rating of academically unacceptable before 2004, this chart includes the equivalent of an academically unacceptable rating for 1998–2002.

² This chart has been updated since original publication in October 2012.

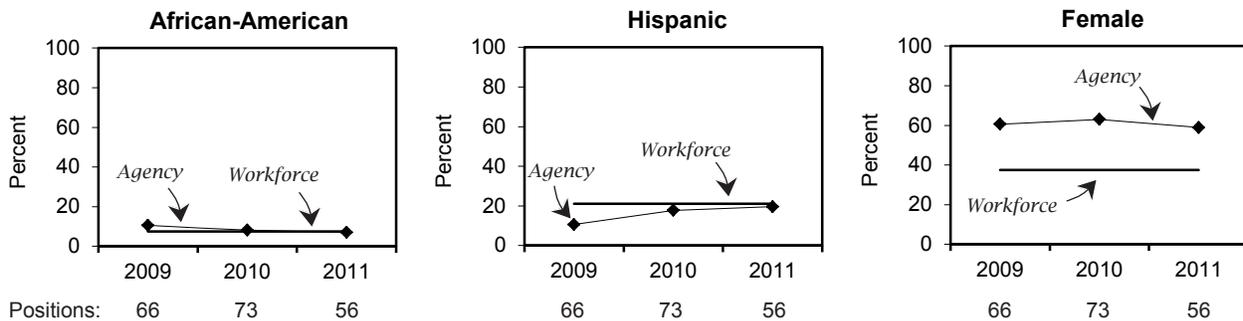
APPENDIX E

Equal Employment Opportunity Statistics 2009 to 2011

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Education Agency.¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the flat lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category.

TEA met or exceeded many statewide civilian workforce percentages for fiscal years 2009 to 2011, but fell short on its employment of Hispanics and African-Americans in technical positions.

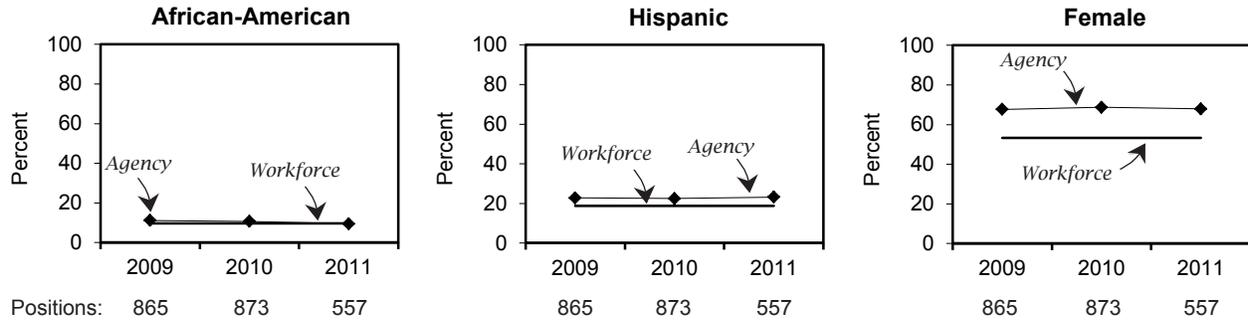
Administration



For fiscal years 2009 and 2010, the percentage of TEA's administrators met or exceeded the statewide civilian workforce percentage for both African-Americans and women. However, while the percentage of Hispanics in this category increased over the last three fiscal years, it still remained below the statewide civilian workforce.

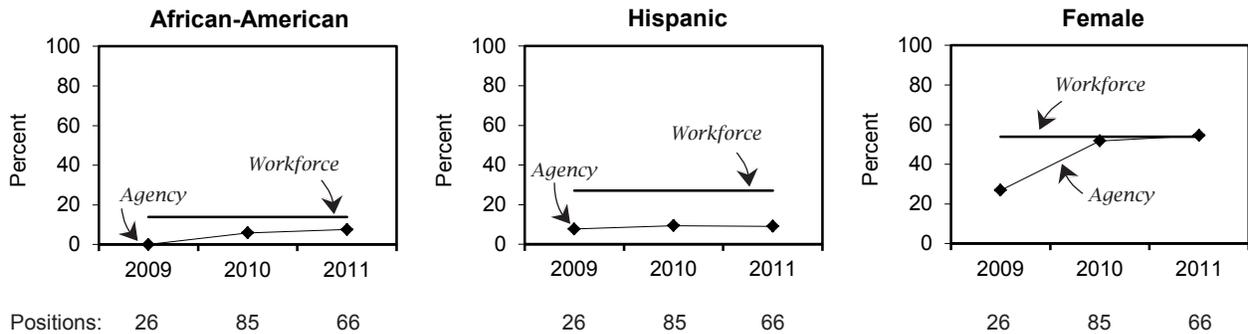
Appendix E

Professional



TEA's workforce percentages for professionals were within a few points of the statewide civilian workforce for African-Americans and Hispanics and exceeded the civilian workforce percentage for women.

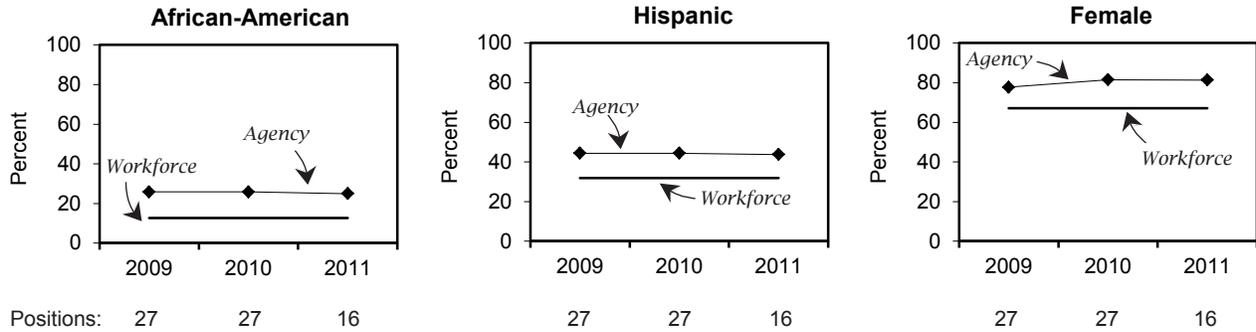
Technical



TEA showed improvement in the percentage of African-Americans and women in technical positions over the last three fiscal years, but the percentage of Hispanic employees in these positions has remained significantly lower than the statewide civilian workforce.

Appendix E

Administrative Support



TEA exceeded the statewide civilian workforce percentage in all categories for administrative support positions from fiscal year 2009 to fiscal year 2011.

1 Section 325.011(9)(A), Texas Government Code.

2 Section 21.501, Texas Labor Code.

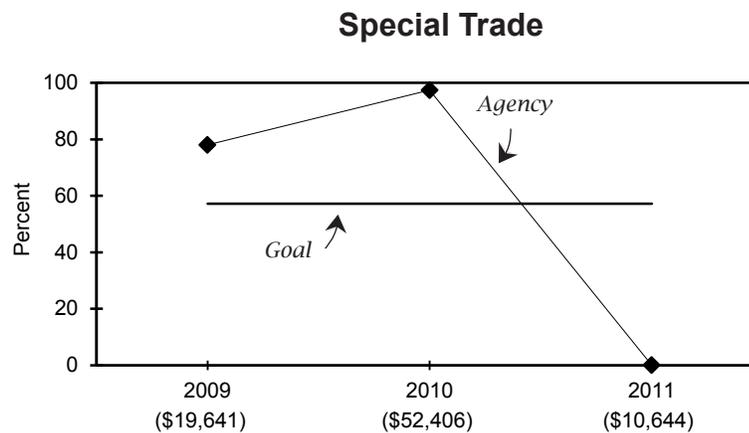
APPENDIX F

Historically Underutilized Businesses Statistics 2009 to 2011

The Legislature has encouraged state agencies to increase their use of Historically Underutilized Businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.¹

The following material shows trend information for the Texas Education Agency's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the flat lines represent the goal for HUB purchasing in each category, as established by the Comptroller's Office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category for fiscal years 2009 to 2011. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

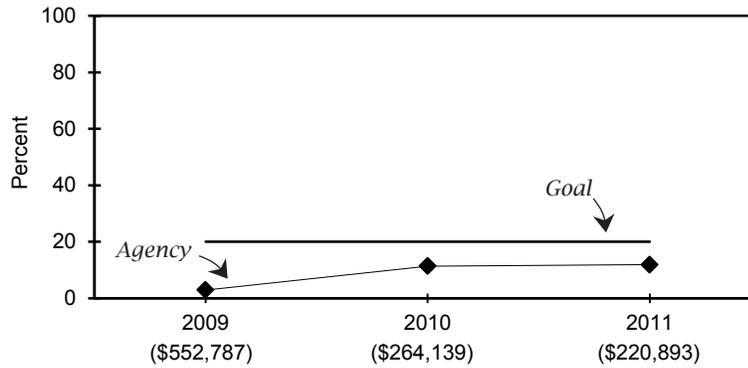
TEA has complied with HUB program requirements, but has had difficulty meeting several statewide HUB purchasing goals, particularly in the categories of professional services and other services.



In the special trade category, TEA significantly exceeded the goal for fiscal years 2009 and 2010, but HUBs did not compose any of the agency's special trade contracts in fiscal year 2011.

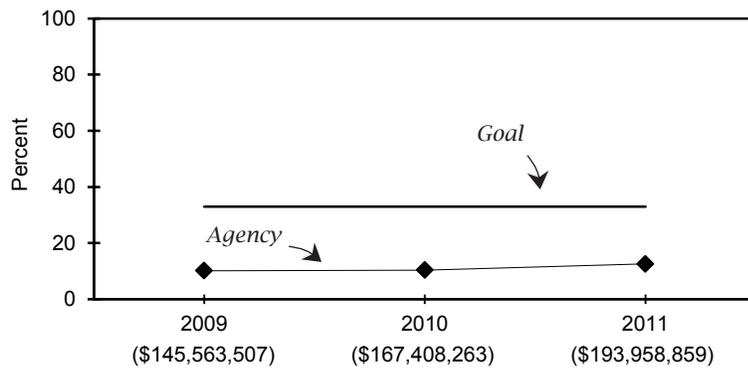
Appendix F

Professional Services



TEA has failed to meet the statewide goal for professional services during the last three fiscal years.

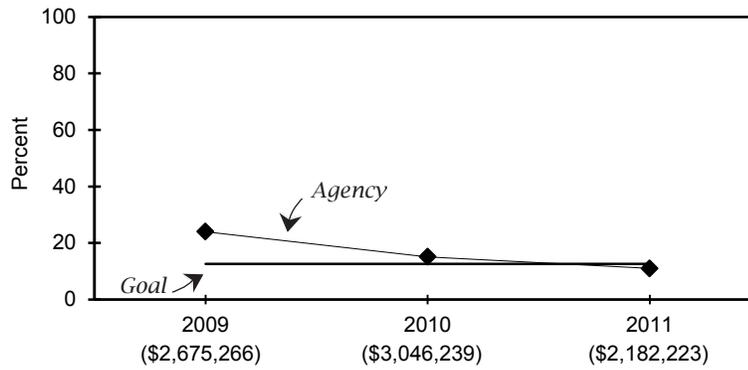
Other Services



During the last three fiscal years, TEA has failed to meet the statewide goal for the other services category.

Appendix F

Commodities



For the first time in fiscal year 2011, TEA did not meet the goal for the commodities category.

.....
¹ Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

APPENDIX G

Sunset Staff Recommendations for the Commissioner of Education's Powers and Duties

Statutory Requirements in Section 7.055, Texas Education Code	Sunset Staff Recommendation
(b)(1) The Commissioner shall serve as the educational leader of the state.	Incorporate into the Commissioner's new list of powers and duties, as described in Recommendation 13.2.
(b)(2) The Commissioner shall serve as executive officer of the agency and as executive secretary of the State Board of Education.	Incorporate the language requiring the Commissioner to serve as the executive officer of the agency into the Commissioner's new list of powers and duties, as described in Recommendation 13.2. Eliminate the reference to the executive secretary as this function is a remnant of when the State Board of Education oversaw the Commissioner and the agency. Instead, Recommendation 13.2 defines the agency's function of providing support to the Board.
(b)(3) The Commissioner shall carry out the duties imposed on the Commissioner by the Board or the Legislature.	Incorporate the language requiring the Commissioner to carry out the duties imposed by the Legislature into the Commissioner's new list of powers and duties, as described in Recommendation 13.2. Eliminate the requirement for the Commissioner to carry out the duties imposed by the Board as this language is a remnant of when the State Board of Education oversaw the Commissioner and the agency. Instead, Recommendation 13.2 defines the agency's function of providing support to the Board.
(b)(4) The Commissioner shall prescribe a uniform system of forms, reports, and records necessary to fulfill the reporting and recordkeeping requirements of this title.	Eliminate. Section 42.006, Texas Education Code, regarding the Public Education Information Management System (PEIMS) makes this section unnecessary because TEA uses PEIMS as a uniform reporting system for public schools to submit information to the agency.
(b)(5) The Commissioner may delegate ministerial and executive functions to agency staff and may employ division heads and any other employees and clerks to perform the duties of the agency.	Incorporate into the Commissioner's new list of powers and duties, as described in Recommendation 13.2.
(b)(6) The Commissioner shall adopt an annual budget for operating the Foundation School Program as prescribed by Subsection (c).	Eliminate. The General Appropriations Act and other legislative appropriations bills supersede this function by establishing requirements for how Foundation School Program money will be spent.

Appendix G

<p align="center">Statutory Requirements in Section 7.055, Texas Education Code</p>	<p align="center">Sunset Staff Recommendation</p>
<p>(b)(7) The Commissioner may issue vouchers for the expenditures of the agency and shall examine and must approve any account to be paid out of the school funds before the Comptroller may issue a warrant.</p>	<p>Eliminate. The Comptroller has sufficient authority in the Texas Government Code to ensure all agencies account for their expenditures, making this section unnecessary.</p>
<p>(b)(8) Repealed.</p>	<p>N/A</p>
<p>(b)(9) The Commissioner shall have a manual published at least once every two years that contains Title 1 and this title, any other provisions of this code relating specifically to public primary or secondary education, and an appendix of all other state laws relating to public primary or secondary education and shall provide for the distribution of the manual as determined by the Board.</p>	<p>Move to a new section of Chapter 7, Texas Education Code, regarding the general provisions for the agency.</p>
<p>(b)(10) The Commissioner may visit different areas of this state, address teachers' associations and educational gatherings, instruct teachers, and promote all aspects of education and may be reimbursed for necessary travel expenses incurred under this subdivision to the extent authorized by the General Appropriations Act.</p>	<p>Eliminate. The Commissioner does not need specific statutory authority to travel and receives reimbursements for travel expenses through the General Appropriations Act.</p>
<p>(b)(11) The Commissioner may appoint advisory committees, in accordance with Chapter 2110, Government Code, as necessary to advise the Commissioner in carrying out the duties and mission of the agency.</p>	<p>Incorporate into the Commissioner's new list of powers and duties, as described in Recommendation 13.2.</p>
<p>(b)(12) The Commissioner shall appoint an agency auditor.</p>	<p>Incorporate into the Commissioner's new list of powers and duties, as described in Recommendation 13.2.</p>
<p>(b)(13) The Commissioner may provide for reductions in the number of agency employees.</p>	<p>Eliminate. The Commissioner does not need specific statutory authority to reduce the number of agency employees as Texas is an at-will employment state.</p>
<p>(b)(14) The Commissioner shall carry out duties relating to the investment capital fund under Section 7.024.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(15) The Commissioner shall review and act, if necessary, on applications for waivers under Section 7.056.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(16) The Commissioner shall carry out duties relating to regional education service centers as specified under Chapter 8.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(17) The Commissioner shall distribute funds to open-enrollment charter schools as required under Subchapter D, Chapter 12.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>

Appendix G

Statutory Requirements in Section 7.055, Texas Education Code	Sunset Staff Recommendation
(b)(18) The Commissioner shall adopt a recommended appraisal process and criteria on which to appraise the performance of teachers, a recommended appraisal process and criteria on which to appraise the performance of administrators, and a job description and evaluation form for use in evaluating counselors, as provided by Subchapter H, Chapter 21.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(19) The Commissioner shall coordinate and implement teacher recruitment programs under Section 21.004.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(20) The Commissioner shall perform duties in connection with the certification and assignment of hearing examiners as provided by Subchapter F, Chapter 21.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(21) The Commissioner shall carry out duties under the Texas Advanced Placement Incentive Program under Subchapter C, Chapter 28.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(22) The Commissioner may adopt rules for optional extended year programs under Section 29.082.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(23) The Commissioner shall monitor and evaluate prekindergarten programs and other child-care programs as required under Section 29.154.	Eliminate. Section 7.028, Texas Education Code, limiting the agency's compliance monitoring of state grant programs supersedes this section.
(b)(24) The Commissioner, with the approval of the board, shall develop and implement a plan for the coordination of services to children with disabilities as required under Section 30.001.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(25) The Commissioner shall develop a system to distribute to school districts or regional education service centers a special supplemental allowance for students with visual impairments as required under Section 30.002.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(26) The Commissioner, with the assistance of the Comptroller, shall determine amounts to be distributed to the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf as provided by Section 30.003 and to the Texas Youth Commission as provided by Section 30.102.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(27) The Commissioner shall establish a procedure for resolution of disputes between a school district and the Texas School for the Blind and Visually Impaired under Section 30.021.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.

Appendix G

<p>Statutory Requirements in Section 7.055, Texas Education Code</p>	<p>Sunset Staff Recommendation</p>
<p>(b)(28) The Commissioner shall perform duties relating to the funding, adoption, and purchase of instructional materials under Chapter 31.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(29) The Commissioner may enter into contracts concerning technology in the public school system as authorized under Chapter 32.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(30) The Commissioner shall adopt a recommended contract form for the use, acquisition, or lease with option to purchase of school buses under Section 34.009.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(31) The Commissioner shall ensure that the cost of using school buses for a purpose other than the transportation of students to or from school is properly identified in the Public Education Information Management System (PEIMS) under Section 34.010.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(32) The Commissioner shall perform duties in connection with the public school accountability system as prescribed by Chapter 39.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(33) Repealed.</p>	<p>N/A</p>
<p>(b)(34) The Commissioner shall perform duties in connection with the equalized wealth level under Chapter 41.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(35) The Commissioner shall perform duties in connection with the Foundation School Program as prescribed by Chapter 42.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(36) The Commissioner shall establish advisory guidelines relating to the fiscal management of a school district and report annually to the board on the status of school district fiscal management as required under Section 44.001.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(37) The Commissioner shall review school district audit reports as required under Section 44.008.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(38) The Commissioner shall perform duties in connection with the guaranteed bond program as prescribed by Subchapter C, Chapter 45.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(39) The Commissioner shall cooperate with the Texas Higher Education Coordinating Board in connection with the Texas partnership and scholarship program under Subchapter Q, Chapter 61.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>

Appendix G

Statutory Requirements in Section 7.055, Texas Education Code	Sunset Staff Recommendation
(b)(40) The Commissioner shall suspend the certificate of an educator or permit of a teacher who violates Chapter 617, Texas Government Code, regarding collective bargaining and strikes of public officers and employees.	Move to a new section of Chapter 21, Texas Education Code, regarding educator certification.
(b)(41) The Commissioner shall adopt rules relating to extracurricular activities under Section 33.081 and approve or disapprove University Interscholastic League rules and procedures under Section 33.083.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(c) The budget the Commissioner adopts under Subsection (b) for operating the Foundation School Program must be in accordance with legislative appropriations and provide funds for the administration and operation of the agency and any other necessary expense. The budget must designate any expense of operating the agency or operating a program for which the board has responsibility that is paid from the Foundation School Program. The budget must designate program expenses that may be paid out of the foundation school fund, other state funds, fees, federal funds, or funds earned under interagency contract. Before adopting the budget, the Commissioner must submit the budget to the board for review and, after receiving any comments of the board, present the operating budget to the governor and the Legislative Budget Board. The Commissioner shall provide appropriate information on proposed budget expenditures to the Comptroller to assure that all payments are paid from the appropriate funds in a timely and efficient manner.	Eliminate. The General Appropriations Act and other legislative appropriations bills supersede this function by establishing parameters for how Foundation School Program money will be spent.

APPENDIX H

Sunset Staff Recommendations for the Texas Education Agency's Powers and Duties

Statutory Requirements in Section 7.021, Texas Education Code	Sunset Staff Recommendation
(b)(1) The agency shall administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs.	Incorporate into the agency's new list of powers and duties, as described in Recommendation 13.2.
(b)(2) The agency shall conduct research, analysis, and reporting to improve teaching and learning.	Eliminate. As a result of significant budget cuts in 2003, TEA no longer conducts this type of research and analysis.
(b)(3) The agency shall conduct hearings involving state school law at the direction and under the supervision of the commissioner.	Eliminate. Other sections of the Texas Education Code more specifically define TEA's hearings jurisdiction, making this section unnecessary. Section 7.057, Texas Education Code, defines the agency's jurisdiction to hear cases regarding appeals of school laws and actions of school boards. Chapter 21, Texas Education Code, defines the agency's jurisdiction to hear cases regarding appeals of teacher contracts that are terminated.
(b)(4) The agency shall establish and implement pilot programs established by this title.	Eliminate. Individual statutes establishing pilot programs provide TEA with sufficient authority, making this section unnecessary.
(b)(5) The agency shall carry out the duties relating to the investment capital fund under Section 7.024.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(6) The agency shall develop and implement a teacher recruitment program as provided by Section 21.004.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(7) The agency shall carry out duties under the Texas Advanced Placement Incentive Program under Subchapter C, Chapter 28.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(8) The agency shall carry out powers and duties relating to adult and community education as required under Subchapter H, Chapter 29.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(9) The agency shall develop a program of instruction in driver education and traffic safety as provided by Section 29.902.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(10) The agency shall carry out duties assigned under Section 30.002 concerning children with visual impairments.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.

Appendix H

<p align="center">Statutory Requirements in Section 7.021, Texas Education Code</p>	<p align="center">Sunset Staff Recommendation</p>
<p>(b)(11) The agency shall carry out powers and duties related to regional day school programs for the deaf as provided under Subchapter D, Chapter 30.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(12) The agency shall establish and maintain an electronic information transfer system as required under Section 32.032, maintain and expand telecommunications capabilities of school districts and regional education service centers as required under Section 32.033, and establish technology demonstration programs as required under Section 32.035.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(13) The agency shall review school district budgets, audit reports, and other fiscal reports as required under Sections 44.008 and 44.010 and prescribe forms for financial reports made by or for school districts to the commissioner or the agency as required under Section 44.009.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(b)(14) The agency shall cooperate with the Texas Higher Education Coordinating Board in connection with the Texas partnership and scholarship program under Subchapter Q, Chapter 61.</p>	<p>Eliminate. This reference to duties assigned in another section of statute is unnecessary.</p>
<p>(c) The agency may enter into an agreement with a federal agency concerning a project related to education, including the provision of school lunches and the construction of school buildings. Not later than the 30th day before the date the agency enters into an agreement under this subsection concerning a new project or reauthorizing a project, the agency must provide written notice, including a description of the project, to: (1) the governor; (2) the Legislative Budget Board; and (3) the presiding officers of the standing committees of the senate and of the house of representatives with primary jurisdiction over the agency.</p>	<p>Eliminate. Section 7.031, Texas Education Code, grants the agency sufficient authority to seek, accept, and distribute grants awarded by the federal government, making this section unnecessary.</p>

APPENDIX I

Staff Review Activities

During the review of the Texas Education Agency, Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; spoke with staff from key legislative offices; conducted interviews and solicited written comments from various interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research using the Internet.

In addition, Sunset staff also performed the following activities unique to this agency.

- Met or spoke with members of the State Board of Education and the State Board for Educator Certification and attended board meetings.
- Conducted a survey of all superintendents and charter school directors in the state.
- Toured and met with staff of school districts and charter schools in Austin, Houston, and Lubbock.
- Accompanied TEA staff on an on-site program monitoring investigation of a school district.
- Met with a TEA-appointed conservator of a charter school.
- Toured and met with staff of educator preparation programs in Central Texas.
- Observed an educator disciplinary hearing at the State Office of Administrative Hearings.
- Monitored interim legislative committee hearings.
- Attended conferences and forums on education topics.
- Attended meetings of various advisory committees, councils, and workgroups.
- Conducted a survey of all bidders on TEA contract solicitations in the last two fiscal years.
- Observed internal TEA meetings to coordinate agency monitoring, investigations, and interventions.
- Interviewed staff from the U.S. Department of Education, Office of the Attorney General, Office of the Comptroller, State Office of Administrative Hearings, Texas Higher Education Coordinating Board, Texas Workforce Commission, Texas Workforce Investment Council, Texas Department of Licensing and Regulation, Texas Department of Public Safety, Texas Department of Insurance, Texas Board of Nursing, Texas Department of Agriculture, Texas Department of State Health Services, Harris County Department of Education, and several regional education service centers.
- Worked with staff from the Legislative Budget Board and the State Auditor's Office.

Sunset Staff Review of the *Texas Education Agency*

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