

SUNSET ADVISORY COMMISSION

STAFF REPORT

Texas Education Agency

OCTOBER 2014



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Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators’ offices and committee rooms. Photo Credit: Janet Wood

TEXAS EDUCATION AGENCY

SUNSET STAFF REPORT
OCTOBER 2014

TABLE OF CONTENTS

	PAGE
SUMMARY	
.....	1
STATUS OF 2012 SUNSET COMMISSION RECOMMENDATIONS	
.....	7
AGENCY AT A GLANCE	
.....	15
ISSUES/RECOMMENDATIONS	
1 While TEA Has Improved Oversight of Its Large and Complex Student Assessment Contract, Further Work Is Needed.....	21
2 TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input	31
3 Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission.....	35
4 Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions	41
5 TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.....	51
6 Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board.....	57
7 Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.....	63
8 Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.....	67
9 TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.....	71
10 Texas Has a Continuing Need for the Texas Education Agency	75

APPENDICES

Appendix A — Driver Training Fees in Statute	79
Appendix B — Texas Education Agency Reporting Requirements.....	81
Appendix C — Equal Employment Opportunity Statistics	87
Appendix D — Historically Underutilized Businesses Statistics	89
Appendix E — Sunset Staff Recommendations for the Commissioner of Education’s Powers and Duties	93
Appendix F — Sunset Staff Recommendations for the Texas Education Agency’s Powers and Duties.....	99

SUMMARY

SUMMARY

This limited scope review of the Texas Education Agency (TEA) follows up on the full Sunset review of the agency conducted in 2012. At that time, the Sunset Commission adopted and forwarded recommendations on TEA to the 83rd Legislature to reshape and focus the role and priorities of the agency. The Sunset Commission's 56 statutory recommendations were incorporated into Senate Bill 218. The Senate Education Committee reported the bill out, but in the end, S.B. 218 never came up on the Senate floor. In a separate bill, the Legislature continued TEA for two years and focused this current Sunset staff review on evaluating the ongoing appropriateness of the original recommendations adopted by the Sunset Commission in January 2013.

Despite progress, TEA still must address concerns about the oversight and transparency of its student assessment contract.

The 83rd Legislature also directed the Sunset Commission to evaluate the contracting procedures used by TEA to enter into a contract with a provider to develop or administer student assessment instruments and present recommendations to the 84th Legislature. Sunset staff conducted this evaluation in conjunction with the limited scope review of TEA and found that the agency has made progress in improving its procurement process for and oversight of the student assessment contract. However, TEA still must address concerns about the oversight and transparency of this and other large contracts to ensure the Legislature and the public have confidence that the State gets what it pays for and that the agency maintains an arms-length relationship with its vendors.

Sunset staff also concluded that most of the Sunset Commission's previous recommendations remain appropriate, and that TEA continues to need statutory authority and direction to implement them. Of the 56 statutory recommendations on TEA from 2012, Sunset staff recommends 41 for consideration again in 2014, including transferring regulation of the private driver training industry to the Texas Department of Licensing and Regulation and abolishing the State Board for Educator Certification to allow the Commissioner of Education to take the lead on all educator quality functions. Since the 83rd Legislature adopted 11 Sunset recommendations related to adult education, charter school regulation, and financial accountability in other legislation, no further action is necessary. Four other recommendations are no longer relevant because of other changes in law or changes made by the agency. The Sunset Commission also adopted 16 management actions that TEA has implemented or is in the process of implementing. The current status of each of the TEA recommendations is shown in the chart, *Status of 2012 Sunset Commission Recommendations on the Texas Education Agency*, on page 7 of this report.

The following material summarizes the Sunset staff recommendations contained in this report. For additional information on the 2012 Sunset review, please see the *Final Report on the Texas Education Agency*, published in July 2013 and

available on the Sunset Commission's website. This report contains detailed information on the original Sunset staff recommendations, Sunset Commission decisions, and legislative action in 2013.

Issues and Recommendations

Issue 1

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

TEA contracts with NCS Pearson Inc. for many of its student assessment functions, paying the company \$438.3 million over a five-year period. This contract ends in August 2015, and the agency is currently in the process of re-procuring the services. Due to its size and complexity and TEA's long-standing relationship with this one vendor, the contract has been the subject of much scrutiny by the Legislature. Further, in July 2013, the State Auditor's Office performed a comprehensive audit of TEA's contracting practices and made many recommendations to improve the agency's oversight of the assessment contract. TEA is making progress in addressing the auditor's recommendations and other lessons learned. However, the agency needs to do more to improve the oversight and transparency of the assessment contract and other large contracts.

Key Recommendations

- TEA should provide comprehensive information online about the student assessment procurement process and contracts to improve transparency.
- TEA should allow sufficient time for vendors to submit proposals for major contracts.
- TEA should provide more centralized contract oversight and develop monitoring plans for all major contracts.

Issue 2

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

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 3

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

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.

Key Recommendations

- Eliminate outdated statutory requirements regarding academic performance indicators and campus distinction designation committees.
- Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.
- 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 require 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 four other unnecessary reports.

Issue 5

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

Key Recommendations

- Authorize the Commissioner of Education 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 or accreditation problems.

Issue 6

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

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 rules.
- Require the commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.

Issue 7

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

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.

Issue 8

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

Key Recommendations

- Establish a five-year renewal process for educator preparation programs (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 9

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

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 10

Texas Has a Continuing Need for the Texas Education Agency.

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. Recommendations with a fiscal impact are summarized below.

Issue 3 — Transferring regulation of driver training would involve a cost-neutral transfer of about \$1.8 million from TEA to the Texas Department of Licensing and Regulation, along with authority to fill 12.5 full-time equivalent positions. Eliminating the regulation of certain driver training administrative staff would result in a small revenue loss of \$3,300 per year in fees.

Issue 4 — 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 two sessions ago, no further savings are anticipated. Rather, these changes aim to match the agency's workload to its reduced resources.

Issue 6 — 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 \$12,000 a year.

**STATUS OF 2012
SUNSET COMMISSION
RECOMMENDATIONS**

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
Issue 1 – TEA Does Not Effectively Manage Public Involvement to Obtain the Greatest Value From Its Stakeholder Input.	
Change in Statute	
1.1 Require TEA to develop and implement a policy to guide and encourage more meaningful and comprehensive stakeholder involvement efforts.	Not implemented, recommendations still needed. See Issue 2 of this report.
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.	
Change in Statute	
2.1 Transfer responsibility for adult education from TEA to the Texas Workforce Commission (TWC).	Implemented. The 83rd Legislature adopted these recommendations through S.B. 307 and the transfer of the adult education program from TEA to the Texas Workforce Commission is now complete. Indications are the new program is working well.
2.2 Create an adult education advisory committee at TWC.	
Management Action	
2.3 TEA and TWC should develop a transition plan for the transfer of the adult education program.	Implemented. S.B. 307 required 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.	
Change in Statute	
3.1 Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation (TDLR).	Not implemented, recommendations still needed. See Issue 3 of this report.
3.2 Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.	
3.3 Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.	
3.4 Remove fixed driver training fee amounts and fee caps from statute.	
3.5 Require TDLR to maintain information on driver training complaints.	
3.6 Increase the driver training statute’s maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.	
3.7 Require TDLR to use the State Office of Administrative Hearings to conduct hearings on driver training enforcement cases.	

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
Management Action	
3.8 TEA and TDLR should develop a transition plan for the transfer of driver training regulation.	Not implemented, recommendations still needed. See Issue 3 of this report.
3.9 TDLR should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.	
3.10 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.	
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.	Not implemented, alternative recommended. See Issue 4 of this report.
4.2 Eliminate campus distinction designations and the committees charged with their development.	Partially implemented, alternative recommended. See Issue 4 of this report.
4.3 Make the <i>Comprehensive Annual Report to the Legislature on Texas Public Schools</i> biennial.	Implemented. The 83rd Legislature adopted this recommendation through S.B. 59. TEA must publish the first <i>Comprehensive Biennial Report</i> by December 1, 2014.
4.4 Merge the <i>Campus Report Card</i> with the <i>Performance Reports</i> and require TEA to distribute the reports to school districts for dissemination to campuses and parents.	Agency alternative implemented, no action needed. The 2012 Sunset review found that the statutorily required report cards that TEA was preparing for each school campus differed very little in look and content from the <i>Performance Reports</i> that the agency produced. However, beginning with the 2012–13 school year, TEA redesigned the <i>Campus Report Cards</i> to be much easier to read and understand for parents, eliminating the need for this recommendation.
4.5 Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.	Not implemented, recommendation still needed. See Issue 4 of this report.
4.6 Limit TEA’s involvement in appointing hearing examiners for teacher contract cases.	Not implemented, alternative recommended. See Issue 4 of this report.
4.7 Eliminate the requirement that the commissioner approve shared services arrangements for special education services.	Not implemented, recommendations still needed. See Issue 4 of this report.
4.8 Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making.	
4.9 Eliminate the ability of school districts to seek and receive a foreign exchange student waiver from TEA.	
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.	Not implemented, alternative recommended. See Issue 4 of this report.

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
4.11 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the commissioner.	Not implemented, recommendations still needed. See Issue 4 of this report.
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.	
4.13 Eliminate the requirement for TEA to recognize schools' use of high school allotment funds.	
4.14 Eliminate the Best Practices Clearinghouse.	
4.15 Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.	
4.16 Eliminate five unnecessary reporting requirements, but continue 14 that still serve a purpose.	Not implemented, alternative recommended. See Issue 4 of this report.
Issue 5 – Separate Reviews Hinder TEA's Comprehensive Assessment of School District and Charter Finances.	
Change in Statute	
5.1 Incorporate the financial solvency review into the FIRST financial accountability system.	Implemented. The 83rd Legislature adopted these recommendations through H.B. 5. TEA is gathering stakeholder input on how to revise its financial accountability system, as required in Recommendation 5.1, and plans to publish proposed rules in November. To fully comply with Recommendations 5.1 and 5.2, the agency has indicated it will need additional resources to upgrade the software systems it uses to collect, analyze, and report financial accountability data. TEA is requesting money for this upgrade through an exceptional item in its 2016–17 Legislative Appropriations Request.
5.2 Require TEA to project revenues and expenditures for districts and charters that will likely become insolvent within three years.	
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.	Implemented. The 83rd Legislature adopted this recommendation through H.B. 5. TEA has begun requiring districts and charters that fail FIRST to prepare corrective action plans. The agency is requiring districts and charters that have submitted inadequate solvency plans to obtain professional services to prepare viable plans. TEA plans to publish proposed rules in November that will address the topic of corrective action plans.
5.4 Require TEA to re-evaluate all FIRST indicators every three years.	Implemented. The 83rd Legislature adopted this recommendation through H.B. 5. TEA will need to implement this recommendation three years from when it revises its financial accountability system, as required in Recommendation 5.1.

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
Issue 6 – TEA Lacks Authority and Flexibility in Annexing a School District, Especially an Imminently Insolvent District.	
Change in Statute	
6.1 Authorize the commissioner to work with county commissioners courts to ensure the timely annexation of an insolvent school district.	Not implemented, recommendations still needed. See Issue 5 of this report.
6.2 Authorize the commissioner to adjust the effective date for a district’s annexation.	
6.3 Provide the commissioner with flexibility to annex a school district to a non-adjointing district.	
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.	
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.	
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.	Statutory alternative implemented. The 83rd Legislature passed S.B. 2, which contained provisions similar to the Sunset Commission recommendation requiring the commissioner to revoke a charter for failure to meet basic accountability standards for three consecutive years. TEA is still implementing these changes, so Sunset staff could not determine the impact of this alternative approach, but opted to not include the original Sunset recommendation in this report.
7.2 Authorize the commissioner to suspend operations and pursue revocation of an imminently insolvent charter to ensure it does not open without sufficient funding to complete the term.	Statutory alternative implemented. The 83rd Legislature passed S.B. 2, which contained provisions similar to the Sunset Commission recommendation requiring the commissioner to take action against imminently insolvent charters. TEA is still implementing these changes, so Sunset staff could not determine the impact of this alternative approach, but opted to not include the original Sunset recommendation in this report.
7.3 Set eight-year terms for charters and restructure the renewal process to ensure failure to meet basic standards for accountability can lead to nonrenewal.	Statutory alternative implemented. The 83rd Legislature passed S.B. 2, which contained provisions similar to the Sunset Commission recommendation establishing a renewal process for charters. TEA is still implementing these changes, so Sunset staff could not determine the impact of this alternative approach, but opted to not include the original Sunset recommendation in this report.
7.4 Provide for objective criteria and flexibility in applying sanctions to charter schools.	Agency alternative implemented, no action needed. S.B.2 did not include a provision similar to Recommendation 7.4. However, the agency’s recently adopted rules to implement S.B. 2 include objective criteria and provide the agency flexibility in applying sanctions to charter schools. As a result, this report does not contain additional recommendations on the subject.

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
7.5 Authorize TEA to reconstitute the governing board of a charter holder.	Statutory alternative implemented. The 83rd Legislature passed S.B. 2, which contained provisions similar to the Sunset Commission recommendation authorizing the commissioner to reconstitute the governing board of a charter. TEA is still implementing these changes, so Sunset staff could not determine the impact of this alternative approach, but opted to not include the original Sunset recommendation in this report.
7.6 Apply standard prohibitions on nepotism to all charter schools.	Statutory alternative implemented. S.B. 2 removed the exception to nepotism prohibitions for charter schools with acceptable academic performance, as the Sunset Commission recommended. The bill added a grandfather provision to allow existing employees to continue working at charter schools that would otherwise fall under the nepotism prohibition. Other Sunset recommendations pertaining to nepotism and family members serving on charter holder boards were not included in S.B. 2. Since S.B. 2 made fundamental changes to charter school regulation, including nepotism provisions, this report does not contain additional recommendations on the subject.
7.7 Prohibit family members from serving on a charter holder board together.	
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.	Agency alternative implemented, no action needed. Although TEA has not implemented this management action specifically as written, the agency has taken many steps to address the problems that led Sunset staff to make this recommendation. For example, within the last year, the agency has created a Complaints, Investigations, and Enforcement Division. This division has developed a clear matrix of interventions and sanctions for the agency to use when charters exhibit poor academic and financial accountability ratings. The division has also developed more specific and detailed letters to send to charter schools when imposing interventions or sanctions. The agency is establishing objective criteria for imposing sanctions in its recently adopted rules to implement S.B. 2. The agency is also doing more to provide on-site support to new charter schools to ensure they comply with reporting requirements and understand their obligations. Further, S.B. 2 made significant changes to TEA's authority to take action against poor performing charter schools.
Issue 8 – Educator Certification Can Be Overseen by the Commissioner of Education Without the Need for a Separate Board.	
Change in Statute	
8.1 Abolish the State Board for Educator Certification and transfer its powers and duties to the Commissioner of Education.	Not implemented, recommendations still needed. See Issue 6 of this report.
8.2 Remove the State Board of Education's authority to reject proposed educator certification and educator preparation rules.	
8.3 Require the commissioner to establish an advisory committee to assist with the regulation of educators and educator preparation programs.	

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
Issue 9 – Elements of Educator Certification Do Not Conform to Commonly Applied Licensing Practices.	
Change in Statute	
9.1 Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.	Not implemented, recommendations still needed. See Issue 7 of this report.
9.2 Grant the commissioner administrative subpoena power to fully investigate certified educator misconduct cases.	
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	
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.	In progress. Since the Legislature did not adopt the recommendation to abolish the State Board for Educator Certification, that board, rather than the commissioner, was responsible for implementing this recommendation. Almost two years after the Sunset Commission passed this management action, TEA and the board began evaluating the fee structure and considering changes to cover the cost of administering the regulatory programs. TEA staff anticipate that the board will consider final adoption of changes to the fee structure in rule at their January 2015 meeting, and the State Board of Education will consider the rule changes in February 2015.
9.5 TEA should provide a more comprehensive preliminary criminal history evaluation for individuals who may later apply for educator certification.	In progress. TEA now conducts name-based criminal history checks through the Department of Public Safety’s criminal history clearinghouse of people who apply for the preliminary evaluation. TEA plans to propose rule changes to the State Board for Educator Certification to adjust the preliminary criminal history evaluation fee. TEA staff anticipate that the board will consider final adoption of changes to the fee in rule at their January 2015 meeting, and the State Board of Education will consider the rule changes in February 2015.
9.6 Direct TEA staff to comprehensively track and analyze enforcement case data.	Implemented. In September 2013, TEA began tracking enforcement cases pursued by investigations staff and legal staff together on one spreadsheet. The Interim Associate Commissioner of Educator Leadership and Quality is facilitating communication between staff in both divisions.
9.7 TEA should encourage the use of mediation in educator misconduct cases as an alternative to formal administrative hearings.	Implemented. Almost a year and a half after the Sunset Commission adopted this management action, TEA legal staff started to offer mediation in educator disciplinary cases that did not require revocation or could not be resolved through settlement negotiations.

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
Issue 10 – Elements of the Regulation of Educator Preparation Programs Do Not Conform to Commonly Applied Licensing Practices.	
Change in Statute	
10.1 Establish a five-year renewal process for educator preparation programs (EPPs) in statute.	Not implemented, recommendations still needed. See Issue 8 of this report.
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.	
10.3 Require the commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.	
10.4 Strengthen and clarify the commissioner’s authority to sanction EPPs for violations of law or rules.	
Management Action	
10.5 Direct TEA to develop procedures outlining all phases of the EPP complaint process and track and analyze complaint data.	In progress. TEA developed procedures that lay out all phases of the EPP complaint process in a proposed rule that will be considered for final adoption by the State Board for Educator Certification in January 2015 and the State Board of Education in February 2015. TEA began using a new centralized complaint system in September 2014. The agency will start using the EPP complaint information gathered by the new system to identify trends and issues, report on these trends to the public, and adjust EPP regulation and monitoring during fiscal year 2016.
Issue 11 – Better Adherence to Contracting Policies Would Help TEA Handle Contracts Consistently and Maximize the Value of Its Expenditures.	
Management Action	
11.1 TEA should improve collection and reporting of all contract sanctions.	Implemented. TEA has established a process to keep track of deficiencies on all contracts. The agency’s Purchasing and Contracts Division has also begun preparing a quarterly report for agency management on sanctions imposed on major contracts.
11.2 TEA should ensure staff follow guidelines regarding contracting with education service centers.	Implemented. In March 2013, TEA amended its contracting manual to require written justification and cost/benefit analysis on all contracts with education service centers, rather than only those worth over \$100,000 as previously required, and to provide a sample justification memo. This justification must be approved by the agency’s executive management. TEA also includes a discussion on contracting with education service centers in its required training for contract managers.

Status of 2012 Sunset Commission Recommendations on the Texas Education Agency

2012 Recommendation	Status
11.3 TEA should complete training of the agency's contract managers by April 1, 2013.	In progress. While TEA did not meet the deadline of April 1, 2013, the agency has made significant progress toward implementing this recommendation. As of June 2014, 91 percent of the agency's contract managers have completed all four in-house contract management training sessions. The agency's Purchasing and Contracts Division is tracking which employees need training and where they are in the process of getting all necessary training.
11.4 Direct TEA to include a section on ethics in contracting in its contracting manual.	Implemented. TEA added language on ethics to its contracting manual and contract management training.
11.5 Direct TEA to ensure staff assess all contracts to identify lessons learned and report assessments of major contracts to senior management.	In progress. TEA has updated its contract close-out checklist to include the standard lessons learned document and the Purchasing and Contracts Division maintains central files on all contracts to ensure staff complete required documentation. To date, TEA has not implemented the recommendation to report to senior management on contractor performance and lessons learned for all major contracts.
Issue 12 – TEA's Statute Does Not Reflect Standard Elements of Sunset Reviews.	
Change in Statute	
12.1 Apply three standard Sunset across-the-board recommendations to the Texas Education Agency.	Not implemented, recommendation still needed. See Issue 9 of this report.
Issue 13 – Texas Has a Continuing Need for the Texas Education Agency.	
Change in Statute	
13.1 Continue the Texas Education Agency for 12 years.	Not implemented, recommendations still needed. See Issue 10 of this report.
13.2 Redefine the commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.	
Management Action	
13.3 TEA should develop and implement a succession plan to prepare for impending retirements and other potential workforce changes.	In progress. TEA implemented a succession planning policy in October 2013. This policy defines the broad concept of succession planning, but also requires the agency's deputy commissioners to meet with each of their associate commissioners every January and June to discuss the succession plan for each division. TEA plans to require these meetings about succession planning for the first time in January 2015.

AGENCY AT A GLANCE

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.

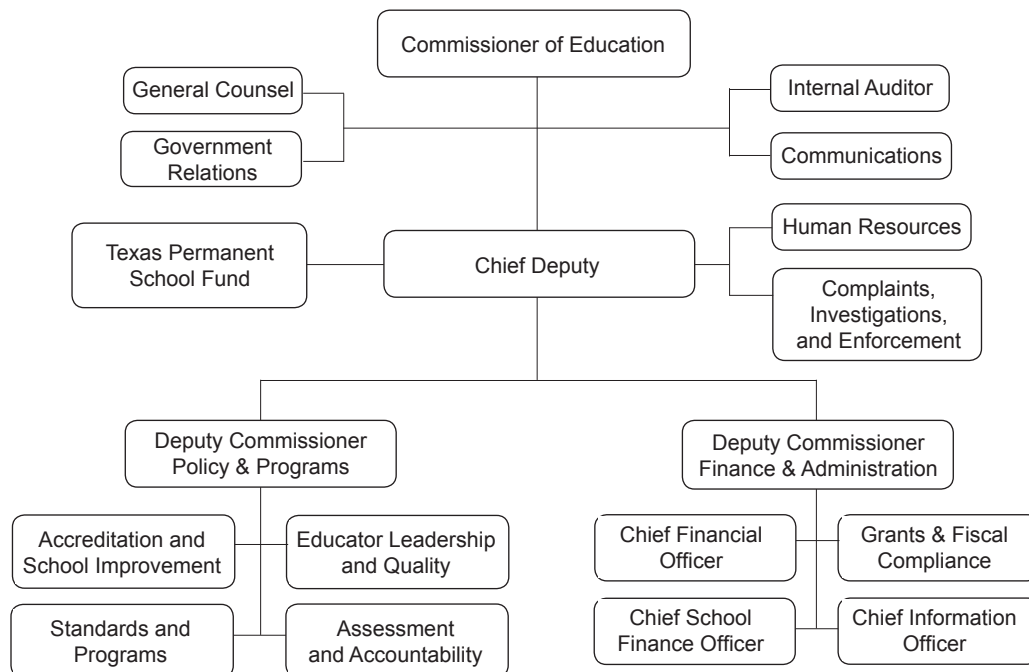
During the 2013–14 school year, Texas' public education system consisted of 1,230 active local education agencies, including 1,025 traditional school districts, 202 charter school districts, the Texas Juvenile Justice Department district, and the Texas schools for the deaf and for the blind and visually impaired. Statewide, this system served more than 5.1 million students with nearly 340,000 classroom teachers in about 8,600 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 budget cuts in the 2012–13 biennium, TEA cut its staff from 1,060 in January 2011 to 688 by January 2012, a 35 percent reduction overall. For fiscal year 2014, the agency was capped at 804 full-time equivalent employees, but its current staffing level is at 777, plus another 24

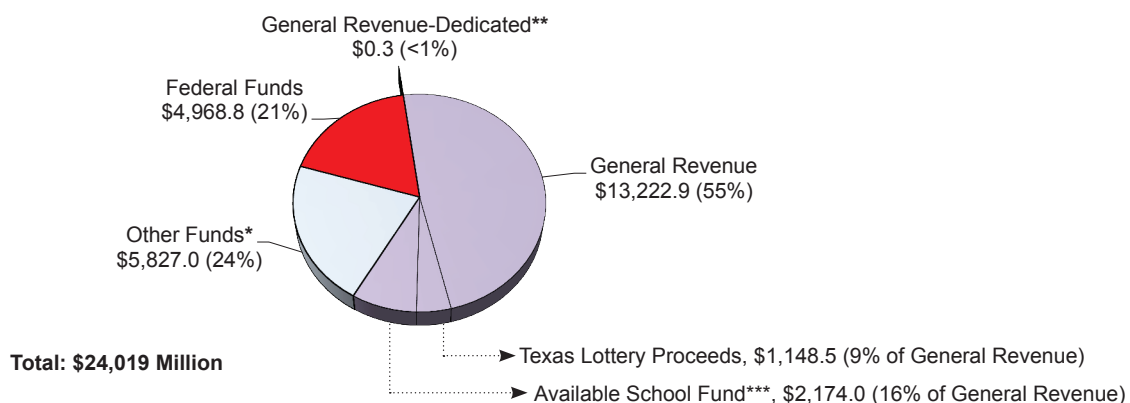
contracted employees. All of the agency's staff are located in Austin. The *Texas Education Agency Organizational Chart* depicts the agency's structure.

Texas Education Agency Organizational Chart

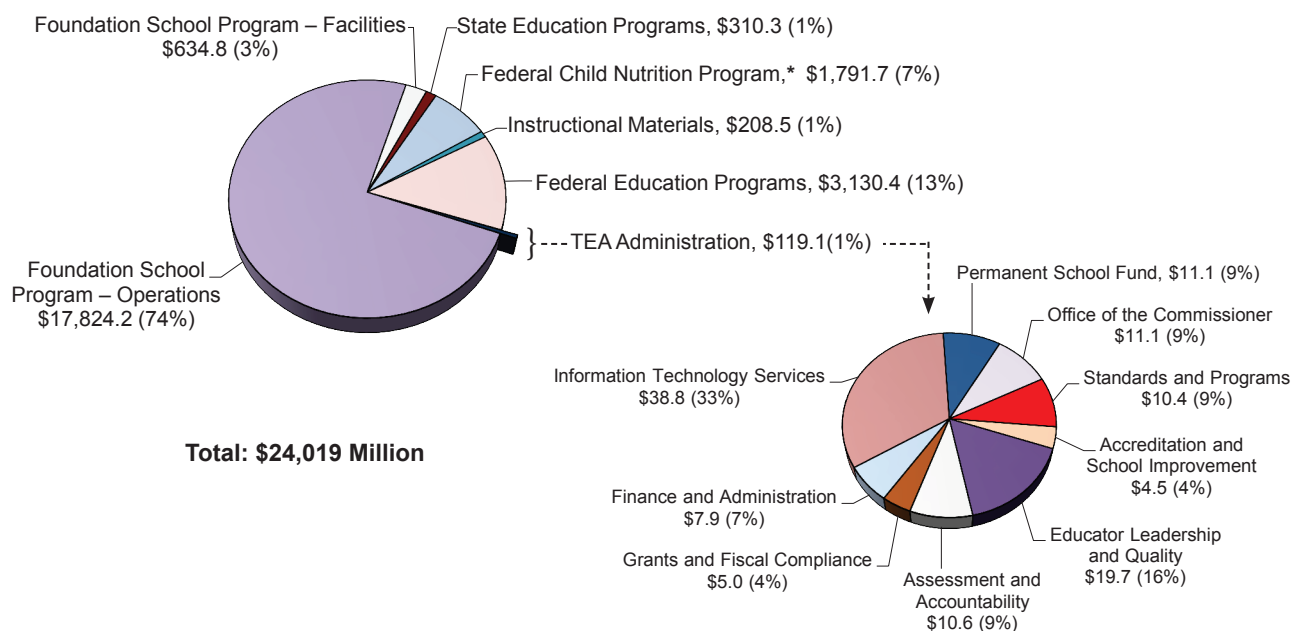


- Funding.** For fiscal year 2013, TEA oversaw a budget totaling \$24 billion. The chart, *TEA Sources of Revenue*, shows that 55 percent of the total budget comes from the General Revenue Fund. The agency passes more than 99 percent of these funds through to public schools for operations, facilities, instructional materials, school lunches, and educational programs, as shown in the chart, *TEA Expenditures by Function*. Less than 1 percent, \$119.1 million, funds the agency's operations.

TEA Sources of Revenue (in Millions) FY 2013



TEA Expenditures by Function (in Millions) FY 2013



* 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.

- 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 2013, TEA distributed \$18.5 billion in state funds through the Foundation School Program, including \$17.8 billion for the operation of school districts and open-enrollment charter schools and \$634.8 million in facilities funding for school districts. TEA distributed \$208.5 million to school districts and charter schools for the instructional materials allotment and \$310.3 million in other state funded grant programs. TEA also distributed \$4.9 billion in federal grant funds.

At the direction of the State Board of Education, TEA provides investment and funds management support for the Permanent School Fund, valued at \$27.4 billion at the end of fiscal year 2013. The fund provided \$1.3 billion to the Foundation School Program and instructional materials allotment during fiscal year 2013 and is providing \$838 million per year during the 2014–15 biennium.

- Educator certification.** The State Board for Educator Certification (SBEC) adopts rules governing educator certification and educator preparation programs, and sanctions certificate holders. SBEC consists of 11 voting members appointed by the governor and three nonvoting members. TEA staff, on behalf of SBEC, certify and oversee about 1.2 million teachers, administrators, and other professional student services providers and monitor educator preparation programs at 151 institutions. TEA also ensures educators meet certification standards by conducting criminal background checks and investigating incidents of educator misconduct.
- Student testing.** TEA manages and oversees standardized testing statewide to measure students' mastery of the state-mandated curriculum standards. During the 2013–14 school year, Texas students took more than 10 million tests. The State of Texas Assessments of Academic Readiness (STAAR) test reading, writing, social studies, math, and science in grades three through eight. In 2013, the

Legislature reduced the previously required 15 end-of-course STAAR tests for high school students to five — Algebra I, biology, English I, English II, and U.S. History. TEA contracts with NCS Pearson Inc. for many of its testing functions through a five-year contract ending August 31, 2015, which is worth \$438.3 million.

- **Accountability.** TEA assigns an accreditation status annually to every Texas public school district, including charter districts, based on academic and financial performance. TEA determines academic accountability ratings and publishes profiles on each district and campus. TEA assigns state academic accountability ratings based on a framework of four performance indexes — student achievement, student progress, closing performance gaps, and postsecondary readiness — using STAAR test scores, graduation rates, dropout rates, and diploma plans. In addition to ratings, TEA awards distinction designations to campuses and districts in recognition of outstanding achievement. In 2013, 92.8 percent of districts and 84.2 percent of campuses achieved a rating of *Met Standard* or *Met Alternative Standard*, while 6.2 percent of districts and 9.0 percent of campuses were rated *Improvement Required*. A total of 42.1 percent of campuses received one or more distinction designations. TEA also manages accountability standards and programs to comply with federal requirements.
- **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 2013, 20 charter schools and eight school districts had a monitor, conservator, or management team in place.
- **Charter school regulation.** The Commissioner of Education authorizes new open-enrollment and college-, university-, and junior college-based charters. By law, the number of open-enrollment charters in Texas cannot exceed 215 in fiscal year 2014, but in 2013 the Legislature changed the law to allow that cap to rise steadily to eventually reach 305 in fiscal year 2020. Currently 204 open-enrollment charters and five college and university charters are active. Charter schools educate more than 203,000 students, or 3.9 percent of the total number of public school students statewide, and operate predominantly in urban areas. Once the commissioner authorizes the charters, the State Board of Education reviews and may veto the commissioner's proposals. The commissioner approves all charter amendments, monitors the academic and financial accountability of charters, intervenes to assist or sanction low-performing charter schools, takes action to approve or disapprove charter renewals, and revokes charters failing to meet minimum standards.
- **Curriculum and instructional materials.** TEA staff assist the State Board of Education as it reviews and adopts curriculum requirements, known as the 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 assist schools with allotments the agency distributes for instructional materials.
- **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.

ISSUES

ISSUE 1

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

Background

The Texas Education Agency (TEA) manages and oversees standardized testing statewide to measure students' mastery of the state-mandated curriculum standards. During the 2013–14 school year, Texas students took more than 10 million tests. The State of Texas Assessments of Academic Readiness (STAAR) test reading, writing, social studies, math, and science in grades three through eight. In 2013, the Legislature reduced the previously required 15 end-of-course STAAR tests for high school students to five — Algebra I, biology, English I, English II, and U.S. History.

TEA contracts with NCS Pearson Inc. for many of its testing functions, including question development, printing and distribution of test materials, scoring, and data management systems. Pearson provides these functions through a five-year contract ending August 31, 2015, which is worth \$438.3 million.¹ Since the current contract ends next year, TEA has begun the procurement process for student assessment functions that will begin on September 1, 2015. The textbox below lists the agency's expected dates for procuring the student assessment contracts for the next contract period. Due to the complexity of the functions being performed, TEA plans to begin the new contracts five months before the previous contract ends to allow sufficient transition time for the new vendors to produce the first deliverables under the new contracts in fall 2015.

Proposed Procurement Process Timeline For TEA's Student Assessment Functions

Event	Date
Publication of request for proposal	September 26, 2014
Vendor proposals due	December 17, 2014
Selection of vendors	By March 13, 2015
Contract transition period	April 1–August 31, 2015
Current contract ends	August 31, 2015
First deliverables due under the new contracts	Fall 2015

The student assessment contract is by far TEA's largest contract, representing 41 percent of the agency's contracted expenditures in fiscal year 2014. TEA's next largest contract is with Educational Testing Service for the development and administration of educator certification assessments. This five-year contract is worth \$76.2 million. The agency has about 120 other contracts each worth \$100,000 or more over the length of the contract.

The Legislature has established basic, statutory contracting requirements and standards for state agencies to follow, such as the *State of Texas Contract Management Guide* that includes model contract provisions and solicitation procedures, and the Contract Advisory Team that reviews high-risk contract solicitations.² TEA's Purchasing and Contracts Division, under the Chief Financial Officer, helps to ensure the agency follows statutory requirements and agency policies for contracting. The division acts as a central resource

to assist the agency's program staff in developing competitive solicitations. The division also maintains the agency's contracting manual; provides training to program staff on developing, evaluating, and managing contracts; and manages central files for all of the agency's contracts.

Findings

The student assessment contract is large and complex, and has been the subject of much scrutiny by the Legislature and State Auditor's Office.

TEA has a long history of contracting with Pearson for the student assessment function starting in 2000. In recent years, the Legislature has raised concerns about TEA's management of the contract and the perception that TEA does not have an appropriate arms-length relationship with the vendor. In response, the 83rd Legislature passed provisions in House Bill 5 restricting appointments to advisory committees and prohibiting political contributions or activities by certain assessment contractors.³

Legislators also expressed concern when, while contemplating significant reductions in the number of required tests, TEA was not able to independently determine how those changes would affect the cost of the contract and instead had to rely on the vendor to provide this information. Senator Wendy Davis questioned whether TEA had sufficient authority to ensure the vendor's full compliance with contractual obligations and attempted to pass legislation requiring the agency to develop a comprehensive methodology for auditing and monitoring performance under the contract, but was unsuccessful.⁴ Instead, the 83rd Legislature directed the Sunset Commission to evaluate the contracting procedures TEA uses for the assessment contract.⁵

The Legislature directed Sunset to evaluate TEA's procedures for the student assessment contract.

During the same time period, the State Auditor's Office (SAO) performed a comprehensive audit of TEA's contracting practices for the student assessment contract. SAO published its findings and recommendations in July 2013.⁶ The audit concentrated on all phases of the agency's contracting processes, including planning, procurement, contract formation, and contract oversight. SAO's objectives were to determine whether TEA was following statutes, rules, requirements of the Office of the Comptroller of Public Accounts, and agency policies and procedures in how it procured, managed, and monitored the assessment contract to ensure the State's interests were protected and the vendor was performing according to the terms of the contract. SAO found problems with TEA's management of the student assessment contract and made 20 recommendations. The key findings of the SAO report are summarized in the textbox, *Key Points From the SAO Audit of TEA's Student Assessment Contract*.

Key Points From the SAO Audit of TEA's Student Assessment Contract, July 2013

The State Auditor's Office found that TEA complied with most requirements related to planning and procuring its contract with Pearson to provide student assessments. However, TEA did not ensure that the contract contained sufficient detail about deliverables and costs to independently determine the reasonableness of changes in the price of the contract. This contract fault prevented TEA from independently assessing the fiscal effect of changes to statewide testing requirements in House Bill 5, 83rd Legislative Session.

Other key findings discussed in the audit report included the following.

- The contract includes a schedule of tasks completed that lists the payment amounts due to the vendor on a monthly basis. However, the contract does not itemize the price per subject, grade level, or interim deliverable. As a result, the agency cannot verify that tasks and deliverables are completed prior to payment because the contract does not detail the work that should be completed during a pay period.
- The agency relies on the vendor to determine the dollar amount for reductions in payments related to the vendor's failure to meet contract requirements. There is a risk that the agency will not receive the appropriate reductions in contract if it does not independently calculate or verify those amounts.
- TEA was not in compliance with regulations related to disclosing whether vendor employees formerly worked for the agency. At SAO's request, TEA identified 11 former employees who worked on student assessments for the agency and later worked for the vendor.
- TEA lacked adequate processes for monitoring the contract. The program staff responsible for administering the contract did not have comprehensive written policies and procedures for monitoring the contract, which contributed to inconsistencies in approvals of key deliverables. Program staff also lacked required contract management training.

TEA is making progress in addressing many of the past concerns about the student assessment contract.

In response to SAO's recommendations, TEA is making many improvements in its oversight of the assessment contract. Earlier this year, TEA hired a contract administration manager specifically to work with program staff to oversee the agency's management of this important contract. This manager reports to the director of the Purchasing and Contracts Division, but also interacts with the student assessment program staff on a daily basis. The manager also communicates with and provides briefings to the agency's senior management on the status of the contract.

The contract administration manager will help bring more independence, objectivity, and expertise to the agency's management of the assessment contract. In the past, Purchasing and Contracts Division staff were only involved in the assessment contract through assisting program staff with the technical details of procuring the contract. Now this position is actively working with program staff to manage the current contract and develop the solicitation for the next contracts. While TEA's assessment program staff are experts in student assessment, they are not experts in contract management. As such, the contract administration manager brings needed experience and training to the agency's oversight of this significant contract.

TEA's new contract manager will bring needed independence and expertise to the contract's oversight.

The contract administration manager is working with program staff to implement several key SAO recommendations related to the agency's monitoring of the vendor, as described below.

- **More detailed tasks and deliverables.** Because TEA was unable to independently determine the cost or savings resulting from changes to testing requirements, SAO recommended that the agency restructure the contract's schedule of tasks completed so that it itemizes costs by subject, grade level, and interim deliverable. SAO also recommended that TEA independently review proposed contract changes, including those that change the dollar amount of the contract, to determine whether they are reasonable and accurate.

Requiring more detail on deliverables should enable TEA to better monitor what it is paying for.

In response, the contract administration manager and program staff worked together to develop a new schedule of tasks and deliverables for the last year of the current assessment contract, which became effective on September 1, 2014.⁷ This amendment to the contract should provide a much greater level of detail to the vendor's monthly invoices, allowing TEA to better monitor what the agency is paying for on a regular basis. Further, the agency included language in the recently issued request for proposal to delineate specific tasks and require bidders to provide detailed budgets for accomplishing each task. TEA also included language in the solicitation to provide the agency greater access to production schedules that will allow the agency to more closely track deliverables. These efforts should allow TEA to better assess the fiscal impact of future changes to the student assessment program.

- **Independent analysis of sanctions.** SAO found that assessment program staff were relying on the vendor to calculate the amounts of sanctions for the vendor's failure to meet contract requirements. SAO recommended TEA independently determine future reductions in contract amounts. The contract administration manager is now working with program staff to independently determine sanctions, such as in the recent contract amendment that assessed the vendor more than \$712,000 for contract deficiencies.⁸ Further, TEA included language in the recently issued request for proposal to allow the agency to directly monitor activities performed as part of the service level agreement with the vendors. The agency also included language in the solicitation detailing how it will determine sanction amounts if vendors fail to meet contract requirements.

TEA recently added required ethics provisions back into the contract.

SAO also raised concerns about ethics provisions that TEA removed from the student assessment contract in May 2011 in response to significant budget cuts that led to one-third of the agency's staff positions being eliminated. SAO found that TEA was not in compliance with the Texas Government Code and the *State of Texas Contract Management Guide* because it had removed contract provisions requiring the vendor to disclose its intention to employ former or retired agency employees and prohibiting former agency employees from working on the student assessment contract within the first 12 months after leaving the agency. SAO recommended that TEA add these provisions back into the contract and TEA recently complied. TEA amended the current

contract in August 2014 to include the restrictions on hiring former employees and retirees, even though the agency had completed two other amendments since SAO made the recommendation in July 2013.⁹

TEA is addressing other lessons it has learned through its 2009 solicitation for the student assessment contract and through the course of the current contract. The most significant improvement TEA is undertaking with the recently issued request for proposal is providing greater opportunities for vendors to bid on individual components of the contract. Although TEA made an effort to do this with its 2009 solicitation, the agency did not clearly communicate the amount of flexibility available to vendors to bid on individual components of the solicitation and did not require vendors to provide sufficient budget information to be able to compare proposals. With the new solicitation, TEA has made changes so that it is much more explicit about the ability of vendors to bid separately on six individual components. TEA also added language requiring vendors to provide specific pricing information for each component to allow the agency to more easily compare proposals. The contract administration manager has also been researching other potential vendors that may be able to fulfill some or all of the requirements of the new solicitation.

TEA is providing greater opportunities for vendors to bid on individual components of the contract.

TEA still must address concerns about the oversight and transparency of the student assessment contract, and other large contracts.

In taking a closer look at TEA's process for procuring and managing the assessment contract, Sunset staff found that TEA still has room for improvement, as described below.

- **Lack of transparency.** Information about the process TEA follows to procure the student assessment contract or about the contract itself is not easily accessible to the public. TEA's website provides no information about the procurement process or the contract. While TEA publishes its solicitations on the Electronic State Business Daily website operated by the comptroller, as all state agencies are required to do, public knowledge of the site is limited as it is intended mainly for vendors interested in doing business with the State.¹⁰

TEA's website provides no information about the procurement process or contract.

In contrast, the Texas Lottery Commission provides comprehensive information about the process for procuring its lottery operator and the contract itself.¹¹ The lottery operator contract has many similarities to TEA's student assessment contract in that it is large and complex and the Lottery Commission has used the same vendor for many years, and as a result, has received much legislative and public scrutiny over the contract. In response to this scrutiny, the Lottery Commission voluntarily posts information about the procurement process and the contract, including the original request for proposal, question and answer documents generated during the solicitation process, each vendor's proposal, notes from each evaluation committee member on each proposal, and the evaluation committee's final reports and recommendations. The current lottery operator contract and

amendments are also available on this website. Even though the Lottery Commission redacts information related to lottery security and proprietary information, the public still has substantial access to information about this important contract.

- **Tight timeline for procurement process.** For the recently issued request for proposal, TEA originally planned to allow vendors less than eight weeks to submit proposals, which was similar to the timeline it followed in 2009. Sunset staff questioned whether eight weeks is sufficient, considering that the agency is now requiring much more detailed budget information and is trying to solicit proposals on six individual components from a wider selection of vendors. Although TEA must have vendors selected in time to allow for a transition period and is on a tight schedule, the agency decided to extend the timeline and allow vendors nearly 12 weeks to submit proposals.

TEA recently decided to allow vendors more time to submit proposals.

Other agencies with large, complex contracts allow for an extended timeline. For example, the Texas Lottery Commission, after amending the solicitation several times, gave vendors nearly six months to submit proposals for its lottery operator contract. The Health and Human Services Commission (HHSC) issued a draft request for proposal for the management of its eligibility support systems for Medicaid and other state and federal health and human services programs in July 2014 and sought public comments on it for a month. The draft solicitation provided potential vendors and the public with an opportunity to review and comment before the agency issues the formal request, which is tentatively scheduled to occur in December 2014. Once the solicitation is published, HHSC plans to allow roughly three months for vendors to submit proposals.¹²

- **No formal contract monitoring plans.** According to contracting best practices, an agency should set out a monitoring program that focuses on items that are most important in determining whether the agency is receiving what it paid for and whether the vendor is complying with the terms of the contract. Although TEA's contracting manual discusses the need to adequately monitor contracts, the agency does not require program staff to develop plans for how they will actually monitor major contracts.

Detailed written monitoring plans are key to holding vendors accountable.

SAO found that the assessment program staff did not have comprehensive written policies and procedures for monitoring the contract and recommended that the agency develop such documents. TEA has recently drafted a contract monitoring plan for staff to follow with the next assessment contracts. In its review of TEA's draft request for proposal before it was issued, the Contract Advisory Team recommended the agency add language indicating that vendors will be held accountable for performance through a detailed written monitoring plan. The Contract Advisory Team also recommended TEA require vendors to provide a detailed plan for reporting on a regular basis to the agency on the status of the project. In response, TEA added a sentence saying it will hold vendors accountable through a detailed written monitoring plan.

TEA's other major contracts would benefit from similar plans to clarify staff responsibilities to regularly track performance requirements specific to each contract. The 2012 Sunset review found that TEA's contract with its driver training vendor did not contain performance measures typically used to evaluate a regulatory program. TEA recently added 12 performance measures to the driver training contract, effective September 1, 2014, but it remains to be seen how TEA will monitor the vendor's compliance with these performance measures. Further, in 2012, the Sunset Commission recommended that TEA include in its contracting manual and training a requirement to report to senior management on contractor performance and lessons learned for all major contracts. The agency is in the process of implementing this recommendation.

- **Limited centralized contract management.** As noted above, until recently, TEA's assessment program staff have been solely responsible for managing the assessment contract. Although the agency has centralized contracting staff, these staff have focused on providing assistance to program staff in the procurement of contracts, but have not been involved in the management of the contracts. While this situation has recently changed with the hiring of the contract administration manager for the assessment contract, TEA could use staff with similar functions for other major contracts, such as the Educational Testing Service contract and the driver training contract. TEA could benefit from active, independent contract management staff working with program staff to ensure adequate performance measurements are defined in contract solicitations and sufficient monitoring of vendor performance occurs throughout the life of each contract.

TEA's centralized contracting staff are involved with procuring, but not managing, contracts.

Recommendations

Management Action

1.1 TEA should provide comprehensive information online about the student assessment procurement process and contracts to improve transparency.

Using the Texas Lottery Commission and its lottery operator contract as an example, TEA should provide comprehensive information about the student assessment contract on its website, including, at a minimum, the solicitation, contracts, and contract amendments. TEA should redact any information protected under the Texas Public Information Act and other applicable laws before posting to its website. TEA should comply with this recommendation by February 1, 2015, to allow the public to access information about the current solicitation before the agency selects vendors for the next contract period. In addition, TEA should consider using this transparent approach for its other major contracts. TEA should determine which contracts are considered major for the purposes of this recommendation.

1.2 TEA should allow sufficient time for vendors to submit proposals for major contracts.

While TEA has decided to extend the timeline for the new student assessment contracts, this recommendation directs the agency to consider extending the amount of time it usually provides vendors to respond to solicitations for other large contracts. TEA should determine which contracts are considered major for the purposes of this recommendation.

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

To increase centralized oversight, TEA should assign a contract administration manager from its Purchasing and Contracts Division to each of its major contracts. These managers would work with program staff to develop plans for overseeing and monitoring each major contract to ensure the agency receives what it pays for and that vendors comply with their contracts. These managers should have expertise in procurement and contract management requirements and best practices. Contract administration managers and program staff should regularly report on vendor performance to the agency's executive management. For each of its major contracts, TEA should tailor a plan to include items such as the following.

- Establish a clear division of monitoring responsibilities and tasks for contract administration and program staff, including how program staff will report monitoring activities and coordinate with contract administration for any needed remedies.
- Set clear expectations for monitoring activities, including items such as developing a risk assessment, reviewing expenditures, tracking deliverables, communicating with and reviewing status reports from the vendor, and conducting site visits.
- Define mechanisms for evaluating contract changes, including full documentation, analysis, and written approval of changes. TEA staff should evaluate contract changes to determine their impact on deliverables, costs, and the overall progress of the project.

For the purposes of this recommendation, TEA should at a minimum consider all contracts worth more than \$5 million over the length of the contract to be major, as well as contracts through which the agency is outsourcing major functions, such as regulation of the private driver training industry. TEA should assign contract administration managers and develop monitoring plans by December 1, 2015.

Fiscal Implication

While clearly requiring effort on the part of the agency, these recommendations would not have a cost to the State. TEA is already funded to perform the necessary functions to effectively manage its programs and should use existing resources to accomplish these recommendations. To provide the centralized oversight described in Recommendation 1.3, TEA should consider requesting two or three additional full-time equivalent positions through the legislative appropriations process or shifting vacant positions from other areas of the agency to the Purchasing and Contracts Division. Given the significant dollar value of TEA contracts, and the significant amount of interest in the student assessment contract in particular, ensuring appropriate contract management and transparency are essential, and currently funded, functions of the agency.

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- ¹ Amendment No. 9, Standard Contract Between Texas Education Agency and Pearson Educational Measurement/NCS Pearson, Inc., effective August 1, 2014, signed August 4, 2014.
 - ² Chapters 2261 and 2262, Texas Government Code.
 - ³ Sections 39.038 and 39.039, Texas Education Code.
 - ⁴ S.B. 1308 and H.B. 2836, 83rd Legislature, Regular Session, 2013.
 - ⁵ Section 39.038, Texas Education Code.
 - ⁶ State Auditor's Office, *An Audit Report on Selected State Contracts at the Texas Education Agency*, Report No. 13-042, July 2013.
 - ⁷ Amendment No. 10, Standard Contract Between Texas Education Agency and NCS Pearson, Inc., effective September 1, 2014.
 - ⁸ Amendment No. 9, Standard Contract Between Texas Education Agency and Pearson Educational Measurement/NCS Pearson, Inc., effective August 1, 2014, signed August 4, 2014.
 - ⁹ Ibid.
 - ¹⁰ "Electronic State Business Daily," Texas Comptroller of Public Accounts, accessed September 24, 2014, <http://esbd.cpa.state.tx.us/>; Section 2155.083, Texas Government Code.
 - ¹¹ "Public Information Posting for Lottery Operator Procurement," Texas Lottery Commission, accessed September 24, 2014, http://www.txlottery.org/export/sites/lottery/About_Us/Doing_Business_with_TLC/Lottery_Operations_and_Services_Contract/.
 - ¹² "Eligibility Support Services, Draft RFP # 529-14-0006, Announcements," Health and Human Services Commission, accessed September 24, 2014, <http://www.hhsc.state.tx.us/contract/529140006/draft/announcements.shtml>.

ISSUE 2

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 9. 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 the Texas Education Agency (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 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.

Finding

The Sunset Commission's recommendations to improve stakeholder involvement at TEA continue to be appropriate.

The 2012 Sunset review found that TEA does not effectively manage public involvement to obtain the greatest value from its stakeholder input, as described below.

TEA has taken some steps to improve stakeholder input, but its efforts remain inconsistent.

- **Approach to stakeholder input.** 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, the agency still has no rule or policy to guide stakeholder input, although it has begun work in this area. While TEA makes many efforts to gather and use stakeholder input, those efforts are not consistent over time or throughout the agency.
- **Advisory committees.** TEA's advisory committees do not meet standard operating procedures, as laid out in Chapter 2110 of the Texas Government Code. TEA generally does not comply with the requirements of this law 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 law should be applied. Without regular evaluation and clear purposes and timeframes, the agency cannot ensure its system of advisory committees is efficient or effective. 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.

Although the Sunset Commission's 2012 statutory recommendations to address these concerns were not enacted, in recent months, TEA has taken some initial steps to improve the consistency of stakeholder involvement efforts. For example, TEA has begun the process of rewriting its operating procedure on advisory committees and expanding the procedure to address stakeholder involvement as well. Further, TEA is currently working with a vendor to redesign its website. The new website, which should debut this fall, should include easier access to information about opportunities for stakeholders to learn about topics of interest and provide input to the agency. TEA has also recently upgraded its system for providing email updates to people who sign up to receive them. While these efforts represent a good beginning, statutory change remains key to ensuring TEA fully complies with the Sunset Commission recommendations now and in the future.

Recommendations

Change in Statute

2.1 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. The agency should develop and implement this policy by December 1, 2015. 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.

2.2 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. TEA should adopt these rules by December 1, 2015. 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.

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¹ Chapters 551 and 552, Texas Government Code.

² Section 325.011, Texas Government Code.

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

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.¹ 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 2013	Revenues From Certificates Sold FY 2013
Driving safety	613	1,153	83	697,921	\$1,186,466 (\$1.70 per certificate)
Driver education	412	1,626	182	495,794	\$1,185,113 (\$2 or \$3 per certificate, depending on school type)

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.² 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 2013, students paid about \$2.4 million for 1.2 million certificates. That same year, licensing and certificate fees more than covered the costs of regulation with TEA collecting \$2.8 million in fees and spending about \$1.9 million on regulation. In fiscal year 2014, the Commissioner of Education adjusted fees to match the cost of regulation by reducing certificates to \$1.00 each. Thus, the agency no longer collects more in fee revenue than needed to cover its costs.

Driver training regulation includes visiting the training schools to ensure compliance with facility specifications, instructor requirements, and other regulations. TEA made 212 site visits and observed 63 classes in fiscal year 2013. That same year, TEA received about 47 complaints alleging violations such as false advertising, inappropriate remarks by instructors, and failure to teach a course's required number of hours. TEA took 71 enforcement actions against licensees who violated laws or rules, collecting \$7,000 in administrative penalties and revoking 25 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 11.5 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 \$1.05 million.

Finding

The Sunset Commission's recommendations to transfer private driver training regulation from TEA to the Texas Department of Licensing and Regulation and apply licensing best practices to the program continue to be appropriate.

Transferring driver training regulation would improve oversight and allow TEA to focus its limited resources.

The 2012 Sunset review evaluated the need for the regulation of the private driver training industry and the appropriateness of its location at TEA and found that the regulation does not fit TEA's mission. With cuts to its staff, TEA outsourced driver training regulation and struggles to effectively oversee this function. Due to its ties to the safety of citizens and the court system, regulating the private driver training industry is still needed.

The Sunset Commission concluded transferring the regulation to the Texas Department of Licensing and Regulation (TDLR) 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. All of the 2012 Sunset Commission recommendations are still necessary, and although TEA has implemented some of the recommendations, TDLR should continue these efforts if the program transfers. The chart below summarizes these recommendations and their status.

2012 Sunset Commission Recommendation	Status
Transfer the regulation of private driver training from TEA to the Texas Department of Licensing and Regulation.	Change in statute still needed. While learning to drive safely is important, it is not the responsibility of the public school system. The private driver training industry has evolved to largely serve adults outside the public school system. 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.
Require the Commission of Licensing and Regulation to establish an advisory committee to provide technical expertise from the driver training industry.	Change in statute still needed. TDLR does not have industry expertise when needed to develop rules and standards related to the driver training industry. An advisory committee would assist with driver training rules and topics such as curriculum development, to help ensure that driver training courses continue to cover critical subject matter.
Remove the statutory requirement to license driver training school directors, assistant directors, and administrative staff.	Change in statute still needed. The Sunset Commission 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. 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.

2012 Sunset Commission Recommendation	Status
Remove fixed driver training fee amounts and fee caps from statute.	Change in statute still needed. 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 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.
Require TDLR to maintain information on driver training complaints.	Change in statute still needed. Statute should require regulatory programs to maintain adequate information about complaints they receive. 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.
Increase the driver training statute's maximum administrative penalty from \$1,000 to \$5,000 per day, per violation.	Change in statute still needed. 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.
Require TDLR to use the State Office of Administrative Hearings to conduct hearings on driver training enforcement cases.	Change in statute still needed. 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 hearings, which it does through SOAH. Clearly specifying in law what happens in practice would keep the hearings process fair for licensees.
TEA and TDLR should develop a transition plan for the transfer of driver training regulation.	Management action still needed. TEA and TDLR need to work together to create a plan for the transfer of the driver training program. At a minimum, the plan should include timelines, a method for transferring records, and steps to avoid duplication of services to ensure the transfer from one agency to another is successful.
TDLR should develop performance measures that help ensure driver training complaint investigations are resolved in a timely manner.	Management action still needed. Regulatory programs should ensure complaint investigations are completed in a reasonable amount of time. ESC-13 tracks the length of time taken to investigate complaints, and TEA is in the process of adding performance measures to the contract to guide investigations. If transferred, TDLR should continue this effort to ensure the timeliness of investigations and track and report on their enforcement efforts.
TDLR should make public final driver training school disciplinary orders and sanctions on its website.	Management action still needed. 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. ESC-13 began posting driver training school sanctions on its website in July 2014, and TDLR should continue making this information publicly available if they take over the program.

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, 2015. 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 the 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 the program.

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 the driver training industry from TEA to TDLR would involve a cost-neutral transfer of about \$1.8 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 12.5 full-time equivalent positions based on the 11.5 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.

The recommendation to eliminate driver training school director, assistant director, and administrative staff licensure would result in a small loss to General Revenue. In fiscal year 2013, TEA received \$3,300 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.

¹ Section 1001.051, Texas Education Code.

² Section 1001.053, Texas Education Code.

³ Section 2001.058(e), Texas Government Code.

ISSUE 4

Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions.

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 2012–13 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.

Finding

With minor adjustments, the Sunset Commission's recommendations to eliminate certain outdated and unnecessary statutory provisions continue to be appropriate.

The 2012 Sunset review 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 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.

As part of the 2014 review, Sunset staff determined the majority of the Sunset Commission's previous statutory recommendations are still necessary. However, a few of the recommendations are no longer relevant because of other changes in law made by the 83rd Legislature or changes made by the agency. Other recommendations are still relevant, but require slight modification to address concerns raised by the Legislature, the agency, or stakeholders during the legislative session. The chart on the following page summarizes the statutory recommendations that are still relevant and their status. Appendix B provides a comprehensive list of all reporting requirements and Sunset staff's analysis, as required by the Sunset Act.¹

A few of the 2012 Sunset recommendations are no longer needed because of changes in law or changes made by TEA.

2012 Sunset Commission Recommendation	Status
Certain statutory requirements related to academic accountability reporting and distinctions place an unworkable burden on TEA.	
Allow the commissioner to decide the most appropriate academic accountability indicators to report on the quality of learning in the state.	Alternative statutory change recommended. In 2012, the Sunset Commission concluded that TEA did not have flexibility to adjust the academic indicators it is required to report to fit the new State of Texas Assessments of Academic Readiness (STAAR) testing and accountability systems adopted by the Legislature in 2009. ² However, during the 83rd legislative session, the Legislature and stakeholders expressed concern about giving the agency too much flexibility to decide which indicators to report. Thus, Sunset staff are not re-recommending this change. However, one indicator listed in statute is no longer applicable under the STAAR testing and accountability system and should be eliminated.
Eliminate campus distinction designations and the committees charged with their development.	Alternative statutory change recommended. In 2012, the Sunset Commission found that the program to distinguish campuses for achievement in several areas beyond the standard assessment system required a great deal of time, cost, and effort on the part of TEA staff. The 83rd Legislature, through H.B. 5, eliminated TEA's responsibility to establish standards and award distinction designations for all categories except academic achievement. As a result, the 2012 Sunset Commission recommendation is no longer needed. However, statute still requires TEA to establish committees to develop criteria for awarding distinction designations. ³ The academic achievement committee has completed its work and is no longer necessary.
Inflexible statutory requirements for one academic accountability report prevent TEA from providing useful information to the public about charter school performance.	
Restructure the open-enrollment charter school evaluation to provide flexibility for the agency.	Change in statute still needed. Because of the prescriptive nature and frequency of the charter school evaluation in statute, and limited funding to pay for it, TEA cannot adapt or change the focus of the evaluation. ⁴ 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.
TEA's involvement in certain local affairs is unnecessary.	
Limit TEA's involvement in appointing hearing examiners for teacher contract cases.	Alternative statutory change recommended. The 2012 Sunset review concluded that, while the parties to a teacher contract case may choose a hearing examiner from a list of certified examiners, in most cases they do not, thus requiring TEA to assign one. ⁵ Further, since a large number of cases settle before being heard by the hearing examiner, requiring TEA to assign an examiner and perform the associated administrative tasks is a waste of time and agency resources. The Sunset Commission and the Senate Education Committee made minor adjustments to allow TEA to assign a hearing examiner if the parties could not agree on one themselves, but, to help expedite the process, provided time limits and a requirement that the agency's assignments be final. Sunset staff have incorporated these changes into the current recommendation.

2012 Sunset Commission Recommendation	Status
Eliminate the requirement that the commissioner approve shared services arrangements for special education services.	Change in statute still needed. While both federal and state law allow schools to enter into shared services arrangements (SSAs) as necessary without oversight from TEA, statute requires the commissioner to approve SSAs specifically for special education services. ⁶ 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.
Eliminate the requirement for TEA to oversee training for, and to conduct a survey of, site-based decision making.	Change in statute still needed. 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. ⁷ 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.
Eliminate the ability of school districts to seek and receive a foreign exchange student waiver from TEA.	Change in statute still needed. 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. ^{8,9} 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. ¹⁰ Although the waiver is meaningless, districts continue to request and receive the waiver from TEA.
Unnecessary financial reviews divert agency resources from higher-risk activities with greater potential for misuse of funds.	
Eliminate the requirement for school districts and charter schools to file a copy of their depository contracts and related documents with the agency.	Alternative statutory change recommended. Statute requires each school district and charter school to file with TEA voluminous amounts of documents related to their depository contracts and bonds or other securities. ¹¹ While the 2012 Sunset Commission recommendation eliminated the requirement to file these documents, upon further study, TEA has determined that it needs information about these contracts for the purposes of disbursing state and federal funds, but does not need and has no place to store the large amounts of paper documents it receives under current law. Sunset staff has incorporated this change into the current recommendation.

2012 Sunset Commission Recommendation	Status
Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the commissioner.	Change in statute still needed. Accountability for superintendent severance payments is a local matter, and TEA's review provides little benefit to the state. 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. ¹² 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.
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.	Change in statute still needed. 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. ¹³ 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.
Certain functions prescribed in TEA's statute are redundant or meaningless.	
Eliminate the requirement for TEA to recognize schools' use of high school allotment funds.	Change in statute still needed. 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. ¹⁴ After only receiving 22 applications in the first year of the program and nine in the second year, TEA ended the program in 2011. The recognition program does not generate sufficient participation to justify TEA's time and resources in administering it.
Eliminate the Best Practices Clearinghouse.	Change in statute still needed. While TEA received funding from 2007 to 2011 to produce the Best Practices Clearinghouse and make it available to the public online, the agency has not received funding for the last two biennia to continue updating the clearinghouse. ¹⁵ As a result, since 2011, TEA has kept the clearinghouse website online, but no longer adds best practices. ¹⁶ Further, many other options exist for schools to share best practices, such as various school-related associations, the Legislative Budget Board's A+ Ideas for Managing Schools website, and TEA's Project Share, which is an online collection of development resources for elementary and secondary teachers. ¹⁷

2012 Sunset Commission Recommendation	Status
No ongoing need for the High School Completion and Success Initiative exists.	
Eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.	Change in statute still needed. The council completed its work by adopting a strategic plan in March 2008. The strategic plan has guided TEA's spending priorities on the initiative's six pilot and grant programs. ¹⁸ Although TEA's evaluations of these programs determined they were largely successful, the Legislature did not provide any funding for the programs for the last two biennia. As a result, the council, reporting requirements, and associated programs no longer serve an ongoing purpose. 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. ¹⁹
Statute requires TEA to prepare several reports that are redundant or no longer necessary.	
Eliminate five unnecessary reporting requirements, but continue those that still serve a purpose.	Alternative statutory change recommended. The 2012 Sunset review concluded that five reporting requirements were no longer necessary, take focus away from more important agency functions, and potentially waste agency resources. ²⁰ The 83rd Legislature appropriated money to TEA for one of these reports, the <i>Physical Fitness Assessment Report</i> . ²¹ However, the other four reports continue to be unnecessary and should be eliminated.

Recommendations

Change in Statute

4.1 Eliminate one academic performance indicator that is no longer applicable under the current testing system.

This recommendation would remove the academic performance indicator regarding the percentage of students of limited English proficiency exempted from the state standardized test, which is obsolete since the STAAR testing system does not allow an exemption for limited English proficiency students.²²

4.2 Eliminate the campus distinction designation committees.

This recommendation would remove the outdated requirement for the commissioner to establish committees to develop criteria for awarding campus distinction designations. Since the academic achievement distinction designation committee already completed its work, it is no longer necessary. Further, since TEA is no longer required to develop criteria for awarding campus distinction designations for other areas of achievement, the related committees are also no longer necessary.

4.3 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. The first report under these new requirements would be due December 1, 2016.

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

Teacher employment decisions are a local matter. Under this recommendation, TEA would no longer be required to assign a hearing examiner whenever a teacher requests a hearing to contest a school district's decision to prematurely terminate the teacher's contract. Instead, statute would allow the teacher and the district to request the assignment of a hearing examiner only in cases when they do not agree on a hearing examiner on their own. In such cases, TEA would be required to immediately assign the next hearing examiner on the list of certified examiners and immediately notify the parties of the assignment. TEA's assignment would be final and the parties would not be able to reject a hearing examiner assigned by the agency. Further, the parties requesting the assignment of a hearing examiner by TEA would have to do so within 25 days of the teacher receiving notice of the proposed action by the school district.

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 only be able to request TEA assign a hearing examiner if they cannot agree on one and the process for assigning a hearing examiner would be expedited.

4.5 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.

4.6 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.

4.7 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 refusing to provide prior written acceptance for enrollment of a student, which federal law requires a foreign exchange organization to obtain before placing a student. 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.

4.8 Require school districts and charter schools to submit information about their depository contracts to TEA, instead of filing copies of their depository contracts and related documents with the agency.

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. Instead, school districts and charter schools would only be required to submit a direct deposit form necessary to identify their depository. 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 instead be specified by TEA. TEA should continue to ensure charter holders, and not a designee, receive state education funds by reviewing the charter's direct deposit form.

4.9 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.

4.10 Replace the prescriptive audit methodology for compensatory education funds with a requirement for TEA to audit all aspects of state education funding through a risk-based approach.

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.

4.11 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.

4.12 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.

4.13 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, *High School Completion and Success Initiative Programs*, as well as the semiannual progress report on the initiative and its related programs.

High School Completion and Success Initiative Programs

- Mathematics Instructional Coaches Pilot Program
- Higher Education and Workforce Readiness Program
- Intensive Technology-Based Academic Intervention Pilot Program
- Intensive Summer Programs
- Grants for Student Clubs
- Collaborative Dropout Reduction Pilot Program

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

This recommendation would continue all necessary reporting requirements and remove four 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*

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.

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. 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, as required by law.²³

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 Sections 325.011(13) and 325.012(a)(4), Texas Government Code.
 - 2 Statutory provisions related to academic indicators can be found in Section 39.301, Texas Education Code.
 - 3 Section 39.204, Texas Education Code.
 - 4 Statutory requirements related to the charter school evaluation can be found in Section 12.118, Texas Education Code.
 - 5 Statutory provisions related to teacher contract case hearings can be found in Subchapter F, Chapter 21, Texas Education Code.
 - 6 Section 29.007, Texas Education Code.
 - 7 Statutory provisions related to site-based decision making can be found in Section 11.254, Texas Education Code.
 - 8 22 C.F.R. Chapter 62.
 - 9 Statutory provisions related to foreign exchange student waivers can be found in Section 25.001(e), Texas Education Code.
 - 10 Section 25.001(b), Texas Education Code.
 - 11 Sections 45.208 and 12.107, Texas Education Code.
 - 12 Statutory provisions related to superintendent severance payments can be found in Section 11.201(c), Texas Education Code.
 - 13 Statutory provisions related to compensatory education funds can be found in Section 42.152, Texas Education Code.
 - 14 Statutory provisions related to high school allotment recognition can be found in Section 39.233, Texas Education Code.
 - 15 Statutory provisions related to the Best Practices Clearinghouse can be found in Section 7.009, Texas Education Code.
 - 16 "Best Practices Clearinghouse," Texas Education Agency, accessed September 17, 2014, http://www.tea.state.tx.us/best_practices/.
 - 17 "A+ Ideas for Managing Schools," Legislative Budget Board, accessed September 17, 2014, <http://aims.lbb.state.tx.us/?type=ISD>; "Project Share," Texas Education Agency, accessed September 17, 2014, <http://www.projectsharetx.org/>.
 - 18 Statutory provisions related to the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative can be found in Subchapter M, Chapter 39 and Sections 21.4541, 29.095, 29.096, 29.097, 29.098, and 29.917, Texas Education Code.
 - 19 Section 61.076, Texas Education Code.
 - 20 Statutory provisions related to these reporting requirements can be found in Sections 39.037(g), 29.099(i), 33.081(d-1), 34.015, and 38.104, Texas Education Code.
 - 21 Rider 74, page III-20, Article III (S.B. 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act).
 - 22 Section 39.301(c)(6), Texas Education Code.
 - 23 Section 2052.0021, Texas Government Code.

ISSUE 5

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

Background

In the 2013–14 school year, Texas had 1,025 school districts, ranging in size from 13 students to more than 211,000 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.

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.

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, nine 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. In the past 10 years, the commissioner has closed and annexed four districts.³

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.

Finding

The Sunset Commission's recommendations to provide additional authority and flexibility in the annexation of school districts continue to be appropriate.

The 2012 Sunset review found that the Commissioner of Education lacks authority and flexibility to ensure the timely and orderly annexation of school districts, as described below.

- **Imminently insolvent districts.** 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. 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.

- **Facilitating district annexation.** Statute lacks a mechanism for TEA to facilitate annexation upon request of a school district that is unable to consolidate on its own. For example, if a district recognizes the need, but cannot meet the statutory timelines for voluntary consolidation. 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.
- **Unique circumstances.** The commissioner's annexation process lacks clarity and flexibility to adapt to unique circumstances in a school district. Several provisions of the Education Code restrict TEA's ability to annex a school district, as described below.
 - Statute limits the effective date of district annexation to July 1.⁶ Flexibility in the effective annexation date could allow annexation to occur more quickly or more slowly, as needed to ease the transition.

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

- Statute provides no option for annexation to a non-adjointing 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.⁷
- Statute limits TEA’s use of boards of managers to two years.⁸ A board of managers can 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.
- The commissioner’s annexation process in statute does not reflect changes made elsewhere in statute. As such, this process does not authorize annexation for all of the reasons for which the commissioner may order closure and annexation, such as a loss of accreditation or failure to meet financial accountability standards.⁹

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

The original Sunset Commission recommendations remain appropriate. Statutory change is still necessary to provide TEA with additional authority and flexibility when school district annexation is the last remaining option to ensure students’ educational needs are met.

Recommendations

Change in Statute

5.1 Authorize the Commissioner of Education 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 10 consecutive days of its regular school year, the commissioner would notify the district that it is eligible for closure, and allow the district 10 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 a rate equal to the rate in 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.¹⁰ 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.¹¹ 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.

5.2 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.

5.3 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.

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

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.

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

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 Section 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 13.005(a), Texas Education Code.
 - ⁷ Section 13.054(a), Texas Education Code.
 - ⁸ Section 39.112(e), Texas Education Code.
 - ⁹ Sections 13.054 and 39.102(a)(10), Texas Education Code.
 - ¹⁰ Section 13.004 and Subchapter B, Chapter 41, Texas Education Code.
 - ¹¹ Section 13.052, Texas Education Code.

ISSUE 6

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. The Texas Education Agency (TEA), with guidance from the State Board for Educator Certification (SBEC), 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 more than 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. SBEC 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

In fiscal year 2013, TEA staff performed all the day-to-day operations of overseeing educator quality with a budget of about \$19.7 million and a staff of 50 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 2013, TEA issued more than 27,000 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

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

school. In fiscal year 2013, TEA investigated 857 certified educators and issued 580 sanctions, including 97 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 2013, TEA regulated 240 EPPs located in 151 community colleges, universities, education service centers, school districts, and privately-run alternative certification programs.

Finding

No significant changes have occurred to affect the Sunset Commission's 2012 decision to recommend abolishing the State Board for Educator Certification and transferring its powers and duties to the Commissioner of Education.

In 2012, the Sunset Commission found that maintaining 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. As an entity attached to TEA, SBEC does not supervise staff or develop 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 SBEC. 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 SBEC, but are employed by and accountable to the Commissioner of Education. If problems arise, who is ultimately responsible for ensuring that the certification and oversight of teachers is done properly — TEA or SBEC?
- **Funding disconnects.** Fees for educator certification and EPP monitoring are set in rule to ensure flexibility for SBEC to adjust them as needed to cover the costs of regulation. However, SBEC is not directly involved in budgeting for these costs.⁵ Over the last several years, revenues for the program have fluctuated, but SBEC has failed to adjust its certification fees to match the cost of running the program.
- **Overlapping duties.** Both SBEC and the commissioner play a role in ensuring educator quality. The board sets statewide standards for educators and broad policy for educator certification. However, the commissioner sets standards to certify that schools are preparing, training, and recruiting highly qualified teachers.⁶ The commissioner also oversees the statewide teacher appraisal system.⁷
- **Outdated statute.** The board has not had its own staff or budget since 2005.⁸ However its enabling law continues to provide for SBEC to supervise an executive director's performance, approve an operating budget, make a request for appropriations, and develop and implement policies that clearly define the respective responsibilities of SBEC and its staff.

Having an independent board directing TEA staff can limit the commissioner's control of his own staff.

In addition, with TEA staff performing the key aspects of the regulation, SBEC's workload continues to be limited. In 2012, the Sunset Commission determined the Commissioner of Education could easily perform these duties, as outlined below, without the need for a separate educator certification board.

- **Sanctioning.** The board's role in sanctioning educators relies significantly upon staff. TEA staff can settle cases and decide sanctions for inappropriate behavior, student assessment cheating, contract abandonment, and all other misconduct during the settlement process. Given the extensive role of the staff and the limited number of cases requiring the direct involvement of a final decision maker, the commissioner could clearly handle these duties.
- **Accreditation of educator preparation programs.** The board's responsibilities also include approving new EPPs and new classes of certificates at existing EPPs.⁹ TEA staff presents SBEC 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.
- **Rulemaking.** TEA staff facilitates many stakeholder meetings with content experts and other professionals working in the field to help develop rules for SBEC's approval. 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 EPPs.

Statute also requires SBEC 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.¹⁰ This additional level of review 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.

The concerns raised by Sunset staff in 2012 about conflicting governance and rulemaking tied to this structure were on display at the September 2014 meeting of the State Board of Education. One month earlier, SBEC had considered revisions to a chapter of rules regarding educator preparation candidates including raising the minimum grade point average requirement for admission to an EPP, as directed by the 83rd Legislature in House Bill 2012. However, based on concerns about teacher shortages, SBEC chose to maintain the current grade point average requirement in rule, but made several other changes to that chapter.¹¹ As required, the rules adopted by SBEC then went to SBOE for further review. While SBOE typically takes no action on SBEC's proposed rules, SBOE voted to reject these rules.¹² SBOE expressed concern about ensuring teacher quality and the need to raise the minimum grade point average requirement. Throughout this process, both boards deliberated for several hours, asked similar questions of TEA staff, and heard the same arguments from stakeholders on the issue.

At the SBOE meeting, SBOE members and stakeholders indicated their confusion about each board's involvement in the rulemaking process and

SBOE's involvement in SBEC's rules causes confusion and uncertainty as to which board has the final say.

Having multiple entities involved can make it unclear who is responsible for ensuring educator quality.

whether SBOE had the ability to direct SBEC to increase the grade point average requirement.¹³ Ultimately, the discussion raised the question of who is responsible for ensuring educator quality in the state — is it SBEC, the Commissioner of Education, SBOE, or some combination of all three? The process also resulted in duplicated effort and wasted time on the part of TEA staff and stakeholders. Further, because SBOE rejected the rules, SBEC will have to consider them again at a future meeting, re-adopt or change the rules, and send them back to SBOE, resulting in further delays in implementation.

Recommendations

Change in Statute

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

Under this recommendation, SBEC 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 2. 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 SBEC's functions into TEA.

6.2 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 boards — one elected and one governor-appointed — involved in rule adoption is time-consuming, unnecessary, and quite unusual in administrative rule development. Also, since TEA staff collects 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.

6.3 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 should 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 statutory 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 SBEC would result in a small savings of about \$12,000, 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.
- 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 Section 21.005, Texas Education Code.
- ⁷ Sections 21.351, 21.354, and 21.3541, Texas Education Code.
- ⁸ Section 21.040, Texas Education Code.
- ⁹ Section 21.045, Texas Education Code.
- ¹⁰ Section 21.042, Texas Education Code.
- ¹¹ State Board for Educator Certification, SBEC Agenda (Item 18), August 1, 2014, <http://www.tea.state.tx.us/index2.aspx?id=25769814416>.
- ¹² State Board of Education, General Meeting Agenda (Item 13), September 19, 2014, <http://www.tea.state.tx.us/index4.aspx?id=25769816438>.
- ¹³ State Board of Education, Committee on School Initiatives Agenda (Item 1), September 18, 2014, <http://www.tea.state.tx.us/index4.aspx?id=25769815958>; State Board of Education, General Meeting Agenda (Item 13), September 19, 2014, <http://www.tea.state.tx.us/index4.aspx?id=25769816438>.
- ¹⁴ Chapter 2110, Texas Education Code.

ISSUE 7

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

Background

The State Board for Educator Certification (SBEC) sets the requirements for educator certification and standards of conduct of public school teachers and administrators. The Texas Education Agency (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. The board oversees 1.2 million certified 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 2013

Type of Certification ¹	Number of Certificates	Initial Fee	Five-Year Renewal Fee ²
Standard teaching	564,758	\$75	\$20
Standard educational aide	69,493	\$30	\$10
One-year	7,405	\$50	Not Renewable
Probationary	12,671	\$50	None ³
Principal	38,344	\$75	\$20
Superintendent	16,553	\$75	\$20
Counselor	40,041	\$75	\$20
Librarian and learning resources	15,239	\$75	\$20
Other student services ⁴	14,478	\$75	\$20
Provisional teaching	1,221,007	No Longer Issued	N/A
Mid-management administrator	33,962	No Longer Issued	N/A
Professional teaching ⁵	93,084	No Longer Issued	N/A
Total	2,127,035		

Finding

TEA continues to need statutory changes to effectively investigate certified educators and make the sanctioning process more transparent.

In 2012, the Sunset Commission found three obstacles, as summarized below, impeding SBEC's ability to oversee certified educators.

- **Superintendent notification.** 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.^{6,7} However,

Educator misconduct cannot be fully investigated without access to school records.

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.

- **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 believe federal law restricts sharing confidential student information without the issuance of a subpoena or consent from the parents of the students.⁸ 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.⁹
- **Disciplinary matrix.** 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. However, SBEC and TEA have no such tool. A change in law is still needed as SBEC has taken no action to implement a disciplinary matrix on its own.

Sunset staff found a continuing need for the Sunset Commission's 2012 statutory recommendations regarding educator certification. Statutory change is still necessary to provide consistent regulation and enforcement of certified educators and to protect the public.

Recommendations

To conform with Issue 6 that recommends transferring SBEC's duties to the Commissioner of Education, the following recommendations assume the commissioner performing these oversight functions.

Change in Statute

7.1 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.

7.2 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. However, the agency would be allowed to use the information and materials in a disciplinary proceeding, unless prohibited by a protective order. 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.

7.3 Require the commissioner to establish a disciplinary matrix to guide the application of sanctions to certified educators for violations of law or rule.

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.

Fiscal Implication

These recommendations would not result in a significant fiscal impact to the State.

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¹ Individual educators may hold several types of certificates.

² 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 certificate or pay a renewal fee.

³ Probationary certificates are not renewed, but may be reissued. The fee for reissuance is \$50.

⁴ Other student services include school psychologist, associate school psychologist, educational diagnostician, and school nurse certificates. Educational diagnostician is the only certificate in this category still issued.

⁵ Professional teaching includes teacher, teacher supervisor, and visiting teacher certificates of the professional type.

⁶ Section 21.006, Texas Education Code; 19 T.A.C. Section 249.14(d).

⁷ 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.

⁸ 20 U.S.C. Section 1232g(b)(1)(C)(i); 34 C.F.R. Section 99.31(a)(3)(iv).

⁹ Section 21.355, Texas Education Code.

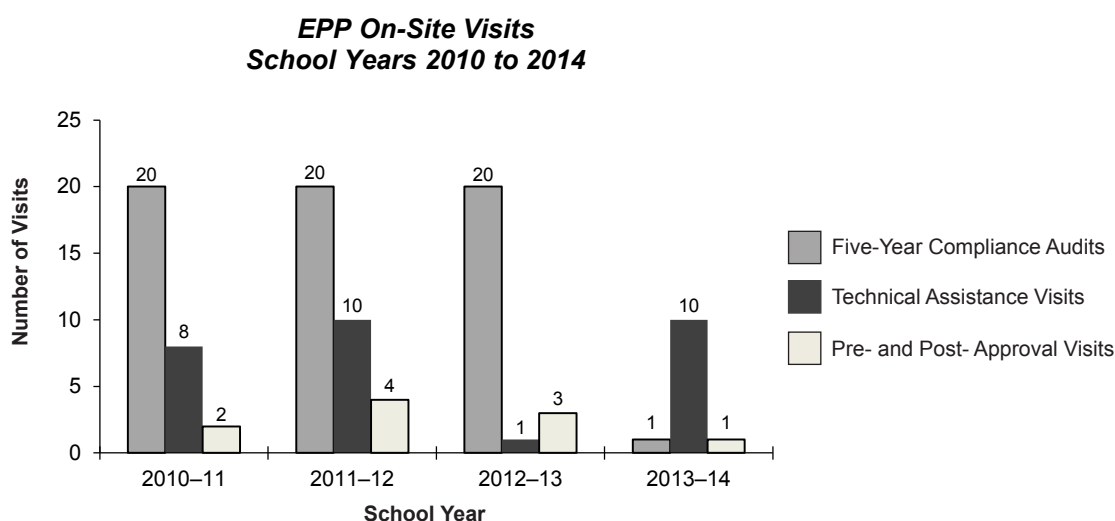
ISSUE 8

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

Background

The State Board for Educator Certification (SBEC) approves educator preparation programs (EPPs) and adopts the rules for EPP regulation.¹ The Texas Education Agency (TEA) staff administers this regulation on behalf of SBEC by monitoring 240 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 44 percent of initially certified teachers in Texas completed traditional programs, 41 percent completed alternative programs, 11 percent qualified for Texas certification due to their out-of-state certification, and 4 percent completed post-baccalaureate 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 through on-site visits and phone, electronic mail, and webinar support. Every five years after initial approval, staff also conducts on-site or desk compliance audits 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, SBEC assigns each EPP an accreditation status based on their students' educator certification examination pass rates. The accreditation statuses are: accredited, accredited-warned, accredited-probation, not accredited-revoked, and not rated.³

Finding

Nonstandard approaches to the regulation of EPPs continue to limit SBEC's and TEA's effectiveness in sanctioning programs and ensuring educator certification candidates are fully prepared to enter the classroom.

The 2012 Sunset review assessed the accreditation and regulation of EPPs and found several areas where statute, rules, and procedures do not follow model licensing standards. Based on these variations, the Sunset Commission recommended changes needed to bring EPP regulation in line with these standards. The 2012 Sunset statutory recommendations continue to be appropriate. The chart below summarizes these recommendations and their status.

2012 Sunset Commission Recommendation	Status
Establish a five-year renewal process for EPPs in statute.	<p>Change in statute still needed. In 2012, the Sunset Commission found that SBEC's rules did not provide for a standard renewal process for EPPs or standards an EPP should meet for renewal. Thus, EPPs did not have to regularly prove their ongoing competence to adequately prepare educator candidates. The board also subjected EPPs to two different criteria for continuing approval, which created inequities among regulated entities.</p> <p>In August 2014, SBEC voted to eliminate the dual approval process from rule and require all EPPs to go through the same process. The State Board of Education approved the rule changes in September 2014, and the rule will be effective October 2014. However, SBEC has not created a renewal process tied to EPPs' compliance with basic standards and requirements to adequately prepare candidates for educator certification. Placing the EPP renewal requirements in statute is still needed to provide clarity and help ensure the process is continued in the future.</p>
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.	<p>Change in statute still needed. In 2012, the Sunset Commission found that while TEA provided the public with information on how to file complaints with the agency generally, it did not specifically address how to file a complaint against an educator preparation program.</p> <p>In April 2014, TEA began providing the public with instructions for contacting the agency about a complaint against an EPP on the agency's main complaint webpage. TEA is also in the process of creating rules requiring EPPs to inform their students about the EPP complaint process and to post TEA's contact information along with the complaint process in their facilities. Although TEA is in the process of implementing this recommendation, to ensure this best practice is continued into the future, this change in statute is still needed.</p>

2012 Sunset Commission Recommendation	Status
Require the commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.	<p>Change in statute still needed. In 2012, the Sunset Commission found that although TEA staff followed a risk-assessment tool to guide the questions and documentation requested during EPP audits, the agency did not adjust the amount of time, staff, or effort dedicated to these audits based on the EPP's status or risk. Further, some EPPs are accredited by associations, but without a process to factor in risk, TEA staff cannot consider outside accreditation ratings in targeting its audit efforts.</p> <p>Since 2012, TEA has improved its risk assessment tool and added risk factors, including whether a program is accredited by another organization. The agency is also beginning to explore ways to modify the length of time spent and the number of staff sent on visits and audits depending on the risk the program poses to the public. Although TEA is in the process of implementing the recommendation, to ensure this best practice is fully implemented and continued into the future, this change in statute is still needed.</p>
Strengthen and clarify the commissioner's authority to sanction EPPs for violations of law or rules.	<p>Change in statute still needed. In 2012, the Sunset Commission found that for EPP enforcement, statute only authorizes SBEC to sanction EPPs based on four measures of their accreditation status: exam pass rates, teacher appraisals, achievement of students taught, and field supervision.⁴ These sanctions do not extend to problems uncovered through monitoring or complaints investigations. TEA may find operational issues during its five-year compliance audits or technical visits, but SBEC does not have clear statutory authority to take enforcement action to address those concerns.</p>

Recommendations

To conform with Issue 6 that recommends transferring SBEC's duties to the Commissioner of Education, the following recommendations assume the commissioner performing these oversight functions.

Change in Statute

8.1 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 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. The commissioner should implement all parts of this recommendation by December 1, 2015.

8.2 Require the commissioner to adopt rules to make information about how to file a complaint about an EPP accessible to EPP students and the public.

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 the Texas Workforce

Commission'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. The commissioner should implement all parts of this recommendation by December 1, 2015.

8.3 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 visits and audits 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. The commissioner should implement all parts of this recommendation by December 1, 2015.

8.4 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 is currently in place 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. The agency should establish sanctioning procedures by December 1, 2015.

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 21.0451, Texas Education Code.

ISSUE 9

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 (TEA).

- **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 continues to not reflect standard language typically applied across the board on Sunset reviews.

In 2012, the Sunset Commission found that several ATBs were missing entirely from TEA's statute. However, since an appointed commissioner helms the agency, rather than a board, only three of the nine ATBs are applicable to the agency, as described below. Since the 83rd Legislature did not add these ATBs to the agency's statute, the original Sunset Commission recommendations remain appropriate.

- **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

TEA falls short on its employment of African Americans and Hispanics in technical positions.

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 continues to meet most statewide EEO performance guidelines except in technical jobs.

In 2012, the Sunset Commission found that while TEA met or exceeded many statewide civilian workforce percentages for fiscal years 2009 to 2011, the agency fell short on its employment of African Americans and Hispanics in technical positions. TEA continued to fall short on meeting this statewide EEO performance guideline for fiscal years 2012 and 2013. To address the situation, TEA broadened its advertising of open positions, while also targeting recruitment efforts to certain minority markets. However, the percentage of African American and Hispanic employees in technical positions remains lower than the statewide civilian workforce. Appendix C shows TEA's EEO performance in each job category for fiscal years 2011 to 2013.

TEA still does not meet the State's HUB purchasing goals in three categories.

During the last review of TEA, the Sunset Commission found that while the agency 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. The agency continues to have difficulty meeting these purchasing goals, three of which are highlighted below. Appendix D details TEA's HUB spending for fiscal years 2011 to 2013 in all purchasing categories.

TEA has not met HUB purchasing goals for professional services for the past five years.

- **Special trade.** While TEA exceeded the statewide HUB contracting goal for fiscal years 2009 and 2010 in the special trade category, the agency failed to meet the goal during the last three fiscal years. TEA explains that the majority of the special trade purchases were with a vendor designated by the owner of the building that houses TEA's Permanent School Fund staff, and that the agency has no control over the selection of this vendor.
- **Professional services.** TEA has failed to meet the statewide goal for HUB contracting for professional services during the last five fiscal years. TEA explains that three-quarters of its expenditures in this category are with one non-HUB vendor that conducts investment transactions for the Permanent School Fund. 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. While TEA used to contract with one HUB vendor for professional services, that vendor closed its business in 2013. Also, TEA explains that its solicitations for services in this category are often for small dollar amounts that few vendors are interested in pursuing.

- **Other services.** During the last five fiscal years, TEA has failed to meet the statewide goal for HUB contracting in 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 challenged Pearson and its other large vendors to take steps to increase the number of HUB subcontractors they use. These efforts have resulted in a small increase in HUB expenditures in the other services category from fiscal year 2012 to 2013.

In recent years, TEA has challenged its large vendors to increase their use of HUB subcontractors.

Recommendation

Change in Statute

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

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

ISSUE 10

Texas Has a Continuing Need for the Texas Education Agency.

Background

The Legislature created the Texas Education Agency (TEA) 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 2013–14 school year, Texas' public education system consisted of 1,230 active local education agencies, including 1,025 traditional school districts, 202 charter school districts, the Texas Juvenile Justice Department district, and the Texas schools for the deaf and for the blind and visually impaired. Statewide, this system served more than 5.1 million students with nearly 340,000 classroom teachers in about 8,600 schools.

Findings

No significant changes have occurred to affect the 2012 Sunset Commission recommendation to continue TEA.

In 2012, the Sunset Commission recommended that the Legislature continue TEA for 12 years. The recommendation is still appropriate. 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.¹ 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.

No substantial benefits would result from merging TEA's functions with another agency, such as the Texas Higher Education Coordinating Board. However, the function of regulating the private driver training industry is not essential to TEA's core mission and should be transferred to the Texas Department of Licensing and Regulation, as discussed in Issue 3 of this report.

The Sunset Commission's recommendation to update TEA's statutory powers and duties to reflect its role in the state's public education system continues to be appropriate.

Changes in law are needed to accurately reflect TEA's core functions.

The 2012 Sunset review found that 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.² 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.

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. 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. Changes in law are still needed to accurately reflect the agency's core functions of 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.

Recommendations

Change in Statute

10.1 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.

10.2 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.³ 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.⁴ 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 E and F.

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.

¹ Section 1, Article VII, Texas Constitution and Section 4.001, Texas Education Code.

² Sections 7.055 and 7.021, Texas Education Code.

³ Section 7.055, Texas Education Code.

⁴ Section 7.021, Texas Education Code.

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)
Fee for criminal history record information review	Not to exceed the amount of any fee imposed on an application for a national criminal history record information review	1001.2512

* 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. 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 4.14, to abolish unnecessary reports.
2. 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 4.13, to eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.
3. 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 4.13, to eliminate the High School Completion and Success Initiative Council and the reporting requirements and programs associated with the initiative.
4. 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 4.14, to abolish unnecessary reports. Under this recommendation, the pilot program would also be eliminated.
5. 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 4.14, to abolish unnecessary reports.

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
6. 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 4.14, to abolish unnecessary reports.
Restructure				
7. 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 4.3, 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.
Continue				
8. Annual Report on the Permanent School Fund	TEA Rider 22, General Appropriations Act, 83rd 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
9. 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	Continue
10. 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

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
11. Comprehensive Biennial 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	Continue
12. Consolidated School Rating Report	Section 39.363 Texas Education Code	Requires TEA to create an online report that includes state-assigned academic and financial ratings and locally-assigned community and student engagement ratings for each district and campus.	School Districts	Continue
13. Early Childhood School Readiness Program	TEA Rider 48, General Appropriations Act, 83rd 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. Foundation School Program Funding	TEA Rider 3, General Appropriations Act, 83rd 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
15. Funding for Regional Education Service Centers	TEA Rider 38, General Appropriations Act, 83rd 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

Appendix B

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
16. 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
17. Permanent School Fund Distribution Rate	TEA Rider 46, General Appropriations Act, 83rd 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
18. 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	Continue
19. Program Transfers and Contracts with Education Service Centers	TEA Rider 14, General Appropriations Act, 83rd 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 39, General Appropriations Act, 83rd 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

Appendix B

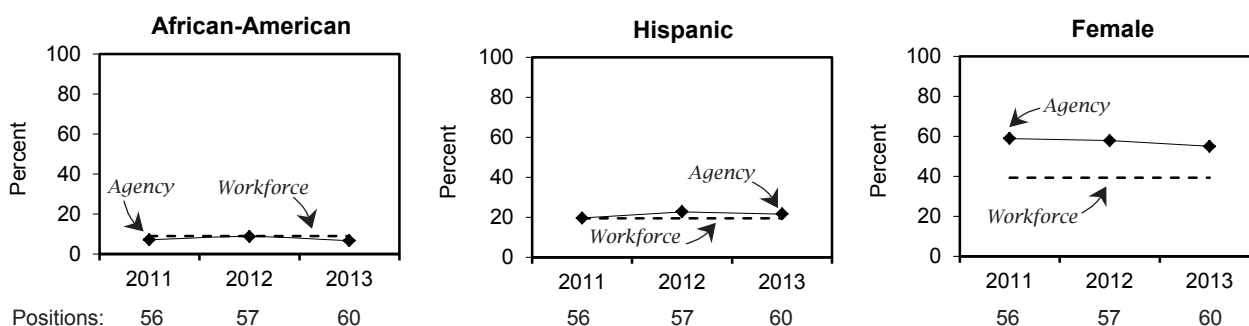
Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
21. Regional and District Level Report	Section 39.333, Texas Education Code	Requires TEA to prepare a report that includes a summary of school district compliance with the student/teacher ratios and class-size limitations; a summary 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
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
25. Texas Academic Performance Report	Section 39.301, Texas Education Code	Requires TEA to prepare district and campus reports that include numerous indicators of academic performance.	School Districts	Continue
26. Texas School Accountability Dashboard	Section 39.309, Texas Education Code	Requires TEA to develop an online comparison reporting system for districts and campuses based on performance index results.	Public	Continue

APPENDIX C

Equal Employment Opportunity Statistics 2011 to 2013

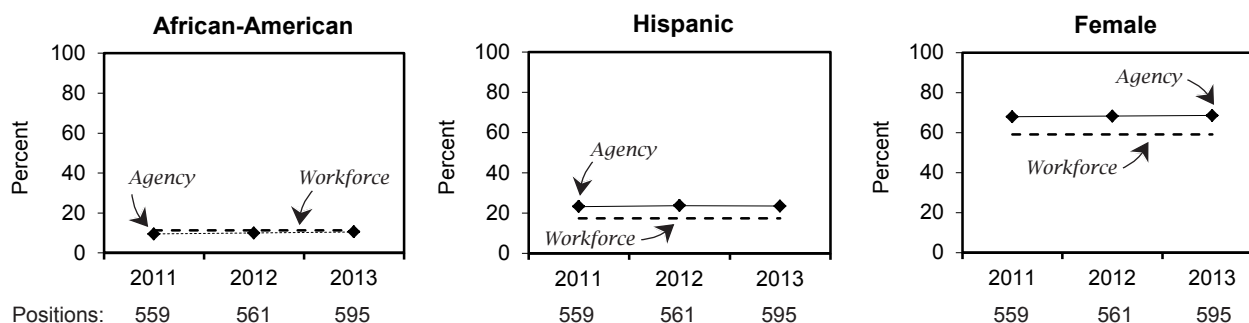
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Education Agency (TEA).¹ The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.² In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.³ 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 from 2011 to 2013. TEA met or exceeded many statewide civilian workforce percentages in the last three fiscal years, but fell short on its employment of African-Americans and Hispanics in technical positions.

Administration



TEA's workforce percentages for administrators generally met or exceeded the statewide civilian workforce for African-Americans, Hispanics, and females.

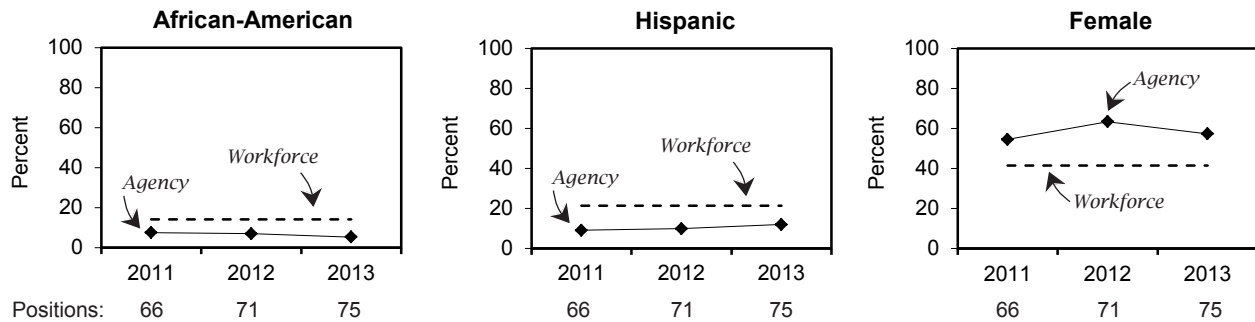
Professional



TEA's workforce percentages for professionals generally met or exceeded the statewide civilian workforce for African-Americans, Hispanics, and females.

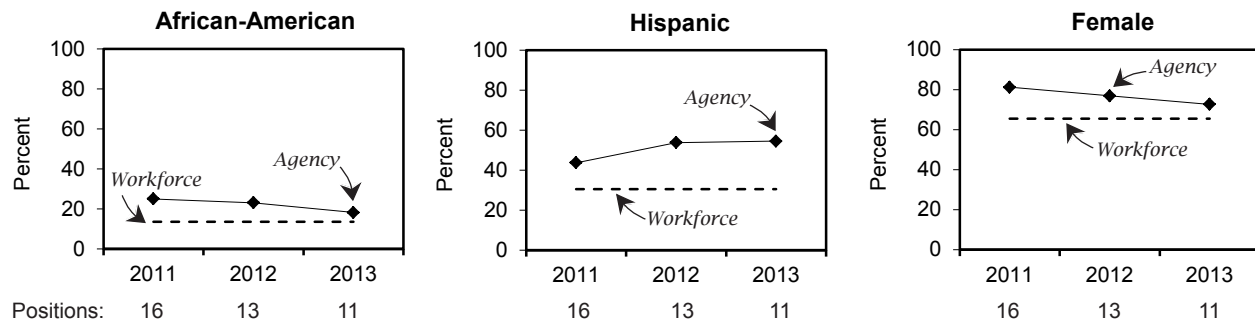
Appendix C

Technical



TEA fell significantly below the statewide civilian workforce percentage of African-Americans and Hispanics in technical positions, but exceeded the statewide average for females.

Administrative Support



TEA exceeded the statewide civilian workforce percentage in all categories for administrative support positions from fiscal years 2011 to 2013.

¹ Section 325.011(9)(A), Texas Government Code.

² Section 21.501, Texas Labor Code.

³ Because the Texas Workforce Commission has not released statewide civilian workforce percentages for fiscal years 2012 and 2013, this analysis uses fiscal year 2011 percentages for those two years.

APPENDIX D

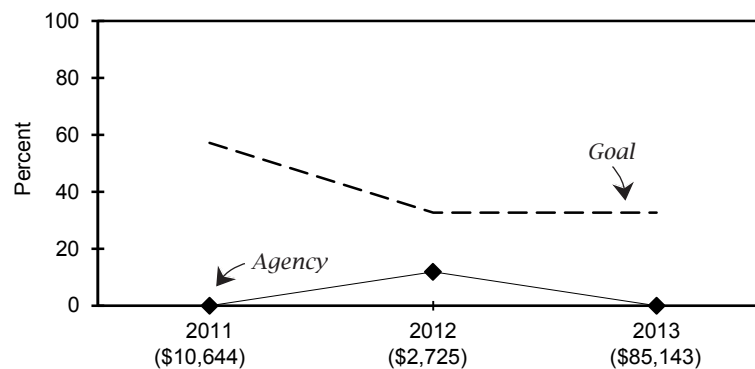
Historically Underutilized Businesses Statistics 2011 to 2013

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 (TEA) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.² In the charts, the dashed 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 from 2011 to 2013. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

TEA complied with HUB program requirements, but had difficulty meeting several statewide HUB purchasing goals in the categories of special trade, professional services, and other services.

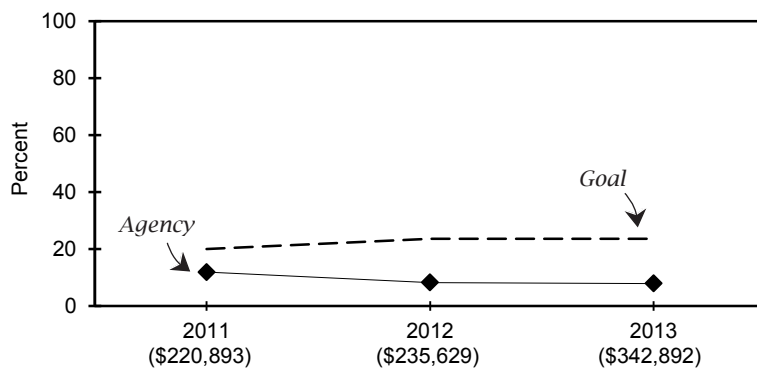
Special Trade



During the last three fiscal years, TEA failed to meet the statewide goal for the special trade category.

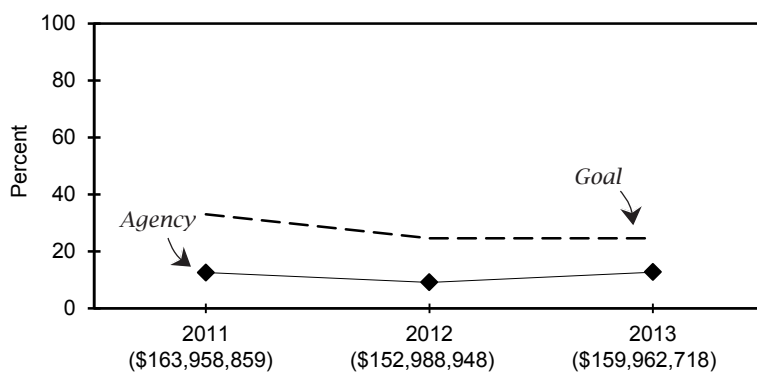
Appendix D

Professional Services



TEA failed to meet the statewide goal for professional services during the last three fiscal years.

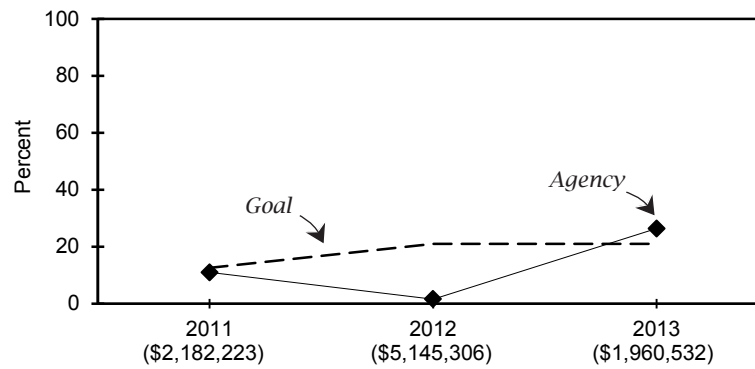
Other Services



During the last three fiscal years, TEA failed to meet the statewide goal for the other services category.

Appendix D

Commodities



In the commodities category, TEA generally met the State's purchasing goal in fiscal years 2011 and 2013, but fell significantly below the goal in 2012.

¹ Section 325.011(9)(B), Texas Government Code.

² Chapter 2161, Texas Government Code.

APPENDIX E

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 10.2.
(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 10.2. 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 10.2 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 10.2. 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 10.2 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 10.2.
(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 E

Statutory Requirements in Section 7.055, Texas Education Code	Sunset Staff Recommendation
(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.	Eliminate. The comptroller has sufficient authority in the Texas Government Code to ensure all agencies account for their expenditures, making this section unnecessary.
(b)(8) Repealed.	N/A
(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.	Move to a new section of Chapter 7, Texas Education Code, regarding the general provisions for the agency.
(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.	Eliminate. The commissioner does not need specific statutory authority to travel and receives reimbursements for travel expenses through the General Appropriations Act.
(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.	Incorporate into the commissioner's new list of powers and duties, as described in Recommendation 10.2.
(b)(12) The commissioner shall appoint an agency auditor.	Incorporate into the commissioner's new list of powers and duties, as described in Recommendation 10.2.
(b)(13) The commissioner may provide for reductions in the number of agency employees.	Eliminate. The commissioner does not need specific statutory authority to reduce the number of agency employees as Texas is an at-will employment state.
(b)(14) The commissioner shall carry out 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)(15) The commissioner shall review and act, if necessary, on applications for waivers under Section 7.056.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(16) The commissioner shall carry out duties relating to regional education service centers as specified under Chapter 8.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(17) The commissioner shall distribute funds to open-enrollment charter schools as required under Subchapter D, Chapter 12.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.

Appendix E

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 school 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 E

Statutory Requirements in Section 7.055, Texas Education Code	Sunset Staff Recommendation
(b)(28) The commissioner shall perform duties relating to the funding, adoption, and purchase of instructional materials under Chapter 31.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(29) The commissioner may enter into contracts concerning technology in the public school system as authorized under Chapter 32.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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 PEIMS under Section 34.010.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(32) The commissioner shall perform duties in connection with the public school accountability system as prescribed by Chapter 39.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(33) Repealed.	N/A
(b)(34) The commissioner shall perform duties in connection with the equalized wealth level under Chapter 41.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(35) The commissioner shall perform duties in connection with the Foundation School Program as prescribed by Chapter 42.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(37) The commissioner shall review school district audit reports as required under Section 44.008.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(b)(38) The commissioner shall perform duties in connection with the guaranteed bond program as prescribed by Subchapter C, Chapter 45.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.

Appendix E

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 F

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 10.2.
(b)(2) The agency shall conduct research, analysis, and reporting to improve teaching and learning.	Eliminate. Other sections of the Texas Education Code more specifically define TEA's responsibilities related to improving teaching and learning. For example, the 83rd Legislature passed H.B. 2012 requiring TEA to survey education professionals about teaching and learning conditions and to perform an audit of professional development requirements for educators.
(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 community education as required under Subchapter H, Chapter 29.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.

Appendix F

Statutory Requirements in Section 7.021, Texas Education Code	Sunset Staff Recommendation
(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.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	Eliminate. This reference to duties assigned in another section of statute is unnecessary.
(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.	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.

Sunset Staff Review of the *Texas Education Agency*

————— *Report Prepared By* —————

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