

October 17, 2014

Ken Levine
Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711-3066

Dear Mr. Levine:

Thank you for the opportunity to provide responses to the issues and recommendations presented in the Sunset Advisory Commission Staff Report on the Texas Education Agency (TEA). It was a pleasure working with you and your staff on this limited scope review.

The attached document reflects TEA's responses to the issues in the report. In almost all cases, the Agency agreed with the staff recommendations or offered clarification around a specific recommendation. Additionally, the attached document includes several areas where I would ask for consideration of action by the Sunset Advisory Commission.

Overall, this report includes important recommendations that would help refocus TEA on our core mission while improving our capability to serve the people of Texas. I look forward to working with you as we move through the rest of the process.

Sincerely,



Michael Williams
Commissioner of Education

MLW/hk

Enclosure: TEA Responses to Sunset Staff Report

Texas Education Agency Responses to the Sunset Advisory Commission Staff Report
October 17, 2014

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

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

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

TEA Response: Agree

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

TEA Response: Agree

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

Issue 3 - Regulating the Private Driver Training Industry Does Not Match TEA's Public Education Mission.

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

3.5 Require TDLR to maintain information on driver training complaints.

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

Issue 4 - Outdated and Unnecessary Statutory Provisions Divert TEA's Focus From Its Core Functions.

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

TEA Response: Agree

4.2 Eliminate the campus distinction designation committees

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

The Agency concurs that the current waiver requirement, in practice, is not meaningful and that limited TEA and district resources should not be directed to the development and review of related requests.

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.

TEA Response: Agree

4.9 Eliminate the requirement for school district boards of trustees to report the terms of superintendent severance payments to the commissioner

TEA Response: Agree

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.

TEA Response: Agree

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

TEA Response: Agree

4.12 Eliminate the Best Practices Clearinghouse.

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

Additional TEA Recommendation: The Agency would suggest that the Commission additionally consider the issue of appeals under Section 7.057 of the Education Code. Since the 1995 revision of the Code, the Agency has understood the jurisdiction of commissioner's hearings to extend only to disputes between public schools and individuals, and not as a mechanism to further appeal final agency decisions. Similarly, the Agency has understood the provisions of Section 7.057(d) to apply only to an appeal to court of an administrative hearing held under subsection (a). The Agency currently faces a large number of demands for hearings attempting to appeal final federal accountability ratings under Section 7.057 and requests clarification of that section.

Additional TEA Recommendation: The Agency lacks comprehensive rulemaking authority for the school finance system. The absence of rulemaking authority under Chapter 42 of the Texas Education Code invites legal challenges to many aspects of that increasingly-complex system. The school finance system consists of Chapter 41 (recapture), Chapter 42 (state aid) and Chapter 46 (facilities). Chapters 41 and 46 confer general rulemaking authority on the commissioner, (§41.006 and §46.002, respectively) but Chapter 42 grants or requires rulemaking on a section-by-section basis. Given the expansive definition of "rule" in the Texas Administrative Procedure Act, the Agency is faced with risking litigation over implementation decisions made without rulemaking, or adopting rules without an explicit authorization. Most additions to Chapter 42 over the past decade have included a grant of rulemaking, but

fundamental parts of the system dating back to the 1980s do not. For example, the statutes that define student eligibility and attendance for funding (§42.003 and §42.005) do not authorize rulemaking. Section 42.004 contains a general reference to State Board of Education rules but does not appear to grant that agency authority over the school finance system, either.

TEA would ask the Commission to consider whether the Agency should have the same general rulemaking authority to implement all aspects of the school finance system, which would minimize legal challenges to decisions made to implement legislation, increase transparency in agency decisions by providing notice of rulemaking and opportunity for comment, and simplify the statute. Please note that a general grant under Chapter 42 would need to recognize existing rulemaking authority in the State Board with respect to funding allotments and indirect cost allotments (§§42.151, 42.152, 42.1541 and 42.156).

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

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

TEA Response: Agree

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

TEA Response: Agree

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

TEA Response: Agree

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.

TEA Response: Agree

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.

TEA Response: Agree

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

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

TEA Response: No position

It is not appropriate for TEA to take a position on this recommendation because the State Board for Educator Certification (“SBEC” or “the Board”) is a separate governmental entity that is not a part of TEA and that TEA does not supervise or control. The relationship between TEA and SBEC is based on the statutory requirement that TEA provide the administrative services and functions of the Board and the MOA executed to implement that requirement. So long as the current arrangement exists, TEA will remain committed to supporting SBEC’s work as efficiently as possible.

6.2 Remove the State Board of Education’s authority to reject proposed educator certification and educator preparation rules.

TEA Response: Agree

The SBEC rule process involves multiple opportunities for input from the public, stakeholders, and the Commissioner of Education, and TEA agrees that further review by the State Board of Education is time consuming, redundant, and delays rule adoption and implementation.

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

TEA Response: No position

Since this recommendation is related to the recommendation to abolish the State Board for Educator Certification it is not appropriate for TEA to take a position on this recommendation for the reasons given above.

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

7.1 Clarify the statutory requirements for school administrators to report misconduct by certified educators to TEA.

TEA Response: Agree

7.2 Grant the commissioner administrative subpoena power to fully investigate certified educator misconduct cases.

TEA Response: Agree

To fully investigate allegations of educator misconduct, TEA has a pressing need for administrative subpoena power. In cases involving allegations of inappropriate sexual conduct between an educator and a student and incidents of physical abuse of students by educators, the only evidence may be the testimony of student victims and witnesses. Some districts believe that FERPA, the federal student privacy law, prevents them from identifying students who are victims or witnesses to educator misconduct unless there is a subpoena. Because those districts do not provide this critical evidence, TEA is unable to fully investigate these cases. Although TEA currently has subpoena power for cases involving testing violations and certain other district violations, TEA has authority to obtain a subpoena in all other matters only after a contested case has been filed. In situations involving allegations of inappropriate sexual conduct between an educator and a student and incidents of physical abuse by educators, a contested case may not be filed if districts do not provide information about victims or witnesses.

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.

TEA Response: Agree

TEA agrees with the recommendation but notes that the use of a disciplinary matrix in matters that involve the safety and welfare of Texas schoolchildren requires different considerations than the use of a disciplinary matrix in other licensing settings. The most important of those considerations is that educators have an unparalleled degree of unsupervised access to students. Educator disciplinary cases necessarily involve an assessment of conduct that may or may not be criminal and an assessment of the risk that conduct presents for continuing harm to students. The factors that must be evaluated in those assessments are often unique to the particular facts. Therefore, any educator certification disciplinary matrix would have to be broad and would have to account for a wide range of aggravating and mitigating circumstances for a variety of conduct.

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

8.1 Establish a five-year renewal process for EPPs in statute.

TEA Response: Agree with one consideration.

If the other changes recommended in statute are adopted, the deadline of December 1, 2015 is appropriate. If those changes are not adopted, additional time may be necessary to adopt the rules necessary to comply with this section.

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.

TEA Response: Agree with one consideration.

If the other changes recommended in statute are adopted, the deadline of December 1, 2015 is appropriate. If those changes are not adopted, additional time may be necessary to adopt the rules necessary to comply with this section.

8.3 Require the commissioner to establish a comprehensive risk-assessment model to guide the monitoring of EPPs.

TEA Response: Agree with one consideration.

If the other changes recommended in statute are adopted, the deadline of December 1, 2015 is appropriate. If those changes are not adopted, additional time may be necessary to adopt the rules necessary to comply with this section.

8.4 Strengthen and clarify the commissioner's authority to sanction EPPs for violations of law or rules.

TEA Response: Agree with one consideration.

If the other changes recommended in statute are adopted, the deadline of December 1, 2015 is appropriate. If those changes are not adopted, additional time may be necessary to adopt the rules necessary to comply with this section.

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

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

TEA Response: Agree

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

10.1 Continue the Texas Education Agency for 12 years.

TEA Response: Agree

10.2 Redefine the commissioner's and TEA's powers and duties in statute to reflect their roles in the public education system.

TEA Response: Agree