

April 15, 2024

The Honorable Mike Morath  
Commissioner of Education  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701

RE: [Proposed rule changes to 19 Texas Administrative Code Chapter 100, Subchapter AA](#)

Dear Commissioner Morath:

On behalf of the 20 education organizations listed at the end of this letter, we submit these comments on the proposed rule changes to 19 Texas Administrative Code Chapter 100, Subchapter AA (Commissioner's Rules Concerning Open-Enrollment Charter Schools).

We recommend that the Commissioner ensure that the rules adhere to statute and that the rules provide for the best interest of all students, including metrics for academic and financial performance. Considering that charter schools have no locally elected school boards to provide oversight and input of Texas citizens, we recommend strengthening rules on transparency, citizen input, and ethics.

We recognize the level of work that went in to the 109-page rule change document and commend the improvement in organization of the subchapter. Below are recommendations regarding specific rule changes.

### **Charter School Performance Framework Manual Should Continue Allowing Public Input and Requiring Academic Focus on Campuses**

The Charter School Performance Framework Manual (hereinafter Framework) is a document used to measure the performance of each charter school. Education Code Section 12.1181 requires the Commissioner to "by rule adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school." In accordance with this statute, in the past the Commissioner by rule has adopted by reference, using a hyperlink in the rule text to the Framework document as a "Figure." See current 19 Tex. Adm. Code Section 100.1010(c). Thus, the public has an opportunity to review and comment on revisions to the Framework. Public comment is important because the Commissioner has designated the Framework as a consideration for charter expansion decisions.

The proposed rules appear to eliminate public participation and rulemaking for adoption of the Framework. The proposed rules repeal current Section 100.1010, which includes the Framework as adopted by rule. Instead of readopting the Framework by rule, new Section 100.1031 states the Framework will be "updated annually" but does not describe the

Framework as being adopted by rule. If the Commissioner does intend to continue to follow the statute by adopting the Framework by rule, it would be helpful to state in proposed Section 100.1031 that the Framework will be “provided in this subsection” (rather than “updated annually” which indicates a non-rule process for Framework adoption).

Further, it appears that the proposed “Academic Indicator” is a lower standard than what is currently used. Proposed Section 100.1031(c)(1) states that the charter school’s “overall academic rating” would be used as the “Academic Indicator.” However, the proposed rule does not state that the Framework also will include campus ratings, which are used currently. Campus status is important in our state’s accountability system; a public school district can lose an elected school board based on the rating of one campus. We recommend ensuring in rule that the Framework include individual campus ratings for the Academic Indicator.

### **Ensure that “High-Quality” and “High Performing” Guarantee Quality**

The rules give charter schools the ability to receive a “High-quality campus designation.” Proposed Section 100.1035(c)(6) allows a “High-quality campus designation” if the charter has an A or B rating, with “all of the campuses that received a rating and operated under the charter” also receiving an A or B rating. To focus on individual campuses, specifying “each campus” would be preferable to “all of the campuses” because “each campus” would not allow for an averaging methodology in calculating whether campuses as a whole receive A or B ratings. In other words, parents and the public would have a better indicator of the charter school’s academic performance.

Also, the proposed rule appears to allow a “high-quality” designation for a charter with a low-performing campus that is not rated – e.g., “Not Rated SB 1365.” Although proposed Section 100.1001(8) allows use of scale scores for “academically unacceptable” performance, that rule as drafted does not appear to extend to scale scores for F campus ratings.

We commend the provision that a “high-quality” campus would require backfilling for attrition. We have seen many “high-quality” charter schools that lose enrollment of student cohorts as they progress through grade levels, losing a substantial number of students in the time between middle school to graduation.

Another designation in state law for charter schools is “high performing,” a moniker which generally has been applied to out-of-state charter school chains seeking to open publicly funded charter schools in Texas.

Current Section 100.1015(b)(2)(B) and proposed Sections 100.1017 and 100.1025 allow an applicant or affiliate that is a “high performing entity” to vest management in a

“member,” which may be an external out-of-state organization.<sup>1</sup> Current rule also specifies that “An academic performance rating that is below acceptable in another state, as determined by the commissioner, does not satisfy this section.” Proposed rules omit this exception to determining the status of a “high performing entity.” Although proposed Sections 100.1001 and 100.1025 define “high performing entity,” requiring a rating comparable to Texas’ highest or second-highest performance ratings, the proposed rules do not continue to include a specific focus on an “academic performing rating that is below acceptable in another state.” This may lead to unintended consequences, if proposed rules allow an out-of-state charter chain with below-acceptable academic ratings in another state (e.g., unacceptable academic performance of a low-performing student group or campus) to be designated here as “high performing” because the other state’s indicators did not translate to Texas district-level performance ratings. In other words, under the proposed rules, Texas could designate as “high-performing” a charter that is rated “below acceptable” in another state. For this reason, we recommend retaining current law’s “below acceptable in another state.”

Another issue regarding out-of-state charter chains is the new requirement in proposed Section 100.1025(b)(1): “The entity must propose to operate the charter school program that is currently implemented in the affiliated charter operator's existing charter schools. ... A charter operator may be considered affiliated with an entity if it utilizes shared structures, practices, or materials, including, but not limited to, a shared management structure, shared financial management or staff development practices, or shared proprietary materials, including those related to instruction.” Does this proposed rule mean that an out-of-state charter chain could be required to implement in Texas schools its Common Core-aligned curricula or its materials designed for other states? Please confirm that this section is not an exception to the requirement that applicants ensure alignment of curricula to TEKS. Will SBOE review these materials as part of the charter application?

### **Restore Performance Requirements for Expansion Amendments**

*Expedited expansion amendments.* Proposed Section 100.1035 would continue to require at least 75 percent of rated campuses to be rated A or B, with no campus in the lowest performance rating category. However, it does not appear that the proposed rule would continue to require a “satisfactory” rating on Charter FIRST financial accountability for expedited amendments. Is this a drafting oversight (as evidenced by this material change not being noted in TEA’s summary)? Or will charters rated less than satisfactory on financial accountability qualify for expedited expansions?

Statute does not require this omission; Education Code Section 12.101(b-4) gives the Commissioner discretion to determine whether the charter holder satisfies “the requirements of this section” (which is not a reference to only Subsection (b-4) but rather to the larger set of authorizing standards in Section 12.101, including financial standards,

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<sup>1</sup> For example, at one Texas charter school, an Arizona organization “member” has the authority to appoint members of the governing body for the Texas-based affiliated charter school.

to which charters must adhere) and further provides that the expedited expansion amendment written notice must be “in the time, manner, and form provided by rule of the commissioner.”

In addition, proposed rule does not provide for written notice in the “time, manner, and form provided by rule” required by Education Code Section 12.101(b-4)(2), and it omits the current rule’s language on this issue, under current Section 100.1033(b)(11)(A)(ii), including requirements for financial strength and integrity. It omits:

- A business plan, voted on by the charter holder governing body, that is financially prudent relative to the financial and operational strength of the charter school, with the business plan required to be filed within 10 business days upon TEA request; and
- Copies of the most recent compliance information including affidavits identifying a board member’s substantial interest in a business entity or real property, documentation of a board member’s voting abstention in the case of potential conflicts of interest, and affidavits identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees.

We recommend restoring omitted language to ensure the financial integrity of charter schools seeking expedited expansion amendments.

*Discretionary expansion amendments.* Current Section 100.1033(b)(9)(A)(iii) requires that 90 percent of the campuses operated by a charter school be “academically acceptable” (which has been defined to include certain D campuses) in order for the Commissioner to approve an expansion amendment.

Proposed Section 100.1035 would be a major change, requiring only 75 percent of a charter school’s rated campuses to be rated A, B, or C, and unlike current rule, excluding from the calculation those campuses that are “Not Rated.” Please clarify if the “Not Rated” would also include a rating similar to “Not Rated SB 1365” in which scores equivalent to a D or F were available but campuses were not rated.

To see how this 75 percent rule works in practice, if a charter school has 10 campuses – including 2 Not Rated, 2 F campuses, and 6 C campuses:

- Under current rule, it could not expand (only 60% of *all* campuses are rated academically acceptable, far short of the 90% rule).
- Under the proposed rule, the charter school could expand (75% of *rated* campuses are rated academically acceptable).

The proposed rule lowers the academic-performance bar for charter school expansion. Expanding such charter schools – especially into areas with successful public school district campuses – does not seem in line with TEA’s strategic plan for every child to be prepared for success in college, career, or the military. Our public school district campuses often receive children who have left a charter school and are not prepared for success. We urge the Commissioner to not reduce the quality of charter schools expanding in our state.

## **Proposed Rule Allows Unaccountable Charter Schools**

Current Section 100.1015(b)(3)(G) requires that a charter applicant commit to serving, by its third year of operation, at least 50 percent of students in grades assessed for state accountability purposes.

Proposed Section 100.1017(c)(3)(H) modifies this requirement by (1) exempting certain charter applicants that only serve early education or prekindergarten students and (2) requiring by its fourth year the charter serve “students in grades assessed for state accountability purposes” instead of requiring 50 percent of students in assessed grades.

We would like to know the rationale for allowing a fourth year for all charter schools to enroll 50% of students in assessed grades. An extension would prevent parents from having any information on student performance for another year. We also would like to know the rationale for charters not having 50 percent in assessed grades, because it will create more charter campuses outside of the accountability system and reduce the overall accountability of charter schools. See also proposed Section 100.1039 on charter renewals, which leaves out current Section 100.1032(3)(C)(ii)’s nonrenewal for failure to operate a campus at which at least 50 percent of students are in tested grades. We recommend restoring in rule these assurances of charter accountability.

Additionally, the proposed rule creates a new class of charter PreK-only chains that are exempt from the state’s accountability system. Creating a new, parallel accountability system for charter campuses serving unassessed students is not a solution that aligns with state and federal assessment and accountability requirements. Placing accountability into the charter contract itself could create a completely opaque system of multiple private accountability systems, with little chance of public input or transparency. Such multiple private accountability systems could be unaccountable to Texas citizens and confusing to Texas parents. Please ensure parents will have the information to make informed choices and the Legislature will be able to clearly evaluate these systems at the state level.

Proposed Section 100.1051(b)(2)(F), on the minimum academic performance required for continuance of a charter, states that if the performance of a charter holder “cannot be determined” because a “high proportion of students served are in prekindergarten-Grade 2 or another grade for which an assessment instrument is not administered under TEC, §39.023, then the commissioner may evaluate the performance of the charter holder.” This proposed section does not align with state assessment requirements. School districts and charter schools are required to use the Commissioner’s List of Approved Prekindergarten Assessment instruments, according to [TEA’s High-Quality Prekindergarten Program Components FAQ](#), and TEA mandates that student progress monitoring data be submitted to TEA. TEA thus has the ability to evaluate PK-2 charter holders and hold them accountable; if the Commissioner goes down the path of PK-2 charters, we would recommend a separate rulemaking with stakeholder input. It took legislative action – with input from stakeholders and legislators – to create adult charter schools. It appears the

proposed rules, without legislative authorization, are creating a new class of charters that are not under TEA's accountability system.

The proposed rules also could treat charter schools differently from school districts because, under 19 Texas Administrative Code Section 97.1003(b)(3), school districts must pair each early childhood center with a campus that has STAAR-assessed grades for accountability ratings, and thus all the district campuses receive ratings in TEA's accountability system. In contrast, it appears that this proposed new class of early elementary charter schools will not be paired with a campus in TEA's accountability system. Please clarify whether paired campus accountability will occur with this system.

### **Statute Requires a 10-Year Sit-Out Period for Charter Holders that Return a Charter**

Under Section 12.101(b), a charter can only be granted for an applicant that “(1) has not within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned; or (2) is not, under rules adopted by the commissioner, considered to be a corporate affiliate of or substantially related to an entity that has within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.”

In proposed Section 100.1001(12)(C) “eligible for high quality designation” appears to be intended (although the lack of a full sentence makes it unclear) to allow certain former charter holders to not be subject to the express statutory prohibition under Education Code Section 12.101(b), which provides a 10-year sit-out for a charter being given to an applicant who has had a charter “surrendered under a settlement agreement.” However, the proposed rule attempts to limit this to allow a charter be granted to a certain class of applicant that has “surrendered its charter, provided that there was no settlement agreement requiring closure or required closure under TEC, Chapter 39.”

Also, proposed rule in Section 100.1001(12)(C) and in Section 100.1011(c) seeks to obviate the sit-out period if an applicant “relinquished” its charter. Proposed rule fails to define “relinquished” and how “relinquished” is different from a charter holder that “returned” its charter. The sit-out period in statute clearly applies to a charter holder whose charter is “returned.” The term “returned” is broader and describes what happens after a charter holder “relinquishes” or abandons or gives up or otherwise parts with its charter. A rule cannot change statute’s clear wording to provide a sit-out period for entities that, voluntarily or involuntarily, walk away from Texas students. We recommend that the rule follow this express statutory language.

### **Restore Academic, Financial, and Governing Standards in the Application**

On the application criteria in Section 100.1011(d)(3), proposed rule replaces current rule's requirement that a charter applicant be "fiscally viable from its inception" with "evidence that the charter school will earn seventy or more points without failing a critical indicator on the Charter Financial Integrity Rating System of Texas beginning in Year 1." We would recommend that, in addition to the proposed evidence of 70 points and not failing Charter FIRST, that the state continue to ensure that an entity granted a state charter is "fiscally viable from its inception."

For Subchapter D charters, proposed Section 100.1011(d) completely eliminates several key criteria found in current Section 100.1002(h), including:

- (5) evidence of parental and community support for or opposition to the proposed charter school;
- (6) qualifications, background, and histories of individuals and entities involved in management and educational leadership;
- (7) history of the sponsoring entity; and
- (8) indications the proposed governance structure is conducive to sound fiscal and administrative practices.

We recommend the proposed rule continue these important criteria, because parents and communities matter, and the backgrounds of proposed leaders are relevant and should be disclosed and considered.

Similarly, proposed Section 100.1017(c)(1) deletes some of the financial standards, related to the evidence of need for a new charter school, found in current Section 100.1015(b)(1)(B). These omitted requirements, such as a growth plan and a list of risk factors, are especially important given that so many new charter schools approved over the past five years are seriously under enrolled, indicating the need for more due diligence on new charter schools.<sup>2</sup>

Another change is that charter applicants no longer will be required to describe how they will "implement an educational program that supports the enrichment curriculum, including fine arts, health education, physical education, technology applications, and, to the extent possible, languages other than English," as under current Section 100.1015(b)(3)(E)(v). That language is repealed. Instead, proposed Section 100.1017(c)(3)(F)(v) directs applicants to implement "an educational program that supports compliance with all course requirements pursuant to state law." It would be helpful for the Commissioner to clarify if this change is intended and whether the SBOE and the public would be able to determine from a charter school application whether enrichment curriculum courses will be offered.

## **Restore Ethics Rules**

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<sup>2</sup> A 2022-23 analysis of enrollment of charter schools approved during the past five years showed that 95 percent had not met enrollment projections. Almost half of those new charter schools were under enrolled by almost 50 percent or more.

Proposed Section 100.1011 omits current ethics rules in Section 100.1015(b)(4) that prevent charter applicants or persons acting on their behalf from contacting TEA staff or giving TEA staff or the Commissioner anything of value during the no-contact period. Here are current rules being eliminated:

(B) A representative of any applicant must not initiate contact with any employee of the TEA, other than the commissioner or commissioner's designee, regarding the content of its application from the time the application is submitted until the time of the commissioner award of charters in the applicable application cycle is final, following the 90-day State Board of Education (SBOE) veto period.

(C) An applicant or person or entity acting on behalf of the applicant may not provide any item of value, directly or indirectly, to the commissioner, any employee of the TEA, or member of the SBOE during the no-contact period as defined in §100.1002(k) of this title.

We recommend the Commissioner restore these ethics rules.

Also, we recommend strengthening language in another no-contact provision. Current and proposed rules both prohibit applicants or persons acting on applicants' behalf from knowingly communicating with external review panel members during the relevant time period. Under current Section 100.1002(k), on finding of a violation, the Commissioner "shall reject" the application. Proposed Section 100.1011(g) turns this into "may reject." Because rule provides no standard for the Commissioner to make a discretionary decision, the rule is left open to challenge, which could encourage applicants to ignore the no-contact rule.

### **Extensions to Open Should Have a Defined Time Limit; Restore Notice for Suspensions of Operations**

Current rule Section 100.1002(q) provides one one-year Commissioner extension to open past the initial requirement that the charter school open within one year. However, proposed rule Section 100.1011(o) provides an unlimited time for the Commissioner extension. If a charter has been awarded, and particularly if the charter is drawing public funds such as a Charter School Program grant during a time when it is not actually educating students, we recommend the charter should have a defined time limit to open and not have an unlimited time to continue drawing public funding without fulfilling its public purpose of educating students.

Likewise, revisions to Section 100.1213 extend dormancy periods for longer periods. Also, the revisions entirely eliminate written notice to parents and TEA for suspension of operations of more than three days. The summary for this change states that it would "move information related to written notice of suspended operation to §100.1035." However, we are unable to find the same requirement for written notices in that proposed section. Is this an oversight? If not, we would recommend not eliminating such important information for parents.



Additionally, we would appreciate an explanation of how Subsection (d)'s "suspension of operations in violation of this section constitutes abandonment of the open-enrollment charter and constitutes a material breach of the charter contract" would be effectuated with the removal of "suspension" language in revised Subsection (b) and in repealed Subsection (c). Please confirm that a charter school's suspension of operations in the middle of the year will continue to be a material violation of the charter under Subsection (a)'s requirement to "operate ... for the full school term" and Subsection (d)'s "material breach."

### **Restore Notice to Local Communities**

Current rule Section 100.1005 requires the applicants to notify boards of trustees and superintendents of school districts, charter schools, legislators, and SBOE members in applicant's proposed geographic boundaries. The proposed rule Section 100.1013 shifts the notification from the applicant to the Commissioner and drastically limits the scope of this notification to only those district boards and superintendents, legislators, and SBOE members in the "anticipated zip code of location." Education Code Section 12.1101 requires, however, that notification be given to the boards and superintendents of each district from which the proposed charter school "is likely to draw students." Given the ability of a charter school to draw any student from (and impact any school district within) the proposed geographic boundaries and across zip code boundaries – and considering that initial zip code locations often change – notice should be provided to each district within the actual geographic boundaries, with the notice indicating the intended zip code, to better inform communities, legislators, and SBOE members. A smaller, zip-code-only notice would reduce awareness by and input from affected stakeholders, including legislators, SBOE members, and school districts.

This same limit on notice to "anticipated zip code of location" (rather than the geographic boundary from which the charter school may draw students) also appears in proposed Section 100.1035(c)(2) (notification of expansion amendments to school districts and legislators) and proposed Section 100.1209(c)(2) (notification to school districts and legislators of charter school real property purchase). Although TEA states this will create "a streamlined method of communication with potentially impacted stakeholders," in actuality it omits notice entirely for many impacted stakeholders.

In addition, the proposed rule delays notice, possibly by months. Currently, the applicant sends the notification before submitting its application to TEA. Under the proposed rule, the applicant would send TEA its application and then, an unknown time later, TEA would send notice to stakeholders. We request that the rules include a deadline for TEA to send out the notice so that interested parties timely receive it. We also suggest that the rules ensure that the notice include instructions on how a public school district may submit a Statement of Impact to TEA that describes the impact of the new school on the district; that the rules allow at least 20 business days for public school districts to complete the Statement of Impact; and that this notice and deadlines also apply to charter school amendment notices in proposed Section 100.1035. We note that TEA processed more than

130 charter expansion amendments in 2023, and this shift in responsibility from charter requestors to TEA is likely to require additional TEA staff time to implement.

We urge the Commissioner to not limit or delay public transparency in these proposed sections and to restore full and timely notice.

### **Geographic Boundary Expansions are Expansions**

Proposed Section 100.1035 eliminates the requirement that a charter school submit an expansion amendment in order to amend its charter to expand its geographic boundaries and include more school districts within its enrollment area. But a geographic boundary expansion is, necessarily, an expansion. There are no public hearings in the expansion process, which is why public awareness and input should continue to be provided for such an expansion.

A charter school that expands its geographic boundaries without first seeking an amendment would no longer be subject to the state-funding penalty for such an unauthorized amendment. This change is not noted in the rule summary. The Commissioner should restore geographic boundary expansion amendments in proposed Section 100.1035 as well as the penalty language in proposed Section 100.1061(d) on state funding.

### **Restore “Material Violation of the Charter” if a Charter is Not in Good Standing with State Agencies**

Both proposed Section 100.1017 and current Section 100.1015(b) require existing entities applying for a charter to be in good standing with the IRS, Texas Secretary of State, and Texas Comptroller and with all regulatory agencies in its home state. Current rule provides teeth: The good-standing requirement is part of “Financial standards,” and, if awarded a charter, a charter’s failure to maintain ongoing compliance will be considered a material violation of the charter and may be grounds for revocation. Although proposed Subsection (c)(2)(A) retains the consequence for losing an IRS 501(c)(3) designation, Subsection (c)(1) takes the good-standing requirement for state agencies out from under “Financial standards” and the material-violation consequence.

The rule change means an out-of-state charter chain that comes into Texas and gets in trouble with its regulatory agencies back in California and/or the Texas Comptroller may face no serious consequence in Texas. We urge the Commissioner to realign the rule to put this requirement under “Financial standards,” with consequences for failure to maintain compliance.

### **Was Omitting Administrative Cost Limits for Charter Schools an Oversight?**

Proposed rules repeal current Section 100.1015(b)(1)(G) on financial standards that limits administrative costs for charter schools. Is this an oversight, or is there a rationale for allowing charter schools to have administrative costs of more than 27 percent?

For the record, PEIMS data shows the percentage that Texas charter schools spend on central administration and school leadership is 55 percent higher than the percentage that Texas school districts spend on the same expenditures.<sup>3</sup>

### **Reconsider Scale Scores for Accountability Ratings**

Proposed Section 100.1001(8)(D) would have the Commissioner use scale scores to determine “academically acceptable” and “academically unacceptable” if academic ratings are not issued. Creating these ratings could potentially violate state or federal laws in years in which the Legislature or the U.S. Department of Education prohibit ratings. Generally, ratings are prohibited in circumstances when there is not confidence that those ratings (or the data used to calculate the ratings) are fair or accurate. In such circumstances, having TEA create a new form of ratings for charter schools is not appropriate nor does it align with legislative intent.

### **Clarify “Related Party” Provisions**

We appreciate that “related party” has been defined in proposed Section 100.1001(25).

- We note that statute defined, at a minimum, who was to be included as a “related party” and provided the Commissioner with additional latitude to have a more expansive definition to protect the public trust.
- Education Code Section 12.1166, requiring the definition of “related party,” states that the definition must include a party with a former officer. However, the proposed rule does not include this statutorily required category. The rule defines “officer” as including employees, contractors, and volunteers, and “officer” clearly does not have the same meaning as “administrator” or “board member” and should be included in the “related party” definition in proposed rule Section 100.1001(25)(A)(iii).
- Proposed Section 100.1069(c) does not follow Education Code Section 12.1166(c), which requires “all transactions with a related party” to be listed in the charter’s annual audit. Proposed rule limits this to “All other related party transactions” (although it is not clear to what “other” refers). We recommend deleting the word “Other” twice in this subsection to clarify that all related party transactions, including those in Subsection (b), are properly reported annually, in accordance with statute.

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<sup>3</sup> 2020-21 PEIMS Financial Actual reports shows that charter schools spend 10.3% of total actual expenditures for central administration and 8.9% for school leadership. In contrast, school districts spend 6.7% of total actual expenditures for central administration and 5.7% for school leadership. Charters’ 19.2% is 55% higher than districts’ 12.4%.

## **Adhere to Statute on Zoning and Certification**

H.B. 1707 in the 87<sup>th</sup> Legislature repealed Education Code Section 12.103(c), which had provided an exemption from zoning for a charter school in a municipality with a population of 20,000 or less. Now that the exemption in Subsection (c) is repealed, Section 12.103(a) makes all charters subject to municipal zoning. However, proposed Section 100.1209(b) appears to have an oversight in retaining the now-repealed 20,000-population exemption. We would urge the Commissioner, in accordance with Education Code Section 12.103(a), to remove the proposed Section 100.1209(b) exemption.

Likewise, proposed Section 100.1209 does not comport with Education Code Section 12.1058(e). That new statute requires a charter school to provide a written certification to a political subdivision in order for the political subdivision to consider the charter school as a school district for certain purposes such as land development standards. The Legislature enacted the specific good-government wording after the Houston Chronicle in 2023 exposed numerous financial issues in charter schools across the state.

Statute requires the certification provide: “no administrator, officer, or employee of the charter school and no member of the governing body of the charter school or its charter holder derives any personal financial benefit from a real estate transaction with the charter school.” Proposed rule provides: “no employee, board member or charter holder of the charter school received any personal financial benefits from a real estate transaction with the charter school.” The proposed rule leaves out words from the statute: “administrator” and “officer” (e.g., “officer” and “employee” are different terms) and “member of the governing body of ... its charter holder.” Additionally, proposed rule changes from “benefit” to the plural “benefits,” suggesting that only more than one benefit would trigger the provision. We suggest the proposed rule add the words in statute.

In addition, Education Code Section 12.1058(i) puts the duty on charter schools, not TEA, to provide 20-day notification of real property purchases to school districts and legislators. Proposed Section 100.1209(c), like several other proposed rules (e.g., stakeholder notice under proposed Section 100.1013), shifts the notice duty to TEA, with no cost for additional TEA staff time noted in the Government Growth and Fiscal Impact Statements for the proposed rule. If TEA does not provide, or timely provide, the required notice to stakeholders, and charter schools do not timely provide the notice to stakeholders despite their clear duty under statute, and stakeholders do not timely receive the notice, the consequence under statute is that the charter school is not entitled to the special treatment it would otherwise get under Section 12.1058(i). We recommend removing the conflicting and unnecessary proposed Section 100.1209.

## **Clarify Common Application Language**

Proposed Section 100.1207 appears to track statute for student admission and the common application form. The first sentence in proposed Section 100.1207(a)(1)(C), however, could

be read two ways and should be clarified to ensure that a charter “may not” alter the form “and may not add [~~or add~~]” any additional criteria. Otherwise, the wording could be read as “unless to signify ... or add any additional criteria...”

Also, Education Code Section 12.1173(e) requires the Commissioner to adopt rules to ensure the common admission application form law conforms with federal and state law protecting student privacy. Although the proposed rule prohibits sharing student information provided in the application to a person or entity other than TEA, the proposed rule should be strengthened to articulate legal compliance to the extent required by statute.

Proposed Section 100.1207(e) should follow statute by including all of the items that Education Code Section 12.1174(a)(1) requires to be reported to TEA, unless these items (student enrollment number, enrollment capacity, and charter holder aggregated information) are required elsewhere by the October deadline.

Proposed Section 100.1207(g) could be improved by requiring a charter school’s establishment of a primary and secondary geographic boundary to be a charter amendment and to be publicly available on the charter school’s website for parents and community members. Whether a family lives in a primary or secondary boundary would be crucial information for a parent considering applying to a charter school.

### **Update School Finance References and Refine Definitions**

Proposed Section 100.1061 continues outdated language on school finance, including the cost of education index, which the Legislature repealed in 2019, as well as outdated references to Chapter 42, Education Code, which has been renumbered as Chapter 48.

In proposed Section 100.1001(5)(B), we suggest revising “public junior college, senior college, or university” to “public junior college or public senior college or university” to be consistent with both Subchapter E, Chapter 12, and Section 61.003, Education Code.

Thank you for this opportunity to comment, and we look forward to the agency’s responses on this rulemaking.

### **The following 20 education organizations sign-on to the comments above:**

- Association of Professional Educators (ATPE)
- Coalition for Education Funding
- Every Texan
- Fast Growth School Coalition (FGSC)
- Go Public
- IDRA (Intercultural Development Research Association)

- Pastors for Texas Children
- Texas American Federation of Teachers (Texas AFT)
- Texas Association of Community Schools (TACS)
- Texas Association of Latino Administrators and Superintendents (TALAS)
- Texas Association of Midsize Schools (TAMS)
- Texas Association of Rural Schools (TARS)
- Texas Association of School Administrators (TASA)
- Texas Association of School Boards (TASB)
- Texas Classroom Teachers Association (TCTA)
- Texas Council of Administrators of Special Education (TCASE)
- Texas Elementary Principals and Supervisors Association (TEPSA)
- Texas Rural Education Association (TREA)
- Texas School Alliance (TSA)
- Texas State Teachers Association (TSTA)