Comments on Proposed Amendments to Commissioner's Rules in 19 TAC Chapter 97

January 27, 2020

The **Association of Texas Professional Educators (ATPE)** offers the following public comments regarding proposed amendments to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, Division 2, Contracting to Partner to Operate a District Campus, §97.1075 and §97.1079, Contracting to Partner to Operate a Campus under Texas Education Code, §11.174. The commissioner's proposed amendments seek to modify the existing rules regarding what are commonly known as "1882 partnership agreements," named after Senate Bill 1882 that put the agreement framework into the Texas Education Code. ATPE has several points of concern about the proposed revisions.

The intent of the bill that created these agreements was to authorize and financially incentivize partnerships between independent school districts (ISDs) and other entities, including but not limited to charter management organizations operating one or more charter campuses in the state of Texas. The initial rulemaking to implement SB 1882 began a trend of limiting the partnership aspect envisioned by the bill as passed; unfortunately, this proposal seems to exacerbate that trend. How can the commissioner and the Texas Education Agency (TEA) reasonably expect a true partnering relationship to exist when it mandates as much unilateral decision-making as appears contemplated by the proposed amendments/ For example, the non-ISD partner would have sole control over assignment (including placement and removal) of staff, such as the teachers and principal of a campus; sole control over the evaluation of staff, including the teachers and principal; sole discretion over the curriculum; sole control over programs offered to special populations; sole control over the calendar; sole control over discretionary/benchmark assessments; and sole control over the campus budget.

Many of the existing campuses that might be considered for one of these agreements are traditional neighborhood schools. Prior to the establishment of an 1882 partnership agreement, parents of the students attending such a campus could petition their locally elected school board trustees to give input and exert community influence over many of the decisions that under the proposed rules would be handed over to the sole discretion of the non-ISD partner. Because the district would be completely cut out of the decision-making process in many areas, the ability of local parents, taxpayers, and educators to affect the decisions impacting their children and other local students would be dramatically limited.

Of specific concern is the 15-day window given to districts under the proposed rules to reassign an educator after the non-ISD partner announces its desire to terminate the educator's assignment. Under the proposed rules, an assignment can be terminated by the non-ISD partner at any time and for any reason or no reason at all, leaving the district with only two weeks, effectively, to find the employee who is still under contract with the district a new position. In fact, this burden may be one that the district cannot meet mid-year, resulting in the termination of the educator's contract for potentially no fault of their own.

Also of concern to ATPE is the apparent inability of the district to hold the non-ISD partner accountable for TEA-assigned A-F ratings of the campus being run by the non-ISD partner. This seems particularly egregious considering that a district can be placed under TEA management, after having its duly elected school board removed, for a persistently poor rating on a single campus under the A-F system. This punitive action could be precipitated by a persistently poor rating for the campus being run by the non-ISD partner under an 1882 agreement, which still impacts the accountability status of the district as a whole.

Finally, the original intent of SB 1882 envisioned such entities as institutions of higher education, charitable organizations, and other community partnerships as potential non-ISD collaborators under this legislation. The bill's authors and other legislators involved in its drafting and passage envisioned school districts working in partnership with multiple types of entities to create an innovative campus with access, potentially, to higher funding. However, the proposed changes to §97.1079 require the non-ISD partner entity to have been in existence for three or more years prior to the agreement, have experience managing multiple campus for multiple years, and have a previous academic track record. These requirements all but prohibit an ISD from forming a new entity in collaboration with a charitable or community group that could work with the district under the 1882 format. In fact, it is difficult to conceive of many entities other than open-enrollment charter schools that would have an interest in pursuing such work *and* meet the proposed new requirements, which were not envisioned by the enabling legislation. This limitation, combined with similarly limiting language in §97.1075, makes these agreements look much less like innovative partnerships between districts and non-ISD partners and much more like incentivized takeovers of district campuses by charter management organizations.

ATPE appreciates the opportunity to provide feedback to the commissioner during this process and invites TEA staff to contact ATPE Governmental Relations at (800) 777-2873 or government@atpe.org for any additional information.