

The Texas Education Agency (TEA) adopts an amendment to §97.1055, concerning accreditation status. The amendment is adopted with changes to the proposed text as published in the August 30, 2019 issue of the *Texas Register* (44 TexReg 4618) and will be republished. The adopted amendment modifies the rule to clarify the commissioner's authority to revoke a district's accreditation status that is operated by an appointed board of managers and to update cross references.

REASONED JUSTIFICATION: Section 97.1055 defines the requirements a school district must meet each school year to receive the status of Accredited and states how the accreditation statuses of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked are determined. Furthermore, this section provides for commissioner authority to revoke a district's accreditation status should the action be reasonably necessary notwithstanding other rules.

As proposed, the amendment to §97.1055 would have modified subsections (b)(1)(A), (c)(1)(A), and (d)(1)(A) to explicate the applicability of proposed new 19 TAC §97.1060(e), Considerations Regarding Needs Improvement Rating, to the determination of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked statuses, respectively. However, due to the expiration of proposed new 19 TAC §97.1060 prior to adoption, all references of its applicability to 19 TAC §97.1055 have been removed at adoption.

The adopted amendment to §97.1055 removes the phrase, "beginning with its 2006 rating" since the phrase is no longer applicable.

The adopted amendment to §97.1055 also modifies subsection (d)(5) to clarify the commissioner's authority to revoke, should it be deemed necessary, a district's accreditation status that is operated by an appointed board of managers and assigned accreditation statuses under §97.1055(d)(3).

Additionally, the adopted amendment modifies §97.1055 to update cross references to align with HB 3, 86th Texas Legislature, 2019, which recodified sections of TEC, Chapter 42, into TEC, Chapter 48.

At proposal, the government growth impact assessment stated that the proposed rulemaking would expand an existing regulation by referencing the criteria in 19 TAC §97.1060 that may be used to determine a district's accreditation status of Accredited-Warned, Accredited-Probation, and Not Accredited-Revoked. However, since references to §97.1060 were removed from the rule at adoption, this government growth impact is no longer applicable.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 30, 2019, and ended September 30, 2019. Following is a summary of public comments received and corresponding agency responses.

Comment: The Texas School Alliance (TSA) expressed support for the proposed amendment that would remove the phrase "beginning with the 2006 rating" since the phrase is no longer applicable and that would modify subsection (d)(5) to clarify the commissioner's authority to revoke a district's accreditation status that is operated by an appointed board of managers.

Agency Response: The agency agrees with removing the outdated language and clarifying the commissioner's revocation authority.

Comment: TSA commented that the proposed amendment does not align with stated legislative intent. Specifically, TSA conveyed that TEC, §39.054, clearly differentiates between "D" and "F" letter grades and stated that "D" represents acceptable performance. Additionally, TSA commented that the House Public Education Committee's Interim Report to the 86th Texas Legislature states that lawmakers agreed that there should be some difference between intervention required for scores of "D" and "F." Finally, TSA commented that creating a "chain of unacceptable ratings" that is not expressed in legislation is inconsistent with the statutes adopted in the 85th legislative session.

Agency Response: The agency provides the following clarification. Due to the expiration of proposed new 19 TAC §97.1060, the agency has modified the amendment to §97.1055 at adoption to remove all references of the applicability of §97.1060 to §97.1055.

Comment: The Texas Association of School Boards (TASB) and the Texas Association of School Administrators (TASA) commented that the proposed amendment provides that a district's accreditation status will be lowered if the district receives a "D" rating for two consecutive years and will continue to lower with subsequent "D" ratings. TASB and TASA also commented that the proposed amendment is based on 19 TAC §97.1060, which is authorized by TEC, §39.101(c), and noted that the statute provides that a "D" rating is treated as an unacceptable rating after two consecutive years for purposes of accountability interventions and sanctions. TASB and TASA stated that the proposed amendment conflates accountability details with accreditation details. Additionally, TASB and TASA noted that the proposed amendment is unnecessary because under current 19 TAC §97.1055, the commissioner has broad discretion to lower accreditation status. TASB and TASA stated that if the district's circumstances require a lowering of accreditation status, the commissioner likely already has the flexibility and concluded that there is no need for this automatic requirement.

Agency Response: The agency provides the following clarification. Due to the expiration of proposed new 19 TAC §97.1060, the agency has modified the amendment to §97.1055 at adoption to remove all references of the applicability of §97.1060 to §97.1055.

Comment: The Texas Urban Council recommended that the agency withdraw the proposed amendment and proposed new rule and allow current statute to apply to the 2019 and 2020 Needs Improvement "D" ratings because proposed new 19 TAC §97.1060 violates express and legislative intent of the law, defaults on the commissioner's commitment to not change goal posts for five years, has significant negative consequences, and lacks any legislative or agency consideration.

Agency Response: The agency provides the following clarification. Due to the expiration of proposed new 19 TAC §97.1060, the agency has modified the amendment to §97.1055 at adoption to remove all references of the applicability of §97.1060 to §97.1055.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; and TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.051 and §39.052.

<rule>

### **§97.1055. Accreditation Status.**

- (a) General provisions.
  - (1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) and (c). Each district shall be assigned a status defined as follows.
    - (A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:
      - (i) meets the standards determined by the commissioner under TEC, §39.052(b) and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and
      - (ii) is not currently assigned an accreditation status of Accredited-Warning or Accredited-Probation.

- (B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.
  - (C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.
  - (D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section.
- (2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052, which are specified in §97.1053(a) of this title (relating to Purpose).
  - (3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052, are to:
    - (A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district's performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) and (c), and specified in subsection (d) of this section; and
    - (B) encourage other districts to improve their performance so as to retain their accreditation.
  - (4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39 or 39A, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.
  - (5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:
    - (A) specifically authorized by commissioner rule;
    - (B) timely requested under and in compliance with such rule; and
    - (C) applicable to the accreditation status under review.
  - (6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.
  - (7) The commissioner may withhold the assignment of an accreditation status to an open-enrollment charter school that is subject to TEC, §12.115(c) or §12.1141(d), or has otherwise surrendered its charter.
  - (8) An accreditation status may be raised or lowered based on the district's performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.
  - (9) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

- (10) If a lowered accreditation status is assigned and a sanction is imposed, the subsequent issuance of a new accreditation status does not affect the commissioner's authority to proceed with the previously imposed sanction.
  - (11) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive.
- (b) Determination of Accredited-Warned status.
- (1) A district shall be assigned Accredited-Warned status if the district is assigned:
    - (A) for two consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System);
    - (B) for two consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Ratings);
    - (C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.
  - (2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:
    - (A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:
      - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
      - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);
      - (iii) other reports required by state or federal law or court order;
      - (iv) awarding high school graduation under TEC, §28.025; or
      - (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
    - (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
      - (i) the district's programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or
      - (ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation.
  - (3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (c) Determination of Accredited-Probation status.

- (1) A district shall be assigned Accredited-Probation status if the district is assigned:
    - (A) for three consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;
    - (B) for three consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;
    - (C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.
  - (2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:
    - (A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:
      - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
      - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;
      - (iii) other reports required by state or federal law or court order;
      - (iv) awarding high school graduation under TEC, §28.025; or
      - (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
    - (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
      - (i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or
      - (ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation.
  - (3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (d) Determination of Not Accredited-Revoked status; Revocation of accreditation.
- (1) The accreditation of a district shall be revoked if the district is assigned:
    - (A) for four consecutive school years, an unacceptable academic accountability rating as indicated in the applicable year's accountability manual adopted under §97.1001 of this title;
    - (B) for four consecutive school years, a financial accountability rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title;
    - (C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or
    - (D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

- (2) Notwithstanding paragraph (1) of this subsection, the commissioner may abate the assignment of a Not Accredited-Revoked status, issue another accreditation status, or elect to appoint a board of managers to govern the district in lieu of revoking the district's accreditation if the commissioner determines that revocation of the district's accreditation is not reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
- (3) Notwithstanding this section, if the commissioner appoints a board of managers under paragraph (2) of this subsection or as a result of a special accreditation investigation, the commissioner shall assign the district accreditation statuses during the period of the appointment of the board of managers as follows.
  - (A) In the school year following the appointment of the board of managers, the commissioner shall assign the district an accreditation status of Accredited.
  - (B) In the school years following the issuance of the accreditation rating under subparagraph (A) of this paragraph, the commissioner shall assign the accreditation status as provided by subsections (a)-(d) of this section. However, the commissioner shall not consider any academic rating that was issued for a school year in which the district was operated, in whole or in part, by the suspended board of trustees. The commissioner shall also not consider any financial accountability rating that was issued based on financial data from a fiscal year in which the district was operated, in whole or in part, by the suspended board of trustees. Notwithstanding this provision, the commissioner may consider academic or financial ratings attributable to performance that occurred in a school year in which the district was operated, in whole or in part, by the suspended board of trustees if the commissioner, in his sole discretion, determines such consideration is necessary to achieve the purposes of TEC, §39.051 and §39.052.
  - (C) For any district subject to this paragraph, the commissioner may lower the district's accreditation rating to Not Accredited-Revoked at any time if the commissioner determines that the district is not making acceptable progress to correct its academic or financial performance and that closure and annexation is necessary to achieve the purposes of TEC, §39.051 and §39.052, unless the district has earned an Accredited status absent the application of subparagraph (A) or (B) of this paragraph.
  - (D) For purposes of this subsection, the period of appointment of the board of managers includes any school year in which any member of the board of managers serves, including the school year during which the appointment of the board of managers expires.
- (4) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:
  - (A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:
    - (i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39, 39A, or 48, and rules implementing those chapters;
    - (ii) the reporting of data under TEC, §48.008, and §61.1025 of this title;
    - (iii) other reports required by state or federal law or court order;
    - (iv) awarding high school graduation under TEC, §28.025; or
    - (v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or
  - (B) after review and/or investigation under TEC, §39.056 or §39.057, the commissioner finds:
    - (i) the district's programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

- (ii) the district otherwise exhibits serious or persistent deficiencies that require revocation of the district's accreditation.
  - (5) Notwithstanding paragraph (3) of this subsection, a district's accreditation shall be revoked if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052.
  - (6) The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Formal Review, and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.
  - (7) Issuance of an accreditation status of Not Accredited-Revoked does not invalidate a diploma awarded, course credit earned, or grade promotion granted by a school district before the effective date of the annexation of the district.
- (e) Legal compliance. In addition to the district's performance as measured by ratings under §97.1001 and §109.1001 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2). Notwithstanding satisfactory or above satisfactory performance on other measures, a district's accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:
- (1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;
  - (2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and
  - (3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2).
- (f) Required notification of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked status.
- (1) A district assigned an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.
  - (2) The district's notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district's notice shall use the format and language determined by the commissioner.
  - (3) Notice under this subsection must:
    - (A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district's website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and
    - (B) appear in a newspaper of general circulation, as defined in §97.1051 of this title (relating to Definitions), in the district for three consecutive days as follows:
      - (i) from Sunday through Tuesday of the second week following assignment of the status; or
      - (ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or
    - (C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district; or

- (D) not later than 30 calendar days after the status is assigned, be presented as a discussion item in a public meeting of the board of trustees conducted at a time and location that allows parents of students enrolled in the district and property owners in the district to attend and provide public comment.
- (4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:
- (A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and
  - (B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or
  - (C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts; or
  - (D) copies of the notice required by paragraph (3)(D) of this subsection and copies of the board of trustees meeting notice and minutes for the board meeting in which the notice was presented and publicly discussed.