Chapter 100. Charters

Subchapter AA. Commissioner's Rules Concerning Open-Enrollment Charter Schools

Statutory Authority: The provisions of this Subchapter AA issued under the Texas Education Code, §§12.101, 12.1012, 12.103, 12.104, 12.1052-12.1055, 12.106, 12.1061, 12.107, 12.108, 12.1101, 12.111, 12.113-12.116, 12.1162, 12.1163, 12.117, 12.1171, 12.120, 12.121, 12.123-12.126, 12.128, 12.129, 12.152, 12.153, 39.051, 39.052, 39.054, 39.074-39.076, 39.082, 39.085, 39.102, 39.104, and 39.131, unless otherwise noted.

Division 1. General Provisions

§100.1011. Definitions.

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Charter holder, governing body of a charter holder, and governing body of a charter school--The definitions of these terms are assigned in Texas Education Code (TEC), §12.1012.

(2) Former charter holder--An entity that is or was a charter holder, but that has ceased to operate a charter school because its open-enrollment charter has been revoked, surrendered, abandoned, or denied renewal, or because all programs have been ordered closed under TEC, Chapter 39.

(A) A charter holder whose authority to operate has been suspended under TEC, §12.1162, is not a former charter holder.

(B) A charter holder with more than one open-enrollment charter is a former charter holder only with respect to the open-enrollment charter that authorizes a charter school that has ceased to operate. The charter holder is not a former charter holder with respect to an open-enrollment charter that authorizes a charter school that continues to operate.

(3) Charter school--A Texas public school operated by a charter holder under an open-enrollment charter granted by the State Board of Education (SBOE) pursuant to TEC, §12.101.

(A) An "employee of a charter school," as used in this subchapter, means a person paid to work at a charter school under the direction and control of an officer of a charter school, regardless of whether the person is on the payroll of the charter holder, a charter school operated by the charter holder, a management company providing management services to the charter holder, or any other person.

(B) An "employee of a charter holder," as used in this subchapter, means a charter holder employee who engages in no charter school activity and is not an officer of any charter school.

(C) A charter school "campus," as used in this subchapter, means an organizational unit of a charter school determined by the Texas Education Agency (TEA) to be an instructional campus for purposes of data collection and reporting.

(D) A charter school "site," as used in this subchapter, means a facility identified by street address and fully described in the open-enrollment charter. A "site" must be approved for instructional use either in the original open-enrollment charter as granted by the SBOE or in an amendment granted under §100.1033(c)(5) of this title (relating to Charter Amendment).

(4) Real estate--An interest, including a lease interest, in real property recognized by Texas law, or in improvements such as buildings, fixtures, utilities, landscaping, construction in progress, or other improvements.

(5) Lease interest--The legal rights obtained under a capital or operating lease. These include the right to occupy, use, and enjoy the real estate given by the property owner in exchange for rental payments or other consideration specified in the lease, together with any associated rights that the lease confers on the tenant under the lease or other law.

(6) Personal property--An interest in personal property recognized by Texas law, including:

(A) furniture, equipment, supplies, and other goods;

(B) computer hardware and software;

(C) contract rights, intellectual property such as patents, and other intangible property;

(D) cash, currency, funds, bank accounts, securities and other investment instruments;

(E) the right to repayment of a loan, advance, or prepayment, or to the payment of other receivables; and

(F) any other form of personal property recognized by Texas law.

(7) Capitalized personal property, fixed assets, ownership interest, cost basis, accumulated depreciation, loan, debt, credit, and fair market valuation--The definitions of these terms are as assigned either by §109.41 of this title (relating to Financial Accountability System Resource Guide) and/or by generally accepted accounting principles.

(8) State funds--Funds received by the charter holder under TEC, §12.106, and any grant or discretionary funds received through or administered by the TEA, including all federal funds. The rules in this division shall apply to property acquired, improved, or maintained with federal funds to the extent that such application is consistent with applicable federal law or regulations.

(9) State funds received on or after September 1, 2001--State funds are received on or after September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds on or after that date, or if an electronic transfer of such funds is made on or after that date.

(10) State funds received before September 1, 2001--State funds are received before September 1, 2001, if the Texas Comptroller of Public Accounts issues a warrant for such funds before that date, or if an electronic transfer of such funds is made before that date.

(11) Property acquired, improved, or maintained using state funds--Property for which the title, control over the property, use of the property, or benefit from the property is obtained directly or indirectly through expenditure of or control over state funds. This includes property acquired, improved, or maintained through a management company under a contract for management services, and includes the proceeds of loans, credit, or other financing that:

(A) is secured with state funds, or with property acquired, improved, or maintained using state funds; or

(B) is extended, in whole or part, based on the charter holder's control over state funds.

(12) Misuse or misapplication of funds or property--A use of state funds or public property that is contrary to:

(A) the open-enrollment charter under which a charter holder holds the funds or property;

(B) an agreement under which an employee or contractor holds the funds or property;

(C) a law, regulation, or rule that prescribes the manner of custody or disposition of the funds or property;

(D) a limited purpose for which the funds or property is delivered or received; or

(E) the use authorized by the governing body of the charter holder.

(13) Management services--Services related to the management or operation of a charter school. Management services include any of the following:

(A) planning, operating, supervising, or evaluating a charter school's educational programs, services, or facilities;

(B) making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;

(C) managing a charter school's day-to-day operations as its administrative manager;

(D) preparing a proposed budget or submitting it to the governing body of a charter holder or charter school;

(E) recommending policies to be adopted by the governing body of a charter holder or charter school, except that legal services provided by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include recommending policies to be adopted by the governing body of a charter holder or charter school;

(F) developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school, except that legal services by an attorney licensed to practice law in this state, and public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state, are not management services, notwithstanding that such services may include developing procedures or practices to implement policies adopted by the governing body of a charter holder or charter school;

(G) overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or

(H) providing leadership for the attainment of student performance at a charter school based on the indicators adopted under TEC, §39.051, or adopted by the governing body of a charter holder or charter school.

(14) Management company--A natural person or a corporation, partnership, sole proprietor, association, agency, or other legal entity that provides any management services to a charter holder or charter school, except that:

(A) a charter holder and its employees may provide management services to a charter school that is under the charter holder's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company;

(B) a non-profit corporation that is exempt from taxation under 28 United States Code §501(c)(3) may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder;

(C) a regional education service center providing services to a charter school under TEC, Chapter 8, is not a management company;

(D) the fiscal agent of a shared services cooperative providing services to a member of the shared services cooperative is not a management company; and

(E) a non-profit corporation that is exempt from taxation under 28 United States Code §115 is not a management company if it performs management services exclusively for a charter holder that is an eligible entity under TEC, §12.101(a)(1) or (4) or TEC, §12.152, and if:

(i) its articles of incorporation and bylaws, and any changes thereto, must be approved by such charter holder;

(ii) its board of directors must be appointed by such charter holder; and

(iii) its assets become the property of such charter holder upon dissolution.

(15) Open-enrollment charter--A charter holder's authorization to operate a publicly funded charter school consistent with TEC, §12.102 (Authority Under Charter). The terms of an open-enrollment charter include:

(A) the applicable contract for charter between the charter holder and the SBOE;

(B) all applicable state and federal laws, rules, and regulations;

(C) the request for application issued by the TEA to which the charter holder's application for open-enrollment charter responds;

(D) any condition, amendment, modification, revision, or other change to the open-enrollment charter adopted or ratified by the SBOE or the commissioner of education; and

(E) to the extent they are consistent with subparagraphs (A)-(D) of this paragraph, all statements, assurances, commitments, and/or representations made by the charter holder in writing in its application for charter, attachments, or related documents, or orally during a public meeting of the SBOE or any of its committees.

(16) Officer of a charter school--A person charged with the duties of, or acting as, a chief executive officer, a central administration officer, a campus administration officer, or a business manager, regardless whether the person is an employee or contractor of a charter holder, charter school, management company, or any other person; or a volunteer working under the direction of a charter holder, charter school, or management company. A charter holder employee or independent contractor engaged solely in non-charter activities for the charter holder is not an "officer of a charter school."

(17) Chief executive officer--A person (or persons) directly responsible to the governing body of the charter holder for supervising one or more central administration officers, campus administration officers, and/or business managers.

(18) Central administration officer--A person charged with the duties of, or acting as, a chief operating officer, director, or assistant director of a charter holder or charter school, including one or more of the following functions:

(A) assuming administrative responsibility and leadership for the planning, operation, supervision, or evaluation of the education programs, services, or facilities of a charter holder or charter school, or for appraising the performance of the charter holder's or charter school's staff;

(B) assuming administrative authority or responsibility for the assignment or evaluation of any of the personnel of the charter holder or charter school, including those employed by a management company;

(C) making recommendations to the governing body of the charter holder or the charter school regarding the selection of personnel of the charter holder or charter school, including those employed by a management company;

(D) recommending the termination, non-renewal, or suspension of an employee or officer of the charter holder or charter school, including those employed by a management company; or recommending the termination, non-renewal, suspension, or other action affecting a management contract;

(E) managing the day-to-day operations of the charter holder or charter school as its administrative manager;

(F) preparing or submitting a proposed budget to the governing body of the charter holder or charter school (except for developing budgets for a charter school campus, if this is a function performed by a campus administration officer under the terms of the open-enrollment charter);

(G) preparing recommendations for policies to be adopted by the governing body of the charter holder or charter school, or overseeing the implementation of adopted policies, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(H) developing or causing to be developed appropriate administrative regulations to implement policies established by the governing body of the charter holder or charter school, except for legal services provided by an attorney licensed to practice law in this state or public accountancy services provided by a certified public accountant licensed to practice public accountancy services in this state;

(I) providing leadership for the attainment of student performance in a charter school operated by the charter holder, based on the indicators adopted under TEC, §39.051, or other indicators adopted by the charter holder in its open-enrollment charter; or

(J) organizing the central administration of the charter holder or charter school.

(19) Campus administration officer--A person charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:

(A) approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(B) setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(C) developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;

(D) assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;

(E) assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or

(F) recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

(20) Business manager--A person charged with managing the finances of a charter holder or charter school.

(21) Donate--Services are donated if:

(A) given free of any charge, cost, fee, compensation, reimbursement, remuneration, or any other thing of value or consideration, whether direct or indirect, from the donee to the donor, or from any other person or entity to the donor on behalf of the donee;

(B) given free of any condition, stipulation, promise, requirement, or any other obligation, whether direct or indirect, enforceable by the donor or by any other person or entity; and

(C) separately and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(22) Material charter violation--An action or failure to act by a charter holder that is contrary to the terms of its open-enrollment charter, and constitutes sufficient grounds for action against the charter holder under §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter) and/or §100.1023 of this title (relating to Intervention Based on Charter Violations).

Where a provision in this subchapter uses this term, such use is for clarity and emphasis only, and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the charter holder.

(23) Management company breach--An action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under TEC, Chapter 12, Subchapter D, or any other legal obligation, and constitutes sufficient grounds for action against the management company under TEC, §12.127 (Liability of Management Company), and/or §100.1155 of this title (relating to Procedures for Prohibiting a Management Contract). Where a provision in this subchapter uses this term, such use is for clarity and emphasis only, and does not:

(A) establish that any breach of a duty occurred in a given case or what sanction is appropriate under the facts of that case; or

(B) imply that any other provision where the term is not used is not material or less important, or that the breach of a duty imposed by the provision is not grounds for action against the management company.

(24) Shared services cooperative--A contractual arrangement among charter holders through which one member of the cooperative, acting as the fiscal and administrative agent for the other members, provides educational services and/or management services to member charter holders under a written contract executed by each member. A contract establishing a shared services cooperative must at a minimum:

(A) establish clear procedures for administering services under the direction and control of the cooperative, and for assigning responsibility for all costs and liabilities associated with services provided under the contract;

(B) establish the duties, responsibilities, and accountability of the fiscal agent and of each member for services provided under the contract;

(C) establish clear procedures for withdrawal of a member from the agreement, and for the dissolution and winding up of the affairs of the cooperative;

(D) if the cooperative may provide special education services, comply with TEC, §29.007; and

(E) be approved in writing by the commissioner before any services are provided.

Source: The provisions of this §100.1011 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective June 22, 2009, 34 TexReg 4119.

§100.1013. Filing of Documents.

The following provisions apply to a document filed with the Texas Education Agency (TEA) under a provision of this subchapter. Grant applications and other documents filed with the TEA under provisions other than this subchapter are governed by the filing rules specific to those documents.

(1) Hand delivery. A document shall be deemed filed only when stamped received by the receiving division of the TEA. A document stamped received after 5:00 p.m. Central Standard Time (CST) shall be deemed filed on the following business day.

(2) Mail or courier. A document may be filed by mail if sent by certified United States mail, return receipt requested, or by an overnight courier service. A document shall be deemed timely filed if it is mailed on the filing deadline, as evidenced by a legible postmark placed on the envelope by the

United States Postal Service, and the document is stamped received by the receiving division by 5:00 p.m. CST on the fifth business day following the filing deadline.

(3) Facsimile transmission. Where facsimile transmission is permitted by the receiving division, the following provisions apply:

(A) Facsimile transmission of a document via telecopier to the receiving division constitutes filing if received in legible form. Filing by facsimile completed after 5:00 p.m. CST shall be deemed filed on the following business day.

(B) If the document requires an original signature or must be an original under applicable rules, then facsimile transmission constitutes filing only if, by 5:00 p.m. on the tenth calendar day following the filing deadline, the original is stamped received by the receiving division.

(4) Receiving division. The receiving division is the division of the TEA specified by any rule in 19 TAC, Part II, requiring that a document be filed with the TEA. If a rule does not specify a division, the receiving division is the TEA division responsible for charter schools.

(5) Misdirected filing. A document sent to a division other than the receiving division shall not be deemed filed unless and until received by the receiving division. It shall not be the responsibility of any division to timely redirect a document sent to a division other than the receiving division.

Source: The provisions of this §100.1013 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1015. Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter.

Applicants for an open-enrollment charter, a public senior college or university charter, or a public junior college charter shall demonstrate compliance, or the capacity to operate in compliance, with the provisions of this subchapter.

Source: The provisions of this §100.1015 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 1, 2003, 28 TexReg 2743; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1017. Application to Public Senior College or University Charters and Public Junior College Charters.

(a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(b) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:

(1) §100.1033(c)(6) and §100.1101, relating to delegation of powers and duties;

(2) §100.1035, relating to compliance records;

(3) §100.1073, relating to improvements to real property;

(4) §§100.1111-100.1116, relating to nepotism;

(5) §§100.1131-100.1135, relating to conflicts of interest;

(6) §100.1203(a), relating to retention of government records; and

(7) §100.1205, relating to procurement of professional services.

Source: The provisions of this §100.1017 adopted to be effective April 1, 2003, 28 TexReg 2743; amended to be effective August 26, 2010, 35 TexReg 7213.

Division 2. Commissioner Action and Intervention

§100.1021. Adverse Action on an Open-Enrollment Charter.

(a) Adverse action. The commissioner of education may modify, place on probation, revoke, or deny renewal of an open-enrollment charter if the commissioner determines the charter holder:

(1) failed to satisfy accountability rating requirements and other student performance requirements, as determined by the commissioner under §100.1022 of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter) and this section;

(2) failed to satisfy generally accepted accounting standards of fiscal management, as determined by the commissioner under §100.1022 of this title and this section;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), §100.1022 of this title, and this section;

(4) committed a material violation of the open-enrollment charter, as determined by the commissioner under §100.1022 of this title and this section; or

(5) failed to comply with the requirements of the Texas Education Code (TEC), Chapter 12, Subchapter D, or other applicable state and/or federal law or rule, as determined by the commissioner under §100.1022 of this title and this section.

(b) Notice to charter holder. The commissioner shall notify the charter holder before modifying, placing on probation, revoking, or denying renewal of the school's charter. The notice shall clearly specify the following, either in the notice or by reference to other documents included with the notice:

(1) the action sought and the grounds for taking such action;

(2) the date, time, and place for a hearing on the action sought, which shall be provided to the charter holder and to parents and guardians of students in the school, if requested in accordance with subsection (e) of this section;

(3) a statement of the legal authority and jurisdiction under which the hearing will be held; and

(4) a reference to the particular sections of the statutes and rules involved.

(c) Notice to parents and guardians. The charter holder shall notify the parents and guardians of students in the school by posting the notice described in subsection (b) of this section, and any amendment to such notice, in the manner required by Texas Government Code, §§551.043, 551.051, and 551.052. Notwithstanding any failure by the charter holder to comply with this subsection, notice to the charter holder shall be notice to parents and guardians of students in the school, and the commissioner may conduct the hearing.

(d) Request for hearing and answer. Within ten business days after receiving the notice, the charter holder may request a hearing and submit a written response to the commissioner containing specific answers to each of the findings included in the notice. If a request for hearing and a written response are not submitted within ten business days, the recommendations of the Texas Education Agency (TEA) on the proposed action shall be submitted to the commissioner for consideration and action without a hearing. If a request for a hearing and a written response are timely submitted, the commissioner shall review the response. After reviewing the response, the commissioner may withdraw the original notice, modify the notice, permit corrective actions, or recommend a statutorily permitted sanction. Within 15 business days after receiving the charter holder's response, the commissioner shall notify the charter holder of the action to be taken.

(e) State Office of Administrative Hearings. A hearing held under this section shall be conducted by the State Office of Administrative Hearings and governed by Chapter 155 of Title 1 (relating to Rules of Procedure), except as modified herein. Texas Government Code, Chapter 2001, does not apply. The hearing shall be open to the public and must be held at the facility at which the program is operated unless the program is not currently in operation or a different location is agreed to by the charter holder and TEA. The hearing shall be held not fewer than ten business days from the date the school receives notice.

(f) Exceptions and replies. Exceptions to a proposal for decision under this section shall be filed on or before the expiration of 30 calendar days from the date of the proposal for decision. Replies to the exceptions shall be filed on or before the expiration of 50 calendar days from the date of the proposal for decision.

(g) No motion for rehearing. A motion for rehearing is not a prerequisite to any judicial appeal authorized by law. No finding of imminent peril is required. No motion for rehearing shall toll or delay any applicable time period or deadline.

(h) Prefiled testimony. The administrative law judge may order that testimony and evidence from parents and guardians of students at the school be taken via prefiled written testimony.

Source: The provisions of this §100.1021 adopted to be effective November 6, 2001, 26 TexReg 8823; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1022. Standards for Adverse Action on an Open-Enrollment Charter.

(a) Adverse action criteria. In accordance with this section, the action the commissioner of education takes under §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter) shall be based on the best interest of the charter school's students as it relates to the violation charged in the notice, the severity of the violation, and any previous violation the school has committed.

(1) These adverse action criteria are not listed in order of importance. Rather, the commissioner shall assign weight to each criterion as indicated by the facts of the case presented. For example, serious or persistent charter violations may warrant revocation or non-renewal even if the violations benefited or had neutral effect on the students enrolled in the charter school. The state's interest in legal compliance is sufficient basis for adverse action without regard to evidence of harm to individual students.

(2) The "best interest of the charter school's students" is not a decisional criterion independent of the violation charged in the notice. Rather, the commissioner shall consider the best interests of students only as this criterion relates to the violation charged in the notice. For example, evidence of serious and persistent violations in one area of performance may not be offset or excused by evidence of benefit to students in an area of performance that is unrelated to the violation charged in the notice.

(b) Minimum student performance required. Continuation of an open-enrollment charter is contingent on satisfactory student performance as measured by the ratings and accreditation statuses assigned under the Texas Education Code (TEC), Chapter 39, as well as any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory student performance as measured by the ratings assigned under TEC, Chapter 39.

(1) Standard of required performance. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder if all of the campuses operated under that charter have been closed under TEC, Chapter 39. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder if at least half of the campuses operated under that charter have received unsatisfactory ratings for a period of two consecutive years unless the charter holder has received a district level rating of acceptable or higher for either of the two years. The commissioner shall not renew the open-enrollment charter of any otherwise-qualified charter holder unless the charter holder's renewal application removes all the charter holder's campuses that have been closed under TEC, Chapter 39.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that receives unsatisfactory ratings. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question of whether the charter school did in fact receive unsatisfactory ratings. Where relevant factors mitigate or aggravate the charter holder's unsatisfactory ratings, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (c), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory ratings under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum student performance shall be determined as follows.

(A) An "unsatisfactory rating" shall mean a substantive rating that is not satisfactory as defined in this section. For any school year, if the Texas Education Agency (TEA) assigns no district-level ratings to open-enrollment charter schools generally, but does assign campus-level ratings in that year, then unsatisfactory ratings for a majority of the campuses operated by the charter holder in such year shall constitute an unsatisfactory rating for the charter holder at the "district" level.

(B) For school years prior to 2004-2005, a "satisfactory rating" shall mean a substantive rating of Acceptable, Recognized, or Exemplary under the relevant accountability manual, or a rating of Acceptable or Commended under the relevant alternative education accountability manual. For the 2004-2005 and subsequent school years, a satisfactory rating will be indicated in the relevant accountability manual.

(C) For school years prior to 2004-2005, a "substantive rating" shall mean any rating under the alternative education accountability manual other than Not Rated, or any rating under the accountability manual other than Not Rated: Charter, Not Rated: PK-K, Not Rated: Alternative Education, or Not Rated: Other. A rating of Needs Peer Review that is assigned due to the failure of the charter holder to comply with the requirements of the alternative education accountability manual (or any other reason) is a substantive rating. A rating assigned due to unsatisfactory compliance performance, as described in subsection (d) of this section, is a substantive rating.

(D) Ratings are "consecutive" if they are not separated by a rating period in which the TEA assigned accountability ratings to charter schools generally. For example, the TEA did not assign accountability ratings to charter schools for the 2002-2003 school year. Thus, the ratings for the 2001-2002 and 2003-2004 school years are consecutive. Similarly, if TEA does not assign accountability ratings to registered alternative education campuses for the 2004-2005 school year, then the ratings for the 2001-2002 and 2004-2005 school years may be consecutive within the meaning of this rule. However, student performance for a year in which ratings were not issued may be considered as a mitigating or aggravating factor.

(E) If the performance of an applicant for renewal under §100.1031 of this title (relating to Charter Renewal) cannot be determined because the applicant's charter school has not received accountability ratings and/or accreditation statuses for a sufficient number of years to support a judgment on its student performance:

(i) the commissioner may decline to finally grant or deny the application until the applicant has received a sufficient number of ratings or statuses, in which case the charter shall continue in effect under §100.1031(a) of this title;

(ii) the commissioner may grant the renewal on condition that one or more future substantive ratings or statuses be at the level or levels required by the commissioner; or

(iii) the commissioner may grant the renewal unconditionally if the commissioner determines this is reasonable under all circumstances presented.

(F) If the performance of a charter holder or an applicant for renewal under §100.1031 of this title cannot be determined because the small numbers of students or the grade levels served by the program prevented, limited, or significantly impacted the application of TEA's standard ratings and/or accreditation criteria, then the commissioner may evaluate substitute data chosen by the commissioner in taking action under this section.

(i) Based on this evaluation, the commissioner shall determine whether the applicant has demonstrated a history of unsatisfactory student performance. Any appeal under §100.1021 of this title of a determination under this clause may include the question whether the campus has had unsatisfactory student performance.

(ii) Regardless of whether the campus has satisfactory student performance, the commissioner may modify the open-enrollment charter to require the charter holder to serve additional students or grade levels that will cause the campus to receive substantive ratings and/or statuses in the future.

(G) If the performance of a charter holder or an applicant for renewal under §100.1031 of this title cannot be determined because a high proportion of students served are in prekindergarten through Grade 2 or another grade for which an assessment instrument is not administered under TEC, §39.023(a), then the commissioner may evaluate the performance of the charter holder under subparagraph (F) of this paragraph.

(H) Evidence of relevant factors in mitigation or aggravation of the charter holder's failure to meet the minimum student performance requirements of this subsection shall be considered under subsection (g) of this section.

(3) Finality of ratings.

(A) Any appeal to a specific rating must be brought using the appeals procedures in the relevant accountability manual or alternative education accountability manual adopted as rules in Chapter 97, Subchapter AA, of this title (relating to Accountability and Performance Monitoring).

(B) Any challenge to an agency rule, ratings standard, or process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(c) Minimum financial performance required. Continuation of an open-enrollment charter is contingent on the charter holder satisfying generally accepted accounting standards of fiscal management as demonstrated by annual audit reports under §100.1047(c) of this title (relating to Accounting for State and Federal Funds) and final investigative audit reports under Chapter 97, Subchapter DD, of this title (relating to Investigative Reports, Sanctions, and Record Reviews).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that, for three consecutive fiscal years, has unsatisfactory financial performance shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory financial performance for three consecutive fiscal years. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question whether the charter school did in fact fail to satisfy generally accepted accounting standards of fiscal management for three consecutive fiscal years. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(C) Notwithstanding the previous provisions, if the commissioner determines that any unsatisfactory financial performance is both serious and has not been corrected, then that open-enrollment charter school shall be revoked or non-renewed.

(2) Determination of performance. For purposes of this subsection, required minimum financial performance shall be determined as follows.

(A) A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given year where its annual audit report under §100.1047(c) of this title for that year fails to express the unqualified opinion of the certified public accountant preparing the report, reports a material weakness in internal controls, or is filed with the TEA more than 60 days after the deadline specified by TEC, §44.008.

(B) An unsatisfactory financial performance is serious if the unsatisfactory financial performance includes any of the following.

(i) Payment is made in excess of bonafide compensation agreements. The payment of compensation to an individual in excess of the fair market value of the services provided is a serious unsatisfactory financial performance. For purposes of this section, the fair market value of the services rendered shall be based on the individual's education, experience, prior salary history, the job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn.

(ii) Rental or purchase of property is in excess of its fair market value.

(iii) The Annual Audit Report required by TEC, §44.008, is more than 180 days delinquent.

(iv) The charter school received a significant overallocation from the Foundation School Program based on data reported by the charter holder.

(v) The charter school becomes financially insolvent. For purposes of this section "financially insolvent" means that the charter holder has a deficit of net assets.

(vi) The bank account where the foundation school allotments are deposited is subject to a lien, levy, or other garnishment, and that lien, levy, or other garnishment is not removed within 30 days.

(vii) The charter holder's Foundation School Program allotment is subject to a warrant hold and that warrant hold is not removed within 30 days.

(viii) The charter holder loses its eligibility to participate in child nutrition programs for a period of more than 30 days.

(ix) The school's financial auditor issues an adverse opinion regarding the school financial statements or the school's financial auditor disclaims an opinion on the financial statements, and the issue resulting in the adverse or disclaimed opinion involves a significant amount of financial resources that were not properly documented or a material weakness that led to the misallocation of financial resources.

(x) The charter holder exhibits other instances of fiscal mismanagement including, but not limited to, the loss of financial records or a material non-compliance with §109.41 of this title (relating to Financial Accountability System Resource Guide) or related supplement resulting in a significant wasting of financial resources.

(C) Charter holder financial performance will be evaluated in accordance with the following standards.

(i) Step transactions. The commissioner may view the transaction as a whole and may disregard any nonsubstantive intervening transaction taken to achieve the final results.

(ii) Arm's length transaction. A transaction that is described in subparagraph (B) of this paragraph that is the result of an arm's length transaction between completely unrelated parties is only a serious unsatisfactory financial performance if the transaction resulted in a significant wasting of financial resources.

(D) A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given fiscal year when a final investigative audit report on that year under Chapter 97, Subchapter DD, of this title finds material noncompliance with these standards.

(E) Evidence of relevant factors in mitigation or aggravation of the charter holder's failure to satisfy generally accepted accounting standards of fiscal management shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of audits and reports.

(A) Any appeal to a specific audited financial statement or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, financial standard, audit procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(d) Minimum compliance performance required. Continuation of an open-enrollment charter is contingent on the charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules, financial accountability standards (including student attendance accounting and grant requirements), and data integrity as demonstrated by monitoring reports under TEC, §7.028; final investigative reports under Chapter 97, Subchapter DD, of this title; and other evidence.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that has unsatisfactory compliance performance for three consecutive school years shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory compliance performance for three consecutive school years. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question whether the charter school did in fact fail to demonstrate compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability (including student attendance accounting and grant requirements); or data integrity for three consecutive years. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum compliance performance shall be determined as follows.

(A) A charter holder's compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards (including student attendance accounting and grant requirements); or data integrity standards may be determined by applying the applicable standards to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports under Chapter 97, Subchapter DD, of this title. Such reports establish non-compliance if the facts found therein are not in compliance with these standards. Other evidence may be considered.

(B) Evidence of relevant factors in mitigation or aggravation of the charter holder's non-compliance shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of compliance reports.

(A) Any appeal to a specific monitoring report or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(e) Minimum health and safety performance required. Continuation of an open-enrollment charter is contingent on the charter holder protecting the health, safety, and welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students) and this subsection or by an official report issued by a federal, state, or local authority with jurisdiction to issue the report.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that fails to protect the health, safety, or welfare of the students enrolled at its school shall be revoked effective immediately.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that fails to protect the health, safety, and welfare of the students enrolled at the school. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question of whether the charter school did in fact fail to protect the health, safety, or welfare of the students enrolled at its school. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum health and safety performance shall be determined as follows.

(A) A final investigative report under Chapter 97, Subchapter DD, of this title is admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(B) An official report issued by a federal, state, or local authority acting within its jurisdiction, as well as hearsay evidence and telephone testimony offered by officials from such authority, are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(C) Documents and testimony considered by the commissioner in making a determination under §100.1025 of this title are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder's non-compliance shall be considered under subsection (g) of this section.

(3) Finality of health and safety reports.

(A) Any appeal to a specific official report issued by a federal, state, or local authority acting within its jurisdiction must be brought using the procedures provided in law for the review of such findings.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(f) Minimum charter performance required. Continuation of an open-enrollment charter is contingent on the charter holder's implementation of and compliance with the terms of its open-enrollment charter as defined by §100.1011(15) of this title (relating to Definitions).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that commits a material violation of its open-enrollment charter shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that commits a material violation of its open-enrollment charter. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the questions of whether the charter school did in fact fail to implement or comply with the terms of its open-enrollment charter as defined by §100.1011(15) of this title and whether such charter violation was material. Where relevant factors mitigate or aggravate the charter holder's failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (e) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum charter performance shall be determined as follows.

(A) A charter holder's compliance with its open-enrollment charter may be determined by applying the charter terms to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports under Chapter 97, Subchapter DD, of this title. Such reports establish non-compliance if the facts found therein are not in compliance with these terms. Other evidence may be considered.

(B) A violation of the contract for charter, request for applications (RFA), or other document approved by the State Board of Education (SBOE), or of a condition, amendment, modification, or revision of a charter approved by the commissioner is material if it directly violates the purpose of the contract, the RFA, or other documents approved by the SBOE, or a condition, amendment, modification, or revision of the contract.

(C) An open-enrollment charter as defined by §100.1011(15) of this title includes all applicable state and federal laws, rules, and regulations. A violation of such laws, rules, or regulations may be considered both under this subsection and under subsection (b), (c), (d), or (e) of this section, as appropriate.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder's material charter violation shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of charter violation reports.

(A) Any appeal to a specific final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(g) Probation and modification; mitigating and aggravating factors.

(1) Revocation or non-renewal normally required. Subsections (b)-(f) of this section apply the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter holder with unsatisfactory performance under these subsections.

(A) The appeal under §100.1021 of this title shall normally be limited to the question of whether the charter holder did in fact fail to achieve a required minimum performance standard as charged in the TEA notice under §100.1021(b) of this title.

(B) If a preponderance of the evidence admitted at the hearing establishes that the charter holder failed to achieve the minimum performance standard required by one or more of subsections (b)-(f) of this section, then the open-enrollment charter must be revoked or non-renewed unless the commissioner makes each of the findings required by paragraph (2) of this subsection.

(2) Mitigating factors warranting probation or modification. A mitigating factor is a fact or circumstance that does not justify or excuse a failure to achieve the required minimum charter performance, but reduces the degree of culpability for, or harm to the public interest caused by, that failure. The existence of a mitigating factor is an affirmative defense that must be plead by the charter holder under §100.1021 of this title and proven by a preponderance of the evidence.

(A) In a hearing under §100.1021 of this title, the charter holder may plead and prove only relevant factors mitigating its failure to attain the required performance standard charged in the TEA notice under §100.1021(b) of this title. A "relevant" mitigating factor is one that tends to reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(b) of this title. Evidence that the charter holder achieved acceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to mitigate the unacceptable performance charged by the TEA in its notice.

(B) Each of the following findings of fact and conclusions of law must be made for evidence of a mitigating factor to be considered for purposes of reducing the sanction otherwise required by paragraph (1) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the minimum performance standard required by a specific subsection of this section, as charged by the TEA notice under §100.1021(b) of this title.

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more mitigating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the mitigating factors found in clause (ii) of this subparagraph reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they warrant consideration of a lesser sanction.

(iv) The commissioner must find that the public policy interest in deterring similar conduct by the charter holder, and similar conduct by other charter holders, in the future is clearly outweighed by the mitigating factors found in clause (ii) of this subparagraph.

(v) The commissioner must find that no aggravating factors under paragraph (4) of this subsection increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they preclude consideration of a lesser sanction.

(vi) The commissioner must find that the root causes of the conduct found in clause (i) of this subparagraph have been fully disclosed by the evidence at trial, and can successfully be remedied through either specific modifications to the open-enrollment charter or specific probationary terms.

(vii) The commissioner must enter findings explaining how the probationary terms and/or charter modifications will remedy each of the root causes of the conduct found in clause (i) of this subparagraph and provide sufficient deterrence to prevent similar conduct by the charter holder and by other charter holders in the future.

(C) Mitigating factors include, but are not limited to the following.

(i) The charter holder complied successfully with all TEA-imposed corrective actions relating to the problem in a timely manner.

(ii) The charter holder has no prior history of similar problems.

(iii) The charter holder has no subsequent history of similar problems and a substantial amount of time has passed since the problem occurred.

(iv) The charter holder has successfully remedied the problem without TEA intervention and taken effective measures to prevent its recurrence.

(3) Mitigating factors plead by the TEA. Notwithstanding paragraph (1) of this subsection, the TEA may, in its notice of intent or other instrument, specifically request probation or modification in lieu of revocation or non-renewal of the open-enrollment charter held by a charter holder. In such a case, the TEA shall state the specific probationary terms and/or modifications it requests, and the charter holder shall state the specific probationary terms and/or modifications to which it objects and the basis for its objections. Paragraph (2) of this subsection shall apply to the disputed probationary terms and/or modifications, but the undisputed terms and modifications may be made without the specific findings required by that paragraph.

(4) Aggravating factors precluding probation or modification. An aggravating factor is a fact or circumstance that increases the degree of culpability for, or harm to the public interest caused by, a failure to achieve the required minimum charter performance. The existence of an aggravating factor must be plead by the TEA under §100.1021 of this title and proven by a preponderance of the evidence. An aggravating factor found under subparagraph (B) of this paragraph shall preclude a lesser sanction that would otherwise be available under paragraph (2) of this subsection.

(A) In a hearing under §100.1021 of this title, the TEA may plead and prove only relevant factors aggravating the charter holder's failure to attain the required performance standard charged in the TEA notice under §100.1021(b) of this title. A "relevant" aggravating factor is one that tends to increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(b) of this title. Evidence that the charter holder achieved unacceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to aggravate the unacceptable performance charged by the TEA in its notice.

(B) Each of the following findings of fact and conclusions of law must be made for evidence of an aggravating factor to be considered for purposes of precluding a sanction otherwise available under paragraph (2) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the minimum performance standard required by a specific subsection of this section, as charged by the TEA notice under §100.1021(b) of this title.

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more aggravating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the aggravating factors found in clause (ii) of this subparagraph increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they preclude a lesser sanction otherwise available under paragraph (2) of this subsection.

(C) Aggravating factors include the following.

(i) The charter holder failed to timely comply with TEA-imposed corrective actions relating to the problem.

(ii) The charter holder has a prior history of similar problems.

(iii) The charter holder has a subsequent history of similar problems.

(iv) The charter holder failed to take effective measures to correct the problem, and a significant time has passed since it occurred.

(v) The charter holder or its management company failed to cooperate with TEA audits, monitoring, or investigations relating to the problem, as required by §100.1029 of this title (relating to Agency Audits, Monitoring, and Investigations).

(vi) The charter holder or its management company failed to cooperate with TEA interventions and sanctions relating to the problem, as required by §100.1027 of this title (relating to Accountability Ratings and Sanctions).

(vii) The charter holder or its management company falsified public records, destroyed public records, or failed to maintain public records as required by §100.1203 of this title (relating to Records Management).

Source: The provisions of this §100.1022 adopted to be effective April 6, 2005, 30 TexReg 1911; amended to be effective June 22, 2009, 34 TexReg 4119; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1023. Intervention Based on Charter Violations.

(a) The commissioner of education shall temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate, impose a sanction under Texas Education Code, §39.131(a), and/or take any other reasonable action the commissioner determines necessary, if the commissioner determines that a charter holder:

(1) committed a material violation of the school's charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management; or

(3) failed to comply with this subchapter or another applicable rule or law.

(b) A determination under this section shall be made under Chapter 97, Subchapter DD, of this title (relating to Investigative Reports, Sanctions, and Record Reviews).

Source: The provisions of this §100.1023 adopted to be effective November 6, 2001, 26 TexReg 8823; amended to be effective June 22, 2009, 34 TexReg 4119.

§100.1025. Intervention Based on Health, Safety, or Welfare of Students.

(a) The commissioner of education may temporarily withhold state funds, suspend the authority of an open-enrollment charter school to operate, and/or take any other reasonable action the commissioner determines necessary to protect the health, safety, or welfare of students enrolled at the school based on evidence that conditions at the school present a danger to the health, safety, or welfare of the students.

(b) The commissioner must notify the charter holder in writing of the action taken in subsection (a) of this section. After the commissioner acts under subsection (a), the open-enrollment charter school may not receive state funds and may not resume operating until a determination is made that:

(1) despite initial evidence, the conditions at the school do not present a danger of material harm to the health, safety, or welfare of students; or

(2) the conditions at the school that presented a danger of material harm to the health, safety, or welfare of students have been corrected.

(c) Not later than the third business day after the date the commissioner acts under subsection (a) of this section, the commissioner shall provide the charter holder an opportunity for a hearing.

(d) The hearing under this section shall be conducted under the procedures governing informal review of a preliminary investigative report specified in §97.1033 of this title (relating to Informal Review of Preliminary Investigative Report; Final Investigative Report).

(e) An action under subsection (a) of this section remains in effect until a determination under subsection (b) of this section becomes final.

(1) If the determination is in favor of the charter holder, the commissioner must cease the action under subsection (a) of this section immediately and restore all funds to which the charter holder would be entitled but for such action.

(2) If the determination is against the charter holder, the commissioner must initiate adverse action against the charter under §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter). The action under subsection (a) of this section then remains in effect until the final decision under §100.1021.

Source: The provisions of this §100.1025 adopted to be effective November 6, 2001, 26 TexReg 8823; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1027. Accountability Ratings and Sanctions.

(a) Commissioner authority. The commissioner of education may take any action relating to the charter holder or any of its charter campuses authorized by Texas Education Code (TEC), Chapter 39, Subchapters B, C, D, E, and J, and the rules adopted under those subchapters. Except as expressly provided by statute, the commissioner may take any accountability action against a charter holder or charter campus that the commissioner is authorized to take against a school district or campus under those subchapters.

(b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an action under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a material charter violation.

(c) Management company cooperation. A management company and its employees and agents shall fully cooperate with an action under subsection (a) of this section. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a management company breach.

Source: The provisions of this §100.1027 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1029. Agency Audits, Monitoring, and Investigations.

(a) Agency authority. The Texas Education Agency (TEA) may conduct routine audits, monitoring, and other investigations of the charter school or charter holder to determine compliance with the terms of the open-enrollment charter, with the terms of federal or state grants, or as authorized in the Texas Education Code (TEC) or other law.

(b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) constitutes a material charter violation.

(c) Management company cooperation. A management company and its employees and agents shall fully cooperate with audits, monitoring, and investigations under subsection (a) of this section. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) constitutes a management company breach.

Source: The provisions of this §100.1029 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1031. Charter Renewal.

(a) If a charter holder makes timely and sufficient application for renewal of an open-enrollment charter, the existing open-enrollment charter does not expire until the commissioner of education has finally granted or denied the application.

(b) Except as provided by subsection (c), a contract term that conflicts with any rule in 19 TAC, Part II, is superseded by the rule to the extent that the rule conflicts with the contract term. Upon renewal of an open-enrollment charter, the charter holder may not execute an amendment to or renewal of a contract under Texas Education Code (TEC), §12.112.

(c) Notwithstanding subsection (b) of this section, the commissioner may require, as a condition of renewal, that the charter holder amend a contract under TEC, §12.114(a), to correct any ambiguities, defects, or other infirmities.

(d) A decision of the commissioner granting an application for renewal shall be communicated to the charter holder in writing, together with any conditions, amendments made with the consent of the charter holder, modifications, or other requirements. An adverse decision on an application for renewal shall be communicated to the charter holder as provided by §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter). The decision of the commissioner shall be governed by §100.1022 of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter).

Source: The provisions of this §100.1031 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective June 22, 2009, 34 TexReg 4119.

§100.1033. Charter Amendment.

(a) Amendments in writing. Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by the commissioner of education in writing.

(b) Non-substantive amendment. A non-substantive amendment is any change to the terms of an open-enrollment charter that is not a substantive amendment under subsection (c) of this section.

(1) Before implementing a non-substantive amendment, the charter holder shall file with the Texas Education Agency (TEA) division responsible for charter schools a notice, clearly labeled "notice of non-substantive amendment," setting forth the text and page reference, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. A notice of non-substantive amendment must be filed separately from any other type of amendment request.

(2) Within 15 business days of receiving the notice of non-substantive amendment, the commissioner may in the commissioner's sole discretion determine that the amendment will be processed under subsection (c) of this section (governing substantive amendments), and, in such event, subsection (c) of this section shall govern the amendment.

(3) Absent action by the commissioner under paragraph (2) of this subsection, the notice of non-substantive amendment shall be effective after the expiration of 15 business days following receipt of the notice by the TEA division responsible for charter schools.

(c) Substantive amendment. A substantive amendment is any change to the terms of an open-enrollment charter that relates to the following subjects: grade levels, maximum enrollment, geographic boundaries, approved sites, school name, charter holder name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. For purposes of this section, educational program means the educational philosophy or mission of the school or curriculum models or whole-school designs that are inconsistent with those specified in the school's charter. A substantive amendment must be approved by the commissioner under this subsection.

(1) Charter amendment request. Before implementing a substantive amendment, the charter holder shall file with the TEA division responsible for charter schools a request, clearly labeled "charter amendment request," setting forth the text and page reference, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. The request must be made in or attached to a written resolution adopted by the governing body of the charter holder and signed by the members voting in favor of it.

(2) Relevant information considered. As directed by the commissioner, a charter holder requesting a substantive amendment shall submit current information required by relevant portions of the last application form approved by the State Board of Education, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its student and other performance; compliance, staff, financial, and organizational data; and other information.

(3) Best interest of students. The commissioner may approve a substantive amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny a substantive amendment.

(4) Conditional approval. The commissioner may grant the amendment without condition, or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school. An amendment receiving conditional approval shall not be effective until a written resolution accepting all conditions and/or requirements, adopted by the governing body of the charter holder and signed by the members voting in favor, is filed with the TEA division responsible for charter schools.

(5) Expansion amendment. An expansion amendment is a substantive amendment that permits a charter school to extend the grade levels it serves, add the site of an instructional facility, change its geographic boundaries, or increase its maximum allowable enrollment.

(A) The commissioner may approve an expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has as its most recent rating Acceptable or higher and is operated by a charter holder that operates other charter campuses and all of that charter holder's most recent campus ratings are Acceptable or higher under the relevant accountability manual;

(ii) the amendment request under paragraph (1) of this subsection is received no later than the first day of February preceding the school year in which the expansion will be effective;

(iii) the most recent rating for each campus operated under the charter is Acceptable or higher under the relevant accountability manual;

(iv) the charter holder has provided evidence that each school district affected by the expansion was sent a notice of the expansion amendment and was given an opportunity to submit a statement regarding the impact of the amendment on the district;

(v) the commissioner determines that the amendment is in the best interest of the students of Texas; and

(vi) the charter holder meets all other requirements applicable to expansion amendment requests and substantive amendments.

(B) The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements as may be in the best interest of the students of Texas.

(C) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment only if:

(i) within the calendar year preceding the request, the charter holder has not requested another expansion amendment seeking to increase maximum allowable enrollment;

(ii) before voting to request the enrollment increase, the charter holder governing body has considered a business plan comprised of the following components:

(I) a statement discussing the need for an increase in the maximum enrollment;

(II) a statement discussing the current and projected financial condition of the charter holder and charter school;

(III) an unaudited statement of financial position for the current fiscal year;

(IV) an unaudited statement of financial activities for the current fiscal year;

(V) an unaudited statement of cash flows for the current fiscal year;

(VI) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(VII) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(VIII) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(IX) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment; and

(X) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed;

(iii) the board resolution required by paragraph (1) of this subsection includes a statement that the charter holder board has considered the business plan required by clause (ii) of this subparagraph and has determined by majority vote of the board that the enrollment growth proposed in the business plan is prudent;

(iv) the charter holder submits, for the most recent three years of operation, copies of the compliance information on file as required in §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on

Serving) to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees; and

(v) on request, the charter holder files the business plan required by clause (ii) of this subparagraph with the TEA division responsible for charters schools within ten business days.

(D) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels.

(E) Exempt from subparagraphs (A)-(D) of this paragraph are requests by charter holders eligible under Texas Education Code (TEC), §12.101(a)(4), that provide instructional services within residential detention, treatment, or adjudication facilities.

(F) The commissioner may exempt from subparagraphs (A)-(D) of this paragraph charter holders eligible for new school amendments as outlined in paragraph (6) of this subsection. Charter holders seeking this exemption must apply for and be granted waivers requesting the exemption. A waiver granted under this provision shall be considered effective until such time as the charter holder fails to meet or exceed one or more standards outlined in paragraph (6) of this subsection.

(6) New school amendment. A new school amendment is an expansion amendment that permits a charter holder to establish an additional charter school under an existing open-enrollment charter pursuant to federal non-regulatory guidance in the Elementary and Secondary Education Act (ESEA), Section 5202(d)(1), as amended. Charter holders of charter schools that receive new school designations from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a new school amendment for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment and a substantive amendment set forth in this section and has operated at least one charter school in Texas for a minimum of five consecutive years;

(ii) the charter has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) with at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, and meets the following:

(I) currently evaluated under the standard accountability procedures and received a district rating of Exemplary or Recognized for three of the last five years with at least 75% of the campuses rated under the charter also being rated Exemplary or Recognized and no campus with an unacceptable rating in the most recent state accountability ratings; or

(II) currently evaluated under the alternative education accountability (AEA) procedures and received a district rating of AEA: Academically Acceptable or a standard rating of Academically Acceptable or higher for five of the last five years with:

(-a-) in the most recent state accountability ratings, all rated campuses under the charter receiving an acceptable or higher rating; and

(-b-) if evaluated using AEA procedures, the district-level assessment data corresponding to the most recent accountability ratings demonstrate that at least 30% of the students in each of the following student groups (if evaluated) met the standard as reported by the sum of all grades tested on the standard accountability indicator in each subject area assessed: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient, and at risk;

(iii) no charter campus has been placed in Stages 2-5 in the No Child Left Behind school improvement program for failure to meet Adequate Yearly Progress in the most current report;

(iv) the charter is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) the charter holder completes an application approved by the commissioner;

(vi) the new charter school will serve at least 50 students;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the amendment is in the best interest of the students of Texas.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school amendment only on making the following written findings:

(i) the proposed school satisfies each element of the definition of a public charter school as set forth in the ESEA, Section 5210(1);

(ii) the proposed school is not merely an extension of an existing charter school;

(iii) the proposed school is separate and distinct from the existing charter school(s) established under the open-enrollment charter; and

(iv) the open-enrollment charter, as amended, includes a separate written performance agreement for the proposed school that meets the requirements of the ESEA, Section 5210(1)(L), and TEC, §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter as a whole, as modified by the new school amendment; and

(ii) whether the proposed school shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the proposed school and the existing charter school(s) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the proposed school will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:

(i) whether the proposed school and the existing charter school(s) have distinctly different requirements in their respective written performance agreements; and

(ii) the extent to which the performance agreement for the proposed school imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

(F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iv) of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the new school designation.

(7) Delegation amendment. A delegation amendment is a substantive amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.

(A) The commissioner may approve a delegation amendment only if:

(i) the charter holder meets all requirements applicable to delegation amendments and substantive amendments generally;

(ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5, of this title (relating to Charter School Governance); and

(iii) the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school.

(B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school.

(C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;

(iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(iv) final authority to adopt policies governing charter school operations;

(v) final authority to approve audit reports under TEC, §44.008(d); or

(vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for a chief executive officer.

(D) The following powers and duties must generally be exercised by the chief executive officer of the charter holder. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(iii) of this subparagraph cannot reasonably be carried out by the chief executive officer of the charter holder, the commissioner may not grant an amendment permitting the chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the chief executive officer of the charter holder shall not delegate final authority:

(i) to organize the charter school's central administration;

(ii) to approve reports or data submissions required by law; or

(iii) to select charter school employees or officers.

(d) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

Source: The provisions of this §100.1033 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1035. Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving.

(a) A charter holder shall collect, maintain, and make available on request for inspection under this division, the following information on a form or in a format approved by the commissioner of education:

(1) information identifying each member of the governing body of the charter holder and related compliance information as required by subsection (b) of this section;

(2) information identifying each officer of the charter school and related compliance information as required by subsection (b) of this section;

(3) information identifying each member of the governing body of the charter school, if the charter holder has established a governing body for the charter school, and related compliance information as required by subsection (b) of this section; and

(4) information identifying each employee of the charter school and related compliance information as required by subsection (b) of this section.

(b) The compliance information recorded for each individual identified under subsection (a) of this section shall include:

(1) the title of each position held or function performed by the individual;

(2) the specific powers and duties that the governing body of the charter holder or charter school have delegated to the individual, if any, as described by the powers and duties listed in the charter pursuant to §100.1101 of this title (relating to Delegation of Powers and Duties);

(3) the legal name of the individual;

(4) any aliases or names formerly used by the individual, including maiden name;

(5) a complete criminal history record of convictions for the individual, issued by the Texas Department of Public Safety within three years of the date of the compliance record;

(6) a list of all relatives of the individual, within the third degree of consanguinity or affinity, under Government Code, Chapter 573, that:

(A) are employed by the charter holder or the charter school;

(B) conduct business transactions with the charter holder or the charter school;

(C) serve on the governing body of the charter holder or the charter school; or

(D) have a substantial interest in a management company under Texas Education Code, §12.120; and

(7) a full and complete list of the individual's business interests in, or transactions with, any charter holder, charter school, or management company.

(c) Not later than 30 days following any change in the information recorded under this section, a charter holder shall make corrections to its most recent charter school compliance record.

(d) A charter holder shall file the information with the Texas Education Agency division responsible for charter schools within ten business days of receiving a written request from the agency.

Source: The provisions of this §100.1035 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1037. Notification of Charter Application.

(a) Prior to the State Board of Education (SBOE) receiving an application for an open-enrollment charter, the Texas Education Agency (TEA) division responsible for charter schools shall provide notification as described in subsection (b) of this section.

(b) If an application has not been withdrawn by the applicant or returned by the TEA for insufficiency or for substantive deviations from state or federal law, and if the application has received the minimum score eligible for selection by the SBOE, then, before the application is sent to the SBOE for consideration, the TEA division responsible for charter schools shall notify the following persons via electronic mail, if possible, or else via interagency mail or United States mail:

(1) the board of trustees of each school district from which the proposed open-enrollment charter school is likely to draw students, as described in the open-enrollment charter; and

(2) each member of the legislature that represents the geographic area to be served by the proposed charter school, as determined by the TEA division responsible for charter schools.

Source: The provisions of this §100.1037 adopted to be effective April 18, 2002, 27 TexReg 3140.

Division 3. Charter School Funding and Financial Operations

§100.1041. State Funding.

(a) Funding formula elements. A charter school is entitled to funding from both tiers of the Foundation School Program (FSP) in accordance with the funding formulas for school districts pursuant to Texas Education Code (TEC), Chapter 42.

(1) Tier I program allocations are determined by substituting the statewide average adjusted allotment in place of the district's calculated adjusted allotment. The state average adjusted allotment takes into account the cost of education index and the small, mid-size, and sparsity adjustments specified in TEC, §§42.102, 42.103, 42.104, and 42.105. It is computed by dividing the state total cost for the regular education program by the number of students in the state counted in attendance in a regular education program in accordance with TEC, §42.101.

(2) An allocation for the guaranteed yield allotment for Tier II of the FSP is determined by substituting a statewide average enrichment tax rate in place of the district's calculated enrichment tax rate (DTR) pursuant to TEC, §42.302. The state average tax rate is computed by first summing the Maintenance and Operations tax collections up to its DTR maximum limit for each district in the state and then dividing that result by the sum of all district property values as defined in TEC, §42.252.

(b) Implementation schedule. The new formula elements described in subsection (a) of this section will take effect for charter schools that begin operation in the 2001-2002 school year or later. Charter schools that report attendance that occurs prior to September 2, 2001, are considered to be in operation on September 1, 2001, and will be funded as described in House Bill 6, Section 40(b), 77th Texas Legislature, 2001. Charter schools that report no attendance that occurs prior to September 2, 2001, are considered to begin operation in the 2001-2002 school year or later, and will be funded according to subsection (a) of this section and TEC, §12.106.

(c) Tuition and fees. A charter school shall not charge tuition and shall not charge a fee except:

(1) a charter school may charge a fee listed in TEC, §11.158(a); and

(2) if authorized under §100.1201(6) of this title (relating to Voluntary Participation in State Programs), a charter holder may charge tuition for certain prekindergarten classes in compliance with TEC, §29.1531 and §29.1532.

(d) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the chair of the State Board of Education.

(1) If a charter holder, before or without approval for an expansion amendment under §100.1033(d) of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the site of an instructional facility, expands its geographic boundaries, or exceeds its maximum allowable enrollment, then the charter holder is not eligible to receive state funds for the activities of the unapproved expansion of its charter school operations.

(2) A former charter holder is not eligible to receive state funds.

(e) Return of over-allocated funds.

(1) Within 30 days of receiving notice of an over-allocation and a request for refund under TEC, §42.258, a charter holder shall transmit to the Texas Education Agency (TEA) an amount equal to the requested refund. Failure to comply with a request for refund under this subsection is a material charter violation and a management company breach. Funds allocated for student attendance in a program affected by an unapproved expansion under subsection (d)(1) of this section are over allocated within the meaning of this subsection.

(2) If the charter holder fails to make the requested refund, the TEA may recover the over allocation by any means permitted by law, including, but not limited to, the process set forth in TEC, §42.258.

(3) Notwithstanding paragraph (2) of this subsection, the TEA may not garnish or otherwise recover funds actually paid to and received by a charter holder under TEC, §12.106, if:

(A) the basis of the garnishment or recovery is that:

(i) the number of students enrolled in the school during a school year exceeded the student enrollment described by the school's charter during that period; and

(ii) the school received the funds under TEC, §12.106, based on an accurate report of the school's actual student enrollment; and

(B) the school:

(i) submits to the commissioner a timely request to revise the maximum student enrollment described by the school's charter and the commissioner does not notify the school in writing of an objection to the proposed revision before the 90th day after the date on which the commissioner received the request, provided that the number of students enrolled at the school does not exceed the enrollment described by the school's request; or

(ii) exceeds the maximum student enrollment described by the school's charter only because a court mandated that a specific child enroll in that school; and

(iii) used all funds received under TEC, §12.106, to provide education services to students;

(4) Nothing in paragraph (3) of this subsection requires the agency to fund activities that are ineligible for state funding under subsection (d)(1) of this section.

Source: The provisions of this §100.1041 adopted to be effective November 6, 2001, 26 TexReg 8826; amended to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1043. Status and Use of State Funds; Depository Contract.

(a) Status and use of state funds.

(1) State funds received by a charter holder are public funds for all purposes under state law, and may be used only for a purpose for which a school district may use local funds under Texas Education Code (TEC), §45.105(c). Any other use or application of such funds constitutes misuse and misapplication of public funds and is subject to the civil and criminal laws governing misuse or misapplication of Texas public funds.

(2) State funds received by a charter holder are held by the charter holder in trust for the benefit of the students of the charter school. In their use of public funds, the governing body of a charter holder, and the governing body and officers of a charter school, shall be held to the standard of care and fiduciary duties that a trustee owes a beneficiary under Texas law.

(b) Depository contract. Pending their use, state funds received by a charter holder must be deposited into a bank with which the charter holder has entered into a depository contract. Each year within the period prescribed by §100.101 of this title (relating to Annual Report on Open-Enrollment Charter Governance) for filing articles of incorporation, the charter holder must file a copy of the depository contract with the Texas Education Agency division responsible for school financial audits; however, if there has been no change since the last filing, the charter holder may file a statement to this effect in lieu of a copy of the depository contract.

(1) State funds received by a charter holder must be deposited into an account owned and controlled by the charter holder pending their use. Once properly deposited, the charter holder may immediately use the funds for any purpose described in subsection (a)(1) of this section, subject to the standard of care and fiduciary duties described in subsection (a)(2) of this section.

(2) A "bank" is defined by TEC, §45.201. Although the term excludes a bank the deposits of which are not insured by the Federal Deposit Insurance Corporation (FDIC), deposits exceeding FDIC-

insured amounts need not be collateralized for the institution to constitute a "bank" under this subsection.

(3) Notwithstanding this subsection, if required by a contract executed prior to September 1, 2001, state funds may be deposited into an account managed by a bond trustee acting on behalf of a charter holder for the sole purpose of complying with debt service obligations of the charter holder on a bond issued under TEC, Chapter 53.

Source: The provisions of this §100.1043 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1045. Investment of State Funds.

(a) This section applies to a charter holder unless alternative requirements for investing state funds have been approved by the State Board of Education under §100.103 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner of education to adopt the approved procedures.

(b) A charter holder shall invest state funds in accordance with Government Code, §§2256.009-2256.016.

(1) A requirement in those sections that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(2) State funds invested by a charter holder shall be maintained in a discrete charter investment account, separate and distinct from the operating accounts for the charter school and separate and distinct from any investment accounts related to non-charter activities.

(3) A charter holder shall invest state funds in accordance with any applicable provision or covenant contained in a debt instrument, bond indenture, or similar agreement.

(4) Nothing in this subsection shall authorize the investment of state or federal grant funds, unless investment of such funds is expressly authorized under the terms of the grant.

(c) Investment of state funds shall be made with judgment and care, under prevailing circumstances, that a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment, considering the probable safety of capital and the probable income to be derived.

(1) Investment of state funds shall be governed by the following investment objectives, in order of priority:

(A) preservation and safety of principal;

(B) liquidity; and

(C) yield.

(2) In determining whether a charter holder, or its employee or agent, has exercised prudence with respect to an investment decision respecting state funds, the determination shall be made taking into consideration:

(A) the investment of all funds, or funds under the entity's control, over which the officer had responsibility rather than a consideration as to the prudence of a single investment; and

(B) whether the investment decision was consistent with the written investment policy of the entity.

Source: The provisions of this §100.1045 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1047. Accounting for State and Federal Funds.

(a) Fiscal year. A charter holder shall adopt a fiscal year consistent with Texas Education Code (TEC), §44.0011.

(b) Financial accounting. A charter holder shall comply fully with:

(1) Generally Accepted Accounting Principles (GAAP);

(2) the Financial Accountability System Resource Guide, as adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide);

(3) the federal standards for financial management systems, 34 Code of Federal Regulations §80.20, and/or other applicable federal standards; and

(4) the financial accountability rating system (School FIRST) specified in Chapter 109, Subchapter AA, of this title (relating to Commissioner's Rules Concerning Financial Accountability Rating System).

(c) Annual audit. A charter holder shall at its own expense have the financial and programmatic operations of the charter school audited annually by a certified public accountant licensed by the Texas State Board of Public Accountancy and registered as a provider of public accounting services.

(1) The charter holder shall file a copy of the annual audit report, approved by a charter holder, with the Texas Education Agency (TEA) division responsible for school financial audits not later than the deadline specified by TEC, §44.008.

(2) The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the charter school through the Public Education Information Management System (PEIMS).

(3) Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133 or its successor.

(d) Attendance accounting. A charter holder shall comply with the Student Attendance Accounting Handbook, as adopted by reference in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook); TEC, §25.002; and Chapter 129 of this title (relating to Student Attendance), except that a charter school shall report its actual student attendance data to the TEA at six-week intervals, or as directed by the TEA.

(e) Non-charter activities. A charter holder shall keep separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

(1) Any business activities of a charter holder not directly related to the management and operation of the program described in the open-enrollment charter shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems from those recording the business activities of the charter school.

(2) Any commingling of charter and non-charter business in the accounting, auditing, budgeting, reporting, and recordkeeping systems of the charter school shall be a material charter violation.

(f) Interested transactions. A charter holder shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131-100.1135 of this title. In addition, the following shall be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school:

(1) financial transactions between the charter school and the non-charter activities of the charter holder;

(2) financial transactions between the charter school and an officer or employee of the charter holder or the charter school;

(3) financial transactions between the charter school and a member of the governing body of the charter holder or the charter school;

(4) financial transactions between the charter school and a management company charged with managing the finances of a charter school; and

(5) financial transactions between the charter school and any other person or entity in a position of influence over the charter holder or the charter school.

(g) Position of influence. A person or entity is in a position of influence over the charter holder or the charter school, within the meaning of subsection (f)(5) of this section, if:

(1) the charter holder or charter school is a subsidiary of, or shares governing body members, officers, or employees with, another organization, and:

(A) the person or entity is a shareholder, partner, administrator, official, or employee of the other organization; or

(B) the person or entity by any other means participates in the business decisions of the affiliate or parent organization; or

(2) a relative of the person is in a position of influence over the charter holder or the charter school under this section, within the third degree by consanguinity or affinity, as determined under Texas Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity).

Source: The provisions of this §100.1047 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective June 22, 2009, 34 TexReg 4119; amended to be effective August 26, 2010, 35 TexReg 7213.

§100.1049. Disclosure of Campaign Contributions.

(a) The governing body of a charter holder shall adopt policies implementing the disclosure requirements of State Board of Education Operating Rule, §4.3 (Disclosure of Campaign Contributions and Gifts), or its successor, and shall insure compliance by:

(1) the members of the governing body of the charter holder and charter school;

(2) the employees and agents of the charter holder and charter school; and

(3) any management company under contract with the charter holder or charter school.

(b) The governing body of a charter holder shall insure that no state funds are expended by the charter holder, the charter school, or its management company for any political advertising within the meaning of Election Code, §251.001(16), as interpreted by the advisory opinions of the Texas Ethics Commission.

Source: The provisions of this §100.1049 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1051. Audit by Commissioner; Records in the Possession of a Management Company.

(a) Commissioner authority. To the extent consistent with subsection (b) of this section, the commissioner of education may audit the records of:

(1) a charter school;

(2) a charter holder; or

(3) a management company that has provided management services to a charter school or a charter holder.

(b) Scope of audit.

(1) An audit under subsection (a) of this section must be limited to matters directly related to the management or operation of a charter school, including the allocation of costs shared between the charter school and any non-charter business activity. The audit may examine any financial or

administrative records related to the charter school that are in the possession of a management company or a former management company, including records related to the allocation of shared costs.

(2) Unless the commissioner has specific cause to conduct an additional audit, the commissioner may not conduct more than one on-site audit under this section during any fiscal year, including any financial and administrative records. For purposes of this subsection, an audit of a charter holder or management company associated with a charter school is not considered an audit of the school.

(c) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an audit under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply timely with a request for access to records or other cooperation from the charter holder constitutes a material charter violation.

(d) Management company cooperation. A management company and its employees and agents shall fully cooperate with an audit under subsection (a) of this section. Failure to timely comply with a request for access to records or other cooperation from the management company constitutes a management company breach.

Source: The provisions of this §100.1051 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

Division 4. Property of Open-Enrollment Charter Schools

§100.1063. Use of Public Property by a Charter Holder.

(a) Public property. An interest in real estate or personal property acquired, improved, or maintained using state funds that were received by the charter holder on or after September 1, 2001, is public property for all purposes under state law. The date on which the property was acquired, improved, or maintained is not determinative. An interest in real estate acquired, improved, or maintained using state funds that were received by the charter holder before September 1, 2001, is public property only to the extent specified by §100.1065 of this title (relating to Property Acquired with State Funds Received Before September 1, 2001--Special Rules). Where the property is acquired with federal funds, federal law may preempt this section in whole or part.

(b) Fiduciary duty respecting public property. Public property is held by the charter holder in trust for the benefit of the students of the charter school. With respect to the public property they manage, the members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, are trustees under Texas law; and the students enrolled in the school are beneficiaries of a trust. Each trustee shall be held to the standard of care and fiduciary duties that a trustee owes the beneficiary of a trust under Texas law.

(c) Use of public property. Public property may be used only for a purpose for which a school district may use school district property and only to implement a program that is described in the open-enrollment charter and is consistent with Texas Education Code (TEC), §12.102.

(1) Any use or application of public property for a purpose other than implementing a program that is described in the open-enrollment charter and is consistent with TEC, §12.102, constitutes misuse and misapplication of such property, and is subject to Texas Law governing misuse or misapplication of public property.

(2) The governing body of a charter holder shall adopt and enforce local policies governing the use and application of public property by its employees, agents, contractors, and management companies. The policies shall prohibit the use or application of public property for any purpose but a program described in the open-enrollment charter, except that the policies may authorize charter holder employees to use local telephone service, cellular phones, electronic mail, Internet connections, and similar public property for incidental personal use, if the policies:

(A) do not result in any direct cost paid with state funds, or the charter holder is reimbursed for any direct cost incurred;

(B) do not impede charter school functions;

(C) do not authorize incidental personal use of public property for private commercial purposes; and

(D) authorize only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--for personal matters.

(3) The governing body of a charter holder shall by separate vote approve any joint use of real property for charter and non-charter activities. In the minutes of the vote approving the joint use, the governing body of a charter holder shall set forth the methodology used to allocate shared costs and the percentage allocation basis between charter and non-charter activities.

(4) The members of the governing body of a charter holder, and the members of the governing body and officers of a charter school, shall authorize all uses and applications of the public property under their control, and shall not authorize any use or application that is inconsistent with the policy required by paragraph (2) of this subsection.

(5) If pursuant to TEC, §12.111(9), the daily management of public property is delegated to any person, including a management company, the members of the governing body of the charter holder, and the members of the governing body and officers of the charter school, shall remain

fully responsible to authorize all uses and applications of public property and enforce the policy required by paragraph (2) of this subsection.

(6) Nothing in this section prevents a charter holder from authorizing the use of its public property by a contractor for the purpose of providing goods or services under the contract, if such use is an express contract term, factored into the price of the contract, and the contract is duly authorized by the governing body of the charter holder under this section.

(d) Ownership of public property. Public property is owned by the charter holder, regardless of the funds used to acquire it. Subject to the requirements of §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) and this section, a charter holder retains all title to the property, exercises complete control over the property, and is entitled to all use and benefit from the property.

(e) Public property mixed with private property. Property acquired, improved, or maintained partly using state funds and partly using other funds is mixed public and private property, and is subject to all requirements of this section.

(f) Accounting for public property. Each charter holder shall include in its annual audit report an exhibit identifying the fixed assets of the charter holder and the ownership interest of all parties for all real estate and capitalized personal property presently held by the charter holder or acquired, improved, or maintained by the charter holder during the term of the open-enrollment charter.

(1) Pursuant to the requirements in §109.41 of this title (relating to Financial Accountability System Resource Guide), the annual audit report must separately disclose the cost basis and accumulated depreciation of all public property as determined by this division, and all other property held, acquired, improved, or maintained by the charter holder.

(2) Alternatively, the charter holder may omit the exhibit required by paragraph (1) of this subsection and substitute a statement, in accordance with the requirements in §109.41, that all property acquired, improved, or maintained during the term of the open-enrollment charter, and all property presently held by the charter holder, is public property under this division.

(3) All property held, acquired, improved, or maintained by the charter holder is subject to this subsection regardless whether it is public or private property.

Source: The provisions of this §100.1063 adopted to be effective November 6, 2001, 26 TexReg 8828; amended to be effective April 18, 2002, 27 TexReg 3140.

§100.1065. Property Acquired with State Funds Received Before September 1, 2001--Special Rules.

(a) Non-public property.

(1) An interest in personal property acquired, improved, and maintained solely using state funds that were received by the charter holder before September 1, 2001, is non-public property. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.

(2) An interest in real estate acquired, improved, and maintained using less than 50% state funds is non-public property if all state funds used were received before September 1, 2001. If any part of the state funds used were received on or after September 1, 2001, then subsection (b) of this section applies to that property.

(3) Non-public property under this section is exempt from §100.1063 of this title (relating to Use of Public Property by a Charter Holder) and exempt from §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder). However, non-public property under this section must be included in the exhibit required by §100.1063(f).

(b) Public property.

(1) An interest in real estate acquired, improved, or maintained using 50% or more state funds is public property, even if all the state funds used were received by the charter holder before September 1, 2001.

(2) An interest in real estate acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.

(3) An interest in personal property acquired, improved, or maintained partly using state funds received on or after September 1, 2001, and partly using state funds received before September 1, 2001, is public property.

(4) Public property under this section is subject to §100.1063 of this title (relating to Use of Public Property by a Charter Holder).

(5) Public property under this section is subject to §100.1067 of this title (relating to Possession and Control of the Public Property of a Former Charter Holder) only to the extent it was acquired, improved, or maintained using state funds received on or after September 1, 2001.

Source: The provisions of this §100.1065 adopted to be effective November 6, 2001, 26 TexReg 8828.

§100.1067. Possession and Control of the Public Property of a Former Charter Holder.

(a) Disposition of audited property. If the exhibits to the annual audit reports filed by a former charter holder are in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner of education shall take possession, assume control, and supervise the disposition of the public property disclosed by those exhibits as provided by subsection (c) of this section.

(b) Disposition of property--defective audit. If the exhibits to the annual audit reports filed by a former charter holder are not in substantial compliance with §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner shall use such legal process as may be available under Texas law to take possession and assume control of all property of the former charter holder and, using such legal process, supervise the disposition of such property in accordance with law.

(1) At any time prior to taking possession and assuming control of the affected property, the commissioner may determine whether the exhibits to the annual audit reports filed by a former charter holder substantially comply with §100.1063(f).

(2) At the commissioner's sole discretion, the commissioner may cure any defects in the filed exhibits by securing, at the former charter holder's expense, such professional services as may be required to create and/or audit the necessary exhibits to the annual audit reports.

(3) If successful in curing all defects in such exhibits, the commissioner may, at the commissioner's sole discretion, take possession, assume control, and supervise the disposition of the public property disclosed by those exhibits as provided by subsection (c) of this section.

(c) Method for audited property. In taking possession, assuming control, and supervising the disposition of property that has been properly recorded by a former charter holder under §100.1063(f) of this title (relating to Use of Public Property by a Charter Holder), the commissioner:

(1) shall accept and rely on the cost basis disclosure of all public property and all other property acquired by the former charter holder disclosed by the annual audit reports already on file with the agency and, if needed, by the annual audit report for the fiscal year in which the charter holder ceased operations;

(2) shall take possession and assume control over all public property disclosed by the annual audit reports;

(3) shall permit the former charter holder to designate the property to be used by the commissioner to satisfy the amount required by paragraph (2) of this subsection, and defer to the reasonable wishes of the former charter holder in this respect;

(4) may liquidate property designated by the former charter holder and, if the commissioner determines it to be necessary, liquidate other property; and

(5) shall return to the possession and control of the former charter holder any property in excess of the ownership interest of the State of Texas and/or federal grant or funding agencies of all public property disclosed by the annual audit reports, in accordance with current fair market valuation of the property.

(d) Use of legal process. Notwithstanding subsection (c) of this section, the commissioner of education may use such legal process as may be available under Texas law to take possession and assume control over the public property disclosed by the annual audit reports and, using such legal process, supervise the disposition of such property in accordance with law.

Source: The provisions of this §100.1067 adopted to be effective November 6, 2001, 26 TexReg 8828.

§100.1069. Rights and Duties Not Affected.

Nothing in this subchapter, and nothing in Texas Education Code (TEC), §12.128:

(1) affects a security interest in or lien on property established by a creditor in compliance with law if the security interest or lien arose in connection with the sale or lease of the property to the charter holder;

(2) obligates the State of Texas or any agency of the State of Texas to fulfill any lease agreement or any other contractual or legal obligation entered into by a charter holder on behalf of an open-enrollment charter school; or

(3) affects the right or the duty of the Attorney General to bring suit under the Texas Miscellaneous Corporations Act, the Texas Deceptive Trade Practices Act, or other law respecting Texas non-profit corporations.

Source: The provisions of this §100.1069 adopted to be effective November 6, 2001, 26 TexReg 8828.

§100.1071. Real Property Held in Trust.

(a) This section applies to a charter holder unless alternative procedures for purchasing and selling real property held in trust have been approved by the State Board of Education under §100.103 (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing), and the open-enrollment charter has been amended by the commissioner of education to adopt the approved procedures.

(b) A requirement in Government Code, Chapter 2252, Subchapter D, that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(1) A charter holder may not purchase real property held in trust until the trustee submits to the governing body of the charter holder a copy of the trust agreement identifying the true owner of the property. The trustee shall identify the true owner of the property to the charter holder.

(2) A charter holder may not sell real property to a trustee until the charter holder receives from the trustee a copy of the trust agreement identifying the person who will be the true owner of the property. The trustee shall identify the person who will be the true owner of the property to the charter holder.

(3) A conveyance of property subject to this section is void if a charter holder fails to comply with this section.

(4) A trust agreement submitted to the governing body of the charter holder is confidential information excepted from the requirements of Government Code, §552.021, but must be disclosed to the Texas Education Agency under §100.1029 (relating to Agency Audits, Monitoring, and Investigations).

Source: The provisions of this §100.1071 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1073. Improvements to Real Property.

(a) This section applies to a charter holder unless alternative procedures for awarding a contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property have been approved by the State Board of Education under §100.103 (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner of education to adopt the approved procedures.

(b) A charter holder shall comply with Local Government Code, Chapter 271, Subchapter B, in awarding any contract for the construction, repair, or renovation of a structure, road, highway, or other improvement or addition to real property if the contract requires the expenditure of public funds in the amount specified by Local Government Code, §271.024. A requirement in that subchapter applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(c) Local Government Code, Chapter 271, Subchapter B, does not apply to a contract executed prior to September 1, 2001.

Source: The provisions of this §100.1073 adopted to be April 18, 2002, 27 TexReg 3140.

Division 5. Charter School Governance

§100.1101. Delegation of Powers and Duties.

(a) Primary responsibility. The governing body of a charter holder has the primary responsibility for implementing the public school program authorized by the open-enrollment charter and ensuring the performance of the students enrolled in its charter schools in accordance with the Texas Education Code (TEC).

(b) Alienation of open-enrollment charter. An open-enrollment charter grants to the governing body of a charter holder the authority to operate a charter school.

(1) The governing body of the charter holder shall, acting as a body corporate in meetings posted in compliance with Government Code, Chapter 551, oversee the management of the charter school.

(2) Except as provided by this section, the governing body's powers and duties to operate the charter school shall not be delegated, transferred, assigned, encumbered, pledged, subcontracted, or in any way alienated by the governing body of the charter holder. Any attempt to do so shall be null and void and of no force or effect and shall constitute abandonment of the contract for charter.

(3) A charter holder shall notify the Texas Education Agency (TEA) in writing prior to initiating any type of bankruptcy proceeding respecting the charter holder. Filing for any form of bankruptcy relief prior to such notice shall constitute abandonment of the contract for charter.

(c) Exclusive method for delegating charter powers and duties. An open-enrollment charter must specify the powers or duties of the governing body of the charter holder that the governing body may delegate to an officer, employee, contractor, management company, creditor, or any other person. The exclusive method for making such a delegation shall be to file a request for a delegation amendment with the TEA division responsible for charter schools under §100.1033 of this title (relating to Charter Amendment), specifying the power or duty delegated and the particular person or entity to which it is delegated.

(d) Accountability for delegated powers and duties retained. The governing body of a charter holder remains responsible for the management, operation, and accountability of the charter school operated by the charter holder, regardless of whether the governing body delegates any of its powers or duties.

Source: The provisions of this §100.1101 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1102. Training for Members of Governing Bodies of Charter Holder and School.

(a) Training required. Unless exempted under subsection (g) or (h) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete a training course consisting of 12 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a member of the governing body of a charter holder or a member of the governing body of a charter school must complete the training course required by this section within one calendar year of appointment or election to such governing body.

(c) Transition timeline. A member serving on the governing body of a charter holder or the governing body of a charter school on the effective date of this section must complete at least the first six hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining six hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first six hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules, which accounts for 540 minutes (nine hours) of the required 12 hours. The remaining 180 minutes (three hours) of the required 12 hours may be selected from any of these modules:

(1) a module consisting of at least 150 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, and the legal requirements specific to members of the governing body of a charter holder;

(2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;

(3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 120 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 60 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

(e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A member serving on the governing body of a charter holder or the governing body of a charter school who has completed the 12-hour training course required by this section must annually thereafter receive six hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a member of the governing body of a charter holder whose organization has operated charters that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings or a member of the governing body of a charter school whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Furthermore, a board chair or vice chair may opt to train the remaining board members in such subjects

as best fits the needs of the school or schools, provided the chair or vice chair has taken the initial 12 hours otherwise required under these rules. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of members of the governing body of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than one hour of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a member serving on the governing body of a charter holder or the governing body of a charter school may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A member of the governing body of a charter holder who serves on the governing body of a governmental entity or an institution of higher education as defined under TEC, §61.003, is exempt from the training required by this section if, by virtue of such service, the member is subject to other mandatory training and the members of the governing body of the charter school operated by the charter holder comply with this section.

(h) Limited exemptions. A member of the governing body of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, or a member of the governing body of a charter school whose campuses have all been rated "Acceptable" or higher for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1)-(5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. For organizations that meet the requirements for this exception, the required amount of training is eight hours. The training courses required by this section shall include the following modules as provided in paragraphs (1)-(5) of this subsection, which account for 360 minutes (six hours) of the required eight hours. The remaining 120 minutes (two hours) of the required eight hours may be selected from any of the following modules, and can consist of self study:

(1) a module consisting of at least 60 minutes of instruction in basic school law, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, and the legal requirements specific to members of the governing body of a charter holder;

(2) a module consisting of at least 60 minutes of instruction in basic school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and the financial duties specific to the members of the governing body of a charter holder;

(3) a module consisting of at least 30 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 90 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 120 combined minutes of instruction in the following:

(A) other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(B) instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(C) instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

Source: The provisions of this §100.1102 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1103. Training for Chief Executive and Central Administrative Officers.

(a) Training required. Unless exempted under subsection (g) or (h) of this section, a chief executive officer or a central administrative officer, including persons providing management services that include the functions of a chief executive officer or central administrative officer, must complete a training course consisting of 30 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials, unless as otherwise provided.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a chief executive officer or a central administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.

(c) Transition timeline. A person serving as a chief executive officer or central administrative officer on the effective date of this section must complete at least the first 15 hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining 15 hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first 15 hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules, which accounts for 1,260 minutes (21 hours) of the required 30 hours. The remaining 540 minutes (nine hours) of the required 30 hours may be selected from any of these modules:

(1) a module consisting of at least 240 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D, and this subchapter;

(2) a module consisting of at least 240 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and capital financing;

(3) a module consisting of at least 120 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162;

(6) a module consisting of at least 60 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(7) a module consisting of at least 120 minutes of instruction in requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

(e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A chief executive officer or a central administrative officer who has completed the 30-hour training course required by this section must annually thereafter receive 15 hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a chief executive or central administrative officer whose organization has operated charters that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of the chief executive or central administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than three hours of continuing training. Twenty-five percent of hours earned by a chief executive officer or a central administrative officer in excess of the requirements set forth in this subsection may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A central administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Superintendent Certificate, or its lifetime equivalent, issued by the State Board for Educator Certification and all other officers of the charter school comply with this division.

(h) Limited exemptions. A chief executive or central administrative officer whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings shall be subject to the requirements in paragraphs (1)-(5) of this subsection in lieu of those specified in subsections (a) and (d) of this section. For organizations that meet the requirements for this exception, the required amount of training is 21 hours. The training course required by this section shall include the following modules, which accounts for 1,140 minutes (19 hours) of the required 21 hours. The remaining 120 minutes (two hours) of the required 21 hours may be selected from any of the following modules, and can consist of self-study:

(1) a module consisting of at least 210 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D, and this subchapter;

(2) a module consisting of at least 210 minutes of instruction in school finance, with special emphasis on accounting for public funds and property, student attendance accounting, federal funds and property management, grant administration, audit requirements, and capital financing;

(3) a module consisting of at least 270 combined minutes of instruction in the following:

(A) health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(B) open meetings requirements under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions; and

(C) requirements relating to public records, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records;

(4) a module consisting of at least 210 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder; and

(5) a module consisting of at least 240 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under TEC, Chapter 39; and the role of student performance in adverse actions under TEC, §12.116 and §12.1162.

Source: The provisions of this §100.1103 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1104. Training for Campus Administrative Officers.

(a) Training required. Unless exempted under subsection (g) of this section, a campus administrative officer, including persons providing management services that include the functions of a campus administrative officer, must complete a training course consisting of 10 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a campus administrative officer must complete the training course required by this section within one calendar year of beginning service in that capacity.

(c) Transition timeline. A person serving as a campus administrative officer on the effective date of this section must complete at least the first five hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining five hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first five hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules (120 minutes (two hours) of the required 10 hours may be selected from any of these modules):

(1) a module consisting of at least 90 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D; this subchapter; students with disabilities; student records; student admissions; geographic boundaries; and residency;

(2) a module consisting of at least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, federal funds and property management, and grant administration;

(3) a module consisting of at least 90 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;

(4) a module consisting of at least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;

(5) a module consisting of at least 120 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; and dropout reporting;

(6) a module consisting of at least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and

(7) a module consisting of at least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.

(e) Required course curriculum outline. The commissioner of education shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. However, a school officer whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training. Twenty-five percent of hours earned in excess of the requirements set forth in this subsection by a campus administrative officer may be carried over to meet the following year's requirement under this section.

(g) Exemptions. A campus administrative officer is exempt from the training required by this section if the person is the holder in good standing of a Standard Principal Certificate, or its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

Source: The provisions of this §100.1104 adopted to be effective June 8, 2003, 28 TexReg 4277; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1105. Training for Business Managers.

(a) Training required. Unless exempted under subsection (g) of this section, a business manager, including persons providing management services that include the functions of a business manager, must complete a training course consisting of 30 instructional hours, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title (relating to Course Providers). The training course may not use self-instructional materials.

(b) Timeline for completing training. Except as provided in subsection (c) of this section, a business manager must complete the training course required by this section within one calendar year of beginning service in that capacity.

(c) Transition timeline. A person serving as a business manager on the effective date of this section must complete at least the first 15 hours of the training course required by this section within six months of the effective date of the curriculum outline approved under subsection (e) of this section, and must complete the remaining 15 hours of such training within one year of the effective date of the approved curriculum outline. Training completed prior to the effective date of this section and after September 1, 2001, may be counted toward the first 15 hours of the training course required by this section if it meets the requirements of the curriculum outline approved under subsection (e).

(d) Course content. The training course required by this section shall include the following modules:

(1) a module consisting of at least 240 minutes of instruction in school law, with special emphasis on TEC, Chapter 12, Subchapter D; this subchapter; and the Financial Accountability System Resource Guide;

(2) a module consisting of at least 480 minutes of instruction in school finance, with special emphasis on the Financial Accountability System Resource Guide, generally accepted accounting principles, student attendance accounting, federal funds and property management, purchasing, grant administration, audit requirements, and capital financing;

(3) a module consisting of at least 20 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school;

(4) a module consisting of at least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;

(5) a module consisting of at least 160 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on PEIMS reporting, internal management controls, and audit requirements;

(6) a module consisting of at least 20 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on adopting and amending the budget; and

(7) a module consisting of at least 40 minutes of instruction in requirements relating to public records, with special emphasis on recordkeeping required by generally accepted accounting principles and applicable law.

(e) Required course curriculum outline. The commissioner shall approve and disseminate a curriculum outline that is consistent with the module topics and minimum durations identified in subsection (d) of this section. Training that does not conform to the curriculum outline does not satisfy the training requirements of this section. The entire duration of the training course must be dedicated to topics identified in the curriculum outline. The curriculum outline will be available on the Texas Education Agency (TEA) website. The process for the development and/or revision of a curriculum outline under this section must include an opportunity for stakeholder comment.

(f) Continuing training. A business manager who has completed the 30-hour training course required by this section must annually thereafter receive 15 hours of training, excluding breaks, administrative tasks, and other non-instructional time, delivered by a course provider registered under §100.1107 of this title. Continuing training under this subsection shall fulfill assessed training needs, including any training needs identified by TEA monitoring, and address update items identified in the curriculum outline approved under subsection (e) as well as additional topics selected from the curriculum outline. Selected topics must be covered in greater depth than the curriculum outline indicates for initial training on those topics. No more than three hours of continuing training may use self-instructional materials.

(g) Exemptions.

(1) A business manager is exempt from the training required by this section if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:

(A) Registered Texas School Business Administrator;

(B) Certified Texas School Business Official;

(C) Certified Texas School Business Specialist; or

(D) Certified Texas School Business Administrator; and

(2) A business manager is exempt from a module of required training, if:

(A) the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and

(B) the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

Source: The provisions of this §100.1105 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1106. Exemption for Participation in a Shared Services Cooperative.

(a) An officer of a charter school is exempt from a module of required training on a specific duty or responsibility, if:

(1) the charter holder is a member of a shared services cooperative;

(2) the written contract establishing the cooperative assigns to the cooperative the specific duty or responsibility, and assigns to the cooperative the requirement to complete that module of training, by:

(A) insuring that all relevant employees attend that module of required training and receive a certificate of course completion for that module from a regional education service center or course provider registered under §100.1107 of this title (relating to Course Providers); or

(B) if the cooperative is a registered course provider, insuring that all relevant employees attend that module of training and receive a certificate of course completion for that module from the cooperative; and

(3) all relevant employees of the cooperative actually attend that module of training and receive a certificate of course completion for that module.

(b) Nothing in this section affects an exemption available by virtue of another section in this division.

Source: The provisions of this §100.1106 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1107. Course Providers.

(a) Authorized course providers. Training under this division must be provided by a regional education service center (RESC) or by a course provider registered with the commissioner of education under this section. Training provided by a course provider that is not registered under this section at the time of training does not satisfy training requirements specified in this division. The fee for a course or module of training shall be determined by the RESC or registered course provider.

(b) Application for registration; qualifications. An applicant for course provider registration must file with the commissioner documents and information demonstrating a history of training experience and subject-matter expertise in each area covered by a training course required by this division.

(1) The course provider may apply to be registered as a course provider for one or more training courses, and may submit documents and information about more than one instructor. However, each instructor must be under contract to teach the course or module for the applicable period of registration.

(2) The course provider is not registered under this section until it receives written notice of registration under this section.

(c) Compliance with training rules. A registered course provider that fails to comply with §§100.1102-100.1107 of this division will not be registered in any subsequent year. A person who completes a training course that does not comply with §§100.1102-100.1105 and curriculum outlines approved thereunder has not satisfied the requirements for continued service.

(d) Annual registration; no renewal. Initial registration under this section is effective for 18 months. Thereafter, re-registration may be for a period of up to three years. Re-registration is by original application under this section, except that the process for re-registration of a registered course provider must include an opportunity for stakeholder comment on that course provider's performance. A successful application for registration in a prior registration period confers no right or expectation that the commissioner will grant an application for registration in a subsequent year.

Source: The provisions of this §100.1107 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1108. Record of Compliance and Disclosure of Non-compliance.

Record of compliance; non-compliance.

(1) Record of compliance. It is the obligation of the charter holder to comply with this section, including compliance with §§100.1102-100.1105 of this division by each a member of the governing body of the charter holder, each member of any governing body of a charter school operated by the charter holder, and each chief executive officer, central administrative officer, campus administrative officer, and business manager of any charter school operated by the charter holder. The charter holder shall document its compliance with §§100.1102-100.1105 and this section.

(2) Continued service. A person may not continue to serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer of a charter school, unless the person is in compliance with §§100.1102-100.1105 and this section.

(3) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State Funds), any member of the governing body of the charter holder or a charter school, and any officer of a charter school, who fails to comply with §§100.1102-100.1105 and this section and who continues to serve in such capacity as of the date of the audit report.

(4) Material charter violation. Failure to comply with §§100.1102-100.1105 and this section is a material charter violation that may be considered by the commissioner in any action or intervention under Division 2 of this subchapter (relating to Commissioner Action and Intervention).

Source: The provisions of this §100.1108 adopted to be effective June 8, 2003, 28 TexReg 4277.

§100.1111. Applicability of Nepotism Provisions; Exception for Acceptable Performance.

(a) Nepotism laws generally apply. Except as provided by this section, a member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Government Code, Chapter 573, in the manner provided by the nepotism provisions, prohibitions, and exceptions described in §§100.1111-100.1116 of this division.

(b) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1022(b)(2)(B) of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter), for at least two of the preceding three school years, then that charter

holder may comply with subsection (e) of this section in lieu of complying with §§100.1111-100.1116 of this division.

(c) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then the charter holder may comply with subsection (e) of this section in lieu of compliance with §§100.1111-100.1116 of this division.

(1) For purposes of this subsection, a "substantive rating" is defined by §100.1022(b)(2).

(2) For purposes of this subsection, a charter school has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:

(A) the charter school has received two consecutive substantive ratings, and neither rating meets the criteria set forth in subsection (b) of this section; or

(B) the charter school has received three substantive ratings.

(3) If a charter holder operates charter schools that have received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of substantive ratings, then its eligibility to comply with subsection (e) of this section is determined by applying the criteria in subsection (b) of this section only to those schools with a sufficient number of substantive ratings.

(d) No annual ratings assigned. For purposes of this section, two substantive ratings are "consecutive" as determined by §100.1022(b)(2).

(e) Exception to nepotism. A member of the governing body of a charter holder subject to this subsection, and a member of the governing body or officer of each charter school operated by such charter holder, shall comply with §100.1133 of this title (relating to Conflicts Requiring Affidavit and Abstention From Voting) and §100.1134 of this title (relating to Conflicts Requiring Separate Vote on Budget), with respect to a personnel matter concerning a person related to the member or officer within the third degree by consanguinity or within the second degree by affinity, as if the personnel matter were a transaction with a business entity requiring compliance with §100.1133 and §100.1134.

(f) No quorum of relatives. Notwithstanding any other provision of this section, persons related to one another within the third degree by consanguinity or within the second degree by affinity, as determined under §100.1113 of this title (relating to Relationships by Consanguinity or by Affinity), shall not constitute a quorum of the governing body or any committee of the governing body of the charter holder or charter school.

(g) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the nepotism provisions, prohibitions, and exceptions described in §§100.1111-100.1116 of this division within 60 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (e) of this section.

(1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable accountability manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.

(2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

Source: The provisions of this §100.1111 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1112. General Nepotism Provisions.

(a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Public official--a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school.

(2) Candidate--a person who applies for, seeks, is nominated for, or is considered for selection, appointment, employment or in any other manner to be made a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of an open-enrollment charter school.

(3) Charter Position:

(A) an office, employment, function, or duty that is to be directly or indirectly compensated from state funds received by a charter holder after September 1, 2001; or

(B) a member of the governing body of a charter holder that receives state funds after September 1, 2001, or a member of the governing body or an officer of a charter school operated by such charter holder.

(b) Degrees of relationship. Except as specifically provided by these rules, §§100.1111-100.1116 of this division apply to relationships within the third degree by consanguinity or within the second degree by affinity.

Source: The provisions of this §100.1112 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1113. Relationships By Consanguinity or By Affinity.

(a) Method of computing degree of relationship. The degree of a relationship is computed by the civil law method.

(b) Determination of consanguinity. Two individuals are related to each other by consanguinity if one is a descendant of the other, or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parent for this purpose.

(c) Computation of degree of consanguinity. The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separate them.

(1) A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree, and so on.

(2) If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

(A) the number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and

(B) the number of generations between the relative and the nearest common ancestor.

(3) An individual's relatives within the third degree by consanguinity are the individual's:

(A) parent or child (relatives in the first degree);

(B) brother, sister, grandparent, or grandchild (relatives in the second degree); and

(C) great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child of a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

(d) Determination of affinity. Two individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.

(1) The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

(2) Paragraph (1) of this subsection applies only until the youngest child of the marriage reaches the age of 21 years.

(e) Computation of degree of affinity. A husband and wife are related to each other in the first degree by affinity. For other relationships by affinity, the degree of relationship is the same as the degree of the underlying relationship by consanguinity.

(1) If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

(2) An individual's relatives within the third degree by affinity are:

(A) anyone related by consanguinity to the individual's spouse in one of the ways named in this section; and

(B) the spouse of anyone related to the individual by consanguinity in one of the ways named in this section.

Source: The provisions of this §100.1113 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1114. Nepotism Prohibitions.

(a) Prohibition applicable to public official. A public official may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position if, within a degree described by Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity):

(1) the individual is related to the public official; or

(2) the public official holds the authority to hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation as a member of a governing body, and the individual is related to another member of that governing body.

(b) Prohibition applicable to candidate. Except for a candidate's actions taken regarding a bona fide class or category of employees or prospective employees, a candidate may not take an affirmative action to influence the following individuals regarding the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of another individual related to the candidate within a degree described by Government Code, §§573.021-573.025, and §100.1113:

(1) an employee of the office that the candidate seeks, applies for, is nominated for, or is considered for; or

(2) an employee or officer under the direction or control of a governing body, if the candidate seeks, applies for, is nominated for, or is considered for membership on that governmental body.

(c) Prohibition applicable to trading. A public official may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position in which the individual's services are under the public official's direction or control if, within a degree described by Government Code, §§573.021-573.025, and §100.1113:

(1) the individual is related to another public official; or

(2) the hiring, selection, appointment, confirmation, or vote would be carried out in whole or partial consideration for the other public official hiring, selecting, appointing, confirming, or voting for an individual who is related to the first public official.

Source: The provisions of this §100.1114 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1115. Nepotism Exceptions.

(a) General. Section 100.1114(a) of this title (relating to Nepotism Prohibitions) does not apply to:

(1) an appointment or employment of a bus driver by a charter school if:

(A) the charter school is located wholly in a county with a population of less than 35,000; or

(B) the charter school is located in more than one county and the county in which the largest part of the charter school is located has a population of less than 35,000;

(2) an appointment or employment of a personal attendant by a public official for attendance on the public official who, because of physical infirmities, is required to have a personal attendant; or

(3) an appointment or employment of a substitute teacher.

(b) Continuous employment. A nepotism prohibition prescribed by §100.1114(a) does not apply to the hiring, selection, appointment, confirmation, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position if:

(1) the individual was employed in the position immediately before the public official to whom the individual is related in a prohibited degree became a public official, by whatever means; and

(2) that prior employment of the individual was continuous for at least:

(A) 30 days, if the public official is an officer of a charter school;

(B) six months, if the public official is a member of the governing body of a charter school; or

(C) one year, if the public official is a member of the governing body of a charter holder.

(c) Prohibition against deliberation or voting on continued relative. If an individual continues in a position under subsection (b) of this section, the public official to whom the individual is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status, compensation, or dismissal of the individual if that action applies only to the individual and is not taken regarding a bona fide class or category of employees.

Source: The provisions of this §100.1115 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1116. Enforcement of Nepotism Prohibitions.

(a) Removal by charter holder. An individual who violates §100.1114 of this title (relating to Nepotism Prohibitions) or §100.1115(c) of this title (relating to Nepotism Exceptions) shall be removed from the individual's position by the charter holder. Failure to comply with this subsection is a material charter violation.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible.

(b) Removal by Attorney General. An individual who violates §100.1114 or §100.1115(c) may be removed from the individual's position by suit brought by the Texas Attorney General under Government Code, §573.082.

(c) Criminal penalties. An individual who violates Government Code, Chapter 573, Subchapter C, or §573.062(b) or §573.083, as applied by these rules, may be subject to criminal penalties under Government Code, §573.084.

(1) On final conviction of an offense under Government Code, §573.084, an individual shall immediately and summarily be removed from the individual's position by the charter holder.

(2) If the removal under paragraph (1) of this subsection is not made within 30 days after the date the conviction becomes final, the individual holding the position may be removed by the commissioner of education or by suit brought by the Texas Attorney General under Government Code, §573.082.

Source: The provisions of this §100.1116 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1131. Conflicts of Interest and Board Member Compensation; Exception.

(a) Process governing conflicts of interest. A member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131-100.1135 of this division.

(b) Compensated board members generally prohibited. Except as provided by this section, a person who receives compensation or remuneration from a nonprofit corporation holding an open-enrollment charter may not serve on the governing body of the charter holder. As used in this subsection, compensation or remuneration includes, without limitation:

(1) salary, bonuses, benefits, or other compensation received by the local public official pursuant to an employment relationship;

(2) payment of or reimbursement for personal expenses of the local public official, excluding reimbursement for allowable travel expenses;

(3) credit extended to the local public official by the charter holder or charter school;

(4) the local public official's personal use of property paid for by the charter holder or charter school;

(5) in-kind transfers of property to the local public official; and

(6) all other forms of compensation or remuneration to the local public official.

(c) Satisfactory student performance. If each charter school operated by a charter holder has received a satisfactory rating, as defined by §100.1022(b)(2)(B) of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter), for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(d) Existing charter holders partly grandfathered. If a charter holder has operated at least one charter school which reported attendance that occurred prior to September 2, 2001, but no charter school operated by the charter holder has received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder in accordance with subsection (f) of this section.

(1) For purposes of this subsection, a "substantive rating" is defined by §100.1022(b)(2).

(2) For purposes of this subsection, a charter school has a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years if:

(A) the charter school has received two consecutive substantive ratings, and neither rating meets the criteria set forth in subsection (c) of this section; or

(B) the charter school has received three substantive ratings.

(3) If a charter holder operates charter schools that have received a sufficient number of substantive ratings to determine whether it has received a satisfactory rating for at least two of the preceding three school years, but also operates charter schools that have not received a sufficient number of substantive ratings, then its eligibility to comply with subsection (f) of this section is determined by

applying the criteria in subsection (c) of this section only to those schools with a sufficient number of substantive ratings.

(e) No annual ratings assigned. For purposes of this section, two substantive ratings are "consecutive" as determined by §100.1022(b)(2).

(f) Exception to prohibition on compensated board members. Notwithstanding subsection (b) of this section, an employee of a charter school subject to this subsection may serve as a member of the governing body of the charter holder if:

(1) only employees of the charter school, and not employees of the charter holder, serve on the governing body of the charter holder;

(2) the only compensation or remuneration received by the board member is salary, bonuses, benefits, or other compensation received pursuant to the employment relationship with the charter school;

(3) charter school employees do not constitute a quorum of the governing body or any committee of the governing body; and

(4) all charter school employees serving on the governing body comply with all conflict of interest provisions referenced in subsection (a) of this section.

(g) Accounting for interested transactions. Notwithstanding compliance with this section, a charter holder shall comply fully with the requirements of §100.1047(f) of this title (relating to Accounting for State Funds).

(h) Compliance following ratings change. Notwithstanding this section, a charter holder must comply with the prohibition on compensated board members described in subsection (b) of this section within 30 days after it is assigned a rating that causes it to become ineligible for the exception provided by subsection (f) of this section.

(1) Subject to paragraph (2) of this subsection, if a ratings appeal is provided in the applicable accountability manual, and if a timely and sufficient appeal is filed by the charter holder, then the time for compliance provided by this subsection is extended until 30 days after the date on which the appeal is finally determined.

(2) Notwithstanding any other deadline, an appeal is "timely" for purposes of the extension of time provided in paragraph (1) of this subsection if it is received by the appeals deadline specified in the relevant Accountability Manual, or under the alternative education accountability ratings procedures, if applicable.

Source: The provisions of this §100.1131 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1132. General Conflict of Interest Provisions.

(a) Definitions. The following words and terms, when used in this division, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Local public official--a member of the governing body of a charter holder, a member of the governing body of a charter school, or an officer of a charter school.

(2) Business entity--a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, agency, political subdivision, or any other entity recognized by law.

(b) Substantial interest in business entity. For purposes of this chapter, a person has a substantial interest in a business entity if:

(1) the person owns 10% or more of the voting stock or shares of the business entity or owns either 10% or more or $15,000 or more of the fair market value of the business entity; or

(2) funds received by the person from the business entity exceed 10% of the person's gross income for the previous year.

(c) Substantial interest in real estate. A person has a substantial interest in real estate if the interest is an equitable or legal ownership with a fair market value of $2,500 or more.

(d) Substantial interest through a relative. A local public official is considered to have a substantial interest under this section if a person related to the official in the third degree by consanguinity or affinity, as determined under Government Code, §§573.021-573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity), has a substantial interest under this section.

Source: The provisions of this §100.1132 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1133. Conflicts Requiring Affidavit and Abstention From Voting.

(a) Affidavit and abstention required. If a local public official has a substantial interest in a business entity or in real property, the official shall file, before a vote, decision, or other action on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

(1) in the case of a substantial interest in a business entity, the vote, decision, or other action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or

(2) in the case of a substantial interest in real property, it is reasonably foreseeable that a vote, decision, or other action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

(b) Affidavit filed. The affidavit described in subsection (a) of this section must be filed with the official recordkeeper of the charter holder.

(c) Abstention excused. If a local public official is required to file and does file an affidavit under subsection (a) of this section, the local public official is not required to abstain from further participation in the matter requiring the affidavit if:

(1) the local public official is a member of the governing body of the charter holder or the charter school, and

(2) a majority of the members of the governing body of which the local public official is a member is composed of persons who are likewise required to file and who do file affidavits of similar interests on the same official action.

Source: The provisions of this §100.1133 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1134. Conflicts Requiring Separate Vote on Budget.

(a) Separate vote required. The governing body of a charter holder shall take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a member of the governing body of the charter holder has a substantial interest.

(b) Abstention required. Except as provided by §100.1133(c) of this title (relating to Conflicts Requiring Affidavit and Abstention From Voting), the affected member may not participate in that separate vote. The member may vote on a final budget if:

(1) the member has complied with this chapter; and

(2) the matter in which the member is concerned has been resolved.

Source: The provisions of this §100.1134 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1135. Acting as Surety and other Conflicts; Criminal Penalties.

(a) Acting as surety. A local public official commits a criminal offense if the official knowingly:

(1) acts as surety for a business entity that has work, business, or a contract with the charter holder; or

(2) acts as surety on any official bond required of a member of the governing body or charter school, or of an officer of the charter school.

(b) Knowing violation of requirements. A local public official commits a criminal offense if the official knowingly violates Local Government Code, §171.004, as applied by these rules.

Source: The provisions of this §100.1135 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1151. Criminal History; Restrictions on Serving.

(a) Restrictions on serving. A person may not serve as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, if the person has been convicted of:

(1) a misdemeanor involving moral turpitude or any felony;

(2) an offense listed in Texas Education Code (TEC), §37.007(a); or

(3) an offense listed in Code of Criminal Procedure, Article 62.01(5).

(b) Required criminal history checks--generally. Before the person begins service, and every third year thereafter, a charter holder shall obtain from the Texas Department of Public Safety (DPS) all criminal history record information that relates to:

(1) an employee or a person whom the charter school intends to employ in any capacity, or whom the charter holder intends to employ in any capacity relating to its charter school activities;

(2) a member of the governing body of the charter holder or charter school or a person who has agreed to serve as a member of the governing body of the charter holder or charter school; and

(3) a person who files, in writing, an intention to serve as a volunteer at the charter school, if the duties are or will be performed on school property or at another location where students are regularly present.

(c) Required criminal history checks--transportation. Except as provided by paragraphs (3) and (4) of this subsection, a charter holder that contracts with a person for transportation services shall obtain from the DPS all criminal history record information that relates to a person employed by the person as a bus driver or a person the person intends to employ as a bus driver.

(1) Except as provided by paragraphs (3) and (4) of this subsection, a person or management company that contracts with a charter holder to provide transportation services shall submit to the charter holder the name and other identification data required to obtain criminal history record information of each person described by this section.

(2) If the charter holder obtains information that a person described by this section has been convicted of a felony or a misdemeanor involving moral turpitude, the charter holder shall inform the chief personnel officer of the person or management company with whom the charter holder has contracted, and the person or management company may not employ that person to drive a bus on which students are transported without the permission of the governing body of the charter holder.

(3) A commercial transportation company that contracts with a charter holder to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person employed by the commercial transportation company, or to a person it intends to employ, as a bus driver, bus monitor, or bus aide.

(4) If the commercial transportation company obtains information that a person employed or to be employed by the company has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the governing body of the charter holder. Paragraphs (1) and (2) of this subsection do not apply if information is obtained as provided by paragraph (3) of this subsection.

(d) Permissive criminal history checks. A charter holder may obtain from any law enforcement or criminal justice agency, including the DPS, all criminal history record information that relates to:

(1) a volunteer, employee, or member of a governing body under subsection (b) of this section;

(2) an employee of or an applicant for employment with a public or commercial transportation company that contracts with the charter holder to provide transportation services if the employee drives or the applicant will drive a bus in which students are transported or is employed or is seeking employment as a bus monitor or bus aide on a bus in which students are transported, under subsection (c) of this section; and

(3) an employee of or applicant for employment by a management company or other person that contracts with the charter school to provide management services or other services, if:

(A) the employee or applicant has or will have continuing duties related to the contracted services; and

(B) the duties are or will be performed on school property or at another location where students are regularly present.

(e) Entitlement to criminal history checks. A charter holder is entitled to obtain, no more than twice each year, from the DPS all criminal history record information maintained by the DPS that the charter holder is required or authorized to obtain under this section.

(f) Reduced fees for criminal history checks. In accordance with Government Code, §411.097, if a regional education service center or commercial transportation company that receives criminal history record information from the DPS under this section requests the information by providing to the DPS a list, including the name, date of birth, and any other personal descriptive information required by the DPS for each person, through electronic means, magnetic tape, or disk, as specified by the DPS, the DPS may not charge the service center or commercial transportation company more than the lesser of:

(1) the DPS's cost for providing the information; or

(2) the amount prescribed by another law.

(g) Disclosure prohibited. Criminal history record information obtained by a charter holder under this section may not be released or disclosed to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification (SBEC), or the chief personnel officer of the transportation company, if the information is obtained under subsection (c) of this section.

(h) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.

(i) Teaching certificate applicant or holder. A charter holder shall promptly notify the SBEC in writing if it obtains or has knowledge of information showing that an applicant for or holder of a certificate issued under TEC, Chapter 21, Subchapter B, has a reported criminal history.

(j) Implementation schedule and transition. Notwithstanding this section:

(1) beginning September 1, 2001, a charter holder shall obtain, in compliance with this section, criminal history record information relating to each person identified in subsections (b) and (c) of this section; and

(2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and

(C) the person does not perform, and is not charged with performing, any charter school functions.

Source: The provisions of this §100.1151 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1153. Substantial Interest in Management Company; Restrictions on Serving.

(a) Restriction on serving. A person may not serve as a member of the governing body of a charter holder as a member of the governing body of a charter school, or as an officer or employee of a charter school, if the person has a substantial interest in a management company that has a contract for management services with the charter holder or a charter school. A person has a substantial interest in a management company if the person:

(1) has a controlling interest in the company;

(2) owns more than 10% of the voting interest in the company;

(3) owns more than $25,000 of the fair market value of the company;

(4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the company;

(5) is a member of the board of directors or other governing body of the company;

(6) serves as an elected officer of the company; or

(7) is an employee of the company.

(b) Management company as officer. Notwithstanding subsection (a) of this section, a person who has a substantial interest in a management company may provide management services that include the functions of a central administration officer, campus administration officer, or business manager, if:

(1) the person provides all management services under a contract for management services;

(2) the person provides all management services as an agent of the management company;

(3) the person does not serve as an employee or volunteer of the charter holder or charter school, and does not otherwise serve as a contractor of the charter holder or charter school;

(4) the person does not serve as a member of the governing body of the charter school or charter holder; and

(5) the management services provided by the person do not include powers or duties that are non-delegable under §100.1101 of this title (relating to Delegation of Powers and Duties).

(c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State Funds), all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a).

(d) Removal by charter holder. If a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, the charter holder shall remove the individual from such position immediately.

(1) The removal must be made in accordance with the removal provisions in the articles of incorporation and bylaws of the corporation, if applicable, the terms of the open-enrollment charter, any applicable local policies, and state and federal law.

(2) The governing body of the charter holder may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of a person if the person is prohibited by this section from serving in the capacity for which compensation is due.

(e) Implementation schedule and transition. Notwithstanding this section:

(1) beginning with the fiscal year in which September 1, 2001, falls, a charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title, all persons listed in subsection (a) of this section with a substantial interest in a management company as defined by subsection (a); and

(2) if a person is prohibited by this section from serving as a member of the governing body of a charter holder, as a member of the governing body of a charter school, or as an officer or employee of a charter school, and if removing such person would violate an employment or other written contract that was executed prior to September 1, 2001, then the employment or other contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the person under the employment or other contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) the terms of the employment or other contract have not been renewed, modified, or otherwise altered since September 1, 2001; and

(C) the person does not perform, and is not charged with performing, any charter school functions.

Source: The provisions of this §100.1153 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1155. Procedures for Prohibiting a Management Contract.

(a) Action prohibiting management contract. The commissioner of education may prohibit, deny renewal of, suspend, or revoke a contract between an open-enrollment charter school and a management company providing management services to the school if the commissioner determines that the management company has:

(1) failed to provide educational or related services in compliance with the company's contractual or other legal obligation to any open-enrollment charter school in Texas or to any other similar school in another state;

(2) failed to protect the health, safety, or welfare of the students enrolled at an open-enrollment charter school served by the company;

(3) violated this subchapter or a rule adopted under this subchapter; or

(4) otherwise failed to comply with any contractual or other legal obligation to provide services to the school.

(b) Procedures for making determination. A determination under subsection (a) of this section shall be made under Chapter 97, Subchapter DD, of this title (relating to Investigative Reports, Sanctions, and Record Reviews). In making this determination:

(1) the commissioner may rely on one or more of the following:

(A) any finding or determination made by a court or other tribunal of competent jurisdiction, whether in Texas or in any other state, or by the United States, if the order or judgment is final under the rules governing such proceedings;

(B) any finding or determination made by the commissioner under §§100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter), 100.1023 of this title (relating to Intervention Based on Charter Violations), 100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), 100.1027 of this title (relating to Accountability Ratings and Sanctions), or 100.1031 of this title (relating to Charter Renewal), if the finding or determination is final under the rules governing such proceedings; or

(C) any finding or determination made by a court in an action for declaratory judgment or other action pertaining to the commissioner's determination under this section, if the order or judgment is final under the rules governing such proceedings; and

(2) to the extent that a finding or determination under paragraph (1) of this subsection pertains to a charter holder or charter school served by a management company, but does not directly pertain to the management company, the proceedings under Chapter 97, Subchapter DD, shall be limited to the question whether the relevant contract for management services creates a legal duty for the management company to provide services to the charter school in areas of performance that are the subject of the finding or determination against the charter holder or charter school.

(c) Review of proposed management contract. At least 30 calendar days prior to any performance or payments under the contract, a charter holder must file a copy of each contract for management services, and each amendment, renewal or extension thereto, with the Texas Education Agency (TEA) division responsible for legal services for review under this section.

(1) A contract for management services is unenforceable, void, and of no force or effect until the expiration of 30 calendar days following the date on which it is filed with the TEA division responsible for legal services for review under this section. In addition, performance under the contract prior to the expiration of 30 calendar days following the date on which it is filed for review under this section is a material charter violation.

(2) Following the expiration of 30 calendar days after it is filed with the TEA division responsible for legal services for review under this section, if the commissioner takes no action under Chapter 97, Subchapter DD, within 30 days, then the parties may begin performance under the contract.

(3) The absence of action by the commissioner under Chapter 97, Subchapter DD, does not constitute a finding of compliance under this section, nor waive or in any other manner prevent the commissioner from acting at a later time under this section.

(d) Implementation schedule and transition.

(1) Notwithstanding this section:

(A) a copy of a contract for management services in effect during school year 2001-2002 shall be filed with the TEA division responsible for legal services on or before the expiration of 30 calendar days following the effective date of this section; and

(B) if a contract for management services is timely filed with the TEA division responsible for legal services for review under subsection (d)(1)(A) of this section, then the parties may continue or immediately begin performance under the contract unless or until the commissioner takes action under Chapter 97, Subchapter DD.

(2) Notwithstanding this section, if an affected contract for management services was executed prior to September 1, 2001, then the management contract may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds; and

(B) the terms of the management contract have not been renewed, modified, or otherwise altered since September 1, 2001.

Source: The provisions of this §100.1155 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective June 22, 2009, 34 TexReg 1155.

§100.1157. Loan from Management Company Prohibited.

(a) Loan prohibited. Neither a charter holder or a charter school may accept any loan or credit from, or incur any debt to, a management company that has a contract to provide management services to:

(1) that charter school; or

(2) another charter school that operates under a charter granted to the charter holder.

(b) Management contract prohibited. A charter holder or charter school that accepts a loan or credit from, or incurs a debt to, a management company, may not enter into a contract with that management company to provide management services to the school.

(c) Audit disclosure. A charter holder shall separately disclose, in its annual audit report required by §100.1047(c) of this title (relating to Accounting for State Funds), all loans or credit received or indebtedness incurred by the charter holder or the charter school to any person or entity providing management services to the charter school or another charter school that operates under a charter granted to the charter holder.

(d) Agency review. Compliance with this section shall be reviewed in conjunction with the review required by §100.1155(c) of this title (relating to Procedures for Prohibiting a Management Contract).

(e) Implementation schedule and transition. Notwithstanding this subsection, if the affected management contract was executed prior to September 1, 2001, and the affected promissory note or other debt instrument was also executed prior to September 1, 2001, then:

(1) both the management contract and the indebtedness may continue in effect past September 1, 2001, if each of the following conditions is met:

(A) no state funds are used to pay any amounts due the management company under the management contract, and all such amounts are paid from a clearly identified source of non-state funds;

(B) no state funds are used to pay any amounts due the management company under the promissory note or other debt instrument, and all such amounts are paid from a clearly identified source of non-state funds; and

(C) the terms of the management contract and the promissory note or other debt instrument have not been renewed, modified, or otherwise altered since September 1, 2001; or

(2) the indebtedness may be refinanced after September 1, 2001, and the management contract may be renegotiated after September 1, 2001, if each of the following conditions is met:

(A) on or before September 1, 2002, the charter holder and the management company shall file with the TEA division responsible for legal services the following:

(i) a copy of each and every contract, promissory note, debt instrument, agreement or document executed, or in effect, at any time on or after September 1, 2001, between or among: the charter holder or any of its charter schools or

management companies; the management company or any of its subsidiaries, parents, affiliates, or related companies; and the lender or any of its subsidiaries, parents, affiliates, or related companies; and

(ii) additional documents as requested by the TEA division responsible for legal services during its review under this subsection;

(B) the documents filed under subparagraph (A) of this paragraph shall establish that, upon approval by the TEA division responsible for legal services, the management company will not be the lender of any funds, but will merely act as the guarantor or co-signer on loans totaling an amount equal to or less than the indebtedness owed by the charter holder to the management company prior to September 1, 2001;

(C) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to prevent, deter, or discourage the charter holder from taking any action respecting the management company under its contract for management services;

(D) the documents filed under subparagraph (A) of this paragraph shall establish that the term of the contract for management services between the management company and the charter holder may not extend beyond the term of the current contract for charter between the charter holder and the State Board of Education, and that the contract for management services is renewable beyond the current term of the open-enrollment charter only through negotiation and execution of a new contract for management services;

(E) the documents filed under subparagraph (A) of this paragraph shall establish that the management company may not take any action in its capacity as guarantor or co-signer to coerce, influence, or encourage the charter holder to negotiate or execute another contract for management services under subparagraph (D) of this paragraph; and

(F) the TEA division responsible for legal services finds, in writing, that the documents filed under subparagraph (A) of this paragraph meet the criteria specified in paragraph (2) of this subsection, and finds that any compliance problems concerning the governance and the financial or other management of the charter holder do not prevent the approval of the arrangements reflected in the documents.

Source: The provisions of this §100.1157 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1159. Public Records Maintained by Management Company; Contract Provision.

(a) Maintenance of records. A management company that provides, or did provide, any management services to a charter holder or charter school shall maintain, as required by §100.1203 of this title (relating to Records Management), all records related to its management services separately from any other records of the management company.

(b) Contract provision. Any contract, including a contract renewal, between a charter holder or charter school and a management company for management services to the charter school must contain a contract provision expressly requiring the management company to comply with subsection (a) of this section.

Source: The provisions of this §100.1159 adopted to be effective April 18, 2002, 27 TexReg 3140.

Division 6. Charter School Operations

§100.1201. Voluntary Participation in State Programs.

A charter school may voluntarily participate in any of the following state programs available to school districts, if the commissioner of education approves an amendment to the open-enrollment charter describing the manner in which the charter school will comply with each term of the program:

(1) a program under Local Government Code, Chapter 271, Subchapter D, requiring the State Purchasing and General Services Commission to perform purchasing services for school districts;

(2) a program under Local Government Code, Chapter 271, Subchapter F, permitting a school district to participate in a cooperative purchasing program with a school district, local government, or local cooperative organization;

(3) to the extent permitted by federal law, a program under Local Government Code, Chapter 271, Subchapter G, permitting a school district to purchase goods or services available under federal supply schedules of the United States General Services Administration;

(4) a program under Local Government Code, Chapter 271, Subchapter E, permitting a school district to enter into an intercept agreement with the Texas Bond Review Board and the Comptroller of Public Accounts to increase its credit rating;

(5) a program under Texas Education Code (TEC), §29.909, permitting a school district to offer an electronic course to students enrolled in the district or to students enrolled in another district, as provided by an agreement between the districts; and

(6) a program under TEC, §29.1531, permitting a school district to offer on a tuition basis, or use school district funds to provide, an additional half-day of prekindergarten classes to children eligible for classes under TEC, §29.153, or half-day and full-day prekindergarten classes to children not eligible for classes under TEC, §29.153.

Source: The provisions of this §100.1201 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1203. Records Management.

(a) Retention of government records. With respect to its operation of a charter school, a charter holder is considered to be a local government for purposes of Title 6, Subtitle C, Local Government Code, and Government Code, Chapter 441, Subchapter J.

(1) Government records. Records of a charter school and records of a charter holder that relate to a charter school are government records for all purposes under state law.

(2) Retention and destruction of records. Any requirement in Title 6, Subtitle C, Local Government Code, or Government Code, Chapter 441, Subchapter J, that applies to a school district, the board of trustees of a school district, or an officer or employee of a school district applies to a charter school, the governing body of its charter holder, the governing body of the charter school, and each officer and employee of the charter school.

(3) Maintained within this state. Records of a charter school shall be maintained physically within the State of Texas at all times, except that records stored electronically in accordance with the requirements of Local Government Code, Chapter 205, may be maintained outside the State of Texas if such records remain accessible from within the State of Texas during normal business hours. For purposes of this paragraph, the records of a charter school shall mean the records indicated by the Financial Accountability System Resource Guide, adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide), or its successor, or by the laws and rules summarized therein. The records of a management company related to the charter school may be audited under §100.1051(b) of this title (relating to Audit by Commissioner; Records in the Possession of a Management Company), but are not subject to this paragraph.

(4) Records of former charter holder. Notwithstanding paragraph 2 of this subsection, and notwithstanding Local Government Code, §201.007, the records of a charter holder that ceases to operate a charter school shall be transferred in the manner prescribed by the commissioner of education under subsection (b) of this section.

(b) Transfer of former charter holder records. The records of a charter holder that ceases to operate a charter school shall be transferred as directed by the commissioner to a custodian or custodians designated by the commissioner. The commissioner may designate any appropriate entity to serve as custodian, including the Texas Education Agency, a regional education service center, or a school district. In designating a custodian, the commissioner shall ensure that the transferred records, including student and personnel records, are transferred to a custodian capable of maintaining the records; making the records readily accessible to students, parents, former school employees, and other persons entitled to access; and complying with applicable state or federal law restricting access to the records.

(c) Enforcement. If a charter holder, a charter school, or an officer or employee of a charter school refuses to transfer school records as directed by the commissioner under subsection (b) of this section, the commissioner may ask the Attorney General to petition a court for recovery of the records. If the court grants the petition, the court shall award attorney's fees and court costs to the state.

Source: The provisions of this §100.1203 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1205. Procurement of Professional Services.

(a) Applicability of section. This section applies to a charter holder unless alternative procedures for selecting a provider of professional services or a group or association of providers, or awarding a contract for professional services, have been approved by the State Board of Education under §100.103 of this title (relating to Optional Open-Enrollment Charter Provisions for Contracting and Purchasing) and the open-enrollment charter has been amended by the commissioner of education to adopt the approved procedures.

(b) Selecting professional services. A charter holder shall select a provider of professional services or a group or association of providers, and award a contract for professional services, in accordance with Government Code, Chapter 2254, Subchapter A. A requirement in that subchapter that applies to a school district or the board of trustees of a school district applies to a charter school, the governing body of a charter holder, or the governing body of a charter school.

(c) Definition. For purposes of this section, professional services are services:

(1) within the scope of the practice, as defined by state law, of accounting; architecture; landscape architecture; land surveying; medicine; optometry; professional engineering; real estate appraising; or professional nursing; or

(2) provided in connection with the professional employment or practice of a person who is licensed or registered as a certified public accountant; an architect; a landscape architect; a land surveyor; a physician, including a surgeon; an optometrist; a professional engineer; a state certified or state licensed real estate appraiser; or a registered nurse.

(d) Implementation schedule and transition. Government Code, Chapter 2254, Subchapter A, does not apply to a contract executed prior to September 1, 2001.

Source: The provisions of this §100.1205 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1207. Student Admission.

(a) Application deadline. For admission to a charter school, a charter holder shall:

(1) require the applicant to complete and submit an application not later than a reasonable deadline the charter holder establishes; and

(2) on receipt of more acceptable applications for admission under this section than available positions in the school:

(A) except as permitted by subsection (b) of this section, fill the available positions by lottery; or

(B) subject to subsection (c) of this section, fill the available positions in the order in which all timely applications were received.

(b) Lottery exemption. The charter holder may exempt students from the lottery required by subsection (a) of this section to the extent this is consistent with the definition of a "public charter school" under the No Child Left Behind Act of 2001, P.L. 107-110, §5210 (NCLB), as interpreted by the United States Department of Education (USDE).

(c) Newspaper publication. To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, a charter holder may fill applications for admission under subsection (a)(2)(B) of this section only if it published a notice of the opportunity to apply for admission to the charter school. A notice published under this subsection must:

(1) state the application deadline; and

(2) be published in a newspaper of general circulation in the community in which the school is located not later than the seventh day before the application deadline.

(d) Student admission and enrollment. Except as provided by this section, the governing body of the charter holder must adopt a student admission and enrollment policy that:

(1) prohibits discrimination on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend under state law; and

(2) specifies any type of non-discriminatory enrollment criteria to be used at each charter school operated by the charter holder. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under Texas Education Code (TEC), Chapter 37, Subchapter A, documented as provided by local policy.

(e) Student admission and enrollment at charter schools specializing in performing arts. In accordance with the TEC, §12.111 and §12.1171, a charter school specializing in performing arts, as defined in this subsection, may adopt a student admission and enrollment policy that complies with this subsection in lieu of compliance with subsections (a)-(d) of this section.

(1) A charter school specializing in performing arts as used in this subsection means a school whose open-enrollment charter includes an educational program that, in addition to the required academic curriculum, has an emphasis in one or more of the performing arts, which include music, theatre, and dance. A program with an emphasis in the performing arts may include the following components:

(A) a core academic curriculum that is integrated with performing arts instruction;

(B) a wider array of performing arts courses than are typically offered at public schools;

(C) frequent opportunities for students to demonstrate their artistic talents;

(D) cooperative programs with other organizations or individuals in the performing arts community; or

(E) other innovative methods for offering performing arts learning opportunities.

(2) To the extent this is consistent with the definition of a "public charter school" under the NCLB, as interpreted by the USDE, the governing body of a charter holder that operates a charter school specializing in performing arts may adopt an admission policy that requires a student to demonstrate an interest or ability in the performing arts or to audition for admission to the school.

(3) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that prohibits discrimination on the

basis of sex, national origin, ethnicity, religion, disability, academic or athletic ability, or the district the child would otherwise attend under state law.

(4) The governing body of a charter holder that operates a charter school specializing in performing arts must adopt a student admission and enrollment policy that specifies any type of non-discriminatory enrollment criteria to be used at the charter school. Such non-discriminatory enrollment criteria may make the student ineligible for enrollment based on a history of a criminal offense, a juvenile court adjudication, or discipline problems under TEC, Chapter 37, Subchapter A, documented as provided by local policy.

(f) Maximum enrollment; transfers. Total enrollment shall not exceed the maximum number of students approved in the open-enrollment charter. Students who reside outside the geographic boundaries stated in the open-enrollment charter shall not be admitted to the charter school until all eligible applicants who reside within the boundaries and have submitted a timely application have been enrolled. Then, if the open-enrollment charter so provides, the charter holder may admit transfer students to the charter school in accordance with the terms of the open-enrollment charter.

Source: The provisions of this §100.1207 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911; amended to be effective November 9, 2006, 31 TexReg 9031.

§100.1209. Municipal Ordinances.

(a) Municipal ordinances apply. A charter holder is subject to federal and state laws and rules governing public schools and to zoning and all other municipal ordinances governing public schools.

(b) When zoning ordinances do not apply. Notwithstanding subsection (a) of this section, a charter school site located in whole or in part in a municipality with a population of 20,000 or less is not subject to a municipal zoning ordinance governing public schools.

Source: The provisions of this §100.1209 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1211. Students.

(a) Student performance. Notwithstanding any provision in an open-enrollment charter, acceptable student performance under Texas Education Code, §12.111(3), shall at a minimum require student performance meeting the standards for an "Acceptable" rating as determined by the commissioner of education under the relevant Accountability Manual, or under the alternative education accountability rating procedures, if applicable.

(b) Reporting child abuse or neglect. A charter holder shall adopt and disseminate to all charter school staff and volunteers a policy governing child abuse reports required by Texas Family Code, Chapter 261. The policy shall require that employees, volunteers, or agents of the charter holder and the charter school report child abuse or neglect directly to an appropriate entity listed in Texas Family Code, Chapter 261.

(c) Notice of expulsion or withdrawal. A charter holder shall notify the school district in which the student resides within three business days of any action expelling or withdrawing a student from the charter school.

(d) Data reporting. A charter holder shall report timely and accurate information required by the commissioner to the Texas Education Agency, except as expressly waived by the commissioner.

(e) Scholastic year. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates.

(f) Minimum teacher qualifications. To the extent that federal law applies, a person employed as an educator by a charter school must meet requirements of federal law. If federal law defers to state standards, then the standard set out in Texas Education Code, §12.129, applies. A high school equivalency certificate is not a high school diploma for purposes of Texas Education Code, §12.129; however, a person who has a high school equivalency certificate and also holds a college degree satisfies the requirement of Texas Education Code, §12.129.

Source: The provisions of this §100.1211 adopted to be effective April 18, 2002, 27 TexReg 3140; amended to be effective April 6, 2005, 30 TexReg 1911.

§100.1213. Failure to Operate.

(a) Continuous operation. Except as provided in this section, a charter holder shall operate the program as described in the open-enrollment charter for the full school term described in the open-enrollment charter during each year that the open-enrollment charter is in effect.

(b) Dormant open-enrollment charter. A charter holder may not suspend operation for longer than 21 days without an amendment to its open-enrollment charter, adopted by the commissioner of education, stating that the charter school is dormant and setting forth the date on which operations shall resume and any applicable conditions for resuming operation that may be imposed by the commissioner.

(c) Written notice. A charter holder may not suspend operation of the charter school for a period of more than three days without mailing written notice to the parent or guardian of each student and filing such notice with the Texas Education Agency (TEA) division responsible for charter schools at least 14 days in advance of the suspension; except that in an emergency the charter holder shall notify the TEA division responsible for charter schools by telephone or other means within 24 hours of suspending operations.

(d) Abandonment. Suspension of operations in violation of this section constitutes abandonment of the open-enrollment charter.

Source: The provisions of this §100.1213 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1215. Instructional Facilities.

(a) Right to occupy facilities. A charter holder shall have and maintain throughout the term of the open-enrollment charter legally enforceable lease agreements, titles, or other legal instruments conferring on it the right to occupy and use one or more facilities suitable for use as the classrooms and other instructional facilities described in the open-enrollment charter.

(1) The enforceable legal instruments must confer on the charter holder the right to occupy and use suitable instructional facilities for the entire school year adopted by the charter school.

(2) During any period of dormancy, an amendment granting the period of dormancy may waive this requirement.

(b) Occupancy certificate. A charter holder shall comply with all state and local laws and ordinances applicable to the occupation and use of the facilities it occupies, including any special standards applicable to the instruction of public school students in the facilities.

(1) A charter school shall not change the site of its instructional facilities or administrative offices from those listed in the open-enrollment charter without prior approval of the commissioner of education through an amendment to the open-enrollment charter.

(2) When approved for a new site under paragraph (1) of this subsection, the charter holder shall, prior to commencing any operations at that site, file with the Texas Education Agency division responsible for charter schools a certificate of occupancy or equivalent certificate appropriate for the proposed use of the facility at the new site.

Source: The provisions of this §100.1215 adopted to be effective April 18, 2002, 27 TexReg 3140.

§100.1217. Eligible Entity; Change in Status.

A charter holder shall take and refrain from all acts necessary to maintain its status as an "eligible entity" within the meaning of Texas Education Code, §12.101(a), and shall notify the commissioner of education immediately in writing of any change in such status.

Source: The provisions of this §100.1217 adopted to be effective April 18, 2002, 27 TexReg 3140.