ATTACHMENT II
Text of Adopted Amendments to 19 TAC

Chapter 97. Planning and Accountability

Subchapter DD. Investigative Reports, Sanctions, and Record Reviews

§97.1031. Preliminary Investigative Report.

(a) Findings resulting from an investigation under Texas Education Code (TEC), Chapter 39, Subchapter C [~~D~~] , must be presented in a preliminary investigative report.

(1) The following are not findings resulting from an investigation under TEC, Chapter 39, Subchapter C [~~D~~] , and need not be presented in a preliminary investigative report:

(A) an academic accountability rating assigned under §97.1001 of this title (relating to Accountability Rating System);

(B) a financial accountability rating assigned under §109.1002 of this title (relating to Financial Accountability Ratings); or

(C) a determination of adequate yearly progress under §97.1004 of this title (relating to Adequate Yearly Progress).

(2) A rating or determination initially issued under paragraph (1) of this subsection may be lowered or changed as a result of an investigation under TEC, Chapter 39, Subchapter C [~~D~~] . In this event, the new rating or determination is a finding resulting from an investigation and must be presented in a preliminary investigative report.

(b) Before issuing a final investigative report, the Texas Education Agency (TEA) must notify the person whom the TEA proposes to find has violated a law, rule, or policy. The notice must be in writing and must:

(1) include a copy of a preliminary investigative report finding that the person has violated a law, rule, or policy;

(2) state the procedures for obtaining an informal review of the findings in the preliminary investigative report under TEC, §39.058(b) [~~§39.076(b)~~] , including the name and department of the person to whom the request may be addressed; and

(3) set a deadline [~~, which shall not be less than ten calendar days from the date of mailing of the preliminary investigative report,~~] for requesting an informal review of such findings.

§97.1033. Informal Review of Preliminary Investigative Report; Final Investigative Report.

(a) (No change.)

(b) A written request for informal review of the preliminary investigative report must be addressed to the Texas Education Agency (TEA) representative identified in the notice under §97.1031(b)(2) of this title (relating to Preliminary Investigative Report). The written request must be received by the TEA representative on or before the deadline set under [~~specified in~~] §97.1031(b)(3) of this title.

(c)-(f) (No change.)

§97.1035. Procedures for Accreditation Sanctions.

(a) The commissioner of education shall notify the school district or open-enrollment charter school in writing of a sanction imposed under Subchapter EE of this chapter (relating to Accreditation Status, Standards, and Sanctions) , §100.1023 of this title (relating to Intervention Based on Charter Violations), or [~~and~~] this section. The notice must state the basis for finding that the district or open-enrollment charter school does not satisfy the applicable [~~accreditation~~] criteria as indicated in Subchapter EE of this chapter or §100.1023 of this title . The finding(s) may be made in the notice or in a final investigative report, or based on a final investigative report.

(b)-(c) (No change.)

(d) The commissioner shall annually review a sanction imposed under subsection (a) of this section and shall increase the sanction, as required by TEC, §39.108 [~~§39.133~~] . The commissioner shall quarterly review the need for a conservator or a management team imposed under Subchapter EE of this chapter, as required by TEC, §39.111 [~~§39.135~~] . If reviews are required under both TEC, §39.108 [~~§39.133~~] and §39.111 [~~§39.135~~] , a quarterly review under TEC, §39.111 [~~§39.135~~] , may satisfy the annual review under TEC, §39.108 [~~§39.133~~] . An annual or quarterly review is not subject to the requirements of this section or §97.1057 of this title.

§97.1037. Record Review of Certain Decisions.

(a) Applicability. This section applies only to:

(1) a notice under §97.1035 of this title (relating to Procedures for Accreditation Sanctions) proposing to order:

(A) alternative management of a school district campus or a charter school campus under Texas Education Code (TEC), §39.107 [~~§39.1327~~] ;

(B) closure of a school district or an open-enrollment charter school under TEC, §§39.052 [~~§§39.071(c)~~] , 39.102 [~~39.131(a)~~] , or 39.104 [~~39.1321(c)~~] ; or

(C) closure of a school district campus or charter school campus under TEC, §39.107 [~~§39.1324 or §39.1327~~] ;

(2) assignment under §97.1055 of this title (relating to Accreditation Status) of an accreditation status of Accredited-Warned or Accredited-Probation;

(3) assignment of a board of managers under TEC, §39.112 [~~§39.136~~] and §39.102 [~~§39.131(a)(9)~~] , or TEC, §39.107 [~~§39.1324(c)~~] ; or

(4) request for review of an over-allocation from an open-enrollment charter school granted by the commissioner of education under §100.1041(e) of this title (relating to State Funding) . [~~; or~~]

[~~(5) request for record review of a charter school accreditation finding under §97.1055(g) of this title from an open-enrollment charter school.~~]

(b) Notice. Notice of a proposed order subject to this section shall be made as provided by §97.1035 [~~§97.1035(d)~~] of this title and this section.

(1)-(3) (No change.)

(c)-(d) (No change.)

(e) Record review.

(1) The TEA representative shall meet with the superintendent and/or representatives of the district or charter at the TEA headquarters in Austin, Texas, to receive oral and written information on the proposed order.

(2) The proceedings shall be recorded by audiotape or similar means. The audiotape and all written information presented during the review shall comprise the official record of the proceedings.

(3) The district or charter may have legal counsel present during the proceedings.

(4) The district or charter may present information verbally and in writing, and may rebut information presented by the TEA staff.

(5) The rules of evidence do not apply. Presentations need not follow question-and-answer format.

(6) The district or charter is allowed to [~~may~~] ask questions of the TEA staff. The TEA representative may designate a specific portion of the meeting for this purpose.

(7) The TEA representative may ask questions of any participant directly or through the TEA staff.

(8) The TEA representative shall strictly confine presentations and questions to the matters set forth in the notice, and shall exclude information that is irrelevant, immaterial, or unduly repetitious.

(9) On request, the TEA representative shall include in the record a brief written proffer describing any information excluded under paragraph (8) of this subsection. In lieu of a written proffer, an oral statement may be recorded on a separate audiotape. If the excluded information is in writing, the document shall be identified as excluded and preserved with the record.

(10) The TEA representative may take official notice of generally recognized information within the TEA's area of specialized knowledge.

(A) Each party shall be notified either before or during the record review, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(B) Any participant may present information to rebut information that is officially noticed.

(11) The special skills and knowledge of the TEA representative and staff shall be used in evaluating all information presented during the record review.

(12) At the request of the district or charter, a record review may be conducted by telephone or similar means.

(13) A participant may present information via telephone or similar means during any record review.

(f) (No change.)

(g) No request. If no record review is requested by the deadline specified in subsection (b)(3) of this section, a final order may be issued without record review. An order issued without record review may not be appealed under Chapter 157, Subchapter EE, of this title, or otherwise.

(1) The charter of an open-enrollment charter school is automatically:

(A) revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner of education ordering the [~~school district or~~] charter school closed under this subsection; and

(B) modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under this subsection.

(2) If sanctions are imposed on an open-enrollment charter school under the procedures provided by this subsection, a charter school is not entitled to an additional hearing relating to the modification, placement on probation, revocation, or denial of renewal of a charter as provided by TEC, Chapter 12, Subchapter D.

(h) (No change.)