ATTACHMENT II
Text of Adopted Amendments to 19 TAC

Chapter 109. Budgeting, Accounting, and Auditing

Subchapter AA. Commissioner's Rules Concerning Financial Accountability [~~Rating System~~]

Division 1. Financial Accountability Rating System

§109.1002. Financial Accountability Ratings.

(a) In accordance with Texas Education Code (TEC), Chapter 39, Subchapter D, each school district and open-enrollment charter school must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts and open-enrollment charter schools.

(b) For fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, each financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet," effective May 2003.

Figure: 19 TAC §109.1002(b) (No change.)

(c) For fiscal years 2006-2007 and 2007-2008, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Effective August 2006." On this form, Indicator 13 entitled, "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%?" was phased in over a three-year period, as follows.

Figure: 19 TAC §109.1002(c) (No change.)

(1) For fiscal year 2006-2007, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 55%?"

(2) For fiscal year 2007-2008, the indicator was "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 60%?"

(3) For fiscal year 2008-2009 and beyond, the indicator was repealed.

(d) For [~~Beginning with~~] fiscal years [~~year~~] 2008-2009 and 2009-2010 , the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated March 2010."

Figure: 19 TAC §109.1002(d) (No change.)

(e) For [~~Beginning with~~] fiscal years [~~year~~] 2008-2009 and 2009-2010 , the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "Charter School - School FIRST - Rating Worksheet Dated March 2010."

Figure: 19 TAC §109.1002(e) (No change.)

(f) Beginning with fiscal year 2010-2011, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Dated December [~~July~~] 2010."

Figure: 19 TAC §109.1002(f) [~~Figure: 19 TAC §109.1002(f)~~]

(g) Beginning with fiscal year 2010-2011, the financial accountability rating of an open-enrollment charter school is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST for Charter Schools - Rating Worksheet Dated December [~~July~~] 2010."

Figure: 19 TAC §109.1002(g) [~~Figure: 19 TAC §109.1002(g)~~]

(h) [~~(f)~~] A financial accountability rating by a voluntary association is a local option of the district or open-enrollment charter school, but it does not substitute for a financial accountability rating by the TEA.

(i) [~~(g)~~] The TEA will issue a preliminary financial accountability rating to a school district or open-enrollment charter school within 150 days of its complete financial data being made available to the TEA staff. The financial accountability rating for a particular year will always be based on complete and audited financial data from the previous fiscal year given the availability of the data. For example, the final 2010 School FIRST rating issued in August 2010 is based on complete and audited financial data for the 2008-2009 fiscal year and is the financial accountability rating for the 2009-2010 school year for the purposes of §97.1055 of this title (relating to Accreditation Status).

(1) The issuance of the preliminary or final rating will not be delayed if a district or open-enrollment charter school fails to meet the statutory deadline for submitting the annual financial and compliance report. Instead, a rating of Suspended-Data Quality under §109.1003(a)(5) of this title (relating to Types of Financial Accountability Ratings) will be issued.

(2) A district or open-enrollment charter school may submit a written appeal requesting that the TEA review a preliminary rating if the preliminary rating was based on a data error solely attributable to the TEA's review of the data for any of the indicators.

(A) The TEA office responsible for financial audits must receive the appeal no later than 30 days after the TEA's release of the preliminary rating, and the appeal must include substantial evidence that supports the district's or open-enrollment charter school's position.

(i) Only appeals that would result in a change of the preliminary rating will be considered.

(ii) The TEA staff will review information submitted by the district or open-enrollment charter school to validate the statements made to the extent possible. The TEA will examine all relevant data.

(iii) The TEA staff will prepare a recommendation and forward it to an external panel for review. This review panel will provide independent oversight to the appeals process.

(iv) The external review panel will examine the appeal, supporting documentation, staff research, and the staff recommendation. The review panel will determine its recommendation.

(v) The external review panel's recommendation will be forwarded to the commissioner.

(vi) The commissioner will make a final decision in accordance with the timeline specified in subparagraph (E) of this paragraph.

(B) Appeals received 31 days or more after the TEA issues a preliminary rating will not be considered.

(C) Errors by a district or open-enrollment charter school in recording data or submitting data through the TEA data collection and reporting system do not constitute a valid basis for appealing a preliminary rating.

(D) A district that is the fiscal agent for a shared services [~~service~~] arrangement (SSA) and has the staff of the SSA on its [~~their~~] payroll may appeal the two indicators related to

student-to-teacher and student-to-staff ratios if it fails [~~Indicators 17 and 18 if they fail~~] these indicators due to the number of staff that are SSA staff. The district must provide the TEA with the number of staff that are employees of the district and the number of staff that are part of the SSA. This adjustment should not be a factor for an open-enrollment charter school that is a fiscal agent since the SSA reporting requirements are different than a school district.

(E) If the TEA receives an appeal of a preliminary rating, a final rating will be issued to the school district or open-enrollment charter school no later than 45 days after the appeal has been received by the TEA.

(F) If the TEA does not receive an appeal of a preliminary rating, the preliminary rating automatically becomes a final rating on the 31st day after issuance of the preliminary rating.

(G) A final rating issued by the TEA pursuant to this section may not be appealed under the TEC, §7.057, or any other law or rule.

§109.1003. Types of Financial Accountability Ratings.

(a) The types of ratings school districts or open-enrollment charter schools may receive are as follows.

(1) Superior Achievement. In accordance with the procedures established in §109.1002 of this title (relating to Financial Accountability Ratings), a school district or open-enrollment charter school shall be classified as Superior Achievement if it scores within the applicable range established by the commissioner of education for Superior Achievement.

(2) Above Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Above Standard Achievement if it scores within the applicable range established by the commissioner of education for Above Standard Achievement.

(3) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.

(4) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, a school district or open-enrollment charter school shall be classified as Substandard Achievement if it [~~the district~~] responds negatively to specified indicators or if it [~~the district~~] scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to a district that is assigned a Substandard Achievement rating and may require other corrective actions.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the school district or open-enrollment charter school . The Suspended--Data Quality rating will be assigned until the school district or open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to a school district or open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.

[~~(b) The types of ratings open-enrollment charter schools may receive are as follows.~~]

[~~(1) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.~~]

[~~(2) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, an open-enrollment charter school shall be classified as Substandard Achievement if the open-enrollment charter school responds negatively to specified indicators or if the open-enrollment charter school scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to~~

~~an open-enrollment charter school that is assigned a Substandard Achievement rating and may require other corrective actions.~~]

[~~(3) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the open-enrollment charter school. The Suspended--Data Quality rating will be assigned until the open-enrollment charter school successfully resolves the data quality issues. The commissioner of education may apply sanctions to an open-enrollment charter school that is assigned a Suspended--Data Quality rating and may require other corrective actions.~~]

(b) The commissioner of education may lower a financial accountability rating based on findings of an investigation conducted under Texas Education Code (TEC), Chapter 39.

(c) Unless revised as a result of investigative activities by the commissioner of education as authorized under TEC, Chapter 39, or other law, a financial accountability rating remains in effect until replaced by a subsequent financial accountability rating. A financial accountability rating shall be revised after initial assignment when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title (relating to Purpose).

§109.1004. Criteria for Financial Accountability Ratings.

(a) The criteria for financial accountability ratings will be based upon indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings), in accordance with requirements in state law and after consultation with the comptroller of public accounts. The commissioner of education shall evaluate the rating system annually and may modify the system in order to improve the effectiveness of the rating system. Changes to criteria for ratings and their effective dates will be communicated to school districts and open-enrollment charter schools.

(b) The Financial Accounting Standards Board (FASB) requires not-for-profit entities such as charter holders to present financial statements showing an aggregate view of the entity as a whole.

(1) The Financial Accountability System Resource Guide, Module 10, Special Supplement-Charter Schools, Section 1.7.2, under §109.41 of this title (relating to Financial Accountability System Resource Guide), states that the charter holder is required to submit audited financial statements for the charter holder entity as a whole (both for charter and non-charter operations) as well as additional exhibits for each individual charter (determined by county-district number).

(2) For purposes of comparability among schools, all financial calculations for the indicators under §109.1002(g) of this title use the financial statements for a charter school; however, in the case of consolidated financial statements, any indicators relating to the auditor's opinion on the financial statements, material weaknesses in internal controls, or material noncompliance will be judged on the financial statements for the entity as a whole.

§109.1005. Reporting.

(a) Each school district and open-enrollment charter school is required to report information and financial accountability ratings to parents and taxpayers by implementing the following reporting procedures.

(1) Each school district and open-enrollment charter school is required to prepare and distribute an annual financial management report in accordance with subsection (b) of this section.

(2) The public must be provided an opportunity to comment on the report at a public hearing in accordance with subsection (c) of this section.

(b) The annual financial management report prepared by the school district and open-enrollment charter school must include:

(1) a description of its financial management performance based on a comparison, provided by the Texas Education Agency (TEA), of its performance on the indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings). The report will contain information that discloses:

(A) state-established standards; and

(B) the district's or open-enrollment charter school's financial management performance under each indicator for the current and previous year's [~~years'~~] financial accountability ratings;

(2) any descriptive information required by the commissioner of education, including:

(A) a copy of the superintendent's current employment contract or other written documentation of employment where no contract exists . The purpose of this disclosure is to report all compensation and benefits paid to the superintendent. The school district or open-enrollment charter school may publish the superintendent's employment contract on the school district's or open-enrollment charter school's Internet site in lieu of publication in the annual financial management report;

(B) a summary schedule for the fiscal year (12-month period) of expenditures paid on behalf of and/or total reimbursements received by the superintendent and each board member, including transactions resulting from use of the school district's or open-enrollment charter school's credit card(s) to cover expenses incurred by the superintendent and each board member. The summary schedule shall separately report reimbursements for meals, lodging, transportation, motor fuel, and other items (the summary schedule of total reimbursements is not to include reimbursements for supplies and materials that were purchased for the operation of the school district or open-enrollment charter school);

(C) a summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or open-enrollment charter school or any other outside entity in exchange for professional consulting and/or other personal services. The schedule shall separately report the amount received from each entity;

(D) a summary schedule for the fiscal year of the total dollar amount by the executive officers and board members of gifts that had an economic value of $250 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's or open-enrollment charter school's (or charter holder's) executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district or open-enrollment charter school (or charter holder) in the prior fiscal year, and gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member, or matters related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education (this exclusion does not apply to trips for entertainment-related purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had an aggregate economic value of less than $250 per executive officer or board member; [~~and~~]

(E) a summary schedule for the fiscal year of the dollar amount by board member for the aggregate amount of business transactions with the school district or open-enrollment charter school (or charter holder). This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(F) a summary schedule of the data submitted using the electronic-based program developed under the financial solvency provisions of Texas Education Code, §39.0822; and

(3) any other information the board of trustees of the district or open-enrollment charter school determines to be useful.

(c) The board of trustees of each school district or open-enrollment charter school shall hold a public hearing on the annual financial management report within two months after receipt of a final financial

accountability rating (including a final rating of Suspended--Data Quality). The public hearing is to be held at a location in the district's or open-enrollment charter school's facilities. The board shall give notice of the hearing to owners of real property in the geographic boundaries of the district or open-enrollment charter school and to parents of district or open-enrollment charter school students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the geographic boundaries of the district or each campus of an open-enrollment charter school once a week for two weeks prior to holding the public meeting, providing the time and place where the hearing is to be held. The first notice in the newspaper may not be more than 30 days prior to or less than 14 days prior to the public meeting. If there is not a newspaper published in the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or within the geographic boundaries of a campus of an open-enrollment charter school , then the notice is to be published in the county nearest the county seat of the county in which the district's [~~or open-enrollment charter school's~~] central administration office is located or in which the campus of the open-enrollment charter school is located ; and

(2) through electronic mail to media serving the district or open-enrollment charter school.

(d) At the hearing, the annual financial management report shall be disseminated to the district's or open-enrollment charter school's parents and taxpayers that are in attendance.

(e) The annual financial management report is to be retained in the district or open-enrollment charter school for at least a three-year period after the public hearing and will be made available to parents and taxpayers upon request.

(f) A corrective action plan is to be filed with the TEA by each school district or open-enrollment charter school that received a rating of Substandard Achievement or Suspended--Data Quality. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's or open-enrollment charter school's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's or open-enrollment charter school's rating of Substandard Achievement or Suspended--Data Quality.