

The Honorable Mike Morath
Commissioner of Education
Texas Education Agency
1701 N. Congress Ave.
Austin, Texas 78701

RE: Proposed New 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, Division 2, Contracting to Partner to Operate a District Campus, §97.1075, Contracting to Partner to Operate a Campus under Texas Education Code, §11.174, and §97.1079, Determining Processes and Criteria for Entity Approval under Texas Education Code, §11.174

Dear Commissioner Morath:

The Texas Charter Schools Association (“TCSA”) is the statewide membership organization for effective charter schools of all types, proudly representing nearly 275,000 students at more than 675 open-enrollment charter school campuses. We appreciate the opportunity to submit comments in response to the Proposed New 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, Division 2, Contracting to Partner to Operate a District Campus, §97.1075, Contracting to Partner to Operate a Campus under Texas Education Code, §11.174, and §97.1079, Determining Processes and Criteria for Entity Approval under Texas Education Code, §11.174 (“District-Charter Partnership Rules”).

Exceeding Authority

TCSA is concerned that as proposed, the District-Charter Partnership Rules exceed the limited rule making authority granted to the Commissioner to regulate independent school district (“ISD”) and open-enrollment charter school partnerships. Specifically, the Commissioner does not have authority to apply the proposed §97.1075(b)(5) and §§97.1075(c)-(i) rules to district-charter partnerships under §11.174(a)(1), open-enrollment charter schools.

Senate Bill 1882 amended Chapter 11 of the Texas Education Code with the intent to incentivize ISDs and open-enrollment charter schools to partner together to benefit low-performing district campuses.¹ SB 1882 created two types of district partnerships: (1) a partnership between an ISD and an open-enrollment charter school;² or (2) a partnership

¹ [House Research Organization bill digest SB 1882](#), page 2.

² Tex. Edu. Code §11.174(a)(1)

between an ISD and an entity approved to operate a district campus.³ The Texas Legislature created two distinct partnerships, each with its own level of Commissioner involvement.

In creating these two distinct partnerships, SB 1882 limited the Commissioner's rule making authority as it relates to partnerships involving open-enrollment charter schools. Section 11.174(l) states, "Except as expressly provided by this section, the commissioner may not impose additional requirements on an open-enrollment charter school to be eligible for a contract under Subsection (a)."⁴ Section 11.174(m), on the other hand, distinguishes the Commissioner's authority over entities granted a charter by a district that are not open-enrollment charter schools. Under subsection (m), the Texas Legislature gave the commissioner greater rule making authority over subsection 11.174(a)(2) entities by stating, "The commissioner shall adopt rules as necessary to administer this section, including requirements for an entity and the contract with the entity, including the standards required for an entity to receive approval under Subsection (a)(2)."⁵ By clearly delineating the rule making authority for §11.174(a)(1) partnerships, separate from the rule making authority for §11.174(a)(2) partnerships, the Texas Legislature intended to provide open-enrollment charter schools and ISDs the flexibility to develop agreements, without the interference of the Texas Education Agency.

Furthermore, through the legislative summaries and drafts of SB 1882, we know that the Texas Legislature did not intend to grant full rule making authority to the Commissioner for §11.174(a)(1) partnerships. Previous drafts of SB 1882 gave greater rule making authority to the Commissioner than the final version of the bill. Specifically, SB 1882 as passed out of the Senate and House Public Education Committee originally gave the Commissioner authority to "adopt rules as necessary to administer this section, including requiring a school district to notify the commissioner of any contract entered into under this section by the district and open-enrollment charter school."⁶ However, members of the Texas House of Representatives removed this expansive language through an amendment and replaced it with the more limited authority. The removal of this language and replacement with §11.174(l) and (m) indicates that the legislative intent was to limit the Commissioner's ruling making authority over district-charter partnerships that include an open-enrollment charter school.

As currently proposed, the District-Charter Partnership Rules exceed the limited authority granted to the Commissioner to regulate open-enrollment charter contracts. Under SB 1882, open-enrollment charter schools are eligible to partner with an ISD so long as the open-

³ Tex. Edu. Code §11.174(a)(2)

⁴ Tex. Edu. Code §11.174(l)

⁵ Tex. Edu. Code §11.174(m)

⁶ [SB 1882, House Committee Report](#), §11.174(j), page 3.

enrollment charter school “has not been previously revoked;”⁷ and that the open-enrollment charter school has received “an overall performance rating of acceptable or higher”⁸ and “a financial accountability rating [...] indicating financial performance of satisfactory or higher.”⁹ There are no additional eligibility requirements stated in §11.174.

Though cleverly worded, §§97.1075(c)-(i) places additional eligibility requirements on open-enrollment charter schools by requiring ISDs to include certain elements in a partnership contract, which are beyond the minimum requirements stated in §11.174. In order for an open-enrollment charter school to enter into a partnership with an ISD, the open-enrollment charter school must accept the initial and final authority to approve the assignments of ISD employees, accept all managerial and operational authority, and take control of the full campus operational budget, amongst other additional requirements.¹⁰ Sections 97.1075(c)-(i) also creates additional “annual academic performance expectations”¹¹ and “annual financial performance expectations”¹² for an open-enrollment charter school to be eligible for a contract to partner with an ISD.¹³ If the open-enrollment charter school is not willing to accept the terms outlined in §§97.1075(c)-(i) of the proposed rules, then the open-enrollment charter school becomes ineligible to contract with an ISD. By creating additional contract requirements on ISDs, the Commissioner is going through the back door to exceed its authority and place additional eligibility requirements on open-enrollment charter schools.

Once an open-enrollment charter school is eligible, §11.174 outlines the contract requirements for a district-charter partnership. First, before entering a contract the ISD must consult with campus personnel regarding employee contract provisions.¹⁴ The partnership contract must address student eligibility for enrollment and must allow any student residing in the attendance zone of the district campus be admitted for enrollment.¹⁵ No other requirements may be imposed on an open-enrollment charter schools partnering with an ISD. This is made clear in §11.174, as well as the Senate Research Center’s bill analysis of the enrolled bill. The bill analysis explicitly states that §11.174(l) “**Prohibits the commissioner, except as expressly provided by this section, from imposing additional requirements on an open-enrollment chart school to be eligible for a contract under Subsection (a).**”¹⁶ However,

⁷ Tex. Edu. Code §11.174(b)(1)

⁸ Tex. Edu. Code §11.174(b)(2)(A)

⁹ Tex. Edu. Code §11.174(b)(2)(B)

¹⁰ 19 TAC §§97.1075(c)(1)-(9)

¹¹ 19 TAC §97.1075(d)(2)

¹² 19 TAC §97.1075(d)(3)

¹³ 19 TAC §97.1075(d)

¹⁴ Tex. Edu. Code §11.174(c)

¹⁵ Tex. Edu. Code §11.174(i)

¹⁶ [Senate Research Center, Enrolled Bill Analysis SB 1882](#), July 6, 2017, page 3.

through §§97.1075(c)-(i), the Commissioner is doing just that: imposing additional requirements.

Additionally, §11.174(k) only requires an ISD to notify the commissioner of their intent to enter a contract with an entity under subsection 11.174(a)(2).¹⁷ The statute does not require the same notification requirements for an ISD intending to enter a contract with an open-enrollment charter school. However, §97.1075(e) creates a notice requirement on open-enrollment charter schools. Specifically, §97.1075(e) states “In order to be an eligible partnership under §11.174, notification of contracts related to TEC §11.174(a)(1), must meet the guidance requirements and deadlines published by TEA staff.”¹⁸ This notification requirement is clearly beyond the rule making authority granted to the Commissioner under §11.174, and may not be applied to partnerships under §11.174(a)(1).

Finally, because the Commissioner does not have the authority to create the additional requirements listed in §§97.1075(c)-(i), it is also necessary to change the definition of “Contract to partner to operate a campus” under §97.1075(b)(5).¹⁹ Once again, by defining a contract to partner to operate a campus as the Commissioner has, the Commissioner is adding eligibility requirements to open-enrollment charter schools interested in partnering with an ISD. If a charter school is unwilling to accept the requirements in §§97.1075(c)-(i) they will not meet the definition to “contract to partner to operate a campus” and will not be eligible to create a district-charter partnership. The proposed definition goes beyond the Commissioner’s authority to create rules for district-charter partnerships created under §11.174(a)(1).

Because the proposed District-Charter Partnership Rules go beyond the Commissioner’s authority to regulate district-charter partnerships between ISDs and open-enrollment charter schools, TCSA recommends that §97.1075(b)(5) and §§97.1075(c)-(i) be limited to apply only to an eligible entity under §11.174(a)(2). The Commissioner has authority to create rules as necessary to implement §11.174(a)(2) partnerships, but cannot apply the same rules to open-enrollment charter schools interested in creating a district-charter partnership with an ISD. Therefore, TCSA recommends the proposed District-Charter Partnership Rules be changed accordingly.

Closing

The purpose of SB 1882 was to incentivize and increase the occurrence of district-charter partnerships. By constraining the flexibility of ISDs and open-enrollment charter schools, the proposed District-Charter Partnership Rules impose potentially greater risk to charter schools

¹⁷ Tex. Edu. Code §11.174(k)

¹⁸ 19 TAC §97.1075(e)

¹⁹ 19 TAC §97.1075(b)(5)

considering a district-charter partnership and will likely limit the participation of charter schools in such partnerships. Instead, TCSA recommends the Commissioner take a less prescriptive approach, and rather create resources, guidance documents, or sample contracts for ISDs and open-enrollment charter schools to consider, but not require, in developing a partnership that meets their particular needs.

Thank you for your careful consideration of these comments. TCSA welcomes the opportunity to work with TEA to revise the language of the proposed rules. Feel free to contact Christine Nishimura, Deputy General Counsel at (512)584-8272 or cnishimura@txcharterschools.org with questions regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Cook', with a long horizontal flourish extending to the right.

Chuck Cook
Interim Chief Executive Officer
Texas Charter Schools Association