

No. _____

TEXAS AMERICAN FEDERATION
OF TEACHERS and TEXAS
STATE TEACHERS ASSOCIATION

Plaintiffs,

V.

MIKE MORATH,
COMMISSIONER OF EDUCATION,
in his official capacity, and
TEXAS EDUCATION AGENCY

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION FOR DECLARATORY JUDGMENT

TO THE HONORABLE COURT:

COME NOW plaintiffs, Texas American Federation of Teachers (Texas AFT) and Texas State Teachers Association (TSTA) and file this petition for declaratory judgment pursuant to the provisions of the Administrative Procedure Act, TEX. GOV'T CODE Section 2001.001 *et seq.* Texas AFT and TSTA seek a declaration that three of the Commissioner of Education's recent administrative rules pertaining to the operation of charter schools in public school districts are invalid and illegal.

In 2017, the Texas Legislature passed Senate Bill 1882. This legislation provides that if a school district enters into a contract with a charter school operator to take over the operations of a campus deemed low-performing under the state’s accountability measures, the district may qualify to receive increased funding as well as relief from the academic accountability sanctions that would otherwise be imposed. *See* TEC §§ 11.174 and 42.2511. Given the significant benefits

available, the legislature intended that there be strings attached to the arrangement, including protections for the school district employees on the campus and regulation of the performance contract between the district and the charter operator. Contrary to legislative intent, however, the Commissioner's rules challenged in this lawsuit reduces the number and type of charter operators that must abide by the rules that were put in place to protect public school employees in SB 1882 charter schools and relaxes the requirements that the school district and charter operator need to satisfy before they can qualify for the benefits available under the law.

After SB 1882 was signed into law, the commissioner promulgated rules to implement the legislation in accordance with Subchapter B of Chapter 2001 of the Texas Government Code. *See* 19 TAC §§ 97.1075 and 97.1079. The rules went into effect on April 4, 2018. However, a little over one month later, the commissioner departed from his agency's own rules and announced a *de facto* rule that significantly limits the safeguards that the legislature put into place to protect teachers and other employees in the context of a SB 1882 charter.

On May 22, 2018, the commissioner issued a determination that the provisions in TEC Section 11.174(c), designed to ensure that a school district consult with the staff on the campus about the provisions in its contract with the charter operator and that existing employment contracts not be adversely affected, apply only to charters operated by open-enrollment charter schools, and not to any of other types of entities, such as non-profits, which are eligible to take over public school campuses under SB 1882. The commissioner's determination is a statement of general applicability – *i.e.*, an administrative rule -- that was promulgated by the commissioner without legal authority and without going through the required rule-making process. It directly conflicts with the administrative rules issued the agency on April 4, 2018, which provide that

Section 11.174(c) applies to all entities eligible for a SB 1882 campus charter, including non-profits. The commissioner's *de facto* rule also conflicts with the provisions of Section 11.174(c) itself and other provisions in the Education Code.

The other two charter school rules challenged here are part of the Texas Administrative Code. While the required process was used to promulgate these rules, they are invalid because they are contrary to provisions in the Texas Education Code. In 19 TAC Section 97.1075(d)(6), the commissioner mandated that a local school district and a charter operator have to agree to exempt the campus from all local policies except ones that are specifically identified in the performance contract. This "opt-in" provision for local policies is contrary to TEC Section 12.054(1), one of the provisions in Subchapter C of Chapter 12, the Education Code chapter that governs all campus charters, and illegally requires a school district to secure the commissioner's permission to impose its own local policies since the performance contract is subject to the commissioner's approval.

In 19 TAC Section 97.1075(e), the commissioner gave himself the authority to simply ignore any statutory or regulatory requirements relating to performance contracts between local school districts and charter operators. If the commissioner alone determines that the proposed SB 1882 contract to take over a public school "will improve student outcomes at the campus," he may grant the application and enable the district and the charter operator to receive the significant financial benefits available under SB 1882, notwithstanding their non-compliance with various legal provisions. In so doing, the commissioner overstepped his statutory authority.

I. DISCOVERY PLAN

1. Plaintiff intends for this suit to be conducted under Discovery Level 2, pursuant to TEX. R. CIV. P. 190.3.

II. JURISDICTION and VENUE

2. The subject matter in controversy is within the jurisdiction of the district court.

3. Venue is proper in Travis County, Texas under Tex. Gov't Code Section 2001.038. Additionally, venue is proper in this court because the defendant Morath is an executive officer of a state agency and Texas Education Agency is a state agency.

4. The amount in controversy exceeds the minimum jurisdictional limits of this Court. Pursuant to Rule 47 of the Texas Rules of Civil Procedure, plaintiffs in good faith plead that at this juncture, they seek non-monetary relief available under the Texas Government Code.

III. PARTIES

5. Plaintiff Texas AFT is a statewide labor organization that represents employees of public school districts across Texas in matters related to their wages, hours, and terms and conditions of employment. Texas AFT has over 65,000 members in Texas and is affiliated with the American Federation of Teachers at the national level, as well as the AFL-CIO. As required of labor organizations representing public employees in Texas, Texas AFT does not claim the right to strike. Texas AFT has its principal place of business at 3000 S. IH-35, Suite 175, Austin, Texas, 78704-6536, in Travis County, Texas.

6. Plaintiff Texas State Teachers Association is (TSTA) is a state-wide, professional association whose members are employed by the public schools of this State, and is affiliated with the National Education Association. It exists to further the interests of public education by

strengthening, promoting, and protecting the rights and privileges of employees of public education. To carry out its mission, TSTA has some 400 local affiliates throughout the state which are made up of members in various school districts and counties across the state. Participation of individual members of TSTA is not required with respect to the claims asserted or the relief requested herein. The interests of TSTA members in public school districts of this state will be affected by the regulations that have been adopted by defendants. The address of TSTA's principal place of business is 8716 N. Mopac Expressway, Austin, Texas 78759 in Travis County, Texas.

7. Defendant Mike Morath, Commissioner of Education, is, pursuant to Tex. Educ. Code Section 7.055, the educational leader of the state and the executive officer of the Texas Education Agency. He is charged with the responsibility of carrying out the duties imposed on this office by the Texas Legislature, including the adoption of rules. He may be served with process at the Texas Education Agency's office in Travis County, Texas at 1701 North Congress, Austin, Texas 78701.

8. Defendant Texas Education Agency is the state agency created and charged with the responsibility of carrying out the education functions of the state, as delegated by the legislature. It may be served with process through the Commissioner of Education, 1701 North Congress, Austin, Texas 78701.

IV. ASSOCIATIONAL STANDING

9. Collectively, Texas AFT and TSTA have over 100,000 members. The combined membership of these two organizations easily exceeds the membership of any other organization representing public school employees in Texas. Texas AFT and TSTA are interested in enforcing and protecting the provisions of TEC Section 11.174(c) because its members work as teachers and

public school employees throughout the state, including in school districts which choose to enter into SB 1882 charter arrangements. The Commissioner's invalid imposition of a *de facto* rule limiting the requirements of Section 11.174(c) only to open-enrollment charter schools, as well as his invalid intrusion upon the prerogatives of local school districts to apply their own policies to SB 1882 charter contracts, and the overstepping of his legal authority to ignore the duly promulgated requirements of performance contracts between a school district and a charter operator, through the application, or threatened application, of 19 TAC Sections 97.1075(d)(6) and (e), interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of Texas AFT and TSTA members. Its members are vitally interested in ensuring that their existing contract rights are not adversely affected by a SB 1882 charter contract, that they have a voice in the provisions to be included in the performance contract, that they receive the benefits and protections of local district policies and that the district and the charter operator satisfy the requirements spelled out in law and regulations that govern their relationship. Thousands of their members are aggrieved by the actions of the defendants and Texas AFT and TSTA bring this action on their behalf.

10. These organizations both have as one of their central purposes the protection of employment rights and benefits of their members. This action is germane to that purpose.

11. Texas AFT and TSTA members who are aggrieved by the actions of the defendants have standing to file this action on their own behalf.

12. Neither the claims asserted herein nor the relief requested requires the filing of individual petitions or the participation of individual members as parties in this action.

V. FACTS

Texas Education Code provisions.

13. Under the Texas Education Code, the State of Texas provides annual academic accountability ratings to its public school districts, charters and schools. When a school district or individual campus demonstrates problems achieving the required performance results, the Education Code provides the commissioner of education with the authority to order various levels of interventions and sanctions.

14. If a district or campus is rated “Improvement Required” due to low performance on one or more of the indices of performance, the commissioner intervenes. If a campus has an unacceptable performance rating for three consecutive school years after the campus is ordered to submit a campus turnaround plan, the commissioner “shall order: 1) appointment of a board of managers to govern the school district as provided by Section 39A.202; or 2) closure of the campus.” TEC § 39A.111.

15. In 2017, Senate Bill 1882 was signed into law. The legislation creates a mechanism by which school districts with such campuses, by entering into a charter contract with an eligible entity, could potentially secure a reprieve from sanction options described in Paragraph 14, as well as obtain increased per-student funding from the state. To accomplish the objectives of the legislation, the legislature added two sections to the Texas Education Code, Sections 11.174 and 42.2511.

16. School districts have had the authority to have campus charters within their school districts since 1995. *See* TEC §§ 12.051 – 12.065. The campus charter provisions in Subchapter C of Chapter 12 of the Education Code provide the legal backdrop for SB 1882 charters because,

among other things, a district wishing to enter into this kind of arrangement must first grant the entity a charter under Subchapter C, Chapter 12. TEC § 11.174(a) and 19 TAC § 97.1075(d). Thus, all SB 1882 must operate under a Subchapter C campus charter.

17. Significantly, TEC Section 12.0522(d) in Subchapter C states: “Subchapter D [creating and governing open-enrollment charter schools] applies to a campus granted a district charter under this section as though the campus were granted a charter under Subchapter D, **and the campus is considered an open-enrollment charter school.**” (emphasis added).

18. TEC Section 11.174(a) specifies the entities which are eligible for a SB 1882 charter contract, including an existing Texas open-enrollment charter school or any of the other types of entities listed in TEC Section 12.101(a): an institute of higher learning, a non-profit organization, or a governmental entity. *See* TEC §§ 11.174(a) and 12.101(a)(1)-(4). After the district grants a campus charter to the eligible entity, and the district and the entity enter into a performance contract regarding the operation of the campus, the district submits the performance contract to TEA for the commissioner’s determination about whether the proposed partnership qualifies for the SB 1882 benefits.

19. The legislature placed a number of specific conditions upon school districts and eligible entities attempting to qualify for benefits under SB 1882. Two provisions in Section 11.174(c) address employees’ interests directly. One of the provisions states that “[b]efore entering into a contract [with the charter operator] as provided by this section, a school district must consult with campus personnel regarding the provisions to be included in the contract between the school district and the open-enrollment charter school.” Subsection (c) also provides that “[a]ll rights and protections afforded by current employment contracts or agreements may not

be affected by the contract entered into between a school district and an open-enrollment charter school under this section.”

Commissioner of Education rules.

20. The commissioner’s rules regulations state that its provisions governing performance contracts apply to open-enrollment charter schools and other entities eligible to serve as a charter partner pursuant to TEC Section 12.101(a), including non-profit organizations, institutes of higher learning, or governmental entities. TEA includes all those types of entities in its definition of “operating partner,” an umbrella term that is used throughout the rules:

(b) Definitions. For purposes of this division, the following words and terms have the following meaning, unless the context clearly indicates otherwise.

(1) Operating partner- Either a state-authorized open-enrollment charter school **or an eligible entity as defined by TEC, Section 12.101(a)....**

19 TAC § 97.1075(b)(1)(emphasis added).

21. The commissioner’s rules state that in order for a school district to receive the sanctions relief and financial benefits of SB 1882, the performance contract with the “operating partner” must include an assurance that the district has consulted with campus personnel regarding the provisions included in the contract and an assurance that the rights and protections afforded by current employment contracts not be affected by the performance contract.

(d) Performance contract. To contract to partner to operate under TEC, Section 11.174, the independent school district’s board of trustees must grant the **operating partner** a campus charter under TEC, Chapter 12, Subchapter C. The charter must include performance expectations memorialized in a performance contract, as required by TEC, Section 12.0531. This performance contract must include, at a minimum, the following provisions:

(10) an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by TEC, Section 11.174(c); ...

19 TAC § 97.1075(d)(10) (emphasis added). Thus, the rules apply the Section 11.174(c) requirements to all types of operating partners, not just open-enrollment charter schools.

22. These requirements are reiterated in the official guidance that the agency has published regarding SB 1882 implementation on its website: https://tea.texas.gov/Texas_Schools/District_Initiatives/SB_1882_Implementation. See TEA's SB 1882 Implementation Guide, attached and incorporated as Ex. A. As part of this guidance, TEA has published a model contract between a school district and a non-profit entity to use as a template. The non-profit contract template includes the two assurances regarding employees that are laid out in TEC Section 11.174(c). See TEA's Model Non-Profit Contract, attached and incorporated as Ex. B.

Commissioner's de facto rule on non-profits and other eligible entities.

23. On May 22, 2018, in a determination regarding the proposed charter partnership between San Antonio Independent School District and a non-profit charter operator, Democracy Prep Inc., the commissioner abandoned his own rules regarding the applicability of TEC Section 11.174(c) requirements to non-profits, institutions of higher education, and governmental entities. See TEA Ruling, attached and incorporated as Ex. C. Instead, the commissioner determined that the Section 11.174(c) requirements apply only to open-enrollment charter schools. The performance contract between San Antonio Independent School District and Democracy Prep that was submitted for approval did not contain an assurance that the district had consulted with campus personnel about the provisions in the contract, as required by Section 11.174(c) and 19 TAC Section 97.1075(d)(10). According to the Commissioner, "[b]ecause this contract [the contract between the non-profit Democracy Prep and San Antonio ISD] is between a school

district and entity granted a charter under TEC Chapter 12, Subchapter C, “Campus or Campus Program Charter,” and not with an entity granted under TEC Chapter 12, Subchapter D “Open Enrollment Charter Schools,” **the requirements in TEC Section 11.174(c) and 19 TAC Section 97.1075(d) do not apply to this application.**” *Id.* (emphasis added). In other words, according to the commissioner, the provisions in the statute and rules designed to protect the rights of teachers on the affected campus only apply to open-enrollment charter schools that may apply to run a campus under SB 1882, and not to other eligible entities.

24. While made in the context of a request for approval for a specific contract, the commissioner’s determination and interpretation of TEC Section 11.174(c) and 19 TAC Section 97.1075(d) is a statement of general applicability that implements, interprets, or prescribes law or policy; constitutes an amendment or repeal of the provisions in 19 TAC Section 97.1075; and affects the private rights of employees of public schools.

The rule regarding local school district policies: 19 TAC Section 97.1075(d)(6).

25. The commissioner’s rules include a provision limiting the extent to which a school district’s own policies apply to an SB 1882 charter operator. For other campus charters, the Education Code states that a campus “is exempt from the instructional and academic rules and policies of the board of trustees from which the campus is specifically exempted in the charter...” TEC Section 12.054(1), Subchapter C of Chapter 12. Thus, according to the Education Code, a district may choose not to apply its various local policies to charter contracts. If not specified, the default is that the policies apply.

26. The commissioner’s rule for SB 1882 contracts is contrary to this statutory provision because it mandates that the performance contract exempt the charter from its local policies unless

the district and charter operator specifically agree to apply them. The commissioner's rules provide that the performance contract contain:

(6) a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and **is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract; ...**

19 TAC § 97.1075(d)(6)(emphasis added). The rule provides that the default is that local policies do **not** apply. As stated, this is contrary to TEC Section 12.054(1). Further, since the policies must be made a part of the performance contract that is then subject to the commissioner's review and approval before the SB 1882 benefits are made available, the commissioner has the authority to reject the application of local policies.

The rule regarding the commissioner's discretion on charter performance contracts.

27. In TEC Section 11.174(m), the legislature granted authority to the commissioner to administer Section 11.174, "including the requirements for an entity and the contract with the entity, including the standards required by an entity to receive approval under Subsection (a)(2) [governing the requirements of a performance contract]."

28. The commissioner's rules include a provision stating that he is essentially free to disregard his own rules for a performance contract. The rules provide, in pertinent part:

(e) Decision finality. **Notwithstanding any other provisions**, the commissioner may approve an eligibility approval request under this section **if the commissioner determines that the approval of the eligibility approval request will approve student outcomes at the campus**. The approval or denial of the eligibility approval request is a final administrative decision by the commissioner and not subject to appeal under TEC, Section 7.057.

19 TAC § 97.1075(e) (emphasis added). While the legislature granted the commissioner the authority to develop standards for the performance contract between a school district and a charter operator, it did not grant him the authority to simply waive the requirements as he alone sees fit.

Further, there is no standard for the exercise of his discretion in determining how or whether a charter arrangement “will improve student outcomes.” 19 TAC § 97.1075(e). Finally, under the cited rule, the commissioner’s decision is final and not subject to appeal so there is no check on the exercise of his discretion in this regard.

VI. CLAIMS

29. Plaintiffs incorporate by reference the preceding paragraphs as if repeated in full.

30. The commissioner’s *de facto* rule, issued on May 22, 2018, is a rule within the meaning of Tex. Gov’t Code Section 2001.003(6). Section 2001.003(6) defines a “rule” as a “state agency statement of general applicability” that “implements, interprets, or prescribes law or policy” or “describes the procedure or practice requirements of a state agency,” “includes the amendment or repeal of a prior rule,” but “does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.” Tex. Gov’t Code Section 2001.003(6). Here, the Commissioner’s determination that Section 11.174(c) and the agency’s own duty-promulgated rule, 19 TAC Section 97.1075(d)(10), only applies to open-enrollment charter schools is a statement of general applicability that applies to all SB 1882 arrangements, implements and interprets Section 11.174(c), amends or repeals the provisions of 19 TAC Section 97.1075(d)(10), and affects private rights, including the rights of the members of Texas AFT and TSTA. The commissioner declared this *de facto* rule by fiat and without going through the legally prescribed rule-making process, making the rule invalid.

31. Additionally, separate and apart from the illegal process that was used to promulgate the *de facto* rule, the rule violates established law. It is contrary to TEC Section 12.0522(d), which specifically provides that a campus granted a district charter is deemed, as a matter of law, to be an

open-enrollment charter school “as though the campus were granted a charter under Subchapter D.” The commissioner’s *de facto* rule applies one set of SB 1882 requirements to open-enrollment charter schools and another to other types of entities, when TEC Section 12.0522(d) states that campus charters are to be considered open-enrollment charters. When Section 11.174(c) provides for employment protections to be addressed in a performance contract between a district and an “open-enrollment charter school,” this requirement applies, as a matter of law, to a campus charter secured by other types of entities. Further, the non-application of the employment protections in Section 11.174(c) to the array of other entities that may qualify for SB 1882 contracts is contrary to other provisions in Section 11.174, as well as the legislative history and purpose of SB 1882 and HB 1842, and leads to an absurd result.

32. The commissioner’s *de facto* rule interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of Texas AFT and TSTA members under this statute, namely, to be consulted regarding the provisions to be included in a SB 1882 performance contract between a charter operator and a school district and to be guaranteed that their existing contractual rights are not adversely affected.

33. The commissioner’s rule, 19 TAC Section 97.1075(d)(6) violates TEC Section 12.054(1), one of the campus charter provisions in Subchapter C, Chapter 12. A prerequisite for entering into a SB 1882 contract is for the school district to grant the eligible entity a campus charter, so the campus charter provisions in Subchapter C apply. *See* TEC § 11.174(a)(2) and 97.1075(d). Included in the provisions governing campus charters is a provision to the effect that local school district policies apply unless they are specifically exempted in the charter. TEC Section 12.054(1). Under the commissioner’s rule challenged here, the commissioner requires that

the SB 1882 performance contract include a provision that the campus is exempt from all local policies except those identified in the performance contract. Not only does this create an opt-in provision for local policies rather than the opt-out provision stated in Subchapter C, it also subjects the inclusion of any local policies to disapproval by the commissioner through the performance contract approval scheme. This rule interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of Texas AFT and TSTA members under Chapter 12, Subchapter C, who benefit from the employment rights and benefits in local school district policies. It is an invalid rule that illegally usurps the authority of local school districts to apply their own local policies to SB 1882 arrangements and illegally subjects the rights and benefits of plaintiff's members, as provided for in local district policies, to unwarranted control by the commissioner. Under TEC Section 7.003, "an educational function not specifically delegated to the agency...under this code is reserved to and shall be performed by school districts..." In adopting 19 TAC Section 97.1075(d)(6), the commissioner exceeded the bounds of his delegated authority by violating a provision in the Education Code.

34. The commissioner's rule, 19 TAC Section 97.1075(e) violates TEC Section 11.174(m). In Section 11.174(m), the legislature delegated to the commissioner the authority to adopt rules regarding the requirements for "the contract with the entity, including the standards required for an entity to receive approval under Subsection (a)(2)." In 19 TAC Section 97.1075(e), the commissioner gave himself the complete discretion to approve a SB 1882 arrangement, notwithstanding the failure of the school district or the charter operator to comply with law or regulations. A state administrative agency has only those powers that the legislature expressly confers upon it or that are implied to carry out the express functions or duties given or imposed by

statute. The legislature’s delegation of rule-making authority to develop standards did not include the power to substitute something entirely different, that is, the discretion to say “never mind” and ignore the adopted standards. Moreover, in delegating authority to the commissioner to develop standards, the legislature did not give the commissioner unfettered decision-making authority to approve or disapprove an application for SB 1882 benefits without reference to any such requirement. Further, the standard used in the rules for the circumstances in which the commissioner may choose to exercise his discretion and waive the stated requirements for a performance contract – if the commissioner “determines that the approval of the eligibility approval request will improve student outcomes” – is so broad and vague as to render it meaningless as any sort of control, prediction, restraint or measure of decision-making authority. If the legislature had intended that the commissioner have complete discretion on approval of Section 1882 contracts, it could and would have said so. This rule interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of Texas AFT and TSTA members under Section 11.174(c), namely, to be consulted with regarding the provisions to be included in a SB 1882 performance contract between a charter operator and a school district and to be guaranteed that their existing contractual rights are not adversely affected. Under the commissioner’s rule that is challenged here, these entitlements could be waived and not enforced.

VII. SUIT FOR DECLARATORY RELIEF

35. Plaintiffs seek a declaratory judgment as to the validity of the commissioner’s *de facto* rule declared on May 22, 2018, as described herein, regarding the applicability of TEC Section 11.174(c) and 19 TAC Sections 97.1075(d)(10) to entities other than open-enrollment charter schools, pursuant to Tex. Gov’t Code Section 2001.038. Additionally, plaintiffs seek a

declaratory judgment as to the validity of 19 TAC Sections 97.1075(d)(6) and (e), pursuant to Tex. Gov't Code Section 2001.038.

VIII. SOVEREIGN IMMUNITY DOES NOT BAR PLAINTIFF'S CLAIMS

36. Sovereign immunity does not bar plaintiffs' claims for declaratory and injunctive relief. Tex. Gov't Code Section 2001.038 waives sovereign immunity.

IX. RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully request that:

1. The defendants be cited to appear and answer.
2. That the Court declare and determine that the commissioner's *de facto* rule, issued on May 22, 2018, regarding the applicability of TEC Section 11.174(c) and 19 TAC Section 97.1075(d)(10) to entities other than open-enrollment charter schools, is a rule within the meaning of Tex. Gov't Code Section 2001.003(6), that the commissioner's failure to comply with the rule-making requirements of subchapter B of Chapter 21 of the Texas Government Code renders the rule invalid, and that the rule, by its terms, is an invalid and illegal rule that is null and void;
3. That the Court declare and determine that 19 TAC Section 97.1075(d)(6) is an invalid and illegal rule that is null and void;
4. That the Court declare and determine 19 TAC Section 97.1075(e) is an invalid and illegal rule that is null and void;
5. That the Court order appropriate injunctive relief; and
6. That plaintiffs be awarded all other relief to which the Court may find it entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS



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SB 1882 Implementation

Bill Overview

SB 1882 is an Act relating to a school district contract to partner with an open-enrollment charter school or other eligible entity to operate a district campus.

The bill provides incentives for districts to enter into such partnerships:

- A potential increase in state funding for the partnered campus. Each partnered campus that meets eligibility requirements is entitled to receive for each student in average daily attendance at the campus the greater of either the amount of state funding to which the district would be entitled or the amount of state funding to which an open-enrollment charter school would be entitled. To calculate the amount for a specific campus, go [here](#):
- An exemption from certain accountability interventions for two years. Specifically, the agency may not impose that the campus prepare and submit a turnaround plan, as outlined in TEC §39.107(a), appoint a board of managers, as outlined in TEC 39.107(e)(1), and/or close the campus, as outlined in TEC §39.107(e)(2).

The bill states that to be eligible to access the benefits described above, **the partnered campus must be granted a charter under Subchapter C, Chapter 12.**

To be eligible for the benefits of SB 1882, the district may partner with two types of entities to operate the charter:

- A State-Authorized Open-Enrollment Charter School in good standing. State-authorized open-enrollment charter schools are also known as Subchapter D open-enrollment charters. To be eligible for the benefits associated with SB 1882 the open-enrollment charter partner may not have been previously revoked and must have received acceptable academic and financial accountability ratings for the three preceding school years.
- On approval by the Commissioner, other entities. These other entities include institutions of higher education, non-profits, or government entities that have been granted a charter under Subchapter C, Chapter 12.

To be eligible for the benefits associated with SB 1882 **the partner entity must operate the campus.** To operate a campus, the partner must:



- Have responsibility to hire, select, approve assignment of and manage the chief operating office or principal of the campus.
- Have responsibility to hire, select, approve assignment of and manage instructional staff that serve a majority of the students on the campus.
- Have initial and final authority over decisions related to curriculum, calendar, and assessments.

To be eligible for benefits associated with SB 1882 the partner entity must demonstrate the capacity to manage campuses and must have a board that does not include any school district board of trustees, the school district superintendent, any school district personnel involved in the review, approval, monitoring, or renewal of the Subchapter C charter or performance contract.

Additional information regarding requirements can be found in the bill and the related rules.

District Process to Enter into a Partnership

The process that a district must follow to enter into a partnership is as follows:

- Adopt a Subchapter C authorizing policy
- Seek partner operators
- Have the partners complete a Subchapter C charter application
- Evaluate the partner's Subchapter C charter application*
- Approve the partners Subchapter C charter application*
- Negotiate the terms of the performance contract between the partner and the district
- Submit relevant materials to TEA for TEA to determine eligibility for 1882 benefits

* see side bar for district authorizing materials & resources

There are several types of possible partnerships that are eligible for benefits:

Each partnership type has different timelines and submission requirements, please visit the specific Partnership pages for detailed information regarding timelines, agency review processes, and related information.

- [Turnaround Partnerships](#): District contracts with a partner to operate a campus that is in IR status
- [Innovation Partnerships](#): District contracts with a partner to operate a campus that is in Met Standard status
- [New School Partnerships](#): District contracts with a partner to launch a new school

Partnership Specific Guidance - SB 1882 Eligibility Approval Requests

- Path A - [Turnaround Partnerships with a New Operator](#)
 - Path B - [Innovation or New School Partnerships with a New Operator](#)
 - Path C - [Turnaround Partnerships with an Existing Operator](#)
 - Path D - [Innovation or New School Partnerships with an Existing Operator](#)
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Important Information

The Bill and Associated Rules

Below are links to the bill itself and the related rules:

- [Senate Bill 1882](#)
- [TAC §97.1075 - Contract to Partner to Operate a Campus under TEC §11.174](#)
- [TAC §97.1077 - School Year Under Contract Operating School District Campus](#)
- [TAC §97.1079 - Determining Processes and Criteria for Eligible Entity Approval](#)
- TAC §61.1010 - Additional State Aid for School Districts that Contract to Partner to Operate a District Campus is to be adopted by May 14, 2018

TEA Recommended Model Subchapter C Authorizing Policies, Processes, Rubrics, and Performance Contracts

In order to gain access to SB 1882 benefits districts must adopt and use high quality Subchapter C Authorizing policies and processes. TEA encourages districts to adopt and use the model materials below:

- [2017-2018 Authorizer Guidance](#)
- EL (legal) Policy - Districts may continue to use EL (legal) policies
- [EL \(local\) Policy](#)
- [Local Campus Partnership Application Template](#)
- [Local Application Rubric Template](#)
- [Local Charter/Performance Contract Template](#)
- [Student Outcome Performance Measure Template](#)

Estimates of Financial Benefit Associated with SB 1882

[To calculate an estimate of the potential financial benefit of SB 1882 for a specific campus, use the District Charter Funding SY2019 tab on the State Aid Template found here.](#)


Contact Information

For additional information, contact:

Doug Dawson
Assistant Director, Division of System Support and Innovation
doug.dawson@tea.texas.gov



AGREEMENT BETWEEN TEXAS ISD AND GREAT SCHOOL NONPROFIT, INC.



This Agreement (the "Agreement") is made and entered into as of December ____, 2017 ("Commencement Date") by and between TEXAS INDEPENDENT SCHOOL DISTRICT, a public independent school district and political subdivision of the State of Texas, ("TISD") and GREAT SCHOOL NONPROFIT, Inc. ("Operating Partner " or "OP") (together, the "Parties") to operate LONE STAR ELEMENTARY SCHOOL (the "School").

ARTICLE I.


RECITALS

- 1.01 Independent School District. TISD is an independent school district created within the laws of Texas.
- 1.02 Authority to Contract. The board of trustees of TISD is empowered by Texas Education Code, Sections 11.157 and 11.174, to contract with a public or private entity for that entity to provide educational services for the district.
- 1.03 Non-Profit Organization. Great School Nonprofit, Inc. is an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)),

If entering into an Agreement under SB 1882, add:

[holds an open enrollment charter contract under TEC Subchapter D, Chapter 12, has not had a contract for charter revoked, has received overall performance ratings of acceptable or higher under Chapter 39, Subchapter C for each of the last three years, and has received financial accountability ratings under Chapter 39, Subchapter D of satisfactory or higher for each of the last three years], or [awarded a charter granted under TEC Subchapter C, Chapter 12 and is eligible under TEC 12.101(a) . TISD has granted (hereby grants) OP a charter under TEC Chapter 12, Subchapter C.]

If entering into an Agreement under SB 1882, add:

- 
- 1.04 Consultation. TISD has consulted with campus personnel regarding provisions to be included in this Agreement. TISD recognizes that all rights and protections afforded by current employment contracts or agreements may not be affected by



this Agreement.

- 1.05 Consideration. In consideration of the mutual agreements set forth in this Agreement, and for other good and valuable consideration, the Parties agree as follows:

ARTICLE II.

PURPOSE OF AGREEMENT

- 2.01 Contract for Services. This Agreement constitutes a contract for services.
- 2.02 Premise of Agreement. This Agreement is predicated on understanding that students benefit when decisions regarding educational programs, operations, and student services are made at the school level and that autonomy and accountability are mutually reinforcing principles.
- 2.03 Student Achievement. The primary purpose of this Agreement is to improve student outcomes by authorizing OP to operate the School as an autonomous campus subject to transparent accountability requirements. The provisions of this Agreement shall be construed and applied to achieve this purpose.
- 2.04 Continuation of Agreement for the Benefit of Students. The Parties intend that this Agreement shall continue in effect and shall be automatically renewed for successive ten-year terms unless terminated in accordance with the provisions of Article XVI.

ARTICLE III.

DEFINED TERMS

- 3.01 School. School has the meaning assigned in the Texas Administrative Code §97.1051(3) and includes all components of the operation of the campus, including, without limitation, the grade levels served, the courses taught, the instructional materials, staffing, budgetary allocations, scheduling, transportation and other services, and the other responsibilities associated with school operation.
- 3.02 Facilities. Facilities are defined as a building and related equipment, furnishings, and property improvements, including any athletic fields and related

improvements, and the land on which the building and related improvements are located as more fully defined in Article X.

- 3.03. Material Breach. A “material breach” of this Agreement shall include the failure of a Party to comply with or fulfill any material obligation, condition, term, representation, warranty, provision, or covenant contained in this Agreement, including without limitation any failure by OP to meet generally accepted fiscal management and government accounting principles, comply with Applicable Law, state agency rule, or meet the student outcome goals required by this Agreement.

ARTICLE IV.

RELATIONSHIP OF THE PARTIES

- 4.01 Nature of Relationship. The relationship between the Parties hereto shall be that of contracting parties. OP will operate as an independent contractor to TISD and will be responsible for delivering the services required by this Agreement. The relationship between and among the Parties was developed and entered into through arms-length negotiations and is based solely on the terms of this Agreement and such contracts and agreements as may be created in the future from time to time between the Parties and reduced to writing.
- 4.02 No Agency. Neither Party will be the agent of another except to the extent otherwise specifically provided by this Agreement. Neither Party has the express or implied authority or will in any case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind the other Party to any duty imposed by contract, other than this Agreement, unless the Party on which such duty is to be inferred has specifically authorized such action at a meeting of that Party’s governing board held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting) and as agreed in writing by that Party.
- 4.03 No Common Control. Neither Party is a division, subsidiary, affiliate, or any part of the other Party or has the right or authority to exercise any common control of any other Party. Nothing herein will be construed to create a partnership or joint venture by or between TISD and SMP.
- 4.03 Assurance of Independence. The OP governing body shall remain independent of the independent school district. This governing body is not and shall not be

comprised of any members of the independent school district's board of trustees or staff.

ARTICLE V.

APPLICABLE LAWS

- 5.01. Scope of Applicable Law. The Parties agree that certain laws and regulations that apply to other schools within TISD may not apply to the School or its operation as a consequence of the grant of a campus charter under Texas Education Code, Chapter 12 [*Other examples may include: waiver under Chapter 7 and a Local Innovation Plan under Chapter 12A, Texas Education Code, or other operation of law*]. The Parties further agree that, except as provided in this Agreement or required by Applicable Law, no provision of Texas law otherwise applicable to a governing body or school, or rule or guideline, shall apply to the School or its operation.
- 5.02. Compliance with Applicable Law. The Parties shall perform their respective obligations under this Agreement in compliance with all laws and regulations that do apply to the School or its operation (collectively, "Applicable Law"), as may be amended from time to time. The Parties stipulate that Applicable Law includes, but is not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Americans with Disabilities Act; the Individuals with Disabilities in Education Act; the Family Educational Rights and Privacy Act of 1974 ("FERPA"); the Every Student Succeeds Act to the extent specified in the Act; the Texas Education Code to the extent the School is not exempt; record retention laws and conflicts of interest laws under the Texas Local Government Code; the Texas Local Government Code, to the extent it applies to school districts; the Texas Open Meetings Act and Texas Public Information Act under the Texas Government Code; and any amendments, interpretations, and reauthorizations of the foregoing.

ARTICLE VI.

GOVERNING POLICIES

- 6.01. Limitation on Authority. An educational or administrative service necessary for operation of the School not specifically reserved for provision by TISD under this agreement shall be provided and solely managed by OP insofar as such delegation is permitted by state and federal law. A service is provided by OP if OP performs the service, contracts for its performance, or otherwise ensures and oversees provision of the service.
- 6.02. Policy Election. OP elects to operate in accordance with TISD Board Policies specified in Addendum A-1, attached to this agreement.
- 6.03. Adoption and Publication of School Policies. The governing board of OP will adopt policies addressing matters specified in Addendum A-2, attached to this agreement, at a public meeting held in conformance with requirements of the Texas Open Meetings Law, Chapter 551, Texas Government Code. OP will provide proposed policies or proposed amendments to policies currently in effect in draft form to TISD for review and comment no later than 30 days prior to the meeting at which the policies are to be considered for adoption or amendment. OP will publish adopted policies and TISD Board Policies applicable by law or by election under this agreement on the School's Internet website.
- 6.04. Future Waivers and Exemptions. The Parties will collaborate in applying for waivers from any restrictions imposed by Applicable Law when it is jointly determined that such waiver would expand opportunities for students enrolled in the School. If TISD is relieved from compliance from certain state or federal law or regulation through a waiver, adoption or amendment of a local innovation plan under Chapter 12A, Texas Education Code, the School is automatically relieved from compliance regardless of whether such relief is addressed in this Agreement. Further, if a waiver from a local policy, procedure, protocol or other requirement is granted to another school in the district, and the policy is not waived by this Agreement, the waiver applies to the School unless TISD notifies the School otherwise in writing within 60 days of the waiver's application to the other school.

ARTICLE VII.

PERFORMANCE REQUIREMENTS

- 7.01 Student Outcome Goals. The primary responsibility of OP under this Agreement is to ensure that the annual student outcome goals specified in Addendum 3 are achieved.

7.02 Performance Measurement, Methods, and Timeline. The Parties agree that achievement of annual student academic and financial performance targets agreed upon by the Parties and specified in Addendum 3 will be determined using the methods, indicators, and timelines specified that Addendum.

[SB 1882 Requirement: The agency will update the model language upon adoption of the rules.]

7.03 Performance Consequences. The Parties agree to specific consequences in the event that the operating party does or does not meet the annual academic or financial performance expectations and goals described in Addendum 4.

7.04 Responsibilities of OP Governing Board. The governing board of OP agrees that it is responsible for ensuring that OP achieves performance goals specified in Addendum 3 and is obliged to oversee management of the School and intervene as required to ensure that performance goals are achieved.

ARTICLE VIII.

SCHOOL OPERATIONS

8.01. Operational Autonomy. OP shall have full autonomy with respect to School operations. Domains of autonomy specified in this Agreement are intended as illustrative and do not represent an exhaustive listing.

8.02. Governing Structure. Subject to the terms of this Agreement, the governing board of OP will serve as the governing board of the School, will oversee management of the School, and has sole authority to hire and manage the School leader and to set the terms and conditions of the School leader's employment.

8.03. Governing Board. OP represents that a true and accurate list of its current directors ("Directors") is attached to this Agreement as Addendum 4. If there is any change to the Directors during the Term of this Agreement, OP shall provide notice to TISD of the change within 30 days.

8.04. Budgetary Authority of OP. OP has sole authority to approve or amend the budget for the School.

- 8.05 Grade Levels. Beginning in the 2018-2019 school year the School will serve students in grade levels ____ through ____.
- 8.06 Attendance Area. The School's attendance area ("Attendance Area") shall be defined as the area designated in Addendum A-5 to this agreement subject to TEC §12.065.
- 8.07 Enrollment Policies. Any student who resides in the Attendance Zone of the district campus as it existed before the operation of the district campus under this contract may attend the School and may not be refused enrollment. If there are additional spots remaining then they shall be filled by the students who reside in the district and then filled by students who reside outside the school district. *[Alternatively, the contract could provide for open-enrollment.]* The Parties will collaborate and agree on a process for enrollment of students into the School.
- [SB 1882 Requirement: Preference must be given to students who were previously enrolled at the campus.]*
- 8.08 Discipline and Expulsion Policies. *[Insert district discipline and expulsion policy, including DAEP/JJAEP placement, or link to addendum with local operator specific policy]*
- 8.09 Schedule. OP will have sole authority in determining the school day, school year, bell schedule, schedule for before and after-school services and for extra-curricular activities. OP agrees to provide this information to TISD no later than ____ days before start of school and to confer with TISD prior to altering.
- 8.10 TISD Meetings, Initiatives, and Training. School staff will not be required to participate in TISD training events or other meetings unless directed by OP. OP agrees that all School staff will comply with training requirements under Applicable Law.
- 8.11 Contractor Criminal History Background Checks. OP will require criminal history background checks on all vendor and contractor personnel who enter the School or any TISD campus or building.
- 8.12 Technology Infrastructure; Network Services. TISD shall be responsible for providing, repairing, and maintaining technology infrastructure and network services at the School to the extent reasonably necessary to permit OP to establish its own internet and phone service at the School of a standard reasonably comparable to other TISD schools. OP shall provide TISD with a list

of equipment purchased and collaborate for consistency between the standard equipment and needs of the School. The initial information technology equipment located at the School as of the commencement of the Term is included in the defined term Furnishings under Article X.

8.13 Media Requests. The Parties agree to collaborate regarding any media requests or press releases related to the School, prior to responding to any media request or making a press release and further agree that any statement made will have prior approval by each Party. This requirement does not apply to general communications regarding OP or TISD that may include references to the School.

8.14 Communications with Parents. The Parties agree to jointly approve a protocol for both general and urgent communications with parents within 60 days of the execution of this Agreement.

ARTICLE IX.

STAFFING

If personnel are to be employees of OP:

9.01 Employment Status. Faculty and staff of the School, including, but not limited to, the School Leader, other administrators, teachers, and teaching assistants, are employees of OP and not of TISD. The Parties acknowledge and understand that employees of OP are not subject to TISD personnel policies and that OP has sole authority over hiring, assignment, evaluation, development, advancement, compensation, continuation, other terms of employment with respect to School staff.

If personnel are to be employed by the district (specific provisions will vary considerably depending on the arrangements determined by the Parties):

9.01 Employment status. Faculty and staff of the School are employees of TISD and will participate in the Teacher Retirement System of Texas. OP has sole authority initial and final authority to approve the assignment of all district employees or contractors to the campus, as well as initial and final authority to rescind the assignment of any district employee or district contractor from the campus. This authority includes hiring, assignment, evaluation, development, advancement, compensation, continuation, and establishment of any other terms of employment.

- 9.02 Criminal History Background Checks. OP shall perform all criminal history background checks required by Applicable Law, including without limitation those required for School personnel, applicants, vendors, contractors, and volunteers and shall take action required by law upon completing the background check.
- 9.03 Certified Personnel. The School's personnel shall at a minimum have the qualifications required by Applicable Law for the assigned role except to the extent a requirement has been lawfully waived or the individual is subject a lawful exemption.
- 9.04 Employment Records. OP is responsible for maintaining the employment records for all School Personnel and all employment records of OP employees are the property of OP except that OP agrees to make records of affected staff members available to TISD should TISD become employer of those staff members.
- 9.05 Employee Complaints and Grievances. The Parties agree that employee complaints and grievance will be governed by the applicable policy of his or her employer.
- 9.06 Non-Solicitation. OP agrees it will not solicit or hire any TISD employees unless and until it receives written confirmation from TISD that the employee has been released from any contractual obligations with TISD. TISD agrees it will not solicit or hire any employee of OP during any school year, Summer school, or after July 1 of any year. Nothing in this Agreement alters the nature of OP employees or changes the employment relationship between any employee and his/her employer.
- 9.07 Teacher Retirement System: An employee of the OP is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at the district.

ARTICLE X.

ACADEMIC PLAN

- 10.01 Curriculum and Program. OP will have sole authority to approve all curriculum decisions beyond the minimum requirements outlined in 19 Texas Administrative Code §74.2 (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional

materials, as defined in TEC, §31.002(1), to be used at that campus. This authority includes sole authority over educational programs for specific, identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, and other statutorily defined populations.

- 10.02 Educational Plan. OP will implement the education plan described in its proposal to operate the School, attached as Addendum 6. OP will ensure that curriculum satisfies the minimum requirements outlined in 19 TAC §74.2 (relating to Description of a Required requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum). OP agrees to notify TISD any significant alteration of this plan.
- 10.03 Selection of Instructional Materials. OP has sole authority to select instructional materials (as defined in TEC, §31.002(1)) for the School and represents that selected materials will align with the TEKS, or its successor, and any other standards that may be required under Applicable Law.
- 10.04 Assessments. OP has sole authority over the selection and administration of student assessments not required by state or federal law.
- 10.05 Extracurricular Programming and Participation. Students enrolled at the School may join any extra-curricular activity offered to TISD students to the same extent as other students so long as participation does not interfere with the School's schedule, tutorials, or other parts of the Program as determined by the OP school leader.
- 10.06 Student Behavior. Students enrolled at the School will be required to follow the OP Code of Student Conduct as presented in its proposal to operate the School and attached as Addendum 6. OP agrees that it will not modify expulsion provisions without consent of TISD and agrees to notify TISD of any other modification at least 60 days in advance of implementation.
- 10.07 Due Process. OP will cooperate with TISD to ensure that due process is afforded with respect to student removals and expulsions.

ARTICLE XI.

FACILITIES

- 11.01 Facilities. TISD agrees to provide facilities, in the form of classrooms, office furniture, and equipment and storage areas, for the School at no cost and provide utilities in accordance with Facility Plan attached as Addendum A-7. *[Note: If a school has been converted to a campus charter school, the district may not require the OP to pay rent or purchase the facility.]* The parties may expand or reduce the amount of space allotted to use by OP during the term as mutually determined and agreed upon by the parties.
- 11.02 Ownership. The Parties acknowledge that all Facilities are owned by TISD.
- 11.03 Permitted Use. Beginning on _____ 2018 ("Possession Date"), and during the Term of this Agreement, OP may use and occupy the Facilities solely for the operation of the School as permitted by this Agreement and Applicable Law. To the extent OP wishes to use the Facilities for educational activities, separate from the School but associated with its educational purposes, OP will seek approval from TISD, and such approval shall not be unreasonably denied but any costs for such facility use shall be reimbursed to TISD by OP.
- 11.04 Furniture and Equipment for Classrooms and Instructional Areas. In consultation with OP regarding the furniture and equipment needs of the OP classrooms, TISD will supply chairs, desks, bookcases, bookshelves, file cabinets, computer tables, conference tables, and other furniture as reasonably required for the OP School. Such furniture and equipment will be substantially the same as furniture and equipment provided in other classrooms for the same grade level and/or same subject at TISD. OP also may furnish other furniture, fixtures, and equipment, at its cost and expense, as OP determines is require it implement the Program. The title to all furniture and equipment supplied by TISD for use by OP remains vested in TISD. OP and TISD will ensure that all property is asset tagged to clearly identify ownership. Each organization shall maintain an inventory list of all of its assets located at the school.
- 11.05 Fixtures and Alterations. OP may attach non-permanent materials and fixtures to the walls of the TISD classrooms but may not make any other alterations (including fixtures) in or to the OP classrooms or any other part of the TISD facilities used by OP for OP that would alter the walls, floors, or any other permanent structure of the TISD Premises without writtend consent of TISD.

- 11.06 Janitorial Services. OP shall provide janitorial services to the area used by OP in the same manner and at the same level as for the remainder of TISD.
- 11.07 Maintenance. OP shall maintain the School classrooms and any other portion of the TISD Premises, such as office space and storage area used exclusively for OP in a neat and orderly manner. Both Parties shall comply with the Applicable Laws regarding standards of safety and health of students. TISD shall be responsible for routine maintenance and major repairs of the OP School including, upgrades, HVAC equipment, roof repairs, and parking lot repairs. TISD shall maintain all other portions of the OP School in a neat and orderly manner.
- 11.08 Insurance Coverage. Each Party, at its own expense, will maintain its own insurance throughout the Term of this Contract. The insurance required under this Contract shall be as follows:
- a) Comprehensive or commercial general liability insurance for not less than \$1,000,000 (combined single limit for bodily injury and property damage per occurrence and in the aggregate). Each Party may elect to carry what other insurance that Party decides is necessary or advisable for its obligations under this Contract. Such insurance will be written to cover claims incurred, discovered, manifested, or made during or after the Term;
 - b) Automobile insurance to cover losses for motor vehicles accidents by that Party; and
 - c) Workers Compensation insurance as may be required by Applicable Law for that Party.
 - d) TISD will obtain and maintain property insurance for School as it deems necessary and advisable to carry. Each Party may elect to carry insurance to insure its own personal property located at the School.
- Neither Party will be responsible for the negligence or liability of the other Party.
- 11.09 Surrender of the Facilities. On the termination of this Agreement, OP shall leave the Facilities in good condition and repair. OP shall return and surrender to TISD all keys, security access cards, mail box keys, and keys to interior doors and improvements that were provided to Operator by TISD. The obligations under this Section shall survive the termination of this Agreement.
- 11.10 Forfeiture for Breach of Contract. It is mutually understood and agreed that any material failure by TISD to perform under this Agreement that remains uncured after receipt of ten (10) day's written notice shall be considered a material breach and default. In addition to any other remedy afforded OP by law or this Agreement, OP is entitled upon material breach to an order of

forfeiture authorizing OP to hold, maintain, lease, sell or otherwise dispose of the Facilities as defined by this Agreement.

ARTICLE XII.

FINANCIAL MATTERS

Note: Funding provisions are subject to negotiation by the parties and may vary significantly. The following provisions are purely illustrative.

- 12.01 Determination of Funding Allocation. Compensation to OP for eligible students is based primarily on the weighted average-daily-attendance (WADA) allocation received by TISD for students enrolled in the School and actual student attendance. For the 2018-2019 school year, ("Initial Year"), OP shall be paid by TISD according to the base student allotment designed by the State for TISD of _____.00 per student ADA plus weights for compensatory education, special education, bilingual (English Language Learners), gifted and talented and career and technology, per school year based on a 180-day school year. OP shall additionally be paid a share of any other allotments received by the district (including the instructional materials allotment) in proportion to the number of students enrolled at the School.

[SB 1882 Requirement: The agency will update the model language upon adoption of the rules.]

If Agreement is being entered into under SB 1882,), modify Paragraph 12.01 to insert reference TEC §42.2511(b) as follows:

Compensation to SPB for eligible students is based upon the weighted average-daily-attendance (WADA) that TISD is entitled to receive under TEC §42.2511(b) for each student enrolled at the School and in actual attendance.

- 12.02. Distribution of Funding Allocation. The allotment shall be paid in monthly installments on the 15th day of each month during the term, commencing on September 15, 2018. Payments shall be issued on an average monthly basis, based initially on a projected first-year enrollment of ____ students at an

estimated 97.3% attendance rate, an estimated 50% LEP students, and an estimated 80% economically disadvantaged, over 11 equal periods, provided that the 11th payment may be withheld by TISD to allow for any required adjustments for the reasons stated below. The estimated weights will be adjusted to actual weights for purposes of determining the compensation hereunder and the amount of the 11th month payment. The 11th payment shall not be withheld for more than 30 days, and if TISD is unable to determine the actual weights within 30 days after the 11th payment is initially due, it shall make such payment based on estimated weights as described above; any adjustment determined thereafter shall be paid to OP upon such determination if warranted, or shall be withheld in 10 equal amounts from the next 1 payments due to OP if the final determination indicates an overpayment based on actual weights. In the event that the 15th shall fall on a Saturday or Sunday, payment shall be made on the preceding following Monday. In the event that the 15th shall fall on a holiday, payment shall be made on the preceding day or preceding Friday as applicable.

12.03 Limitations. Payment shall be issued contingent on current ADA and FTE records (as applicable) in balance ten (10) days after receipt of the monthly invoice for the periods covered in this Agreement, and submitted to TISD. In no case shall TISD be obligated to pay any amount for students not included in the District's eligible ADA count to the Texas Education Agency. Notwithstanding any terms herein to the contrary, TISD's obligation to compensate OP is expressly subject to the receipt, adjustment, or modification of funds by TISD from the State of Texas specifically allocated for those eligible students in attendance at OP. In the event that such funding is not received or reduced, TISD shall not be obligated to OP in any amount, and OP may terminate this Agreement, and any prior payments made by TISD shall be retained by OP in consideration of and as payment for educational services provided to the date of such termination. This section shall not be construed to relieve TISD of any responsibility or obligation to OP if TISD fails to receive funding as a result of a failure by TISD or its agents or contractors to fulfill requirements necessary for securing funding from the State of Texas.

12.04 Procedure for Initiating Payment. By January 30 of any calendar year, OP shall submit its projected enrollment for the upcoming school year to TISD, which shall use that projected enrollment to calculate the monthly payments for the next school year. For the second year of School's operation, attendance rates and percentages of LEP and economically disadvantaged students shall be calculated based on actual figures from the first year of operation. For the third year and succeeding years, attendance rates and

percentages of LEP and economically disadvantaged students shall be calculated based on an average of the prior two years.

12.05. Refund upon Termination. In the event of termination prior to the full term of this Agreement, OP agrees to refund to TISD within ninety (90) days of the date of termination all advanced but unearned funds.

12.06 Federal and State Grants. In addition to the funding described above, OP may also be eligible for Federal entitlement grants, such as Title I, as approved by the Federal granting agencies and the State. Such funding must be spent as approved and designated by Federal and State agencies. OP admits knowledge of and agrees that TISD's obligation hereunder for payment of Federal and/or State grants is limited to and expressly subject to receipt of any funds from the Texas Education Agency. In the event TISD is ever required to refund any funds received from TEA specifically designated for any Federal or State grant program, then it is understood and agreed that OP shall be liable for and shall refund such amounts received.

12.07 Contracting, Purchasing and Procurement. OP may establish school-level systems for obtaining, contracting with, and paying its vendors for goods it acquires and services it provides under this Agreement. OP will ensure compliance with applicable state and federal contracting and payment. OP reserves the right to contract for any services it deems beneficial in operation of the School.

12.08 Accounting and Audits. OP shall comply with generally accepted fiscal management and accounting principles. In addition to any audits required by Applicable Law, OP shall submit to TISD within 180 days following the end of each fiscal year during the Term of this Agreement financial statements audited by an independent certified public accountant. OP agrees to comply with all rules, regulations, ordinances, statutes, and other laws, whether local, state or federal, including, but not limited to, all audit and other requirements of the Single Audit Act of 1984. In the event an audit occurs and any expenditures relating to this Agreement are disallowed, OP agrees to reimburse TISD immediately for the full amount of such.

ARTICLE XIII.

RECORDS AND REPORTING

- 13.01 Records Management System. OP shall implement a records management system that conforms to the system required of school district under the Local Government Records Act, Section 201.001 *et seq.*, Local Government Code, and rules adopted thereunder; provided, however, that records subject to audit shall be retained and available for audit for a period of not less than five (5) years from the latter of the date of termination or renewal of the contract.
- 13.02 State and Federal Reporting. OP shall report timely and accurate information to TISD as necessary for TISD to comply with all applicable state and federal requirements. OP shall report information in the manner requested by TISD and correct any demonstrable errors as requested by TISD provided that the manner of reporting or correction requested is not unduly burdensome to TISD.
- 13.03 Lawful Disclosure. To the extent that OP or TISD will come into possession of student records and information, and to the extent that OP or TISD will be involved in the survey, analysis, or evaluation of students incidental to this Agreement, both parties agree to comply with all requirements of the Family Educational Rights and Privacy Act and the Texas Public Information Act. In the event that TISD is required to furnish information or records of the School pursuant to the Texas Public Information Act, OP shall furnish such information and records to TISD, and TISD shall have the right to release such information and records. Either OP or TISD may object to disclosure of information and records under the Family Educational Rights and Privacy Act or the Texas Public Information Act.

ARTICLE XIV.

INTELLECTUAL PROPERTIES

- 14.01 Proprietary Materials. Each of the Parties shall own its own intellectual property including without limitation all trade secrets, know-how, proprietary data, documents, and written materials in any format. Any materials created exclusively by TISD for the School shall be owned by TISD, and any materials created exclusively by OP for the School shall be OP's proprietary material. The Parties acknowledge and agree that neither has any intellectual property interest or claims in the other Party's proprietary materials. Notwithstanding the foregoing, materials and work product jointly created by the Parties shall be jointly owned by the Parties and may be used by the individual Party as may be agreed upon by both Parties from time to time.
- 14.02 Name. OP owns the intellectual property right and interest to the name "Great Schools Nonprofit." The Parties agree that the name "Great Schools

Nonprofit" may be used by either Party during the Term of the Contract. The Parties agree that after the expiration or termination of this Contract, TISD will not use the name "Great Schools Nonprofit" for its own individual purposes.

ARTICLE XV.

INSURANCE

15.01 Insurance Coverage. OP shall secure and keep in force during the Term of this Agreement commercial general liability insurance coverage, including contractual coverage, automobile liability insurance coverage, and sexual misconduct and molestation coverage, with minimum liability limits of \$1,000,000 per occurrence, with a \$2,000,000 annual aggregate. TISD is to be named as an additional insured under such coverage for any liability arising, directly or indirectly, under or in connection with this Agreement, or with regard to the operations of the School or any event arising therefrom. TISD shall maintain casualty insurance on the Facilities and on its personal property and commercial general liability coverage applicable to any services it provides at the School, in substantially the same manner as it maintains such insurance with respect to other TISD schools. Operator shall also maintain (a) broad form casualty coverage for all personal property located or used at the School, including the Furnishings, which coverage shall be on a full replacement value basis, and (b) worker's compensation insurance to the extent required by the laws of the State of Texas. Any deductible or other similar obligation under OP's insurance policies shall be the sole obligation of OP and shall not exceed \$25,000. Notwithstanding the foregoing requirement regarding insurance coverage, TISD shall have the right to self-insure part or all of said insurance coverage in TISD's sole discretion. In the event TISD elects to self-insure all or any part of any risk that would be insured under the policies and limits described above, and an event occurs where insurance proceeds would have been available but for the election to self-insure, TISD shall make funds available to the same extent that they would have been available had such insurance policy been carried.

15.02 Form of Policies. All of OP's insurance policies shall be issued by insurance companies qualified to operate in Texas and otherwise reasonably acceptable to TISD. Such policies shall name TISD, and such other related parties as TISD elects, as additional insureds. Evidence of insurance shall be delivered to TISD on or before the Possession Date, and thereafter within thirty (30) days prior to the expiration of the term of each such policy,

or immediately upon OP's obtaining a new policy. Such coverage may be maintained under a blanket insurance policy of OP.

- 15.03 Indemnification. Subject to the policy limits of the insurance coverage required by this Agreement, OP will protect, defend, indemnify, and save harmless TISD from and against all claims and suits, including court costs, attorneys' fees, and other expenses, caused by the acts or omissions of OP, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement. Subject to the policy limits of the insurance coverage required by this Agreement, TISD will protect, defend, indemnify, and save harmless Operator from and against all claims and suits, including court costs, attorneys' fees, and other expenses, caused by the acts or omissions of TISD, its employees, officers, directors, trustees, subcontractors or agents in relation to the School or the performance of its obligations under this Agreement.
- 15.04 Evidence of Insurance. Upon request, a Party will furnish a certificate of insurance to the other Party evidencing the required coverage within thirty (30) days after the Possession Date of this Agreement and annually thereafter. Each Party will provide to the other Party notice of any cancellation or material adverse change to such insurance within thirty (30) days of such occurrence.
- 15.05 Cooperation. To the extent that it is reasonably practicable, each Party will comply with any information or reporting requirements required by any of the other Party's insurers.
- 15.06 Insurance Companies. All insurance coverage described in this Article shall be obtained from companies that are authorized to do business in the State of Texas.

ARTICLE XVI.

TERM AND TERMINATION

- 16.01 Term. The term of this Agreement shall begin on the Commencement Date and end on [5 years] ("Term"). This Agreement is subject to the termination provisions below.

- 16.02 Termination by Mutual Consent. This Agreement may be terminated at any time by mutual written agreement of OP and TISD if termination is effective no sooner than the end of the then current school year.
- 16.03 Termination Rights of Both Parties. Either Party may immediately terminate this Agreement in the event that the other Party fails to remedy a material breach of this Agreement within ____ days after written notice by the non-breaching Party of such breach; provided, however, that if the breach would affect the safety or well-being of a student or is not reasonably capable of being cured, then no such notice and opportunity to cure shall be required. In the event the TISD terminates the agreement before the agreement end date and if the OP has met performance goals, then TISD will pay a transition fee of \$1,000,000 to the OP to support costs related with exiting the agreement. The TISD also agrees that the OP has the right to use the facility, on a market rate level, for the duration of the original agreement. In the event that the OP terminates the agreement early or has a material breach, then the OP agrees to pay the TISD pro-rated market rate rent for the time that the OP operated in the facility without rent.
- 16.04 Termination Related to Academic Performance. TISD may terminate this Agreement if the School is placed in one of the lowest two categories of school improvement for three or more consecutive years in which it is operated by OP or fails to achieve the student outcome goals specified in Addendum 9, attached, after the third year of School operation under this Agreement. A termination under this section shall be effective at the end of the then current school year so long as notice of such termination is provided no later than one hundred eighty (180) days prior to the end of the then current school year.
- 16.05 Termination Right to a Public Hearing. TISD may not terminate this Agreement if the school successfully achieves the student outcome goals specified in Addendum 9, attached, without a public hearing at least 30 days prior to any district action to terminate the contract. TISD may not extend this Agreement if the school fails to achieve the student outcome goals specified in Addendum 9, attached, without a public hearing at least 30 days prior to any district action to extend or renew the contract.
- 16.06 Termination Related to Academic Performance. TISD may terminate this Agreement if the School is placed in one of the lowest two categories of school improvement for three or more consecutive years in which it is operated by OP or fails to achieve the student outcome goals specified in

Addendum 9, attached, after the third year of School operation under this Agreement. A termination under this section shall be effective at the end of the then current school year so long as notice of such termination is provided no later than one hundred eighty (180) days prior to the end of the then current school year.

ARTICLE XVII.

Service-level Agreements

- 17.01 OP Authority. The OP has sole decision-making authority regarding the delivery of any service related to transportation, food services, janitorial, security, or related services. OP may, at its sole discretion, choose to purchase one or more services from TISD, including student transportation, child nutrition, services for special populations, library, counseling, facilities maintenance, temporary alternative programs, and other services at a cost jointly approved annually. If OP operates more than one campus within TISD, the services and terms of purchases may vary for each school. The TISD will not and cannot require the OP to use any TISD provided services without the consent and agreement of the OP.
- 12.09 Administrative Services. The Parties agree that TISD shall withhold no more than ____% of all funds annually for TISD services, including mandatory state and federal reporting and data system administration. The Parties agree to meet annually to review and jointly approve such fees. Itemization and cost of administrative services for 2018-2019 are set forth in Addendum 7, attached.
- 17.02 Individual Service Pricing. TISD agrees to publish annually a service menu and price list for all services. Prices will be stated in a per-pupil or per-square foot format. Prices will be actual prices that the TISD service costs for TISD schools.
- 17.03 Service Pricing at Cost. If the OP decides, as documented in this agreement, to buy services from the TISD then TISD must charge the OP the same per-pupil or per-square foot price that TISD delivers the service to TISD direct run schools. *[Note: If a school has been converted to a campus charter school, district fees for services may not exceed cost to the district.]*

17.04 [INSERT SPECIFIC SERVICE-LEVEL AGREEMENT]

ARTICLE XVIII.

GENERAL AND MISCELLANEOUS

- 18.01 Entire Agreement. This agreement, including all referenced attachments and terms incorporated by reference contains the entire agreement of the parties. All prior representations, understandings, and discussions are merged into, superseded by and canceled by this contract.
- 18.02 Severability. If any provision of this contract is determined by a court other tribunal to be unenforceable or invalid for any reason, the remainder of the contract shall remain in full force and effect so as to give effect to the intent of the parties to the extent valid and enforceable.
- 18.03 No Waiver of Breach. No assent, express or implied, to any breach of any of the covenants or agreements herein shall waive any succeeding or other breach.
- 18.04. Venue. Any suit arising under this contract shall be brought in _____ County, Texas.
- 18.05. Governing Law. In any suit arising under this contract, Texas law shall apply.

Entered into this ____ day of _____, 2018

Texas ISD

By

Great Schools Nonprofit, Inc.

By

ADDENDUMS REFERENCE

Addendum 1: TISD Charter Policy

- Local policy
- Model district EL(legal) and EL(local) policies can be found here:
 - https://tea.texas.gov/Texas_Schools/District_Initiatives/SB_1882_Implementation_Update/

Addendum 2: SPM Board Adopted School Policies

- Local district or operating partner policies and bylaws

Addendum 3: Student Outcome Goals

- Please reference the student outcome performance measure template, which can be found here:
 - https://tea.texas.gov/Texas_Schools/District_Initiatives/SB_1882_Implementation_Update/

Addendum 4: Performance Consequences

- To be developed locally

Addendum 5: School Attendance Area

- To be developed locally

Addendum 6: SPM Charter Proposal (Application)

- Model charter application can be found here:
 - https://tea.texas.gov/Texas_Schools/District_Initiatives/SB_1882_Implementation_Update/

Addendum 7: Facility Plan

- To be developed locally

Addendum 8: TISD Services and Fees

- To be developed locally

May 22, 2018

Superintendent Martinez
San Antonio ISD
141 Lavaca Street
San Antonio, TX 78210

Re: Requirements for SB 1882 Performance Requirement Modifications

Dear Superintendent Martinez,

On May 21, TEA sent a letter to inform you that San Antonio ISD's submission for SB 1882 eligibility approval for the partnership with Democracy Prep Public Schools has been approved contingent upon several technical modifications to the performance contract. Upon satisfactory completion of the required modifications, the district will receive official approval for access to SB 1882 benefits.

This letter describes the modifications required in the performance contract.

Required Modifications to Phase 2b (Executed Performance Contract) materials

To meet the standard for approval under 19 TAC §1075 the district will be required to modify the performance contract to include:

- A provision conferring initial and final authority to the Operating Partner to approve all assessments that are not required by the state of Texas. 19 TAC §97.1075(c)(2)(D)
- School academic performance goals as required by 19 TAC §97.1075(d)(2). Goals should include, at a minimum:
 - annual academic performance expectations and goals, which shall include, but are not limited to:
 - for campuses issued an accountability rating under TEC, §39.054, a specific annual target for the overall campus academic rating and a specific target for student growth based on the School Progress Domain; and
 - specific consequences in the event that the operating party does not meet the annual academic performance expectations and goals described in the performance contract;



From: Siedlecki, Joe <Joe.Siedlecki@tea.texas.gov>

Sent: Tuesday, May 22, 2018 2:49 PM

To: Martinez, Pedro

Cc: Choudhury, Mohammed A; Byer, Von; Jones, Christopher; Dawson, Doug; Horgos, Sandi

Subject: RE: SB 1882 Eligibility Approval Request Update - Democracy Prep Public Schools - Performance Contract Modifications

Superintendent Martinez,

Attached is a memorandum regarding the required modifications to the performance contract between SAISD and Democracy Prep Public Schools to make it eligible for SB 1882 benefits.

We have also attached a document highlighting the review team analysis of the performance contract.

Thank you,

Joe Siedlecki
Associate Commissioner
Texas Education Agency

- Financial performance measures, as required in 19 TAC §97.1075(d)(3), which include the following:
 - receipt of an unqualified audit opinion, and
 - specific consequences in event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract.
- A provision describing the education plan described in the approved charter proposal. 19 TAC §97.1075(d)(9)
- A contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract. 19 TAC §97.1075(d)(6)

The enclosed document, titled *Performance Contract Evaluation_SAISD_DPPS* provides additional information on the review.

Instructions for Required Modifications

Districts must make the required modifications and submit them to TEA by 5:00pm on Monday, July 2. The modifications to the performance contract must be approved by the district Board of Trustees and by the Operating Partner.

To submit, the district must adhere to the following guidance:

- Save the modified file as a PDF
- Name the file – *Phase 2b Performance Contract Modifications_San Antonio ISD_DPPS*
- Email the attached file to dssi@tea.texas.gov with the subject line as follows – *Modifications – San Antonio ISD_DPPS*

TEA will review the modifications to determine if they were satisfactorily completed. TEA will inform the district of this determination within 10 working days of submission.

For additional information or assistance, please contact Doug Dawson at doug.dawson@tea.texas.gov.

Sincerely,

Joe Siedlecki
Associate Commissioner

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Review Overview

Review team members will individually review contracts using the criteria in this rubric. The review team will discuss individual findings and will establish a consensus rating for each section of the rubric. In order to meet the TEA threshold for approval, a proposal must "Meet the Standard" in each of the sections below and may not receive a rating of "Does Not Meet the Standard" in any section.

Performance Contract Content Criteria:

1) Contract grants partner organizations with **necessary authority** to operate the campus.

Review		
Contract provisions as required by TAC, §97.1075.	<input type="checkbox"/> Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Staffing Authority (COO/Executive Director/School Leader) - The operating partner must have authority to employ and manage the campus chief operating officer, including initial and final non-delegable authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.	Meets the Standard	
Evidence:		
b) DPPS will recruit, hire, and train all school leadership, including principals, assistant principals, and an Executive Director. DPPS will have sole authority over all leadership of the Schools and full autonomy to evaluate the School Leader. The campus School Leader will serve as the supervisor of all employees at any particular campus.		
Staffing Authority (Employees of the Operating Partner) - The operating partner must have authority over the employees of the operating partner, including initial and final non-delegable authority for the operating partner to employ and/or all of the operating partner's own administrators, educators, contractors, or other staff. Such authority includes the authority to hire, supervise, manage, assign, evaluate, develop, advance, compensate, continue employment, and establish any other terms of employment.	Meets the Standard	
Evidence:		

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<p>f) DPPS will have full autonomy to hire, assign, reassign and terminate staff at the Schools and DPPS will have no requirement to retain staff at the Schools. If possible, the District and DPPS may pursue any possible waivers or exemptions from certification requirements (where applicable) for staff.</p> <p>g) DPPS shall have full autonomy and sole discretion concerning employee hiring, employees, selection, retention, and recruitment of high quality teaching and administrative staff by the Schools. DPPS will also have full autonomy concerning employee performance, management, termination, work hours and work conditions, compensation and benefits and payment thereof, including salary schedules and performance pay, employee assignment and duties at the Schools. Hiring for the Schools shall be separate from hiring for District contract positions.</p>	
<p>Staffing Authority (Employees of the District) - The operating partner must have authority over the assignment of all district employees to the campus, including initial and final authority to approve the assignment of all district employees or contractors to the campus, as well as initial and final authority to supervise, manage, and rescind the assignment of any district employee or district contractor from the campus.</p>	<p>Meets the Standard</p>
<p>Evidence:</p> <p>f) DPPS will have full autonomy to hire, assign, reassign and terminate staff at the Schools and DPPS will have no requirement to retain staff at the Schools. If possible, the District and DPPS may pursue any possible waivers or exemptions from certification requirements (where applicable) for staff.</p> <p>g) DPPS shall have full autonomy and sole discretion concerning employee hiring, employees, selection, retention, and recruitment of high quality teaching and administrative staff by the Schools. DPPS will also have full autonomy concerning employee performance, management, termination, work hours and work conditions, compensation and benefits and payment thereof, including salary schedules and performance pay, employee assignment and duties at the Schools. Hiring for the Schools shall be separate from hiring for District contract positions.</p>	
<p>Manage Majority of Instructional Staff - The operating partner must directly manage the instructional staff, either employed by the district or operating partner, who provide services to at least a majority of the students.</p>	
<p>Evidence:</p>	

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<p>b) DPPS will recruit, hire, and train all school leadership, including principals, assistant principals, and an Executive Director. DPPS will have sole authority over all leadership of the Schools and full autonomy to evaluate the School Leader. The campus School Leader will serve as the supervisor of all employees at any particular campus.</p>		
<p>Curriculum - Initial and final authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus.</p>	<p>Meets the Standard</p>	
<p><i>Performance contract clearly confers initial and final authority to approve all curriculum decisions beyond the minimum requirements outlined in §74.2 of this title (relating to Description of a Required Elementary Curriculum) or §74.3 of this title (relating to Description of a Required Secondary Curriculum), lesson plans, instructional strategies, and instructional materials, as defined in TEC, §31.002(1), to be used at that campus.</i></p>		
<p>Evidence:</p> <p>iii. DPPS shall have full autonomy with regard to the academic program of the Schools (subject to state standards), including, but not limited to, curriculum, length and design of the school day, the academic calendar, class size and teacher leveling, professional development, and summer school. DPPS will provide the Schools with comprehensive program design, including proprietary curriculum development and implementation, curriculum scope and sequence, instructional oversight, common standards, the development, administration and analysis of diagnostic assessments, and the oversight, measurement, and management of comprehensive school quality. DPPS will also support the Schools' Arts, Athletics, and Civics programming through curriculum planning, professional development, and strategic partnerships. Additionally, DPPS will support the Schools' domestic and international educational fieldtrips (as applicable) by creating itineraries and securing bookings for approved destinations; providing guidance and support in securing passports, visas, and other required travel documentation for high school trips; and cultivating and maintaining relationships with in-country program partners.</p>		
<p>Education Programming for Subpopulations - Initial and final authority over educational programs for specific,</p>	<p>Meets the Standard</p>	

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identified student groups, such as gifted and talented students, students of limited English proficiency, students at risk of dropping out of school, special education students, and other statutorily defined populations.		
<p>Evidence:</p> <p>a) DPPS will have autonomy to run all aspects of the Schools subject only to federal, state, local law, and this Agreement to the fullest extent possible and if the students perform satisfactorily as provided by this Agreement.</p> <p>c) The District is the Local Education Agency ("LEA") for all purposes, including, but not limited to, compliance with Section 504 of the Rehabilitation Act of 1973, as amended; the Individuals with Disabilities Education Act ("IDEA"); the Americans with Disabilities Act, as amended; Titles VI and IX of the Civil Rights Act of 1964; the Family Education Rights and Privacy Act ("FERPA") and other areas of law applicable to LEA's including those described in TEC §12.056. However, DPPS will implement its own programs for students in special populations including, but not limited to, those who qualify for special education,</p> <p style="text-align: center;">5</p> <div style="background-color: black; height: 20px; width: 100%; margin: 10px 0;"></div> <p style="text-align: center;">gifted and talented students, and English Learners (ELs) at the Schools, subject to and consistent, however, with all applicable state and/or federal requirements.</p>		
Calendar & Schedule - Initial and final authority to set the school calendar and the daily schedule, which may differ from those in other district campuses	Meets the Standard	
Evidence:		

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iii.	<p>DPPS shall have full autonomy with regard to the academic program of the Schools (subject to state standards), including, but not limited to, curriculum, length and design of the school day, the academic calendar, class size and teacher leveling, professional development, and summer school. DPPS will provide the Schools with comprehensive program design, including proprietary curriculum development and implementation, curriculum scope and sequence, instructional oversight, common standards, the development, administration and analysis of diagnostic assessments, and the oversight, measurement, and management of comprehensive school quality. DPPS will also support the Schools' Arts, Athletics, and Civics programming through curriculum planning, professional development, and strategic partnerships. Additionally, DPPS will support the Schools' domestic and international educational fieldtrips (as applicable) by creating itineraries and securing bookings for approved destinations; providing guidance and support in securing passports, visas, and other required travel documentation for high school trips; and cultivating and maintaining relationships with in-country program partners.</p>		
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%; padding: 5px;"> <p>Assessments - Initial and final authority to approve all assessments that are not required by the state of Texas.</p> </td> <td style="width: 40%; padding: 5px;"> <p>Does not meet the standard</p> </td> </tr> </table>	<p>Assessments - Initial and final authority to approve all assessments that are not required by the state of Texas.</p>	<p>Does not meet the standard</p>
<p>Assessments - Initial and final authority to approve all assessments that are not required by the state of Texas.</p>	<p>Does not meet the standard</p>		
<p><i>The performance contract does not clearly confer initial and final authority to approve all assessments that are not required by the state of Texas.</i></p> <p><i>There is brief mention of diagnostic assessments (see below).</i></p> <p>Evidence:</p> <p>iii. DPPS shall have full autonomy with regard to the academic program of the Schools (subject to state standards), including, but not limited to, curriculum, length and design of the school day, the academic calendar, class size and teacher leveling, professional development, and summer school. DPPS will provide the Schools with comprehensive program design, including proprietary curriculum development and implementation, curriculum scope and sequence, instructional oversight, common standards, the development, administration and analysis of diagnostic assessments, and the oversight, measurement, and management of comprehensive school quality. DPPS will also support the Schools' Arts, Athletics, and Civics programming through curriculum planning, professional development, and strategic partnerships. Additionally, DPPS will support the Schools' domestic and international educational fieldtrips (as applicable) by creating itineraries and securing bookings for approved destinations; providing guidance and support in securing passports, visas, and other required travel documentation for high school trips; and cultivating and maintaining relationships with in-country program partners.</p>			

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Budget - Initial and final authority to adopt and implement the campus budget.	Meets the standard	
<p>Evidence:</p> <ul style="list-style-type: none"> c) DPPS Schools will receive all funds (including state and Federal funds) received by the District that are generated by the Schools' students, with no withholdings, except for each Schools' site-specific utilities and actual transportation costs that the District incurs. Transportation and utilities costs shall be passed onto DPPS Schools by the District. d) DPPS will also have access to private or block grants received by DPPS or the District to support the Schools. e) DPPS School funds shall be maintained in an account or accounts belonging to DPPS but earmarked and designated for the Schools. DPPS shall maintain appropriate financial controls over the Schools' accounts and maintain a fiscal policy that governs the maintenance, management, and disbursement of all funds in such accounts, all in accordance with generally accepted accounting standards for fiscal management as required by TEC §12.063. 		

2) Contract includes **school academic performance goals**. Goals should include, at a minimum:

- annual academic performance expectations and goals, which shall include, but are not limited to:
 - for campuses that are paired for accountability purposes, specific annual targets for improved student academic performance;
 - for campuses issued an accountability rating under TEC, §39.054, a specific annual target for the overall campus academic rating and a specific target for student growth based on the School Progress Domain; and
 - specific consequences in the event that the operating party does not meet the annual academic performance expectations and goals described in the performance contract;

Review	
Meets the Standard	x Does Not Meet the Standard
Comments/Feedback	
<i>The performance contract includes Exhibit A. Exhibit A, below, includes performance measures for the overall campus ratings (Performance Measure #1) and for student growth based on the School Progress Domain (Performance Measure #2), but the Exhibit fails to set annual targets for these</i>	

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performance measures for, at minimum, SY19-20. To align with best practices, the partnership should establish performance measures for SY18-19.

- d) P.F. Stewart Elementary School's Performance Metrics are detailed in Exhibit A to this Agreement. Any future changes to performance metrics will expressly require DPPS's agreement, which shall not be unreasonably withheld. As additional Schools are developed, each School's performance metrics will be individualized and will not apply to DPPS Schools as a consolidated entity. DPPS Schools will only be held to such performance metrics to the extent that the District holds its own schools to the metrics. If the District does not enforce the State Accountability Ratings Framework for District schools, it will forfeit the right to enforce the State Accountability Ratings Framework against DPPS Schools.

Performance Contract Evaluation					
School Year	2018-19	2019-20	2020-21	2021-22	2022-23
Rating	DPPS Schools will have two years after a School is launched before it is held accountable under performance contract metrics (in accordance with SB 1882)		Met Standard	Met Standard	Met Standard

Performance Measure 2. Student Progress Domain

School Year	2018-19	2019-20	2020-21	2021-22	2022-23
Rating			Met Standard	Met Standard	Met Standard
Goal Progress Measures					
Relative Performance (scaled score)			69	65	69
STAAR Growth Measure (scaled score, growth in Reading and Math for all students)			70	70	70
% Meets (based on average of Approaches, Meets, and Exceeds)			33%	33%	35%
		DPPS Schools will have two years after a School is launched before it is held accountable under performance contract metrics (in accordance with SB 1882)			

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- 3) Contract includes **school financial performance goals**. Goals should include, at a minimum:
- annual financial performance expectations and goals, which shall include, but are not limited to:
 - the completion of an annual financial report of the operating partner meeting the expectations outlined in §109.23 of this title (relating to School District Independent Audits and Agreed-Upon Procedures;
 - receipt of an unqualified audit opinion, in connection with the annual financial report; and
 - specific consequences in event that the operating partner does not meet the annual financial performance expectations and goals described in the performance contract.

Review	
<input type="checkbox"/> Meets the Standard	<input checked="" type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<p><i>The performance contract references an annual financial audit.</i></p> <p><i>The performance contract includes Exhibit A which includes a mention of financial health.</i></p> <p><i>Neither of these statements fully satisfy the requirement that the performance contract include annual financial performance expectations and goals, which shall include receipt of an unqualified audit opinion.</i></p> <p><i>The performance contract does not articulate specific consequences in the event the OP does not meet the financial performance expectations and goals described in the performance contract.</i></p> <p>Evidence:</p> <p>f) DPSS will prepare annual financial statements for the Schools, have their financial statements audited by a licensed independent CPA firm, and submit the resulting audited annual financial report to the District within 150 days after the close of DPSS' fiscal year. The first audit will commence after completion of the inaugural fiscal year following the opening of the Schools.</p> <p>Financial Health</p> <p>Objective: <i>DPSS Schools will be well-run organizations capable of achieving long-term success.</i></p> <ul style="list-style-type: none"> ▪ DPSS will operate core educational programs sustainably on dependable public funds and will maintain a balanced budget and stable cash flow (based on Annual Financial Audit and Compliance Report) 	

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4) Contract includes a description of the **campus enrollment and expulsion policies**. For turnaround partnerships, the enrollment provision must:

- *Address eligibility for enrollment; and*
- *Provide that any student residing in the attendance zone of the district campus as the attendance zone existed before operation of the district campus under the contract shall be admitted for enrollment at the campus. The contract must establish enrollment preference for students who do not reside in the attendance zone as follows:*
 - *other students residing in the school district in which the campus is located; and*
 - *students who reside outside the school district.*

Review	
<input checked="" type="checkbox"/> Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<p><i>The performance contract clearly meets the criteria outlined above.</i></p> <p>Evidence:</p> <ul style="list-style-type: none"> a) The Parties agree and understand that the District may not assign a student to the School unless the student's parent or guardian has voluntarily enrolled the student at the School. A Student's parent or guardian may remove the student from the School at any time and enroll the student at the school to which the student would ordinarily be assigned. b) Any student residing in the attendance zone of the School as the attendance zone existed before operation of the School under its charter shall be admitted for enrollment at the School subject to (a) above. For students who do not reside in the School attendance zone, the following enrollment preference and order shall apply: <ul style="list-style-type: none"> i. Other students residing in the District; and ii. Students who reside outside of the District, or iii. As otherwise required by state law or TEA regulation. 	

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- i) In addition to the enrollment restrictions required by TEC §11.174(h) and (i), the following student enrollment provisions, subject to the provisions of state law and as may be revised by the Parties as necessary to meet the federal definition of a charter school, shall be followed by the Parties:
- i. DPPS will work with the District to ensure preferences for current students attending the campus in the school year before its conversion under this Agreement.
 - ii. Students in lower grade levels at Schools will receive automatic admission to the next grade level at the DPPS-managed School in the same continuum as DPPS expands its continuum.

- 5) Contract **term of up to 10 years** with provisions that specify terms for termination, including:
- a requirement for a public hearing at least 30 days prior to any district action to terminate the contract for an operating partner that successfully met the performance expectations and goals described in the performance contract; and
 - a requirement for a public hearing at least 30 days prior to any district action to extend the contract for an operating partner that failed to meet the performance expectations and goals described in the performance contract.

Review	
x Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<p><i>The performance contract clearly meets the criteria outlined above.</i></p> <p>Evidence:</p> <p>15. <u>Term & Termination.</u></p> <p>a) This Agreement shall be effective for ten years, beginning July 1, 2018 and ending June 30, 2028 (the "<u>Initial Term</u>"), unless terminated pursuant to its terms.</p> <p>and public hearing clauses</p>	

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- c) In accordance with 19 Texas Administrative Code section 97.1075(d)(5) due process will be afforded DPPS as follows:
- i. A requirement of a public hearing at least 30 days prior to any action to terminate this management agreement when DPPS has successfully met the performance expectations and goals described in this agreement; and
 - ii. A requirement of a public hearing at least 30 days prior to any action to extend this management agreement when DPPS has failed to successfully meet the performance expectations and goals described in this agreement.

6) a contract term stating that the **campus is exempt from laws and rules** to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract.

Review	
xMeets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<p><i>The performance contract does not include a contract term stating that the campus is exempt from laws and rules to the fullest extent allowed by TEC, Chapter 12, Subchapter C, and is exempt from all district policies except for laws, rules, and policies that are specifically identified as applicable to the campus in the performance contract. The below language is not sufficient.</i></p>	
<p>b) DPPS will retain as much authority and autonomy as permitted by law or TEA Rule, including 19 Tex. Admin. Code §§ 97.1075 and 97.1079, over its Schools and operations. Any authority or responsibility not specifically given to the District in the Agreement or by law or TEA Rule, will remain with DPPS, including, but not limited to, the following:</p>	

7) Contract **includes service level agreements** to describe what shared services the district will provide to the operating partner.

Review	
x Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	

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The performance contract clearly meets the criteria outlined above.

Evidence:

10. District Services.

a) The District will provide the following services at no cost to DPPS:

1. Child Nutrition Program and Food Services as a pass-through. The District will remain the Contracting Entity and School Food Authority for all purposes and DPPS will have no liability or responsibility for compliance with federal or state Child Nutrition guidelines or legal requirements. DPPS will maintain a collaborative and working relationship with the District's Food and Child Nutrition Services division.
2. Disciplinary Alternative Education Programs (DAEP), in the unlikely event that such programs could be necessary.
3. Related services for special education, Section 504, dyslexia, dysgraphia, hearing, vision, orientation and mobility, assistive technology, adaptive equipment, speech, psychology, orientation and mobility, reading, adaptive physical education, and occupational and physical therapy. DPPS will maintain a collaborative and working relationship with the District's Special Education Department.
4. Technology infrastructure and maintenance services at the Schools. DPPS will maintain a collaborative and working relationship with the District's Technology and Management Information Systems division.
5. Software licenses as required.
6. Other services to be agreed upon by the parties.

8) Contract includes a per pupil allocation from the district to operator that provides a student-level allocation of local, state, and federal funds received by the district.

Review	
x Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<p><i>The performance contract clearly meets the criteria outlined above.</i></p> <p>Evidence:</p> <p>14. <u>Management Fee.</u></p> <p>a) <u>Management Fee.</u> As compensation for its services hereunder, DPPS shall receive a management fee (the "<u>Management Fee</u>") from the Schools in an amount equal to 15.0% of the Non-Competitive Public Revenue of the Schools attributable to the students at the Schools. After the 2020-21 school year, this percentage will decrease by one-half percent (0.5%) in each year until it reaches a minimum of 12.0%, which percentage will remain in effect for all subsequent Renewal Terms.</p>	

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- i. In 2018-19 and 2019-20 school year, Stewart Elementary will continue to receive TTIPS funding and the Parties agree that Stewart will receive approximately \$14,000 in 2018-19 and \$12,000 in 2019-20 in per pupil funding for each of those years. The 2018-19 and 2019-20 projected total per pupil funding amounts are based on TTIPS funding, TEC §11.174, and the District's Campus Financial Summary: Preliminary Estimate for the 2018-19 School Year sheet for Stewart provided to DPPS.

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- ii. In the 2020-21 school year, and thereafter, the District guarantees that DPPS Schools will receive at least the same amount of per pupil funding as other charter schools located in the District that serve comparable student populations and demographics, as defined by federal and state guidelines, and as mutually agreed by the parties, as DPPS Schools. DPPS schools will receive the same increases that those open enrollment schools receive. Should any other charter schools located in the District, irrespective of whether chartered by the TEA or the District, that serve comparable student populations and demographics as DPPS Schools receive additional public funding from the state or District, DPPS Schools shall receive the same funding.
- iii. In no event (and regardless of the school year) shall DPPS Schools receive any less state and local funding on a per pupil basis than any open enrollment charter schools subject to TEA authorization in the District serving comparable student populations and demographics (such comparison schools to be mutually agreed upon by the Parties) to those served by DPPS.

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- j) DPPS will pay the District an administrative support fee of 2.274% of the state revenue generated by students at the Schools for certain services defined below:
- 1) Services to maintain state and Federal compliance, reporting, and other related systems.
 - 2) Unified enrollment system platform and related services.
 - 3) Police and campus security services and personnel in the same manner as any other SAISD school.
 - 4) Operation and maintenance of facilities, including, but not limited to, building maintenance and repair, security equipment, capital repairs, landscaping and grounds upkeep.
 - 5) Other services to be agreed upon by the parties.
- k) In addition to the above provisions, the Parties will annually determine the amount of per pupil funding to be available under the Agreement and available under TEC §11.174 and TEA Rule, 30 days before the start of the Schools' fiscal year or as soon as reasonably practicable. The Parties will determine a total budget of funds available for the Schools, with DPPS retaining sole discretion (subject to applicable state law) of how it distributes the funds within the Schools' budgets. The source of funds for this budget will include, but not be limited to:

9) Contract holds partner organization accountable for implementing school model from the charter application; in particular for the implementation of the **education plan** described in the approved charter proposal.

Review	
<input type="checkbox"/> Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<i>The performance contract does not include a description of the education plan, nor a specific statement about the OP being held accountable for implementing the plan.</i>	

10) Contract describes **consequences for breach** of contract by either party.

Review	
x Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	

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The performance contract address the required criteria above.

Evidence:

- g) In the event the District terminates the Agreement for a reason outside of the defined material terms and conditions of this Agreement and if DPPS has met its performance contract objectives, then the District's termination under this paragraph can only take effect at the end of the school year following the District's Board of Trustees providing 180 days prior written notice. By way of example, if there are 179 days left in the current school year when written notice is given, the termination would not be effective until the end of the next school year. The District

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will compensate DPPS for all actual costs incurred by DPPS related to the District's exiting the Agreement, including, but not limited to, the loss of the management fee for the Schools for a period of two years, the cost of leasing of a separate facility in Bexar County (if any), limited to the market value of the current leased or District provided premises, incurred by DPPS for a period of two years, and any other personnel or operational costs incurred by DPPS as a result of the termination. The District agrees that such compensation is not a penalty or meant to be punitive and hereby waives and agrees it will not assert any defense that this compensation is a penalty or meant to be punitive to invalidate this compensation.

Performance Contract Assurances:

1) Performance contract includes assurance from school district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract as required by TEC, §11.174(c).

Review	
<input checked="" type="checkbox"/> Meets the Standard	<input type="checkbox"/> Does Not Meet the Standard
Comments/Feedback	
<i>The contract meets this standard. To qualify for benefits under TEC §11.174, subsection (c) of that statute requires the district to consult with campus personnel regarding provisions to be included in a contract between the district and an <u>open-enrollment charter school</u>. This same subsection</i>	

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*requires that the contract between a school district and an **open-enrollment charter school** not affect the rights and protections afforded by current employment contracts or agreements. TAC §97.1075(d)(10) requires an assurance that the district has consulted with campus personnel regarding the provisions included in the performance contract and that the rights and protections afforded by current employment contracts or agreements shall not be affected by this contract **as required by TEC, §11.174(c)**. Open-enrollment charter schools are authorized by TEC Chapter 12, Subchapter D "Open Enrollment Charter Schools." Because this contract is between a school district and entity granted a charter under TEC Chapter 12, Subchapter C "Campus or Campus Program Charter," and not with an entity granted a charter under TEC Chapter 12, Subchapter D "Open Enrollment Charter Schools," the requirements in TEC §11.174(c) and 19 TAC §97.1075(d)(10) do not apply to this application.*

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