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HOUSE OF REPRESENTATIVES

Daniel H. Hultety

FLOOR AMENDMENT NO. _____

BY: _____

1 Amend S.B. No. 1365 (house committee printing) as follows:

2 (1) On page 2, line 6, strike "FINAL AND UNAPPEALABLE" and
3 substitute "APPEAL".

4 (2) On page 2, lines 7 and 8, strike "and unappealable".

5 (3) On page 2, line 8, between "decision," and "or", insert
6 "report,".

7 (4) On page 2, line 10, strike "if" and substitute "as".

8 (5) On page 8, strike lines 6 through 9, and substitute the
9 following:

10 (a-1) During the pendency of a special investigation under
11 this section, the agency is not required to disclose the identity of
12 any witness.

13 (6) On page 8, strike lines 13 through 17, and substitute
14 the following:
15 policy. [~~Before issuing a report with its final findings, the~~
16 ~~agency must provide a person or entity the agency finds has violated~~
17 ~~a law, rule, or policy an opportunity for an informal review by the~~
18 ~~commissioner or a designated hearing examiner.]~~

19 (7) On page 8, strike lines 18 and 19 and substitute the
20 following:

21 (c) In presenting the agency's preliminary findings to a
22 school district under Subsection (b), the agency:

23 (1) shall provide to the district a written report of
24 the agency's preliminary findings of the investigation;

25 (2) shall provide to the district any evidence relied
26 on by the agency in making the preliminary findings;

27 (3) shall disclose to the district the identity of any
28 witness whose statements the agency relied on in making the
29 preliminary findings; and

1 (4) may not include recommended sanctions or
2 interventions.

3 (d) A written report of preliminary findings under
4 Subsection (c) and all associated materials produced by the agency
5 in support of the report are excepted from public disclosure as
6 audit working papers of the agency under Section 552.116,
7 Government Code. A school district may publicly release a report of
8 preliminary findings only if the release is approved by an
9 affirmative vote of the board of trustees of the district.

10 (e) Unless otherwise provided by law, all evidence
11 collected by the agency in connection with a special investigation,
12 including witness statements and videos of agency interviews, are
13 confidential and not subject to disclosure under Chapter 552,
14 Government Code, except that evidence described by this section may
15 be disclosed:

16 (1) to a person with a legitimate interest in the
17 investigation; or

18 (2) in connection with an administrative or other
19 legal proceeding brought under this title.

20 (f) Not later than 30 days after the date on which the board
21 of trustees of the school district receives the written report of
22 the preliminary findings under Subsection (c), the board of
23 trustees of a school district may accept the agency's findings or
24 respond in writing to the agency.

25 (g) Before the agency determines to recommend a sanction or
26 intervention in a final report, other than a sanction or
27 intervention described by Section 39.005, the commissioner or the
28 commissioner's designee shall informally review the investigation,
29 the preliminary findings, and any proposed intervention or sanction
30 under consideration by the agency. An informal review under this
31 section is not a contested case for purposes of Chapter 2001,

1 Government Code.

2 (h) In conducting an informal review under Subsection (g),
3 the commissioner or the commissioner's designee may subpoena a
4 current or former school district employee, agent, or official to
5 compel the employee, agent, or official to attend a deposition or
6 produce documents reasonably necessary for the review.

7 (i) If a person fails to comply with a subpoena issued under
8 Subsection (h), the commissioner, acting through the attorney
9 general, may file suit to enforce the subpoena in a district court
10 in this state. On a finding that good cause exists for issuing the
11 subpoena, the court shall order the person to comply with the
12 subpoena and the court may punish a person who fails to obey the
13 court order.

14 (j) The agency shall consider any response submitted by the
15 board of trustees of the school district under Subsection (f) and
16 the results of an informal review conducted under Subsection (g)
17 before providing the board of trustees of a school district a final
18 report in writing that includes proposed sanctions or
19 interventions.

20 (k) A court may not enjoin a special investigation conducted
21 under this section prior to the conclusion of the special
22 investigation.

23 (l) A school district must exhaust the administrative
24 remedies provided under this subchapter before appealing the
25 findings or final recommendations of a special investigation
26 conducted under this section to a court.

27 (8) On page 9, strike lines 16 through 24 and substitute the
28 following:

29 assigned performance rating under Section 39.0544. [~~A reference in~~
30 ~~law to an acceptable rating or acceptable performance includes an~~
31 ~~overall or domain performance rating of A, B, C, or D or performance~~

1 ~~that is exemplary, recognized, or acceptable performance or~~
2 ~~performance that needs improvement.]~~

3 (9) On page 11, lines 19 and 20, strike "NEEDS IMPROVEMENT
4 OR UNACCEPTABLE PERFORMANCE RATING. (a)" and substitute the
5 following:

6 PERFORMANCE RATING REQUIRING INTERVENTION OR OTHER ACTION. (a) A
7 reference in law to an acceptable performance rating or acceptable
8 performance includes an overall or domain performance rating of A,
9 B, or C or performance that is exemplary, recognized, or acceptable
10 performance. A reference in law to an unacceptable performance
11 rating or unacceptable performance includes an overall or domain
12 performance rating of F. For the purposes of public reporting
13 required under Section 39.054(a-3), an overall or domain
14 performance rating of D shall be referred to as performance that
15 needs improvement.

16 (b)

17 (10) On page 11, lines 20 and 21, strike "an acceptable
18 performance or acceptable performance rating" and substitute "an
19 acceptable performance rating or acceptable performance".

20 (11) On page 12, line 4, strike "(a-1)" and substitute
21 "(b-1)".

22 (12) On page 12, between lines 12 and 13, insert the
23 following:

24 (b-2) For purposes of determining whether a reference in law
25 to an acceptable performance rating or acceptable performance
26 includes an overall performance rating of D under Subsection (b), a
27 performance rating of D assigned to a school district,
28 open-enrollment charter school, district campus, or charter school
29 campus prior to the 2018-2019 school year shall not be considered.

30 (13) On page 12, line 13, strike "(a-2) Subsection (a-1)"
31 and substitute "(b-3) Subsections (b-1), (b-2),".

1 (14) On page 12, line 15, strike "(b)" and substitute "(c)".

2 (15) On page 12, lines 15 and 16, strike "an unacceptable
3 performance or unacceptable performance rating" and substitute "an
4 unacceptable performance rating or unacceptable performance".

5 (16) On page 12, line 19, strike "Section 39.0545" and
6 substitute "Sections 39.0545 and 39.0546".

7 (17) On page 13, between lines 19 and 20, insert the
8 following appropriately lettered subsection and reletter
9 subsequent subsections and cross-references to those subsections
10 accordingly:

11 (_) Notwithstanding Section 39.054(a-4), if after reviewing
12 a campus to which this section applies under the alternative
13 methods and standards adopted under Subsection (b), the
14 commissioner determines that the campus would not be assigned an
15 acceptable performance rating, the commissioner shall instead
16 assign the campus a rating of "Not Rated."

17 (18) On page 13, between lines 24 and 25, insert the
18 following:

19 Sec. 39.0546. COVID-19 RECOVERY ACCOUNTABILITY FOR
20 2021-2022 SCHOOL YEAR. (a) Notwithstanding any other law, the
21 commissioner shall assign to a school district or campus a rating of
22 "Not Rated" for the 2021-2022 school year, unless:

23 (1) the district requests that the district or a
24 campus located in the district be reviewed and assigned a
25 performance rating under the methods and standards adopted under
26 Section 39.054; and

27 (2) after reviewing the district or campus under the
28 methods and standards adopted under Section 39.054, the
29 commissioner determines the district or campus should be assigned
30 an overall performance rating of C or higher.

31 (b) Regardless of the rating assigned under this section, if

1 the commissioner would have otherwise assigned a campus an
2 unacceptable performance rating, the campus is considered to be a
3 campus assigned an unacceptable performance rating for purposes of
4 determining a student's eligibility for a public education grant
5 under Section 29.202.

6 (c) This section expires September 1, 2028.

7 (19) On page 16, line 1, strike "39.0543(a)" and substitute
8 "39.0543(b)".

9 (20) On page 18, line 2, strike "39.0543(a)" and substitute
10 "39.0543(b)".

11 (21) On page 18, line 7, strike "39.0543(b)" and substitute
12 "39.0543(c)".

13 (22) On page 20, between lines 23 and 24, insert the
14 following appropriately lettered subsection:

15 () For purposes of determining the number of overall
16 performance ratings of D assigned to a school district,
17 open-enrollment charter school, district campus, or charter school
18 campus under Subsection (a), a performance rating of D assigned
19 prior to the 2018-2019 school year shall not be considered. This
20 subsection expires September 1, 2027.

21 (23) On page 21, line 12, strike "Section 39A.301" and
22 substitute "Section 39A.301(a)".

23 (24) On page 21, strike lines 14 and 15, and substitute "(a)
24 A school district or".

25 (25) On page 21, line 17, between "or" and "school", insert
26 "charter".

27 (26) On page 21, line 18, strike "Section 39.003 or".

28 (27) On page 21, line 22, strike "or".

29 (28) On page 21, line 24, strike "school under Section
30 39A.202" and substitute the following:

31 charter school; or

1 (4) appoint a conservator or management team to
2 oversee the operations of the district or charter school

3 (29) Strike page 21, line 26 through page 22, line 23.

4 (30) On page 23, lines 3 and 4, strike "except as provided
5 by Section 39A.301" and substitute "unless an applicable provision
6 of Chapter 39 or this chapter provides otherwise".

7 (31) On page 23, line 8, between "Act," and "apply", insert
8 "and Sections 39.005, 39.006, and 39.007, Education Code, as added
9 by this Act,".

10 (32) On page 23, line 9, strike "authorized or initiated
11 before, on, or" and substitute "authorized, initiated, opened, or
12 finalized on or after".

13 (33) On page 23, line 10, after the period, insert the
14 following:

15 A special investigation authorized or initiated by the Texas
16 Education Agency under Section 39.057, Education Code, before the
17 effective date of this Act that is open and not finalized on the
18 effective date of this Act, is unaffected by this Act and may be
19 continued as if authorized by Section 39.003, Education Code, as
20 redesignated and amended by this Act.

21 (34) Add the following appropriately numbered SECTIONS to
22 ARTICLE 2 of the bill and renumber subsequent SECTIONS of the
23 ARTICLE accordingly:

24 SECTION 2.____. Section 29.202(a), Education Code, is
25 amended to read as follows:

26 (a) A student is eligible to receive a public education
27 grant or to attend another public school in the district in which
28 the student resides under this subchapter if the student is
29 assigned to attend a public school campus assigned an unacceptable
30 performance rating that is made publicly available under Section
31 39.054 [~~for~~

1 ~~[(1) the student achievement domain under Section~~
2 ~~39.053(c)(1), and~~
3 ~~[(2) the school progress domain under Section~~
4 ~~39.053(c)(2)].~~

5 SECTION 2.____. Subchapter A, Chapter 39, Education Code, is
6 amended by adding Sections 39.005, 39.006, and 39.007 to read as
7 follows:

8 Sec. 39.005. HEARING FOLLOWING INVESTIGATION. (a) This
9 section applies to a school district that is the subject of a
10 special investigation conducted under Section 39.003 that resulted
11 in a final report in which the agency recommends the appointment of
12 a board of managers, alternative management of a campus, or closure
13 of the district or a district campus.

14 (b) Except as provided by Subsection (c), not later than 15
15 days after the date on which the board of trustees of the school
16 district receives the final report of a special investigation under
17 Section 39.004(j), a board of trustees of a school district to which
18 this section applies may request a hearing, if the board of trustees
19 disagrees with the final report or a sanction or intervention
20 recommended by the agency in the report.

21 (c) A school district and the agency may agree in writing to
22 extend the time period for requesting a hearing under Subsection
23 (b) by not more than an additional 30 days.

24 (d) If a board of trustees of a school district requests a
25 hearing under Subsection (b), the hearing shall be conducted by the
26 State Office of Administrative Hearings unless the district and the
27 agency agree in writing to the appointment of another qualified
28 person to conduct the hearing.

29 (e) Except as otherwise provided by this subchapter, a
30 hearing conducted under this section is a contested case under
31 Chapter 2001, Government Code.

1 (f) A hearing conducted under this section shall be held at
2 the administrative offices of the school district that requested
3 the hearing or at another location within the geographic boundaries
4 of the district agreed to by the district and the agency, unless the
5 district and the agency agree in writing to a different location.

6 (g) To protect the privacy of a witness who is a child, the
7 hearing examiner or the person conducting the hearing may:

8 (1) close the hearing to receive the testimony of the
9 witness; or

10 (2) order that the testimony or a statement of the
11 witness be presented using the procedures prescribed by Article
12 38.071, Code of Criminal Procedure.

13 (h) Not later than 90 days after the date on which the school
14 district requests a hearing under Subsection (b), the hearing
15 examiner or the person conducting the hearing shall issue and
16 submit to the commissioner findings of fact and conclusions of law.
17 The hearing examiner or the person conducting the hearing may not
18 issue a recommendation for relief.

19 (i) A hearing conducted under this section may not be held
20 on a Saturday, Sunday, or state or federal holiday, unless agreed to
21 by the school district that requested the hearing and the agency.

22 Sec. 39.006. COMMISSIONER DETERMINATION. (a) After a
23 hearing is conducted under Section 39.005, the commissioner shall
24 provide an opportunity for the agency and the school district to
25 present oral argument to the commissioner regarding the
26 disagreement that formed the basis of the hearing. The
27 commissioner shall provide the agency and the district with equal
28 time for oral argument.

29 (b) After hearing any oral argument presented under
30 Subsection (a), the commissioner shall issue a written decision to
31 the school district that contains:

1 (1) findings of fact;
2 (2) conclusions of law; and
3 (3) sanctions, interventions, or other actions
4 authorized by law.

5 (c) In determining the written decision under Subsection
6 (b), the commissioner shall consider:

7 (1) the record of the hearing conducted under Section
8 39.005;

9 (2) the findings of fact and conclusions of law issued
10 by the hearing examiner or the person conducting the hearing under
11 Section 39.005(h); and

12 (3) the oral arguments presented under Subsection (a).

13 (d) The commissioner may accept, reject, or amend the
14 conclusions of law issued by the hearing examiner or the person who
15 conducted the hearing under Section 39.005 regarding the
16 interpretation of a provision of this code.

17 (e) The commissioner may not reject or amend a finding of
18 fact issued by the hearing examiner or the person who conducted the
19 hearing under Section 39.005, unless the commissioner, after
20 reviewing the record, determines that a finding of fact is not
21 supported by substantial, admissible evidence.

22 (f) The commissioner shall provide in writing the legal
23 basis and reason for any amendment or rejection of a finding of fact
24 or conclusion of law made by the hearing examiner or the person who
25 conducted the hearing under Section 39.005.

26 Sec. 39.007. JUDICIAL APPEAL. (a) Notwithstanding Chapter
27 2001, Government Code, a school district may only appeal a decision
28 made by the commissioner under Section 39.006 in accordance with
29 this section.

30 (b) A school district may appeal a decision made by the
31 commissioner under Section 39.006 to:

1 (1) a district court with jurisdiction in the county
2 in which the school district's central administrative offices are
3 located; or

4 (2) a district court in Travis County, if agreed to by
5 the school district and the commissioner.

6 (c) A school district must file an appeal under this section
7 not later than 30 days after the date on which the district received
8 the written decision of the commissioner under Section 39.006(b).

9 (d) The filing of an appeal under this section does not
10 affect or stay the enforcement of the commissioner's written
11 decision issued under Section 39.006(b).

12 (e) A court hearing an appeal under this section shall
13 review the decision issued by the commissioner under Section
14 39.006(b) under the substantial evidence rule as provided by
15 Subchapter C, Chapter 2001, Government Code, after examining:

16 (1) the evidentiary record of the hearing conducted
17 under Section 39.005;

18 (2) the findings of fact issued by the hearing
19 examiner or the person that conducted the hearing under Section
20 39.005; and

21 (3) any amendment or rejection of a finding of fact
22 made by the commissioner under Section 39.006.

23 (f) A court hearing an appeal under this section may not
24 take additional evidence.

25 (g) A court hearing an appeal under this section may review
26 any amendment to or rejection of a finding of fact made by the
27 commissioner. If the court determines that the amendment or
28 rejection was not supported by substantial evidence, the court
29 shall reject the commissioner's amended finding of fact and
30 consider instead the original finding issued by the hearing
31 examiner or the person who conducted the hearing under Section

1 39.005.

2 (h) Notwithstanding Section 2001.174, Government Code, the
3 court may not reverse or remand a decision issued by the
4 commissioner under Section 39.006(b) based on a procedural error or
5 irregularity made by the commissioner, an agency investigator, or
6 the hearing examiner or the person who conducted the hearing under
7 Section 39.005, unless the court determines that the procedural
8 error or irregularity is likely to have caused an erroneous
9 decision by the commissioner.