

BILL ANALYSIS

C.S.H.B. 3731
By: Dutton
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2017, the 85th Legislature passed H.B. 22, which, among other changes to the public school accountability system, established a needs improvement or D rating. The resulting law delayed interventions for a public school district or campus rated D in the hope that this rating could be a sign of improvement by the district or could serve as an early warning, allowing the district to adjust practices and prevent a slide into unacceptable performance.

There have been concerns, however, that the current law creates some uncertainty in the implementation of performance ratings and accountability interventions. As currently worded, certain accountability provisions may result in interventions based on domain performance rather than the intended basis of overall performance. There may also be awkward results in which a district receiving consecutive years of needs improvement ratings could experience harsher intervention than a district alternating between ratings of needs improvement and unacceptable. Additionally, the law does not address the impact of a needs improvement rating on other intervention stages, such as certain interventions applicable to open-enrollment charter schools. C.S.H.B. 3731 seeks to address these issues by establishing a process focused on overall performance for a district or campus rated as needs improvement and providing for a pause in interventions after a district or campus receives either its first or second D rating. The bill also clarifies other statutory references to that rating.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 3731 amends the Education Code to set out and revise provisions relating to public school accountability performance ratings and to clarify certain effects of a performance rating of D or needs improvement.

C.S.H.B. 3731 repeals certain provisions relating to accountability interventions for a public school district or campus that receives an overall or domain performance rating of D, which require the commissioner of education to order such a district or campus to develop and implement a targeted improvement plan. Under those provisions repealed by the bill, if a school district or campus is assigned an overall performance rating of D for a school year after the targeted improvement plan is ordered, the commissioner must then implement interventions and sanctions that apply to a campus rated as unacceptable.

C.S.H.B. 3731 establishes the following regarding an overall performance rating of D:

- a reference in law to an acceptable performance or acceptable performance rating of a district, open-enrollment charter school, or district or charter school campus includes an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, or campus has not received either of the following:
 - an overall performance rating of F; or
 - two or more overall performance ratings of D;
- a performance rating of D that satisfies those requirements is considered performance that needs improvement; and
- a reference in law to an unacceptable performance or unacceptable performance rating includes a performance rating of D that does not satisfy those requirements.

C.S.H.B. 3731 adds a transition provision set to expire September 1, 2027, for purposes of determining a district's, charter school's, or campus's applicable performance rating history. For an overall performance rating issued in 2017-2018 or a prior school year, the following equivalencies apply:

- an overall rating of met standard, academically acceptable, recognized, exemplary, A, B, or C is considered as a performance rating of C or higher; and
- an overall rating of improvement required, academically unacceptable, or F is considered as a rating of F.

C.S.H.B. 3731 requires a district, charter school, or campus assigned a rating of D that qualifies as a rating of needs improvement under the criteria established by the bill to develop and implement a local improvement plan. The bill requires the plan to be presented to the district board or charter school board, as applicable. The bill requires the commissioner to adopt rules to establish requirements for plan components and training and prohibits the commissioner from requiring a district or charter school to submit the plan to the Texas Education Agency (TEA).

C.S.H.B. 3731 provides for a pause in applicable accountability interventions or sanctions for a district, charter school, or campus if those interventions or sanctions are based on the district's, charter school's, or campus's first or second overall performance rating of D since previously receiving a rating of C or higher. The bill prohibits TEA from implementing any of the following interventions or sanctions under those circumstances until another performance rating is issued:

- revocation of a charter for an open-enrollment charter school on the basis of performance ratings;
- annexation of a district to one or more adjoining districts on the basis of a two-year period of academically unacceptable ratings;
- a change in a district's accreditation status under applicable rules;
- an order to prepare and submit a campus turnaround plan;
- commissioner approval of a campus turnaround plan or the interventions required if such a plan is not approved; or
- appointment of a board of managers or campus closure on the basis of three consecutive years of unacceptable performance ratings after an order to submit a turnaround plan.

C.S.H.B. 3731 establishes that a first or second overall performance rating of D that triggers an interventions pause may not be included in calculating consecutive school years of an unacceptable performance rating and is not considered a break in consecutive school years of an unacceptable performance rating. Interventions or sanctions implemented prior to the pause continue during the school year for which actions based on the qualifying D rating are paused. These provisions relating to a pause in certain interventions do not apply to a commissioner action based on performance or reasons not specified by these provisions.

C.S.H.B. 3731 replaces references to the lowest performance rating with references to an unacceptable performance rating in certain provisions that establish the following performance-related conditions for an open-enrollment charter school:

- conditions under which a charter holder must be granted expedited renewal of the charter; and
- conditions under which the commissioner is prohibited from renewing the charter and must allow it to expire.

C.S.H.B. 3731 adds temporary provisions set to expire September 1, 2027, requiring the commissioner to determine the number of unacceptable performance ratings issued to each district, charter school, or campus since its last performance rating of acceptable or higher and to use the result of that determination as the base number of consecutive years of unacceptable performance to which the performance rating in the 2021-2022 school year will be added. The bill classifies past performance ratings for that purpose as follows:

- an acceptable rating includes the following:
 - a rating of met standard, academically acceptable, recognized, exemplary, A, B, or C; or
 - a rating of D that is considered acceptable and is considered performance that needs improvement under the bill's provisions;
- an unacceptable rating includes the following:
 - a rating of improvement required, academically unacceptable, or F; or
 - a rating of D that is considered unacceptable under the bill's provisions; and
- a rating of not rated may not be considered acceptable or unacceptable or be considered a break in consecutive years of unacceptable performance.

C.S.H.B. 3731 repeals Section 39A.0545, Education Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3731 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

While the original revised provisions requiring a targeted improvement plan as a first step in commissioner interventions for a district or campus with an overall D rating to account for certain performance ratings history and to clarify certain effects on subsequent interventions, the substitute repeals those provisions and replaces them with other requirements.

Both the original and the substitute contain provisions updating descriptions of certain performance ratings in the context of charter renewals for charter schools, though the language of those updated descriptions differs in accordance with other differences between the two versions.

The substitute and the original contain no other substantive provisions in common.

The original included the following provisions which are not in the substitute:

- requirements for the commissioner to incorporate or consider, as applicable, an overall D rating as an unacceptable performance rating for the following purposes, subject to the bill's provisions clarifying certain effects of an overall D rating and a targeted improvement plan;
 - annexation of a district to one or more adjoining districts based on a two-year period of ratings of academically unacceptable, subject to a certain exception;

- determination of accreditation status or revocation of accreditation;
- commissioner actions based on a special accreditation investigation;
- appointment of a district board of managers; and
- campus-level interventions, including assignment of a campus intervention team;
- provisions clarifying the following by replacing references to acceptable or unacceptable performance ratings with more specific descriptors and, as applicable, adding further specifications:
 - certain duties of a regional education service center;
 - performance ratings qualifying a charter school to operate a district campus under a contract;
 - conditions of a charter school employee's eligibility for a conflict of interest exception relating to service on the school's or charter holder's governing body;
 - priority treatment of applications proposing a charter school campus within the attendance zone of a public school district campus assigned a certain rating;
 - conditions requiring revocation of a charter school's charter;
 - eligibility for designation as a district of innovation and conditions requiring termination of the designation;
 - a district's eligibility for certain staff development resources funded by the state staff development account;
 - eligibility for a public education grant;
 - eligibility to act as a course provider for the state virtual school network;
 - eligibility for a distinction designation;
 - required contents of an annual district performance report and a TEA regional and district level report; and
 - notice of certain campus ratings included in certain student grade reports to parents;
- a provision specifying the school year from which the bill's provisions apply; and
- a procedural provision regarding the calculation of consecutive years of overall performance ratings.

The following provisions appear only in the substitute:

- provisions establishing the circumstances under which an overall performance rating of D is considered a rating of acceptable or unacceptable for purposes of references in law, designating certain D ratings as performance that needs improvement, and providing for the interpretation of past performance ratings accordingly;
- provisions relating to a local improvement plan;
- provisions relating to a pause in interventions for a district, charter school, or campus based on a first or second overall performance rating of D following a rating of C or higher; and
- a transition requirement for the commissioner to determine the number of unacceptable performance ratings issued to each district, charter school, or campus since the most recent rating of acceptable or higher as a basis for future accountability-related calculations, and provisions relating to that requirement.

The substitute changes the effective date from the original date of September 1, 2021, to on passage or September 1, 2021, if the bill does not receive the necessary vote for immediate effect.