

## **BILL ANALYSIS**

S.B. 1365  
By: Bettencourt  
Public Education  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2015, the Texas Legislature passed H.B. 1842 which, among other things, amended law relating to the intervention in and sanction of a public school that has received an academically unsuccessful performance rating for several consecutive school years. In 2020, the Third Court of Appeals issued an opinion that, in effect, nullified many of the provisions within H.B. 1842.

S.B. 1365 seeks to address the specific provisions within the court's ruling by clarifying statute to ensure the continued operations of the accountability system and the interventions process, sanctions and to clarify related powers of the commissioner of education and certain commissioner appointees.

### **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 previously granted to the commissioner of education is modified in SECTION 2.04, SECTION 2.07, and SECTION 2.19 and that new rulemaking authority is granted in SECTION 2.06 and SECTION 2.11 of this bill.

### **ANALYSIS**

S.B. 1365 amends the Education Code to revise provisions relating to the public-school accountability system and associated interventions and sanctions and to clarify related powers of the commissioner of education (commissioner) and certain commissioner appointees.

S.B. 1365 establishes that notwithstanding any other law, the commissioner has power to delegate ministerial and executive functions to the Texas Education Agency (TEA) staff to perform duties of the agency is a valid delegation of authority.

S.B. 1365 establishes that trustees as a body corporate have exclusive power and duty to govern and oversee the management of the public schools of the district, including specific duties, except as that board of managers may exercise all of the powers and duties assisted to a board of trustees of a school district by law, rule or regulation, and if the commissioner appoints a board of managers to govern a school district the powers of the board of trustees of the district are suspended for the period of appointment and the commissioner shall appoint a district superintendent.

S.B. 1365 establishes that if an order, decision, or determination is described as final and unappealable in the Education Code provisions relating to public education, no interlocutory or

intermediate order, decision, or determination made or reached before the final order, decision or determination may be appealed only if specifically authorized under the Education Code or a rule adopted under the Education Code.

S.B. 1365 establishes that among the criteria the commissioner considers with a renewal of a charter for an open-enrollment charter school shall include an unacceptable performance rating rather than the lowest performance rating under Subchapter C, Chapter 39 .

S.B. 1365 replaces references to a “special accreditation investigation” in the education code with references to a “special investigation”. S.B. 1365 clarifies that the TEA may not substitute its judgement for that of the board of trustees of a school district if the investigation indicates the board of trustees has observed a lawfully adopted policy that does not otherwise violate the law or rule for investigations regarding allegations of conflict between trustees or between a board and the district administration if it appears the conflict involves a violation of a role or duty of the board members or the administration clearly defined by the code. Based on the results of a special investigation, the commissioner may take any action under the Education Code provisions related to accountability interventions and sanctions regardless of any requirements applicable to the action that are provided under those provisions.

S.B. 1365 specifically authorizes the commissioner, at any time before issuing a report with the TEA’s final findings of a special investigation to defer taking an action authorized under the accountability interventions and sanctions provisions of the education code, until either a third party selected by the commissioner, has reviewed programs or other subjects of an investigation and submitted a report identifying problems and proposing solutions and/or a district completes a corrective action plan developed by the commissioner. Permits the Commissioner to decline to take said deferred action based on the results of an investigation and report of a third-party and/or a district completes a correction action plan developed by the commissioner.

S.B. 1365 applies the provisions to challenge an intervention or sanction under the accountability interventions and sanctions provisions of the education code, to an action taken by the commissioner as the result of a special investigation in the same manner as those provisions apply to an action taken under the public-school system accountability provisions of the education code.

S.B. 1365 deletes existing language which authorizes the commissioner to take action under the accountability interventions and sanctions provisions of the education code if the commissioner determines that the action is necessary to improve any area of a district’s or campus’s performance, including the district’s financial accounting practices, regardless of whether the commissioner lowers the school’s district’s accreditation status or a district’s or campus’s performance rating.

S.B. 1365 clarifies that the TEA shall adopt written procedures for conducting special investigations under the education code and permits the TEA, if it determines that it is necessary to protect the welfare of the witness, to classify the identity of a witness as confidential and not subject to disclosure to the district or under provisions of chapter 552 of the Government Code. Before issuing a report with final findings that a person or entity has violated a law, rule, or policy, the TEA shall provide the person or entity an opportunity for an informal review by the commissioner or the commissioner’s designee (deletes the specification that the designee be a designated hearing examiner). The informal review is not a contested case hearing under chapter 2001, Government Code.

S.B. 1365 provides that not later than August 15th of each year the performance ratings of each school district and campus, and if applicable, the number of consecutive school years of

unacceptable performance ratings for each district and campus, shall be widely made publicly available under rule adopted by the TEA.

S.B. 1365 amends provisions in the Education Code which require the Commissioner to assign each district and campus an overall performance rating between A-F, or not rated, and a separate domain performance rating. The bill provides that a reference in law to an unacceptable performance rating includes an overall or domain performance rating of F and under certain provisions D or performance that needs improvement. The bill also clarifies that consideration of the effectiveness of district programs under the public school system accountability provisions of the education code may be based on a special investigation under those same provisions.

S.B. 1365 permits the commissioner, notwithstanding any other law, to assign a school district or campus an overall performance rating of “not rated” if the commissioner determines that the assignment of a performance rating would be inappropriate because any of the following reasons:

- The district or campus is located in an area that is subject to a declaration of a state of disaster under emergency management provisions of the Government Code, and due to the disaster, performance indicators for the district or campus are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement for the district or campus;
- The district or campus has experienced breaches or other failure in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;
- The number of students enrolled in the district or campus is insufficient to accurately evaluate the performance of the district or campus; or
- For other reasons outside the control of the district or campus, the performance indicators would not accurately reflect quality of learning and achievement for the district or campus.

Notwithstanding any other law, an overall performance rating of “not rated” is not included in calculating consecutive school years of unacceptable performance ratings and is not considered a break in consecutive school years of unacceptable performance ratings for purposes of any provision of the public school system accountability provisions of the education code.

S.B. 1365 adds Section 39.0543 (a) to the education code which provides that a reference in law to an acceptable performance or acceptable performance rating for a school district, open-enrollment charter school, district campus, 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, district campus, or charter school campus has not previously received more than one overall performance rating of D or has not received an overall performance rating of F.

S.B. 1365 adds Section 39.0543 (a-1) that expires September 1, 2027, which states that an overall performance rating issued in a previous school year for a school district, open-enrollment charter school, district campus, or charter school campus of:

- Met standard, academically acceptable, recognized, exemplary, A, B, or C is considered to be a performance rating of C or higher; and
- Improvement required, academically unacceptable, or F is considered to be a rating of F.

S.B. 1365 adds Section 39.0543(b) which provides a reference in law to an unacceptable performance or unacceptable performance rating includes a performance rating of D if the rating does not satisfy subsection (a).

S.B. 1365 sets forth specific provisions for 2020 - 2021 school year that applies to certain campuses which expire September 1, 2027. These provisions require the commissioner to adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020 – 2021 school year to an applicable campus. The rules must evaluate a campus under the domains of indicators of achievement listed in certain sections of the public

school system accountability provisions of the education code. These provisions require a commissioner to review an applicable campus under the alternative methods and standards adopted on request of the school district in which the campus is located which is made by the deadline established under commissioner rule. An acceptable performance rating assigned under the alternative methods and standards adopted by the commissioner is considered a break of consecutive school years of unacceptable performance ratings under the education code. These alternative methods and standards do not apply to an intervention ordered on the basis of consecutive school years of unacceptable performance ratings accrued before the effective date of this act. The provisions which apply for the 2020 – 2021 school year applies to a campus:

- That meets the participation requirements for all students in all subject areas for the annual measurement of achievement under provisions of the federal Every Student Succeeds Act;
- To which the most recent performance rating assigned, other than a “not rated” rating, is a D, F, or performance that needs improvement; and
- Is not subject to the appointment of a board of managers under the accountability interventions and sanctions provisions of the education code.

S.B. 1365 amends current rule making authority the commissioner has regarding challenges to TEA decisions made regarding financial accountability ratings or academic performance rating or determinations under the public school system accountability provisions of the education code to include in the allowable challenges and procedures challenges to a determination of consecutive school years of unacceptable performance ratings.

S.B. 1365 amends the powers and duties of conservator or management team under the interventions and sanctions for school districts provisions of the education code. The bill clarifies that a conservator or management team may exercise the powers and duties under these provisions regardless of whether they were appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

S.B. 1365 applies the provisions for board of managers for school district managed by conservator or management team under the interventions and sanctions for school districts provisions of the education code to a conservator or management team appointed regardless of the scope or any changes to the scope of the conservator’s or team’s oversight. The bill further clarifies that the commissioner may appoint a board of managers to the district due to an assignment under any provision in Title II of the education code of a conservator or management team to the district or the district's campus for two consecutive school years .

S.B. 1365 amends the provisions of the interventions and sanctions for school districts provisions of the education code for satisfaction of certain requirements related to campus planning and site-based decision making to permit the commissioner to authorize a targeted improvement plan, an updated improvement plan, or a local improvement plan.

S.B. 1365 adds language on local improvement plans to the subchapter on campus intervention team; targeted improvement plan of the interventions and sanctions for school district provisions of the education code. The bill requires a school district, open-enrollment charter school, district campus, or charter school campus that is assigned a rating of D that qualifies for an overall performance rating of “D” if, since previously receiving an overall performance rating of “C” or higher, the district, charter school, district campus, or charter school campus has not previously received more than one overall performance rating of “D” or has not received an overall performance rating of “F” to develop and implement a local improvement plan which must be presented to the board of trustees for the school district or governing board of the open-enrollment charter school. The language requires the commissioner to adopt rules to establish local improvement plans but is prohibited from requiring a school district or open-enrollment charter school to submit the local improvement plan to the TEA.

S.B. 1365 amends language in the education code regarding the implementation of updated targeted improvement plans to require the commissioner to appoint a conservator to a school district to ensure and oversee district level support to low-performing campuses and the implementation of the updated targeted improvement plan until each campus in the district for which a turnaround plan has been ordered receives an acceptable performance rating for the school year or the commissioner determines a conservator is not necessary.

S.B. 1365 amends language in the education code regarding a change in campus performance rating to change the title of the section to modification of campus turnaround plan, and to permit the commissioner to authorize modification of an approved campus turnaround plan if the commissioner determines that due to a change in circumstances occurring after the plan's approval by the commissioner, a modification is necessary to achieve the plan's objectives.

S.B. 1365 amends language in the education code about continued unacceptable performance ratings to require the commissioner to order the appointment of a board of managers to govern the school district or order closure of the campus after five consecutive school years of unacceptable performance rather than current law of three consecutive school years of unacceptable performance after the campus is ordered to submit a campus turnaround plan.

S.B. 1365 adds a section to the education code on intervention for certain districts or campuses which expires September 1, 2027 and prevails over any other conflicting transition provision. For the purposes of that section, an acceptable performance rating includes a rating of met standard, academically acceptable, recognized, exemplary, A, B, C, or a rating of D that qualifies for an overall performance rating of "D" if, since previously receiving an overall performance rating of "C" or higher, the district, charter school, district campus, or charter school campus has not previously received more than one overall performance rating of "D" or has not received an overall performance rating of "F". For the purposes of this section, an unacceptable performance rating includes a rating of improvement required, academically unacceptable, F, or a rating of D if, since previously receiving an overall performance rating of "C" or higher, the district, charter school, district campus, or charter school campus has previously received more than one overall performance rating of "D" or has received an overall performance rating of "F". Further, a rating of "not rated" is not considered an acceptable or unacceptable performance rating and may not be considered a break in consecutive years of unacceptable performance. This section requires the commissioner, as soon as practicable after the effective date of this Act or similar legislation to determine the number of school years of unacceptable performance ratings occurring after the 2012 – 2013 school year for each school district, open-enrollment charter school, district campus, or charter school campus by determining the number of unacceptable performance ratings assigned to each district, charter school, district campus or charter school campus since the most recent acceptable performance rating was assigned. The section further requires the commissioner, as soon as practicable after the effective date of this Act or similar legislation to use the number of school years of unacceptable performance ratings as the base number of consecutive years of unacceptable performance ratings for which the performance rating in the 2021 – 2022 school year will be added and order the appointment of a board of managers to the school district or charter school for each campus that is determined to have been assigned an unacceptable performance rating for five or more school years. S.B. 1365 provides that exemptions from interventions authorized under Sections 11.174 and 28.020 of the Education Code, and Section 5 of 86R H.B. 4205 apply to an intervention ordered and the commissioner shall make necessary modifications in accordance with those provisions. Provisions of S.B. 1365 on interventions for certain districts or campuses may not be construed to:

- Provide a school district or open-enrollment charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned; or

- Prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

S.B. 1365 adds a section to the education code on intervention if assigned certain performance needs improvement rating, which does not apply to a commissioner action based on performance or reasons not specifically listed as interventions in the section. The section identifies certain interventions and sanctions for a school district, open-enrollment charter school, district campus or charter campus which are subject to pause and prohibits the TEA from implementing the intervention or sanctions until another performance rating is issued if the performance rating initiating the action for an identified intervention or sanction is based on the first or second overall performance rating of D, since previously receiving a rating of C or higher. Interventions or sanctions implemented prior to the intervention pause shall continue during the school year for which actions are paused for certain interventions or sanctions.

S.B. 1365 transfers Section 39A.116, Education Code to Subchapter z, Chapter 39A, education code, and makes conforming changes to prohibit challenges to decisions of the Commissioner under the public school system accountability and the accountability and interventions and sanctions provisions of the education code are final and may not be appealed except through the SOAH process amended by this Act.

S.B. 1365 amends Section 39A.301 of the education code regarding a review of sanctions by State Office of Administrative Hearings (SOAH) to require any challenge by a school district or open-enrollment charter school of a commissioner decision under provisions of special investigations of the education code or the provisions of accountability interventions and sanctions of the education code to close, pursue alternative management or appoint a board of managers to a district or district campus or charter school is subject to review by SOAH. Notwithstanding Chapter 2001, Government Code, the administrative law judge shall uphold a decision by the commissioner unless the judge finds the decision is arbitrary and capricious or clearly erroneous, but in reviewing any discretionary decision made by the commissioner the administrative law judge may not substitute their own judgement for the commissioner's judgement. S.B. 1365 deletes language which requires such reviews to be under the substantial evidence rule.

S.B. 1365 repeals current Section 39A.0545 of the education code, Needs Improvement Rating, which sets forth provisions of the requirements for the commissioner for a school district or campus that is assigned an overall or domain performance rating of D.

S.B. 1365 specify that changes to provisions to special investigations and conduct of special investigations applies to a special investigation authorized or initiated before, on, or after the effective date of this Act and changes to board of managers for school district managed by conservator or management team applies to a conservator or management team assigned to a school district before, on, or after the effective date of this Act.

S.B. 1365 provides instructions for the TEA and commissioner on adopting rules and publishing consecutive school years of unacceptable performance ratings upon effectiveness of the Act.

S.B. 1365 expands the conduct that constitutes the Class C misdemeanor offense of failure to comply with school budget requirements to include a district trustee's vote to approve any expenditure of school funds in violation of a provision of the Education Code for a purpose for which those funds may not be spent. Those prohibitions include the use of local school funds or basic allotment funds from the tier two component of the Foundation School Program funds from being used to initiate or maintain any action or proceeding against the state or an agency or officer of the state arising out of a decision, order, or determination that is final and unappealable under a provision of the education code, except where specifically authorized by a provision of

the education code or a rule adopted under this education code and that results in a final and unappealable decision, order, or determination. The changes to an offense under this Act apply only to an offense committed on or after the effective date of this Act.

S.B. 1365 repeals current Section 39A.203 of the education code, Board of managers of campus, which sets forth provisions of the powers of the board of managers, the board of trustees for a school district and the commissioner during the period of the appointment of a board of managers, if the commissioner appoints a board of managers to govern a school district.

S.B. 1365 amends Sections 7.028(a), 12.013(b), 12.056(b), 12.104(b), 12.1162(a), 39.0302(a), 39.056(h), 39A.001, 39A.256(a) and (b) Education Code, to make conforming changes and provides that if those changes conflict with any other Acts adopted by the 87th Legislature, this Act prevails relating to nonsubstantive additions to and corrections in enacted codes.

S.B. 1365 repeals current Section 39A.0545 of the education code, Needs Improvement Rating, which sets forth provisions of the requirements for the commissioner for a school district or campus that is assigned an overall or domain performance rating of D.

S.B. 1365 repeals current Section 39A.203 of the education code, Board of managers of campus, which sets forth provisions of the powers of the board of managers, the board of trustees for a school district and the commissioner during the period of the appointment of a board of managers, if the commissioner appoints a board of managers to govern a campus of a school district.

#### **EFFECTIVE DATE**

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