SUBJECT: Revising state authority for school accountability interventions

COMMITTEE: Public Education — favorable, with amendment

VOTE: *After recommitted:*
10 ayes — Dutton, Allison, K. Bell, Bernal, Buckley, Huberty, K. King, Meza, Talarico, VanDeaver

1 nay — Allen

2 absent — Lozano, M. Gonzalez

SENATE VOTE: On final passage, May 5 — 20-11 (Alvarado, Blanco, Eckhardt, Gutierrez, Johnson, Menéndez, Miles, Powell, West, Whitmire, Zaffirini)

WITNESSES: No public hearing.

BACKGROUND: Education Code sec. 39.102 requires the commissioner of education to undertake certain interventions and sanctions involving a school district that does not satisfy accreditation criteria, academic performance standards, or any financial accountability standard. Actions can include appointment of a conservator to oversee operations of the district, appointment of a board of managers to exercise the powers and duties of the board of trustees, or closure of the district and annexation to one or adjoining districts.

DIGEST: SB 1365 would revise and add provisions relating to public school performance ratings and state interventions for districts with unacceptable performance ratings. The bill would specify the education commissioner's authority to appoint a board of managers for certain districts, charter schools, or district or charter schools campuses that had received consecutive years of unacceptable performance ratings.

Commissioner's authority. SB 1365 would establish that if an order, decision, or determination of the education commissioner was described in the Education Code as final and unappealable, an interlocutory or

intermediate order, decision, or determination made or reached before the final order, decision, or determination could be appealed only if specifically authorized by the code or a rule adopted under the code.

Review of action. A district or charter school that intended to challenge a decision by the commissioner for closure or appointment of a board of managers would have to appeal to the State Office of Administrative Hearings. The administrative law judge would have to uphold a decision by the commissioner unless the judge found the decision was arbitrary and capricious or clearly erroneous, and could not substitute the judge's judgment for that of the commissioner.

The bill would establish that the education commissioner's power to delegate ministerial and executive functions to Texas Education Agency (TEA) staff and to employ division heads and any other employees and clerks to perform TEA duties were valid delegations of authority, notwithstanding any other law.

Special investigations. SB 1365 would replace Education Code references to special accreditation investigations with revised provisions for special investigations. Based on the results of a special investigation, the commissioner could take any interventions and sanctions for school districts provided under Chapter 39A, regardless of any requirements applicable to the action that are provided by that chapter. The commissioner's action related to a special investigation would be subject to review by the State Office of Administrative Hearings.

At any time before issuing a report with the Texas Education Agency's final findings, the commissioner could defer taking an action until:

- a third party, selected by the commissioner, had reviewed programs or other subjects of a special investigation and submitted a report identifying problems and proposing solutions;
- a district completed a corrective action plan developed by the commissioner; or
- both the third party report and corrective action plan had been

completed.

Confidential witnesses. During a special investigation, TEA would be authorized to classify the identity of a witness as confidential if TEA determined it was necessary to protect the welfare of the witness.

Campus and district performance ratings. SB 1365 would revise provisions under which a performance rating of D was considered an acceptable or unacceptable performance rating, and specify when the commissioner could assign a rating of "Not Rated."

Effect of D rating. The bill would stipulate that a reference in law to an acceptable performance rating for a school district, charter school, or district or charter school campus included an overall performance rating of D if, since previously receiving an overall performance rating of C or higher, the district, charter school, or district or charter school campus:

- had not previously received more than one overall performance rating of D; or
- had not received an overall performance rating of F.

Otherwise, a performance rating of D would be considered unacceptable in Education Code references.

SB 1365 would expand information that would have to be made publicly available by August 15 of each year to include, if applicable, the number of consecutive school years of unacceptable performance ratings for each district and campus. If the bill took effect later than August 15, 2021, the commissioner would have to publish the consecutive school years of unacceptable performance as soon as practicable after the effective date.

Not rated. The commissioner could assign a school district or campus an overall performance rating of "Not Rated" if the commissioner determined that the assignment of a performance rating of A, B, C, D, or F would be inappropriate because:

- the district or campus was located in an area subject to a declared disaster, and performance indicators would be difficult to measure or evaluate and would not accurately reflect quality of learning and achievement;
- the district or campus had experienced breaches or failures in data integrity to the extent that accurate analysis of data regarding performance indicators was not possible;
- the number of students enrolled in the district or campus was 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.

An overall performance rating of "Not Rated" would not be included in calculating consecutive school years of unacceptable performance and would be not considered a break in consecutive school years of unacceptable performance.

Alternative evaluations. The commissioner would have to adopt rules to develop and implement alternative methods and standards for evaluating the performance for the 2020-2021 school year of a campus that:

- met the participation requirements for all students and all subject areas for the annual measurement of achievement under the federal Every Student Succeeds Act;
- was most recently rated D, F, or needs improvement; and
- was not subject to the appointment of a board of managers.

An acceptable performance rating assigned under the commissioner's alternative methods and standards would be considered a break in consecutive school years of unacceptable performance rating. The alternative evaluation would not apply to an intervention ordered on the basis of consecutive years of unacceptable performance ratings accrued before the bill became effective.

The requirement for alternative evaluations would expire September 1, 2027.

Interventions and sanctions. SB 1365 would make revisions and additions to state interventions and sanctions related to certain performance ratings.

Local improvement plan. A school district, charter school, or district or charter school campus that was assigned a rating of D that qualified as acceptable performance under the bill would have to develop and implement a local improvement plan. The plan would have to be presented to the district board of trustees or charter school governing board. The commissioner would have to adopt rules to establish requirements for a local improvement plan components and training but could not require a district or charter school to submit the plan to TEA.

Campus turnaround plan. The statutory requirement for a campus identified as unacceptable for two consecutive years to prepare and submit a campus turnaround plan to the commissioner would be expanded to require the commissioner to appoint a conservator to a school district unless and until:

- each campus in the district for which a campus turnaround plan had been ordered received an acceptable performance rating for the school year; or
- the commissioner determined a conservator was not necessary.

A conservator or management team could exercise the statutory powers and duties defined by the commissioner regardless of whether the conservator or management team was appointed to oversee the operations of a school district in its entirety or the operations of a certain campus within the district.

Continued unacceptable performance. The bill would change the period of consecutive unacceptable campus performance ratings after which the commissioner had to intervene by closing the campus or appointing a

board of managers to the district from three consecutive school years to five consecutive school years.

Intervention for certain districts or campuses. In temporary provisions that would expire September 1, 2027, the commissioner would have to:

- determine the number of school years of unacceptable performances ratings as defined in the bill occurring after the 2012-2013 school year for each school district, charter school, or district or charter school campus;
- use the number of school years of unacceptable performance ratings as the base number of consecutive years of unacceptable performance for which the performance rating in the 2021-2022 school year would be added; and
- order the appointment of a board of managers to the district or charter school for each campus that was determined to have been assigned an unacceptable performance rating for five or more school years.

This requirement could not be construed to:

- provide a district or 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.

Intervention pause. The bill would require a pause in certain interventions for a district, charter school, or district or charter school campus that received a first or second overall performance rating of D, since previously being rated C or higher, until another performance rating was issued.

Fiscal management. The bill would prohibit the use of state funds not designated for a specific purpose or local school funds to initiate or maintain any action or proceeding against the state or against an agency or

officer of the state arising out of a decision that was final and unappealable, except that funds could be used for an action or proceeding specifically authorized by a provision of the Education Code or a rule adopted under the code and that resulted in a final and unappealable decision, order, or determination.

The bill would expand the conduct that constituted 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.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1365 would allow the commissioner of education to address the problem of chronically failing schools by clarifying the state's authority to intervene when a campus receives a series of D performance ratings. The school accountability system plays a crucial role in ensuring that a quality education is available to all Texas students, especially when local school officials allow multiyear school failures to leave thousands of students behind.

By specifying that a D rating is considered unacceptable performance under the school accountability system, SB 1365 would allow the commissioner to use statutory sanctions and interventions, including the appointment of a conservator or board of managers to focus on campus improvement. This would ensure that state and local school officials understand the impact of D ratings going forward.

While local control of school districts and charter schools is important, state intervention becomes necessary when a school board is unwilling or unable to improve chronically failing schools. The bill would protect local school board authority by allowing the results of investigations by the Texas Education Agency (TEA) in a board of managers case to be

appealed to the State Office of Administrative Hearings while limiting a district's ability to use litigation to thwart state intervention. Allowing TEA to consider confidential witness testimony would protect teachers and others who came forward with allegations of wrongdoing by a district or charter school.

CRITICS SAY:

SB 1365 would inappropriately allow more state control of locally governed school districts and give too much power to the appointed state commissioner. The bill would allow the education commissioner to take over more school districts than allowed under current law by treating a D rating as an F rating signifying unacceptable academic performance. This would heighten the pressure on students taking STAAR exams by increasing the stakes attached to test results under the school rating system.

The bill states that the commissioner's power under certain circumstances is "final and unappealable," providing school districts limited recourse to challenge the legality of some decisions by the commissioner. A provision to allow the Texas Education Agency to consider anonymous testimony could deprive districts of meaningful due process.

NOTES:

The House sponsor plans to offer a floor amendment that would revise certain provisions in the bill related to school accountability ratings and state sanctions and interventions associated with those ratings.

The House companion bill, HB 3270 by Dutton, was considered by the House Public Education Committee in a public hearing on March 30, reported favorably as substituted on April 7, placed on the General State Calendar for May 6, then returned to committee.