

**TEXAS EDUCATION AGENCY  
REOPENED RECORD REVIEW**

IN RE:	§
	§
CLOSURE OF NORTH FOREST	§
	§
INDEPENDENT SCHOOL DISTRICT	§

**Decision of the Commissioner's Designee on Reopened Record Review**

**Statement of Facts**

Following the issuance of the Commissioner of Education's notice to the board of trustees and the superintendent of North Forest Independent School District on February 7, 2013 of his proposed action to close the District and to annex it into the Houston Independent School District, the District requested a reopened record review of the proposed action.

The staff of the Texas Education Agency ("Agency" or "TEA") is represented by Christopher M. Jones, Attorney at Law, Austin, Texas. The North Forest Independent School District ("District," "NFISD" or "North Forest ISD") is represented by Christopher L. Tritico and Ron S. Rainey, Attorneys at Law, Houston, Texas, and by William C. Bednar, Attorney at Law, Austin, Texas.

The documentary record on the reopened record review consists of three volumes of documents, as well as NFISD Exhibits 211 and 212, which were not included in the notebooks. The Agency's documentary exhibits, numbered 22-38, and the District's exhibits, numbered 180-212, with the exception of Exhibit 204, which was withdrawn, are referred to as "Ex. Number." Transcript references are denoted as "T. [page number]."

Lizzette González Reynolds, Chief Deputy Commissioner, was delegated to be the final decision maker by the Commissioner of Education for the purposes of hearing the reopened record review and issuing a final order on the record review.

### **Findings**

The following findings are supported by the record and supplement the original Findings in the Decision of the Commissioner, dated March 30, 2012, as amended by Order on Motion for Rehearing, issued on May 7, 2012. Any findings necessary to the outcome of this matter and contained in the Discussion section are incorporated herein as if set forth in full.

#### *Completion Rate*

1. Pursuant to the Decision of the Commissioner, as a condition of withdrawing the order of closure and the annexation to Houston Independent School District (Houston ISD), the District was required to achieve a rate of improvement in the completion rate that was acceptable to the Agency, which would demonstrate sustained improvement for the class of 2011. (Order on Motion for Rehearing).

2. The acceptable rate of completion, as defined in the Agency's rules and the accountability manual and as reported annually to all districts, is either 75% or is calculated as one half of the difference between 75% (the acceptable completion rate) minus a district's actual completion rate. (T. 661, 663; 19 TEX. ADMIN. CODE § 97.1001(b); <http://ritter.tea.state.tx.us/perfreport/account/2011/manual/ch03.pdf> ).

3. The District's completion rate for the 2010-2011(class of 2010) school year was 59.1%. In order to meet the acceptable rate of improvement standard, North Forest ISD would have had to increase its completion rate by 7.95% to 67.05%. (T. 661, 664, 666; Ex. 22; <http://ritter.tea.state.tx.us/perfreport/account/2011/manual/ch03.pdf> ).

4. The District's completion rate for the 2011-2012 school year (class of 2011) is 66.4%. The actual annual increase in the District's completion rate was 7.3%. (T. 661, 664, 756-757; Ex. 24).

5. The District failed to achieve an acceptable rate of improvement of their completion rate for the class of 2011. (T. 665; Ex. 24).

6. The Decision of the Commissioner, as modified by the Order on Motion for Rehearing, did not provide for acceptance of a de minimus shortfall in achieving the standard acceptable completion rate. (Record).

7. The District, for the fourth year in a row, failed to demonstrate an acceptable rate of improvement in its completion rate. (Findings 21, 22 contained in Ex. 22; Ex. 24).

8. The District's class of 2012 completion rate will not be available until August or September, 2013, after the effective date of the closure and annexation. (T. 668; Att. A).

9. The District's class of 2011 completion rate is the most recent finalized rating for this data element. (Att. A).

10. The District's rate of improvement in its completion rate fails to satisfy the condition in the Decision of the Commissioner, as modified by the Order on Motion for Rehearing, to demonstrate an acceptable rate of improvement in its completion rate.

#### *Performance on Statewide Assessments*

11. Pursuant to the Decision of the Commissioner, as a condition of withdrawing the order of closure and the annexation to Houston ISD, the District was required to continue and improve performance on statewide assessments. (Ex. 22).

12. The District's academic performance results for Grades 10 and 11 declined between 2010-11 and 2011-12 school years, as set forth below:

Grade 10, 2011-2012 Academic Performance Results

Subject	2011-12 Met Standard	2010-11 Met Standard	Decline in Performance
English/Language Arts	70%	75%	-5%
Mathematics	49%	51%	-2%
Science	47%	49%	-2%
Social Studies	75%	78%	-3%

Grade 11, 2011-2012 Academic Performance Results

Subject	2011-12 Met Standard	2010-11 Met Standard	Change in Performance
English/Language Arts	80%	82%	-2%
Mathematics	80%	80%	No change
Science	81%	79%	+2%
Social Studies	90%	93%	-3%

(T. 680-682; Exs. 24, 27). The TAKST<sup>TM</sup> Assessment was given in these grades in both 2010-2011 and 2011-2012. (T. 672).

13. As compared to statewide results, the District's academic performance results for Grades 10 and 11 in 2011-12 in the subjects identified in Finding 12 ranged from 8% to 28% behind the state performance. (T. 688; Exs. 24, 25).

14. North Forest ISD's district wide results for 2011-2012, which include Grades 3-8 and Grade 10, are as follows:

Student Performance Data from AYP 2011-2012 Database

Subject	North Forest ISD 2011-2012 Met Standard	Statewide Performance 2011-2012 Met Standard	Difference
English/Language Arts	73%	88%	-15%
Mathematics	63%	83%	-20%

(T. 683-686; Ex. 29). The District's federal Adequate Yearly Progress (AYP) rating was not considered in this Decision. Only the performance data, which is based upon student

performance on statewide assessments, was considered to determine whether performance increased or decreased. (T. 680; Record). This level of decline did not occur on a statewide basis. (Ex. 30, p. 1500).

15. The STAAR® assessment was given in 2011-2012 in grades 3-8 and 10. (T. 672, 695-696). There were no state accountability ratings in 2012 based upon the STAAR® assessment. (T. 696; Ex. 197).

16. The standard used for the STAAR® assessments was the standard that is equivalent to the TAKS™ passing standard. The results from 2010-2011 and 2011-2012 can be compared. (T. 696). The bridge study that aligned the two standards was approved by the United States Department of Education. (T. 696). There is no evidence that the bridge study was flawed or that it should have been adopted as a rule. (Record).

17. The data set forth above regarding performance on statewide assessments constitutes the most recent finalized data. Data for 2012-2013 will not be finalized until November, 2013, after the effective date of the closure and annexation. (Att. A).

18. The academic performance requirements identified in the Decision of the Commissioner were established for the sole purpose of determining whether the Commissioner should withdraw the order of closure and annexation and does not apply academic standards in 2012-2013. (Record).

19. The District's decline in student performance on statewide assessments fails satisfy the condition in the Decision of the Commissioner to continue and improve performance on statewide assessments. (Exs. 22, 24-30).

*Investigation of Educational and Financial Impact of Annexation*

20. Exhibit 38 contains the annexation study and its findings are adopted and identified as being supported by the exhibit. Houston ISD is substantially larger (refined Average Daily Attendance [ADA] of students is 181,980) than North Forest ISD (6,000). (Ex. 38).

21. Annexation of North Forest ISD to Houston ISD would result in a 3.3% increase in the enlarged district's refined ADA. (Ex. 38).

22. North Forest ISD's most recent Annual Financial Report contains a write down of its obligation to replay their construction fund. This write down has not been reviewed by the Agency. (Ex. 38).

23. Comparing the balance sheets of North Forest ISD and Houston ISD, annexation would lead to a slight increase in net assets of the enlarged district. (T. 720; Exs. 38, 186).

24. The enlarged district would generate slightly smaller revenue than the two districts generate separately; however, if a waiver were applied for, the enlarged district would be eligible to receive up to 10 years of incentive aid. (T. 711-713; Ex. 38).

25. While the enlarged district would incur transition costs, economies of scale that would reduce the amount of administrative and associated infrastructure costs currently incurred by North Forest ISD would also result. (T. 711; Exs. 38, 187).

26. The annexation would not substantially impair Houston ISD's ability to educate its students or to pay its pre-annexation obligations, based upon the annexation findings such as the disparity in size of the two districts, the financial position of both districts, the most current Annual Financial Reports from both districts, the school finance model that analyzed the finances of the two districts, as annexed, and the projected revenue impact of the additional

students to Houston ISD. Houston ISD can educate its current students with the resources, both financial and otherwise, that result from the annexation. (T. 20; Exs. 38, 186, 187).

27. The annexation would not substantially impair Houston ISD's ability to educate its students or to pay its pre-annexation obligations. (TEX. EDUC. CODE §13.054(e); T. 711; Exs. 38, 186, 187).

28. Houston ISD was given the opportunity to contest the annexation report prepared by the Agency and did not do so. The report is final. (T. 708-713; Ex. 38).

29. The Commissioner may delegate ministerial and executive functions to agency staff and may employ division heads and any other agency employees and clerks to perform the duties of the Agency; the duty to perform the annexation study pursuant to TEX. EDUC. CODE §13.054(e) was properly performed by the Chief School Funding Officer by virtue of her job assignment. TEX. EDUC. CODE § 7.055(b)(5).

#### *Miscellaneous Findings*

30. Reconstitution was not presented in the original record review in a timely manner; the designee of the Commissioner did not receive Exhibit 182, a letter regarding reconstitution, prior to the hearing on March 15, 2013 because it was not sent as a document in the record review process. (Ex. 182; Record).

31. North Forest ISD timely submitted its annual audit report which was unqualified and which reported a fund balance of four and a half million dollars. (Stipulation; T. 763-764; Ex. 196).

32. North Forest was not required to comply with the portion of the order that dealt with single-member districts because an expert determined that it was not feasible to break the district up into single-member districts at this time. (Stipulation; Ex. 196).

33. The memorandum of understanding between North Forest ISD, PHILO School Management L.L.C. or its designated affiliate, KIPP, Inc., Yes Prep, and Harmony Public Schools does not contain sufficient specificity of management, services, and deliverables to support a decision to rescind the proposed order of closure and annexation. The memorandum of understanding was signed one week before the reopened record review. PHILO is seeking to establish itself and would like to begin in Texas. Given that the parameters of the plan were only agreed to on March 7, 2013, it is concluded that the implementation of the plan would take longer than the July 1, 2013 closure date of the Commissioner's Decision. (Ex. 203; T. 776-782).

34. The District refers to a Petition for Review filed with the State Office of Administrative Hearings (SOAH). This pleading is not filed as part of this record review. (Record).

35. Official notice is taken of the following link and map entitled *Texas School Districts and ESC Regions 2010-2011 School Year*, located at the first link at [http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu\\_id=692&menu\\_id2=796&cid=2147483661](http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu_id=692&menu_id2=796&cid=2147483661) to establish the legal boundary description of North Forest ISD.

36. Official notice is taken of the following link and map entitled *Texas School Districts and ESC Regions 2010-2011 School Year*, located at the first link at [http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu\\_id=692&menu\\_id2=796&cid=2147483661](http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu_id=692&menu_id2=796&cid=2147483661) to establish the legal boundary description of Houston ISD.

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47483661 to establish that the legal boundary description of Houston ISD, after North Forest ISD has been annexed to Houston ISD, will consist of the boundaries of both Houston ISD and North Forest ISD without the joint boundary line currently separating the districts.

## **Discussion**

### ***Introduction***

The Decision of the Commissioner dated March 30, 2012, as modified by the Decision on Motion for Rehearing, dated May 7, 2012, revoked the accreditation of North Forest ISD, ordered its closure and annexation to Houston Independent School District, but abated the implementation of the order until July 1, 2013 to allow North Forest ISD a last opportunity to demonstrate, among other requirements, sustained improvement in student completion rates and student academic performance.

On February 7, 2013, the Commissioner of Education notified North Forest ISD of his conclusions that the District failed to meet two of the conditions set forth in the Commissioner's Decision and Decision on Rehearing in this matter and that the District should be ordered closed and annexed into the Houston ISD.

In this proceeding, the issues are limited to whether the District failed to meet two conditions established in the original order, as modified, and whether the findings required by section 13.054 of the Education Code have been made. The District did not meet the requirements, the Agency demonstrated that the required findings were made, and therefore, the abatement is rescinded and the Decision to close and annex the District is effective on July 1, 2013.

### ***Completion Rate***

The District failed to achieve a rate of improvement in the completion rate that was acceptable to the Agency for the class of 2011. (Findings 1-10). On this basis alone, the

abatement should be rescinded and North Forest ISD should be closed and annexed to Houston ISD effective July 1, 2013.

The District asserts that the Decision of the Commissioner is void because conditions were set that were impossible to perform, that is, that it was known that the District could not attain the acceptable completion rate. However, at the time of the Decision, the 2010-2011 completion rate was not yet finalized. As noted in the Decision of the Commissioner, ratings and performance reports are generally reported the year after the school year the data represents. One of the rationales for the conditions in the Decision was to determine if the District's performance was improving as compared to the data admitted into the record. The completion rate was a critical data element to review because it is the reason why the District was rated "Academically Unacceptable" for three years as of the original hearing date. For the 2011-2012 school year, this data element will not be established until July, 2013, which is after the effective date of the Decision. Therefore, as in the original Decision, we look to the most recent finalized ratings in each category. The completion rate data elements for the class of 2011 were finalized after the Decision of the Commissioner was issued in 2012. Being the most recent finalized data elements for the completion rate, it is not arbitrary and capricious nor an abuse of discretion to rely upon the class of 2011 completion rate data for purposes of the review, nor did the use of the data render the Decision of the Commissioner void.

The District relies upon the statement that North Forest ISD should "be given the 2012-2013 school year to demonstrate continuous improvement..." to support its position that the Commissioner must rely on data from the 2012-2013 school year. This statement recognized that with the abatement, North Forest ISD would continue in existence for the next school year and in general, would be granted the specified time period to meet the conditions. The sentence

did not refer to the data to be considered and was not intended to, nor did it establish a right to wait for data generated about the 2012-2013 school year. Had this been the case, the July 1, 2013 date in the Order would have been meaningless, because the completion rate and the assessment data would not be finalized until 2014. The specific language of the conditions set forth in the Order governs as to the data to be considered, including the most current finalized data.

The District was not harmed by the use of the most current finalized completion rate data. The District was allowed to remain in existence for an additional year. Had this opportunity to demonstrate continued improvement not be granted, North Forest ISD would have been closed and annexed to Houston ISD on July 1, 2012.

In addition, the District always had the responsibility of establishing an acceptable completion rate and the responsibility was known to the District. (T. 796-797). For the three prior years, the District failed to sufficiently improve its completion rate.

The 2010-2011 completion rate supports the finding that North Forest ISD continued to fail to make adequate progress toward meeting the state standards. The Order did not establish a de minimus exception to find compliance with the condition set forth in the Order.

### *Academic Performance*

The District failed to continue or improve performance on statewide assessments. Findings 11-19. On this basis alone, the abatement should be rescinded and North Forest ISD should be closed and annexed to Houston ISD effective July 1, 2013.

The District contends that the Commissioner's proposed action did not allow it sufficient time to demonstrate that it maintained or improved its academic performance results. As noted above, ratings and performance reports are generally reported the year after the school year the

data represents. One of the rationales for the conditions in the Decision was to determine if the District's performance was improving as compared to the data admitted into the record. For the 2012-2013 school year, this data element will not be established until November, 2013, which is after the effective date of the Decision. Therefore, as in the original Decision, we look to the most recent finalized ratings in each category. The performance data for the class of 2011 was finalized after the Decision of the Commissioner was issued in March, 2012. Being the most recent finalized data, it is not arbitrary and capricious to rely upon the class of 2011 assessment data for purposes of the review. The decline in the data does not support a finding that the District is progressing toward improved student assessment performance. As noted above, it is always the District's responsibility to ensure student assessment performance by maintaining or improving performance results. The most recent finalized results confirm that the District created an even larger deficit than existed in 2012.<sup>1</sup>

The District contends that the Agency is relying upon only 10<sup>th</sup> and 11<sup>th</sup> grade student assessment performance, in violation of TEX. EDUC. CODE § 39.116, which requires "an evaluation of the district's...performance." Finding 14, also a basis for this Decision, takes into account a decrease in district wide performance. No violation of section 39.116 is demonstrated. It is also noted that the high school's performance is directly related to the District's accountability and accreditation deficits. Such data is relevant to allow the Commissioner's designee to determine whether this significant performance area was maintaining or improving.

In addition, Tex. Educ. Code § 39.116(e) grants authority to the Commissioner to assess the performance of North Forest ISD during the transition 2011-2012 school year because the

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<sup>1</sup> Shannon Housson, who sponsored the student performance data, is the Director of the Division of Performance Reporting, a position he has held since 2004. His responsibilities include generating the Agency's Academic Excellence Indicator System (AEIS) reports, the Agency's Adequate Yearly Progress (AYP) reports.

District had unacceptable performance in the 2010-2011 school year. The Commissioner therefore also has authority to impose sanctions and interventions during the transition year.

In its written closing argument, North Forest ISD states that performance must be reviewed on a cohort basis, comparing the performance of the same group of students over time. However, the District failed to present information in the record regarding this theory and the Agency has not had an opportunity to present challenges. The District failed to exhaust administrative remedies with regard to this issue. Further, for the purposes of the required performance levels, student performance is measured on a grade level basis, not a cohort basis.

North Forest ISD also asserts on a number of bases that it is improper for the Agency to rely upon the federal No Child Left Behind standard of adequate yearly progress (AYP). As noted in hearing, the AYP rating is not being considered in this matter; rather, the data that reflects actual district wide student performance on statewide assessments was admitted. Ratings are separate from the data gathered. The AYP system data was used solely and strictly to measure improvement in district wide performance in English/Language Arts and Mathematics; the rating was not considered.

The District also asserts that the Agency failed to present any evidence that the bridge study that aligned the TAKS™ standard to the STAAR® standard with regard to the district wide data was reliable and was not adopted in a rule. However, it was the District's burden to present information which challenged the reliability of the study; it did not do so. As to whether the study should have been adopted as a rule by the Agency, for the purposes of this record review, it is not necessary to make that determination. The data presented is valid and the process to standardize the data has not been specifically challenged. In addition, the U.S.D.E., which relies on the data, approved the process set forth in the bridge study.

No ratings, either federal or state, are the basis for the decision in this reopened record review. Only student performance assessment data, which reflects student performance on the statewide assessments, was considered in compliance with the Commissioner's Decision. Relying on the data for decision is not the same as using accountability, accreditation or AYP ratings or indicators. The question before the Commissioner's Designee is whether the District sufficiently continued and improved performance on statewide assessments. That question is answered by the student assessment performance data, not ratings.

The District was not harmed by the use of the most current finalized student assessment performance data. The District was allowed to remain in existence for an additional year. Had this opportunity to demonstrate continued improvement not be granted, North Forest ISD would have been closed and annexed to Houston ISD on July 1, 2012. The data supports the finding that North Forest ISD did not maintain or improve student performance on statewide assessments.

### ***Annexation Findings***

Section 13.054(e) of the Education Code provides:

Before the commissioner orders an annexation under this section, the commissioner shall investigate the educational and financial impact of the annexation on the *receiving* district. The commissioner may order the annexation only if the commissioner finds that the annexation *will not substantially impair the ability of the receiving district to educate the students located in the district before the annexation and to meet its financial obligations incurred before the annexation.*

(Emphasis added).

North Forest ISD asserts that the annexation study violates 19 TEX. ADMIN. CODE § 97.1057(e), which provides in relevant part: "In determining whether to impose a particular sanction under TEC, Chapter 39, or this subchapter, the commissioner may consider the costs

and logistical concerns of the district, but shall give primary consideration to the best interest of the district's students. *The sanction selected shall be reasonably calculated to address the district's or campus' deficiencies immediately or within a reasonable time, in the best interest of its present and future students.*" (Emphasis added). The District did not cite to the second sentence, which makes the provision applicable to districts that will not be closed and annexed. The annexation findings set forth in section 13.054(e) of the Education Code are all that is required to support annexation. The standards proposed by the District are not supported by statute or rule.

The District contends that the second prong of the annexation study regarding whether annexation would substantially impair the ability of the receiving district to educate its current students cannot be met by a financial review. However, it is reasonable to conclude that if the new district's finances, as demonstrated by the balance sheets and the school funding model, are sufficient, the district's ability to educate its *current* students will not be substantially impaired. For example, Houston ISD is currently educating its students. Along with the addition of 6,000 students, Houston ISD will receive the infrastructure of North Forest ISD (real property, buildings, buses, fixtures, etc.), the property tax base, the state payments per student, etc. Having sufficient financial resources relates directly to the ability to educate Houston ISD's current students. In addition, it should be noted that Houston ISD did not object to the conclusions of the annexation study, which further supports the finding that the annexation will not substantially impair Houston ISD's ability to educate its students.

The District also challenges the Agency's communication regarding the annexation study with Houston ISD, which it described as "preliminary." The Agency properly sought the input of the receiving district with regard to the section 13.054(e) conclusions. If Houston ISD

disagreed with the findings, further review would be necessary. Hence, unless Houston ISD communicated its disagreement, the findings became final and could serve as the annexation study. It is noted that section 13.054(e) does not refer to preliminary or final studies. The District's position is not supported.

North Forest ISD also contends that the annexation study is not valid because the Commissioner did not issue the findings. This position is erroneous as well. TEX. EDUC. CODE § 7.055(b)(5) contemplates that the Commissioner may delegate ministerial and executive functions to agency staff and may employ division heads and any other agency employees and clerks to perform the duties of the Agency. Dr. Dawn-Fisher, the Chief School Finance Officer, is charged with the responsibility of overseeing the school finance system, including school funding. This is an executive duty delegated from the Commissioner, as is the annexation study, because it falls within her area of responsibility. The performance of this function does not invalidate the annexation study.

The timing of this study is likewise in compliance since no annexation was ordered to become effective until the abatement was dissolved. Not knowing the outcome of any reopened record review, it was reasonable to conduct the annexation study in the context of this proceeding.

North Forest ISD lacks standing to challenge the annexation study. The study relates to Houston ISD's students and finances, not to those of North Forest ISD.

The required findings that the annexation will not substantially impair Houston ISD's ability to educate the students located in the district before annexation and to meet its financial obligations that were incurred prior to the annexation have been made and are supported.<sup>2</sup>

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<sup>2</sup> Dr. Lisa Dawn-Fisher performed the annexation study. As the Agency's Chief School Finance Officer, she is responsible for overseeing financial audits of school districts and charter schools and more importantly, state



The annexation study meets the requirements of TEX. EDUC. CODE § 13.054(e) and the results support the required findings for annexation to Houston ISD.

### ***Miscellaneous Challenges to Closure and Annexation***

School districts and “other government subdivisions derive their existence and powers from legislative enactments and are subject to legislative control and supremacy. Consequently, they cannot use the sword of the due-process-of-law and other provisions to invalidate the laws that govern them.” *See Connally v. General Contr. Co.*, 269 U.S. 385, 391, 70 L.Ed. 322, 46, S.Ct. 126 *McGregor v. Clawson*, 506 S.W.2d 922, 929 (Tex. Civ. App.-Waco 1974, no writ).

North Forest ISD asserts that the Commissioner violated TEX. EDUC. CODE § 39.102 because revocation, closure and annexation of the District cannot be bifurcated. The District makes this conclusory statement with no legal support. As addressed in the Order on Motion for Rehearing, the Commissioner ensured that the financial penalty for the “Accredited-Revoked” rating, the loss of funding, was also abated.

The District contends that now, after the abatement, the action to sanction the District is not based upon two consecutive years of ratings in violation of TEX. EDUC. CODE § 39.102. However, the findings, conclusions, and Decision to revoke accreditation, close the district and annex it to Houston ISD attached and became fixed and final during the 2012 record review process. There is no requirement that the Agency had to prove the two consecutive years of ratings again with 2011-2012 ratings (for which there was no accountability rating for any district). North Forest ISD met the criteria for closure and annexation.

The abatement of the Decision did not order that no action or consideration would be taken until July 1, 2013. A preliminary determination was required to be filed prior to February

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funding of school districts and charter schools. She has worked in the area of school finding for approximately seventeen years. She participated in the annexation study regarding the closure and annexation of the Kendleton Independent School District and its annexation to Lamar Consolidated School District.

1, 2013. The relevant conclusions and order language set the term of the abatement to end on July 1, 2013 and at that time, either North Forest ISD would continue to exist or the order to close and annex would become effective. The Commissioner would consider any finalized data in making the decision. Nowhere in the Decision or the Order is it specified that 2012-2013 data would be required for final action. The District argues that the two conditions relied upon by the Agency were impossible of performance; however, both conditions specify a data outcome that would be demonstrated by finalized data. While it is true that the performance to be measured had already occurred, since the data had not been finalized, the Commissioner would wait until the reports were issued before making a decision.

Further, pursuant to TEX. EDUC. CODE § 39.116, the Commissioner has the authority to increase the level of intervention or sanction based upon performance in the 2011-2012 school year, despite the abatement based upon the 10<sup>th</sup> and 11<sup>th</sup> grade data for 2011-2012 and the STAAR® results under the TAKST™ passing standard for Grades 3-8 and 10.

The District also asserts that it was not able to reconstitute its high school campus for the 2012-2013 school year. This issue was not raised until after the original Decision of the Commissioner was issued and no evidence was presented at the original record review and thus was not proven. In addition, this issue was not included in the as part of the conditions to be fulfilled and is therefore not relevant.

North Forest ISD presented a memorandum of understanding with PHILO, L.L.C. and others to assume management of the District and to provide educational services. However, the agreement was signed one week before the reopened record review. PHILO is trying to establish itself and desires to begin in Texas. The implementation of the plans described by the District

would extend past the July 1, 2013 closure date. Without experience and a track record of proven results, this agreement does not compel a decision to allow the District to remain open.

With regard to the legal boundary description requirement of TEX. EDUC. CODE § 13.054(c), the boundaries of school districts are set forth at [http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu\\_id=692&menu\\_id2=796&cid=2147483661](http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu_id=692&menu_id2=796&cid=2147483661), which reflects data maintained by the Texas Legislative Council. Metes and bounds descriptions are not required. *Gates v. Asher*, 154 Tex. 538, 280 S.W.2d 247, 249 (Tex. 1955). This Order takes official notice of the boundary map to establish the legal boundary description.

### ***Conclusion***

The abatement should be rescinded and North Forest ISD should be closed and annexed to Houston ISD because it failed to meet the condition to achieve an acceptable rate of improvement of its completion rate. The District's failure to meet or exceed this condition results in giving effect to the Decision of the Commissioner to close North Forest ISD and annex it to Houston ISD. The closure and annexation are supported by the reasons and facts set forth in the Decision of the Commissioner, as modified by the Order on Motion for Rehearing, and the Decision of the Commissioner's Designee and should be reinstated.

As a second, independent reason, the abatement should be dissolved and North Forest ISD should be closed and annexed to Houston ISD because it failed to meet the condition to continue and improve performance on statewide assessments. The District's failure to meet or exceed this condition results in giving effect to the Decision of the Commissioner to close North Forest ISD and annex it to Houston ISD. The closure and annexation are supported by the reasons and facts set forth in the Decision of the Commissioner, as modified by the Order on

Motion for Rehearing, and the Decision of the Commissioner's Designee and should be reinstated.

The investigation required by TEX. EDUC. CODE § 13.054(e) has been completed and it is concluded that the annexation will not substantially impair the ability of the receiving district to educate the students located in the district before the annexation and to meet its financial obligation incurred before the annexation.

Any issue previously determined in the Decision of the Commissioner or the Order on Motion for Rehearing is not addressed here; the rulings as to those issues are incorporated from these orders as if set forth herein in full.<sup>3</sup> In addition, any issue not addressed herein is determined not to invalidate the decision to close North Forest ISD and to annex it to Houston ISD.

### **Conclusions**

The following conclusions are supported by the record review as a whole and supplement the original Conclusions in the Decision of the Commissioner, dated March 30, 2012, as amended by Order on Motion for Rehearing, issued on May 7, 2012. Any conclusions necessary to the outcome of this matter and contained in the Discussion section are incorporated herein as if set forth in full. In consideration of the matters presented, the findings made herein and official notice taken, I make the following conclusions:

1. The Commissioner of Education has jurisdiction over this matter pursuant to TEX. EDUC. CODE §§ 39.051 and 39.052 and 19 TEX. ADMIN. CODE §§ 97.1037, 97.1055(d)(1).

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<sup>3</sup> For example, the issues of the bifurcation or separation of accreditation revocation from closure and annexation, the determination of the current school year, the revocation is not based upon two consecutive years of poor performance; the finding that TEX. EDUC. CODE § 39.102(a) regarding the permissible selection of "any" of the actions set forth in subsection (a), constitute examples of prior rulings.

2. School districts and other government subdivisions derive their existence and powers from legislative enactments and are subject to legislative control and supremacy. Consequently, they cannot use the sword of the due-process-of-law and other provisions to invalidate the laws that govern them.

3. North Forest ISD was required to achieve a rate of improvement acceptable to the Agency of the District's completion rate which demonstrates sustained improvement in order to comply with the conditions for the withdrawal of the decision to close the District and annex the District to Houston Independent School District in the Commissioner's Decision of March 30, 2012, as modified by the Order on Motion for Rehearing, dated May 7, 2012.

4. The standard for an acceptable rate of improvement for any district's completion rate is established in 19 TEX. ADMIN. CODE § 97.1001(b) and <http://ritter.tea.state.tx.us/perfreport/account/2011/manual/ch03.pdf>. The District knew or should have known the standard for achieving an acceptable rate of improvement in the completion rate.

5. North Forest Independent School District failed to achieve a rate of improvement acceptable to the Agency of the District's completion rate which demonstrated sustained improvement, as established by the most recent finalized completion rate data.

6. It is not arbitrary or capricious nor an abuse of discretion to rely on the most recent finalized completion rate data, even though the data relates to the prior school year, in determining whether the District achieved a rate of improvement in the completion rate acceptable to the Agency.

7. The Commissioner's Designee is authorized to rely upon the most recent finalized completion rate data in deciding this matter; the next reporting of the completion rate data occurs after the end of the abatement period.

8. As an independent ground, because North Forest Independent School District failed to meet the requirement set forth in Conclusion 2, the abatement is rescinded and North Forest Independent School District should be closed and annexed to Houston Independent School District effective July 1, 2013.

9. North Forest ISD was required to continue and improve performance on statewide assessments in order to comply with the conditions for withdrawal of the decision to close the District and annex the District to Houston Independent School District in the Commissioner's Decision of March 30, 2012, as modified by the Order on Motion for Rehearing, dated May 7, 2012.

10. North Forest Independent School District failed to continue and improve performance on statewide assessments, as demonstrated by the most recent finalized student assessment performance data.

11. It is not arbitrary or capricious nor an abuse of discretion to rely on the most recent finalized student assessment performance data, even though the data relates to the prior school year, in determining whether the District maintained and improved performance on statewide assessments.

12. The performance standards considered in this matter are based upon the Decision of the Commissioner and are not statewide standards. The academic performance requirements identified in the Decision of the Commissioner were established for the sole purpose of determining whether the Commissioner should withdraw the order of closure and annexation and does not apply academic standards in 2012-2013.

13. The bridge study which aligned the TAKST<sup>™</sup> performance standards with the STAAR<sup>®</sup> performance standards for 2011-2012 is valid and reliance upon the data resulting from the alignment process is likewise valid.

14. The statement in the Decision of the Commissioner issued March 30, 2012 that North Forest ISD should “be given the 2012-2013 school year to demonstrate continuous improvement...” recognized that with the abatement, North Forest ISD would continue in existence for the next school year and in general, would be granted the time period to meet the conditions. The statement did not identify or relate to the data to be considered. It did not establish a right to wait for data generated about the 2012-2013 school year, available in 2014. The specific language of the conditions set forth in the Order governs as to the data to be considered, including the most current finalized data.

15. North Forest ISD failed to exhaust administrative remedies with regard to the issue of whether student assessment performance must be reviewed on a cohort basis, comparing the performance of the same group of students over time.

16. For the purposes of the required performance levels, student performance is measured on a grade level basis, not a cohort basis.

17. The Commissioner’s Designee is authorized to rely upon the most recent finalized student assessment performance data from 2010-2011 in deciding this matter; the next reporting of the student assessment performance data occurs after the end of the abatement period.

18. As an independent ground, because North Forest Independent School District failed to meet the requirement set forth in Conclusion 9, the abatement is rescinded and North Forest Independent School District should be closed and annexed to Houston Independent School District effective July 1, 2013.

19. The Commissioner may delegate ministerial and executive functions to agency staff and may employ division heads and any other agency employees and clerks to perform the duties of the Agency; the duty to perform the annexation study and make findings about effect of annexation pursuant to TEX. EDUC. CODE §13.054(e) was properly performed by the Chief School Funding Officer by virtue of her job assignment. TEX. EDUC. CODE § 7.055(b)(5).

20. The annexation will not substantially impair the ability of Houston ISD to educate the students located in the district before the annexation and to meet its financial obligations incurred before the annexation. TEX. EDUC. CODE § 13.054(e).

21. Once a district is subject to closure and annexation pursuant to TEX. EDUC. CODE § 13.054(e), the review standard of 19 TEX. ADMIN. CODE § 97.1057(e), “best interests of the district’s students” no longer applies. The “best interests” standard is considered in the sanctions and interventions set forth in TEX. EDUC. CODE § 39.102; once the district is to be annexed, the analysis is transferred to the interests of the students in the receiving district under TEX. EDUC. CODE § 13.054(e).

22. North Forest ISD lacks standing to challenge the annexation study required by TEX. EDUC. CODE § 13.054(e), as it relates solely to the students and finances of the receiving district, Houston ISD.

23. There is no legal prohibition against rating a district as “Accredited-Revoked” and abating the closure and annexation of the district, so long as funding and other requirements are continued during the abatement.

24. The Commissioner has authority to abate the closure and annexation of a district that is rated “Accredited-Revoked.” The District was not harmed by the abatement as it was allowed to continue in existence for an additional year.



25. TEX. EDUC. CODE 39.116(e) authorizes the Commissioner to assess the performance of North Forest ISD during the TAKS™ to STAAR® assessment program transition in the 2011-2012 school year because the District had unacceptable performance in the 2010-2011 school year. The Commissioner has authority to impose sanctions and interventions during the transition year.

26. The difficulty in hiring and maintaining staff while the employing school district is rated “Accredited-Revoked” does not invalidate the imposition of the rating or the legality of the abatement.

27. The District was not harmed by the use of the most current finalized completion rate and student assessment performance data. The District was allowed to remain in existence for an additional year. Had this opportunity to demonstrate continued improvement not be granted, North Forest ISD would have been closed and annexed to Houston ISD on July 1, 2012.

28. The findings, conclusions, and Decision to revoke accreditation, close the district and annex it to Houston ISD attached and became fixed and final during the 2012 record review process. No additional proof of deficiencies is required to support the closure and annexation, other than failure to meet the requirements set forth in the Decision, as modified by the Order on Motion for Rehearing.

29. The memorandum of understanding with PHILO School Management, L.L.P., et al., due to its lack of specificity and the lack of time remaining to implement, does not support the withdrawal of the order of closure and annexation.

30. The District relies upon a Petition for Review filed with the State Office of Administrative Hearings (SOAH). This pleading is not filed as part of this record review and will not be considered.

31. Conclusions of Law 30, 31, and 32 of the Decision of the Commissioner, issued March 30, 2012, are specifically incorporated herein as if set forth in full and are adopted.

32. The abatement should be rescinded and North Forest Independent School District should be closed effective July 1, 2013.

33. The abatement should be rescinded and North Forest Independent School District should be annexed to Houston Independent School District effective July 1, 2013.

34. The legal boundary description of the territory to be annexed to Houston Independent School District consists of all territory currently assigned to North Forest Independent School District, as identified in the *Texas School Districts and ESC Regions 2010-2011 School Year* map located at the first link on the web page at [http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu\\_id=692&menu\\_id2=796&cid=2147483661](http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu_id=692&menu_id2=796&cid=2147483661).

35. The legal boundary description of the territory to be known as Houston Independent School District following annexation consists all territory currently assigned to North Forest Independent School District and all territory currently assigned to Houston Independent School District, as identified in the *Texas School Districts and ESC Regions 2010-2011 School Year* map located at the first link on the web page at [http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu\\_id=692&menu\\_id2=796&cid=2147483661](http://www.tea.state.tx.us/index2.aspx?id=2147505144&menu_id=692&menu_id2=796&cid=2147483661).

36. North Forest Independent School District's reopened record review should be denied.

37. The District may file a Petition for Review with the Agency's Hearings Division to review this decision. TEX. EDUC. CODE § 39.152(a), 19 TEX. ADMIN. CODE §§ 97.1037(f), 157.1151(a)(2). No Motion for Rehearing is required nor will be considered. 19 TEX. ADMIN. CODE § 97.1037(h). This Decision constitutes the final decision of the Designee of the Commissioner of Education on this matter.

### **Order**

After due consideration of the record, matters officially noticed, and the foregoing Findings and Conclusions, in my capacity as the delegatee of the Commissioner of Education, it is hereby


ORDERED that North Forest Independent School District's reopened record review be, and is hereby, DENIED;

FURTHER ORDERED that the abatement established by the Decision of the Commissioner, as modified by the Order on Motion for Rehearing be, and is hereby RESCINDED;

FURTHER ORDERED that North Forest Independent School District be, and is hereby, CLOSED effective July 1, 2013; and

FURTHER ORDERED that North Forest Independent School District, as identified in the legal boundary description set forth in Conclusion 34 be, and is hereby, ANNEXED to the Houston Independent School District effective July 1, 2013, pursuant to the legal boundary description contained in Conclusion 35.

SIGNED AND ISSUED this 1<sup>st</sup> day of April, 2013.

  
LIZZETTE GONZALEZ REYNOLDS  
CHIEF DEPUTY COMMISSIONER

ATTACHMENT A - North Forest ISD Selected History of Academic, Financial and Accreditation Ratings (REVISED)			
Academic Year	Academic Accountability Issued in July of the ongoing school year ending August 31. Appeals in October of the calendar year; ratings finalized in late October.	FIRST (Financial Accountability) Issued August 31, one year after the close of the fiscal year (e.g., 2008 rating for fiscal year 2006-2007).	Accreditation Status Issued March 1 for the ongoing school year.
2007-2008 (2008)		<i>Substandard Achievement</i> <ul style="list-style-type: none"> <li>Negative fund balance</li> <li>Based on 2006-2007 school year</li> </ul>	<i>Accredited – Probated</i> Special Accreditation Investigation findings
2008-2009 (2009)	<i>Academically Unacceptable</i> <ul style="list-style-type: none"> <li>Completion Rate 49.6% (class of 2008)</li> </ul>	<i>Suspended – Data Quality</i> <ul style="list-style-type: none"> <li>Negative fund balance</li> <li>Material weakness in internal control</li> <li>Based on 2007-2008 school year</li> </ul>	<i>Accredited – Probated</i> Special Accreditation Investigation findings
2009-2010 (2010)	<i>Academically Unacceptable</i> <ul style="list-style-type: none"> <li>Completion Rate 52.1% (class of 2009)</li> </ul>	<i>Substandard Achievement</i> <ul style="list-style-type: none"> <li>Negative fund balance</li> <li>Qualified opinion</li> <li>Based on 2008-2009 school year</li> </ul>	<i>Accredited – Warned</i> 2009 Academically Unacceptable rating; 2008 FIRST Substandard Achievement; 2009 FIRST Suspended-Data Quality ratings
2010-2011 (2011)	<i>Academically Unacceptable</i> <ul style="list-style-type: none"> <li>Completion Rate 59.1% (class of 2010)</li> </ul>	<i>Substandard Achievement</i> <ul style="list-style-type: none"> <li>Negative fund balance</li> <li>Qualified opinion</li> <li>Untimely filing</li> <li>Material weakness in internal control</li> <li>Based on 2009-2010 school year</li> </ul>	<i>Accredited – Probated</i> Special Accreditation Investigation findings; 2009, 2010 Academically Unacceptable ratings; 2009 FIRST Suspended-Data Quality rating; 2010 FIRST Substandard Achievement rating
2011-2012 (2012)	<i>No Accountability Rating Issued</i> <ul style="list-style-type: none"> <li>Completion Rate 66.4% (class of 2011) Required rate of improvement 67.05%</li> </ul>	<i>Substandard Achievement</i> <ul style="list-style-type: none"> <li>Negative fund balance</li> <li>Qualified opinion</li> <li>Untimely filing</li> <li>Material weakness in internal control</li> <li>Based on 2010-2011 school year</li> </ul>	<i>Not Accredited – Revoked Based Upon Abated 2012 Commissioner's Decision</i> 2008, 2009, 2010, 2011 FIRST Ratings, 2009, 2010, 2011 (failing), Accountability Ratings (AU)