

**Disparity Between Public School Students:** The result of these marked differences in funding between school districts and charter school funding is a significant and continual disparity between the amount of combined state and local funding that school districts and charter schools receive from the State of Texas. On average, over the past four years, charter schools have received approximately \$1,600 less per student. Furthermore, the range from the highest per-student funding in school districts to the lowest per-student funding in charter schools is approximately \$9,000.

The state funding mechanism for charter schools is a derivative of the formula used to calculate funding for school districts. The Legislature funds charter schools by applying the school district funding mechanism to charter schools, as if they were a school district with no tax base. Tex. Educ. Code §12.106. Charter school funding is computed in two tiers, Tier I and Tier II.

### Tier I Funding

**Districts Adjusted:** For school districts, the Basic Allotment is adjusted to account for each school district's tax rate, size, sparsity and cost of education. Tex. Educ. Code §42.101.

**Not for Charters:** Yet, these particular adjustments are not made for public charter schools. Tex. Educ. Code §12.102-105. Instead, the Statewide Average Adjusted Allotment, the average of all school district Adjusted Allotments, is applied to every charter school, regardless of a particular charter school's size, sparsity or cost of education. Tex. Educ. Code §12.106.

### Tier II Funding

Tier II funding provides guaranteed levels of enrichment to school districts and charter schools. Tier II funding is dependent upon Tier I funding. Thus, for charter schools, both Tier I and Tier II funding is negatively impacted by the use of the Statewide Average Adjusted Allotment.

**Not for Charters:** Tier II funding is dependent upon Tier I funding.

### Property Taxes and Guaranteed Yield

In addition to state funding entitlements in Tier I and Tier II, school districts can levy local property taxes to pay for facilities. The state subsidizes facilities for low-wealth districts by guaranteeing a yield on interest and sinking fund taxes from the state through the Instructional Facilities Allotment (IFA) or the Existing Debt Allotment (EDA). Tex. Educ. Code §42.007.

**Not for Charters:** Charter schools are not eligible to receive facilities funding through the IFA or EDA. Charter schools, having neither a local tax base nor receiving state assistance for instructional facilities, receive no facilities funding of any sort from the State.

## Charter School Parents and TCSA Litigation Claims:

### 1 *The Current Public School Finance System is Unconstitutional as to Public Charter Schools.*

- The State has failed to provide adequate resources to these public schools so that the schools are able to provide students with the general diffusion of knowledge, as required by Article VII, Section 1 of the Texas Constitution.

While the Legislature enjoys flexibility and discretion in determining how public schools are funded, that discretion is subject to constitutional limitations. Profoundly inadequate and inequitable public school funding, whether between school districts or between school districts and public charter schools, is unconstitutional.

- Public charter schools are required to meet the same state and federal education standards as are school districts. They are subject to the same academic and financial accountability requirements.

Yet, for the past several years, charter schools have received on average \$1,600 less revenue per student than their school district counterparts. Moreover, students in the poorest charter schools receive on average \$9,000 less revenue than their peers in the wealthiest districts.

- As the Supreme Court explicitly recognized in *Edgewood IV*, “An efficient system of public education requires not only classroom instruction, but also the classrooms where that instruction is to take place. These components of an efficient system—instruction and facilities—are inseparable.” *Edgewood IV*, 917 S.W.2d at 726.

Yet, despite this undisputed recognition that facilities are a component of a constitutional school finance system, public charter schools, as part of the public school system and charged with the same responsibility as districts to educate Texas students, are denied facilities funds.

- The arbitrary denial of facilities funding impacts charter schools tremendously, as school districts receive on average \$1,000 in facilities funds and charter schools receive \$0 per student.

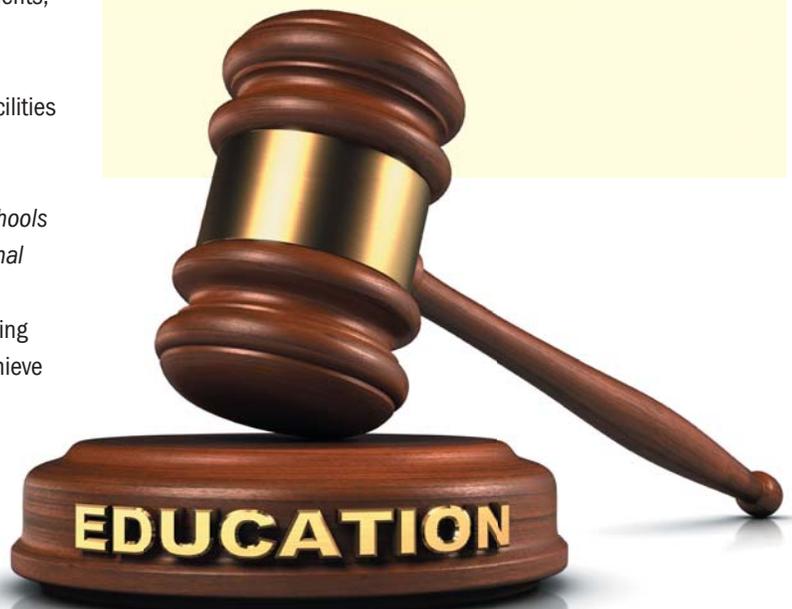
### 2 *The Means Provided by the Legislature to Fund Public Charter Schools and the Statutory Cap on Charter Schools Violate the Constitutional Prohibition Against An Arbitrary Public School Finance System.*

- While the Legislature is afforded significant discretion in determining the means by which it funds the level of education required to achieve a general diffusion of knowledge, that discretion is limited by the Constitution, and the decisions made by the Legislature cannot be arbitrary.

NOTE: With the enactment of Senate Bill 2, the cap on the number of open-enrollment charter schools increased (215 to 305 by 2019), but an arbitrary cap remains.

## Requesting Litigation Outcome:

- That the Court declares that Article VII, Section 1 of the Texas Constitution, with respect to the public school finance system, applies equally to open-enrollment charter schools.
- That the Court declare that the public school finance system, insofar as it creates arbitrary differences between the sources of funding available to open-enrollment charter schools, without rational basis, is in violation of the equal protection provisions of Article 1, Section 3 of the Texas Constitution.
- That the Court find that the constitutional requirements upon the Legislature, for a suitable and efficient free public school system to provide general diffusion of knowledge, requires facility funding for open-enrollment charter schools.
- Removing these arbitrary limitations on charter schools would not only relieve the constitutional complaints on behalf of these students, but would also support the charter schools’ impressive start toward the achievement of an efficient state school system and a brighter educational future for the school children of Texas, as promised by our Constitution.



The Legislature, having established charter schools as part of the public school system, must fund these public schools in compliance with the Texas Constitution.

The Texas Legislature created charter schools in 1995 as “part of the public school system of this state.” Tex. Educ. Code § 12.105.

Charter schools, together with traditional public schools, “have the primary responsibility for implementing the state’s system of public education.” Tex. Educ. Code § 11.002. Thus, charter schools share the primary responsibility—equally with school districts—to implement the public education system in Texas.

**Same Accountability:** Charter schools must meet the same academic and financial mandates as school districts, including the rigorous assessment standards, increasing curriculum requirements, and the requirement to ensure that students attain post-secondary readiness. Tex. Educ. Code §§ 12.059, 12.104, 12.111.

**Additional Accountability for Charters Only:** With passage of Senate Bill 2 by the 83rd Legislature, charter schools are uniquely subject to additional accountability in the form of performance frameworks, and are subject to revocation/closure requirements applied only to open-enrollment charter schools.

Charter schools, parents, and students continue to be shortchanged. **That is NOT FAIR.**

The current school finance system provides traditional school districts with two types of funding: instructional/operations and facilities funding.

Charter school students are given, on average, less instructional/operational funding per pupil than their traditional school district peers, and charter schools receive no facilities funding.

Charter school students **ARE NOT WORTH LESS,** but every calculation adds up to **FEWER DOLLARS.**

On average over four years, charter schools have received approximately \$1,600 less in total funding per student (ADA). The highest per-student funding in school districts is approximately \$9,000 more than the lowest perstudent funding in charter schools.

In facilities funding, school districts receive on average \$1,000 and charters receive \$0 per student. To address facility needs, Texas charters spend \$829 per student (on average) from Foundation School Program funding.

## Statute Says: Flexibility given to public charter schools to ...

1. Improve student learning
2. Increase the choice of learning opportunities within the public school system
3. Create professional opportunities that will attract new teachers to the public school system
4. Establish a new form of accountability for public schools
5. Encourage different and innovative learning methods

Texas Education Code § 12.001

## Statute DOES NOT SAY: Flexibility in Exchange for Less Funding.





## Recent State Legislative Action on School Finance

- **Cut \$5.4 bil:** In 2011, the 82nd Legislature cut \$5.4 billion from the 2012-2013 biennium. The State also cut, or eliminated entirely, funding for programs for the costly to teach at-risk student.
- **Restored \$3.4 bil:** In 2013, the 83rd Legislature restored an estimated \$3.4 billion of the total \$5.4 billion in Foundation School Program cuts made in 2011.
- **Gap Remains:** The 83rd Legislature made no structural changes to the funding mechanism for charter schools, and the gap in funding between ISDs and charters remains.
- **School Finance Not Improved for Charters:** The 83rd legislative session brought about three types of major changes that impacted charter schools: school finance dollars, academic requirements, and charter school accountability. None of the changes made by the 83rd Legislature significantly improved the school finance system as applied to public school students served by open-enrollment charters. Despite the restoration of \$3.4 billion to the school finance system, the disparity in funding between charters and school districts remains.

## Changes in School Finance

Changes to public school funding made mainly in Senate Bill 1 and House Bill 1025 did not change the school funding mechanism used to distribute education dollars to schools, but rather added money into the existing system. Further, the unique adaptations of the school funding mechanism for charter schools remain unchanged and no facilities funding was added to the system for charter schools.

To add more money to the FSP, the Legislature: (a) raised the Basic Allotment (the basis for school funding), (b) restored to one (1), the reduction factor applied to regular program funds (essentially removing their effect), and (c) made changes to equalized wealth levels and target revenue.

The gap between charter school and school district funding remains significantly large. This was not surprising, as the funding mechanisms did not change to address the funding gaps that have existed since charter schools were created in the late 1990s. Compared in a percentile distribution analysis, the gaps between charter schools in the 95th percentile and school districts in the 95th percentile exceed \$4,000 per student and \$3,000 per weighted student.

## House Bill 5: Changes to Academic Accountability for School Districts & Charters

House Bill 5 reduced the number of standardized tests (End of Course exams, or EOCs) a student is required to pass to graduate from high school to five tests (Alg 1, Eng 1 & 2, Bio and US History). House Bill 5 also changed the course requirements and diploma plans for graduation, but did not change the number of credits required for graduation nor the passing standard for each of these tests. The passing standard for each of these tests continues to rise because the State's phase-in of the new STAAR exam passing standards is not yet complete. House Bill 5 did not change the requirement imposed upon districts and charters that it graduate students post-secondary ready, and did not change the Texas standards for post-secondary readiness.

## Additional Accountability for Charters

Senate Bill 2, also passed by the 83rd Legislature, imposes heightened accountability and performance measures unique to charter schools with the addition of performance frameworks and mandatory revocation.