



TCSA Model Board Policy Series

100.080: *Federal Fiscal Compliance*

INTRODUCTION

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

Overall Policy Framework

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

Scope of Service & Copyright Notice

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

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Module 100: Financial Operations

The Financial Operations, Module 100, is the first module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to the financial operations of charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

Module 200: Charter School Governance & Organization

Module 300: General School Operations

Module 400: Students

Module 500: Open Government

Module 600: Human Resources

Legal Abbreviations Used In the TCSA Model Board Policy Series

Atty. Gen. Op.

Attorney General Opinion

C.F.R

Code of Federal Regulations

Tex. Admin. Code

Texas Administrative Code

Tex. Educ. Code

Texas Education Code

Texas Gov't Code

Texas Government Code

Tex. Labor Code

Texas Labor Code

Texas Local Gov't Code

Texas Local Government Code

U.S.C.A

United States Code Annotated

100.080. FEDERAL FISCAL COMPLIANCE (UPDATED JUNE 2015)

TCSA Note: This TCSA Legal Authority summary addresses the most popular sources of federal funding for open-enrollment charter schools, but may not address every source of federal funding received by your open-enrollment charter school. In addition to referencing this resource, each open-enrollment charter school is encouraged to refer to its Notice of Grant Award and all applicable regulations for the specific compliance standards related to each source of federal funding the charters school receives, whether directly from a federal agency or as a pass through from the Texas Education Agency.

A. General Standards - Proper Use of Federal Grants awarded by the U.S. Department of Education

1. Adoption of New EDGAR. Charter holder/school grantees should consult the new Education Department General Administration Regulation (EDGAR) for the complete set of applicable federal regulations that were adopted on December 26, 2014. The new EDGAR will apply to all federal grants awarded directly to the charter school after that date and will apply to all state administered programs as of July 1, 2015. Grants awarded before the effective dates will continue to be governed by the OMB circulars that were in effect at the time the grant was awarded.
2. Regulations Comprising the New EDGAR. The new EDGAR consists of the following parts of the Code of Federal Regulations: 34 CFR 75, 34 CFR 6, 34 CFR 77, 34 CFR 81, 2 CFR 200, 2 CFR 3474, and 2 CFR 3485. See, [General and Fiscal Guidelines: The New EDGAR](#).
3. Cost Principles. According to the new EDGAR, any expenditure of federal grant funds must be:
 - a. Allowable, [2 C.F.R. §200.403](#);
 - b. Reasonable and Necessary, [2 C.F.R. §200.404](#); and
 - c. Allocable, [2 C.F.R. § 200.405](#).
4. Costs for Professional Services. Costs of professional and consultant services rendered by persons who are not employed by the charter schools and members of a particular profession or possess a special skill are allowable when reasonable and when certain factors are considered. [2 C.F.R. § 200.459](#).
5. Procurement of Goods and Services.
 - a. General Procurement Standards.
 - i. Responsible Contractors. Charter schools must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Factors include

contractor integrity, compliance with public policy, past performance, and financial and technical resources. [2 C.F.R. § 200.318](#).

- ii. Shared Services. To promote greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the federal government, charter schools are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. [2 C.F.R. §200.318](#).
- iii. Full and Open Competition. All procurement transactions must be conducted in a manner providing full and open competition. [2 C.F.R. § 220.319](#).
- b. Specific Procurement Standards. Unless the charter school has adopted more strict procurement standards for the purchase of goods and services than the standards adopted in in EDGAR, then EDGAR governs the purchase of goods and services with federal funds. Under EDGAR:
 - i. for expenses of \$3,000 or less (i.e., micro-purchases), charter schools must distribute purchases equitably among qualified suppliers;
 - ii. for small purchases of less than \$150,000, charter schools must get price quotes from an adequate number of qualified sources;
 - iii. for construction, charter schools must use procurement by sealed bids;
 - iv. when sealed bids are not appropriate (such as for when one or more source submits a fixed price or cost-reimbursement model), then charter schools must use procurement by competitive proposals;
 - v. for sole source purchasing, charter schools must use noncompetitive proposals; and
 - vi. for every procurement action in excess of the Simplified Acquisition Threshold (i.e., \$150,000 as of December 26, 2014, but from time to time may be adjusted for inflation), the charter school must perform a cost or price analysis, which as a starting point must make independent estimates before receiving bids or proposals.

[2 C.F.R. § 200.320](#); [2 C.F.R. § 200.323](#); [2 C.F.R. § 200.88](#)
- c. Historically Underutilized Businesses. The charter school must take all necessary affirmative steps to assure minority businesses, women's business enterprises, and labor surplus area firms are used when possible. [2 C.F.R. § 200.321](#)
- d. Contract provisions. The charter school's contracts must contain the applicable provisions described in [Appendix II of 2 C.F.R. § Part 200](#). [2 C.F.R. § 200.326](#)

6. Conflicts of Interest. The charter school must establish a conflict of interest policy for federal awards. Any potential conflict of interest must be disclosed to the federal awarding agency or the Texas Education Agency.
 - a. An individual conflict of interest would arise when a charter school officer, employee, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of these parties has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. Further, no officer, employee or agent of the charter school may solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. [2 C.F.R. § 200.112](#)
 - b. An organizational conflicts of interest would arise if (1) a charter school has a parent, affiliate, or subsidiary organization, and (2) because of the charter school's relationship with the parent, affiliate, or subsidiary, the charter school is unable to be or appears unable to be impartial in conducting a procurement action involving the related organization. [2 C.F.R. § 200.318](#)
7. Mandatory Disclosures of Misconduct. The charter school must disclose, in a timely manner, in writing to the federal awarding agency or the Texas Education Agency, all violations of federal criminal law involving fraud, bribery, or gratuity violations affecting the federal award. [2 C.F.R. § 200.113](#)
8. Documentation for Personnel Expenses (Time-and-Effort Reporting)
 - a. Time and effort records must be maintained for all employees whose salaries are paid in whole or in part with federal funds. The records must:
 - i. be supported by a system of internal control that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
 - ii. be incorporated into the official records of the non-federal entity;
 - iii. reasonably reflect the total activity for which the employee is compensated by the non-federal entity, not to exceed 100%;
 - iv. encompass both federal assisted and all other activities compensated by the non-federal entity on an integrated basis;
 - v. comply with the established accounting policies and practices of the non-federal entity; and
 - vi. other factors. [2 C.F.R. § 200.430](#)
 - b. The federal time-and-effort reporting requirement requires employees who work on multiple activities or cost objectives to document their time and effort in one of two ways:

- i. *With monthly personnel activity reports (PARs), or*
- ii. *Through an approved substitute system.*

9. Audit Requirements.

- a. The Single Audit Act requires non-federal entities that expend \$750,000 or more in year in federal awards to have a single or program specific audit conducted for that year. This requirement applies to the charter holder as a whole and not to a single charter school. [2 CFR § 200.501](#)
- b. The form to be submitted is the Form SF-SAC, Data Collection Form for Reporting on Audits of States, Local Governments and Non-Profit Organizations. The form is submitted electronically through the [Federal Audit Clearinghouse website](#).

B. Specific Standards – U.S. Department of Education, No Child Left Behind Act, Title I, Part A

- 1. Title I, Part A funds are purposed to be used to provide services in addition to the regular services provided by the charter holder. Therefore, the charter holder must meet three fiscal requirements related to the expenditure of regular state funds:
 - a. Maintain state and local effort (MOE). To meet the NCLB LEA MOE requirement in any fiscal year, a charter school is required to expend state and/or local funds at 90% of the level at which it expended funds in the preceding fiscal year. There are four calculations for determining whether a charter school has met the NCLB LEA MOE requirement. The charter school needs to meet at least one of the following four tests to be compliant:
 - i. Total state and local expenditures: The LEA's total state and local expenditures must equal or exceed 90% of expenditures during the previous fiscal year.
 - ii. Total state and local expenditures per-pupil for refined average daily attendance (RADA): The RADA per-pupil amount the LEA expended must equal or exceed 90% of the amount it expended during the previous fiscal year.
 - iii. Total state and local expenditures per-pupil for membership: The membership per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
 - iv. Total state and local expenditures per-pupil for enrollment: The enrollment per-pupil amount the LEA expended must equal or exceed 90% of what it expended during the previous fiscal year.
 - b. Provide services in project areas with state and local funds that are at least comparable to services provided in areas not receiving Title I, Part A services; and

- c. Use Title I, Part A funds to supplement, not supplant, regular non-federal funds. Documentation must be maintained which clearly demonstrates the supplementary nature of federal funds.
- 2. A charter holder may use Title I, Part A funds to conduct Schoolwide Programs or Targeted Assistance Programs.
 - a. *For Schoolwide Programs, the charter holder must use the funds that are part of the Campus Improvement Plan to improve student performance and upgrade the entire educational program. A comprehensive needs assessment must be conducted that will inform the campus improvement plan.*
 - b. For Targeted Assistance Programs, the charter holder may only use these funds to meet the needs of children identified as being in greatest need of services.

20 U.S.C.A §§6314–6315; 20 U.S.C.A. § 9521; See also, [Guidance for the Implementation of Title I, Part A, Texas Education Agency](#), [Title I, Part A Comparability of Services Guidance Handbook](#), and the NCLB LEA Maintenance of Effort Handbook at [19 TAC § 109.3001\(c\)\(2\)](#).

C. Specific Standards –U.S. Department of Education, IDEA- B Special Education Grant Funding

1. Maintenance of Effort. Unless an exception applies, funds provided to an open-enrollment charter school under Part B of the Individuals with Disabilities Education Act (IDEA) must not be used to the reduce the level of expenditures for the education of children with disabilities made by the charter school from local funds below the level of those expenditures for the preceding year. The four methods that charter schools may use to meet this standard are: (1) Local funds only, (2) the combination of State and local funds, (3) local funds only on a per capita basis, or (4) the combination of State and local funds on a per capita basis. [34 C.F.R. § 300.203](#), IDEA-B LEA Maintenance of Effort (MOE) Guidance Handbook at [19 TAC § 109.3001\(c\)\(1\)](#)
2. Excess Costs. The excess cost requirement mandates how much the charter school must expend in state and local funds before it may begin expending IDEA-B grant funds. IDEA-B funds must be used only to pay the excess cost of providing special education and related services to children with disabilities. “Excess costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student. [34 C.F.R. §300.202\(a\)\(2\)](#), [34 CFR § 300.16](#), IDEA-B LEA Maintenance of Effort (MOE) Guidance Handbook at [19 TAC § 109.3001\(c\)\(1\)](#); [IDEA-B Excess Cost Guidance](#).
3. Supplement, Not Supplant. Funds for this program must be used to supplement (increase the level of services) and not supplant (replace) funds from federal, state, and local funds for similar activities. Documentation must be maintained which clearly demonstrates the supplementary nature of federal funds.
4. Coordinated Early Intervening Services (CEIS). Under IDEA-B, grantees are permitted to expend grant funds on services (known as coordinated early intervening services, or

CEIS) for students who do not meet the definition of students with a disability. When you set funds aside for CEIS, the amount by which you may voluntarily reduce your maintenance of effort (MOE) is affected. [IDEA-B CEIS Handbook](#)

D. Specific Standards – Direct Funding from the U.S. Department of Education for the Charter Schools Program (CSP), No Child Left Behind Act, Title V, Part B

1. Charter schools that receive CSP grants directly from the U.S. Department of Education must comply with and use federal funds in accordance with all statutes, regulations, and approved applications. [34 C.F.R §75.700](#).
2. Grantees must directly administer or supervise the administration of the project, and they must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, federal funds. [34 C.F.R. § 75.702](#).
3. Charter schools that receive CSP grants must avoid apparent and actual conflicts of interest when administering grants. Regulations prohibit a person from participating in an administrative decision regarding a project if:
 - a. The decision is likely to benefit that person or an immediate family member; and
 - b. The person is a public official or has a family or business relationship with the grantee.

A person may not participate in a project to use his or her position for a purpose that is, or gives the appearance of being, motivated by a desire for a private or financial gain for that person or for others. [34 C.F.R. § 75.525](#)

E. United States Department of Agriculture - [Child Nutrition Programs](#)

1. Charter schools that choose to participate in the federal National School Lunch Program must comply with Title 7 of the Code of Federal Regulations Parts 210, 245, and 3016 and Title 4 of the Texas Administrative Code Chapter 25 and Chapter 26. 7 C.F.R §210 et. seq., §245 et. seq., §3016 et. seq; [4 Tex. Admin. Code §25 – §26 et. seq.](#)
2. If a charter school participates in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, the charter school must publicly announce to the parents of each student in attendance the eligibility criteria for these nutrition programs near the beginning of the school year. Charter schools must also provide an application for the program(s). [7 C.F.R §245.5](#).
3. If at least 10 percent of enrolled students in a charter school are eligible for free or reduced-price breakfasts under the National School Breakfast Program, provided for by the Child Nutrition Act of 1966, the charter school shall participate in the School Breakfast Program and make the benefits of the program available to all eligible students. Tex. Educ. Code §33.901 (a), 42 U.S.C.A. 1773; See also [4 Tex. Admin. Code §25 et seq. – §26 et seq.](#)

4. If an open-enrollment charter school participates in the National School Breakfast program and at least 80 percent or more of the students in a charter school qualify for a free or reduced-price breakfast, the open-enrollment charter school shall provide a free breakfast to all students. [TEX. EDUC. CODE 33.901](#).
5. Each school year, the Board may request a waiver from the commissioner from the requirement described above, provided the board votes to request the waiver at the annual meeting of the board called to adopt the budget for the open-enrollment charter school, the board lists the waiver as a separate item for consideration on the meeting's agenda, and the board provides an opportunity for public comment regarding the waiver at the meeting. The waiver shall not exceed one year. [TEX. EDUC. CODE 33.901](#).
6. If a charter school participates in the National School Lunch Program, the School Breakfast Program, or the Special Milk Program, the charter school must publicly announce to the parents of each student in attendance the eligibility criteria for these nutrition programs near the beginning of the school year. Charter schools must also provide an application for the program(s). [20 U.S.C. § 7221i \(1\)\(G\)](#).

F. Discrimination in Non-Charter Operations

1. Federal law defines a charter school as a public school that complies with the Age Discrimination Act of 1975 [[42 U.S.C. 6101](#) et seq.], Title VI of the Civil Rights Act of 1964 [[42 U.S.C. 2000d](#) et seq.], Title IX of the Education Amendments of 1972 [[20 U.S.C. 1681](#) et seq.], Section 504 of the Rehabilitation Act of 1973 [[29 U.S.C. 794](#)], and Part B of the Individuals with Disabilities Education Act [[20 U.S.C. 1411](#) et seq.]. [20 U.S. Code § 7221i\(1\)\(G\)](#).
2. Civil Rights Restoration Act (CRRA) of 1987. Under the CRRA, the entire corporation or other legal entity that holds an open-enrollment charter is subject to broad, institution-wide coverage under the four major civil rights statutes that prohibit discrimination in federally assisted programs. Thus, the CRRA applies Title IX, Title VI, Section 504, and the Age Act – but not the IDEA – to “all of the operations of” the entire corporation or other legal entity that is “principally engaged in the business of providing education, health care, housing, social services, or parks and recreation” any part of which receives federal funds. [20 U.S.C. § 1687](#).

TCSA Note: For more information on prohibited discrimination in federally assisted programs, see TCSA Model Board Policy Module 400: Students and Model Board Policy Module 600: Human Resources.