

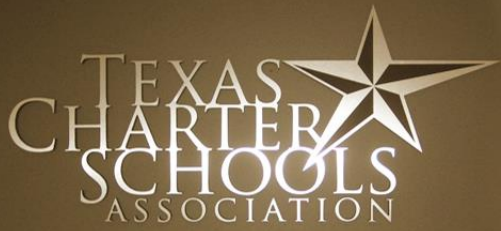


Charter Law Overview For Board Members



Presentation Link

www.txcharterschools.org/medialist/lawoverview



Classes of Charter Schools

Texas Education Code, Chapter 12

Subchapter A: General Provisions

Subchapter B: Home Rule Charter Districts

Subchapter C: School District Campus Charters

Subchapter D: Open Enrollment Charter Schools

Subchapter E: College or University Charters

Apply

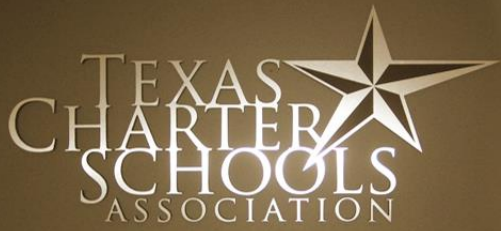
- Commissioner of Education, SBOE Veto
- Generation 21 Applications Before the SBOE

Amend

- Substantive Amendments
- Non-Substantive Amendments
- 19 TAC §100.1033

Adjudicate

- Avoid Adverse Action (Academic, Financial, Health & Safety, Material Violation, Compliance)
- Revocation and Non-Renewal for Accountability
- Informal Review, SOAH Appeal



Examples of Sources of Law: *State*

Texas Constitution

- Use of Public Funds
- Support and Maintenance of Public Free Schools

Texas Education Code, Chapter 12 (*mainly*)

Texas Business Organization Code, Chapter 22

Title 19, Texas Administrative Code, Chapter 100

Texas Attorney General Opinions

- Legal Opinions
- Open Records Decisions

Decisions Issued by Texas Courts

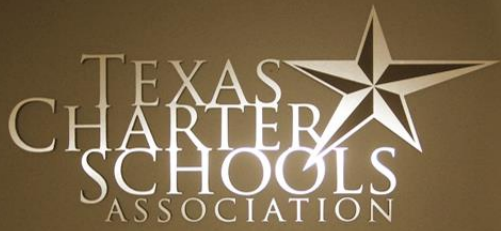
Core Principles of Open Meetings Act

- Sunshine Law – aims to make public business accessible to the public
- Meeting – the charter board must hold a meeting to exercise its powers
- Agenda – the board may take action only on items that appear on the agenda
- Closed Meetings – the board must discuss the agenda items in public unless statutorily permitted to discuss the item in closed session

- Gives **public right** to request access to information
- Applies to open enrollment **charter schools**
- Applies to **'Public Information'**
- Allows **charges** to the requestor
- **Exceptions** to disclosure apply

Tex. Educ. Code §12.107. State funds received by a charter are considered to be public funds for all purposes and are held in trust by the charter holder for the benefit of the students and may be used only for a purpose for which a school may use local funds under §45.105(c).

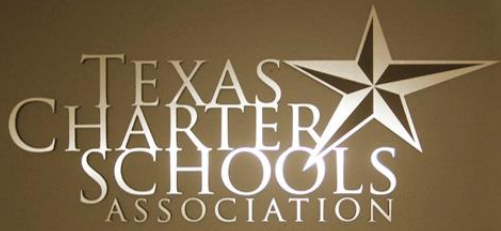
Tex. Educ. Code §12.128. Property acquired with state funds is “property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school.”



Purchasing & Contracting Laws Applicable to Charter Schools

Under Texas Education Code Section 12.1053, open-enrollment charters must comply with the following laws unless the school's approved charter provides otherwise:

- Tex. Govt. Code Chapter 2252 (Subchapter D)
- Tex. Local Govt. Code Chapter 271 (Subchapter B)
- Tex. Govt. Code Chapter 2254 (Subchapter A)
- Tex. Govt. Code Sections 2256.009-2256.016



Purchasing & Contracting

Tex. Gov't. Code Chapter 271, Subchapter B

Competitive Bidding for Public Works Projects

- Notice
- Lowest Responsible Bidder
- Sealed Bids
- Public Bid Opening

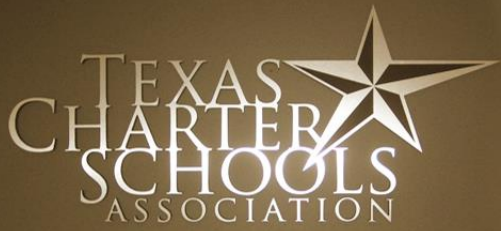
- An open-enrollment charter school may not purchase or sell real property held in trust until the trustee submits a copy of the trust agreement identifying the true owner.
- If the school fails to comply with this provision, the real property conveyance is void.
- A trust agreement submitted to the school under this provision is confidential under the PIA.

Professional Services Procurement Act

- An open-enrollment charter school may not award a contract for professional services on the basis of competitive bids.
- Providers for professional services must be selected on the basis of:
 - Demonstrated competence
 - Demonstrated qualifications
 - A fair and reasonable price

Professional services include:

- Accounting
- Architecture
- Landscape architecture
- Land surveying
- Medicine
- Optometry
- Professional nursing
- Real estate appraising
- Professional engineering



School Law Comparison

Similarities

Open Enrollment Charter Schools

Traditional School Districts

Academic Accountability

Academic Accountability

- State AEIS System
- Federal NCLB

- State AEIS System
- Federal NCLB

Financial Accountability

Financial Accountability

Teacher Retirement System

Teacher Retirement System

Immunity from Tort

Immunity from Tort

Open Meetings

Open Meetings

Open Records

Open Records

Mandatory Board Training

Mandatory Board Training

State Curriculum & Graduation

State Curriculum & Graduation

PEIMS Reporting

PEIMS Reporting

Criminal History Background Checks

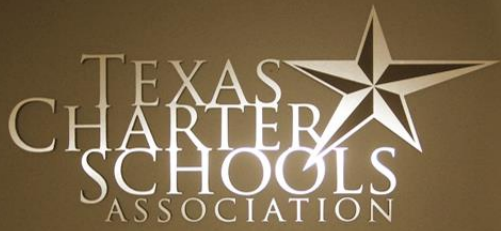
Criminal History Background Checks

Conflicts of Interest

Conflicts of Interest

Nepotism

Nepotism



School Law Comparison

Differences

Open-Enrollment Charter Schools

Traditional School Districts

305 Statutory Cap (By 2019)

More Than 1,000 Districts

Employment “At-Will”

Employment Contracts

No Minimum Salary Scale for Teachers

Minimum Salary Scale for Teachers

Local Student Code of Conduct

Statutory Student Code of Conduct

No Authority to Levy Property Taxes

Authority to Levy Property Taxes

No Facilities Funding Provided

Facilities Funding Subsidized by State or Local Tax

Services Contracts Pre-approved by TEA

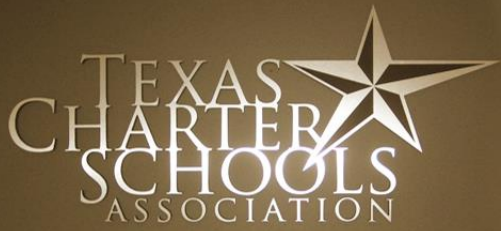
Services Contracts Approved by School Board

Some Real Properties Tax Exempt

All Real Properties Tax Exempt

Three strikes of poor financial or academic rating triggers closure

No automatic closure triggers in place for poor academic or financial performance.



Senate Bill 2: High Stakes Accountability

- **Mandatory Expiration (Non-Renewal) of Charter (TEC §12.1141(d)) :**
 - ✓ Lowest Academic or Financial Performance Rating for 3 of 5 Years (or any combination of both)
 - ✓ Any campus has been assigned lowest academic rating for three consecutive years and such campus has not been closed.
 - ✓ AEA Charters will be subject to expiration for poor financial ratings

- **Three Strikes Revocation (TEC §12.115(c)):**
 - ✓ Lowest academic performance rating for 3 consecutive years
 - ✓ Unsatisfactory financial performance rating for 3 consecutive years
 - ✓ Any combination of above for 3 consecutive years

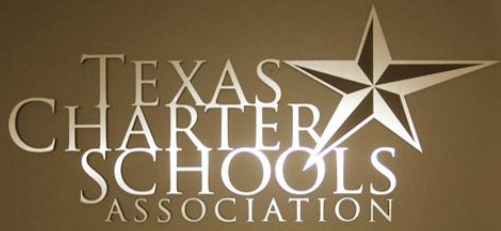
- **Charters must meet Performance Frameworks (TEC §12.1181)**
 - ✓ Annual evaluation based on the Performance Frameworks
 - ✓ Charter may be revoked for failure to meet Performance Frameworks

Federal Statues

- Every Student Succeeds Act (ESSA)
- Family Education Rights and Privacy Act (Student Records)
- Individuals with Disabilities in Education Act (Special Education)
- Fair Labor Standards Act (Minimum Wage, Overtime Pay, Recordkeeping)
- Family Medical Leave Act (Unpaid Employee Leave)
- National Child Nutrition Program (Eligibility, Claims and Counting)
- Antidiscrimination Laws:
 - Title VII of the Civil Rights Act of 1964
 - Title IX of the Education Amendments of 1972
 - Age Discrimination in Employment Act
 - Americans with Disabilities Act
 - Uniform Services Employment and Reemployment Rights Act
 - Section 504 of the Rehabilitation Act of 1973

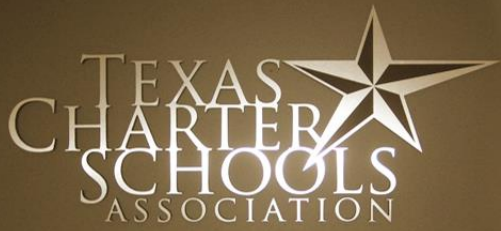
Federal Regulation / Federal Constitution

- 1st Amendment (speech, assembly, religious freedom, establishment clause) /4th Amendment (search and seizure) / 14th Amendment (due process)
- IRS Regulations Concerning 501(c)(3) Exempt Organizations



Charter Governance

- Legal Requirements for Board Members
- Effective Board Meetings
- Board Responsibilities
- *Training and policy adoption*
- *Open Meetings Act; Meeting Organization and Preparation*
- *Fiscal, Academic; Proper Delegation*



Criminal History and Compensation Restrictions

Criminal History

Misdemeanor involving moral turpitude

Any felony

An offense listed in Tex. Educ. Code § 37.004(a)

An offense listed in Code of Criminal Procedure, Article 62.01(5)

Tex. Educ. Code § 12.120; 19 TAC § 100.1151

Compensation

General Rule: A person who serves on the governing board of a charter holder may not receive compensation or remuneration:

- ***Salaries, bonuses, benefits, or other compensation pursuant to an employment relationship**
- Reimbursement for personal expenses
- Credit
- Personal Use of Property
- In-Kind Transfers of Property
- All other forms of compensation or remuneration.

BUT, compensated employees *may* serve on the board provided the conditions of 19 TAC 100.1131 (c) and (f) are satisfied.

Management Company Connections

A person may not serve if they have a substantial interest in a management company that has a contract with the charter holder or a charter school:

Tex. Educ. Code § 12.120; 19 TAC § 100.1153

- Have controlling interest in the company
- Own more than 10% of voting interest
- Have a direct or indirect participating interests in more than 10% of the profits, proceeds or capital gains
- Member of the board or other governmental body of the management company
- Serve as an elected officer of the company
- Are an employee of the company

SB 2 (2013) Repealed the Ratings Exception. Public officials may not:

- Hire persons related to them within a prohibited degree for a charter position
- Hire persons related to other public official within a prohibited degree for a charter position

Candidates for public official positions may not:

- Take any affirmative action to influence employment decisions around any person in a charter position to which they are related. 19 TAC § 100.1114

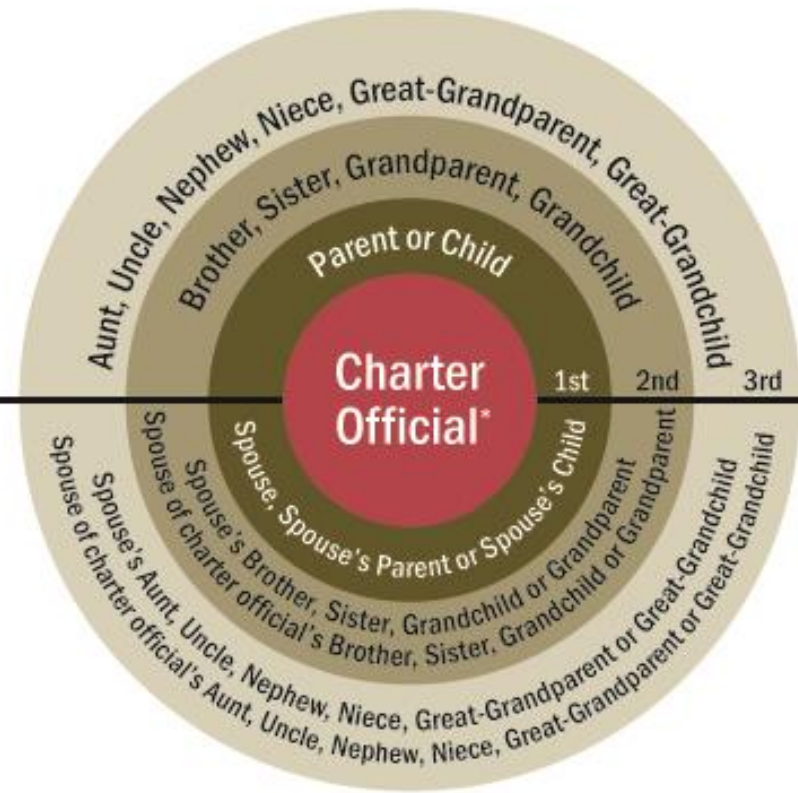
Who is a “public official” for purposes of nepotism restrictions?

- Board Member (*even if* hiring authority delegated)
- CEO/Superintendent (for delegated hires only)

Prohibited Degrees of Relationship

200.100 Nepotism Diagram

▲ **Blood Relation (Consanguinity)**
includes adoption & half-blood relations.



▼ **Relation by Marriage (Affinity)**
includes marriages that end in death or divorce when a child of the marriage is living and under age 21.

*Charter Official includes charter holder board member, charter school board member, or officer of a charter school.

Continuous Employment Exception (SB 2 grandfather
of employees employed prior to Sept. 1, 2013)

Certain Positions:

- Bus Drivers in small counties
- Personal Attendants
- Substitute Teachers

Fiduciary Duties

Who owes fiduciary obligations to the charter school?

- Board of Charter Holder
- Board of the Charter School
- Charter Board Officers
- School “Officers”, which includes CEO, principals, assistant principals business managers and central administration officer and campus administration officer.

TEC § 12.1012 and § 12.121; 19 TAC § 100.1011(16)

Duty of Loyalty

Duty of Care

Duty of Obedience

On request of the Commissioner, the Attorney General may bring suit against a member of the governmental body of an open enrollment charter school for breach of fiduciary duty, including misappropriation of funds. The AG may bring suit for damages, injunctive relief, and any other equitable remedy.

Tex. Educ. Code § 12.122

Charter School Board Members: Fiduciary Duties

- Duty of Care – Pay Attention and Be Informed in Decision-Making
- Duty of Obedience – Understand Mission
- Duty of Loyalty – Students First

Tex. Bus. Org. Code §22.221.

Conflicts of Interest; Interested Transactions

Often the same transaction, but two different actions:

Recusal, Affidavit, possibly Board Action (TEC 12.1054):

- A member of the governing body of a charter holder, a member of the governing body of a charter school, and an officer of a charter school must comply with Local Government Code, Chapter 171
- In accordance with Rules § § 100.1131 - 100.1135

Books and Records (Rule 100.1047(f)): Interested transaction must be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the school.

Substantial Interest in Business Entity or Real Property

If a Director or Officer has a substantial interest in a business entity or in real property, then:

- (a) before a vote, decision, or other action
- (b) on any matter involving the business entity or the real property,
- (c) the director must file an affidavit stating the nature and extent of the interest

And shall abstain from further participation in the matter if:

- (a) In the case of a substantial interest in a business entity, the vote decision, or other action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- (a) In the case of a substantial interest in real property, it is reasonably foreseeable that a vote, decision, or other action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

What's a Substantial Interest?

Substantial interest in business entity. A person has a substantial interest in a business entity if:

- (1) the person owns 10% or more of the voting stock or shares of the business entity or owns either 10% or more or \$15,000 or more of the fair market value of the business entity; or
- (2) funds received by the person from the business entity exceed 10% of the person's gross income for the previous year.

Substantial interest in real estate. A person has a substantial interest in real estate if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.

Substantial interest through a relative or family member. A Director or Officer is considered to have a substantial interest under this section if a person related to the Director or Officer within the third degree by consanguinity or the second degree by affinity has a substantial interest in real estate or a business entity.

Conflicts of Interest: Indirect Interests

A **local government officer** must file a **CIS form** with respect to a vendor of the charter school if:

The vendor enters into a **contract** with the charter school or the charter school is considering entering a contract with the vendor or

AND

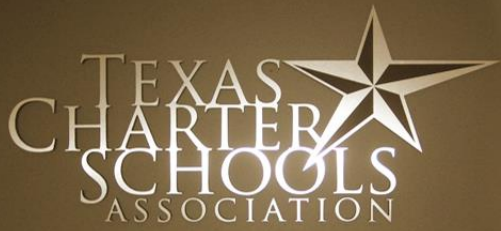
The vendor:

- has a relationship with the officer that results in the officer or the **officer's family member** receiving **taxable income** that exceeds \$2,500 in the 12 months preceding, OR
- Has given the officer or the officer's family member one or more **gifts** that have aggregate value of over \$100 in 12 mos. preceding. Tex. Loc. Gov't. Code, Chapter 176.

Conflicts of Interest: Indirect Interests

A **local government officer** must file a **CIS form** with respect to a vendor of the charter school if:

- (1) The vendor enters into a **contract** with the charter school or the charter school is considering entering a contract with the vendor; **AND**
- (2) The vendor:
 - has a relationship with the officer that results in the officer or the **officer's 1st degree family member** receiving **taxable income** that exceeds \$2,500 in the 12 months preceding, **OR**
 - Has given the officer or the officer's family member one or more **gifts** that have aggregate value of over \$100 in 12 mos. preceding. Tex. Loc. Gov't. Code, Chapter 176; **OR**
 - Vendor or employees are related within 3rd Degree of Consanguinity or 2nd Degree of Affinity.



Conflicts of Interest: Indirect Interests

A local government officer means board members, superintendents, employees, or (NEW!) “agents who exercise discretion in the planning, recommending, selecting, or contracting of a vendor.”

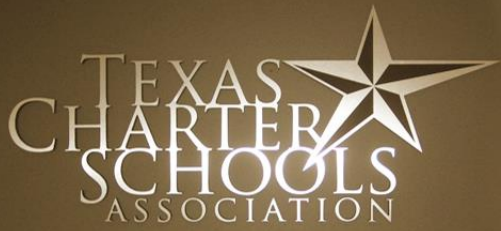
A vendor must file a [Form CIQ](#) if the vendor has an employment or other business relationship with a local government officer or the 1st degree relative that generated more than \$2500 in the preceding year; AND the vendor has given income or gifts of \$100 or more or there is a family relationship with school officers.

Forms CIS and CIQ must be posted on school’s website and retained with school records.

- To hear or decide employee grievances, citizen complaints or parental concerns
- To adopt or amend the budget of the school
- To authorize the expenditure or obligation of state funds or the use of public property
- To approve audit reports
- To direct the disposition or safekeeping of public records
- To adopt policies governing school operations, or
- *Delegate the initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate or set compensation of a chief executive officer.*

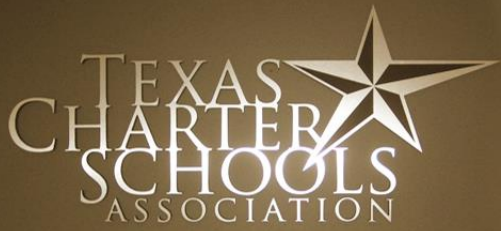
19 TAC §100.1017 and §100.1033(c)(7).

- Board must determine compensation arrangement and evaluation procedures of school executive(s)
- IRS Private Inurement/Excess Benefit Transaction Rules (Internal Revenue Code §4958)
 - ✓ Comparable compensation from schools of similar size and budget
 - ✓ At least three (3) comparable compensation arrangements
 - ✓ Consideration should include contract terms, bonus, benefits, etc.



Charter School Board: Transparency Requirements

- ✓ A majority of the members of the governing body of an open-enrollment charter school or charter holder must be qualified voters. **Tex. Educ. Code §12.1202**
- ✓ Names of members of governing board must be on homepage of website. Tex. Educ. Code **§12.1211**
- ✓ Superintendent/CEO salary must be posted on the school's website. Tex. Educ. Code **§12.136**
- ✓ The Board must ensure that financial statements are posted continuously on the school's website. Tex. Local Gov't Code §140.006.



Immunity for Open-Enrollment Charter Schools

- In matters related to the operation of an open-enrollment charter school, a **school** is immune from liability and suit to the same extent as school district, and its **employees and volunteers** are immune to the same extent as school district employees and volunteers.
- A **member of the governing body of an open-enrollment charter school or of a charter holder** is immune from liability and suit to the same extent as a school district trustee. Tex. Educ. Code § 12.1056.

Tex. Educ. Code § 12.1056.