

Charter School Law & Governance



What is the purpose of your board?

- Board Responsibilities
 - Fiscal
 - Academic
 - Delegation of Duties
- Legal Requirements for Board Members
 - Training Staff and Administration
 - Policy Adoption
- Effective Board Meetings
 - Meeting Organization
 - Preparation

Who can serve on the board?

- Minimum of 3 board members
- President and Secretary required
- 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

Who can't serve on the board?

- **Individuals with:**

- Misdemeanor involving moral turpitude
 - Theft
- Any felony
- An offense listed in Tex. Educ. Code § 37.007(a)
 - Arson, aggravated assault, murder, indecency with a child
- An offense listed in Code of Criminal Procedure, Article 62.001(5)

Tex. Educ. Code § 12.120; 19 TAC §100.1151; BUT ALSO SEE, Tex. Educ. Code § 12.1059 and Tex. Educ. Code § 22.081 et seq.

- Criminal History Check is required for board members

Nepotism

- No family members within the third degree of consanguinity or second degree of affinity shall serve together on the charter holder or **charter school board**.

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

If the person is related by blood (called Consanguinity):

First Degree	Second Degree	Third Degree
Parent	Grandparent	Great Grandparent
Child	Grandchild	Great Grandchild
	Brother/Sister	Uncle/Aunt
		Nephew/Niece

If the person is related by marriage (called Affinity):

First Degree	Second Degree
Spouse	Spouse's Grandparent
Mother/Father-in law	Spouse's Grandchild
Son/Daughter in law	Brother/Sister in law

Nepotism Exceptions

- Continuous Employment Exception
- Certain Positions:
 - Bus Drivers in small counties
 - Personal Attendants
 - Substitute Teachers

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

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.

Business Entity or Real Property Substantial Interest

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.

Business Entity or Real Property 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.

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;

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.**

Can you compensate the board?

- **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.

19 TAC § 100.1131 (b).

- Satisfactory student performance exception for employees
 - 2 out of 3 years

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

Non-Delegable Duties:

Absent approval from the TEA and upon a showing of good cause, the governing body of a charter holder may not delegate final authority:

- 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.

- 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.

- **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

CSPF Indicator Summary




Total Indicators Exceeding Expectations:	3
Total Indicators Meeting Expectations:	16
Total Indicators Not Meeting Expectations:	13
Total Indicators Far Below Expectations:	0
Total Indicators Not Applicable:	0
Total Indicators:	<u>32</u>

Financial Framework

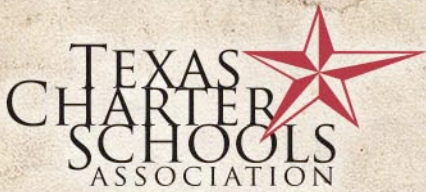
Timely Filing of Annual Financial Report	
Unmodified Opinions	
Material Weaknesses in Internal Controls	
Default on Debt	
Aggregate Variance	
Administrative Cost Ratio	

 Meets  Does Not Meet  NA

Operational Framework

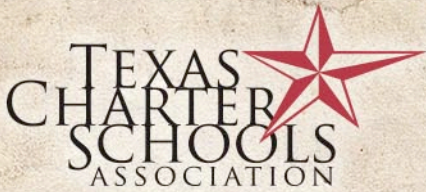
Teacher Qualifications	
Special Population Program Requirements	
BE/ESL Program Requirements	
CTE Program Requirements	
Governance Reporting	
Criminal Record Requirements	
501(c)(3) Status	
Certificate of Occupancy Requirements	
Community & Student Engagement	
PEIMS Reporting	
TREx Usage	
Material Noncompliance	

 Meets  Does Not Meet  Far Below  NA



Charter School Board: Transparency Requirements

- 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.
- After final approval, the Board must keep the annual budget posted on the school's website. Tex. Educ. Code §39.084



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

Locally Proscribed Student Code of Conduct

Statutorily Proscribed Student Code of Conduct

No Authority to Levy Property Taxes

Authority to Levy Property Taxes

Not Eligible for Certain State
Funding Opportunities;
No Facilities Funding Provided (State or Local)

Eligible for More State Funding Opportunities;
Facilities Funding Subsidized by State or Local Tax

Services Contracts Pre-approved by TEA

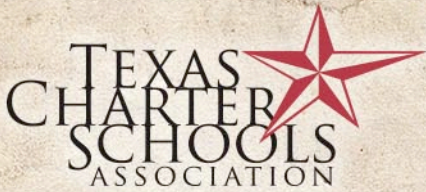
Services Contracts Approved Solely by School Board

Some Real Properties Tax Exempt

All Real Properties Tax Exempt

Three strikes of poor financial or academic rating
triggers mandatory closure

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



School Law Comparison *Similarities*

Open Enrollment Charter Schools

Traditional School Districts

Academic Accountability

- State AEIS System
- Federal NCLB

Academic Accountability

- 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

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

- 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**
 - Legal Opinions
 - Open Records Decisions
- Decisions by Texas Courts

Public Funds and Public Property

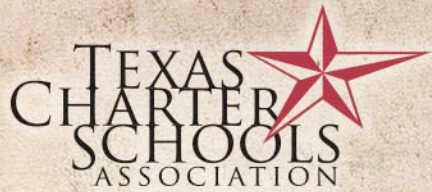
Tex. Educ. Code §12.107. State funds received by a charter are considered to be public funds for all purposes and are held in trust by the charter holder for the benefit of the students and may be used only for a purpose for which a school may use local funds under §45.105(c).

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.”

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.



Questions?

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