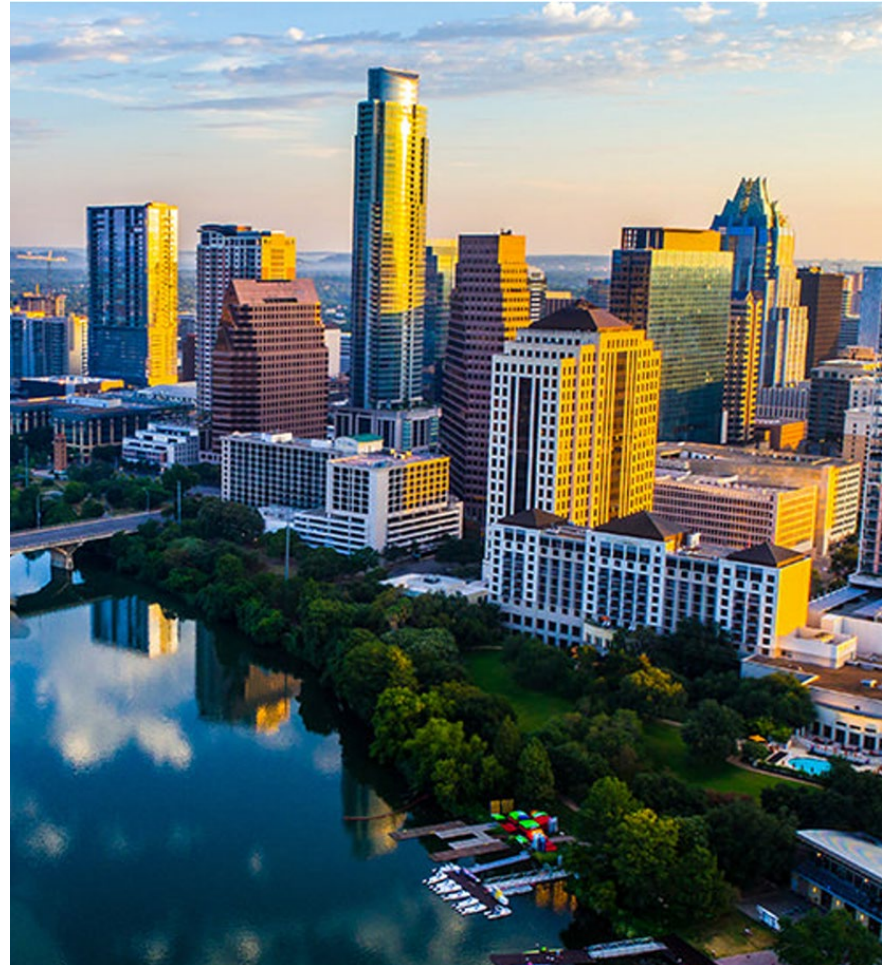




GENERATION 29
APPLICANT INFORMATION SESSION
Selected Legal Issues



GENERATION 29
APPLICANT INFORMATION
SESSION:
SELECTED LEGAL ISSUES



LEGAL ISSUES OVERVIEW

- Governance
- Applicable Laws and Rules
- Admissions and Enrollment Issues
- 88th Legislative Session

Governance Overview

- Entities Eligible to Hold Charters
- Texas Open Meetings Act (TOMA)
- Nonsectarian Requirement
- Restrictions on Board Service
- General Notes

Eligible Entities

Subchapter D Charter Schools

- Institution of Higher Education (*TEC §61.003*)
- Nonprofit corporation exempt from taxation under Internal Revenue Code Section 501(c)(3)
 - Must have final IRS determination prior to consideration for interview (*19 TAC §100.1015(b)(2)(A)*)
 - May not be governed by Sole Member (*19 TAC §100.1015 (b)(2)(B)*)
- A governmental entity.

Eligible Entities

Subchapter C Charter Schools

- Not TEA authorized.

Subchapter E Charter Schools

- A public senior college or university.
- A public junior college.

Subchapter G Charter Schools

- A nonprofit entity, a school district, an open-enrollment charter school, or an institute of higher learning as defined by Section 61.003.

Eligible Entities – Texas Business Organizations Code

- Charter holders that are Texas non-profit corporations must remember to comply with the requirements of the Business Organizations Code (BOC).
- Under *BOC §22.204*, the number of directors of a corporation shall be not less than three (3).
- Questions regarding non-profit corporations should be directed to the Texas Secretary of State's Corporations Division.

Eligible Entities – Authorization Requirements

The commissioner may grant a charter for an open-enrollment charter school only to applicants that:

- meet applicable standards adopted by the commissioner;
- that the commissioner determines can carry out the responsibilities provided by the charter and is likely to operate a school of high quality; and
 - has not within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned; or
 - is not considered to be a corporate affiliate of or substantially related to an entity that has within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned. *TEC §12.101(b)*

Eligible Entities – Required Documentation

- All applicants must submit litigation history that includes documentation regarding any charters (held by the applicant or by a corporate affiliate of or an entity that is substantially related to the applicant) surrendered under a settlement agreement, revoked, denied renewal, or returned in Texas or in other states.
- The documentation must be sufficient to determine if the applicant is ineligible pursuant to *TEC §12.101(b)*, as discussed in the prior slide.

Eligible Entities - IRS 501(c)(3) Exemption Status

- A revocation of tax-exempt status by the IRS renders the charter null and void without further action by the commissioner. *19 TAC § 100.1217(b)*
- An automatic revocation of the exemption is effective on the original filing due date of the third annual return or notice.
- The law does not give the IRS authority to undo an automatic revocation and there is no appeal process.
- An automatically revoked organization must apply with the IRS to have its status reinstated, even if the organization was not originally required to file an application for exemption.
- For more information:
 - www.irs.gov/charities-and-nonprofits
 - <https://www.irs.gov/charities-non-profits/automatic-revocation-of-exemption>
 - <https://www.irs.gov/charities-non-profits/annual-filing-and-forms>

Texas Open Meetings Act (TOMA)

Texas Gov't Code Chapter 551

- TOMA requires that when a quorum of a governing body discusses public business, written notice of the time, place, and subject of the meeting be posted for at least 72 hours at a place convenient to the public at the central administrative office.
- The Act applies to both charter holder boards and charter school boards.
- For more information:
 - Attorney General's Online TOMA Resources:
<https://www.texasattorneygeneral.gov/open-government/governmental-bodies>
 - *2022 Open Meetings Handbook* is available at:
https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings_hb.pdf

GOVERNANCE

NONSECTARIAN EDUCATIONAL NATURE

Nonsectarian Educational Nature

Like other public schools, charter schools must be nonsectarian in all respects. This includes but is not limited to:

- Student Admission
- Employee Hiring
- Instruction
- Visible Religious Iconography
 - This may require covering décor and existing structures depending on the building used for instruction.
- School Calendars (naming student holidays)

GOVERNANCE

NONSECTARIAN EDUCATIONAL NATURE

Nonsectarian Educational Nature

Why must charter schools be nonsectarian?

- The Establishment Clause in the U.S. Constitution states that: *“Congress shall make no law respecting an establishment of religion.”*
- Article I, §7 of the Texas Constitution states that: *“No money shall be appropriated or drawn from the Treasury for the benefit of a sect or religious society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purpose.”*

Restrictions on Board Service

- Nepotism – Slides 14-16
- Conflicts of Interest – Slides 17-19
- Criminal History – Slides 20-21

GOVERNANCE

RESTRICTIONS ON BOARD SERVICE

Nepotism Restrictions

19 TAC § 100.1015 & §§100.1111-1116

- **General Rule:** A public official cannot hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual if the individual is related to the public official within the third degree of consanguinity (by blood) or affinity (by marriage).
- Two or more relatives within the third degree cannot serve together on the governing body.
- A board member's relative within the third degree cannot be employed by the charter holder or charter school. Some exceptions apply.

GOVERNANCE

RESTRICTIONS ON BOARD SERVICE

Relatives within the Third Degree (Consanguinity or Affinity)

A public official's or their spouse's:

- Spouse
- Child
- Parent
- Grandparent
- Great-grandparent
- Grandchild
- Great-grandchild
- Sibling
- Aunt/uncle
- Niece/Nephew

NOTE



- Applicants should not contact the agency regarding nepotism issues. *TAC §100.1002(k)*
- Agency staff cannot provide an applicant with individualized advice regarding the applicant's governance structure.
- If an applicant is ultimately awarded a charter, agency staff will advise the applicant of any nepotism issues that must be resolved via contingencies prior to execution of the charter contract.

GOVERNANCE

RESTRICTIONS ON BOARD SERVICE

Conflict of Interest Restriction – Compensation

General Rule: A member of a charter holder board cannot receive compensation or remuneration from the charter holder or the charter school (i.e., an individual cannot serve on the board and be an employee). *19 TAC §100.1131(b)*

Exception: If each charter school operated by a charter holder has received a satisfactory rating for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder. However, the governing body or any committee may not be comprised of a quorum (majority) of charter school employees. *19 TAC §100.1131(f)*

NOTE: This provision will not apply until the fourth year of operation

NOTE: If the charter school loses the satisfactory rating, then the employees must be removed from the position within 30 days. *19 TAC § 100.1131(h)*

NOTE

- Applicants should not contact the agency regarding conflict-of-interest issues. *TAC §100.1002(k)*
- Agency staff cannot provide an applicant with individualized advice regarding the applicant's governance structure.
- If an applicant is ultimately awarded a charter, agency staff will advise the applicant of any conflict-of-interest issues that must be resolved via contingencies prior to the execution of the charter contract.



GOVERNANCE

RESTRICTIONS ON BOARD SERVICE

Conflict of Interest Restriction

Substantial Interest in a Management Company

A person cannot serve on the governing body of a charter holder or charter school or as an officer or employee of a charter school if the person has a substantial interest in a management company that has a contract for management services with the charter holder or charter school. *19 TAC § 100.1153*

Criminal History Restriction

A person cannot serve as a board member, employee, or officer if the person has been convicted of:

- a misdemeanor involving moral turpitude;
- a felony;
- any offense listed in TEC § 37.007(a) (i.e., offenses for which an ISD student must be expelled); or
- any offense listed in the Code of Criminal Procedure Art. 62.01(5). *19 TAC § 100.1151*

NOTE: *TEC § 12.120* allows persons to be employed if the person could be employed by a school district.

NOTE



- The charter application requires the CEO of the sponsoring entity to certify that no board member, employee, or officer has been convicted of a misdemeanor involving moral turpitude or any felony.
- Questions regarding whether a misdemeanor offense is a “crime of moral turpitude” must be directed to the charter holder’s private attorney, not TEA. *TAC §100.1002(k)*
- Criminal history checks must be conducted before the person begins service and every year thereafter. The checks must be obtained from the Texas Dept. of Public Safety (DPS).

GOVERNANCE

RESTRICTIONS ON BOARD SERVICE

Non-Delegable Duties

Certain powers and duties must be exercised by the governing body of the charter holder itself and not delegated to any other body or individual. *19 TAC § 100.1033(b)(14)(C)*

Specifically, non-delegable duties include:

- final authority to hear or decide employee grievances, citizen complaints, or parental concerns;
- final authority to adopt or amend the budget, or to authorize the expenditure or obligation of state funds or the use of public property;
- final authority to direct the disposition or safekeeping of public records;
- final authority to adopt policies governing charter school operations;
- final authority to approve audit reports under TEC § 44.008(d);
- initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent/CEO.

GOVERNANCE

GENERAL NOTES

- Statement regarding bankruptcy history must be included.
- There must be a Biographical Affidavit for each board member and every member must make sure information is correct and fully answered by the member.
- Majority of your board members must be qualified voters (Texas residents). *TEC § 12.1202*

APPLICABLE LAWS AND REGULATIONS

Relevant Statutes for Charter Operation

- Texas Education Code, especially Chapter 12, Subchapter D.
- Title 19 of the Texas Administrative Code, especially Chapter 100.
- Texas Business Organizations Code
- Texas Government Code.
- Texas Local Government Code.

Requirements Applicable to Both ISDs and Charter Schools

- Special Education
- Bilingual Education & ESL
- PEIMS
- TEKS
- STAAR
- Graduation Requirements
- Open Government Laws
- Pre-Kindergarten
- Health & Safety TEC Chap. 38

Differentiation Between ISDs and Charter Schools

- Student/Teacher Ratio & Class Size
- Teacher Certification Requirements
- TEC Chapter 21
- TEC Chapter 37
- School Calendar
- Admissions

ADMISSIONS AND ENROLLMENT ISSUES

Terminology

Admission Process – when the student is initially seeking to be admitted to school. TEC § 12.1173 requires that the Commissioner adopt a common application form. Pursuant to TEC § 12.117, this form must be used by applicants for admission to an open-enrollment charter school. No additional documentation or questions can be used or required.

Enrollment Process – when the student has been offered admission and is registering for school. At this stage, information regarding past academic achievement, medical history, etc. may be requested. At this point, the school may request information regarding a student's documented history of past discipline problems as permitted by TEC § 12.111(a)(5)(A).

ADMISSIONS AND ENROLLMENT ISSUES

Admission Policy Requirements

- All students residing within the designated geographic area who meet lawful criteria must be eligible for admission.
- Admissions policy must prohibit discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic ability, artistic ability, athletic ability, or the district the student would otherwise attend. *TEC § 12.111(a)(5)*
- Texas law permits charter schools specializing in performing arts to admit students based on artistic ability and audition. *TEC § 12.111(a)(5)(B)*
- Federal law and non-regulatory guidance require charter schools receiving federal funds to use a lottery when a school is oversubscribed.

ADMISSIONS AND ENROLLMENT ISSUES

Admission Policy Requirements (continued)

- A set application period (beginning and ending dates).
- The nondiscrimination statement in TEC § 12.111(a)(5).
- If the policy excludes students with documented histories of discipline problems under TEC §12.111(a)(5)(A), the admissions policy in your charter application must state the intended exclusions.
- Describe how the application process and lottery process will work, including whether any students are excluded from the lottery and the dates of the admissions window. Be sure to comply with TEC § 12.1173.
- Charter schools may not charge an admission fee to students.
- Charter school may not require parents to volunteer, to attend any sessions, or make any commitment to the charter for admission.

ADMISSIONS AND ENROLLMENT ISSUES

Enrollment Records

- Schools may not prohibit students from enrolling pending receipt of records from the prior school. *19 TAC §74.26(a)(1)*.
- The failure of a prior school or the person enrolling the student to provide identification or records does not constitute grounds for refusing to admit the student. However, if identifying records are not furnished within 30 days, *TEC § 25.002(c)* requires the school to notify law enforcement and request a determination of whether the student has been reported as missing.
- Federal law requires a school to enroll a homeless student immediately even if the student is unable to produce records normally required.

LEGISLATIVE UPDATES AND MISCELLANEOUS

Legislative Updates

- SB 2032 widened the eligibility for adult education charter holders.
- HB 3 and other bills changed the safety and facility standards that both charter schools and school districts must meet. HB 3 also required an armed security guard to be present at each school campus.
- HB 2729 alters the teacher qualifications required for prekindergarten programs.

Virtual Programs

- Virtual full-time programs are currently only available for charter schools that had been operating a full-time virtual program under the soon to expire Senate Bill 15. New charter schools are not eligible to operate full-time virtual programs.

Questions?

Thank you for your
dedication to
Texas Public Education!