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
Charter Process and Procedures

Apply

- Commissioner of Education, SBOE Veto
- Generation 19 Applications Under Review
- Generation 20 Applications likely due February 2015

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
Examples of Sources of Law: *Federal*

**Federal Statutes**
- Family Educational Rights and Privacy Act (Student Records)
- Individuals with Disabilities in Education Act (Special Education)
- Elementary and Secondary Education Act (NCLB)
- Fair Labor Standards Act (Minimum Wage, Overtime Pay, Recordkeeping)
- Family Medical Leave Act (Unpaid Employee Leave)
- Antidiscrimination Laws:
  - *Title VII of the Civil Rights Act of 1964*
  - *Age Discrimination in Employment Act*
  - *Americans with Disabilities Act*
  - *Uniformed Services Employment and Reemployment Rights Act*

**Federal Regulations**

**Federal Constitution – Not Absolutely Certain of Its Applicability to Open-Enrollment Charter Schools in Texas**
- First Amendment (speech, assembly, religious freedom, establishment clause)
- Fourth Amendment (search and seizure)
- Fourteenth Amendment (due process)
For purposes of constitutional obligations and rights, are open enrollment charter schools state actors or private actors?
On January 4, 2010, the Ninth Circuit Court of Appeals ruled that charter school employees in Arizona are not entitled to protections under the federal constitution. The court found that they are private actors, not state actors. *Caviness v. Horizon Community Learning Center, Inc.*, No. 08-15245, slip op. (9th Cir. Jan. 4, 2010).

But see, *Serafin v. School of Excellence in Education*, et al, 2007 WL 3226296 (5th Cir. 2007) (holding in an unpublished opinion that an adult public school student’s constitutional rights are not violated by a charter school principal’s use of corporal punishment.)

*S.S. v. Princeton House Charter School, Inc.* (M. D. Florida – Sept. 20, 2011) The court held that a public charter school meets the “nexus/joint action test” and the “public function test” to satisfy the “under color of state law” requirement in section 1983.
Are open enrollment charter schools political subdivisions/local governments/governmental entities under state law?

*It depends.*
The governing body of a charter holder or open-enrollment charter school are considered "governmental bodies" for purposes of Chapters 551 (Open Meetings Act) and 552 (Public Information Act), Government Code. Tex. Educ. Code § 12.1051.

An open-enrollment charter school is considered to be a "local government" for purposes of certain records retention statutes. Records of an open-enrollment charter school are government records for all purposes under state law. Tex. Educ. Code §12.1052.

An open-enrollment charter school, its board members, employees, and volunteers are immune from liability to the same extent as a school districts, school district board members, employees, and volunteers. Tex. Educ. Code §12.1056.
An open-enrollment charter school is a “governmental unit” under the Texas Tort Claims Act because it is “an organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the Constitution.” Therefore, it may bring an interlocutory appeal in the state courts. *LTTS Charter School, Inc. D/B/A Universal Academy v. C2 Construction, Inc.*, 342 S.W.3d 73 (Tex. 2011).


- **Texas Payday Law** - Because of the absence of any statute, rule, or court decision to the contrary, TCSA attorneys advise that open enrollment charter schools are **not school districts** exempt from the requirement in Texas Labor Code Section 61.011(b) that hourly employees must be paid twice per month.

- **Fair Labor Standards Act** – Because of the absence of any statute, rule, or court decision to the contrary, TCSA attorneys advise that open enrollment charter schools are **not public agencies** defined in 29 C.F.R. § 553.1, which permits public agencies to provide compensatory time off in lieu of required overtime compensation.

Texas Education Code Provisions at Play

1. **Section 12.001** – “The purposes of (Chapter 12) are to . . . (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.”

2. **Section 12.105** – “An open-enrollment charter school is part of the public school system of this state.”

3. **Section 12.103 (a)** – “Except as provided by Subsection (b) or (c), an open-enrollment charter school is subject to federal and state laws and rules governing public schools.”

4. **Section 12.103(b)** – “An open-enrollment charter school is subject to this code and rules adopted under this code only to the extent the applicability to an open-enrollment charter school of a provision of this code or a rule adopted under this code is specifically provided.”
## School Law Comparison Similarities

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<tr>
<th>Open Enrollment Charter Schools</th>
<th>Traditional School Districts</th>
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<tbody>
<tr>
<td><strong>Academic Accountability</strong></td>
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<tr>
<td>• State AEIS System</td>
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<td>• Federal NCLB</td>
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<td><strong>Financial Accountability</strong></td>
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<td><strong>Nepotism</strong></td>
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## School Law Comparison Differences

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<th>Open Enrollment Charter Schools</th>
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<tr>
<td>305 Statutory Cap</td>
<td>Approximately 1034 Districts</td>
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<tr>
<td>Employment “At-Will”; No certification</td>
<td>Employment Contracts; Certification</td>
</tr>
<tr>
<td>No Minimum Salary Scale for Teachers</td>
<td>Minimum Salary Scale for Teachers</td>
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<tr>
<td>Exclusions for Discipline</td>
<td>Special Placements for Discipline</td>
</tr>
<tr>
<td>No authority to levy property taxes</td>
<td>Authority to levy property taxes</td>
</tr>
<tr>
<td>Not eligible for certain state funding opportunities</td>
<td>Eligible for more state funding opportunities</td>
</tr>
<tr>
<td>Services Contracts Pre-approved by TEA</td>
<td>Services Contracts Approved Solely by School Board</td>
</tr>
<tr>
<td>State and Federal Tax Exempt Status Compliance</td>
<td>All Properties Tax Exempt</td>
</tr>
<tr>
<td>Some Properties Tax Exempt</td>
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</tbody>
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Senate Bill 2: High Stakes Accountability

- **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

- **Mandatory Revocation of Charter (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
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**
• 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**.
Competitive Bidding for Public Works Projects

- Notice
- Lowest Responsible Bidder
- Sealed Bids
- Public Bid Opening
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
Charter School Facilities Funding
Charter School Funding Equity
Special Education Charter Schools
Civil Rights and Charter Schools
Charter School Law Questions?

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