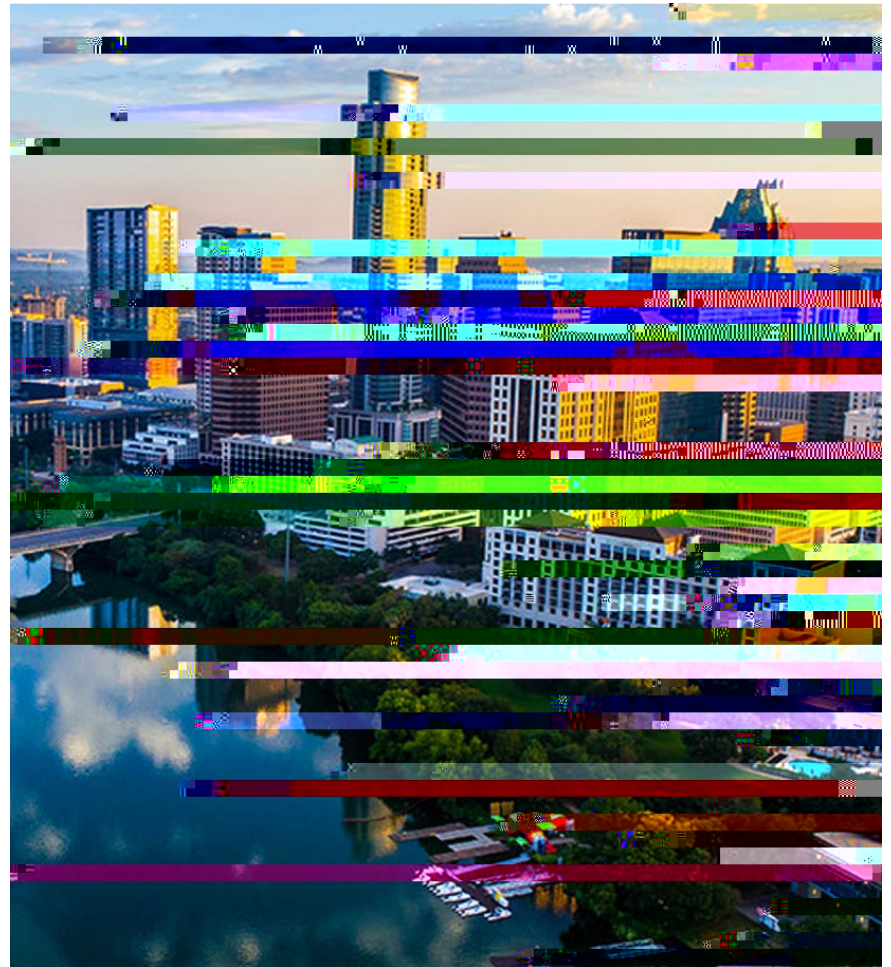


GENERATION 29
APPLICANT INFORMATION SESSION
Selected Legal Issues



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

Eligible Entities

Subchapter C Charter Schools

Not TEA authorized.

Subchapter E Charter Schools

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Eligible Entities – Texas Business Organizations Code

Charter holders that are Texas nonprofit 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 nonprofit 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

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 available at:

<https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open->

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)

Nonsectarian Educational Nature

Wh



Nepotism Restrictions

19 TAC § 100.1015 & §§ 100.11141116

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.

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.





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.

Conflict of Interest Restriction

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 TEC37.007(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 TA§100.1151

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 TETAC
§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. TAC § 100.1033(b)(14)(C)

Specifically, nondelegable 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 TAC § 4.008(d);

- initial or final authority to select, employ, direct, evaluate, renew, ~~renew~~, terminate, or set compensation for the superintendent/CEO.

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

APPLICABLE LAWS AND REGULATIONS

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 (continued)

A set application period (beginning and ending dates).

The nondiscrimination statement in TEC § 2.111(a)(5).

If the policy excludes students with documented histories of discipline problems under TEC § 2.111(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 § 73.

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 school19 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

Thank you for your
dedication to
Texas Public Education!