



# TCSA Model Board Policy Series

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Module 300: *General School Operations*

## **INTRODUCTION**

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

### **Overall Policy Framework**

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

### **Scope of Service & Copyright Notice**

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

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### **Module 300: General School Operations**

The General School Operations, Module 300, is the third module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to the general operations of charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules in the series include:

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Module 100: Financial Operations

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Module 200: Charter School Governance & Organization

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Module 400: Students

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Module 500: Open Government

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Module 600: Human Resources

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### **Legal Abbreviations Used In the TCSA Model Board Policy Series**

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Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

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## **300.020. SCHOOL YEAR AND ELIGIBILITY STATUS**

### **A. School Year**

1. A charter holder shall adopt a school year for the charter school, with fixed beginning and ending dates.

[19 Tex. Admin. Code §100.1211\(e\).](#)

2. The charter holder must operate the program described in the open-enrollment charter for the full school year each year that the open-enrollment charter is in effect.
3. A charter holder may not suspend operation for longer than 21 days without an amendment to its charter, adopted by the commissioner of education, stating that the charter school is dormant. The amendment shall set the date on which operations shall resume and state any applicable conditions for resuming operation that may be imposed by the commissioner.
4. A charter school may not suspend operation of a charter school for more than three days without mailing a written notice to the parent or guardian of each student. Such notice must be filed with TEA at least 14 days before the suspension of operations. In an emergency situation the charter holder shall notify TEA by telephone or other means within 24 hours of suspending operations.
5. Suspension of operations in violation of this section constitutes abandonment of the open-enrollment charter.

[19 Tex. Admin. Code §100.1213.](#)

### **B. Eligible Status to Hold a Charter**

A charter holder shall take and refrain from all acts necessary to maintain its status as an “eligible entity” to hold a charter within the meaning of [Texas Education Code §12.101\(a\)](#), and shall immediately notify the commissioner of education in writing of any change in such status.

[19 Tex. Admin. Code §100.1217.](#)

## **300.040. INSTRUCTIONAL FACILITIES**

### **A. Right to Occupy Facilities**

1. Throughout the term of the open-enrollment charter a charter holder shall have and maintain legally enforceable lease agreements, titles, or other legal instruments conferring on it the right to occupy and use one or more facilities suitable for classroom use as well as other instructional facilities described in the open-enrollment charter. The legal instrument must confer the right to occupy and use the facilities for the entire school year adopted by the charter school.

### **B. Occupancy Certificate**

1. A charter holder shall comply with all state and local laws and ordinances applicable to the occupation and use of the facilities it occupies.
2. A charter holder shall not change the site of its instructional facilities or administrative offices from those listed in the charter without prior approval from the commissioner of education through an amendment to the open-enrollment charter.
3. When approved for a new site under (2), the charter holder shall, before commencing any operations at that site, file with the Texas Education Agency, Division of Charter Schools, a certificate of occupancy or an equivalent certificate appropriate for the proposed use of the facility at the new site.

[Tex. Admin. Code §100.1215.](#)

### **C. Use of Public Property**

TCSA NOTE: Please reference TCSA's [Module 100: Financial Operations 2010](#), Section 100.280 Property, for the legal authority and charter board policy applicable to the use of public property.

### **D. Joint Facility for High School Dropout Prevention Program and Adult High School Diploma/ Industry Certification Charter School Pilot Program**

1. An entity granted a charter to operate both (a) a dropout recovery charter school that consists only of students 17 years old and older, and (b) an adult high school diploma and industry certification charter school pilot program may place the students, regardless of the age of the students, at the same facility and in the same classroom setting or learning environment, the same cafeteria, or the same activity sanctioned by the school and the program. Tex. Educ. Code §12.137; [84th R.S., SB 2062 \(2015\)](#)

## 300.060. CHARTER AMENDMENTS

### A. Amendments Generally

1. Definition: An amendment includes any changes to the terms of an open-enrollment charter that relate to:
  - a. Grade levels;
  - b. Maximum enrollment;
  - c. Geographic boundaries;
  - d. Approved campuses;
  - e. Approved sites;
  - f. Relocation of a campus;
  - g. Charter holder name;
  - h. Charter school (district) name;
  - i. Charter campus name
  - j. Charter holder governance;
  - k. Articles of incorporation;
  - l. Corporate bylaws;
  - m. Management company;
  - n. Admission policy; or
  - o. Educational program of the school (e.g., the educational philosophy, mission, curriculum models, whole-school designs that are inconsistent with those specified in the school's charter).
2. Approval Required. Amendments must be approved by the Commissioner of Education.
3. Amendment Request. Prior to implementation, a charter holder must first file with the charter division at TEA a request clearly labeled "charter amendment request". As applicable, this notice should include either the text and page reference, or, an actual copy of the current charter language to be changed. It must also include the proposed new text for the charter language. The request must be made in or attached to a written resolution adopted by the charter holder's governing body and signed by the

members voting in favor of the amendment request.

4. Timeline. All charter amendment requests, except for expansion amendments, may be filed with TEA at any time.
5. Final Determination. The Commissioner's decision on an amendment request is final and cannot be appealed. The same amendment request may not be submitted prior to the first anniversary of the original submission.

## **B. Expansion Amendments**

1. An expansion amendment is an amendment that allows a charter school to extend the grade levels it serves, add a campus, add a site, change its geographic boundaries, or increase its maximum allowable enrollment.
2. Expansion amendments must be filed within a certain window: no earlier than either (a) the first day of February or (b) after the submission to TEA of the charter school's annual financial report for the immediately preceding fiscal year and no later than the first day of April.
3. The commissioner may approve an expansion amendment only if [certain criteria are met and certain forms completed.](#)
4. The commissioner will provide notice of approval or disapproval of an expansion amendment within 60 days of the date the charter holder submits a completed expansion amendment request.

## **C. New School Designation**

1. A new school amendment is an expansion amendment that permits a charter holder to establish an additional charter school under an existing open-enrollment charter pursuant to federal non-regulatory guidance in the Elementary and Secondary Education Act, Section 5202(d)(1).
2. Charter schools that receive new school designations from the commissioner will be eligible to participate in the charter school program competitive grant process with federal funding for the Texas charter school program.
3. The Commissioner may approve a new school designation amendment only if [certain criteria are met and certain forms completed.](#)

## **D. Delegation Amendment**

1. A delegation amendment is an amendment that permits a charter holder to delegate certain powers and duties ordinarily held by the governing body of the charter holder to any other person or entity.

2. A delegation amendment also is an amendment that permits a charter holder's chief executive officer to delegate certain powers and duties ordinarily held by the chief executive officer to any other person or entity.
3. The Commissioner may approve a delegation amendment only if [certain criteria are met and certain forms completed.](#)

#### **E. Campus Quality Expansion**

2. Approval of the Commissioner is not required for the establishment of a new open-enrollment charter school campus under an existing charter held by the charter holder if the charter holder satisfies the following criteria:
  - a. The charter holder's accreditation status is accredited;
  - b. At least 50 percent of the student population are in grades assessed under the state's accountability system or at least 50 percent of the students in the grades assessed have been enrolled in the school for at least three years;
  - c. The charter holder is currently evaluated under the standard accountability procedures and received a district rating in the highest or second highest performance rating category for three of the last five years with.
    - i. at least 75 percent of the campuses rated under the charter also receiving a rating in the highest or second highest performance rating category; and
    - ii. no campus with a rating in the lowest performance rating category in the most recent ratings.
  - d. The charter holder provides written notice to the Commissioner of the establishment of a new campus under this authority in the time, manner and formed prescribed by Commissioner rule; and
  - e. Not later than the 60th day after the date the charter holder provides written notice the Commissioner does not provide written notice to the charter holder that the Commissioner has determined that the charter holder does not satisfy the requirements of this expansion type.

[19 Tex. Admin. Code §100.1033; Tex. Educ. Code §12.101\(b-4\); 84th Leg., R.S., HB 1842 \(2015\)](#)

### **300.080. EMERGENCY MANAGEMENT PLAN**

TCSA Note: Neither the federal nor the state government has adopted a statute nor rule that governs emergency management planning by open-enrollment charter schools. Thus, this section of the policies does not have a direct legal counterpart. Please reference Section 300.080 Charter Board Policy for the recommended policy to address a school's emergency management plan.

## **300.100. INSTRUCTIONAL MATERIALS**

### **A. Free Instructional Materials & Title**

Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by [Section 31.104\(d\)](#), an open-enrollment charter school may not charge a student for instructional material or technological equipment purchased by the open-enrollment charter school with their instructional materials allotment. Each instructional material purchased as provided by the [Education Code, Chapter 31](#), is the property of the school.

[Tex. Educ. Code §31.001](#); [Tex. Educ. Code §31.102](#).

### **B. Funding**

1. Open-enrollment charter schools are entitled to the instructional materials allotment under Chapter 31 and subject to Chapter 31 as if the school were a school district.
2. A charter school is entitled to an allotment each biennium from the state instructional materials fund for each student enrolled in the school on a date during the last year of the preceding biennium specified by the Commissioner. An allotment shall be transferred from the state instructional materials fund to the credit of the school's instructional materials account as provided by [Section 31.0212](#).

[Tex. Educ. Code §31.005](#); [Tex. Educ. Code §31.0211](#).; [84th Leg., R.S. HB 1474](#).

### **C. Use of Instructional Materials Allotment**

1. Subject to Subsection 2 below, funds allotted under the instructional materials allotment may be used to:
  - a. Purchase:
    - i. materials on the list adopted by the Commissioner;
    - ii. instructional materials, regardless of whether the materials are on the list adopted by the SBOE;
    - iii. consumable instructional materials, including workbooks;
    - iv. instructional materials for use bilingual education classes;
    - v. supplemental instructional materials adopted by the SBOE;
    - vi. state-developed open-source instructional materials;
    - vii. technological equipment necessary to support the use of materials included

on the list adopted by the Commissioner, or any other instructional materials purchased with the instructional materials allotment.

- b. Pay:
  - i. for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and
  - ii. the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.
2. Each biennium an open-enrollment charter school shall use their allotment to purchase, in the following order:
  - a. instructional materials necessary to permit the charter school to certify that the district has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level; and
  - b. any other instructional materials or technological equipment as determined by the charter school.
3. Notwithstanding Subsection 2 above, for the state fiscal biennium beginning September 1, 2011, an open-enrollment charter school shall use an allotment to purchase instructional materials that will assist the charter school in satisfying performance standards under [Section 39.0241](#), on assessment instruments adopted under [Sections 39.023\(a\) and \(c\)](#).
4. Not later than May 31 of each school year, a charter school may request that the Commissioner adjust the number of students for which the district is entitled to receive an allotment on the grounds that the number of students attending school will increase or decrease during the school year for which the allotment is provided. The Commissioner may also adjust the number without a request by the charter school, if the Commissioner determines a different number of students is a more accurate reflection of student who will be attending school in the district. The Commissioner's determination is final.

[Tex. Educ. Code §31.0211.; 84th Leg., R.S. HB 1474.](#)

#### **D. Instructional Materials Account**

1. The Commissioner shall maintain an instructional materials account for each open-enrollment charter school. In the first year of each biennium, the Commissioner shall deposit in the account for each school the amount of the school's instructional materials allotment.

2. The Commissioner shall pay the cost of instructional materials requisitioned by an open-enrollment charter school under Section 31.103 using funds from the school's instructional materials account.
3. An open-enrollment charter school may also use funds in the school's account to purchase electronic instructional materials or technological equipment. The school shall submit to the Commissioner a request for funds for this purpose from the school's account.
4. Money deposited in an open-enrollment charter school's account during each state fiscal biennium remains in the account and available for use for the entire biennium. At the end of each biennium, unused money in the school's account carries forward into the next biennium.

[Tex. Educ. Code §31.0212.](#)

#### **E. Certification of Use of Instructional Materials Allotment**

Each open-enrollment charter school shall annually certify to the Commissioner that the school's instructional materials allotment has been used only for expenses allowed by [Section 31.0211](#).

[Tex. Educ. Code §31.0213.](#)

#### **F. Board Action**

1. Adoption of Policy  
The governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the governing body.

[19 Tex. Admin. Code §66.104\(a\).](#)

#### **G. Sample Copies**

Upon request by the instructional materials coordinator of an open-enrollment charter school, a publisher shall provide an electronic sample of submitted instructional material. No state funds shall be expended to purchase, distribute, or ship sample materials.

[Tex. Educ. Code §31.027; 19 Tex. Admin. Code §66.101.](#)

#### **H. Bilingual Instructional Materials**

An open-enrollment charter school shall purchase with their instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes.

[Tex. Educ. Code §31.029.](#)

## I. Supplemental Instructional Materials

1. An open-enrollment charter school may requisition supplemental instructional material adopted under this section only if the district or school requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the list adopted under [Section 31.023](#) that in combination cover each element of the essential knowledge and skills for the course for which the district or school is requisitioning the supplemental instructional materials.
2. An open-enrollment charter school that requisitions supplemental instructional materials shall certify to the agency that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the school, cover the essential knowledge and skills identified under [Section 28.002](#) by the SBOE for the subject and grade level for which the district or school is requisitioning the supplemental instructional materials.

[Tex. Educ. Code §31.035 \(d\), \(f\).](#)

## J. State-Developed Open-Source Instructional Materials

1. Notwithstanding [Section 31.022](#), an open-enrollment charter school may adopt state-developed open-source instructional material at any time, regardless of the instructional material review and adoption cycle under that section.
2. An open-enrollment charter school may not be charged for selection of state-developed open-source instructional material in addition to instructional material adopted under Subchapter B of the Texas Education Code.
3. State-developed open-source instructional material is the property of the state.

[Tex. Educ. Code §31.073\(c\)-\(d\); §31.075.](#)

## K. Selection Procedures

Each year, during a period established by the SBOE, the governing body shall:

1. for a subject in the foundation curriculum, notify the SBOE of the instructional materials selected by the governing body for the following school year from the instructional materials list, including the list adopted under [Section 31.0231](#); or
2. for a subject in the enrichment curriculum:
  - a. notify the SBOE of each instructional material selected by the governing body for the following school year from the instructional materials list, include the list adopted under [Section 31.0231](#); or
  - b. notify the SBOE that the governing body has selected instructional material that is not on the list.

3. For instructional material that is not on the list, an open-enrollment charter school must use the instructional material for the period of the review and adoption cycle the SBOE has established for the subject and grade level for which the instructional material is used.
4. An open-enrollment charter school that selects subscription-based instructional material on the list adopted under [Section 31.023](#) or electronic instructional material on the list adopted by the Commissioner under [Section 31.0231](#) may cancel the subscription and subscribe to new instructional material on the list adopted under [Section 31.023](#) or electronic instructional material on the list adopted by the Commissioner under [Section 31.0231](#) before the end of the state contract period under [Section 31.026](#) if:
  - a. The school has used the instructional material for at least one school year; and
  - b. The agency approves the change based on a written request to the agency by the school that specifies the reasons for changing the instructional material used by the school.

[Tex. Educ. Code §31.101.](#)

#### **L. Certification of Provision of Materials & Report to TEA**

1. Prior to the beginning of each school year, each open-enrollment charter school shall annually certify to the Commissioner of Education that, for each subject in the required curriculum, under [Section 28.002](#) other than physical education, and each grade level, the open-enrollment charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level. The certification shall be submitted in a format approved by the Commissioner of Education. Upon request by the Commissioner of Education, the certification shall include supporting documentation describing the instructional materials on which the certificate is based. The certifications shall be ratified by local school boards in public, noticed meetings.

[TEA link to instructional materials allotment certification](#)

2. A report listing instructional materials selected for use in an open-enrollment charter school shall be transmitted by April 1 of each year.

[Tex. Educ. Code §31.004; 19 Tex. Admin. Code § 66.105; 19 Tex. Admin. Code §66.104\(g\).](#)

#### **M. Instructional Materials Requisitions**

1. An open-enrollment charter school shall make a requisition for instructional material using the online requisition program maintained by the Commissioner not later than June 1 of each year.
2. In making a requisition, an open-enrollment charter school may requisition instructional

materials on the list adopted under [Section 31.023](#) for grades above the grade level in which a student is enrolled.

3. An open-enrollment charter school that selects open-source instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the school provides each student:
  - a. electronic access to the instructional material at no cost to the student; or
  - b. printed copies of the portion of the instructional material that will be used in the course.

[Tex. Educ. Code §31.103.](#)

## **N. Physical Inventory**

1. Each open-enrollment charter school shall conduct an annual physical inventory of all currently adopted instructional materials. The results of the inventory shall be recorded in the charter school's files.

[19 Tex. Admin. Code § 66.107\(a\).](#)

## **O. Distribution and Handling**

1. Employee Delegation  
The governing body may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials in a manner consistent with Chapter 31 of the Education Code and rules adopted by the Commissioner of Education.

[Tex. Educ. Code §31.104\(a\).](#)

2. Distribution to Students  
The governing body shall distribute printed instructional material to students in a manner that the governing body determines is the most effective and economical.

[Tex. Educ. Code §31.102\(c\).](#)

3. Instructional Materials Replacement  
The school may order replacements for instructional materials that have been lost or damaged directly from:
  - a. The publisher of the instructional materials; or
  - b. Any source for a printed copy of open-source instructional material.

[Tex. Educ. Code §31.104\(b\).](#)

#### 4. Responsibility for Instructional Materials and Technological Equipment

##### a. Student or Parent/Guardian Responsibility

A student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school. Each student, or student's parent or guardian, is responsible for instructional materials and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued, but not returned in an acceptable condition, are paid for by the student, parent, or guardian. As provided by the policy of the governing body of an open-enrollment charter school, the school may waive or reduce the payment required if the student is from a low-income family. The school shall allow the student to use instructional materials and technological equipment at school during each school day. If instructional materials or technological equipment is not returned in an acceptable condition or paid for, the school may withhold the student's records. However, the school may not prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma. The Commissioner shall adopt criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

##### b. Employee Responsibility

The governing body of an open-enrollment charter school may not require an employee of the school, who acts in good faith, to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means, except that a charter school may enter into a written agreement with a school employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business. Such a written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to agree to such an agreement as a condition of employment.

##### c. At the end of the school year for which open-source instructional material that an open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source instructional material becomes the property of the student to whom it is distributed.

##### d. This section does not apply to an electronic copy of open-source instructional material.

##### e. Commissioner's Rules Concerning Acceptable Condition of Instructional Materials:

- i. Printed instructional materials are considered to be in acceptable condition if:
  - (1) the cover, binding, pages, spine, and all integral components of the instructional materials are wholly intact and the instructional materials are fully usable by other students; and
  - (2) all components of the instructional materials are not soiled, torn, or damaged—whether intentionally or by lack of appropriate care—such that any portion of the content is too disfigured or obscured to be fully accessible to other students.
- ii. Electronic instructional materials are considered to be in acceptable condition if:
  - (1) All components or applications that are a part of the electronic instructional materials are returned;
  - (2) the electronic instructional materials do not have a computer code that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer’s memory, file system, or software; and
  - (3) the electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the school.

[Tex. Educ. Code §31.104\(c\)-\(e\), \(g\)-\(h\); 19 Tex. Admin. Code §66.107\(b\)-\(c\), §66.1201-1203.](#)

## **P. Sale or Disposal of Instructional Materials and Technological Equipment**

1. The governing body of an open-enrollment charter school may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the SBOE or the Commissioner. The governing body may also sell electronic instructional materials and technological equipment owned by the school. Any funds received by a school from a sale authorized by this subsection must be used to purchase instructional materials and technological equipment allowed under [Section 31.0211](#).
2. The governing body of an open-enrollment charter school shall determine how the district or school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.
3. The governing body of an open-enrollment charter school may dispose of printed instructional material before the date the instructional material is discontinued by the SBOE if the governing body determines that the instructional material is not needed by the school and the governing body does not reasonably expect that the instructional material will be needed. A school must notify the Commissioner of any instructional material the school disposes of under this section.

[Tex. Educ. Code §31.105.](#)

## **Q. Use of Local Funds**

In addition to any instructional material selected under this chapter, an open-enrollment charter school may use local funds to purchase any instructional materials.

[Tex. Educ. Code §31.106.](#)

## **R. Accepting Rebates on Textbooks**

1. A board member, administrator, or teacher commits a Class B misdemeanor offense if that person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated as a board member, administrator, or teacher.
2. A board member, administrator, or teacher commits a Class B misdemeanor offense if the person accepts a gift, favor, or serve that:
  - a. Is given to the person or the person's school;
  - b. Might reasonably tend to influence a board member, administrator, or teacher in the selection of instructional material or technological equipment; and
  - c. Could not be lawfully purchased with funds from the state instructional materials funds.

[Tex. Educ. Code §31.152.](#)

## **S. Violation of Free Instructional Materials Law**

A person commits a Class C misdemeanor if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for public schools.

[Tex. Educ. Code §31.153.](#)

## **300.120. GRIEVANCE PROCESS**

### **A. Federal Law**

1. Section 504 of the Rehabilitation Act of 1973 (“Section 504”)

A charter holder that receives federal financial assistance, and that employs 15 or more persons, shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging conduct prohibited by Section 504. The charter holder shall designate one person to coordinate compliance with this requirement.

*34 C.F.R. 104.7.*

2. American with Disabilities Act (“ADA”)

A charter holder that employs 50 or more persons shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging conduct prohibited by the ADA. The charter holder shall designate an employee to coordinate compliance with this requirement.

*28 C.F.R. 35.107.*

3. Title IX of the Education Amendments of 1972 (“Title IX”)

Title IX requires that each charter holder receiving federal financial assistance designate at least one employee that will coordinate investigations of complaints alleging violations of Title IX. The charter holder must notify all of its students and employees of the name, office address, and telephone number of the designated employee. Charter holders must also adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging violations of Title IX.

*34 C.F.R. §106.8.*

4. Title VI of the Civil Rights Act of 1964 (“Title VI”)

Title VI requires all recipients to prominently display posters which state that the recipient is subject to Title VI and briefly explain the procedures for filing complaints alleging violations of Title VI.

*28 C.F.R §42.405*

### **B. Authority of Charter Holder to Hear Complaints**

Absent a specific written waiver from the commissioner of education, the board of a charter holder shall not delegate final authority to hear or decide employee grievances, citizen complaints, or parental concerns.

[Tex. Admin. Code §100.1033\(c\)\(6\)\(C\).](#)

**C. Exception to Open Meeting Requirement: Personnel Matters**

The governing body of a charter holder or charter school may conduct a closed meeting to hear a complaint or charge against an officer or employee of the charter holder or charter school. However, the governing body shall conduct an open meeting if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

[Tex. Gov't Code §551.074.](#)

The closed meeting exception for personnel matters does not apply when a board discusses an independent contractor who is not a school employee or when a board discusses a class or group of employees, not a particular employee.

[Atty. Gen. Op. MW-129 \(1980\); Atty. Gen. Op. H-496 \(1975\).](#)

**D. Exception to Open Meeting Requirement: Personally Identifiable Information About Public School Student**

The governing body of a charter holder or charter school may conduct a closed meeting to deliberate a matter regarding a student if personally identifiable information about the student will be revealed by the deliberation.

[Tex. Gov't Code § 551.0821\(a\).](#)

The closed meeting exception for personally identifiable student information does not apply if an open meeting about the matter is requested in writing by a parent or guardian of the student or by the student if the student has attained 18 years of age.

[Tex. Gov't Code § 551.0821\(c\).](#)

### **300.140. MEDIA RELATIONS**

#### **A. Notice of Board Meetings to Media**

1. A charter holder and charter school must give notice of the meetings of its governing body, including emergency meetings, by telephone, facsimile transmission, or electronic mail to any news media that have requested such notice and have agreed to reimburse the charter holder for the cost of providing the notice.

[Tex. Gov't Code §551.052;](#)

## **300.160. ASBESTOS HAZARD EMERGENCY RESPONSE ACT**

### **A. Identification**

1. Local education agencies are required to identify asbestos-containing material in elementary and secondary schools.

40 C.F.R. §763.80; [25 Tex. Admin. Code §295.31, §295.33](#)

### **B. Charter Holder Obligations:**

The Charter holder must:

1. Ensure that the activities of persons who perform inspections, re-inspections, periodic surveillance, develop and update management plans, and develop and implement response actions are carried out in accordance with [federal laws and rules](#) regarding asbestos management;
2. Ensure that all custodial and maintenance employees are properly trained as required by federal and [state regulations](#);
3. Ensure that employees and students (or their parents/legal guardians) are annually informed about inspections, response actions, and post-response activities;
4. Ensure that short-term workers that may come in contact with asbestos are provided information regarding the locations of the asbestos as well as suspected asbestos;
5. Ensure that warning labels are posted in compliance with laws and regulations;
6. Ensure management plans are available for inspection and notice of their availability has been provided;
7. Designate an adequately trained individual to ensure compliance with federal and state laws and regulations; and
8. Consider any potential conflict of interest that may arise from the relationship with the accredited personnel, and whether that should influence the selection of accredited personnel.

40 C.F.R. §763.84.

### **C. Asbestos Management Plan**

1. The charter holder shall develop an asbestos management plan for each school, including all buildings that it leases, owns, or otherwise uses as a school building. The plan shall be submitted to the Texas Department of Health. The plan shall be developed by an accredited management planner.

40 C.F.R. §763.93.

**D. Warning Labels**

1. The charter holder shall prominently display a warning label immediately adjacent to any asbestos or suspected asbestos located in routine maintenance areas (such as boiler rooms) at each school building. It shall remain posted until the asbestos is removed. The notice shall read, in large size or bright colored print, “CAUTION: ASBESTOS. HAZARDOUS. DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.”

40 C.F.R. § 763.95.

## 300.180. MUNICIPAL ORDINANCES

### A. General Rule

1. An open-enrollment charter school is subject to municipal zoning ordinances governing public schools and to all other municipal ordinances governing public schools.

[Tex. Educ. Code § 12.103\(a\); Tex. Admin. Code § 100.1209\(a\).](#)

- a. A municipality may not enforce its zoning ordinances to exclude a facility operated by an open-enrollment charter school.

[Austin Indep. Sch. Dist. v. City of Sunset Valley, 502 S.W.2d 670 \(Tex. 1973\).](#)

- b. A municipality may enforce other ordinances against an open-enrollment charter school that arise from the municipalities' police power to enforce necessary health and safety regulations.

[City of Sunset Valley; Port Arthur Indep. Sch. Dist. v. City of Groves, 376 S.W.2d 330 \(Tex. 1964\)](#)

- c. A home rule city may enforce its reasonable land development regulations and ordinances against an open-enrollment charter school for the purposes of aesthetics and the maintenance of property values.

[Atty. Gen. Op. GA-0697 \(2009\).](#)

- d. An open-enrollment charter school is not required to pay impact fees unless the governing body of the charter holder consents to the payments of the fees by entering a contract with the political subdivision that imposes the fees. The contract may contain terms the governing body considers advisable to provide for the payment of the fees.

[Tex. Loc. Gov't Code §395.022\(b\).](#)

### B. Exception for Small Municipalities

1. A campus of an open-enrollment charter school located in whole or in part in a municipality with a population of 20,000 or less is not subject to municipal zoning ordinances governing public schools.

[Tex. Educ. Code § 12.103\(c\); Tex. Admin. Code § 100.1209\(b\).](#)

## 300.200. MANAGEMENT COMPANIES

### A. Definitions

#### 1. Management Company

- a. A management company is a person or legal entity that provides any management services to a charter holder or charter school, except that:
  - i. A charter holder and its employees may provide management services to a charter school that is under the charter school's supervision and control pursuant to the open-enrollment charter, and such charter holder is not thereby a management company.
  - ii. A nonprofit corporation, under 28 U.S.C §501(c)(3), may donate management services to a charter holder, and the donor corporation is not thereby a management company if the donee charter holder is a subsidiary corporation controlled by the donor corporation under the articles of incorporation and bylaws of the donee charter holder; and
  - iii. A regional education service center providing services to a charter school under Chapter 8 of the Texas Education Code is not a management company.

[Tex. Admin. Code §100.1011\(14\).](#)

#### 2. Management Services

- a. Management services are services related to the management or operation of a charter school. They include the following:
  - i. Planning, operating, supervising or evaluating a charter school's education programs, services, or facilities;
  - ii. Making recommendations to the governing body of a charter holder or charter school relating to the selection of school personnel;
  - iii. Managing a charter school's day-to-day operations as its administrative manager;
  - iv. Preparing a proposed budget or submitting it to the governing body of a charter holder or charter school;
  - v. Recommending policies to be adopted by the governing body of a charter holder or charter school or developing procedures or practices to implement policies adopted by such governing body;
    - (1) Legal services provided by a Texas licensed attorney and public accountancy services provided by a Texas licensed certified public accountant, are not

management services, even though such services may include recommending policies or developing procedures or practices to implement adopted policies.

- vi. Overseeing the implementation of policies adopted by the governing body of a charter holder or charter school; or
- vii. Providing leadership for the attainment of student performance at a charter school based on indicators adopted under Chapter 39.051 of the Education Code, or adopted by the governing body of a charter holder or charter school.

[Tex. Admin. Code §100.1011\(13\).](#)

### 3. Management Company Breach

- a. A management company breach is an action or failure to act by a management company that is contrary to a duty owed under a management contract, a rule adopted under Chapter 12, subchapter D of the Education Code, or any other legal obligation, and constitutes sufficient grounds for action against the management company under the [Chapter 12.127 of the Education Code](#) and/or [19 Texas Administrative Code §100.1155.](#)

[19 Tex. Admin. Code §100.1011\(23\).](#)

## **B. Maintenance of Records**

- 1. A management company that provides, or did provide, any management services shall maintain all records related to its management services separately from any other records of the management company.
- 2. Any contract, including a contract renewal, between an open-enrollment charter school and a management company to provide management services to the school must include a provision in writing stating that the management company will comply with maintaining all records related to its management services separately from another other records of the management company.

[Tex. Educ. Code §12.125; 19 Tex. Admin. Code §100.1159; 19 Tex. Admin. Code §100.1203.](#)

## **C. Cooperation with Audits**

- 1. A management company, its employees, and agents shall fully cooperate with an audit by the commissioner of education. Failure to timely comply with a request for access to records or other cooperation from the management company constitutes a management company breach.

[Tex. Admin. Code §100.1051\(d\).](#)

#### **D. Prohibited Management Services Contracts**

1. The commissioner of education may suspend, prohibit, deny the renewal of, or revoke a contract between an open-enrollment charter school and a management company providing management services to the school if the commissioner determines that the management company has:
  - a. Failed to comply with its contractual or legal obligations to any open-enrollment charter school in Texas or any other similar school in another state:
  - b. Failed to protect the health, safety, or welfare of the student enrolled at an open-enrollment charter school served by the company; or
  - c. Violated the laws and regulations governing open-enrollment charter schools listed under [Subchapter D of Chapter 12 of the Education Code](#) or a rule adopted under Subchapter D.

[Tex. Educ. Code §12.126](#); [Tex. Educ. Code §12.124\(b\)](#); [19 Tex. Admin. Code §100.1155](#); [19 Tex. Admin. Code §100.1157\(b\)](#).

#### **E. Prohibition on Loans**

1. A charter holder or charter school that accepts a loan or credit from, or incurs a debt to, a management company, may not enter into a contract with that management company to provide management services to the school.
2. Neither a charter holder nor a charter school may accept any loan or credit from, or incur any debt to, a management company that has a contract to provide management services to
  - a. That charter school; or
  - b. Another charter school that operates under a charter granted to the charter holder.
3. A charter holder shall separately disclose, in its annual audit report, all loans or credit received or indebtedness incurred by the charter holder or the charter school to any person or entity providing management services to the charter school or another charter school that operates under the charter holder.

[Tex. Educ. Code §12.124\(a\)](#); [19 Tex. Admin. Code §100.1157](#).

#### **F. Approval by the Texas Education Agency**

1. At least 30 calendar days before any performance or payments under a management services contract, a charter holder must file a copy of each contract for management services, and each amendment, renewal or extension, with the Texas Education Agency (“TEA”) division responsible for legal services for review.
2. The contract for management services is unenforceable until the expiration of 30

calendar days following the date on which it is filed with TEA. Performance under the contract before the expiration of the 30 days is a material charter violation.

3. After the expiration of 30 days, if the commissioner of education does not take any action within 30 days under [the Title 19 of the Texas Administrative Code, Chapter 97, Subchapter DD](#) (relating to Investigative Reports, Sanctions, and Record Reviews), the parties may begin performance under the contract. The absence of action by the commissioner within this timeframe does not preclude the commissioner from acting at a later time under this section.

[Tex. Admin. Code §100.1155.](#)

### **G. Liability of a Management Company**

A management company that provides management services to an open-enrollment charter school is liable for damages incurred by the state as a result of the company's failure to comply with its contractual or other legal obligations to provide services to the school.

[Tex. Educ. Code §12.127.](#)

## **300.220. IMMUNITIES & WAIVER**

### **I. Immunity from Liability**

#### **A. Board Members.**

A director of a non-profit corporation is not liable to the corporation, a member, or another person if the director discharges his or her duties in good faith, with ordinary care, and in a manner the director reasonably believes to be in the best interest of the corporation.

[Tex. Bus. Org. Code § 22.221.](#)

#### **B. Charter School and Charter Holder.**

In matters related to operation of an open-enrollment charter school, an open-enrollment charter school or charter holder is immune from liability and suit to the same extent as a school district, and the employees and volunteers of the open-enrollment charter school or charter holder are immune from liability and suit 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 \(a\).](#)

#### **C. Employees.**

Like school district employees, a professional employee of an open-enrollment charter school or a professional employee of an open-enrollment charter holder is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee, except in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students.

1. This section does not apply to the operation, use, or maintenance of any motor vehicle.
2. In addition to the immunity provided under this section and under other provisions of state law, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001. Nothing in this subsection shall be construed to limit or abridge any immunity or protection afforded an individual under state law.

[Tex. Educ. Code § 22.051.](#)

#### **D. Volunteers.**

Like school district volunteers, a volunteer who is serving as a direct service volunteer of a charter school or charter holder is immune from civil liability to the same extent as a professional employee of a school district under Section 22.0511.

1. In this section, "volunteer" means a person providing services for or on behalf of a charter school/holder, on the premises of the charter school/holder or at a school-sponsored or school-related activity on or off school property, who does not receive compensation in excess of reimbursement for expenses.
2. This section does not limit the liability of a person for intentional misconduct or gross negligence.

[Tex. Educ. Code §22.053.](#)

### **E. Other Matters.**

Notwithstanding Subsections (a) or (b) of Texas Education Code Section 12.1058, an open-enrollment charter school operated by a tax exempt entity as described by Section 12.101(a)(3) is not considered to be a political subdivision, local government, or local governmental entity unless the applicable statute specifically states that the statute applies to an open-enrollment charter school.

[Tex. Educ. Code § 12.1058\(c\) and §22.053; 84th R.S., HB 1170.](#)

## **II. Waiver of Immunity from Liability**

### **A. Waiver in the Texas Tort Claims Act for Property Damage, Personal Injury and Death**

Like a school district, an open-enrollment charter school is liable for:

1. An open-enrollment charter school is a governmental unit as defined by Section 101.001, Civil Practice and Remedies Code, and is subject to liability only as provided by Chapter 101, Civil Practice and Remedies Code, and only in the manner that liability is provided by that chapter for a school district.

[Tex. Educ. Code §12.1056 \(b\); 84th R.S., HB 1171](#)

- a. Like a school district, an open-enrollment charter school is liable for property damage, personal injury, and death proximately caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:
  - i. The property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment; and
  - ii. The employee would be personally liable to the claimant according to Texas law;
- b. Personal injury and death so caused by a condition or use of tangible personal or real property if the governmental unit would, were it a private person, be liable to the claimant according to Texas law.

[Tex. Civ. Prac. & Rem. Code §101.021.](#)

- c. Liability for an open enrollment charter school is limited to money damages in a maximum amount of \$100,000 for each person and \$300,00 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

[Tex. Civ. Prac. & Rem. Code §101.023.](#)

- 2. An open-enrollment charter school is a local government as defined by Section 102.001, Civil Practice and Remedies Code, and a payment on a tort claim must comply with Chapter 102, Civil Practice and Remedies Code.

[Tex. Educ. Code §12.1056 \(c\); 84th R.S., HB 1171.](#)

- a. An open-enrollment charter school may pay actual damages awarded against an employee of the charter school if the damages:
  - i. result from an act or omission of the employee in the course and scope of his employment for the charter school; and
  - ii. arise from a cause of action for negligence.
- b. The charter school may also pay the court costs and attorney's fees awarded against an employee for whom the local government may pay damages under this section.
- c. A charter school may not pay damages awarded against an employee that:
  - i. arise from a cause of action for official misconduct; or
  - ii. arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence.
- d. A local government may not pay damages awarded against an employee to the extent the damages are recoverable under an insurance contract or a self-insurance plan authorized by statute.

[Tex. Civ. Prac. & Rem. Code §102.002.](#)

- e. Payments under this chapter by an open-enrollment charter school may not exceed (1) \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death; or (2) \$10,000 for a single occurrence of property damage.

[Tex. Civ. Prac. & Rem. Code §102.003.](#)

**B. Waiver in the Local Government Code for Breach of Contract Claims.**

1. An open-enrollment charter school is a local governmental entity as defined by Section 271.151, Local Government Code, and is subject to liability on a contract as provided by Subchapter I, Chapter 271, Local Government Code, and only in the manner that liability is provided by that subchapter for a school district.

[Tex. Educ. Code §12.1056\(d\); 84th Leg., R.S., HB 1171.](#)

2. An open-enrollment charter school is considered to be a local government entity for purposes of Subchapter I, Chapter 271, Local Government Code.

[Tex. Educ. Code §12.058\(a\)\(4\); 84th Leg., R.S. HB 1170.](#)

3. An open-enrollment charter school that enters into a contract subject to Subchapter I, Chapter 271, Local Government Code waives sovereign immunity to suit for the purpose of adjudicating a claim for breach of the contract, subject to the terms and conditions of the subchapter.

[Tex. Loc. Gov't Code § 271.152](#)

4. Except for written contracts regarding the sale or delivery of at least 1,000 acre feet of reclaimed water for industrial use, the total amount of money awarded in an adjudication brought against an open-enrollment charter school for breach of a contract subject to this subchapter is limited to the following:
  - a. the balance due and owed by the local governmental entity under the contract as it may have been amended, including any amount owed as compensation for the increased cost to perform the work as a direct result of owner-caused delays or acceleration;
  - b. the amount owed for change orders or additional work the contractor is directed to perform by a local governmental entity in connection with the contract;
  - c. reasonable and necessary attorney's fees that are equitable and just; and
  - d. interest as allowed by law, including interest as calculated under Chapter 2251, Government Code.

[Tex. Loc. Gov't Code § 271.153\(a\).](#)

5. Damages awarded in an adjudication brought against an open-enrollment charter school arising under a contract subject to this subchapter may not include consequential damages (except for as expressly allowed in the contract); exemplary damages; or damages for unabsorbed home office overhead.

[Tex. Loc. Gov't Code § 271.153\(b\).](#)

6. Except for written contracts regarding the sale or delivery of at least 1,000 acre

feet of reclaimed water for industrial use, the total amount of money awarded in an adjudication brought against an open-enrollment charter school for breach of a contract subject to this subchapter is limited to the following:

- a. Waive a defense or limitations on damages available to a party, other than a bar against a suit based on sovereign immunity;
- b. Waive sovereign immunity to suit in federal court;
- c. Waive sovereign immunity for suit for a case of action for a negligent tort or an intentional tort.

[Tex. Loc. Gov't Code § 271.155 – 271.157.](#)

### **C. Waiver in the Education Code for Breach of Fiduciary Duty**

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 §22.053.](#)

## **III. Acquiring Insurance and Managing Risk**

### **A. Insurance for Bodily Injuries Sustained by Students**

The board of directors for an open-enrollment charter holder may obtain insurance against bodily injuries sustained by students while training for or engaging in interscholastic athletic competition or while engaging in school-sponsored activities.

[Tex. Educ. Code § 12.104; Tex. Educ. Code §38.024; 84th Leg., R.S. HB 744.](#)

### **B. Workers Compensation Coverage**

1. An open-enrollment charter school may elect to extend workers' compensation benefits to employees of the school through any method available to a political subdivision under Chapter 504, Labor Code. An open-enrollment charter school that elects to extend workers' compensation benefits as permitted under this subsection is considered to be a political subdivision for all purposes under Chapter 504, Labor Code. An open-enrollment charter school that self-insures either individually or collectively under Chapter 504, Labor Code, is considered to be an insurance carrier for purposes of Subtitle A, Title 5, Labor Code.

[Tex. Educ. Code § 12.058 \(b\); 84th Leg., R.S. HB 1170.](#)

2. A political subdivision must extend workers' compensation benefits to its employees

by (1) becoming a self-insurer; (2) providing insurance under a workers' compensations insurance policy; or (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance.

[Tex. Labor Code §504.011](#)

### **C. Self Insurance for Risk Management**

1. An open-enrollment charter school is considered to be a local government for purposes of Chapter 2259, Texas Government Code, except that a charter school may not issue public securities as authorized in Section 2259.031(b)(1).

[Tex. Educ. Code § 12.0158 \(a\); 84th Leg., R. S. HB 1170](#)

2. A governmental unit may establish a self insurance fund to protect the governmental unit and its officers, employees, and agents from any insurable risk or hazard.

[Tex. Gov't Code § 2259.031 \(a\).](#)

3. An open-enrollment charter school that establishes such a self-insurance fund may
  - a. use any money available to the charter school for the fund,

[Tex. Gov't Code § 2259.031 \(b\)\(2\); and](#)

- b. purchase reinsurance for a risk covered through the fund;

[Tex. Gov't Code § 2259.031 \(c\)](#)

4. Any law, including a regulation, requiring insurance may be satisfied by coverage provided through the fund.

[Tex. Gov't Code § 2259.031 \(d\).](#)

5. Any law, including a regulation, requiring a certificate of insurance or an insurance agency's signature may be satisfied by a certificate of coverage issued on behalf of the charter school demonstrating that coverage is provided through the fund.

[Tex. Gov't Code § 2259.031 \(e\).](#)