



TCSA Model Board Policy Series

Module 600: *Human Resources*

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 600: Human Resources

The Human Resources Module 600, is the sixth and final module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules currently available include:

Module 100: Financial Operations

Module 200: Charter School Governance & Organization

Module 300: General School Operations

Module 400: Students

Module 500: Open Government

Legal Abbreviations Used In the TCSA Model Board Policy Series

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

600.020. EQUAL OPPORTUNITY

A. Nondiscrimination Generally

1. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, age (applies to individuals 40 years of age or older), or genetic information the employer:
 - a. Fails or refuses to hire an individual;
 - b. Discharges an individual;
 - c. Discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
 - d. Limits, segregates, or classifies an employee, or applicant for employment, in a manner that would deprive, or tend to deprive, an individual of any employment opportunity; or adversely affect the status of an employee.

[Tex. Labor Code §§21.051, 21.101, 21.108, 21.402](#); 42 U.S.C.A §2000e-2(a) (Title VII); 20 U.S.C.A. §1681 (Title IX); 29 U.S.C.A §§ 623.631 (Age Discrimination in Employment); 42 U.S.C.A 12111 et seq. (Americans with Disabilities Act).

2. Pregnancy

- a. The prohibition on discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions.

[Tex. Labor Code §21.106](#).

3. Sexual Harassment

- a. Harassment on the basis of sex is a violation of Title VII.
- b. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

- c. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer knows, or should have known of the conduct, unless it can show that it took immediate an appropriate corrective action.

[29 C.F.R §1604.11.](#)

4. Bona Fide Occupational Qualification

- a. If disability, religion, sex, national origin, or age is a bona fide occupation qualification reasonably necessary to normal operations, performing any of the following practices on any of the aforementioned bases is not an unlawful employment practice:
 - i. An employer hiring and employing an employee;
 - ii. An employer controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

[Tex. Labor Code §21.119; 42 U.S.C. 2000e-2\(e\); 29 U.S.C. 623\(f\).](#)

5. Job Postings

- a. An employer commits an unlawful employment practice if the employer prints or publishes a notice or advertisement relating to employment that:
 - i. Indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
 - ii. Concerns an employee's status, employment, training or retraining program.
- b. This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

[Tex. Labor Code §21.059; 42 U.S.C. 2000e-3\(b\).](#)

6. Notices

- a. Equal Employment Opportunity Notice
An employer is required to post, in conspicuous places on its premises, notices describing the federal laws prohibiting job discrimination based on race, color nation origin, religion, age, equal pay, disability and genetic information. The U.S. Equal Employment Opportunity Commission has developed a model poster located at the following link: <http://www1.eeoc.gov/employers/poster.cfm>

[42 U.S.C. 2000e-10; 29 U.S.C. 627.](#)

- b. Section 504 of the Rehabilitation Act of 1973
 A charter holder/school that employs 15 or more employees shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.
 - i. The notice shall state:
 - (1) That the charter holder/school does not discriminate in employment in its programs and activities; and
 - (2) The identity of the employee designated as the 504 Coordinator.
 - ii. Methods of notification may include:
 - (1) Posting notices;
 - (2) Publication in newspapers and magazines;
 - (3) Placement of notices in school publications; and
 - (4) Distribution of memoranda or other written communications.
 - iii. If a school publishes or uses recruitment materials, it shall include in those materials a statement of the policy described in Subsection (b).

[34 C.F.R. §104.8.](#)

B. Nondiscrimination Based on Religion

The prohibition against discrimination on the basis of religion includes discrimination on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable to reasonably accommodate the religious observance or practice of an employee or applicant without undue hardship to the school’s business.

[Tex. Labor Code §21.108; 42 U.S.C. §2000e\(j\).](#)

C. Nondiscrimination Based on Disability

1. General Rule

An employer shall not discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

[Tex. Labor Code §21.051; 42 U.S.C §12112\(a\).](#)

2. Definition of Disability

The term ‘disability’ means, with respect to an individual:

- a. a physical or mental impairment that substantially limits one or more major life activities of such individual;
- b. a record of such an impairment; or
- c. being regarded as having such an impairment.

[42 U.S.C. § 12102.](#)

3. Reasonable Accommodation

Discrimination includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the school.

[42 U.S.C §12112\(b\)\(5\)\(A\).](#)

4. Posting Notices

Every employer shall post notices in an accessible format to applicants, employees, and members of the public, describing the applicable provisions of the Americans with Disabilities Act. The model notice posted at <http://www1.eeoc.gov/employers/poster.cfm> will satisfy this requirement.

[42 U.S.C. §12115; 28 C.F.R. §35.106.](#)

D. Nondiscrimination Based on Age

1. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

[42 U.S.C.A §6102.](#)

E. Coordinator

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. Age Discrimination Act of 1975 Each recipient of federal funds shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination Act of 1975 and corresponding regulations, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act and the regulations.

A recipient shall also notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and these regulations. The notification must identify the responsible employee by name or title, address, and telephone number.

A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or the corresponding regulations.

[34 C.F.R. §110.25](#)

TCSA Note: For grievance/complaint procedures see Module 300: General School Operations.

F. Nondiscrimination Based on Military Service

1. An employer shall not deny initial employment, reemployment, retention in employment promotion, or any benefits of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service.
2. An employer shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed services Employment and Reemployment Rights Act of 1994.
3. An employer may not terminate the employment of an employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled

to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment.

38 U.S.C. §4311; [Tex. Gov't Code §431.006](#).

600.040. DRUG-FREE WORKPLACE

A. Federal Grant Recipients Must:

1. Agree to provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establish a drug-free awareness program to inform employees about:
 - a. The dangers of drug-abuse in the workplace;
 - b. The employer's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Require each employee engaged in the performance of the grant be given a copy of the statement required by subsection (1) above.
4. Notify each employee in the statement required by subsection (1), that as a condition of employment in such grant, the employee will:
 - a. Abide by the terms of the statement; and
 - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
5. Notify the granting agency within 10 days after receiving notice under subsection (4)(b) from an employee or otherwise receiving notice of such a conviction.
6. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program, by an employee that receives such a conviction.
7. Within 30 days after receiving notice under subsection (4)(b), the grantee must take appropriate personnel action against such employee up to and including termination or require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
8. Make a good faith effort to continue to maintain a drug-free workplace.

[41 U.S.C. §702 – 703.](#)

B. Omnibus Transportation Employee Testing Act

The following applies to every employee of the charter school who operates a commercial motor vehicle and is subject to commercial driver's license requirements in accordance with federal regulations.

49 C.F.R §382.103

1. Drug & Alcohol Testing of Safety-Sensitive Positions

The charter school shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates the law.

49 C.F.R Part 382; §382.105

2. Definition of Commercial Motor Vehicle

A commercial motor vehicle means a motor vehicle used to transport passengers or property if the vehicle:

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or
- c. Is designed to transport 16 or more passengers, including the driver.

49 CFR 382.107

3. Required Testing

- a. Required testing includes pre-employment, postaccident, random, reasonable suspicion, return-to-duty, and follow-up testing.
- b. No driver shall refuse to submit to a postaccident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test.
- c. The District shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

49 C.F.R 382.211; 49 C.F.R. 382.309

4. Employer Obligation to Promulgate a Policy

The charter school shall provide educational materials that explain the federal requirements and the charter school's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this

policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Charter schools shall also provide

a. Content of Education Materials:

The content of the educational materials shall include detailed discussion of at least the following:

- i. The identity of the person designated by the charter school to answer driver questions about the materials;
- ii. The categories of drivers who are subject to the provisions;
- iii. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance;
- iv. Specific information concerning driver conduct that is prohibited by federal regulations;
- v. The circumstances under which a driver will be tested for alcohol and/or controlled substances according to federal regulations, including post-accident testing under applicable federal regulations;
- vi. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by federal regulations;
- vii. The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with federal regulations;
- viii. An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- ix. The consequences for drivers found to have violated federal regulations, including the requirement that the driver be removed immediately from safety-sensitive functions, and the applicable federal procedures;
- x. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
- xi. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances

problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

49 C.F.R. §382.601

600.080 COMPENSATION

A. Fair Labor Standards Act (“FLSA”)

1. FLSA Minimum Wage - Each employer is required to pay non-exempt employees a minimum of \$7.25 an hour.

[29 U.S.C.A. §206.](#)

2. FLSA Overtime - Each employer shall pay each non-exempt employee engaged in any workweek for over 40 hours a minimum of one and one-half times the regular rate at which the employee is paid.

[29 U.S.C.A. §207.](#)

3. Compensatory Time - Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required.

Note that open-enrollment charter schools presently are not defined as a public agency or a political subdivision for purposes of offering compensatory time to its employees under the FLSA.

[29 C.F.R. § 553.21.](#)

4. Exemptions - Employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teach in elementary or secondary schools) are exempt from the minimum wage and overtime requirements of the FLSA.

[29. C.F.R. § 541.](#)

5. Notice - Employers shall post a notice explaining the FLSA in a conspicuous location where employees may readily observe a copy.

<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

[29 C.F.R. § 516.](#)

6. Recordkeeping – Employers must maintain accurate records on non-exempt employees including certain identifying information about the employee and data about the hours worked and the wages earned.

[29. C.F.R. § 516.](#)

(TCSA Note: [TWC’s sample wage deduction authorization agreement](#))

B. Texas Payday Law

See TCSA Module 100: Financial Operations

C. Board Member Compensation

See TCSA Module 200: Charter School Governance & Organization

600.100 TRAINING: CAMPUS ADMINISTRATIVE OFFICERS & BUSINESS MANAGERS

A. Campus Administrative Officers

1. “Campus administrative officers” include persons who are charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:
 - a. approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - b. setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - c. developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - d. assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;
 - e. assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or
 - f. recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

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

2. Campus administrative officers, including persons providing management services that include the function of a campus administrative officer, must complete ten instructional hours of training, delivered by a TEA-registered course provider.
3. Training shall include the following modules (two out of the required ten hours may be selected from any of these modules):
 - a. At least 90 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; students with disabilities; student records; student admissions; geographic boundaries; and residency;
 - b. At least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, federal funds and property management, and grant administration;

- c. At least 90 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;
 - d. At least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;
 - e. At least 120 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; and dropout reporting;
 - f. At least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and
 - g. At least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.
4. Continued Training
- a. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training.
 - b. However, a school officer whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law.
 - c. Continuing training under shall fulfill assessed training needs, including any training needs identified by TEA monitoring
 - d. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training.
 - e. Twenty-five percent of hours earned in excess of the requirements may be carried over to meet the following year's requirement.
5. Exemptions
- a. A campus administrative officer is exempt from the training required by this section if the person is the holder, in good standing, of a Standard Principal Certificate, or

its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

[19 Tex. Admin. Code §100.1104.](#)

B. Business Managers

1. A “business manager” is any person charged with managing the finances of a charter school or charter holder.

[19 Tex. Admin. Code §100.1011\(20\).](#)

2. A business manager, including persons providing management services that include the functions of a business manager, must complete a training course consisting of 30 instructional hours, delivered by a course provider registered with TEA. The training course may not use self-instructional materials.
3. A business manager must complete the training course required by this section within one calendar year of beginning service in that capacity.
4. The training course required by this section shall include the following modules:
 - a. At least 240 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; and the Financial Accountability System Resource Guide;
 - b. At least 480 minutes of instruction in school finance, with special emphasis on the Financial Accountability System Resource Guide, generally accepted accounting principles, student attendance accounting, federal funds and property management, purchasing, grant administration, audit requirements, and capital financing;
 - c. At least 20 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school;
 - d. At least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;
 - e. At least 160 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on PEIMS reporting, internal management controls, and audit requirements;

- f. At least 20 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on adopting and amending the budget; and
 - g. At least 40 minutes of instruction in requirements relating to public records, with special emphasis on recordkeeping required by generally accepted accounting principles and applicable law.
5. Continued Training
- a. A business manager who has completed the required 30-hour training course must annually thereafter receive 15 hours of training.
 - b. Continuing training shall fulfill assessed training needs, including any training needs identified by TEA monitoring.
 - c. No more than three hours of continuing training may use self-instructional materials.
6. Exemptions
- a. A business manager is exempt from the required training if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:
 - i. Registered Texas School Business Administrator;
 - ii. Certified Texas School Business Official;
 - iii. Certified Texas School Business Specialist; or
 - iv. Certified Texas School Business Administrator; and
 - b. A business manager is exempt from a module of required training, if:
 - i. the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and
 - ii. the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

[19 Tex. Admin. Code §100.1105.](#)

600.100 TRAINING: CAMPUS ADMINISTRATIVE OFFICERS & BUSINESS MANAGERS

A. Campus Administrative Officers

1. “Campus administrative officers” include persons who are charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:
 - a. approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - b. setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - c. developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
 - d. assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;
 - e. assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or
 - f. recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

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

2. Campus administrative officers, including persons providing management services that include the function of a campus administrative officer, must complete ten instructional hours of training, delivered by a TEA-registered course provider.
3. Training shall include the following modules (two out of the required ten hours may be selected from any of these modules):
 - a. At least 90 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; students with disabilities; student records; student admissions; geographic boundaries; and residency;
 - b. At least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, federal funds and property management, and grant administration;

- c. At least 90 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; and safe schools;
 - d. At least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;
 - e. At least 120 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; and dropout reporting;
 - f. At least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and
 - g. At least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.
4. Continued Training
- a. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training.
 - b. However, a school officer whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law.
 - c. Continuing training under this section shall fulfill assessed training needs, including any training needs identified by TEA monitoring
 - d. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training.
 - e. Twenty-five percent of hours earned in excess of the requirements may be carried over to meet the following year's requirement.
5. Exemptions
- a. A campus administrative officer is exempt from the training required by this section if the person is the holder, in good standing, of a Standard Principal Certificate, or

its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

[19 Tex. Admin. Code §100.1104.](#)

B. Business Managers

1. A “business manager” is any person charged with managing the finances of a charter school or charter holder.

[19 Tex. Admin. Code §100.1011\(20\).](#)

2. A business manager, including persons providing management services that include the functions of a business manager, must complete a training course consisting of 30 instructional hours, delivered by a course provider registered with TEA. The training course may not use self-instructional materials.
3. A business manager must complete the training course required by this section within one calendar year of beginning service in that capacity.
4. The training course required by this section shall include the following modules:
 - a. At least 240 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; and the Financial Accountability System Resource Guide;
 - b. At least 480 minutes of instruction in school finance, with special emphasis on the Financial Accountability System Resource Guide, generally accepted accounting principles, student attendance accounting, federal funds and property management, purchasing, grant administration, audit requirements, and capital financing;
 - c. At least 20 minutes of instruction in health and safety issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school;
 - d. At least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder;
 - e. At least 160 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on PEIMS reporting, internal management controls, and audit requirements;

- f. At least 20 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on adopting and amending the budget; and
 - g. At least 40 minutes of instruction in requirements relating to public records, with special emphasis on recordkeeping required by generally accepted accounting principles and applicable law.
5. Continued Training
- a. A business manager who has completed the required 30-hour training course must annually thereafter receive 15 hours of training.
 - b. Continuing training shall fulfill assessed training needs, including any training needs identified by TEA monitoring.
 - c. No more than three hours of continuing training may use self-instructional materials.
6. Exemptions
- a. A business manager is exempt from the required training if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:
 - i. Registered Texas School Business Administrator;
 - ii. Certified Texas School Business Official;
 - iii. Certified Texas School Business Specialist; or
 - iv. Certified Texas School Business Administrator; and
 - b. A business manager is exempt from a module of required training, if:
 - i. the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and
 - ii. the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

[19 Tex. Admin. Code §100.1105.](#)

C. Staff Development

Staff development training must include suicide prevention. The training must:

1. Use a best practice-based program recommended by the Department of State Health Services
2. Be provided on an annual basis to all new employees as a part of a new employee orientation; and
3. Provided to all other employees in accordance with the schedule adopted by the Commissioner.
4. An independent review of material may satisfy the requirement if it complies with the Commissioner's rules and is provided online.

[Tex. Educ. Code §21.451; 84th Leg., R.S. HB 2186](#)

600.120 IMMUNITIES

A. Immunity from Civil Liability for School Employees

1. Employees and volunteers of an open-enrollment charter school are immune from liability and suit to the same extent as school district employees and volunteers are immune from liability.

[Tex. Educ. Code §12.1056.](#)

2. Professional Employee. A “professional employee” of an open-enrollment charter school includes:
 - a. superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by the open-enrollment charter school;
 - b. a teacher employed by a company that contracts with the open-enrollment charter school to provide the teacher's services to the district;
 - c. a student in an education preparation program participating in a field experience or internship;
 - d. a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
 - e. a member of the board of directors of the open-enrollment charter school or charter holder; and
 - f. any other person employed by the charter school whose employment requires certification and the exercise of discretion.

[Tex. Educ. Code § 22.051\(a\).](#)

3. Statutory immunity is in addition to and does not preempt the common law doctrines of official and governmental immunity.

[Tex. Educ. Code § 22.051\(b\).](#)

4. A professional employee of an open-enrollment charter school 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. Professional immunity does not apply:
 - a. in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students; or
 - b. to the operation, use, or maintenance of any motor vehicle.

5. In addition to the professional immunity provided described above, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended.
6. An open-enrollment charter school may not by policy, contract, or administrative directive:
 - a. require an employee to waive immunity from liability for an act for which the employee is immune from liability under Section 22.0511; or
 - b. require an employee who acts in good faith to pay for or replace property belonging to a student or other person that is or was in the possession of the employee because of an act that is incident to or within the scope of the duties of the employee's position of employment.

[Tex. Educ. Code § 22.0511.](#)

B. Immunity from Employer Discipline

1. A professional employee of an open-enrollment charter school may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under [Section 9.62, Penal Code.](#)
2. "Disciplinary proceeding" means:
 - a. an action brought by the charter school employing a professional employee of a charter school to discharge or suspend the employee or terminate or not renew the employee's term contract; or
 - b. an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).
3. This section does not prohibit an open-enrollment charter school from enforcing a policy relating to corporal punishment; or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.

[Tex. Educ. Code § 22.0512.](#)

C. Immunity from Liability Resulting from the Administration of Medication to Students

See TCSA Module 400: Students

D. Notice of Claim

Not later than the 90th day before the date a person files a suit against a professional employee of an open-enrollment charter school, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

[Tex. Educ. Code § 22.0513.](#)

E. Exhaustion of Remedies

A person may not file suit against a professional employee of a charter school unless the person has exhausted the remedies provided by the charter school for resolving the complaint.

[Tex. Educ. Code § 22.0514.](#)

F. Contract Liability

An open-enrollment charter school that enters into a contract waives sovereign immunity for purposes of adjudicating a breach of contract claim.

The total amount award by a charter school for a breach of contract claim is limited to:

1. The balance owed by the open-enrollment charter;
2. The amount owed for changed orders or additional work completed, as directed by the open-enrollment charter school;
3. Reasonable and necessary attorney's fees;
4. Interest allowed by law.

Outside of these limitations, actual damages, specific performance, or injunctive relief may be granted against an open-enrollment charter school.

Adjudication procedures agreed to in the contract, including alternative dispute resolution are enforceable.

[Tex. Loc. Gov't Code § 271.151 - 271.160; 84th Leg., R.S. HB 1171](#)

G. Tort Liability

An open-enrollment charter school is defined as a government unit for purposes of the Texas Tort Claims Act, and is liable for property damage, personal injury, and death caused by the wrongful act or omission or the negligence of an employee acting within his scope of employment if:

1. The property damage, personal injury, or death arises from the operation or use of a motor-driven vehicle or motor-driven equipment;
2. The balance owed by the open-enrollment charter;
3. The employee would be personally liable to the claimant according to Texas law; and
4. 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 § 101.001 and 101.021; 84th Leg., R.S. HB 1171](#)

H. Payment of a Tort Claim

An open-enrollment charter school is defined as a local government for purposes of tort claim payments. An open-enrollment charter school:

1. May pay actual damages awarded against an employee of the charter school if the damages:
 - a. result from an action of the employee in the course and scope of his employment at the charter school; and
 - b. result from a negligence claim.
2. May pay the court costs and attorney's fees awarded against an employee for whom the charter school may pay damages under this section.
3. May NOT pay damages awarded against an employee that:
 - a. arise from a cause of action for official misconduct; or
 - b. arise from a cause of action involving a willful or wrongful act or omission or an act or omission constituting gross negligence.
4. 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.

Payment shall not exceed \$100,000 for any single person or more than \$300,000 for a single occurrence in the case of personal injury or death. Payment shall not exceed \$10,000 for a single occurrence in the case of property damage.

[Tex. Civ. Prac. & Rem. Code § 102.002 and 102.003; 84th Leg., R.S. HB 1171](#)

I. Defense Counsel

An open-enrollment charter school may provide legal counsel to represent a defendant for whom the charter school may pay damages under this chapter. The counsel provided by the charter may be the charter school's regularly employed counsel, unless there is a potential conflict of interest between the charter school and the defendant. If there is a conflict, the charter school may employ other legal counsel. Legal counsel hired under this section may settle the portion of a suit that may result in the payment of damages by charter school.

[Tex. Civ. Prac. & Rem. Code § 102.004; 84th Leg., R.S. HB 1171](#)

600.140. RETIREMENT AND HEALTH BENEFITS

A. Retirement Benefits

1. Teacher Retirement System of Texas (TRS)

a. All Employees Eligible

An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent as an employee of a traditional school district.

b. School and State Responsibilities

For each covered employee, the school is responsible for making any contribution that otherwise would be the legal responsibility of a school district, and the state is responsible for making contributions to the same extent it would be legally responsible if the employee were a school district employee.

[Tex. Educ. Code § 12.1057 \(a\) and \(b\).](#)

2. United States Social Security Administration

An open-enrollment charter school is an entity for which the state may enter an agreement with the Social Security Administration. Consequently, the governing board of an open-enrollment charter school or charter holder may elect to extend Social Security coverage to its employees in accordance with the procedure established by the Employees Retirement System.

[Tex. Att'y Gen. No. GA-0629 \(2008\).](#)

B. Health Benefits

1. TRS-ActiveCare

a. Open-enrollment charter schools may elect, but are not required, to offer health benefits to their employees through TRS-Active Care, the health benefits program operated by the Teacher Retirement System. A charter school is eligible to participate in TRS-Active Care if the school agrees:

- i. that all school records relating to program participation are open to inspection by the trustee, the administering firm, the commissioner of education, or a designee of any of those entities; and**
- ii. to have the school's accounts relating to participation in the program annually audited by a certified public accountant at the school's expense.**

b. charter school must notify the TRS of the school's intent to participate in the program in the manner and within the time required by rules adopted by the TRS.

[Tex. Ins. Code § 1579.154 \(a\) and \(b\); 34 Tex. Admin. Code § 41.30 \(f\).](#)

3. COBRA Benefits

a. General Rule

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families, who lose their health benefits, the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances.

b. Three Qualifying Elements

There are three elements to qualifying for COBRA benefits: (1) specific criteria for coverage plans, (2) qualified beneficiaries, and (3) qualifying events:

i. Plan Coverage

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

ii. Qualified Beneficiaries

A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

iii. Qualifying Events

Qualifying events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA. A plan, at its discretion, may provide longer periods of continuation coverage.

(1) The qualifying events for employees are:

- (a) Voluntary or involuntary termination of employment for reasons other than gross misconduct; and
- (b) Reduction in the number of hours of employment

(2) The qualifying events for spouses are:

- (a) Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct;
 - (b) Reduction in the hours worked by the covered employee;
 - (c) Covered employees becoming entitled to Medicare;
 - (d) Divorce or legal separation of the covered employee; and
 - (e) Death of the covered employee
- (3) The qualifying events for dependent children are the same as for the spouse with one addition:
- (a) Loss of dependent child status under the plan rules

[26 C.F.R § 54.4980B-0 through 26 C.F.R § 54.4980B-10.](#)

C. Workers Compensation Benefits

Workers' compensation provides covered employees with income and medical benefits if they are injured on the job or have a work-related injury or illness. For purposes of workers' compensation insurance, open-enrollment charter schools are considered to be private employers and can choose whether or not to provide workers' compensation insurance coverage for their employees.

[See, Tex. Labor Code § 406.001.](#)

1. Required Notice:
 - a. Non-Subscriber Notice to TDI-DWC. An employer that does not obtain workers' compensation insurance coverage shall notify the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) of their non-subscriber status and of their work-related injuries and illnesses.

[Tex. Labor Code § 406.004.](#)

- b. Notice to Employees. Each employer must notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. Each employer also shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination, or cancellation of the coverage takes effect.

[Tex. Labor Code § 406.005.](#)

- c. Model Notices. Model notices regarding workers compensation are published on the website of the Texas Department of Insurance at <http://www.tdi.state.tx.us/forms/form20employer.html>
2. Obtaining Coverage. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as described in [Chapter 406, Texas Labor Code](#). Except in cases of gross negligence, workers' compensation insurance limits an employer's liability if an employee brings suit against the employer for damages.

[Tex. Labor Code § 406.003; § 406.031.](#)

600.160. TEACHER CREDENTIALS AND QUALIFICATIONS

A. State Qualifications

1. All Teachers. A person employed as a teacher by an open-enrollment charter school must hold a baccalaureate degree.
2. All Principals. A person employed as a principal by an open-enrollment charter school must hold a baccalaureate degree.

[Tex. Educ. Code § 12.129](#)

3. Special Education Teachers. A person employed as a special education teacher by an open-enrollment charter school must hold the proper certification.

[34 C.F.R. §300.156; 19 Tex. Admin. Code §89.1131.](#)

4. Bilingual Education Teachers. A person employed as a bilingual education teacher by an open-enrollment charter school (must hold the proper certification) using a transitional bilingual/early exit or a transitional bilingual/late exit program model.
 - a. A teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model must be appropriately certified by the board for:
 - i. bilingual education for the component of the program provided in a language other than English; and
 - ii. bilingual education or English as a Second Language for the component other than English.
 - b. A charter school that uses a dual language immersion/one-way or two-way program model can assign two teachers to teach the dual program with one teacher certified under part (i) above and a second teacher certified under part (ii) above.

[Tex. Educ. Code §12.104\(b\)\(2\)\(G\); Tex. Educ. Code §29.061\(b\) – \(c\); 84th Leg., R.S. HB 218.](#)

C. Federal Highly Qualified Status

1. Highly Qualified Teachers. Any teacher of record that provides direct instruction to students in any core academic subject area at a school that receives federal funding must be highly qualified. A highly qualified teacher in an open-enrollment charter school:
 - a. Meets state certification requirements as they apply to charter schools;
 - b. Holds a minimum of a bachelor's degree; and
 - c. Has demonstrated subject matter competency in each of the academic subjects

in which the teacher teaches. For secondary teachers, this includes possessing an academic major in the subject area taught.

2. Core Academic Subjects. Core academic subjects include English, reading or language arts, mathematics, science, foreign languages (languages other than English), civics and government, economics, arts, history and geography. “Arts” includes music (band and choir directors), art, theater, dance, and any other courses accepted by SBOE for graduation credit in Fine Arts.)
3. Demonstrated Subject Matter Competency. Charter school teachers have the same options for demonstrating competency as teachers in traditional public schools.
 - a. Elementary Teachers (Early Childhood – Grade 6)
 - i. Newly certified teachers. New certified elementary teachers demonstrate competency in the general elementary curriculum by passing the grade-level appropriate Texas Examination of Educator Standards (TExES) Generalist exam.
 - ii. Experienced teachers. Experienced elementary teachers may demonstrate competency by:
 - (1) passing the Elementary Comprehensive ExCET;
 - (2) passing the grade-level appropriate TExES Generalist exam;
 - (3) meeting the requirements established under the High, Objective, Uniform Standard of Evaluation (HOUSE) for elementary teachers.
 - b. Secondary Teachers (Grades 7-12)
 - i. Newly certified. New secondary teachers may demonstrate competency by:
 - (1) passing the applicable ExCET/TExES content exam for a certification area appropriate to the teaching assignment; or
 - (2) having an academic major or graduate degree or the coursework equivalent to an undergraduate academic major in the core academic subject areas in which they teach.
 - ii. Experienced teachers. Experienced secondary teachers may demonstrate competency by:
 - (1) passing the applicable ExCET/TExES content exam for a certification area appropriate to the teaching assignment; or
 - (2) having an academic major or graduate degree or the coursework equivalent to an undergraduate academic major in the core academic subject areas in

which they teach.

- (3) meeting the requirements established under the High, Objective, Uniform Standard of Evaluation (HOUSE) for elementary teachers.

See [20 U.S.C. § 7801\(23\)](#); [34 C.F.R. § 200.55\(b\)\(1\)](#); TEA Guidance for the Implementation of NCLB Highly Qualified Teacher Requirements (http://www.tea.state.tx.us/index4.aspx?id=4261&menu_id=798)

4. Notice to Parents

a. Notice Each School Year

At the beginning of each school year, a local educational agency that receives Title I funds shall notify the parents of each student attending any school receiving funds that the parents may request, and the school will provide the parents on request (and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

- i. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
- ii. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived;
- iii. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree; and
- iv. Whether the child is provided services by paraprofessionals and, if so, their qualifications.

b. Additional Required Notice

A school that receives Title I funds shall provide to each individual parent timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by a teacher who is not highly qualified.

600.180. EMPLOYEE LEAVES AND ABSENCES

A. Family Medical Leave

1. Covered Employers. All public elementary and secondary schools are “covered employers” under the federal Family Medical Leave Act (FMLA) without regard to the number of employees employed.

[29 U.S.C. 2611 \(4\); 29 C.F.R 825.104\(a\); 29 C.F.R 825.600.](#)

- a. Posted General Notice. Covered employers must post a notice on its premises that explains the FMLA and the process for filing complaints with the U.S. Department of Labor’s Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment.
- b. Language for Posted General Notice. If an employer’s workforce is comprised of a significant portion of workers who are not literate in English, then the employer shall provide notice in a language in which the employees are literate.
- c. Options for General Notice Posting Placement. For the required posted notice, employers may use [U.S. Department of Labor \(DOL\) Form WHD 1420](#) or may use another format so long as the information provided includes all of the information contained in that notice. Electronic posting is sufficient if it meets the other requirements of this section.
- d. Additional General Notice Requirement. If a covered employer has any eligible employees, then it shall also either (i) include the general notice in employee handbooks or other written guidance to employees concerning rights or benefits, if such written materials exist; or (ii) distribute a copy of the general notice to each new employee upon hiring.

[29 C.F.R 825.300\(a\).](#)

2. Eligible Employees. “Eligible employee” means an employee who:
 - a. Has been employed for at least 12 months, but the 12 months does not need to be consecutive;
 - b. Has been employed for at least 1,250 hours of service during the 12 months immediately preceding the commencement of leave; and
 - c. Is employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

[29 U.S.C. 2611\(2\); 29 C.F.R 825.110.](#)

3. Qualifying Reasons For Leave. A covered employer must grant FMLA leave to an eligible employee:

- a. For the birth of a son or daughter, and to care for the newborn child;
- b. For the placement with the employees of a son or daughter for adoption or foster care.

[29 C.F.R 825.122.](#)

- c. To care for the employee's spouse, son, daughter, or parent with a serious health condition.

[29 C.F.R 825.113; 29 C.F.R 825.122\(c\).](#)

- d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

[29 C.F.R 825.113.](#)

- e. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty.

[29 C.F.R 825.126\(b\); 29 U.S.C 2611 \(14\).](#)

- f. To care for a covered service member with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

[29 U.S.C 2611 \(15\), 29 U.S.C 2611 \(18\); 29 C.F.R.127\(b\)\(3\).](#)

- g. For the treatment of the employee or of the employee's covered family member for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

[29 C.F.R. 825.119; 29 U.S.C. 2612\(a\); 29 C.F.R. 825.112.](#)

4. Length of Leave. An eligible employee may take up to 12 work-weeks of unpaid leave during a 12-month period for any one or more of the qualifying reasons for leave.
 - a. Husband and Wife. A husband and wife employed by the same employer may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.
 - b. 12-Month Period. An employer may choose any one of the following methods for determining the "12-month period" in which the 12 weeks of FMLA occurs:
 - i. The calendar year;

- ii. Any fixed 12 month “leave year,” such as a fiscal year or a year starting on an employee’s anniversary date;
- iii. The 12-month period measured forward from the date an employee’s first FMLA leave begins; and
- iv. A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

[29 C.F.R 825.200\(b\).](#)

5. Military Caregiver Leave

- a. Length of Leave. For military caregiver leave, an eligible employee is entitled to a total of 26 work weeks of leave during a “single 12-month period.” The “single 12-month period” is measured forward from the date of an employee’s first FMLA leave to care for the covered service member, regardless of the method used by the employer to determine the 12-month period for other FMLA leaves.

[29 C.F.R 825.200\(f\).](#)

- b. Husband and Wife. A husband and wife employed by the same employer may be limited to a combined total of 26 work weeks of FMLA leave during any “single 12-month period” if leave is taken as military caregiver leave, leave for the birth of a son or daughter, leave for the placement of a child for adoption or foster care, or leave to care for a parent with a serious health condition.

[29 C.F.R 825.127\(d\).](#)

6. Designation of FMLA Leave

- a. Eligibility Notice
When an employee requests FMLA leave, or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee whether the employee is eligible to take FMLA leave within five business days, absent extenuating circumstances. If the employee is not eligible for FMLA leave, then the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, the number of hours of service worked for the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.

[29 C.F.R 825.300 \(b\).](#)

- b. Rights and Responsibilities Notice
Each time an employer provides an eligibility notice to an employee, the employer must also provide a written rights and responsibilities notice. An employer may use [DOL form WH-381](#) to provide such notification or another notice that includes the

information set out in 29 C.F.R 825.300 (c)(1).

[29 C.F.R 825.300 \(c\).](#)

c. Designation Notice

Once an employer has enough information to determine whether an eligible employee has a qualifying reason for FMLA leave, then the employer must send notice to the employee of whether the leave will or will not be designated as FMLA leave. An employer may use [DOL form WH-382](#) to provide such notification. The designation notice must include information about the substitution of paid leave, the fitness for duty certification, and the amount of leave charged against FMLA entitlement.

[29 C.F.R 825.300 \(d\).](#)

d. Employee Notice

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave. The employee does not need to expressly assert rights or even mention FMLA.

[29 C.F.R 825.301.](#)

- i. Foreseeable Leave. If an employee's FMLA leave is foreseeable, then the employee must provide the employer with 30 days notice unless 30 days notice is not practicable.

[29 C.F.R 825.302.](#)

- ii. Unforeseeable Leave. When the approximate timing of leave is not foreseeable, an employee must provide notice to his or her employer as soon as practicable under the facts and circumstances under the particular case.

[29 C.F.R 825.303.](#)

- iii. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

[29 C.F.R 825.302\(d\); 29 C.F.R 825.303\(c\).](#)

e. Concurrent Use of Other Types of Leave.

- i. Paid Leave. At the employee's or employer's option, paid leave provided by the employer may be taken and run concurrently with unpaid FMLA leave.

[29 C.F.R 825.207.](#)

- ii. Workers' Compensation Leave. When an employee's "serious health condition" arises from an employee's on the job injury, the employee may also be entitled to workers' compensation benefits. Under this circumstance, if the employer designates the leave as FMLA leave, then the workers' compensation leave runs concurrently with the FMLA leave. An employer and employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

[29 C.F.R 825.207.](#)

7. Use of FMLA Leave

- a. Intermittent Use of FMLA Leave. FMLA leave may be taken as "intermittent leave," that is – separate blocks of time ranging from an hour or more to several days or weeks due to a single qualifying reasons.
- b. Reduced Leave Schedule. FMLA leave also may be taken on a "reduced leave schedule" that reduces an employee's usual number of working hours per work-week or hours per workday. An example is to reduce the employee's work hours from full time to part time.
- c. Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered service member. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

[29 C.F.R, 825.202; 29 C.F.R. 825.203.](#)

- d. Intermittent and Reduced Leave for Instructional Employees Instructional employees (employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting) may be limited in their use of intermittent or reduced leave.

[29 C.F.R. 825.600; 29 C.F.R 825.601.](#)

- e. Leave Through the End of a Semester for School Employees. In certain cases, a school employer may require an employee to take FMLA leave through the end of the semester.

[29 C.F.R 825.602; 29 C.F.R 825.603](#)

8. Health Insurance

During an employee's FMLA leave, the employer must maintain the employee's coverage under any group health plan. The employee may choose whether to retain health coverage during the leave, and if the employee elects to retain coverage must continue to pay the employee's share of the health plan premium.

[29 C.F.R 825.209; 29 C.F.R 825.210](#)

9. Right to Reinstatement

a. General Rule

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when the leave began, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.

[29 C.F.R 825.214; 29 C.F.R 825.216](#)

b. Reinstatement for School Employees.

The reinstatement of school employees to "an equivalent position" will be based on established school board policies and practices that are in writing and made known to the employee before he or she takes FMLA leave. The written policy must clearly explain the employee's rights of restoration.

[29 C.F.R 825.604.](#)

c. Pay Increases and Bonuses.

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. If pay increases occur during the FMLA period that are related to seniority, length of service, or work performed, then the employee is entitled to the pay increase in accordance with the employer's policy or practice with respect to other employees on equivalent leave status.

[29 C.F.R 825.215\(c\).](#)

d. Key Employee Exception

i. Definition. A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

[29 C.F.R 825.217](#)

ii. An employer may deny job restoration to a key employee if restoration will cause a substantial and grievous economic injury to school operations.

FMLA's "substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the American with Disabilities Act.

[29 C.F.R 825.218 and 29 C.F.R 825.218.](#)

10. Recordkeeping Requirements

An employer shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the FLSA and the FMLA regulations. Employers must keep the records for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request.

[29 C.F.R 825.500.](#)

11. Discrimination and Retaliation

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights.

[29 C.F.R 825.220.](#)

B. Military Leave

1. Covered Employers

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) applies to all public and private employers in the United States, regardless of size.

[20 C.F.R 1002.34.](#)

2. Protected Employees

USERRA applies to all employees that leave public or private employment to serve one of the uniformed services, including all managerial, executive, and professional employees. For purposes of federal military leave, "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; individuals attending a military service academy; and any other category of persons designated by the President in time of war or emergency.

[20 C.F.R 1002.6; 20 C.F.R 1002.43; 20 C.F.R 1002.57; 20 C.F.R 1002.58; 20 C.F.R 1002.59; 20 C.F.R 1002.60.](#)

3. Employee Re-employment Rights

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under USERRA if:

- a. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to an employer (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);

[20 C.F.R 1002.85; 20 C.F.R 1002.86](#)

- b. The cumulative length of the absence and of all previous absences from a position of employment with the employer does not exceed five years;

[20 C.F.R 1002.99 et seq.](#)

- c. The person reports to or submits an application for re-employment to the employer and complies with the appropriate procedural requirements that apply under the circumstances; and

[20 C.F.R 1002.115.](#)

- d. The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

[20 C.F.R 1002.32.](#)

4. Exceptions to Employee Re-employment Rights

An employer is not required to re-employ a person if:

- a. The employer's circumstances have so changed as to make reemployment impossible or unreasonable;
- b. The re-employment of such person would impose an undue hardship on the employer; or
- c. The employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

[20 C.F.R 1002.41.](#)

5. Right to the Escalator Position

As a general rule, the employee is entitled to the escalator position, which is re-employment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service.

[20 C.F.R 1002.191.](#)

6. Additional Employee Rights

Under certain circumstances, protected employees are also entitled to non-seniority

rights and benefits, and the opportunity to continue health insurance coverage.
[20 C.F.R 1002.149](#); [20 C.F.R 1002.163](#).

7. Protected Activities

An employer must not deny initial employment, re-employment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

[20 C.F.R 1002.18](#); [20 C.F.R 1002.40](#).

C. Religious Observances

An open-enrollment charter school shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of charter business. Such absence shall be without pay unless applicable paid leave is available.

[42 U.S.C. 2000e\(j\)](#); [2000e-2\(a\)](#).

D. Compliance with Subpoena

An open-enrollment charter school may not discharge, discipline, or penalize, in any manner, an employee who complies with a valid subpoena to appear in civil, criminal, legislative, or administrative proceeding.

[Tex. Labor Code § 52.051\(a\)](#).

E. Reasonable Absence Control

An employer that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced.

Continental Coffee Products Co. v. Cazarez, 937 S.W. 2d 444 (Tex. 1996) (workers' compensation discrimination case); *Texas Division-Tranter, Inc. v. Carrozza*, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case).

600.200. COMPLAINTS BY SCHOOL EMPLOYEES

NOTE: See *TCSA Model Policy Module 300, Section 300.120* for a summary of the *Legal Authority governing complaints and grievances against the charter school or against employees of the charter school.*

A. Right to Report a Crime

An employee of an open-enrollment charter school may report a crime witnessed at school to any peace officer with the authority to investigate. The board of directors may not adopt a policy preventing an employee from reporting a crime or requiring an employee to report the crime to certain persons or peace officers.

[Tex. Educ. Code § 37.148; 84th Leg., R.S. HB 1783](#)