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# Texas charter schools turn 25

In the 1990s, Texas was part of the first wave of states to create a system of publicly funded, privately operated charter schools as an alternative to traditional school districts. Public charter schools now operate in most states and the District of Columbia. Advocates promoted charter schools nationally as a way to close gaps in student achievement through alternative governance, smaller learning communities, and a focus on academics rather than regulatory compliance. The state authorized the first open-enrollment charters in 1996, and they began serving students in 1997.

Over the past 10 years, charter school enrollment in Texas has increased an average of 12 percent annually, according to state enrollment data. Supporters of expanding charter schools say they provide critical public school choice and educational opportunity for families seeking an alternative to underperforming local district schools. Critics of expanding charter schools say they harm traditional school systems by diverting financial resources to new charter schools that often perform at about the same levels as comparable district schools.

In Texas, most charter schools are authorized by the state and operated by nonprofit entities under performance contracts with the Texas Education Agency. These contracts specify the grades and geographic region a charter school may serve, the school's leadership team and curriculum, and its goals for student success. Charter schools are exempt from certain requirements under the Texas Education Code so that they can have more flexibility in staffing and operations. State law caps the number of charters that may be granted but does not limit the total number of campuses that a holder of a charter may operate.

Students may apply to charter schools serving the geographic area where they live and may attend charter schools at no cost. If applications exceed available slots, most schools hold a lottery to determine which students to admit. In the 2020-2021 school year, 184 charter operators ran 835 charter campuses in Texas, mostly in urban areas, according to a TEA report. Those charter schools served about 366,000 students, 6.8 percent of all public school students.

Since the creation of charter schools, the Legislature has revised how they are authorized and held accountable for their academic performance and use of state funds. This report examines the 25-year history of charter schools in Texas and policy proposals related to their growth and operations.

## Legislative history

The 74th Texas Legislature in 1995 enacted Chapter 12 of the Education Code to govern charter schools as part of a comprehensive rewrite of the code. The stated goals of the law are to provide choice in learning opportunities, attract new teachers to the public education system, and encourage innovative learning. Since the initial legislation, statutory revisions have altered how the schools are authorized and expanded and how the state may force the closure of underperforming charters.

**Types of charter schools.** Charter schools are authorized and overseen either by the state or a school district. Texas has four types of charter schools: home-rule school district charters, campus or campus program charters, open-enrollment charters, and university or junior college charters.

*State-authorized.* Most are open-enrollment charter schools authorized by the education commissioner under ch. 12, subch. D to which any student living in the charter school's approved geographic region may apply for admission. Under this law, entities eligible to operate an open-enrollment charter school include nonprofits, institutions of higher education, and governmental entities. Like a school district, a charter operator is identified as a Local Education Agency, or LEA, for state reporting purposes and may operate more than one campus. In the 2020-2021 school year, there were 184 state-authorized charter school operators and 835 state-authorized charter school campuses. The commissioner also authorizes Subchapter E charters, which are operated by public colleges and universities. As of December 2020, there were six such operators of 26 campuses.

*District-authorized.* School district boards of trustees may authorize and oversee campus charter schools under Subchapter C. This law allows school boards to contract with outside entities, including charter operators, nonprofits, and higher education institutions, to operate certain district campuses or programs at specified district campuses. In the 2020-2021 school year, about 62,000 students were enrolled in district-authorized charter schools. The number of district-charter partnerships has increased since the passage of a 2017 law that provides financial and accountability incentives for qualifying partnerships. See "*District-charter partnerships formed under SB 1882*," page 3.

Subchapter B authorizes a traditional school district to convert to a home-rule school district charter. A conversion must be initiated by a vote of two-thirds of a school board or a petition signed by 5 percent of a district's registered voters and later approved by district voters in an election. There currently are no home-rule school district charters, although in 2014 the Dallas ISD considered such a conversion.

**Limits on charters.** When it first authorized the creation of charter schools in 1995, the Texas Legislature capped the number of new open enrollment charters that could be awarded. The Legislature since has increased the cap from the initial 20 to the current cap of 305. Charter applicants specify the number of campuses they initially plan to open and may be eligible to add campuses after three years of operation. The majority of charter schools manage fewer than six campuses. Eleven large charter systems, meaning those that run more than 10 campuses, in 2020 managed a total of 342 campuses serving 157,224 students.

The original 20 charters awarded in 1996 are designated as first-generation charters. Twelve of those remain active. From 1997 to 1999 the State Board of Education (SBOE) approved 41 second-generation charters and 109 third-generation charters. Many charter schools that opened during this period of rapid expansion were later closed by the state for academic or financial reasons. Texas has 23 second-generation and 36 third-generation charters still operating.

In 2001 the 77th Legislature enacted [HB 6](#), which raised the cap on charters to 215. The law subjected charter school governing bodies to state laws on open records and public meetings, public purchasing and contracting, conflicts of interest, nepotism, and immunity from liability. The bill established a procedure for notifying school districts when a proposed charter school was likely to draw from their student body.

**'Three-strikes' law.** Acting to increase oversight of charter schools, the Legislature in 2013 passed [SB 2](#) by Patrick. It changed the charter authorizer from SBOE to the education commissioner. The bill enhanced the commissioner's authority to revoke charters under the so-called "three strikes" provision and revised requirements for reviewing charter applicants and renewing charters. Since 2013, the education commissioner has overseen the closure of 41 charters.

## District-charter partnerships formed under SB 1882

School districts may contract with a charter operator to manage some of their campuses. To encourage such partnerships, the 85th Legislature in 2017 enacted [SB 1882](#) by Menéndez. The law provides financial and accountability benefits to districts that enter such contracts and has led to 116 partnerships.

One type of partnership, known as an innovation partnership, is formed when a district enters into a performance contract with a state-authorized charter operator, other nonprofit, higher education institution, or government entity to open a new campus or restructure an existing campus as an innovation campus. The outside partner must agree in its contract with the district to improve student performance.

Another type is a turnaround partnership, which is formed to turn around the academic performance of a district campus that has been rated F under the A-F accountability system. A turnaround partner must be an open-enrollment charter operator that has been rated academically and financially acceptable for the three preceding school years and has a track record of improving academic performance. Districts that enter into a turnaround partnership may receive a two-year exemption from state accountability sanctions and interventions.

Under either type of partnership, the charter operator determines staffing, expenditures, and academic programs, and the school district monitors the contract. Teachers may remain employed by the district or be employed by the operating partner according to the partnership agreement.

The Texas Education Agency (TEA) does not approve partnerships but must determine if a partnership qualifies for access to SB 1882's financial and accountability benefits. All SB 1882 partnerships are eligible under Education Code [sec. 48.252\(b\)](#) to receive additional state funding if the district's formula funding entitlement is less than the charter school average funding. Since 2018, TEA has recognized benefits for 22 turnaround partnerships, 69 innovation partnerships for existing district campuses, and 25 innovation partnerships for new campuses.

SB 2 also authorized the commissioner to allow high-performing charter operators to expand their operations. The law raised the cap on the number of available charters in annual increments from 215 to 305 by September 2019. Supporters said SB 2 would encourage growth of high-quality charter schools and give the commissioner tools to close low-quality schools. Some criticized the bill for authorizing additional charter schools before the quality control measures were in place.

**Recent legislation.** The Legislature in recent sessions has enacted legislation addressing the disposition of charter school property when a school closes and mandating a common student application form and reporting on waiting lists. Lawmakers also have provided some state funding for charter school facilities. Legislation has been considered but not enacted on issues related to charter school growth, municipal oversight of charter school

locations, student discipline, and limitations on the authority of SBOE to veto the education commissioner's recommendations for new charter operators.

### Charter authorization process

Texas has by statute, administrative rule, and practice implemented a rigorous process for charter applicants. The Texas Education Agency (TEA) ensures that Education Code [sec. 12.1101](#) requirements for notice and public meetings are followed, and the commissioner recommends charter applicants for approval. Members of SBOE participate in TEA reviews and may by a majority vote veto charter applicants selected by the commissioner. Performance contracts between approved charter operators and TEA govern how an operator will carry out its educational mission and use state funds.

*Applying for a charter.* An applicant under Education Code [sec. 12.101](#) to be an open-enrollment charter holder must be organized as a nonprofit under Internal Revenue Code sec. 501(c)(3). Leaders of nonprofits that have been awarded charters include educators, community residents, and professionals from the private and public sectors. Since 2016, TEA annually has received between 21 and 34 applications and has awarded charters to fewer than 14 percent of applicants.

*Notification of charter application.* Applicants must hold a public meeting within the charter school's proposed geographic boundary before submitting the application. They must provide notice by certified mail to school districts and charter schools located in the applicant's proposed geographic boundary. Notice also is provided to members of the Legislature and SBOE who represent the geographic area served by the proposed charter.

*Application review.* TEA accepts applications each January for charter schools that would open in the fall of the following calendar year. Applications typically run several hundred pages to describe the applicant's management structure, educational plan, and academic, operational, and financial performance expectations for their campuses. Applicants include information about how students will be recruited and how student positions will be filled if applications exceed available slots. Applications are [posted](#) on the TEA website.

TEA checks applications for eligibility, completeness, and the absence of plagiarism. Qualified applications are then randomly assigned to external reviewers selected by TEA for their expertise in school finance, school operations, and charter governance. Each application is graded by at least five reviewers on criteria that include the qualifications of those seeking to operate the charter, the strength of the planned curriculum, and how a proposed school's opening could impact existing district and charter school campuses.

Staff from TEA and members of SBOE publicly interview applicants that meet a certain scoring threshold. In recommending approval of an application, the commissioner may consider whether the school will improve student performance, provide innovation, and be fiscally viable, as well as the proposed charter's financial impact on other nearby public schools. Priority must be given to applications that propose a charter school campus in the attendance zone of a district campus assigned an

unacceptable performance rating for the two preceding school years.

SBOE may veto any of the commissioner-selected applicants. In 2020, SBOE approved five new charters and vetoed three. In 2021, SBOE approved three new charters and vetoed four. After SBOE review, approved charter organizations have up to 60 days to address any contingency issues that emerged during the approval process. Potential contingency issues include curriculum alignment, organizational structure, discipline policy, board bylaws, and admissions policies.

**Performance contracts.** Approved charter applicants operate under a written contract signed by the commissioner, the chair of the charter's governing board, and the charter's chief operating officer. The contract has an initial term of five years. Newly approved charter schools must open and serve students within one year, although they may request a one-year extension.

*Management companies.* Charter operators must disclose in their application their plans for contracting with a management company to provide academic or administrative services. At least 30 days before payment of state funds by a charter operator to a management company, the operator must file a copy of each contract for management services and each amendment, renewal, or extension of such a contract for review by TEA legal services. Under [sec. 12.126](#), TEA may prohibit, suspend, or revoke a contract if it finds the management company has failed to comply with the contract, failed to protect student health, safety, or welfare, or violated an administrative rule concerning open-enrollment charter schools. Neither a charter operator nor a charter campus may accept a loan or credit from a management company.

*Contract renewal.* At the end of a charter's initial five-year contract, the commissioner may renew, deny, or allow a charter to expire for poor performance as outlined in [sec. 12.1141](#). Charters that have been assigned the lowest performance rating for any three of the previous five years must be allowed to expire. Charters with a record of high performance for the previous three years are entitled to a 30-day expedited renewal process. Those that do not qualify for the expedited process are considered for possible discretionary renewal. Operators approved for renewal receive 10-year contracts.

*Revocations.* The commissioner under [sec. 12.115](#) must revoke an open-enrollment charter after three consecutive years of unacceptable academic performance ratings, unsatisfactory financial accountability ratings, or a combination of the two. Under other specified conditions, including if the charter operator committed a material violation of the charter, failed to comply with applicable state laws, failed to protect the health, safety or welfare of its students, or failed to satisfy generally accepted accounting standards, the commissioner must revoke a charter or reconstitute its governing body.

When a charter is revoked, surrendered, or expires, [sec. 12.116\(d\)](#) allows the commissioner to assign one or more of the operator's campuses to another qualified, consenting charter holder or provide for management of the day-to-day operations of the affected campuses until alternative arrangements have been made for students.

## Charter school funding

Charter schools receive all of their funding from the state based on the state average funding variables for school districts and state average tax rates.

**Funding.** Charter holders are not authorized to levy local property tax revenue to fund school operations or facilities. They receive all of their funding from the state, including both Tier 1 regular program funding and Tier 2 enrichment program funding, through the Foundation School Program (FSP).

Under Education Code [sec. 12.106](#), a charter's Tier 1 funding is determined by multiplying the number of students in average daily attendance by the applicable program weights and the state average of school district adjusted allotment. Regardless of their enrollment, charter schools receive the funding allotment for small and mid-size districts.

A charter school's Tier 2 funding is calculated based on the state average number of enrichment pennies levied by school districts with taxing authority. The Legislative Budget Board estimated that state aid to charter schools for fiscal 2021 would be \$3.5 billion, about 15 percent of total FSP spending expected during that fiscal year.

The U.S. Department of Education provides funding through grant competitions administered by TEA to create

new charter schools, replicate high-quality charter schools, and help charters find suitable facilities. The most recent grant to charter schools in Texas totaled \$100 million and was awarded in September 2020 for a grant term of five years.

**School facilities.** Locating and financing facilities has been a major issue for charter schools since their inception. Many new schools start out in leased facilities and later obtain funding to build their own campuses.

School districts generally finance their new facilities and upgrades by asking voters to approve borrowing through the issuance of bonds, which may result in higher local property taxes. Charter schools do not have the option to levy taxes and must use their state FSP funding or find other revenue sources to pay for facilities.

Since fiscal 2019, the Legislature has provided a per-student facilities allotment for charter schools rated as having acceptable academic performance, with the total amount of available facilities funding for all charter schools capped at \$60 million per year. The Legislature also has acted to lower the borrowing costs for charter operators that want to own their facilities by providing access to bonds guaranteed by the Permanent School Fund and to facilities-related financing assistance through the Public Finance Authority.

**Property disposition.** Lawmakers in 2019 enacted [SB 1454](#) by Taylor to address the disposition of property and management of assets after a charter school closes. The charter operator has several options for disposing of property purchased with state funds. It may retain the property by reimbursing the state, transfer title to TEA or another public school, or liquidate it and send the proceeds to the state.

TEA may transfer a closed charter school's remaining funds to an entity that is taking over the school's operations or deposit returned state funds into the charter school liquidation fund, which is a fund in the state treasury that exists for that purpose.

**Leased facilities.** Charter schools often operate in leased facilities, and some have sought exemption from property taxes paid to the facility owner as a way to achieve tax parity with other types of public schools. In June 2021, the Texas Supreme Court ruled that a charter school in Galveston was not entitled to a property tax

exemption for property it subleases. The court, in a 6-3 decision in *Odyssey 2020 Academy v. Galveston Central Appraisal District*, said the Texas Constitution “does not authorize an exemption for leased property that is privately owned but deemed public by statute” and that “ownership of leased property determines tax liability and the right to an exemption.”

Before the *Odyssey* ruling, the 87th Legislature in 2021 enacted legislation on property tax exemptions for charter schools. [HB 3610](#) by Gervin-Hawkins exempts from taxation the portion of real property leased to an open-enrollment charter school, school district, or community college district if it is used exclusively to operate the school or perform school functions. The law, effective September 1, 2021, requires the property owner to pass the tax savings on to the charter school tenant. In previous sessions, bills similar to HB 3610 were considered as enabling legislation for a proposed constitutional amendment to exempt property leased to charter schools from property taxes. No such proposals for amendments to the Texas Constitution have been approved by the Legislature.

Supporters of HB 3610 said that the tax savings would provide charter schools with millions of dollars to use in the classroom to directly benefit students and that the bill would put charter schools in line with school districts, private nonprofit schools, and charter schools that own their facilities, all of which are exempt from property taxes. Supporters of HB 3610 said at the time that a constitutional amendment would not be necessary to enact the bill because the Texas Constitution already provides authority to the Legislature to grant a property tax exemption for school property and for political subdivisions using property for public purposes, but that the issue could be addressed later by a constitutional amendment if needed.

Critics of HB 3610 said at the time that the exemption would result in less local tax revenue for school districts and would add to the growing expense of running parallel systems of public district and charter schools. Some said the bill likely could not take effect without a joint resolution amending the Texas Constitution to allow for the property tax exemption.

## Charters grow through expansion amendments

Charter schools with a successful record of operations may seek approval from the education commissioner to open new campuses. This process, known as an “expansion amendment,” has accounted for most new charter campuses opening around the state in recent years. In 2020, the TEA approved 62 of 102 additional site amendment requests.

New charter operators typically start with one or two campuses. Those that demonstrate academic and financial success in their first three years may apply for expansion amendments to open new campuses within 25 miles of an existing campus.

Charter operators also may seek expansion amendments to increase maximum enrollment, serve additional grade levels, or expand the geographic boundaries from which the charter draws students. Charter operators seeking to add sites or expand the boundaries of an existing campus must notify area school districts whose enrollment is likely to be affected.

Authorized by Education Code [sec. 12.114](#), the process for TEA review of charter amendments is established in a lengthy administrative rule, TAC [100.1033](#).

Requests for more campuses are due by March 1 of a calendar year in which the campus would open but may be submitted up to 18 months in advance. A decision by the commissioner of education on an expansion amendment is due within 60 days of the date the request is submitted.

The commissioner may approve an amendment if it meets all applicable requirements and the commissioner determines it is in the best interest of all area students. Before TAC 100.1033 was amended in 2020, the commissioner had to consider only whether the amendment was in the best interest of students enrolled in the specific charter school seeking to expand.

**Limiting expansion amendments.** Legislation filed in the House during the regular session of the 87th Legislature would have limited charter school expansions and required earlier, more detailed information about a proposed expansion, including the zip code where a new campus would be located. Other 2021 proposals would

have required a public comment period for proposed expansions, reports on the likely impact of expansions on nearby public schools, and SBOE approval of expansion amendments. None of the bills were set for a public hearing. During the 86th Legislature in 2019, the House Public Education Committee approved [HB 1730](#) by Y. Davis, which would have prohibited charter operators from expanding to locations in close proximity to another charter school unless the charter school seeking to expand had been operating at maximum enrollment for the preceding two years. That bill died in the House Calendars Committee.

*Supporters of limiting expansion amendments* say that legislative oversight is needed for an administrative process that is rapidly growing the number of charter schools at a significant cost to the state. They say that because charter schools receive all of their funding from the state, each new student in a charter school costs the state more than if that student attended a nearby district school funded in part by local property taxes.

Those who support limits on expansion say the state should concentrate its education spending on existing district and charter campuses in order to maintain the higher funding levels established by the Legislature in 2019 as part of HB 3 by Huberty. School districts lose funding when students leave for a new charter school, they say, but often are unable to lower their expenses for staffing and building maintenance. Supporters say that current law vests too much authority in the appointed education commissioner to approve expansion amendments and that the elected SBOE should weigh in on charter expansions as they do on new charter operators. While recent administrative rule changes improved the expansion review process, supporters say, statutory procedures could ensure consideration was given to the financial impact on nearby public schools.

Those urging limits on expansion say the Legislature should increase transparency and community notification requirements for proposed expansion amendments to ensure fuller consideration of how new charter schools would impact the enrollments of nearby public schools. Earlier and more detailed notification requirements would help districts plan whether to build new schools and how many teachers to hire, they say.

*Critics of limiting the use of expansion amendments* say the amendment process appropriately allows successful

charter operators to serve more students on their waiting lists. They say that the state should continue to support the expansion of high-quality charter schools, some of which have achieved impressive results compared to nearby district schools in reducing achievement gaps for low-income and minority students. Legislation is not needed, they say, because newly revised administrative rules require the commissioner to consider the impact of proposed charter school expansions on all students in the affected district.

Critics of limiting expansion amendments say that charter operators already must notify school districts likely to be impacted by a proposed expansion at least six months in advance, making it unlikely that district officials would be surprised by a new charter school opening. They point out that a specific location for a proposed new charter school might not be available when an expansion amendment is submitted because the charter operator would likely wait for TEA approval before securing a facility for a new campus.

## Municipal ordinances

Issues concerning the location of new charter schools and municipal land use ordinances have prompted proposals to require cities to treat charter schools the same as district schools in zoning and project permitting cases. Education Code [sec. 12.103](#) subjects open-enrollment charter schools in cities of more than 20,000 residents to the municipal zoning ordinances governing public schools, but some say that certain municipalities are adding requirements that can increase costs for charter operators.

A June 2021 non-binding attorney general [opinion](#) (KP-0373) determined that a court would likely conclude that a municipal zoning ordinance that treats charter schools differently from other public schools was inconsistent with sec. 12.103. The opinion also states that a municipality may enforce its “reasonable land development regulations and ordinances” for certain purposes as long as it is not done to effectively deny public schools the right to choose reasonable locations for their buildings. The validity of an ordinance requiring a public school, including an open-enrollment charter school, to obtain a permit or other permission before beginning construction must be evaluated by Texas courts on a case-by-case basis, according to the opinion.

During the regular session of the 87th Legislature, the Senate passed [SB 487](#) by Hughes, which would have required municipalities to consider a charter school to be the same as a school district for purposes of zoning, project permitting, utility services, signage, fees, and other regulations related to land development. The bill would have prohibited a political subdivision from taking any action that prohibited a charter school from operating a public school campus that it could not take against a school district. The bill died on the House floor after a point of order was raised and the House sponsor postponed consideration of the bill until after the end of the legislative session. A similar bill, [HB 1348](#) by Deshotel, also died on the House floor.

*Supporters of legislation requiring cities to treat charter schools the same as district schools for zoning purposes* say action is needed to prevent cities from putting up unnecessary hurdles, including those related to traffic and signage, that could significantly increase facilities costs for charter schools and limit their ability to serve Texas schoolchildren. Charter schools are public schools and should not be forced to spend extra time and money attempting to open new campuses in their chosen locations, supporters say. They say the Legislature should create a level playing field by requiring cities to consider a charter school a school district for purposes of zoning, permitting, code compliance, and development. Such a law would not remove the authority of local officials to review proposed charter school locations, supporters say, but would require those officials to follow the same processes or procedures they use in reviewing school district construction.

*Critics of legislation requiring cities to treat charter schools the same as district schools for zoning purposes* say local permitting processes are necessary to ensure that campuses are placed in safe and appropriate locations. They say local officials and residents are in the best position to know about neighborhoods and traffic patterns, issues that are important when any new school is being opened. Municipal zoning hearings also provide a level of transparency for new charter campuses, which, unlike school districts, are not required to have new school construction approved by elected school board members and construction bond funding approved by district voters, critics say.

## Charter school operations

Charter schools by law operate differently from district schools in the way they admit and discipline students. Charter schools also have different governance structures and requirements for teacher qualifications and pay.

**Student admissions.** An open-enrollment charter holder is limited by its performance contract with TEA to enrolling a certain number of students in its approved grade levels who live within the charter school's approved geographic boundaries. If student applications exceed a charter school's available positions, the charter must follow the steps outlined in its admission and enrollment policy to conduct a lottery for open slots. Although Texas law allows a charter school to fill positions in the order in which they were received if it publishes a notice of the opportunity to apply for admission, eligibility for federal Charter School Program grants requires a school to use a lottery.

Charter schools may not discriminate in their enrollment policy, although a charter specializing in performing arts may require an audition. Once students are selected for the available positions, the charter school begins its enrollment process, which may include requests for student records from a previous school.

*Student demographics.* Data reported to TEA show African American and Hispanic students make up a higher percentage of students at charter schools than they do at public school campuses overall. The combined enrollment of African American and Hispanic students is about 80 percent at charter schools and about 66 percent at public schools overall. The situation is similar with economically disadvantaged students, who make up 71 percent of students at charter schools compared to 60 percent at public schools overall, and English learners, who make up about 29 percent at charter schools compared to about 21 percent at public schools overall. Charter schools serve about 3 percent fewer students designated to receive special education services than do all public schools.

*Waiting lists.* Lawmakers in 2019 enacted [SB 2293](#) by Fallon to require TEA to collect data on waiting lists maintained by charter schools. Since the 2020-2021

school year, the governing body of a charter holder is required annually to report information about each campus it operates, including the number of students enrolled, the enrollment capacity, and the number of students on its waiting list. The first [report](#), released in March 2021, said the total number of individual students reported on waitlists, for charter schools that maintain them, was 55,059 for the 2020-2021 school year.

**Student discipline.** Charter schools have greater statutory authority than districts to deny admission based on a student's history of school discipline and to remove students for violating a school's code of conduct.

*Disciplinary exclusion.* Under Education Code [sec. 12.111\(a\)\(5\)\(A\)](#), a charter school may exclude from admission a student who has a documented history of a criminal offense, a juvenile court adjudication, or school discipline problems. Documented discipline history indicates a student was subject to a disciplinary action that resulted from an Education Code offense and that was documented with an explanation of the offense and reason for the disciplinary action.

Under [sec. 25.001\(d\)\(1\)](#), a school district may exclude a student who engaged in conduct or misbehavior within the preceding year that resulted in his or her removal to a disciplinary alternative education program (DAEP) or expulsion. Districts also are not required to admit a student who is on probation or other criminal release for delinquent conduct or a criminal conviction.

Beginning with the fall 2020 enrollment, charter schools must use a new statewide common admission application that does not request information about a student applicant's disciplinary history, although that information may be requested when enrolling an admitted student.

*Disciplinary removals.* Districts are limited to removing students from class to a DAEP for specified conduct listed in [sec. 37.006](#) and to expelling students for specified serious offenses listed in [sec. 37.007](#). Chapter 37, which governs school discipline, generally does not apply to charter schools. A charter school under [sec. 12.111\(a\)\(5\)\(A\)](#) may remove or expel students for violations of the charter school's code of conduct using the due process procedures outlined in its student conduct code.

The Texas Legislature in recent sessions has considered proposals to change how charter schools handle student

disciplinary issues. The House Public Education Committee in 2021 approved [HB 97](#) by Hinojosa, which died in the House Calendars Committee. The bill would have prohibited a charter school from discriminating in its admissions policy on the basis of a student's discipline history. The bill would have allowed a charter school to exclude from admission students who were currently placed in a disciplinary or juvenile justice alternative education program or under an expulsion order from a school district or charter school. Other bills filed in 2021 also would have more closely aligned charter schools' policies and procedures for suspension and expulsion with those that school districts must follow, but none of those bills advanced during the 87th Legislature.

The House Public Education Committee in 2019 approved [HB 3013](#) by Talarico, which would have prohibited a charter school from expelling a student based on a student's attendance, academic ability or performance, or the acts or omissions of a student's parent or legal guardian. The bill, which died in the House Calendars Committee, also would have prevented a charter school employee from suggesting a student withdraw from the school in lieu of being disciplined under the school's code of conduct.

*Supporters of aligning charter school disciplinary standards with standards for district schools* say that such parity would ensure a more equal and understandable disciplinary system for all public school students. Under current law, charter schools are allowed to make admissions decisions based on a student's history of school discipline, which could include minor infractions, supporters say. They say this makes it less likely that certain students who are disproportionately impacted by school discipline are able to enroll in a charter school. Supporters of revising these standards say that applying the disciplinary exclusion related to charter school enrollment only to students with a documented history of a criminal offense or who are currently in a disciplinary or juvenile justice alternative educational program would be more in line with the enrollment policy for school districts and still protect the safety of charter teachers and students. While the new common application form for charter schools does not request information about a prospective student's disciplinary history, a charter school could request that information and use it to deny or deter a student from enrolling.

Supporters of aligning the disciplinary standards say charter schools may need to retain some flexibility in

their discipline practices but should be prohibited from removing students for non-disciplinary reasons, including academic performance and attendance. In response to those who say charters must take a tougher approach to student discipline issues because they lack alternative education programs for disruptive students, supporters say that charter schools have options to work with other charter operators or school districts to provide such programs.

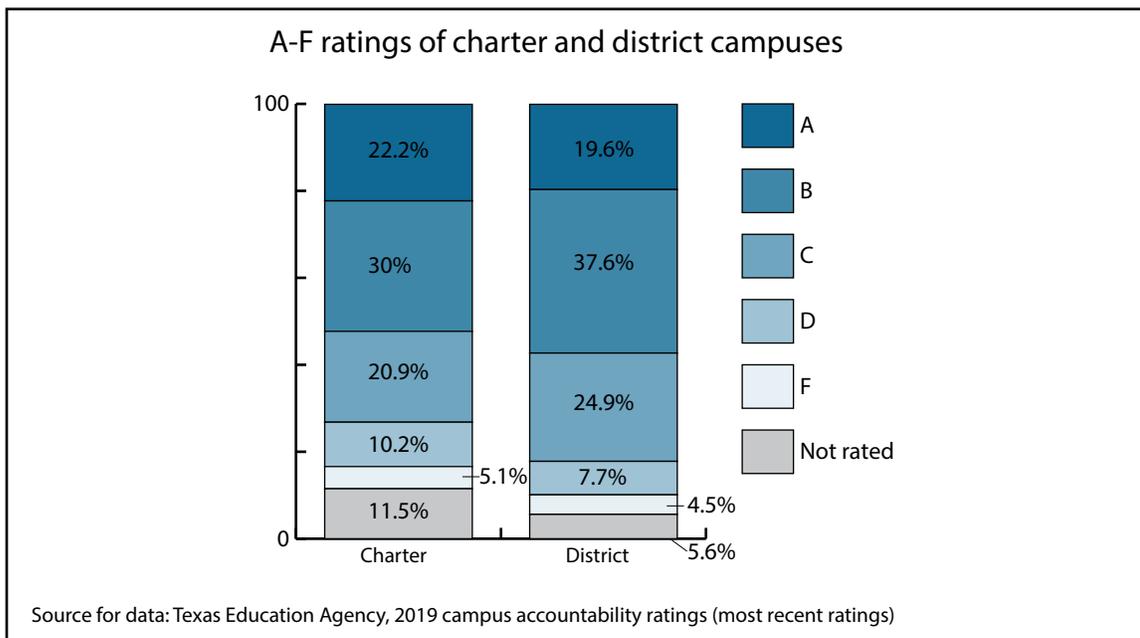
*Critics of aligning charter school disciplinary standards with standards for district schools* say that the different standards for admitting students with disciplinary records and for removing students through suspensions and expulsions are appropriate for charter schools, many of which are small and lack facilities for alternative education programs. Without facilities to isolate disruptive students, charter schools should retain flexibility to address serious discipline problems that could compromise the safety of students and teachers, they say. Charter schools may not be able to access a nearby school district’s disciplinary alternative education program unless the district agrees to accept non-district students, they say.

Critics of revising the standards for charter schools say that some charter schools have used their flexibility to enact their own disciplinary policies to implement restorative discipline practices and, on average, are about half as likely as school districts to assign students to in-school suspensions.

Limiting a charter school’s discretion to ask about a student’s disciplinary history could prompt some students to game the system by enrolling in a charter school to avoid being placed in a school district’s disciplinary alternative education program, critics say. In addition, legislative action is not needed, they say, now that the state has adopted a common charter school application form and has advised charter operators to limit any enrollment exclusion based on discipline history to serious issues.

**Accountability.** The state grades charter schools and district schools under the same academic accountability standards, which rely heavily on the State of Texas Assessments of Academic Readiness (STAAR) exams. TEA annually assigns a financial integrity rating to charters, as it does with district schools, based on various financial metrics, benchmarks, and operating procedures.

The education commissioner also measures the academic, financial, and operational viability of charters through a charter school performance framework that is updated annually. The framework is aligned with the Texas A-F accountability ratings, the charter financial accountability rating system, known as FIRST, and best practices that have been identified by the National Association of Charter School Authorizers. The commissioner uses the performance framework in determining whether charter holders are eligible for expansion and making decisions related to renewal, non-renewal, and revocation.



The 2019 academic accountability ratings, the most recent available due to the COVID-19 pandemic, show that 73 percent of charter schools were rated A, B, or C and 82 percent of district schools received those ratings. About 15 percent of charter campuses were rated D or F, compared to about 12 percent of district campuses. For charter schools, 11.5 percent of campuses were not rated, compared to 5.6 percent of district campuses. *See chart on page 10.*

*Specialized charters.* Some charters serve special student populations, such as those in residential treatment centers or adults who had dropped out of school and are seeking to complete their high school diplomas. Most specialized charters are rated under an alternative accountability system.

**Governance.** Charter schools are governed by appointed boards of directors as outlined in the charter operator's state performance contract. Under Education Code [sec. 12.121](#), the boards are responsible for the management, operations, and accountability of the charter school, and may delegate some duties to an outside management company. Like elected school district trustees, charter governing board members must complete training on school law, school finance, student health and safety requirements, and public records and open meetings laws.

Charter school board members are not paid. Under [sec. 12.121](#), a person may not serve as a member of a governing body or as an officer or employee of a charter school if that person has a substantial interest in a management company that has a contract for management services with the charter holder or a charter school. Board members must publicly disclose substantial business and property interests that would be affected by a board vote and abstain from such a vote. Individuals with certain criminal convictions may not serve on a board.

**Teachers.** Since 2013, charter teachers and principals have been required to hold a bachelor's degree. Most charter school teachers do not have to be certified by the State Board for Educator Certification, but special education and bilingual education/ESL teachers must hold the relevant state certification.

Charter employers are not subject to the state minimum salary schedule for teachers and are free to set their own salaries for professional employees. Charters

are exempt from the state law requiring each classroom teacher to have a lesson-planning period of at least 450 minutes within each two-week period. Charter schools are not subject to student-teacher ratios under the Education Code, such as the 22 to 1 class size limit for students in kindergarten through fourth grade. Charter school teachers are members of the Teacher Retirement System of Texas. Until 2019, the state and district contributions to the pension fund on behalf of charter employees were paid by the state. The Legislature in 2019 required charter schools, like school districts, to pay a portion of a teacher's salary to the retirement system.

The 87th Legislature this year removed a requirement that a teacher be certified in order to be designated as a master, exemplary, or recognized teacher for purposes of a local-option teacher designation system. The designations allow these teachers to be eligible for an incentive funding program that pays salary allotments ranging from \$3,000 to \$32,000 each year, with the higher funding amounts available for teachers at rural campuses and high-poverty campuses.

— Janet Elliott

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