

ISSUE PAPER



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Public School Choice

“School Choice” is a term used to describe a wide array of programs aimed at giving parents the option to choose the schools their children will attend at taxpayer expense. State and federal laws already give Texas students choices among public schools. Students in Texas may choose to attend a public school outside of their attendance zone by: exercising inter- and intra-district transfer options, attending a magnet school or program, or enrolling in a charter school.

School Choice Options *Currently Available* in Texas

Intra-District Transfers: Texas school boards may adopt intra-district transfer policies that allow students to transfer between schools within the same district.¹ Nearly all of the approximately **475 multi-campus** districts in Texas have adopted intra-district transfer policies. Many multi-campus districts by policy or practice also provide an “open enrollment” period during the school year when students may enroll in any school within their resident district on a “space available” basis.

Inter-District Transfers: Additionally, approximately **1000 districts** have adopted inter-district transfer policies, allowing a student to transfer to another school district.

Special Circumstance Inter- and Intra-District Transfers:

- A student who was the victim of “bullying,”² a violent crime,³ or a sexual assault by another student⁴ has the right to transfer to another class or school in the same district or in another district.
- A student who resides in the same household as a student with disabilities who has been assigned to a campus other than the student’s resident campus for special education services has the right to transfer to the same campus as the special education student.⁵
- Parents may request the transfer of multiple birth siblings to the same or separate classrooms on the same campus.⁶
- Students attending a “low-performing” school are eligible to attend a higher performing school in the same district or in another district under *the Public Education Grant (PEG)* program. A district

¹ Texas Education Code (TEC) §25.031.

² TEC §25.0341.

³ No Child Left Behind Act of 2001, 20 U.S.C. 7912.

⁴ TEC §25.0341.

⁵ TEC §25.0343.

⁶ TEC §25.043.

is not required to accept a PEG transfer student, but may not discriminate against PEG applicants for impermissible reasons.⁷

- Similarly, the federal *No Child Left Behind Act* (NCLB) provides that a student in a school that does not make Adequate Yearly Progress (AYP) for two consecutive years is eligible to transfer to a higher performing school in the same district or in another district. The school district of origin must provide or pay for transportation for the NCLB transfer students.⁸
- Students who attend a “persistently dangerous” school are also entitled to transfer under NCLB.⁹

Magnet Schools: Magnet schools and magnet programs are another school choice option available in Texas. School boards may approve the creation of a magnet school/program in the district.¹⁰ Magnet schools generally have a particular pedagogical focus, like art or technology, or follow a different structural organization, such as a Montessori magnet school. Magnet schools enroll students from throughout a school district through an application process.

Charter Schools: Charter schools are publicly funded schools that are subject to fewer state regulations than traditional public and magnet schools. In 1995, the Texas Legislature authorized the formation of campus and program charters, open-enrollment charters and home-rule school districts. Each is described below.

- **Home-Rule School District Charter:** Texas’ charter school law includes provisions that permit an entire school district to convert to a home-rule school district via a charter. A home-rule school district charter may be adopted if approved by a majority vote in an election in which at least 25 percent of the district’s registered voters participate.¹¹ No Texas district has sought home-rule conversion. (*See also TASB’s issue brief, “Home Rule School Districts”*)
- **Campus Charter Schools and Charter Programs:** School districts or home-rule school districts may operate their own charter schools or charter programs by converting an existing campus or by creating an entirely new charter campus.
 - **Governance:** In the case of campus or program charters, the charter is a contract between the school board and the charter applicants specifying, among other things, the campus’ educational program, the governing structure and the conditions under which the charter may be revoked.¹² Campus charter schools and programs are exempt from many state regulations, including state teacher certification and contract laws, instructional time mandates, and academic program requirements.¹³ Additionally, the school board may exempt a campus or program charter from board policies and district regulations. But, campus charter schools and programs remain the legal responsibility of the school board and are funded like traditional school district campuses.¹⁴
 - **Conversion Process:** In order for a district to convert an existing campus into a charter campus, a majority of the school’s teachers and the parents of a majority of students attending the school must sign a petition requesting conversion. Notably, the petition does not require the principal’s signature, nor does conversion require the principal’s

⁷ TEC §29.201-29.203.

⁸ NCLB, Title I, §1116(b)(E).

⁹ NCLB, Title IX, §9532.

¹⁰ 19 TAC 74.27.

¹¹ TEC §§12.021-12.022.

¹² TEC §12.059.

¹³ TEC §12.056-12.057.

¹⁴ TEC §12.057-12.059.

approval. The petition must be presented to the school board, which may not arbitrarily deny the request.¹⁵

- **Staffing:** If a district chooses to open an entirely new charter campus within the district's boundaries, the school may be operated by district staff or by an external entity that provides educational services. The campus charter may be housed in district facilities or at another facility located within the district. However, teachers and students must expressly agree to be assigned to the charter school.¹⁶
- **Program Charters:** Program charters are independent educational programs that operate within a larger school (i.e., a school within a school). The school board creates its own charter application requirements and oversees the authorization process. During the 2012-13 school year, 74 campus charter schools operated in 15 Texas districts; however, 45 percent of them were located in the Houston Independent School District.
- **Open-Enrollment Charter Schools:** Open-enrollment charter schools are new public schools created by "eligible entities," such as nonprofit organizations, institutions of higher learning and local government groups.¹⁷ Open-enrollment charters are authorized by the State Board of Education (SBOE) and are valid for the amount of time specified in the charter approved by the SBOE.¹⁸
 - **Governance:** Open-enrollment charter schools are governed by a board of directors or board of trustees in accordance with the governance structure specified in the charter.¹⁹ The governing board retains legal responsibility for the management, operation and accountability of the school²⁰ and is permitted to contract for school management and instructional services from for-profit educational vendors.²¹ Charter holders may operate multiple charter campuses under the same charter if the expansion is approved by the commissioner of education.²² Some Texas charter schools operate multiple campuses in a particular city or region of the state, while others operate statewide networks of charter campuses. Initially, the number of open-enrollment charter schools was limited to 20, but the Texas Legislature increased the cap to 100 in 1997 and to 215 in 2001.²³ University and community college charter schools do not count against the cap on the number of open enrollment charters.²⁴ During the 2012-13 school year, 207 open-enrollment charter holders operated 561 open-enrollment charter campuses in the state.
 - **Management:** Open-enrollment charter schools may enroll students from an area defined in the contract as approved by the SBOE. Operators must provide transportation to the same extent as school districts and cannot charge tuition, but they may charge fees.²⁵ Over time, the Texas Legislature and the Texas Education Agency have increased state regulation of open-enrollment charter schools,²⁶ which now are subject to the same

¹⁵ TEC §§12.051-12.065.

¹⁶ TEC §12.0521.

¹⁷ TEC §12.101.

¹⁸ TEC §12.111.

¹⁹ TEC §§12.101-.102.

²⁰ TEC §12.121.

²¹ TEC §12.125.

²² 19 TAC Chapter 100.

²³ TEC §12.101.

²⁴ TEC §12.156.

²⁵ TEC §12.108-12.1101.

²⁶ From 1996 to August 31, 2012, 47 charters were voluntarily surrendered, 21 surrendered after enforcement, and 27 were revoked or non-renewed.

academic and financial accountability provisions applicable to school districts, though fewer indicators typically apply to charter schools because of their smaller size.

- **Funding:** Open-enrollment charter schools do not have the authority to impose taxes.²⁷ They receive maintenance and operations funding from the state based on the statewide average maintenance and operations expenditure for school districts. Charter schools are eligible for state facilities funding through the New Instructional Facilities Allotment program, the Foundation School Credit Enhancement program, and the Permanent School Fund Bond Guarantee program. They are also eligible for federal funding, including federal start-up grants, special education funding and Title 1 funding for disadvantaged students.
- **College or University Charter Schools:** In 2001, the Texas Legislature authorized the creation of university charter schools. A university charter school is an open-enrollment charter school operating on a university campus or in the same county in which a university campus is located.²⁸ In 2009, the legislature similarly authorized community colleges to operate open-enrollment charter schools. College or university charters are largely subject to the same laws as open-enrollment charter schools but must be supervised by a university/college faculty member with expertise in educational matters. Additionally, the charter school's financial operations must be overseen by the college or university business office.²⁹ Like open-enrollment charters, college and university charter schools are able to operate multiple campuses. Three universities operated 19 charter school campuses during the 2012-13 school year.

(See *also* Appendix _ comparing performance data of traditional schools and open-enrollment charter schools)

83rd Legislative Session

As in recent sessions, the 83rd Legislature will likely consider legislation regarding the expansion, accountability and funding for facilities of open-enrollment charter schools.

²⁷ TEC §12.102.

²⁸ TEC §12.152.

²⁹ TEC §12.154.