



Testimony

SB 28

Clarifying Municipal Ordinances and State Approvals of Open-Enrollment Charter Schools

Invited Testimony Before the Texas Senate Education Committee

by Emily Sass, Policy Director, Next Generation Texas

Chairman Taylor and Members:

Charter schools, established in Texas in 1995, compose a small but influential sector of Texas public education. Now in existence over 25 years, open-enrollment charter schools [served approximately 336,900 students](#) (or roughly 6% of Texas public education students) in 2019-20. Tens of thousands of students [are on charter school waitlists](#) across the state, according to early state reports.

Charter schools were established, among other reasons, to improve student learning and increase the availability of choices within the public education system (see [Tex. Educ. Code §12.001\(a\)](#)). The charter sector has answered these purposes with a preponderance of charter schools [performing at a high accountability level](#)—though charters serve only 6% of Texas students, they compose [20% of A-rated districts](#) in the state—all while [serving a more disadvantaged student body](#) and [closing persistent achievement gaps](#).

Charter schools have been found to operate [more efficiently](#) than their traditional counterparts and are associated with [increased academic performance](#) in [surrounding schools](#). In fact, the closer the charter is located, the [greater the increase](#) in performance of the nearby traditional public schools. They have offered new alternatives to students across the state and developed respected new learning models in areas such as [STEM](#), [classical](#), [college prep](#), [dropout recovery](#), and more.

There are several categories of charter schools in Texas, the most-discussed and most-prevalent type being open-enrollment charter schools. Open-enrollment charter schools operate under a state-imposed cap: As of 2019, the [Texas Education Code](#) stipulates that 305 charters may be under operation in the state. Based on the most recent [PEIMS data](#) (2019-20), 180 charters were operating in Texas, approximately 60% of the total charters allowed by law.

For each open-enrollment charter ultimately awarded, a new **local education agency (LEA)** is created by the state of Texas. This is the same formal designation that applies to independent school districts. TEA undertakes a new set of regulatory, auditing, data collection, performance monitoring, governance, and accountability responsibilities for each additional LEA.

Charter schools [undergo a rigorous process](#) to obtain initial authorization to operate in Texas, involving hundreds of pages of application material; a technical review; an external review; an internal agency review; an in-depth interview before the commissioner of education, TEA staff, and State Board of Education (SBOE) members; and a potential SBOE vote to reject a charter even after the commissioner has declared a decision to approve it.

However, receiving a charter or permission to expand services means little if the operator cannot open its doors. Charter operators across the state have reported new barriers to their operation—obstruction from municipal administrations. This has in some cases forced charters to give up plans for an intended campus, move to another site, or delay adding grades or opening new campuses for a school year. Indeed, some ISD officials have encouraged this behavior by calling for cities to [enact moratoria on charters within their jurisdictions](#) or [protesting publicly](#) against their existence.

Open-enrollment charter schools are approved and authorized by the state, both in their initial authorization and in any subsequent [plans to expand](#). Municipalities, also creations of the state, have no role in this process. In fact, current Texas code states that charters are subject to “[municipal zoning ordinances governing public schools](#).” This does not always comport, however, with recorded and reported animosity toward public charter schools as they seek to offer public education services within their approved service areas. Additional clarity from the state would help restore a proper balance of powers between state authorization and municipal administrative function.

[SB 28](#) would provide that clarity by expanding the applicable language in the Education Code, stipulating that cities cannot adopt policies intended to prevent charter districts from operating on equal terms with other districts, and adding charter school terminology to the applicable sections of the Local Government Code. Notably, it calls for no special treatment or favoritism; it merely establishes equal treatment of Texas public schools.

It also significantly improves the Texas charter school application process. As noted, the charter application process is extensive and rigorous. SB 28 would give the State Board of Education the ability to consider appeals from select charter applicants following consideration by an independent review board, instead of an isolated veto at the end of the process. This provides an additional layer of consideration in the independent review process and involves the SBOE more constructively in the charter approval process. *The Foundation supports this bill as a key measure to continue parity of treatment of charter schools by Texas municipalities and improve the charter school approval process.* ★

ABOUT THE AUTHORS



Emily Sass is the policy director for Next Generation Texas at the Texas Public Policy Foundation. Emily has researched education policy topics such as school finance, teacher compensation, expanded family opportunities, and virtual education. She has served on legislative taskforces regarding education mandate relief and teacher professional development.

Before coming to the Foundation, Emily served on Sen. Ted Cruz’s state staff as deputy regional director for North Texas, functioning as the senator’s liaison on all policy topics to a 14-county region. She has worked as staff in the Texas House of Representatives and on multiple campaigns.

Emily holds a BA in music from Thomas Edison State University and a certificate in education finance from Georgetown University. She is a trained classical musician and a former teacher.

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