Generation 18 Applicant Information Session

Selected Legal Issues

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Topics

- Governance
- Applicable Laws & Regulations
- Admission & Enrollment Issues
- Q & A

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Governance Topics

- Entities Eligible to Hold Charters
- Open Government Laws
- Nonsectarian Requirement
- Restrictions on Who May Serve

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Eligible Entities

- Governmental entity
- Institution of higher education
- Nonprofit corporation exempt from taxation under Internal Revenue Code section 501(c)(3)*

*Must have final IRS determination

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Texas Non Profit Corporation Act

- Charter holders that are Texas non profit corporations must remember to comply with the requirements of the TNPCA.
- Under the TNPCA, the number of directors of a corporation shall be not less than three (3).
- Questions regarding non profit corporations should be directed to the Texas Secretary of State's Corporations Division.
- Tip: Check to make sure that you are in good standing with the Texas Secretary of State and the IRS.

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IRS 501(c)(3) Exemption Status

- An automatic revocation is effective on the original filing due date of the third annual return or notice.
- The law does not give IRS authority to undo an automatic revocation and there is no appeal process.
- An automatically revoked organization must apply to have its status reinstated, even if the organization was not originally required to file an application for exemption.

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For More Information

- www.irs.gov/eo
  - Charities/Non-Profit page
- Frequently Asked Questions (FAQs) – Automatic Revocations
- Fact Sheet – Annual Form 990 Requirements for Tax-Exempt Organizations (PDF)

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Texas Open Meetings Act
Texas Government Code Chapter 551

- TOMA requires that when a quorum of a governing body discusses public business, written notice of the time, place, and subject of the meeting be posted for at least 72 hours at a place convenient to the public at the central administrative office. The Act applies to both charter holder boards and charter school boards.

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Texas Open Meetings Act
Texas Government Code Chapter 551

- The Attorney General's answers to FAQs may be found at:
  - http://www.oag.state.tx.us/open/og_faqs.shtml.
- The 2012 Open Meetings Handbook is available at:
  - http://www.oag.state.tx.us/AG_Publications/pdfs/openmeeting_hb.pdf.

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Nonsectarian Nature

- Like other public schools, charter schools must be nonsectarian in all respects:
  - Admission of students
  - Hiring of employees
  - Instruction

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Why must charter schools be nonsectarian?

- The Establishment Clause in the U.S. Constitution states that: “Congress shall make no law respecting an establishment of religion...”
- Article I, § 7 of the Texas Constitution states that: “No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.”

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Explanation

- Texas law restricts state agencies from awarding public funds to a religious organization. Accordingly, religious organizations may not apply for a charter but are required to establish a separate nonsectarian 501(c)(3) organization to apply.

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Restrictions on Who May Serve on the Charter Holder's Board

- Nepotism
- Conflict of Interest
- Criminal History

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Nepotism Restriction

- General Rule: A public official cannot hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual if the individual is related to the public official within the third degree of consanguinity (by blood) or affinity (by marriage).
- Two or more relatives within the third degree cannot serve together on the governing body.
- A board member's relative within the third degree cannot be employed by the charter holder or charter school.

19 TAC § 100.1111-100.1116

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Relatives within the Third Degree
A public official's or his/her spouse's:

- Spouse
- Child
- Parent
- Grandparent
- Great-grandparent
- Grandchild
- Great-grandchild
- Sibling
- Aunt/Uncle
- Niece/Nephew

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Exception

If each charter school operated by a charter holder has received a satisfactory rating, as defined by 19 TAC § 100.1022(b)(2)(B), for at least two of the preceding three school years, then that charter holder is exempt from the general nepotism rule. However, there cannot be a quorum (majority) of relatives on the governing body or on any committee of the charter holder or charter school.

19 TAC § 100.1111

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Request

Applicants should not contact the agency regarding conflict of interest issues. Agency staff cannot provide an applicant with individualized advice regarding the applicant's governance structure. If an applicant is ultimately awarded a charter, agency staff will advise the applicant of any conflict of interest issues that must be resolved.

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Conflict of Interest Restriction

- General Rule: Members of the charter holder board cannot receive compensation or remuneration from the charter holder or the charter school (i.e., an individual cannot serve on the board and be an employee).

19 TAC § 100.1131

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Exception

- If each charter school operated by a charter holder has received a satisfactory rating, as defined by 19 TAC § 100.1022(b)(2)(B), for at least two of the preceding three school years, then charter school employees may serve on the governing body of the charter holder.
- However, the governing body or any committee may not be comprised of a quorum (majority) of charter school employees.

19 TAC § 100.1131

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Request

Applicants should not contact the agency regarding nepotism issues. Agency staff cannot provide an applicant with individualized advice regarding the applicant's governance structure. If an applicant is ultimately awarded a charter, agency staff will advise the applicant of any nepotism issues that must be resolved.

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Substantial Interest in Management Company

- A person cannot serve on the governing body of a charter holder or charter school or as an officer or employee if the person has a substantial interest in a management company that has a contract for management services with the charter holder or charter school.

19 TAC § 100.1153

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Criminal History Restriction

A person cannot serve as a board member, employee, or officer if the person has been <u>convicted</u> of:

- a misdemeanor involving moral turpitude
- a felony
- any offense listed in TEC § 37.007(a) (i.e., offenses for which an ISD student must be expelled)
- any offense listed in the Code of Criminal Procedure Art. 62.001(5)(i.e., primarily sex crimes)

19 TAC § 100.1151

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Note

- The application coversheet requires the CEO of the sponsoring entity to certify that no one has been convicted of a misdemeanor involving moral turpitude or any felony. The affidavit form also contains a question regarding criminal history.
- Questions regarding whether a misdemeanor offense is a “crime of moral turpitude” must be directed to the charter holder’s private attorney, not TEA.

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Note (continued)

- Criminal history checks must be conducted before the person begins service and every year thereafter. The checks must be obtained from the Texas Dept. of Public Safety (DPS).
- How long ago the conviction occurred is irrelevant.
- Whether the person will have contact with students is irrelevant.

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Roles and Responsibilities of Governing Bodies

- Certain powers and duties must be exercised by the governing body of the charter holder itself and not delegated to any other body or individual.

19 TAC § 100.1033(c)(6)(C)

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Non-Delegable Duties

- Final authority to hear or decide certain grievances;
- Final authority to adopt or amend the budget;
- Final authority to direct the disposition or safekeeping of public records;

19 TAC § 100.1033(c)(6)(C)

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Non-Delegable Duties (continued)

- Final authority to adopt policies governing charter school operations;
- Final authority to approve audit reports under TEC § 44.008(d);
- Initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the CEO.

19 TAC § 100.1033(c)(6)(C)

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Governance Issues in the RFA

- Statement regarding bankruptcy history (p. 30).
- Include an affidavit for each board member and make sure information is correct.
- Requirement that a secondary board be established if a majority of board members are not local.
- Do not answer questions regarding school board if you only have one board .

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Applicable Laws and Regulations

- Texas Education Code Chapter 12
- 19 Texas Administrative Code Chapter 100

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Requirements Applicable to ISDs and Charter Schools

- Special Education
- Bilingual Education and ESL
- PEIMS
- TEKS
- TAKS/STAAR
- Graduation Requirements
- Open Government Laws
- Pre-K
- Health and Safety - TEC Chapter 38

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Areas of Difference Between ISDs and Charter Schools

- Student/Teacher Ratio and Class Size
- Teacher Certification Requirements
- Chapter 21
- Chapter 37-except 37.015 & 37.022 apply
- School Calendar
- Admissions

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Admission
and
Enrollment Issues

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Admission Process

- When student is initially seeking to be admitted to school. The admissions application must only request basic information (e.g., name, age, address, parent information). The school may request information regarding an applicant's documented history of past discipline problems as permitted by TEC § 12.111(a)(6).

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Enrollment Process

- When the student has been offered admission and is registering. At this stage, information regarding past academic achievement, medical history, etc. may be requested.

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Admissions Policies

- All students residing within the designated geographic area who meet lawful criteria must be eligible for admission.
- Admissions policy must prohibit discrimination on the basis of sex, national origin, ethnicity, religion, disability, academic ability, artistic ability, athletic ability, or the district the student would otherwise attend.
  TEC § 12.111(a)(6).
- Texas law permits charter schools specializing in performing arts to admit students based on artistic ability and audition.
- Federal law and the non-regulatory guidance requires charter schools receiving federal funds to use a lottery when a school is oversubscribed.

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Elements in Admissions Policy

- A set application period (beginning and ending dates).
- The nondiscrimination statement in TEC § 12.111(a)(6).
- If you exclude students with documented histories of discipline problems under TEC § 12.111(a)(6), the admissions policy in your charter application must state so.
- How your application process and lottery process will work, including whether any students are excluded from the lottery.

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Enrollment Records

- Schools may not prohibit students from enrolling pending receipt of records from the prior school.
  19 TAC § 74.26(a)(1)
- Federal law requires a school to enroll a homeless student immediately even if the student is unable to produce records normally required.

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Enrollment Records (continued)

- The failure of a prior school or the person enrolling the student to provide identification or records does not constitute grounds for refusing to admit the student. However, if identifying records are not furnished within 30 days, TEC § 25.002(c) requires the school to notify law enforcement and request a determination of whether the student has been reported as missing.

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