



Regulatory Issues Raised by Texas Charter Schools

1. Adjust the Common Enrollment Application

Issue: TEA implemented the charter student admission application form without seeking input from charter schools and it does not reflect the diversity of charter school needs.

TPCSA Proposal: TEA revises the application based on input from the charter community to make the form more effective for charter schools. In particular, schools would like to see the social security field removed. A new field also needs to be added to allow families to select what session they are choosing (for schools that do an AM and PM session) or if they want to be online only, etc.

Questions for TEA: Which schools or charter leaders provided input or feedback for the application? If it's determined the agency did not seek a good faith effort for input before implementation, would the agency be willing to reach a compromise revision for the 2021-2022 school year? Why did the agency not follow the typical rule-making process?

2. Temporarily Loosen Restrictions on Number of Days Cash on Hand Required under FIRST

Issue: In response to COVID-19, charter schools need more flexibility on the required number of day's cash on hand to deal with unexpected expenses.

TPCSA Proposal: Loosen the required number of days for cash on hand from 45 days to 30 days in order to deal with unexpected COVID-19 expenses. Adjust FIRST requirements and scoring accordingly.

3. Make Temporary Adjustments to the Charter Renewal and Expansion Process

Issue: TEA relies heavily on previous school year accountability ratings to determine if charters can renew and expand. Schools received a "Not Rated" for the 2019-20 school year and it looks increasingly likely that school ratings will be suspended for the current school year. Not having ratings for two school years is challenging for charters who may not have met the 90% threshold in 2018-19 or new schools that only had untested grades (so 20-21 was slated to be their first year with tested grades).

TPCSA Proposal: TEA and TPCSA should form a small group task force to determine how renewal and expansion decisions will be made without accountability ratings. TEA should not make this decision in a vacuum without input from the charter community. TPCSA supports including a representative from NACSA in the task force. TPCSA is happy to host and facilitate the task force meetings to alleviate workload concerns for Charter Division staff.

4. Consider Campuses with Only Untested Grades to Count as a Pass, Not an F for the 90% Rule

Issue: Currently, campuses that have only untested grades are considered an F when TEA is calculating the percentage of campuses with an A, B, or C rating for purposes of expansion. Many charters phase in grades over time, so for the first couple of years that a campus is operating there may be no students in tested grades. This unnecessarily punishes charters with this phase-in approach and can prevent a good charter network from growing to serve more students.

TPCSA Proposal: Rate these campuses as a “Pass” or remove them from the campuses used to calculate the 90% threshold.

Questions for TEA: (1) If TEA is unwilling to rate campuses as a “Pass,” would TEA be willing to count them as “Not Rated?” (2) If TEA pairs these campuses with another campus to receive a rating, what is the process and how does TEA determine which campus to pair them with? (3) Is this in rule or an internal policy TEA adopted for these particular campuses?

5. Clarify the Clock on the Expansion Amendment Approval Window

Issue: Schools are waiting far past the designated 60-day approval requirement for expansion and amendment requests. TEA staff will often submit a list of questions to schools in the last few days of the 60-day approval window and staff has interpreted the rule to allow them to restart the 60-day window from the time a school responds to questions raised. As a result, schools are often not receiving approval for more than 120 days.

TPCSA Proposal: Adjust the process so that TEA staff questions are given to schools by day 45. Require approval or denial by day 30 after a school responds to all questions.

6. Create a Longer Expansion Request Window

Issue: The current expansion request window schools have is too short. Schools are applying for permission to open new schools six months before a school could open. While most schools are deferring their approvals for an additional year, this 18-month window is often still not adequate time to get financing, buy land, get zoning/permitting approval, and build a building.

ISDs have also complained that this time horizon is too short for them to plan for the potential loss of students.

TPCSA Proposal: (1) Allow schools to apply for approval of a new campus two full school years in advance with ability to defer for another school year; or (2) Make 18 months the standard approval window for a new campus with the ability to defer for an additional six months. Set the expansion request calendar appropriately so that schools have approval for the full window (i.e., back the cycle up so that the deadline for approval is at least 18 months before a campus would open).

7. Do Not Impose Geographic Restrictions on Expansion

Issue: TEA staff has indicated an interest in limiting which type of charters can locate inside the boundaries of which districts, or where inside districts can locate. TEA has no statutory authority to micromanage the geographic location of charter schools if they meet the statutory criteria for expansion approval. Furthermore, TPCSA data analysis shows that inside A and B-rated ISDs the achievement gaps between non-white and white students and low-income and non-low income students are significant and persistent. Families assigned to A and B-rated ISDs need options.

TPCSA Proposal: Do not self-impose any geographic restrictions on where charters can locate if they meet the criteria for expansion approval.

8. Address Expansions for Networks with Multi-Year F-Rated Campuses

Issue: Our largest charter networks can meet the TEA-imposed expansion permission threshold of 90% of campuses being high-performing while also having a F-rated campus for multiple school years. TEA staff would like to prevent networks from expanding when they have a multi-year F-rated campus, even if they meet the 90% threshold.

TPCSA Proposal: TPCSA agrees that a network, regardless of the ability to meet the 90% threshold, should not expand if the same campus is rated F for three consecutive school years. Years when the campus is not rated, or has no tested grades, or when the campus is D-rated, should not count toward this three-year threshold. The restriction should only be based on years when the campus is legitimately rated an F.

9. Adjust Dual Language Program Funding Interpretation of HB 3

Issue: HB 3 offered a slight funding increase for schools offering dual-language programs. TEA staff has interpreted the statute to require all teachers in these dual-language programs to be

certified in order for a school to qualify for this funding, even though that is not required under the statute.

TPCSA Proposal: Because statute does not require teachers to be certified to qualify for the funding, TEA should adjust its interpretation. TEA could ensure that schools are truly offering a dual-language program by requiring TEA approval to qualify for the funding. This approval could be given by TEA staff visiting the school and reviewing program materials, pedagogy, and design. TPCSA would be glad to work with TEA on what standards could be used to evaluate a program for fidelity to the intent of the law.

10. Adjust Bilingual Instruction Requirements

Issue: Some parents want schools to provide full English immersion for their EL children. Indeed, some of the state's top performing EL students are at charters operating on waivers from the bilingual requirement. Additionally, schools (ISD and charter) are having a difficult time finding certified bilingual teachers.

TPCSA Proposal: Create a "permanent waiver" option for schools (ISD or charter) that wish to provide English-only instruction for EL students. Establish a working group with TPCSA and civil rights groups to determine equity and quality guardrails to ensure EL students are learning. Eliminate the certification requirement for bilingual teachers.

11. Offer NIFA Funding Flexibility

Issue: There are certain requirements that make it difficult for charter schools to apply for and receive NIFA funding, which further exacerbates the facilities funding disparity for charters.

TPCSA Proposal: (1) Allow NIFA dollars to be used to retrofit existing facilities for COVID-19 related expenses; (2) Allow funding to cover remodeling and other improvement projects versus solely new construction; (3) Eliminate the lease-length requirement because the length of the lease has no bearing on the materials being used.

12. Begin Related Party Transaction Rulemaking per SB 1454

Issue: In 2019, the Legislature passed SB 1454 which further restricts charter holder's ability to contract with related parties. Charters are eager to comply with the spirit and letter of the law and are still waiting on rules from the agency.

TPCSA proposal: Because these rules impact charters only, TEA should conduct information gathering sessions with charter school leaders and attorneys before developing draft rules. TPCSA requests that Charter Division staff conduct at least two listening sessions with the

charter community and that TPCSA is notified in advance of the sessions so that we can ensure a variety of voices are included in the sessions and that the participants are not hand-picked by TEA staff.

13. Address CSP Grant Delays for Newly Awarded Charters

Issue: The CSP grant process for newly awarded charters has become problematic. Generation 24 charters went their entire planning year without CSP funds. Attempts to work within the agency to expedite the process were unsuccessful.

TPCSA Proposal: We understand Associate Commissioner Siedlecki has proposed making the CSP grant award process a seamless part of final SBOE approval for a new charter. We strongly support this change and would like to see TEA rulemaking adjusted quickly so that it is in place for Gen 26 charters.

Questions for TEA: What is the planned time frame for CSP awards to Gen 25 charters?

14. Ensure Contracting Clarity

Issue: The Texas Supreme Court *Burnham Wood* opinion prohibits charters from entering into any contract without full board approval, even if the person signing the contract is authorized by the board to do so and even for minor contracts.

TPCSA Proposal: Implement a threshold where a superintendent or other school representative would have to obtain full board approval to enter into contracts.

Questions for TEA: Is TEA seeking a legislative solution to address this issue or could the agency resolve this through rule?

15. Record & Report TEA Secret Shopper Calls

Issue: Charter Division staff currently conducts “secret shopper” calls to charters and uses the information collected to make sweeping public accusations about the practices of the charter community as a whole.

TPCSA Proposal: TEA staff should record all calls so that schools can request the audio file in the event that the school is accused of wrongdoing. Release an annual report that lists all schools called, questions asked, and the number of schools that responded to questions with answers that violate state or federal law. TEA could examine the “secret shopper” program at other charter authorizers, like the DC Public Charter School Board.

Questions for TEA: How frequently do these calls currently take place? Who keeps the records of the calls? How are these records used? How could a school dispute a TEA staff recollection of a call? Has TEA coordinated with outside groups or organizations on questions that will be asked of schools or which schools to call?