

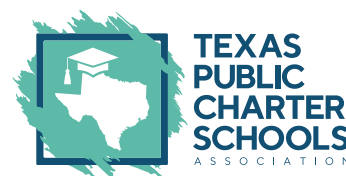
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Heritage Academy, San Antonio

An Inside Look: Understanding the Governing Boards of Texas Public Charter Schools

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About 1,300 experienced professionals serve on the governing boards of Texas public charter schools, volunteering their time and talent to ensure that all Texas students succeed. These board members include some of the brightest stars from the technology, law, finance, and non-profit sectors. Their experience enriches the way that public charter schools — designed to be creative and flexible — operate each day.

The ranks of Texas public charter school board members include:



Dr. Oner Celepcikay (*Harmony Public Schools*), a Rice University professor, STEM education advocate, and founder and CEO of a company that creates cybersecurity education curriculums and coding camps. Dr. Celepcikay is originally from Istanbul and moved to Texas in 2000.



James Nortey (*Austin Achieve Public Schools*), an accomplished attorney who advises clients on state regulatory issues. The son of Ghanaian immigrants, Mr. Nortey was raised in El Paso and graduated from Harvard Law School.



Allan Lindstrom (*El Paso Leadership Academy*), whose first six years of education took place in a one-room schoolhouse — before he saved enough from his grocery store job to attend college, then rose through the traditional school district ranks as a teacher, counselor, administrator, and superintendent.

Public charter schools benefit enormously from the ability to convene governing boards composed of skilled professionals, business leaders and community members with diverse backgrounds. This nonprofit volunteer board governance system is one reason why **Texas public charter schools educate 6% of the state's public school students, but represent 67% of the state's top-rated school districts.**

Despite this clear success, critics have raised concerns about public charter school governing boards, claiming they are unaccountable to policymakers and taxpayers. This could not be further from the truth. In fact, they are significantly *more* accountable than the governing boards of traditional school districts.

This brief explains what public charter school boards are, who serves on them, how they work, and the multitude of ways they are accountable. It compiles and explains information from a variety of sources — including the Texas Education Code, Texas Education Agency regulations, and other applicable law — in one place. The taxpayers who fund public charter schools deserve to know how public charter school governing boards both safeguard and maximize their investment.

Public Charter School Governing Boards 101

Readers should take away the following most important points in this brief:

- Texas has strict standards for those who may serve on a public charter school board. These standards are far stricter than those governing who may serve on an ISD board.
- Texas public charter school board members receive no compensation for their service and cannot have a financial stake in a management company.
- Texas public charter school boards are held just as accountable, and must be just as transparent, as those in traditional public school districts. As 501(c)3 nonprofit organizations, public charter schools and their boards must also comply with additional IRS accountability guidelines.
- Texas public charter school board members receive training to ensure they understand state law.
- Texas public charter school boards are separate from the boards of management organizations.
- Texas public charter school board members who breach their duty or commit a crime can be removed with relative ease, whereas ISDs and the State have virtually no authority or ability to remove ISD trustees who have breached their duty.
- Texas public charter school board members are directly accountable to the TEA and Attorney General and can be held individually and personally liable for breach of duty. There is no similar mechanism for ISD trustees.

ELIGIBILITY TO SERVE

Public charter school boards manage over \$3 billion in taxpayer revenue statewide every year.¹ To ensure sound management of these funds, the Texas Legislature created strict standards for public charter schools. For instance, public charter schools must meet all of the state education commissioner's financial, governing, educational, and operational quality standards.

The commissioner is required by law to reject new public charter schools that do not meet these standards.² Therefore, board members must be highly skilled in finance, governance, and educational operations to ensure that their charter schools meet the commissioner's standards.

Public charter school boards oversee school operations for over 365,000 children in Texas, a role which demands an understanding of the education profession and the utmost level of public trust. That's why state law blocks any person from serving on a public charter school board if they have ever been convicted of any serious criminal offense, including a felony or misdemeanor for moral turpitude; any offense listed in TEC Section 37.007(a) such as assault, murder or indecency with a child; or any offense listed in Article

62.001(5), Code of Criminal Procedure such as kidnapping or child abuse.³ By contrast, convictions of felonies and misdemeanors do not disqualify a person from serving as an ISD trustee. Even if an ISD trustee is convicted of a crime while serving on an ISD board, there is no mechanism to remove them from office besides an election.⁴

Furthermore, a person may not serve on any Texas public charter school board if they have a financial stake in a "management company" providing services to any Texas public charter school.⁵ This measure helps to ensure board members do not profit from the operations of the public charter school.

Public charter school board members and officers follow all of the same conflict of interest laws as ISD trustees.⁷ In fact, nepotism prohibitions are much stricter for public charter schools than for ISDs. For instance, an ISD superintendent's spouse or child can be employed by an ISD board member, but state law was changed in 2013 to prohibit this at public charter schools. While TEA can enforce violations of these nepotism restrictions by public charter schools, the agency cannot do so for ISD boards.⁸

How does the law define a financial conflict of interest?

A person has a substantial interest in a management company if any of the following apply: they have a controlling interest; they own more than 10 percent of the voting interest; they own more than \$25,000 of the fair market

value; they have a direct or indirect interest by shares or stock in more than 10 percent of company profits; they are a company board member; they serve as an elected officer of the company; or are a company employee.⁶

TRAINING

Required Board Member Training Includes 12 Hours of Instruction

State law requires public charter school board members to get initial training when they begin their board service as well as additional training every year they serve. The State Commissioner of Education is responsible for adopting rules prescribing training for public charter school board members. These rules specify the minimum amount and frequency of the training, and who can provide the training. Board member training must include basic school law, school finance, health and safety issues, accountability requirements related to the use of public funds, and requirements

associated with open meetings and public information.⁹

As of 2021, the commissioner requires public charter school board members to complete, within one year, a training course consisting of 12 instructional hours (excluding breaks, administrative tasks, and other non-instructional time). The training course must be delivered by a state-approved provider and include a series of “modules” (explained in the graphic below) that account for nine of the required 12 hours. The remaining three hours may cover any of these module topics.¹⁰

150 minutes of instruction in basic **school law**, with special emphasis on corporate director duties and liabilities, non-delegable duties, nepotism, conflicts of interest, management companies, appropriate roles concerning internal and external audits, and the legal requirements specific to board members.

60 minutes of instruction in basic **school finance**, with special emphasis on accounting for public funds and property, student attendance accounting, fiduciary duties related to state and federal funding, federal funds and property management, grant administration, audit requirements, and the financial duties specific to board members.

30 minutes of instruction in **health and safety** issues, with special emphasis on health and safety codes, ordinances, and other laws applicable to operating a Texas public school; student discipline; safe schools; required reporting of child abuse; and criminal background checks.

120 minutes of instruction in **accountability requirements** related to the **use of public funds**, with special emphasis on the duties and liabilities of a board member under Texas law, the shared use of real property for charter and non-charter business, bank depository contracts, capital financing, incidental use of public property by charter holder personnel, and recovery by the commissioner of education of the public property held by a former charter holder.

60 minutes of instruction in other requirements relating to **accountability to the public**, with special emphasis on the administration of statewide assessments; student, staff, financial, and organizational data reporting; dropout reporting; statewide standards for acceptable student performance; charter-specific standards for acceptable student performance; accountability ratings and sanctions under Texas Education Code (TEC), Chapter 39; and the role of student performance in actions under TEC, §12.116 and §12.1162.

60 minutes of instruction in **open meetings requirements** under Government Code, Chapter 551, with special emphasis on posting the agenda, executive sessions, accessibility of the meeting location to the public, employee board members, and civil and criminal sanctions.

60 minutes of instruction in **requirements relating to public records**, with special emphasis on the Public Information Act, the Records Retention Act, confidential student records, records in the possession of a management company, and other duties respecting public records.

After public charter school board members receive their initial 12 hours of training, they must obtain six hours each year of continuing education delivered by a course provider registered under TAC §100.1107.¹¹

Unlike ISDs, public charter schools must extensively track and report the training their board members complete. The law requires public charter schools to submit training records to an independent auditor and to TEA — and the

agency can sanction any public charter school that fails to comply.¹² No similar laws apply to the trustees of traditional school districts.

Public charter school board members and officers must also annually report to TEA not just training, but any and all expense reimbursements and many other detailed questions about board members on annual governance reporting.¹³ Again, no similar tracking or reporting exists for ISDs.



MeyerPark Elementary Charter School, Houston

COMPENSATION

Public Charter School Board Members are Unpaid Volunteers

Public charter schools must register with the Internal Revenue Service (IRS) as 501(c)3 nonprofits to operate in Texas. The IRS normally permits nonprofit board members to receive reasonable compensation for their service. However, Texas law prohibits public charter school board members (like those governing ISDs) from receiving any form of compensation for their board-related work.¹⁴ Therefore, public charter school board members volunteer their time and expertise to their districts. These public charter school board members make their living from their positions outside of the board in business or professional roles.

Texas law also prohibits charter board members from having any private interest in their public charter school district. For instance, public charter school board members cannot have a private interest in a charter management company or service provider.

In short, board members do not receive payments or any other benefits from the charter school for their businesses, investments, or career advancement. These measures ensure that board members make only those decisions that

are in the best interest of the public charter school district.

If public charter school board members transact business with a charter school legally, they must comply with numerous state law disclosure requirements under the Local Government Code — in exactly the same way an ISD board member would. Beyond these requirements, Texas law gives TEA the ability to review transactions and order that they be discontinued or restructured. TEA is empowered to initiate audits and ultimately to hold board members and charter schools accountable for any transaction the agency considers to not be in the best interest of students.¹⁵ No such mechanism exists for ISDs.

Public charter schools must also comply with Internal Revenue Code requirements for nonprofit organizations, which include separate restrictions, sanctions and disclosure requirements for self-dealing, insider transactions, and other transactions with officers and board members that are not reasonable, necessary and meeting the best interest of the students. The IRS can also impose sanctions and tax penalties — none of which apply to ISDs and ISD trustees.

Education Commissioner Ensures Board Members Uphold the Law

Texans expect public school boards to run their districts well and follow all state and federal laws when spending tax revenue to educate children. If school board members underperform or break the law, they are accountable to taxpayers.

In traditional public schools, taxpayers are supposed to hold school board members accountable through elections. However, the strength of this accountability is questionable. As stated above, ISD boards and TEA have no power to remove individual ISD trustees who have breached their duty or broken the law — they just have to wait for a voluntary resignation or the next election cycle.

What's more, in major metropolitan areas of Texas, less than 3% of residents vote in traditional public school district board elections.¹⁶ For instance, in the 2018 runoff election for an at-large seat on the Austin ISD board, there were 25,245 votes cast, representing 2.7% of the city's total population at the time (about 936,000).

Consequently, board members in traditional public school districts often represent the interests of a small minority of constituents — along with political influencers who have a disproportionate impact on these elections — instead of the broader public.¹⁷

To make matters worse, ISD trustee campaigns are often funded by vendors or prospective vendors of the ISD looking to protect their own interest and current or future business. Not only is this allowed, but in reality it is widespread practice. Law firms, insurance companies, bond advisors, architects, construction contractors, food service providers, and many other vendors contribute “legally” to elected trustees’ campaigns — and nothing prevents those same trustees from returning the favor by voting for the same vendors’ contracts to be approved.

As just one example: the former president of the El Paso ISD board “received at least three donations from district vendors” during her 2018 race for re-election, according

to the *El Paso Times*. The donors included the heads of two construction firms that did business with the school district and a partner at a law firm that had signed \$350,000 worth of legal services contracts with El Paso ISD.¹⁸

By contrast, Texas taxpayers’ elected governor and the governor’s appointed commissioner of education have unfettered authority to continuously hold public charter school board members accountable. The commissioner has two main powers at his disposal to police any possible misconduct. One is the power to reconstitute the public charter school board by appointing new members.¹⁹ When appointing new board members, the commissioner must consider local input from community members and parents. The commissioner must also confirm that board members have the appropriate credentials and expertise, and that they live in the public charter school’s geographic area.

Alternatively, the commissioner can simply revoke the charter if he believes that reconstituting the board will not prevent further misconduct.²⁰ The commissioner’s power to revoke a charter is not limited to illegal behavior by charter board members. The commissioner may also revoke a charter if board members commit a material violation of the school’s charter or fail to satisfy generally-accepted accounting standards of fiscal management.²¹ At the same time, the commissioner may temporarily withhold funding, suspend the operational authority of a public charter school, or take any other reasonable action to protect the health, safety, or welfare of public charter school students.

And if the misconduct of public charter school board members (e.g. misuse of public funds) harmed the state in any way, the commissioner can ask the attorney general to file suit against them personally and individually. The attorney general can file suit for damages, injunctive relief, or any other court-approved remedy.²² There are no similar mechanisms for ISD trustees to be held accountable.

Texas taxpayers’ elected governor and the governor’s appointed commissioner of education have unfettered authority to continuously hold public charter school board members accountable.



Academy of Accelerated Learning, Chimney Park

OPENNESS AND TRANSPARENCY

All Meetings Must be Open and Information Made Publicly Available

Texans expect to know exactly how public schools are using their tax dollars. If schools make decisions that are not in the public interest, then taxpayers need to know about it. All public charter school records are considered government records for all purposes under state law.²³

Furthermore, Texas law considers public charter schools as governmental bodies under Chapters 551 and 552 of the Government Code. This means they must provide internal information to the public upon request and conduct open meetings for public scrutiny – including posting notices and agendas in advance of each meeting on the internet. Public charter school boards that broadcast board meetings must also post links to the broadcasts, and to archived recordings, if their charter school enrolls at least

10,000 students.²⁴ The same open meeting, public information and record retention laws apply to ISDs and public charter schools, including their boards. These laws can be enforced by the attorney general and local district attorney. But for public charter schools alone, TEA can also enforce these laws.²⁵

All public charter school records are considered government records for all purposes under state law.

Information on public charter schools must still be available for public scrutiny even if the charter school ceases to operate. If an officer or employee of a closed public charter school refuses to transfer school records to the Texas Education Agency (TEA), the commissioner may ask the attorney general to petition a court for recovery of those records. If the court grants the petition, the court must award attorney's fees and court costs to the state.²⁶



PROHIBITED CONFLICTS OF INTEREST

Safeguards Against Conflicts of Interest in Hiring and Contracting

As mentioned in a previous section, public charter school board members and officers follow all of the same conflict of interest laws as ISD trustees. They are also subject to some additional restrictions.

For instance, public charter school board members cannot use school property for anything other than school-related business. Public charter school property is public property held in trust by the charter.²⁷ Furthermore, public charter school board members may not transfer, sell, or dispose of public charter school property without the commissioner's prior written consent.²⁸ Finally, the commissioner must take possession of the property of a public charter school that ceases to operate, and supervise the sale or transfer of that property.²⁹

Texas also prevents public charter school boards from conflicts of interest in awarding contracts for architectural, engineering, or land surveying services. Public charter school boards must first select the most highly qualified provider and then attempt to negotiate a contract at a fair and reasonable price. If this is unsuccessful, the public

charter school board must formally end negotiations and select the next most highly qualified provider.³⁰ This is the same law that applies to ISDs.

If a public charter school board awards a contract for construction, repair, or renovation of a school building using competitive bids, and if the contract is worth more than \$50,000, the public charter school board must provide all bidders with the opportunity to bid on the same items on equal terms. They must also judge bids according to the same standards.³¹ These same laws apply to both public charter schools and ISDs.

Finally, Texas law prohibits public charter school boards from conflicts of interest in their hiring practices. For example, public charter school boards cannot engage in nepotism by hiring their relatives.³² If the commissioner determines that a public charter school board engaged in nepotism, the board members must remove the related person immediately or face legal consequences.³³ Therefore, TEA has the authority to force corrective action for nepotism at public charter schools, but not ISDs.

MANAGEMENT ORGANIZATIONS

Management Companies Provide Support Services Only

Texas law grants public charter schools — which are generally much smaller than ISDs and lack economies of scale — the ability to contract with management companies. These contracts are uncommon: Only 7% of public charter schools use them.³⁴ They are also frequently misunderstood or deliberately mischaracterized.

The term “management company” refers to an outside organization that provides support services to a public charter school, such as recommending new hires, preparing proposed budgets, and developing policies and procedures for the board to approve independently.³⁵

The 7% of public charter schools that use management companies currently do so for a variety of reasons. Some public charter schools that are small in enrollment size contract management services rather than hiring full-time employees to save cost and direct more funding to classrooms. Others hire management companies for important professional expertise to ensure legal compliance and high levels of financial or educational accountability.

However, management companies do not make governance decisions. Only public charter school board members make governance decisions. And as already discussed, public charter school board members cannot have a private interest in management companies. Public charter school board members also cannot accept a loan from a management company.³⁶ Furthermore, unlike other private companies, charter school management companies must provide records for public scrutiny. For instance, management companies must maintain all records related to charter management services separately from any other records for public scrutiny during contract approval and renewal.³⁷

The commissioner can audit the records of a public charter school contracting with a management company. If the aggregate amount of all transactions between a public charter school and a related party exceeds \$5,000, the commissioner’s audit may include the review of public charter schools’ real property transactions. The commissioner is ultimately responsible for determining whether a transaction was fair market value and for taking any necessary action to protect the public charter school’s interests.³⁸

The commissioner may prohibit, deny renewal of, suspend, or revoke a contract between a public charter school and a management company if the commissioner determines that the company has done any of the following:³⁹

- Failed to provide educational or related services in compliance with the company’s contractual or other legal obligation to any public charter school in Texas or elsewhere;
- Failed to protect the health, safety, or welfare of public charter school students; or
- Otherwise failed to comply with any contractual or other legal obligation to provide services to the school.

Finally, management companies are liable for damages incurred by the state that result from the failure of the company to comply with its contractual or other legal obligations. On request of the commissioner, the attorney general can file suit on behalf of the state against a management company for damages, injunctive relief; or any other court-approved remedy.⁴⁰

Management companies may provide the following support services to public charter schools:

- Planning, operating, supervising, and evaluating the school’s educational programs, services, and facilities
- Making recommendations to the public charter school board relating to the selection of school personnel
- Managing the public charter school’s day-to-day operations as its administrative manager
- Preparing and submitting to the public charter school board a proposed budget
- Recommending policies to be adopted by the public charter school board, developing appropriate procedures to implement policies adopted by the governing body of the school, and overseeing the implementation of adopted policies
- Providing leadership for the attainment of student performance at the school based on the indicators adopted under TEC Sections 39.053 and 39.301



Beatrice Mayes Institute, Houston



Gateway College Preparatory School, Georgetown



Leadership Prep School, Frisco

Conclusion

Members of the governing boards that oversee public charter schools are public servants who are *highly* accountable to Texas policymakers and taxpayers. In fact, as this brief vividly demonstrates, Texas administrative code and statutes hold public charter school boards to higher standards than the boards of traditional school districts.

This is by design. The state legislature rightly created a system of accountability that empowers regulators to take decisive action in the event that a public charter school board fails to act in the best interests of students. It's a system designed to affirmatively answer questions such as:

- Are our school board members fit to serve children and be good stewards of public funds?
- Do school board members receive the extensive training necessary to govern effectively for the public good?
- Do school board members undergo continuous monitoring of their use of public funds to prevent waste, fraud, and abuse?
- If school board members commit a crime or misuse public funds, is there a way to oust them immediately from their position to protect the public interest?

For the rules that govern accountability for traditional district boards, the answers to these questions are “no” or “maybe.” There is good reason to believe that public charter school accountability protects students more thoroughly and reliably than holding board elections every three or four years.



MeyerPark Elementary Charter School, Houston



Clay Classical Academy, Dallas

SOURCES

1. 2019-2020 Charter Summary of Finances, Texas Education Agency.
2. TEC § 12.101.
3. TEC § 12.120.
4. TEC § 11.066.
5. TEC § 12.120.
6. TEC § 12.120.
7. Local Government Code chapters 171 and 176.
8. TEC § 12.1054.
9. TEC § 12.123.
10. TAC § 100.1102.
11. TAC, Title 19, Part 2, Chapter 100, Subchapter AA, Division 5, RULE § 100.1102.
12. TAC, Title 19, Part 2, Chapter 100, Subchapter AA, Division 5, RULE § 100.1108.
13. TAC, Title 19, Part 2, Chapter 100, Subchapter AA, Division 6, RULE § 100.1203.
14. TEC § 11.061(d) and TAC § 100.1131(b).
15. Public charters must follow the same statutes regarding nepotism (according to TEC Section 12.1055), outlined in Chapter 573 of the Government Code. However, the commissioner wrote the following additional rules in the TAC on nepotism that apply to charter board members but not to those in ISDs: § 100.1111, § 100.1112, § 100.1113, § 100.1114, § 100.1115, and § 100.1116.
16. Turnout for board elections can be computed using total vote counts reported by Balltopedia https://balltopedia.org/Main_Page and total population counts reported by the Census Bureau.
17. Hochschild, J. L. (2005). What school boards can and cannot (or will not) accomplish. *Besieged: School boards and the future of education politics*, 324-338.
18. Sanchez, Sara. (2018, February 23). *EPISD vendors say Veronica Escobar, not Susie Byrd, solicited donations from them*. El Paso Times. <https://www.elpasotimes.com/story/news/politics/elections/2018/02/23/episd-vendors-deny-susie-byrd-solicited-veronica-escobar-campaign-donations/363410002/>
19. TEC § 12.115
20. TEC § 12.115
21. TEC § 12.1162.
22. TEC § 12.122.
23. TEC § 12.1052(a), (b) and (c).
24. TEC § 12.1051; Government Code Sections 551.043 and 551.128.
25. TEC § 12.1162.
26. TEC § 12.1052.
27. TEC § 12.128.
28. TEC § 12.128.
29. TEC § 12.128.
30. Government Code, Sec. 2254.004. According to TEC § 12.1053, an open-enrollment charter school is considered to be a political subdivision for purposes of Subchapter A, Chapter 2254, Government Code.
31. Chapter 271, Subchapter B, Local Government Code. According to TEC § 12.1053, an open-enrollment charter school is considered to be a governmental entity for purposes of Subchapter B, Chapter 271, Local Government Code.
32. Under TEC § 12.1281, an open-enrollment charter school is subject to a prohibition, restriction, or requirement imposed by state law or by a rule adopted under state law, relating to nepotism under Chapter 573, Government Code. However, these laws on nepotism only apply to charters approved by TEA after 2013 when the Texas Legislature passed Senate Bill 2. Senate Bill 2 exempted charters approved before 2013 from these new nepotism laws.
33. Government Code Sec. 573.081.
34. Obtained from a Public Information Request from TEA in April, 2021.
35. TEC § 12.1012.
36. TEC § 12.124.
37. TEC § 12.125.
38. TEC § 12.1163.
39. TEC § 12.127.
40. TEC § 12.127.

If you have general questions about the information presented in this brief, email Dr. Timothy Mattison at **tmattison@txcharterschools.org**. If you have specific questions related to the board of a particular public charter school district, please contact that district directly.



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