

ON POINT:

Charter Schools & The Law

2015 LEGISLATIVE SESSION ROUNDUP

The Texas Legislature started this year with a big bang and much anticipation from some, and many worries from others, as to what the more conservative makeup of the Legislature would bring in regards to education. If you were tied into the Legislative Session at all you definitely heard over and over again about controversial measures such as parent trigger, vouchers, and the opportunity school district. More importantly, you knew this was the Legislative Session whereby the Senate Education Committee considered allocating much needed facilities funds to open-enrollment charter schools. At the end of the legislative day, however, none of these policy initiatives made it to the Governor's desk and this Session did not move the needle nearly as significantly as SB 2 and HB 5 did during the 2013 Legislative Session.

That being said, however, this was a legislative year and there were changes made to the laws that impact your schools. Below we highlight charter school-specific legislation along with a few other notable bills that passed this Legislative Session and apply to all public schools.

CHARTER SCHOOL SPECIFIC LEGISLATION

Foundation School Program Payments – H.B. 2251

The previous FSP payment schedule, which issued equal payments once a month regardless of size or rate of growth, presented an obstacle for some open-enrollment charter schools. For those schools that begin classes in mid-summer, the July and August payments are calculated using the previous school year's enrollment. Unfortunately this meant those schools starting classes mid-summer received funding based on an outdated student count, presenting a particularly difficult challenge for fast-growth charter schools.

H.B. 2251 will now allow a charter school with increased enrollment from the previous year to request an alternative payment schedule that frontloads the percentage of yearly entitlement payments in order to better manage growth. The

funding may be received under this alternative payment schedule for three school years, after which the commissioner will have to determine the eligibility of the charter school to continue receiving payment in this same alternative manner.

Immunity – H.B. 1171

Open-enrollment charter schools enjoy the same immunity from liability as school districts. However, the law was less clear on the degree to which charter schools are immune from suit or subject to liability limits under the Texas Torts Claims Act. Furthermore, the previous law only referenced charter *schools*, and not charter *holders*. H.B. 1171 clarified the law surrounding charter schools' legal status by defining them as public schools for purposes of immunity from both liability and suit. It also clarified that charter schools are eligible for the cap on liabilities under the Texas Torts Claims Act.

This is a bill that we have seen reappear over the past few Legislative Sessions. With its final passage, it will enable charter schools to further safeguard public funds from costly, protracted litigation.

Risk Pools – H.B. 1170

Before the passage of H.B. 1170, open-enrollment charter schools could not enter into inter-local contracts and risk pools with neighboring entities in an effort to strengthen their bargaining position for purchasing and contracting and to lessen the unforeseen costs of insurance claims.

This new law includes open-enrollment charter schools in the definition of local governments for the purposes of inter-local cooperation contracts, self-insurance, and group benefits agreements. Charter schools can now enter into cooperative agreements with other charters, local school districts, and other governmental entities to lower the costs of purchases, services, and insurance for their employees.

CHARTER SCHOOLS CAN NOW ENTER INTO COOPERATIVE AGREEMENTS WITH OTHER CHARTERS, LOCAL SCHOOL DISTRICTS, AND OTHER GOVERNMENTAL ENTITIES TO LOWER THE COSTS OF PURCHASES, SERVICES, AND INSURANCE FOR THEIR EMPLOYEES.



OTHER NOTABLE LEGISLATION IMPACTING ALL PUBLIC SCHOOLS

Video Cameras in Special Education Classrooms – S.B. 507

Beginning with the 2016-17 school year, charter schools must, at the request of a parent, board trustee, or staff member, provide equipment including video cameras in self-contained classrooms or other special education settings in which certain students receive special services. The charter school must place, operate, and maintain the video camera in each self-contained classroom or other special education setting in which the majority of students in regular attendance are provided special education and related services; and are assigned to a special education setting for at least 50 percent of the instructional day. Cameras must record audio and be capable of covering all areas of the classroom or setting with the exception of bathrooms or areas in which a student's clothes are changed. The recorded video must be maintained for at least six months.

Teacher Input into the IEP – S.B. 1259

This law requires that the regular education teacher who serves as a member of the Individualized Education Plan (IEP) planning committee be a regular education teacher who is responsible for implementing a portion of the student's IEP. The IEP committee must develop a written report of the IEP planning committee which must document the decisions of the committee and: (1) the date of the meeting; (2) the name, position, and signature of each member participating in the meeting; and (3) the parent/adult student and the administrator may indicate their agreement or disagreement with the committee's decisions.

Notice to Foster Parents – H.B. 1804

Charter schools are now also responsible for notifying a foster child's educational decisional maker and caseworker about

events that may significantly impact the child's education.

EpiPens – S.B. 66

Open-enrollment charter schools may adopt and implement a policy on the maintenance, administration, and disposal of epinephrine auto-injectors (epi-pen). Each charter school that adopts a policy must require that each campus have at least one school personnel member/volunteer, authorized and trained to administer the epi-pen, present during all hours the campus is open. Each charter school that adopts a policy is responsible for training school personnel and school volunteers in the administration of an epi-pen and must maintain records on this training. Furthermore, if the charter school implements such a policy, it must provide notice to a parent of each student enrolled in the school.

Individual Graduation Committees – S.B. 149

This provision only applies to an 11th or 12th grade student who has failed to pass an end-of-course exam in not more than two courses. Charter schools must establish an individual graduation committee to determine whether to award a high school diploma to a student who has passed all courses required for graduation but has failed required end-of-course exams in not more than two courses. The law specifies who must serve on this committee.

Reporting to SBEC

An open-enrollment charter school must now notify the State Board for Educator Certification (SBEC) if an educator employed by, or seeking employment by, the charter school has a criminal record and the charter school obtained information about the educator's criminal record by a means other than the criminal history clearinghouse. Charter schools must also notify SBEC if an educator's employment with the charter school was terminated based on evidence that the educator:

(1) abused or otherwise committed an unlawful act with a student or a minor; (2) was involved in a romantic relationship with, or solicited or engaged in sexual contact with, a student or minor; (3) possessed, transferred, sold, or distributed a controlled substance; (4) illegally transferred, appropriated, or expended funds or other property of the charter school; (5) attempted by fraudulent or unauthorized means to obtain or alter a professional certificate or license for the purpose of promotion or additional compensation; (6) or committed a criminal offense or any part of a criminal offense on school property or at a school-sponsored event. Even if the educator resigns, if there is evidence that the educator engaged in conduct outlined above, the charter school must report it to SBEC. Lastly, the charter school must notify SBEC if the educator violated assessment instrument security procedures.

The superintendent or director of a charter school must complete an investigation of an educator that is based on evidence that the educator (1) abused or otherwise committed an unlawful act with a student or a minor; or (2) was involved in a romantic relationship with, or solicited or engaged in sexual contact with, a student or minor. The investigation must be completed even if the educator resigns from the charter school before the investigation is complete.

It is important to note that the requirements in this law arguably apply only to those educators certified through SBEC. That being said, it is a good practice to complete any investigation that the charter school begins based on any of the evidence of misconduct outlined above. Check with your local counsel for assistance when faced with such circumstances.

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