



# TCSA Model Board Policy Series

---

## 600. Human Resources *Charter Board Policy for Excellence In Leadership Academy*

## **INTRODUCTION**

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

### **Overall Policy Framework**

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

### **Scope of Service & Copyright Notice**

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

This policy module and all updates are copyrighted publications of the TCSA. All rights are reserved and will be enforced to the fullest extent of the law. The policy modules are for the sole use of the purchaser. Duplication and distribution in whole or in part are prohibited unless otherwise specifically authorized in writing by TCSA. Inquiries should be directed to TCSA, 700 Lavaca, Suite 930, Austin, TX 78701.

For questions concerning the Model Board Policies for Charter Schools contact:

Lindsey Gordon, Texas Charter Schools Association  
lgordon@txcharterschools.org  
512.584.8272

### **Module 600: Human Resources**

The Human Resources Module 600, is the sixth and final module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules currently available include:

---

Module 100: Financial Operations

---

Module 200: Charter School Governance & Organization

---

Module 300: General School Operations

---

Module 400: Students

---

Module 500: Open Government

---

### **Legal Abbreviations Used In the TCSA Model Board Policy Series**

---

Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

---

## *I. 600.020. EQUAL OPPORTUNITY*

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Anti-Discrimination Policy**

Excellence in Leadership Academy employees shall not engage in discrimination or harassment motivated by race, color, religion, sex, disability, military service, or age directed toward other Excellence in Leadership Academy employees or students. A substantiated charge of discrimination and/or harassment shall result in disciplinary action. Retaliation against employees or students who report discrimination and/or harassment is strictly prohibited. Acts of retaliation may result in disciplinary action up to and including termination.

### **SECTION 2. Investigation**

Any allegations of discrimination or harassment of students or employees shall be investigated and addressed.

### **SECTION 3. Coordinator**

Excellence in Leadership Academy designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Age Discrimination Act of 1975, and this anti-discrimination policy:

Name: Ana Mendoza

Position:  
Executive Director

Address:  
915 W. Interstate Highway 2,  
Mission, Texas

Telephone: 956-424-9504

### **SECTION 4. Complaints**

The Coordinator shall be responsible for the investigation of discrimination complaints filed by employees and citizens. Complaints regarding any type of alleged discrimination shall be made in accordance with Excellence in Leadership Academy complaint policy in Section 300.120.

## **II. 600.40. DRUG-FREE WORKPLACE**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Drug-Free Policy**

Excellence in Leadership Academy is committed to maintaining a drug-free workplace and shall make a good faith effort to maintain such an environment. The unlawful manufacture, distribution, possession, or use of a controlled substance in the workplace is strictly prohibited. In addition to any consequences established by law, violation of this policy may lead to disciplinary consequences up to and including termination.

### **SECTION 2. Drug-Free Awareness Program**

The Executive Director, or designee, shall establish a drug-free awareness program in accordance with federal law.

### **SECTION 3. Notification.**

Employees shall notify the Executive Director or designee of any conviction based on a drug statute violation that occurs within five days of such a conviction. Within 10 days of such notification, or otherwise being notified, the Executive Director, or designee, shall notify applicable relevant federal granting agencies of the conviction. Within 30 days of such notification the Executive Director, or designee, shall take appropriate personnel action or require the employee participate in a drug abuse assistance or rehabilitation program.

### **SECTION 4. Alcohol & Drug Testing**

Section 4.1. Establishment of Testing Program & Procedures. In an effort to promote safety and help prevent accidents resulting from alcohol and/or drug misuse, the EXECUTIVE DIRECTOR, or EXECUTIVE DIRECTOR's designee, shall establish an alcohol and drug and controlled substance testing program and procedures for the following:

1. Employees who are drivers of charter school-owned or rented vehicles;
2. Employees who perform safety-sensitive functions;
3. Applicants for positions in the above-referenced categories; and
4. Any employee when there is reasonable suspicion of use of alcohol or controlled substances in the workplace.

The EXECUTIVE DIRECTOR shall designate a charter school official who shall be responsible for ensuring that information is provided to all employees regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

Section 4.2. Reasonable Suspicion Testing. Only supervisors trained in accordance with federal regulations may, based upon reasonable suspicion, remove an employee and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based

on specific observations of the appearance, behavior, speech, or body

odors of the employee whose motor ability, emotional equilibrium, or mental acuity appears impaired. Such observations must take place just preceding, during, or just after the period of the workday that the employee is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

**Section 4.3. Required Procedures.** The procedures established under Section 4.1 shall require the termination of an employee's employment for refusal to submit to a required test for alcohol or controlled substances.

**Section 4.4. Supervisor Training.** The Executive Director, or the Executive Director's designee, shall ensure that supervisors are properly trained in accordance with the terms of the applicable law and this policy.

### **III. 600.060. HIRING PRACTICES & CRIMINAL BACKGROUND CHECKS**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

#### **SECTION 1. New Hires (updated August 2017)**

##### **Section 1.1. Compliance.**

The Executive Director, or designee, shall ensure compliance with applicable laws and regulations regarding hiring practices of new employees.

##### **Section 1.2. Posting Job Vacancies.**

The Executive Director, or designee, shall ensure that job vacancies are posted with ample time and in various venues so that a broad pool of potentially strong applicants may apply for available positions.

##### **Section 1.3. Pre-employment Affidavits.**

The Executive Director, or designee, shall ensure all applicants for a position at Excellence in Leadership Academy must submit a pre-employment affidavit. An applicant that answers affirmatively as to having an improper relationship with a minor must disclose all relevant facts regarding the charge, adjudication, or conviction, and whether the charge was determined to be false. An applicant is not precluded from being employed with NAME OF CHARTER SCHOOL if the charges were determined to be false.

#### **SECTION 2. Criminal Background Checks**

The Executive Director, or designee, shall ensure compliance with applicable laws and regulations regarding criminal background checks. Upon notification that an employee or prospective employee has engaged in an offense which legally prohibits that individual from employment at an open-enrollment charter school, the Executive Director, or designee, shall terminate, or not hire as applicable, that individual.

#### **SECTION 3. SBEC Reporting Requirements (updated August 2017)**

**Section 3.1 Principal Reporting Requirements.** The principal at a Excellence in Leadership Academy campus must notify the Executive Director of Excellence in Leadership Academy no later than 7 business days of:

- a. Learning an educator's termination of employment or resignation following an alleged incident of misconduct, including an improper relationship with a student; or
- b. Learning about an educator's criminal record by means other than the criminal history clearinghouse.

**Section 3.2. Executive Director Reporting Requirements.** The Executive Director, or designee, shall ensure compliance with reporting laws and regulations regarding employee termination and background checks.

- a. If the Executive Director, or designee, learns of criminal history outside of the clearinghouse background check, the Executive Director, or designee, must notify SBEC within 7 business days.
- b. Additionally, if an educator is terminated for or resigned due to inappropriate behavior, including being involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor, the Executive Director, or designee, shall notify SBEC within 7 business days.
- c. If the Executive Director, or designee, receives a report from a principal of a Excellence in Leadership Academy campus, the Executive Director, or designee, must report to SBEC within 7 business days.

TCSA NOTE: Texas Education Code requires the report to be in writing in a form adopted by the board. This is a sample list of items that the school may want to include in the written notice, but there are no prescribed requirements.

Section 3.3. Written Report. A report to SBEC must be in writing and should include the following:

- a. Name of employee
- b. State certification status
- c. Description of incident or description of criminal history
- d. Disciplinary steps taken

#### **Section 4. Improper Relationships with Students**

It is the policy of Excellence in Leadership Academy that all employees maintain a professional relationship and exhibit a professional demeanor in their interactions with students. Employees shall not form personally intimate or romantic relationships with students, regardless of whether the student is 18 years old. Employees found to have engaged in an improper or inappropriate relationship with a student is subject to immediate disciplinary action, including termination.

Section 4.1. Electronic Communication. In order to prevent improper relationships with students, Excellence in Leadership Academy adopts the following:

- a. Text messages and email communications are prohibited between employees and students unless the communication is for educational purposes.
- b. Employees may not be friends or connect with students on any social media platform such as Facebook, Twitter, Snapchat, Instagram and others. Also, employees are prohibited from engaging in electronic dating applications with students such as Tinder.

TCSA NOTE: Charter schools that require school employees to be available to students via phone or email to assist with homework or classwork, cannot require an employee to share their personal email or phone number.

Section 4.2. Personal Phone Numbers and Emails. Employees at Excellence in Leadership Academy are not required to provide personal emails or personal phone numbers with students, parents, or families of students. Employees may elect not to disclose their personal telephone number or e-mail address to students.



### Section 4.3. Reporting Inappropriate Behavior.

#### a. Employee Reporting.

Employees at Excellence in Leadership Academy must report any behavior that is observed at school or at any school-related or school-sponsored activity that might violate this policy. Additionally, if employees receive any inappropriate communication from a student, the employee must immediately report the incident to the DESIGNATED CAMPUS ADMINISTRATOR. Reports may be submitted directly to the campus administrator via email or verbally in person. A report should include:

- i. Name of the employee involved;
- ii. Name of the student involved;
- iii. Location of incident; and
- iv. Description of incident.
- v. If possible, a report should include any copies of communication between the employee and the student.

#### b. Parent Notification

TCSA NOTE: A notice regarding an alleged incident is required to be sent as soon as feasibly possible.

Excellence in Leadership Academy will notify a parent or guardian of a student when an alleged incident of educator misconduct involving an inappropriate relationship with a student as soon as feasibly possible after learning of the alleged incident, but no later than 24 hours.

Following an investigation into an incident of alleged misconduct involving an inappropriate relationship with a student, Excellence in Leadership Academy will notify the parent or guardian of the student involved as to whether:

- i. The educator was terminated following the investigation or if the education resigned before the completion of the investigation; and
- ii. A report was submitted to the SBEC for the alleged misconduct.

## **IV. 600.080. COMPENSATION**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Fair Labor Standards Act (FLSA) Compliance**

Section 1.1. Designation of Work Week. For purposes of the FLSA, the board generally designates the 40 hour work-week for employees as Monday at HOUR am through Friday at HOUR pm. The Board authorizes the Executive Director to designate separate work weeks for specific school personnel such as, but not limited to, the school maintenance staff.

Section 1.2. Classification of Employees. The Executive Director shall determine the classification of employees as "exempt" or "nonexempt" for purposes of FLSA compliance.

Section 1.3. Permission Required to Work Overtime. Nonexempt employees may only work over 40 hours per week if they have received prior approval from their supervisor.

### **SECTION 2. COMPENSATION PLANS FOR SCHOOL EMPLOYEES**

The Executive Director shall recommend for Board approval compensation plans for all categories of charter school employees including salary schedules, stipends, benefits, incentives or other components determined appropriate by the Executive Director. The Executive Director shall administer the compensation plan in a manner consistent with the annual budget adopted by the Board.

### **SECTION 3. Wage Overpayment / Underpayment**

Excellence in Leadership Academy strives to take all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled paydays. In the unlikely event that there is an error in the amount of pay, the employee shall promptly bring the discrepancy to the attention of his or her supervisor so that corrections can be made as quickly as possible. If the employee has been paid in excess of what he or she has earned, the employee shall return the overpayment to Excellence in Leadership Academy as soon as possible. No employee is entitled to retain any pay in excess of the amount he or she has earned according to the agree-upon rate of pay. If a wage overpayment occurs, the overpayment will be regarded as an advance of future wages payable and will be deducted in whole or in part from the next available paycheck(s) until the overpaid amount has been fully repaid. Each employee will be expected to sign a wage deduction authorization agreement authorizing such a deduction either soon after employed with Excellence in Leadership Academy or as soon as practicable. Such authorization agreement is valid for the duration of the employment relationship.

(TCSA Note: TWC's sample wage deduction authorization agreement)

### **SECTION 4. Expense Reimbursement**

The Executive Director shall designate allowable expenses for expense reimbursement when employees incur expenses that are pre-approved and related to their work assignments. Employees shall be required to submit accurate documentation of the expenses for which

reimbursement is sought.

## **SECTION 5. Bonus Payments**

Excellence in Leadership Academy provides every employee with base compensation. However, there are circumstances when additional payment, bonus pay, may be appropriate to provide a reward for exceptional performance. An employee may earn a bonus only if he or she is employed on the bonus payment day and has not indicated his or her intent to resign.

A bonus is defined as an after-the-fact discretionary, lump sum, non-cumulative cash award that may be granted to an employee in recognition of an extraordinary contribution which substantially benefits the students at Excellence in Leadership Academy. Because bonuses are for extraordinary contributions, it is not expected that bonuses will be awarded annually or on any other regular basis. No property interest exists in the possibility of an award of a bonus.

Excellence in Leadership Academy may award a bonus to an employee in its sole discretion. General factors that Excellence in Leadership Academy might consider in exercising its discretion to award a bonus include, but are not limited to:

1. 100% Attendance
2. 85% of Students Pass STAAR
3. 85% of Students are Developed on TPRI & Circles Test

By June, the ED shall notify the Board whether funds exist to award employee bonus payments. The Board will determine whether or not to allocate these funds for use as employee bonuses. If the Board determines to use these funds as employee bonuses, the ED, along with Business Manager and Principal, shall comprise a committee which shall determine which employees receive a bonus and the amount.

## **V. 600.100. TRAINING: CAMPUS ADMINISTRATIVE OFFICERS & BUSINESS MANAGERS**

### **Section 1: Documenting Compliance**

The governing body (“Board”) of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

Each campus administrative officer and business manager shall comply with and keep accurate records concerning his or her compliance with the commissioner of education rules governing training requirements.

### **Section 2: Staff Development**

The Executive Director or designee will adopt a policy to provide annual training on suicide prevention for all new staff and a schedule for returning staff to renew their training in line with rules adopted by TEA.

## **VI. 600.120. IMMUNITIES**

The governing body (“Board”) of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **Section 1. Exhaustion of Administrative Claims**

Prior to filing a lawsuit against a professional employee hired by Excellence in Leadership Academy, potential claimants shall exhaust administrative remedies in accordance with state law. Administrative remedies must be pursued through the Board’s grievance process set forth in Board Policy 300.120.

### **Section 2. Written Notice of Legal Claims**

Written notice of a potential legal claim against a professional employee of the Excellence in Leadership Academy shall be provided in accordance with state law and shall be mailed or hand-delivered to the employee’s attention at the charter school’s administrative office at the following address: HR Coordinator-Cyda Alfaro

## **VII. 600.140. RETIREMENT AND HEALTH BENEFITS**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Compliance**

The Executive Director shall administer this policy in compliance with all applicable laws and shall ensure that school records pertaining to each employee's retirement and health benefits are current and accurate.

### **SECTION 2. Health Benefits**

Excellence in Leadership Academy elects to provide health benefits through TRS – Active Care. All health claims and coverage decisions are final as determined by the school's selected carrier.

For more information, see Excellence in Leadership Academy Personnel Handbook/Employee Handbook.

### **SECTION 3. COBRA Notification**

The Executive Director, or designee, shall notify employees of their potential rights under COBRA upon separation from employment with the school, whether for voluntary or involuntary reasons.

### **SECTION 4. Local Benefits**

Local Benefits – Excellence in Leadership Academy offers the following additional employment benefits for its employees: [Note: Here the Board should define and state any specific conditions for participating in additional employment benefits such as vision programs, dental programs, parking privileges, membership dues in professional associations, cell phone allowances, professional development opportunities, etc.

- \$300.00 towards health insurance with TRS-Active Care

### **SECTION 5. Workers Compensation Benefits**

It is the policy of Excellence in Leadership Academy to provide workers' compensation insurance. The Executive Director shall notify employees of its coverage decisions in accordance with state law.

### **SECTION 6. Teacher Retirement System (New August 2017)**

Section 6.1. TRS Eligibility. Excellence in Leadership Academy participates in the Teacher Retirement System (TRS). An employee is eligible for membership in TRS when the employee has:

- a. Regular employment with a single public, state-supported education institution in Texas that is expected to last for a period of 4 ½ months or more;

- b. For one-half or more of the full-time workload; and
- c. With compensation paid at a rate comparable to the rate of compensation for other persons employed in similar positions.

An employee at Excellence in Leadership Academy is considered to meet these requirements if the employee's customary employment is for 20 hours or more each week at a single employer and for 4 ½ months or more in one school year.

TCSA NOTE: This is a required policy.

Section 6.2 Loss of TRS Eligibility. An employee at Excellence in Leadership Academy is no longer eligible to receive retirement annuity from TRS if the person is convicted of a qualifying felony against a student. A qualifying felony includes the continuous sexual abuse of a young child or children, an improper relationship between an educator and student, sexual assault, or aggravated sexual assault.

## **VIII. 600. 160. TEACHER CREDENTIALS & QUALIFICATIONS**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Compliance.**

The Executive Director shall ensure that each teacher employed by the Excellence in Leadership Academy is properly credentialed and qualified as required by state and federal law. Further, the Executive Director shall ensure that the appropriate notices are sent to parents concerning the credentials and qualifications of the student's teachers.

## **IX. 600. 180. EMPLOYEE LEAVES AND ABSENCES**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **Section 1. Definition**

For purposes of this policy, "instructional staff" includes full time employees who work as campus principals, classroom teachers, teacher aides, counselors, and providers of special education services

### **Section 2. Administration and Compliance**

The Executive Director shall administer this policy in compliance with all applicable laws and shall ensure that school records pertaining to each employee's leaves and absences are current and accurate.

### **Section 3. Family Medical Leave**

Section 3.1. 12-Month Period. For purposes of FMLA leave, the 12-month period for leave is determined as the calendar year the 12-month period following the employee's employment anniversary date.

Section 3.2. Concurrent Use of Leave. It is the policy of Excellence in Leadership Academy for an employee's paid leave, and/or workers' compensation leave to run with FMLA leave.

### **Section 4. Local Leaves and Absences**

Section 4.1. Leave for Instructional Staff. For instructional staff, leave ordinarily may not be taken on the first day of school, on the last of school, during the administration of state assessments, during the administration of local bench-marking assessments, on days immediately before or after Spring Break, or on days immediately before or after Winter Break, but each employee's supervisor is authorized to make exception to this policy as he or she determines appropriate to accommodate the employee without compromising the interests of the students.

Section 4.2. Local Personal Leave. Each employee is entitled to 5 local days of paid personal leave per year. Personal leave may be used for illness, illness of an employee's family member,

personal and family medical appointments, and other personal reasons as determined by the employee. Personal leave may accumulate up to 10 days per year.

Section 4.3. Other Leave. The charter school offers the following additional types of leave for its employees:

- Military Leave

### **Section 5. Extended Absences from Duty**

Section 5.1. Abandoning Work. An employee who misses three days of work without directly notifying the employee's supervisor is considered to have abandoned the employee's position and will be terminated from employment unless extenuating circumstances exist as determined by the Executive Director or designee.

### **Section 5.2. Returning to Work from Extended Leave.**

Section 5.2.1. Reinstatement. The reinstatement of an employee returning from extended leave such as family medical leave, military leave, or workers' compensation leave is a high priority for Excellence in Leadership Academy. Reinstatement to an equivalent position will be determined on a case-by-case basis by the Executive Director, or designee, based on the following factors relating to the best interests of the school and its students:

- a. the applicable laws, policies, and practices governing the employee's absence from duty;
- b. for instructional positions, the time of year, the students' academic and behavior progress, the proximity of school and/or student holidays, the proximity of student testing, and additional similar factors relating to the academic and behavioral success of the students;
- c. whether the employee is a key employee;
- d. the school's legal obligations to other employees;
- e. the employee's ability to perform the essential functions of the job with or without reasonable accommodation;
- f. the impact of reinstatement on the academic, fiscal, or other operations of the school.

Section 5.3. Pay Increases. Employees returning to their prior employment positions from extended leave such as family medical leave or workers' compensation leave are entitled to any cost of living increases that were awarded during the employee's absence from duty. Unless legally required otherwise, returning employees will be entitled to any pay increases that were awarded based on seniority, length of service or work performance.

## **X. 600. 200. COMPLAINTS BY SCHOOL EMPLOYEES**



The governing body (“Board”) of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Process for Employee Complaints**

Employees of Excellence in Leadership Academy who have a complaint about their terms or conditions of work are encouraged to resolve their concerns informally with their co-workers and/or supervisors at the lowest level possible. If the employee is not satisfied with the outcome the informal resolution, then the employee may file a formal complaint in accordance with the grievance process set forth in Board Policy Section 300.120.

### **SECTION 2. Exception for Sexual Harassment Complaints**

All formal complaints by charter employees must be pursued in accordance with the process set forth in Board Policy 300.120 unless the complaint is a sexual harassment complaint filed by an employee against the employee’s supervisor. Under these circumstances, the employee shall present his or her Level 1 complaint to the school’s ED who will designate another supervisory level employee to hear and respond to the Level1 grievance. If the ED designee does not reach a decision that is satisfactory to the employee, then the employee may appeal the decision to Levels 2 and 3 as delineated in Board Policy Section 300.120.



# TCSA Model Board Policy Series

---

600.020. Equal Opportunity

## **INTRODUCTION**

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

### **Overall Policy Framework**

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

### **Scope of Service & Copyright Notice**

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

This policy module and all updates are copyrighted publications of the TCSA. All rights are reserved and will be enforced to the fullest extent of the law. The policy modules are for the sole use of the purchaser. Duplication and distribution in whole or in part are prohibited unless otherwise specifically authorized in writing by TCSA. Inquires should be directed to TCSA, 700 Lavaca, Suite 930, Austin, TX 78701.

For questions concerning the Model Board Policies for Charter Schools contact:

Lindsey Gordon, Texas Charter Schools Association  
lgordon@txcharterschools.org  
512.584.8272

## **Module 600: Human Resources**

The Human Resources Module 600, is the sixth and final module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules currently available include:

---

Module 100: Financial Operations

---

Module 200: Charter School Governance & Organization

---

Module 300: General School Operations

---

Module 400: Students

---

Module 500: Open Government

---

## **Legal Abbreviations Used In the TCSA Model Board Policy Series**

---

Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

---

## 600.020. EQUAL OPPORTUNITY

### A. Nondiscrimination Generally

1. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, age (applies to individuals 40 years of age or older), or genetic information the employer:
  - a. Fails or refuses to hire an individual;
  - b. Discharges an individual;
  - c. Discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or
  - d. Limits, segregates, or classifies an employee, or applicant for employment, in a manner that would deprive, or tend to deprive, an individual of any employment opportunity; or adversely affect the status of an employee.

Tex. Labor Code §§21.051, 21.101, 21.108, 21.402; 42 U.S.C.A §2000e-2(a) (Title VII); 20 U.S.C.A. §1681 (Title IX); 29 U.S.C.A §§ 623.631 (Age Discrimination in Employment); 42 U.S.C.A 12111 et seq. (Americans with Disabilities Act).

#### 2. Pregnancy

- a. The prohibition on discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions.

Tex. Labor Code §21.106.

#### 3. Sexual Harassment

- a. Harassment on the basis of sex is a violation of Title VII.
- b. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
  - i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

- c. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer knows, or should have known of the conduct, unless it can show that it took immediate an appropriate corrective action.

29 C.F.R §1604.11.

4. Bona Fide Occupational Qualification

- a. If disability, religion, sex, national origin, or age is a bona fide occupation qualification reasonably necessary to normal operations, performing any of the following practices on any of the aforementioned bases is not an unlawful employment practice:
  - i. An employer hiring and employing an employee;
  - ii. An employer controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

Tex. Labor Code §21.119; 42 U.S.C. 2000e-2(e); 29 U.S.C. 623(f).

5. Job Postings

- a. An employer commits an unlawful employment practice if the employer prints or publishes a notice or advertisement relating to employment that:
  - i. Indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
  - ii. Concerns an employee's status, employment, training or retraining program.
- b. This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Tex. Labor Code §21.059; 42 U.S.C. 2000e-3(b).

6. Notices

- a. Equal Employment Opportunity Notice  
An employer is required to post, in conspicuous places on its premises, notices describing the federal laws prohibiting job discrimination based on race, color nation origin, religion, age, equal pay, disability and genetic information. The U.S. Equal Employment Opportunity Commission has developed a model poster located at the following link: <http://www1.eeoc.gov/employers/poster.cfm>

42 U.S.C. 2000e-10; 29 U.S.C. 627.

- b. Section 504 of the Rehabilitation Act of 1973  
A charter holder/school that employs 15 or more employees shall take appropriate steps to notify applicants and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability.
  - i. The notice shall state:
    - (1) That the charter holder/school does not discriminate in employment in its programs and activities; and
    - (2) The identity of the employee designated as the 504 Coordinator.
  - ii. Methods of notification may include:
    - (1) Posting notices;
    - (2) Publication in newspapers and magazines;
    - (3) Placement of notices in school publications; and
    - (4) Distribution of memoranda or other written communications.
  - iii. If a school publishes or uses recruitment materials, it shall include in those materials a statement of the policy described in Subsection (b).

34 C.F.R. §104.8.

### **B. Nondiscrimination Based on Religion**

The prohibition against discrimination on the basis of religion includes discrimination on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable to reasonably accommodate the religious observance or practice of an employee or applicant without undue hardship to the school's business.

Tex. Labor Code §21.108; 42 U.S.C. §2000e(j).

### **C. Nondiscrimination Based on Disability**

#### 1. General Rule

An employer shall not discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

Tex. Labor Code §21.051; 42 U.S.C §12112(a).

#### 2. Definition of Disability

The term 'disability' means, with respect to an individual:

- a. a physical or mental impairment that substantially limits one or more major life activities of such individual;
- b. a record of such an impairment; or
- c. being regarded as having such an impairment.

42 U.S.C. § 12102.

3. Reasonable Accommodation

Discrimination includes not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the school.

42 U.S.C §12112(b)(5)(A).

4. Posting Notices

Every employer shall post notices in an accessible format to applicants, employees, and members of the public, describing the applicable provisions of the Americans with Disabilities Act. The model notice posted at <http://www1.eeoc.gov/employers/poster.cfm> will satisfy this requirement.

42 U.S.C. §12115; 28 C.F.R. §35.106.

**D. Nondiscrimination Based on Age**

1. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

42 U.S.C.A §6102.

**E. Coordinator**

1. Section 504 of the Rehabilitation Act of 1973 ("Section 504")

A charter holder that receives federal financial assistance, and that employs 15 or more persons, shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging conduct prohibited by Section 504. The charter holder shall designate one person to coordinate compliance with this requirement.

34 C.F.R. 104.7.

2. American with Disabilities Act ("ADA")

A charter holder that employs 50 or more persons shall adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging conduct prohibited by the ADA. The charter holder shall designate an employee to coordinate compliance with this requirement.



28 C.F.R. 35.107.

3. Title IX of the Education Amendments of 1972 ("Title IX")  
Title IX requires that each charter holder, receiving federal financial assistance, designate at least one employee that will coordinate investigations of complaints alleging violations of Title IX. The charter holder must notify all of its students and employees of the name, office address, and telephone number of the designated employee. Charter holders must also adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging violations of Title IX.

34 C.F.R. §106.8.

4. Age Discrimination Act of 1975  
Each recipient of federal funds shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Age Discrimination Act of 1975 and corresponding regulations, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act and the regulations.

A recipient shall also notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and these regulations. The notification must identify the responsible employee by name or title, address, and telephone number.

A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or the corresponding regulations.

34 C.F.R. §110.25

***TCSA Note: For grievance/complaint procedures see Module 300: General School Operations.***

**F. Nondiscrimination Based on Military Service**

1. An employer shall not deny initial employment, reemployment, retention in employment promotion, or any benefits of employment on the basis of membership in a uniformed service, performance in a uniformed service, application for uniformed service, or obligation to a uniformed service.
2. An employer shall not take adverse employment action or discriminate against any person who takes action to enforce protections afforded by the Uniformed Services Employment and Reemployment Rights Act of 1994.
3. An employer may not terminate the employment of an employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled

to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment.

*38 U.S.C. §4311; Tex. Gov't Code §431.006.*





# TCSA Model Board Policy Series

---

600.040. Drug Free Work Place

## **600.040. DRUG-FREE WORKPLACE**

### **A. Federal Grant Recipients Must:**

1. Agree to provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Establish a drug-free awareness program to inform employees about:
  - a. The dangers of drug-abuse in the workplace;
  - b. The employer's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Require each employee engaged in the performance of the grant be given a copy of the statement required by subsection (1) above.
4. Notify each employee in the statement required by subsection (1), that as a condition of employment in such grant, the employee will:
  - a. Abide by the terms of the statement; and
  - b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
5. Notify the granting agency within 10 days after receiving notice under subsection (4)(b) from an employee or otherwise receiving notice of such a conviction.
6. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program, by an employee that receives such a conviction.
7. Within 30 days after receiving notice under subsection (4)(b), the grantee must take appropriate personnel action against such employee up to and including termination or require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
8. Make a good faith effort to continue to maintain a drug-free workplace.

41 U.S.C. §702 - 703.

## **B. Omnibus Transportation Employee Testing Act**

The following applies to every employee of the charter school who operates a commercial motor vehicle and is subject to commercial driver's license requirements in accordance with federal regulations.

### *49 C.F.R §382.103*

#### 1. Drug & Alcohol Testing of Safety-Sensitive Positions

The charter school shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates the law.

### *49 C.F.R Part 382; §382.105*

#### 2. Definition of Commercial Motor Vehicle

A commercial motor vehicle means a motor vehicle used to transport passengers or property if the vehicle:

- a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- b. Has a gross vehicle weight rating of 26,001 or more pounds; or
- c. Is designed to transport 16 or more passengers, including the driver.

### *49 CFR 382.107*

#### 3. Required Testing

- a. Required testing includes pre-employment, postaccident, random, reasonable suspicion, return-to-duty, and follow-up testing.
- b. No driver shall refuse to submit to a postaccident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test.
- c. The District shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

### *49 C.F.R 382.211; 49 C.F.R. 382.309*

#### 4. Employer Obligation to Promulgate a Policy

The charter school shall provide educational materials that explain the federal requirements and the charter school's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this

policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Charter schools shall also provide

a. Content of Education Materials:

The content of the educational materials shall include detailed discussion of at least the following:

- i. The identity of the person designated by the charter school to answer driver questions about the materials;
- ii. The categories of drivers who are subject to the provisions;
- iii. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance;
- iv. Specific information concerning driver conduct that is prohibited by federal regulations;
- v. The circumstances under which a driver will be tested for alcohol and/or controlled substances according to federal regulations, including post-accident testing under applicable federal regulations;
- vi. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by federal regulations;
- vii. The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with federal regulations;
- viii. An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- ix. The consequences for drivers found to have violated federal regulations, including the requirement that the driver be removed immediately from safety-sensitive functions, and the applicable federal procedures;
- x. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
- xi. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances

problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

49 C.F.R. §382.601

LEGAL AUTHORITY 600.040.







# TCSA Model Board Policy Series

---

600.060. Hiring Practices & Criminal Background Checks

## 600.060 HIRING PRACTICES & CRIMINAL BACKGROUND CHECKS

### A. Verification of Employment Eligibility

1. Within three business days of hire or actual commencement of duties, the employer shall verify employment eligibility by examination of documents establishing identity and employment authorization and completion of the Form I-9 required by the Department of Homeland Security.

8 C.F.R. §274a.2.

### B. New Hire Reporting

1. By the 20th day after hiring a new employee, a report containing the name, address, and social security number of the employee, and the name, address, and employer identification of the employer shall be made to the Texas Employer New Hire Reporting Operations Center, P.O. Box 149224, Austin, TX 78714-9224.

Tex. Fam. Code §234.102; 1 Tex. Admin. Code §55.303.

### C. Criminal History Background Checks

#### 1. Definitions

##### a. Criminal History Record Information

Criminal history record information is information collected about a person by a criminal justice agency that consists of arrests, detentions, indictments, and other formal criminal charges and their dispositions.

Tex. Gov't Code §411.082(2).

##### b. National Criminal History Record Information ("NCHRI")

NCHRI is criminal history record information obtained from the Department of Public Safety ("DPS") and from the Federal Bureau of Investigation ("FBI").

Tex. Educ. Code §22.081(2).

##### c. Criminal History Clearinghouse ("Clearinghouse")

The clearinghouse is established by DPS and is an electronic clearinghouse and subscription service that provides criminal history record information to a particular person entitled to receive such information.

Tex. Gov't Code §411.0845(a).

#### 2. National Criminal History Record Information

##### a. Teachers, Librarians, Educational Aides, Administrators, Counselors

- i. A person may not be employed by or serve as a teacher, librarian, educational aide, administrator, or counselor for an open-enrollment charter school unless

the person has been approved by the Texas Education Agency ("TEA") following a review of the person's NCHRI.

- ii. An open-enrollment charter school must provide the agency with any information upon request by TEA to enable TEA to complete a NCHRI review. Failure of an open-enrollment charter school to provide such information is a material violation of the school's charter.

Tex. Educ. Code §12.1059; Tex. Educ. Code §22.0832.

b. Substitute Teachers

i. Definition

A substitute teacher is one who is on call or on a list of approved substitutes to replace a regular teacher and who has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

- ii. Substitute teachers must submit to a NCHRI review. An open-enrollment charter school shall send or ensure that the person sends to DPS information required for obtaining the NCHRI.

- iii. In addition, the open-enrollment charter school shall obtain all criminal history record information that relates to that person through the clearinghouse and may require a person to pay any fees related to obtaining the criminal history record information.

- iv. The open-enrollment charter school shall provide to TEA the name of a person to whom this section applies. TEA shall obtain all criminal history record information through the clearinghouse and notify the school if the person:

(1) May not be hired or must be discharged as provided by Section 22.085 of the Education Code; or

(2) May not be employed as a substitute teacher because the person's educator certification has been revoked or is suspended.

- v. After the required information is submitted, the person may begin employment, but employment is conditional upon TEA's review of the criminal history record information. Employment must be terminated if TEA determines that the employee or applicant is ineligible for employment.

Tex. Educ. Code §22.0836; 19 Tex. Admin. Code §153.1101(11); 19 Tex. Admin. Code §153.1111(d).

c. Other Employees

- i. This section applies to a person who:

(1) Is not an applicant for an educator's certificate under Subchapter B, Chapter 21 of the Education Code;

(2) Does not fall under subsection (2)(a) above; and

(3) Who on or after January 1, 2008 is offered employment by an open-enrollment charter school.

- ii. Before, or immediately after employing or securing the services to whom this section applies, an open-enrollment charter school shall send, or ensure that the person sends to DPS the required information to obtain a NCHRI.
- iii. Each open-enrollment charter school shall obtain all criminal history record information that relates to a person to whom this section applies through the clearinghouse and shall subscribe to the criminal history record information of that person. The open-enrollment charter school may require a person to pay any fees related to obtaining criminal history record information under this section.
- iv. The open-enrollment charter school shall provide the TEA with the name of the person to whom this section applies. The TEA shall examine the criminal history record information of the person through the clearinghouse and notify the school if the person may not be hired or must be discharged as provided by [Section 22.085 of the Education Code](#).
- v. After the required information is submitted, the person may begin employment, but that employment is conditional upon the review of that person's criminal history record information by the TEA and must be terminated if the TEA makes a determination that the employee or applicant is ineligible for employment under the terms of [Section 22.085 of the Education Code](#).
- vi. The TEA, the State Board for Educator Certification (SBOE), school districts, open-enrollment charter schools, and shared services arrangements may coordinate as necessary to ensure that criminal history reviews are not unnecessarily duplicated.

[Tex. Educ. Code §22.0833; Tex. Admin. Code §153.1109\(d\)\(2\)](#).

d. Certain Contractors Hired On or After January 1, 2008

- i. This subsection applies to a person who is offered employment by an entity that contracts with an open-enrollment charter school on or after January 1, 2008 and:
  - (1) The employee or applicant will have continuing duties related to the contracted services; and
  - (2) The employee or applicant has or will have direct contact with students.

- ii. A person to whom the law applies must submit to a NCHRI before being employed or serving in a capacity described above. The entity contracting with the charter school must send or ensure that the employee sends to DPS the information required for a NCHRI review. The entity must obtain the record from the DPS clearinghouse and certify to the charter school that the entity has received the information. These duties also apply to the entity's subcontractors.
  - iii. An open-enrollment charter school may obtain the criminal history record information of a person to whom this section applies through the DPS clearinghouse.
  - iv. A contracting or subcontracting entity may not permit an employee to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under [Section 22.085\(a\) of the Education Code](#).
- e. Certain Contractors Hired Before January 1, 2008
- i. For employees employed before January 1, 2008, an entity that contracts with an open-enrollment charter school shall obtain from any law enforcement, criminal justice agency, or private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act, all criminal history record information that relates to that employee if:
    - (1) The employee has continuing duties related to the contracted services; and
    - (2) The employee has direct contact with students.
  - ii. An open-enrollment charter school may obtain all criminal history record information that relates to such a person.
  - iii. The entity's duties also apply to the entity's subcontractors.

[Tex. Educ. Code §22.0834.](#)

- f. Contractors Hired for Engineering, Architectural, or Construction Services  
(NEW August 2017)
- i. An entity that contracts with an open-enrollment charter school to provide engineering, architectural, or construction services may not permit an employee who will have continual duties related to the contracted services and will have the opportunity for direct contact with students to work at an instructional facility, if the employee has been convicted of one of the following offenses in the last 30 years and the victim was a minor:
    - (1) A Title 5 felony offense;
    - (2) an offense that requires a person to register as a sex offender; or

- (3) a similar offense under another state or federal law.
- ii. An individual is not considered to have direct contact with students, if:
    - (1) The contracted services does not involve construction, alteration, or repair to an instructional facility;
    - (2) The contracted work does involve an instructional facility, but the work will be completed not later than the 7th day before the first date the facility will be used for instructional purposes; or
    - (3) The contracted work involves an existing instructional facility, but:
      - (a) The work area contains its own sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than 6 feet in height; and
      - (b) The contracting entity adopts a policy prohibiting employees, including subcontracted employees, from interacting with students, informs employees of the policy, and enforces the policy at the public works area.
  - iii. The contracting entity must:
    - (1) obtain criminal history records;
    - (2) certify to the open-enrollment charter school that the contracting entity or subcontracting entity has received all criminal history records; and
    - (3) certify that the contracting entity obtained written certification from the subcontracting entity that the subcontractor complied with the background check.
  - iv. If a contracting entity and subcontracting entity determines that the employee will not have direct contact with students, the entity must make a reasonable effort to ensure that the conditions or precautions that resulted in this determination remain in place throughout the public works project.
  - v. An open-enrollment charter school may directly obtain the criminal history information for employees hired by the contractor or subcontractor through the criminal history clearinghouse.
  - vi. In the event of an emergency, an open-enrollment charter school may allow a person to enter an instructional facility, even if the individual has been convicted of a qualifying offense in the preceding 30 years, if the person is accompanied by an employee of the charter school.

vii. A charter school may adopt a policy to address emergency situations.

Tex. Educ. Code §22.08341; 85th Leg. R.S., HB 3270.

3. Criminal History Records

- a. An open-enrollment charter school shall obtain the criminal history record information of an employee who is not subject to a NCHRI.
- b. A school may obtain the information from:
  - i. DPS;
  - ii. A law enforcement or criminal justice agency; or
  - iii. A private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act.

Tex. Educ. Code §22.083.

c. Student Teachers & Volunteers

- i. An open-enrollment charter school shall obtain from DPS and may obtain from any other law enforcement, criminal justice agency, or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act, all criminal history record information that relates to:
  - (1) A person participating in an internship consisting of student teaching to receive a teaching certificate; or
  - (2) A volunteer, or a person who has indicated in writing an intention to serve as a volunteer, with the school.
- ii. A person under this section must provide to the open-enrollment charter school a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government.
- iii. A person under this section may not student teach or volunteer until all requirements under subsection (i) and (ii) have been satisfied.
- iv. This section does not apply to a person who is a volunteer or is applying to volunteer with an open-enrollment charter school if the person:
  - (1) Is the parent, guardian, or grandparent of a child who is enrolled in the same school for which the person volunteers or is applying to volunteer;
  - (2) Will be accompanied by a school employee while on a school campus; or



- (3) Is volunteering for a single event on the school campus.
- v. An open-enrollment charter school may obtain the criminal history record information that relates to a person under this section and may require a student teacher, volunteer, or volunteer applicant to pay any costs related to obtaining the information.

Tex. Educ. Code §22.0835.

d. School Bus Drivers, Bus Monitors, and Bus Aides

- i. An open-enrollment charter school that contracts with a person for transportation services shall obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:
  - (1) A person employed by the person as a bus driver; or
  - (2) A person the person intends to be employed as a bus driver.
- ii. A person that contracts with an open-enrollment charter school to provide transportation services shall submit to the school the name and other identification data required to obtain the criminal history record information of each person described by subsection (i). If the school obtains information that a person described by subsection (i) has been convicted of a felony or misdemeanor involving moral turpitude the school shall inform the chief personnel officer of the person with whom the school has contracted, and the person may not employ that individual to drive a bus on which students are transported without the permission of the governing body of the open-enrollment charter school.
- iii. Commercial Transportation Company
  - (1) A commercial transportation company that contracts with an open-enrollment charter school to provide transportation services may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to:
    - (a) A person employed by the commercial transportation company as a bus driver, bus monitor, or bus aide; or
    - (b) A person the commercial transportation company intends to employ as a bus driver, bus monitor, or bus aide.
  - (2) If the commercial transportation company obtains information that a person employed, or to be employed, has been convicted of a felony or a misdemeanor involving moral turpitude, the company may not employ that person to drive or to serve as a bus monitor or bus aide on a bus on which students are transported without the permission of the governing body of the open-enrollment charter school.

Tex. Educ. Code §22.084.

4. Pre-Employment Affidavit

- a. An applicant for a position as a teacher, librarian, counselor, diagnostician, administrator, education aide, therapist, nurse, psychologist, audiologist, speech pathologist, or social worker at an open-enrollment charter school must complete a pre-employment affidavit disclosing whether the applicant has ever been charged with, adjudicated for, or convicted of having an inappropriate relationship with a minor.
- b. An affidavit must include any relevant facts pertaining to an affirmative charge, adjudication, or conviction, including whether the charge was determined to be true or false.
- c. If a charge is determined to be false, the applicant is still eligible for employment at an open-enrollment charter school.
- d. If the school determines the employee failed to disclose information required in the affidavit, the failure to disclose is grounds for termination.

Tex. Educ. Code §21.009; 85th Leg. R.S., SB 7

**D. Confidentiality**

1. Information collected on an individual to comply with the requirements to secure national criminal history record information is confidential and may not be released except:
  - a. To comply with the law;
  - b. By court order;
  - c. With the consent of the person who is the subject of the information; or
  - d. To comply with Government Code §411.097.

Tex. Educ. Code §22.08391.

2. Criminal history record information may not be released with the exception of releasing it to:
  - a. the individual who is the subject of the information;
  - b. the TEA;
  - c. SBEC;

- d. the chief personnel officer of a transportation company; or
  - e. by court order.
3. Criminal history record information collected by the charter school must be destroyed on the earlier of the first anniversary of the date the information was originally obtained; or the date the information is used for the authorized purpose.
  4. Any criminal history record information received by a charter school is not subject to disclosure under the Texas Public Information Act.

Tex. Gov't Code §411.097.

**E. Prohibition Against Employing Individuals Convicted of Certain Offenses**

1. An individual may be employed by an open-enrollment charter school if:
  - a. The employment is in a position as a teacher or educational aide and (i) a school district could employ the person or (ii) a school district could employ the person as a teacher or educational aide if the person held the appropriate certification issued under Subchapter B, Chapter 21, and the person has never held a certificate issued under Subchapter B, Chapter 21.
  - b. The employment is in a position other than teacher or educational aide and a school district could employ the person.

Tex. Educ. Code §12.120.

2. An open-enrollment charter school may not allow a person who is an employee of, or applicant for employment by, an entity that contracts with the school to serve at the school if the school obtains information through a criminal history record information review concerning the employee or applicant that the individual has been convicted of an offense under the Penal Code, Title 5,<sup>1</sup> or is required to register as a sex offender. An open-enrollment charter school must ensure that an entity that the school contracts with for services has obtained all criminal history record information as required by the Education Code §22.0834.
3. An open-enrollment charter school may discharge an employee if the school obtains information of the employee's conviction of a felony or of a misdemeanor involving moral turpitude that the employee did not disclose to SBEC or the open-enrollment charter school.
4. Each school year the chief operating officer of an open-enrollment charter school shall certify to the Commissioner that the school has complied with this section.

Tex. Educ. Code §22.085; 19 Tex. Admin. Code §100.1151; 19 Tex. Admin. Code §153.1107.

<sup>1</sup>Title 5 offenses include: murder, capital murder, manslaughter, and criminally negligent homicide.

5. Notification to SBEC

- c. The director of an open-enrollment charter school shall promptly notify the SBEC in writing if the person obtains or has knowledge of information showing that an applicant for, or holder of, an educator's certificate has a reported criminal history.
- d. The director must also notify SBEC if an open-enrollment charter school obtained information showing that an applicant for, or holder of, an educator's certificate has a reported criminal history from some place other than the criminal history clearinghouse.

Tex. Educ. Code §22.087; 84th Leg., R.S. HB 1783.

**F. Preventing Educator Misconduct (New August 2017)**

1. Definitions

- a. Electronic communication includes any communication facilitated by the use of an electronic device, including computers, phones, networks, personal data assistant, or pager. The term includes emails, text messages, instant messages, and any communications made through an Internet website, including a social medial website or a social networking website.

2. Electronic Communication Policy

- a. Each open-enrollment charter school must adopt an electronic communication policy between school employees and students. The policy must include:
  - i. Provisions designed to prevent improper electronic communication between a school employee and student;
  - ii. Allow a school employee to elect to not disclose to students the employee's personal phone number or email address; and
  - iii. Provisions instructing a school employee about the proper method for notifying appropriate local administrators about an incident in which a student engages in improper communication with an employee.

Tex. Educ. Code §38.027; 85th Tex. Leg. R.S., SB 7

**G. Investigating an Educator's Misconduct (New August 2017)**

- 1. The director of a charter school must complete an investigation of an educator when there is evidence that the educator may have engaged in a romantic relationship with or solicited or engaged in sexual contact with a student or a minor; or abused or otherwise committed an unlawful act with a student or minor.

Tex. Educ. Code §21.006; 85th Leg. R.S., SB 7

## H. Reporting an Educator's Misconduct (Updated August 2017)

### 1. Reporting to SBEC

- a. Definition of educator means a person who holds a position described by Section 21.003(a) or (b), Education Code, regardless of whether the employee holds the appropriate certificate.

#### Tex. Educ. Code § 5.001 (5).

- b. A principal at an open-enrollment campus must notify the director of an open-enrollment charter school not later than the seventh (7) business day after the date an educator is terminated or resigned for any of the below circumstances. A person who serves as the director of an open-enrollment charter school shall promptly notify the SBEC by filing a written report with the TEA, within seven business days of the date the person first obtains knowledge of information, indicating any of the following circumstances:
  - i. That an educator, or applicant for, or a holder of a certificate, has a reported criminal history;
  - ii. That an educator or a certificate holder was terminated and there is evidence that he or she committed any of the following acts:
    - (1) Sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor;
    - (2) Possessed, transferred, sold, or distributed a controlled substance;
    - (3) Illegally transferred, appropriated, or expended school property or funds;
    - (4) Attempted by fraudulent or unauthorized means to obtain or to alter any certificate or permit that would entitle the individual to be employed in a position requiring such a certificate or permit or to receive additional compensation associated with a position;
    - (5) Committed a crime, any part of such crime having occurred on school property or at a school-sponsored event;
    - (6) Solicited or engaged in sexual conduct or a romantic relationship with a student or minor; or
    - (7) Involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor.
  - iii. That a certificate holder resigned and reasonable evidence supported a recommendation by the person to terminate a certificate holder because he or she committed one of the acts specified in paragraph (b) of this subsection; or

- iv. Before accepting an employee's resignation, that under this section requires a person to notify SBEC by filing a report with TEA, the person shall inform the certificate holder in writing that such a report will be filed and sanctions against his or her certificate may result as a consequence.
- v. A person required to comply with this paragraph shall notify the governing board of the charter holder before filing the report with TEA.
- c. A report filed under this section shall describe in detail the factual circumstances requiring the report and identifying the subject of the report by providing: name and any aliases; certificate number, if any, or social security number; last known mailing address and home and daytime phone numbers; name(s) and contact information of any alleged victim(s); and name(s) and any available contact information of any relevant witnesses.
- d. A person who is required to file a report under this section but fails to do so timely is subject to sanctions, such as:
  - i. If an individual fails to submit a report to the SBEC, the SBEC may impose an administrative penalty of not less than \$500 and not more than \$10,000.
  - ii. The SBEC may not renew the certification of an educator who has an administrative penalty imposed upon them until the penalty is paid.
  - iii. An individual commits an offense if the individual fails to submit a report to the SBEC with the intent to conceal an educator's criminal record or alleged incident of misconduct. Such an offense is a state jail felony.
- e. The SBEC may revoke the certification of an administrator if the SBEC determines there is reason to believe the administrator hired an applicant as a teacher, librarian, counselor, diagnostician, administrator, education aide, therapist, nurse, psychologist, audiologist, speech pathologist, or social worker despite being aware that the applicant had been adjudicated for or convicted of having an inappropriate relationship with a minor.
  - i. A person who assists another person in obtaining employment at a school, other than the routine transmission of administrative and personnel files, and the person knew that the applicant previously engaged in sexual misconduct with a minor or a student, may have their certification revoked by the SBEC.

Tex. Educ. Code §12.104(b)(2)(M); Tex. Educ. Code §21.006; Tex. Edu. Code. §21.0061; 85th Leg. R.S., SB 7; 19 Tex. Admin. Code §249.14.

**I. Report to Parents (Updated August 2017)**

1. An open-enrollment charter school must notify a parent or guardian of a student with whom an educator is alleged to have engaged in an inappropriate relationship with a student or minor; or sexually or physically abused a student or minor or engaged in any other illegal conduct with a student or minor.
  - a. As soon as feasible, the charter school must notify the parent that the alleged misconduct occurred.
  - b. Additional notification must be sent informing the parent or guardian
    - i. Whether the educator was terminated following an investigation or whether the educator resigned before the completion of an investigation.
    - ii. Whether a report was submitted to the State Board of Educator Certification concerning the alleged misconduct.

Tex. Educ. Code §21.0061; 85th Leg. R.S., SB 7

**J. Report to TEA (Updated August 2017)**

1. An open-enrollment charter school may give the agency documents regarding the performance evaluation of an educator or administrator for purposes of an investigation.
2. Documents provided by the school may be used in a disciplinary proceeding against a teacher or administrator if the document is admissible under the rules of evidence.
3. The TEA may authorize a special accreditation investigation when an open-enrollment charter school fails to produce, upon request from the TEA, evidence or an investigation report relating to an educator who is under investigation by the SBEC.

Tex. Educ. Code §21.355; Tex. Educ. Code §39.057; 85th Leg. R.S., SB 7







# TCSA Model Board Policy Series

---

600.080. Compensation

## 600.080 COMPENSATION

### A. Fair Labor Standards Act (“FLSA”)

1. FLSA Minimum Wage - Each employer is required to pay non-exempt employees a minimum of \$7.25 an hour.

[29 U.S.C.A. §206.](#)

2. FLSA Overtime - Each employer shall pay each non-exempt employee engaged in any workweek for over 40 hours a minimum of one and one-half times the regular rate at which the employee is paid.

[29 U.S.C.A. §207.](#)

3. Compensatory Time - Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required.  
**Note that open-enrollment charter schools presently are not defined as a public agency or a political subdivision for purposes of offering compensatory time to its employees under the FLSA.**

[29 C.F.R. § 553.21.](#)

4. Exemptions - Employees employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teach in elementary or secondary schools) are exempt from the minimum wage and overtime requirements of the FLSA.

[29. C.F.R. § 541.](#)

5. Notice - Employers shall post a notice explaining the FLSA in a conspicuous location where employees may readily observe a copy.  
<http://www.dol.gov/whd/regs/compliance/posters/flsa.htm>

[29 C.F.R. § 516.](#)

6. Recordkeeping – Employers must maintain accurate records on non-exempt employees including certain identifying information about the employee and data about the hours worked and the wages earned.

[29. C.F.R. § 516.](#)

**(TCSA Note: [TWC's sample wage deduction authorization agreement](#))**

### B. Texas Payday Law

**See TCSA Module 100: Financial Operations**

**C. Board Member Compensation**

**See TCSA Module 200: Charter School Governance & Organization**





# TCSA Model Board Policy Series

---

600.100. Training:  
Campus Administrative Officers & Business Managers

## 600.100 TRAINING: CAMPUS ADMINISTRATIVE OFFICERS & BUSINESS MANAGERS

### A. Campus Administrative Officers

1. "Campus administrative officers" include persons who are charged with the duties of, or acting as, a principal or assistant principal of a charter school campus, including one or more of the following functions:
  - a. approving teacher or staff appointments for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
  - b. setting specific education objectives for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
  - c. developing budgets for a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter;
  - d. assuming the administrative responsibility or instructional leadership, under the supervision of a central administration officer, for discipline at a charter school campus;
  - e. assigning, evaluating, or promoting personnel assigned to a charter school campus, unless this function is performed by a central administration officer under the terms of the open-enrollment charter; or
  - f. recommending to a central administration officer the termination or suspension of an employee assigned to a charter school campus, or recommending the non-renewal of a term contract of such an employee.

#### 19 Tex. Admin. Code § 100.1011 (19).

2. Campus administrative officers, including persons providing management services that include the function of a campus administrative officer, must complete ten instructional hours of training, delivered by a TEA-registered course provider.
3. Training shall include the following modules (two out of the required ten hours may be selected from any of these modules):
  - a. At least 90 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; students with disabilities; student records; student admissions; geographic boundaries; and residency;
  - b. At least 60 minutes of instruction in school finance, with special emphasis on student attendance accounting, federal funds and property management, and grant administration;

- c. At least 90 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; and safe schools;
- d. At least 30 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on incidental use of public property by charter holder personnel;
- e. At least 120 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; and dropout reporting;
- f. At least 30 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on employee board members; and
- g. At least 60 minutes of instruction in requirements relating to public records, with special emphasis on confidential student records.

#### 4. Continued Training

- a. A campus administrative officer who has completed the 10-hour training course required by this section must annually thereafter receive five hours of training.
- b. However, a school officer whose school has been rated "Acceptable" or higher for at least two out of three of the most recent ratings may take any training that is documented by the provider and that applies to the achievement of the charter's academic mission and/or fulfillment of its responsibilities and/or accountabilities under the law.
- c. Continuing training under this section shall fulfill assessed training needs, including any training needs identified by TEA monitoring
- d. With the exception of campus administrative officers of a charter holder whose organization has operated campuses that are all rated "Acceptable" or higher for at least two out of three of the most recent ratings, no individual may use self-instructional materials for more than 30 minutes of continuing training.
- e. Twenty-five percent of hours earned in excess of the requirements may be carried over to meet the following year's requirement.

#### 5. Exemptions

- a. A campus administrative officer is exempt from the training required by this section if the person is the holder, in good standing, of a Standard Principal Certificate, or

its lifetime equivalent, issued by the State Board for Educator Certification, and all other officers of the charter school comply with this division.

19 Tex. Admin. Code §100.1104.

## **B. Business Managers**

1. A “business manager” is any person charged with managing the finances of a charter school or charter holder.

19 Tex. Admin. Code §100.1011(20).

2. A business manager, including persons providing management services that include the functions of a business manager, must complete a training course consisting of 30 instructional hours, delivered by a course provider registered with TEA. The training course may not use self-instructional materials.
3. A business manager must complete the training course required by this section within one calendar year of beginning service in that capacity.
4. The training course required by this section shall include the following modules:
  - a. At least 240 minutes of instruction in school law, with special emphasis on Education Code, Chapter 12, Subchapter D; subchapter AA, Chapter 100 of Title 19 of the Texas Administrative Code; and the Financial Accountability System Resource Guide;
  - b. At least 480 minutes of instruction in school finance, with special emphasis on the Financial Accountability System Resource Guide, generally accepted accounting principles, student attendance accounting, federal funds and property management, purchasing, grant administration, audit requirements, and capital financing;
  - c. At least 20 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;
  - d. At least 240 minutes of instruction in accountability requirements related to the use of public funds, with special emphasis on the duties and liabilities of a trustee 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;
  - e. At least 160 minutes of instruction in other requirements relating to accountability to the public, with special emphasis on PEIMS reporting, internal management controls, and audit requirements;



- f. At least 20 minutes of instruction in open meetings requirements under Government Code, Chapter 551, with special emphasis on adopting and amending the budget; and
- g. At least 40 minutes of instruction in requirements relating to public records, with special emphasis on recordkeeping required by generally accepted accounting principles and applicable law.

5. Continued Training

- a. A business manager who has completed the required 30-hour training course must annually thereafter receive 15 hours of training.
- b. Continuing training shall fulfill assessed training needs, including any training needs identified by TEA monitoring.
- c. No more than three hours of continuing training may use self-instructional materials.

6. Exemptions

- a. A business manager is exempt from the required training if the person is the holder in good standing of one or more of the following credentials issued by the Texas Association of School Business Officials, and if all other officers of the charter school comply with this division:
  - i. Registered Texas School Business Administrator;
  - ii. Certified Texas School Business Official;
  - iii. Certified Texas School Business Specialist; or
  - iv. Certified Texas School Business Administrator; and
- b. A business manager is exempt from a module of required training, if:
  - i. the business manager is a certified public accountant (CPA) registered in good standing with the Texas State Board of Public Accountancy; and
  - ii. the subject matter of the module of required training is covered by the Uniform CPA Examination administered by the Texas State Board of Public Accountancy.

19 Tex. Admin. Code §100.1105.

### **C. Staff Development**

Staff development training must include suicide prevention. The training must:

1. Use a best practice-based program recommended by the Department of State Health Services
2. Be provided on an annual basis to all new employees as a part of a new employee orientation; and
3. Provided to all other employees in accordance with the schedule adopted by the Commissioner.
4. An independent review of material may satisfy the requirement if it complies with the Commissioner's rules and is provided online.

Tex. Educ. Code §21.451; 84th Leg., R.S. HB 2186





# TCSA Model Board Policy Series

---

600.120. Immunities

## 600.120 IMMUNITIES

### A. Immunity from Civil Liability for School Employees

1. Employees and volunteers of an open-enrollment charter school are immune from liability to the same extent as school district employees and volunteers are immune from liability.

Tex. Educ. Code §12.1056.

2. Professional Employee. A “professional employee” of an open-enrollment charter school includes:
  - a. superintendent, principal, teacher, including a substitute teacher, supervisor, social worker, counselor, nurse, and teacher's aide employed by the open-enrollment charter school;
  - b. a teacher employed by a company that contracts with the open-enrollment charter school to provide the teacher's services to the district;
  - c. a student in an education preparation program participating in a field experience or internship;
  - d. a school bus driver certified in accordance with standards and qualifications adopted by the Department of Public Safety of the State of Texas;
  - e. a member of the board of directors of the open enrollment charter school or charter holder; and
  - f. any other person employed by the charter school whose employment requires certification and the exercise of discretion.

Tex. Educ. Code § 22.051(a).

3. Statutory immunity is in addition to and does not preempt the common law doctrines of official and governmental immunity.

Tex. Educ. Code § 22.051(b).

4. A professional employee of an open-enrollment charter school is not personally liable for any act that is incident to or within the scope of the duties of the employee's position of employment and that involves the exercise of judgment or discretion on the part of the employee. Professional immunity does not apply:
  - a. in circumstances in which a professional employee uses excessive force in the discipline of students or negligence resulting in bodily injury to students; or
  - b. to the operation, use, or maintenance of any motor vehicle.

5. In addition to the professional immunity provided described above, an individual is entitled to any immunity and any other protections afforded under the Paul D. Coverdell Teacher Protection Act of 2001 (20 U.S.C. Section 6731 et seq.), as amended.
6. An open-enrollment charter school may not by policy, contract, or administrative directive:
  - a. require an employee to waive immunity from liability for an act for which the employee is immune from liability under Section 22.0511; or
  - b. require an employee who acts in good faith to pay for or replace property belonging to a student or other person that is or was in the possession of the employee because of an act that is incident to or within the scope of the duties of the employee's position of employment.

[Tex. Educ. Code § 22.0511.](#)

#### **B. Immunity from Employer Discipline**

1. A professional employee of an open enrollment charter school may not be subject to disciplinary proceedings for the employee's use of physical force against a student to the extent justified under [Section 9.62, Penal Code.](#)
2. "Disciplinary proceeding" means:
  - a. an action brought by the charter school employing a professional employee of a charter school to discharge or suspend the employee or terminate or not renew the employee's term contract; or
  - b. an action brought by the State Board for Educator Certification to enforce the educator's code of ethics adopted under Section 21.041(b)(8).
3. This section does not prohibit an open-enrollment charter school from enforcing a policy relating to corporal punishment; or bringing a disciplinary proceeding against a professional employee of the district who violates the district policy relating to corporal punishment.

[Tex. Educ. Code § 22.0512.](#)

#### **C. Immunity from Liability Resulting from the Administration of Medication to Students** **See TCSA Module 400: Students**

#### **D. Notice of Claim**

Not later than the 90th day before the date a person files a suit against a professional employee of an open-enrollment charter school, the person must give written notice to the employee of the claim, reasonably describing the incident from which the claim arose.

[Tex. Educ. Code § 22.0513.](#)

**E. Exhaustion of Remedies**

A person may not file suit against a professional employee of a charter school unless the person has exhausted the remedies provided by the charter school for resolving the complaint.

Tex. Educ. Code § 22.0514.







# TCSA Model Board Policy Series

---

600.140. Retirement & Health Benefits

## 600.140. RETIREMENT AND HEALTH BENEFITS

### A. Retirement Benefits

#### 1. Teacher Retirement System of Texas (TRS)

##### a. All Employees Eligible

An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent as an employee of a traditional school district.

##### b. School and State Responsibilities

For each covered employee, the school is responsible for making any contribution that otherwise would be the legal responsibility of a school district, and the state is responsible for making contributions to the same extent it would be legally responsible if the employee were a school district employee.

Tex. Educ. Code § 12.1057 (a) and (b).

#### 2. United States Social Security Administration

An open-enrollment charter school is an entity for which the state may enter an agreement with the Social Security Administration. Consequently, the governing board of an open-enrollment charter school or charter holder may elect to extend Social Security coverage to its employees in accordance with the procedure established by the Employees Retirement System.

Tex. Att'y Gen. No. GA-0629 (2008).

### B. Health Benefits

#### 1. TRS-ActiveCare

a. Open-enrollment charter schools may elect, but are not required, to offer health benefits to their employees through TRS-Active Care, the health benefits program operated by the Teacher Retirement System. A charter school is eligible to participate in TRS-Active Care if the school agrees:

- i. that all school records relating to program participation are open to inspection by the trustee, the administering firm, the commissioner of education, or a designee of any of those entities; and
- ii. to have the school's accounts relating to participation in the program annually audited by a certified public accountant at the school's expense.

b. charter school must notify the TRS of the school's intent to participate in the program in the manner and within the time required by rules adopted by the TRS.

Tex. Ins. Code § 1579.154 (a) and (b); 34 Tex. Admin. Code § 41.30 (f).

### 3. COBRA Benefits

#### a. General Rule

The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives workers and their families, who lose their health benefits, the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances.

#### b. Three Qualifying Elements

There are three elements to qualifying for COBRA benefits: (1) specific criteria for coverage plans, (2) qualified beneficiaries, and (3) qualifying events:

##### i. Plan Coverage

Group health plans for employers with 20 or more employees on more than 50 percent of its typical business days in the previous calendar year are subject to COBRA. Both full and part-time employees are counted to determine whether a plan is subject to COBRA. Each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee worked divided by the hours an employee must work to be considered full-time.

##### ii. Qualified Beneficiaries

A qualified beneficiary generally is an individual covered by a group health plan on the day before a qualifying event who is either an employee, the employee's spouse, or an employee's dependent child. In certain cases, a retired employee, the retired employee's spouse, and the retired employee's dependent children may be qualified beneficiaries. In addition, any child born to or placed for adoption with a covered employee during the period of COBRA coverage is considered a qualified beneficiary. Agents, independent contractors, and directors who participate in the group health plan may also be qualified beneficiaries.

##### iii. Qualifying Events

Qualifying events are certain events that would cause an individual to lose health coverage. The type of qualifying event will determine who the qualified beneficiaries are and the amount of time that a plan must offer the health coverage to them under COBRA. A plan, at its discretion, may provide longer periods of continuation coverage.

(1) The qualifying events for employees are:

- (a) Voluntary or involuntary termination of employment for reasons other than gross misconduct; and
- (b) Reduction in the number of hours of employment

(2) The qualifying events for spouses are:

- (a) Voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct;
  - (b) Reduction in the hours worked by the covered employee;
  - (c) Covered employees becoming entitled to Medicare;
  - (d) Divorce or legal separation of the covered employee; and
  - (e) Death of the covered employee
- (3) The qualifying events for dependent children are the same as for the spouse with one addition:
- (a) Loss of dependent child status under the plan rules

26 C.F.R § 54.4980B-0 through 26 C.F.R § 54.4980B-10.

### **C. Workers Compensation Benefits**

Workers' compensation provides covered employees with income and medical benefits if they are injured on the job or have a work-related injury or illness. For purposes of workers' compensation insurance, open-enrollment charter schools are considered to be private employers and can choose whether or not to provide workers' compensation insurance coverage for their employees.

See, Tex. Labor Code § 406.001.

#### 1. Required Notice:

- a. Non-Subscriber Notice to TDI-DWC. An employer that does not obtain workers' compensation insurance coverage shall notify the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) of their non-subscriber status and of their work-related injuries and illnesses.

Tex. Labor Code § 406.004.

- b. Notice to Employees. Each employer must notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired. Each employer also shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination, or cancellation of the coverage takes effect.

Tex. Labor Code § 406.005.

- c. Model Notices. Model notices regarding workers compensation are published on the website of the Texas Department of Insurance at <http://www.tdi.state.tx.us/forms/form20employer.html>
2. Obtaining Coverage. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as described in Chapter 406, Texas Labor Code. Except in cases of gross negligence, workers' compensation insurance limits an employer's liability if an employee brings suit against the employer for damages.

Tex. Labor Code § 406.003; § 406.031.





# TCSA Model Board Policy Series

---

600.160. Teacher Credentials & Qualifications

## 600.160. TEACHER CREDENTIALS AND QUALIFICATIONS

### A. State Qualifications

1. All Teachers. A person employed as a teacher by an open-enrollment charter school must hold a baccalaureate degree.
2. All Principals. A person employed as a principal by an open-enrollment charter school must hold a baccalaureate degree.

Tex. Educ. Code § 12.129

3. Special Education Teachers. A person employed as a special education teacher by an open-enrollment charter school must hold the proper certification.

34 C.F.R. §300.156; 19 Tex. Admin. Code §89.1131.

4. Bilingual Education Teachers. A person employed as a special education teacher by an open-enrollment charter school must hold the proper certification.

Tex. Educ. Code §12.104(b)(2)(G); Tex. Educ. Code §29.061(b) – (c).

### B. Federal Highly Qualified Status

1. Highly Qualified Teachers. Any teacher of record that provides direct instruction to students in any core academic subject area at a school that receives federal funding must be highly qualified. A highly qualified teacher in an open-enrollment charter school:
  - a. Meets state certification requirements as they apply to charter schools;
  - b. Holds a minimum of a bachelor's degree; and
  - c. Has demonstrated subject matter competency in each of the academic subjects in which the teacher teaches. For secondary teachers, this includes possessing an academic major in the subject area taught.
2. Core Academic Subjects. Core academic subjects include English, reading or language arts, mathematics, science, foreign languages (languages other than English), civics and government, economics, arts, history and geography. "Arts" includes music (band and choir directors), art, theater, dance, and any other courses accepted by SBOE for graduation credit in Fine Arts.)
3. Demonstrated Subject Matter Competency. Charter school teachers have the same options for demonstrating competency as teachers in traditional public schools.
  - a. Elementary Teachers (Early Childhood – Grade 6)
    - i. Newly certified teachers. New certified elementary teachers demonstrate



competency in the general elementary curriculum by passing the grade-level appropriate Texas Examination of Educator Standards (TExES) Generalist exam.

ii. Experienced teachers. Experienced elementary teachers may demonstrate competency by:

- (1) passing the Elementary Comprehensive ExCET;
- (2) passing the grade-level appropriate TExES Generalist exam;
- (3) meeting the requirements established under the High, Objective, Uniform Standard of Evaluation (HOUSE) for elementary teachers.

b. Secondary Teachers (Grades 7-12)

i. Newly certified. New secondary teachers may demonstrate competency by:

- (1) passing the applicable ExCET/TExES content exam for a certification area appropriate to the teaching assignment; or
- (2) having an academic major or graduate degree or the coursework equivalent to an undergraduate academic major in the core academic subject areas in which they teach.

ii. Experienced teachers. Experienced secondary teachers may demonstrate competency by:

- (1) passing the applicable ExCET/TExES content exam for a certification area appropriate to the teaching assignment; or
- (2) having an academic major or graduate degree or the coursework equivalent to an undergraduate academic major in the core academic subject areas in which they teach.
- (3) meeting the requirements established under the High, Objective, Uniform Standard of Evaluation (HOUSE) for elementary teachers.

See [20 U.S.C. § 7801\(23\)](#); [34 C.F.R. § 200.55\(b\)\(1\)](#); TEA Guidance for the Implementation of NCLB Highly Qualified Teacher Requirements ([http://www.tea.state.tx.us/index4.aspx?id=4261&menu\\_id=798](http://www.tea.state.tx.us/index4.aspx?id=4261&menu_id=798))

4. Notice to Parents

a. Notice Each School Year

At the beginning of each school year, a local educational agency that receives Title I funds shall notify the parents of each student attending any school receiving funds that the parents may request, and the school will provide the parents on request

(and in a timely manner), information regarding the professional qualifications of the student's classroom teachers, including, at a minimum, the following:

- i. Whether the teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
  - ii. Whether the teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived;
  - iii. The baccalaureate degree major of the teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree; and
  - iv. Whether the child is provided services by paraprofessionals and, if so, their qualifications.
- b. **Additional Required Notice**  
A school that receives Title I funds shall provide to each individual parent timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by a teacher who is not highly qualified.





# TCSA Model Board Policy Series

---

600.180. Employee Leaves & Absences

## 600.180. EMPLOYEE LEAVES AND ABSENCES

### A. Family Medical Leave

1. Covered Employers. All public elementary and secondary schools are “covered employers” under the federal Family Medical Leave Act (FMLA) without regard to the number of employees employed.

29 U.S.C. 2611 (4); 29 C.F.R 825.104(a); 29 C.F.R 825.600.

- a. Posted General Notice. Covered employers must post a notice on its premises that explains the FMLA and the process for filing complaints with the U.S. Department of Labor’s Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment.
- b. Language for Posted General Notice. If an employer’s workforce is comprised of a significant portion of workers who are not literate in English, then the employer shall provide notice in a language in which the employees are literate.
- c. Options for General Notice Posting Placement. For the required posted notice, employers may use U.S. Department of Labor (DOL) Form WHD 1420 or may use another format so long as the information provided includes all of the information contained in that notice. Electronic posting is sufficient if it meets the other requirements of this section.
- d. Additional General Notice Requirement. If a covered employer has any eligible employees, then it shall also either (i) include the general notice in employee handbooks or other written guidance to employees concerning rights or benefits, if such written materials exist; or (ii) distribute a copy of the general notice to each new employee upon hiring.

29 C.F.R 825.300(a).

2. Eligible Employees. “Eligible employee” means an employee who:
  - a. Has been employed for at least 12 months, but the 12 months does not need to be consecutive;
  - b. Has been employed for at least 1,250 hours of service during the 12 months immediately preceding the commencement of leave; and
  - c. Is employed at a worksite where 50 or more employees are employed by the district within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 C.F.R 825.110.

3. Qualifying Reasons For Leave. A covered employer must grant FMLA leave to an eligible employee:

- a. For the birth of a son or daughter, and to care for the newborn child;
- b. For the placement with the employees of a son or daughter for adoption or foster care.

29 C.F.R 825.122.

- c. To care for the employee's spouse, son, daughter, or parent with a serious health condition.

29 C.F.R 825.113; 29 C.F.R 825.122(c).

- d. Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

29 C.F.R 825.113.

- e. Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty or has been notified of an impending call or order to active duty.

29 C.F.R 825.126(b); 29 U.S.C 2611 (14).

- f. To care for a covered service member with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

29 U.S.C 2611 (15), 29 U.S.C 2611 (18); 29 C.F.R.127(b)(3).

- g. For the treatment of the employee or of the employee's covered family member for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider.

29 C.F.R. 825.119; 29 U.S.C. 2612(a); 29 C.F.R. 825.112.

- 4. Length of Leave. An eligible employee may take up to 12 work-weeks of unpaid leave during a 12-month period for any one or more of the qualifying reasons for leave.
  - a. Husband and Wife. A husband and wife employed by the same employer may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.
  - b. 12-Month Period. An employer may choose any one of the following methods for determining the "12-month period" in which the 12 weeks of FMLA occurs:
    - i. The calendar year;

- ii. Any fixed 12 month “leave year,” such as a fiscal year or a year starting on an employee’s anniversary date;
- iii. The 12-month period measured forward from the date an employee’s first FMLA leave begins; and
- iv. A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

29 C.F.R 825.200(b).

5. Military Caregiver Leave

- a. Length of Leave. For military caregiver leave, an eligible employee is entitled to a total of 26 work weeks of leave during a “single 12-month period.” The “single 12-month period” is measured forward from the date of an employee’s first FMLA leave to care for the covered service member, regardless of the method used by the employer to determine the 12-month period for other FMLA leaves.

29 C.F.R 825.200(f).

- b. Husband and Wife. A husband and wife employed by the same employer may be limited to a combined total of 26 work weeks of FMLA leave during any “single 12-month period” if leave is taken as military caregiver leave, leave for the birth of a son or daughter, leave for the placement of a child for adoption or foster care, or leave to care for a parent with a serious health condition.

29 C.F.R 825.127(d).

6. Designation of FMLA Leave

a. Eligibility Notice

When an employee requests FMLA leave, or when the employer acquires knowledge that an employee’s leave may be for an FMLA-qualifying reason, the employer must notify the employee whether the employee is eligible to take FMLA leave within five business days, absent extenuating circumstances. If the employee is not eligible for FMLA leave, then the notice must state at least one reason why the employee is not eligible, including as applicable the number of months the employee has been employed by the employer, the number of hours of service worked for the employer during the 12-month period, and whether the employee is employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.

29 C.F.R 825.300 (b).

b. Rights and Responsibilities Notice

Each time an employer provides an eligibility notice to an employee, the employer must also provide a written rights and responsibilities notice. An employer may use

[DOL form WH-381](#) to provide such notification or another notice that includes the information set out in 29 C.F.R 825.300 (c)(1).

[29 C.F.R 825.300 \(c\).](#)

c. Designation Notice

Once an employer has enough information to determine whether an eligible employee has a qualifying reason for FMLA leave, then the employer must send notice to the employee of whether the leave will or will not be designated as FMLA leave. An employer may use [DOL form WH-382](#) to provide such notification. The designation notice must include information about the substitution of paid leave, the fitness for duty certification, and the amount of leave charged against FMLA entitlement.

[29 C.F.R 825.300 \(d\).](#)

d. Employee Notice

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave. The employee does not need to expressly assert rights or even mention FMLA.

[29 C.F.R 825.301.](#)

- i. Foreseeable Leave. If an employee's FMLA leave is foreseeable, then the employee must provide the employer with 30 days notice unless 30 days notice is not practicable.

[29 C.F.R 825.302.](#)

- ii. Unforeseeable Leave. When the approximate timing of leave is not foreseeable, an employee must provide notice to his or her employer as soon as practicable under the facts and circumstances under the particular case.

[29 C.F.R 825.303.](#)

- iii. If an employee does not comply with usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied.

[29 C.F.R 825.302\(d\); 29 C.F.R 825.303\(c\).](#)

e. Concurrent Use of Other Types of Leave.

- i. Paid Leave. At the employee's or employer's option, paid leave provided by the employer may be taken and run concurrently with unpaid FMLA leave.



29 C.F.R 825.207.

- ii. Workers' Compensation Leave. When an employee's "serious health condition" arises from an employee's on the job injury, the employee may also be entitled to workers' compensation benefits. Under this circumstance, if the employer designates the leave as FMLA leave, then the workers' compensation leave runs concurrently with the FMLA leave. An employer and employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

29 C.F.R 825.207.

7. Use of FMLA Leave

- a. Intermittent Use of FMLA Leave. FMLA leave may be taken as "intermittent leave," that is – separate blocks of time ranging from an hour or more to several days or weeks due to a single qualifying reasons.
- b. Reduced Leave Schedule. FMLA leave also may be taken on a "reduced leave schedule" that reduces an employee's usual number of working hours per work-week or hours per workday. An example is to reduce the employee's work hours from full time to part time.
- c. Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered service member. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

29 C.F.R, 825.202; 29 C.F.R. 825.203.

- d. Intermittent and Reduced Leave for Instructional Employees Instructional employees (employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting) may be limited in their use of intermittent or reduced leave.

29 C.F.R. 825.600; 29 C.F.R 825.601.

- e. Leave Through the End of a Semester for School Employees. In certain cases, a school employer may require an employee to take FMLA leave through the end of the semester.

29 C.F.R 825.602; 29 C.F.R 825.603

## 8. Health Insurance

During an employee's FMLA leave, the employer must maintain the employee's coverage under any group health plan. The employee may choose whether to retain health coverage during the leave, and if the employee elects to retain coverage must continue to pay the employee's share of the health plan premium.

[29 C.F.R 825.209; 29 C.F.R 825.210](#)

## 9. Right to Reinstatement

### a. General Rule

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when the leave began, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence.

[29 C.F.R 825.214; 29 C.F.R 825.216](#)

### b. Reinstatement for School Employees.

The reinstatement of school employees to "an equivalent position" will be based on established school board policies and practices that are in writing and made known to the employee before he or she takes FMLA leave. The written policy must clearly explain the employee's rights of restoration.

[29 C.F.R 825.604.](#)

### c. Pay Increases and Bonuses.

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. If pay increases occur during the FMLA period that are related to seniority, length of service, or work performed, then the employee is entitled to the pay increase in accordance with the employer's policy or practice with respect to other employees on equivalent leave status.

[29 C.F.R 825.215\(c\).](#)

### d. Key Employee Exception

- i. Definition. A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

[29 C.F.R 825.217](#)

- ii. An employer may deny job restoration to a key employee if restoration will cause a substantial and grievous economic injury to school operations.

FMLA's "substantial and grievous economic injury" standard is different from and more stringent than the "undue hardship" test under the American with Disabilities Act.

29 C.F.R 825.218 and 29 C.F.R 825.218.

10. Recordkeeping Requirements

An employer shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the FLSA and the FMLA regulations. Employers must keep the records for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request.

29 C.F.R 825.500.

11. Discrimination and Retaliation

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights.

29 C.F.R 825.220.

**B. Military Leave**

1. Covered Employers

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) applies to all public and private employers in the United States, regardless of size.

20 C.F.R 1002.34.

2. Protected Employees

USERRA applies to all employees that leave public or private employment to serve one of the uniformed services, including all managerial, executive, and professional employees. For purposes of federal military leave, "uniformed services" means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Services; individuals attending a military service academy; and any other category of persons designated by the President in time of war or emergency.

20 C.F.R 1002.6; 20 C.F.R 1002.43; 20 C.F.R 1002.57; 20 C.F.R 1002.58; 20 C.F.R 1002.59; 20 C.F.R 1002.60.

3. Employee Re-employment Rights

Any person who is absent from a position of employment by reason of voluntary or involuntary service in the uniformed services shall be entitled to certain reemployment rights and benefits under USERRA if:

- a. The person (or an appropriate officer of the uniformed service in which such service is performed) has given advance written or verbal notice of such service to an employer (unless notice is precluded by military necessity or is otherwise unreasonable or impossible);

20 C.F.R 1002.85; 20 C.F.R 1002.86

- b. The cumulative length of the absence and of all previous absences from a position of employment with the employer does not exceed five years;

20 C.F.R 1002.99 et seq.

- c. The person reports to or submits an application for re-employment to the employer and complies with the appropriate procedural requirements that apply under the circumstances; and

20 C.F.R 1002.115.

- d. The employee has not been separated from service with a disqualifying discharge or under other than honorable conditions.

20 C.F.R 1002.32.

4. Exceptions to Employee Re-employment Rights

An employer is not required to re-employ a person if:

- a. The employer's circumstances have so changed as to make reemployment impossible or unreasonable;
- b. The re-employment of such person would impose an undue hardship on the employer; or
- c. The employment from which the person leaves to serve in the uniformed services is for a brief, non-recurrent period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period.

20 C.F.R 1002.41.

5. Right to the Escalator Position

As a general rule, the employee is entitled to the escalator position, which is re-employment in the job position that he or she would have attained with reasonable certainty if not for the absence due to uniformed service.

20 C.F.R 1002.191.

6. Additional Employee Rights

Under certain circumstances, protected employees are also entitled to non-seniority

rights and benefits, and the opportunity to continue health insurance coverage.  
20 C.F.R 1002.149; 20 C.F.R 1002.163.

7. Protected Activities

An employer must not deny initial employment, re-employment, retention in employment, promotion, or any benefit of employment to an individual on the basis of his or her membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

20 C.F.R 1002.18; 20 C.F.R 1002.40.

**C. Religious Observances**

An open-enrollment charter school shall reasonably accommodate an employee's request to be absent from duty in order to participate in religious observances and practices, so long as it does not cause undue hardship on the conduct of charter business. Such absence shall be without pay unless applicable paid leave is available.

42 U.S.C. 2000e(j); 2000e-2(a).

**D. Compliance with Subpoena**

An open-enrollment charter school may not discharge, discipline, or penalize, in any manner, an employee who complies with a valid subpoena to appear in civil, criminal, legislative, or administrative proceeding.

Tex. Labor Code § 52.051(a).

**E. Reasonable Absence Control**

An employer that terminates an employee for violating a reasonable absence-control provision cannot be liable for retaliatory discharge as long as the rule is uniformly enforced.

*Continental Coffee Products Co. v. Cazarez, 937 S.W. 2d 444 (Tex. 1996) (workers' compensation discrimination case); Texas Division-Tranter, Inc. v. Carrozza, 876 S.W.2d 312 (Tex. 1994) (workers' compensation discrimination case).*





# TCSA Model Board Policy Series

---

600.200. Complaints by School Employees

## **600.200. COMPLAINTS BY SCHOOL EMPLOYEES**

***NOTE: See TCSA Model Policy Module 300, Section 300.120 for a summary of the Legal Authority governing complaints and grievances against the charter school or against employees of the charter school.***







# TCSA Model Board Policy Series

---

**600. Human Resources**  
***Charter Board Policy for***  
***Excellence In Leadership Academy***



## **INTRODUCTION**

The Model Board Policies for Charter Schools is a series of publications by the Texas Charter Schools Association (TCSA). These publications are an educational tool for charter school leaders to aid in the operation and management of open-enrollment charter schools in Texas.

### **Overall Policy Framework**

Each module in the Board Policy Series provides a summary of federal and state statutes, regulations, and related materials applicable to open enrollment charter schools. Citations to these materials are provided throughout the module and many contain a hyperlink so the actual statutory or regulatory provision can be accessed on the Internet. The summary is designated by the LEGAL AUTHORITY tab on the right edge of each page.

After the LEGAL AUTHORITY portion of the module you will find the model policy section designed to comply with current statutory and regulatory requirements described in the LEGAL AUTHORITY summaries. These policies are designated by the red CHARTER BOARD POLICY tab on the right edge of each page.

These are suggested policies to address the requirements set forth in this Module. Prior to adoption of the model policies by the Board of a charter school, each policy should be customized by including the school's name and by tailoring the language, if appropriate, to fit the specific needs, culture and requirements of the school. TCSA recommends that the Board of a charter school consult with and obtain the advice of the school's legal counsel in connection with adopting policies to comply with laws governing charter schools.

TCSA plans to update the Model Board Policies for Charter Schools after each Texas Legislative Session to reflect changes in applicable laws. We also will regularly and continually update the Policy Series when changes occur in state and federal case law and administration regulations that affect open enrollment charter schools. We encourage you to renew your subscription to the policy series each year to ensure that your school has the most recent laws and regulations.

### **Scope of Service & Copyright Notice**

This policy module prepared by the TCSA is designed and intended as a resource of information for charter schools and is not to be construed as legal advice. It should be used in connection with consulting and obtaining the advice of the school's legal counsel to ensure compliance with applicable legal requirements.

This policy module and all updates are copyrighted publications of the TCSA. All rights are reserved and will be enforced to the fullest extent of the law. The policy modules are for the sole use of the purchaser. Duplication and distribution in whole or in part are prohibited unless otherwise specifically authorized in writing by TCSA. Inquiries should be directed to TCSA, 700 Lavaca, Suite 930, Austin, TX 78701.

For questions concerning the Model Board Policies for Charter Schools contact:

Lindsey Gordon, Texas Charter Schools Association  
lgordon@txcharterschools.org  
512.584.8272

## **Module 600: Human Resources**

The Human Resources Module 600, is the sixth and final module of the Model Board Policies. The material included in this module provides a comprehensive summary of statutes and regulations that apply to charter schools, as well as specific model board policies designed to comply with these legal requirements. Other policy modules currently available include:

---

Module 100: Financial Operations

---

Module 200: Charter School Governance & Organization

---

Module 300: General School Operations

---

Module 400: Students

---

Module 500: Open Government

---

## **Legal Abbreviations Used In the TCSA Model Board Policy Series**

---

Atty. Gen. Op.	Attorney General Opinion
C.F.R	Code of Federal Regulations
Tex. Admin. Code	Texas Administrative Code
Tex. Educ. Code	Texas Education Code
Tex. Gov't Code	Texas Government Code
Tex. Labor Code	Texas Labor Code
Tex. Loc. Gov't Code	Texas Local Government Code
U.S.C.A	United States Code Annotated

---

## *I. 600.020. EQUAL OPPORTUNITY*

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Anti-Discrimination Policy**

Excellence in Leadership Academy employees shall not engage in discrimination or harassment motivated by race, color, religion, sex, disability, military service, or age directed toward other Excellence in Leadership Academy employees or students. A substantiated charge of discrimination and/or harassment shall result in disciplinary action. Retaliation against employees or students who report discrimination and/or harassment is strictly prohibited. Acts of retaliation may result in disciplinary action up to and including termination.

### **SECTION 2. Investigation**

Any allegations of discrimination or harassment of students or employees shall be investigated and addressed.

### **SECTION 3. Coordinator**

Excellence in Leadership Academy designates the following person to coordinate its efforts to comply with Title IX of the Education Amendments, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Age Discrimination Act of 1975, and this anti-discrimination policy:

Name: Ana Mendoza

Position:  
Executive Director

Address:  
915 W. Interstate Highway 2,  
Mission, Texas

Telephone: 956-424-9504

### **SECTION 4. Complaints**

The Coordinator shall be responsible for the investigation of discrimination complaints filed by employees and citizens. Complaints regarding any type of alleged discrimination shall be made in accordance with Excellence in Leadership Academy complaint policy in Section 300.120.

## **II. 600.40. DRUG-FREE WORKPLACE**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Drug-Free Policy**

Excellence in Leadership Academy is committed to maintaining a drug-free workplace and shall make a good faith effort to maintain such an environment. The unlawful manufacture, distribution, possession, or use of a controlled substance in the workplace is strictly prohibited. In addition to any consequences established by law, violation of this policy may lead to disciplinary consequences up to and including termination.

### **SECTION 2. Drug-Free Awareness Program**

The Executive Director, or designee, shall establish a drug-free awareness program in accordance with federal law.

### **SECTION 3. Notification.**

Employees shall notify the Executive Director or designee of any conviction based on a drug statute violation that occurs within five days of such a conviction. Within 10 days of such notification, or otherwise being notified, the Executive Director, or designee, shall notify applicable relevant federal granting agencies of the conviction. Within 30 days of such notification the Executive Director, or designee, shall take appropriate personnel action or require the employee participate in a drug abuse assistance or rehabilitation program.

### **SECTION 4. Alcohol & Drug Testing**

Section 4.1. Establishment of Testing Program & Procedures. In an effort to promote safety and help prevent accidents resulting from alcohol and/or drug misuse, the EXECUTIVE DIRECTOR, or EXECUTIVE DIRECTOR's designee, shall establish an alcohol and drug and controlled substance testing program and procedures for the following:

1. Employees who are drivers of charter school-owned or rented vehicles;
2. Employees who perform safety-sensitive functions;
3. Applicants for positions in the above-referenced categories; and
4. Any employee when there is reasonable suspicion of use of alcohol or controlled substances in the workplace.

The EXECUTIVE DIRECTOR shall designate a charter school official who shall be responsible for ensuring that information is provided to all employees regarding prohibited driver conduct, alcohol and controlled substances tests, and the consequences that follow positive test results.

Section 4.2. Reasonable Suspicion Testing. Only supervisors trained in accordance with federal regulations may, based upon reasonable suspicion, remove an employee and require testing for alcohol and/or controlled substances. The determination of reasonable suspicion shall be based

on specific observations of the appearance, behavior, speech, or body

odors of the employee whose motor ability, emotional equilibrium, or mental acuity appears impaired. Such observations must take place just preceding, during, or just after the period of the workday that the employee is on duty.

The observations may include indication of the chronic and withdrawal effects of controlled substances. Within 24 hours of the observed behavior, the supervisor shall provide a signed, written record documenting the observations leading to a controlled substance reasonable suspicion test.

**Section 4.3. Required Procedures.** The procedures established under Section 4.1 shall require the termination of an employee's employment for refusal to submit to a required test for alcohol or controlled substances.

**Section 4.4. Supervisor Training.** The Executive Director, or the Executive Director's designee, shall ensure that supervisors are properly trained in accordance with the terms of the applicable law and this policy.



### **III. 600.060. HIRING PRACTICES & CRIMINAL BACKGROUND CHECKS**

The governing body (“Board”) of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

#### **SECTION 1. New Hires (updated August 2017)**

##### **Section 1.1. Compliance.**

The Executive Director, or designee, shall ensure compliance with applicable laws and regulations regarding hiring practices of new employees.

##### **Section 1.2. Posting Job Vacancies.**

The Executive Director, or designee, shall ensure that job vacancies are posted with ample time and in various venues so that a broad pool of potentially strong applicants may apply for available positions.

##### **Section 1.3. Pre-employment Affidavits.**

The Executive Director, or designee, shall ensure all applicants for a position at Excellence in Leadership Academy must submit a pre-employment affidavit. An applicant that answers affirmatively as to having an improper relationship with a minor must disclose all relevant facts regarding the charge, adjudication, or conviction, and whether the charge was determined to be false. An applicant is not precluded from being employed with NAME OF CHARTER SCHOOL if the charges were determined to be false.

#### **SECTION 2. Criminal Background Checks**

The Executive Director, or designee, shall ensure compliance with applicable laws and regulations regarding criminal background checks. Upon notification that an employee or prospective employee has engaged in an offense which legally prohibits that individual from employment at an open-enrollment charter school, the Executive Director, or designee, shall terminate, or not hire as applicable, that individual.

#### **SECTION 3. SBEC Reporting Requirements (updated August 2017)**

Section 3.1 Principal Reporting Requirements. The principal at a Excellence in Leadership Academy campus must notify the Executive Director of Excellence in Leadership Academy no later than 7 business days of:

- a. Learning an educator’s termination of employment or resignation following an alleged incident of misconduct, including an improper relationship with a student; or
- b. Learning about an educator’s criminal record by means other than the criminal history clearinghouse.

Section 3.2. Executive Director Reporting Requirements. The Executive Director, or designee, shall ensure compliance with reporting laws and regulations regarding employee termination and background checks.

- a. If the Executive Director, or designee, learns of criminal history outside of the clearinghouse background check, the Executive Director, or designee, must notify SBEC within 7 business days.
- b. Additionally, if an educator is terminated for or resigned due to inappropriate behavior, including being involved in a romantic relationship with or solicited or engaged in sexual contact with a student or minor, the Executive Director, or designee, shall notify SBEC within 7 business days.
- c. If the Executive Director, or designee, receives a report from a principal of a Excellence in Leadership Academy campus, the Executive Director, or designee, must report to SBEC within 7 business days.

TCSA NOTE: Texas Education Code requires the report to be in writing in a form adopted by the board. This is a sample list of items that the school may want to include in the written notice, but there are no prescribed requirements.

Section 3.3. Written Report. A report to SBEC must be in writing and should include the following:

- a. Name of employee
- b. State certification status
- c. Description of incident or description of criminal history
- d. Disciplinary steps taken

#### **Section 4. Improper Relationships with Students**

It is the policy of Excellence in Leadership Academy that all employees maintain a professional relationship and exhibit a professional demeanor in their interactions with students. Employees shall not form personally intimate or romantic relationships with students, regardless of whether the student is 18 years old. Employees found to have engaged in an improper or inappropriate relationship with a student is subject to immediate disciplinary action, including termination.

Section 4.1. Electronic Communication. In order to prevent improper relationships with students, Excellence in Leadership Academy adopts the following:

- a. Text messages and email communications are prohibited between employees and students unless the communication is for educational purposes.
- b. Employees may not be friends or connect with students on any social media platform such as Facebook, Twitter, Snapchat, Instagram and others. Also, employees are prohibited from engaging in electronic dating applications with students such as Tinder.

TCSA NOTE: Charter schools that require school employees to be available to students via phone or email to assist with homework or classwork, cannot require an employee to share their personal email or phone number.

Section 4.2. Personal Phone Numbers and Emails. Employees at Excellence in Leadership Academy are not required to provide personal emails or personal phone numbers with students, parents, or families of students. Employees may elect not to disclose their personal telephone number or e-mail address to students.

### Section 4.3. Reporting Inappropriate Behavior.

#### a. Employee Reporting.

Employees at Excellence in Leadership Academy must report any behavior that is observed at school or at any school-related or school-sponsored activity that might violate this policy. Additionally, if employees receive any inappropriate communication from a student, the employee must immediately report the incident to the DESIGNATED CAMPUS ADMINISTRATOR. Reports may be submitted directly to the campus administrator via email or verbally in person. A report should include:

- i. Name of the employee involved;
- ii. Name of the student involved;
- iii. Location of incident; and
- iv. Description of incident.
- v. If possible, a report should include any copies of communication between the employee and the student.

#### b. Parent Notification

TCSA NOTE: A notice regarding an alleged incident is required to be sent as soon as feasibly possible.

Excellence in Leadership Academy will notify a parent or guardian of a student when an alleged incident of educator misconduct involving an inappropriate relationship with a student as soon as feasibly possible after learning of the alleged incident, but no later than 24 hours.

Following an investigation into an incident of alleged misconduct involving an inappropriate relationship with a student, Excellence in Leadership Academy will notify the parent or guardian of the student involved as to whether:

- i. The educator was terminated following the investigation or if the education resigned before the completion of the investigation; and
- ii. A report was submitted to the SBEC for the alleged misconduct.

## **IV. 600.080. COMPENSATION**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Fair Labor Standards Act (FLSA) Compliance**

Section 1.1. Designation of Work Week. For purposes of the FLSA, the board generally designates the 40 hour work-week for employees as Monday at HOUR am through Friday at HOUR pm. The Board authorizes the Executive Director to designate separate work weeks for specific school personnel such as, but not limited to, the school maintenance staff.

Section 1.2. Classification of Employees. The Executive Director shall determine the classification of employees as "exempt" or "nonexempt" for purposes of FLSA compliance.

Section 1.3. Permission Required to Work Overtime. Nonexempt employees may only work over 40 hours per week if they have received prior approval from their supervisor.

### **SECTION 2. COMPENSATION PLANS FOR SCHOOL EMPLOYEES**

The Executive Director shall recommend for Board approval compensation plans for all categories of charter school employees including salary schedules, stipends, benefits, incentives or other components determined appropriate by the Executive Director. The Executive Director shall administer the compensation plan in a manner consistent with the annual budget adopted by the Board.

### **SECTION 3. Wage Overpayment / Underpayment**

Excellence in Leadership Academy strives to take all reasonable steps to ensure that employees receive the correct amount of pay in each paycheck and that employees are paid promptly on the scheduled payday. In the unlikely event that there is an error in the amount of pay, the employee shall promptly bring the discrepancy to the attention of his or her supervisor so that corrections can be made as quickly as possible. If the employee has been paid in excess of what he or she has earned, the employee shall return the overpayment to Excellence in Leadership Academy as soon as possible. No employee is entitled to retain any pay in excess of the amount he or she has earned according to the agree-upon rate of pay. If a wage overpayment occurs, the overpayment will be regarded as an advance of future wages payable and will be deducted in whole or in part from the next available paycheck(s) until the overpaid amount has been fully repaid. Each employee will be expected to sign a wage deduction authorization agreement authorizing such a deduction either soon after employed with Excellence in Leadership Academy or as soon as practicable. Such authorization agreement is valid for the duration of the employment relationship.

(TCSA Note: TWC's sample wage deduction authorization agreement)

### **SECTION 4. Expense Reimbursement**

The Executive Director shall designate allowable expenses for expense reimbursement when employees incur expenses that are pre-approved and related to their work assignments. Employees shall be required to submit accurate documentation of the expenses for which

reimbursement is sought.

## **SECTION 5. Bonus Payments**

Excellence in Leadership Academy provides every employee with base compensation. However, there are circumstances when additional payment, bonus pay, may be appropriate to provide a reward for exceptional performance. An employee may earn a bonus only if he or she is employed on the bonus payment day and has not indicated his or her intent to resign.

A bonus is defined as an after-the-fact discretionary, lump sum, non-cumulative cash award that may be granted to an employee in recognition of an extraordinary contribution which substantially benefits the students at Excellence in Leadership Academy. Because bonuses are for extraordinary contributions, it is not expected that bonuses will be awarded annually or on any other regular basis. No property interest exists in the possibility of an award of a bonus.

Excellence in Leadership Academy may award a bonus to an employee in its sole discretion. General factors that Excellence in Leadership Academy might consider in exercising its discretion to award a bonus include, but are not limited to:

1. 100% Attendance
2. 85% of Students Pass STAAR
3. 85% of Students are Developed on TPRI & Circles Test

By June, the ED shall notify the Board whether funds exist to award employee bonus payments. The Board will determine whether or not to allocate these funds for use as employee bonuses. If the Board determines to use these funds as employee bonuses, the ED, along with Business Manager and Principal, shall comprise a committee which shall determine which employees receive a bonus and the amount.

## **V. 600.100. TRAINING: CAMPUS ADMINISTRATIVE OFFICERS & BUSINESS MANAGERS**

### **Section 1: Documenting Compliance**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

Each campus administrative officer and business manager shall comply with and keep accurate records concerning his or her compliance with the commissioner of education rules governing training requirements.

### **Section 2: Staff Development**

The Executive Director or designee will adopt a policy to provide annual training on suicide prevention for all new staff and a schedule for returning staff to renew their training in line with rules adopted by TEA.

## **VI. 600.120. IMMUNITIES**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **Section 1. Exhaustion of Administrative Claims**

Prior to filing a lawsuit against a professional employee hired by Excellence in Leadership Academy, potential claimants shall exhaust administrative remedies in accordance with state law.

Administrative remedies must be pursued through the Board's grievance process set forth in Board Policy 300.120.

### **Section 2. Written Notice of Legal Claims**

Written notice of a potential legal claim against a professional employee of the Excellence in Leadership Academy shall be provided in accordance with state law and shall be mailed or hand-delivered to the employee's attention at the charter school's administrative office at the following address: HR Coordinator-Cyda Alfaro

## **VII. 600.140. RETIREMENT AND HEALTH BENEFITS**

- The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Compliance**

The Executive Director shall administer this policy in compliance with all applicable laws and shall ensure that school records pertaining to each employee's retirement and health benefits are current and accurate.

### **SECTION 2. Health Benefits**

Excellence in Leadership Academy elects to provide health benefits through TRS - Active Care. All health claims and coverage decisions are final as determined by the school's selected carrier.

For more information, see Excellence in Leadership Academy Personnel Handbook/Employee Handbook.

### **SECTION 3. COBRA Notification**

The Executive Director, or designee, shall notify employees of their potential rights under COBRA upon separation from employment with the school, whether for voluntary or involuntary reasons.

### **SECTION 4. Local Benefits**

Local Benefits - Excellence in Leadership Academy offers the following additional employment benefits for its employees: [Note: Here the Board should define and state any specific conditions for participating in additional employment benefits such as vision programs, dental programs, parking privileges, membership dues in professional associations, cell phone allowances, professional development opportunities, etc.

- \$300.00 towards health insurance with TRS-Active Care

### **SECTION 5. Workers Compensation Benefits**

It is the policy of Excellence in Leadership Academy to provide workers' compensation insurance. The Executive Director shall notify employees of its coverage decisions in accordance with state law.

### **SECTION 6. Teacher Retirement System (New August 2017)**

Section 6.1. TRS Eligibility. Excellence in Leadership Academy participates in the Teacher Retirement System (TRS). An employee is eligible for membership in TRS when the employee has:

- a. Regular employment with a single public, state-supported education institution in Texas that is expected to last for a period of 4 ½ months or more;

- b. For one-half or more of the full-time workload; and
- c. With compensation paid at a rate comparable to the rate of compensation for other persons employed in similar positions.

An employee at Excellence in Leadership Academy is considered to meet these requirements if the employee's customary employment is for 20 hours or more each week at a single employer and for 4 ½ months or more in one school year.

TCSA NOTE: This is a required policy.

Section 6.2 Loss of TRS Eligibility. An employee at Excellence in Leadership Academy is no longer eligible to receive retirement annuity from TRS if the person is convicted of a qualifying felony against a student. A qualifying felony includes the continuous sexual abuse of a young child or children, an improper relationship between an educator and student, sexual assault, or aggravated sexual assault.



## **VIII. 600. 160. TEACHER CREDENTIALS & QUALIFICATIONS**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Compliance.**

The Executive Director shall ensure that each teacher employed by the Excellence in Leadership Academy is properly credentialed and qualified as required by state and federal law. Further, the Executive Director shall ensure that the appropriate notices are sent to parents concerning the credentials and qualifications of the student's teachers.

## **IX. 600. 180. EMPLOYEE LEAVES AND ABSENCES**

The governing body ("Board") of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **Section 1. Definition**

For purposes of this policy, "instructional staff" includes full time employees who work as campus principals, classroom teachers, teacher aides, counselors, and providers of special education services

### **Section 2. Administration and Compliance**

The Executive Director shall administer this policy in compliance with all applicable laws and shall ensure that school records pertaining to each employee's leaves and absences are current and accurate.

### **Section 3. Family Medical Leave**

Section 3.1. 12-Month Period. For purposes of FMLA leave, the 12-month period for leave is determined as the calendar year the 12-month period following the employee's employment anniversary date.

Section 3.2. Concurrent Use of Leave. It is the policy of Excellence in Leadership Academy for an employee's paid leave, and/or workers' compensation leave to run with FMLA leave.

### **Section 4. Local Leaves and Absences**

Section 4.1. Leave for Instructional Staff. For instructional staff, leave ordinarily may not be taken on the first day of school, on the last of school, during the administration of state assessments, during the administration of local benchmarking assessments, on days immediately before or after Spring Break, or on days immediately before or after Winter Break, but each employee's supervisor is authorized to make exception to this policy as he or she determines appropriate to accommodate the employee without compromising the interests of the students.

Section 4.2. Local Personal Leave. Each employee is entitled to 5 local days of paid personal leave per year. Personal leave may be used for illness, illness of an employee's family member,

personal and family medical appointments, and other personal reasons as determined by the employee. Personal leave may accumulate up to 10 days per year.

Section 4.3. Other Leave. The charter school offers the following additional types of leave for its employees:

- Military Leave

### **Section 5. Extended Absences from Duty**

Section 5.1. Abandoning Work. An employee who misses three days of work without directly notifying the employee's supervisor is considered to have abandoned the employee's position and will be terminated from employment unless extenuating circumstances exist as determined by the Executive Director or designee.

### **Section 5.2. Returning to Work from Extended Leave.**

Section 5.2.1. Reinstatement. The reinstatement of an employee returning from extended leave such as family medical leave, military leave, or workers' compensation leave is a high priority for Excellence in Leadership Academy. Reinstatement to an equivalent position will be determined on a case-by-case basis by the Executive Director, or designee, based on the following factors relating to the best interests of the school and its students:

- a. the applicable laws, policies, and practices governing the employee's absence from duty;
- b. for instructional positions, the time of year, the students' academic and behavior progress, the proximity of school and/or student holidays, the proximity of student testing, and additional similar factors relating to the academic and behavioral success of the students;
- c. whether the employee is a key employee;
- d. the school's legal obligations to other employees;
- e. the employee's ability to perform the essential functions of the job with or without reasonable accommodation;
- f. the impact of reinstatement on the academic, fiscal, or other operations of the school.

Section 5.3. Pay Increases. Employees returning to their prior employment positions from extended leave such as family medical leave or workers' compensation leave are entitled to any cost of living increases that were awarded during the employee's absence from duty. Unless legally required otherwise, returning employees will be entitled to any pay increases that were awarded based on seniority, length of service or work performance.

## **X. 600. 200. COMPLAINTS BY SCHOOL EMPLOYEES**

The governing body (“Board”) of Excellence in Leadership Academy adopts the following policy which shall be effective on the date that the policy is adopted by the Board.

### **SECTION 1. Process for Employee Complaints**

Employees of Excellence in Leadership Academy who have a complaint about their terms or conditions of work are encouraged to resolve their concerns informally with their co-workers and/or supervisors at the lowest level possible. If the employee is not satisfied with the outcome the informal resolution, then the employee may file a formal complaint in accordance with the grievance process set forth in Board Policy Section 300.120.

### **SECTION 2. Exception for Sexual Harassment Complaints**

All formal complaints by charter employees must be pursued in accordance with the process set forth in Board Policy 300.120 unless the complaint is a sexual harassment complaint filed by an employee against the employee’s supervisor. Under these circumstances, the employee shall present his or her Level 1 complaint to the school’s ED who will designate another supervisory level employee to hear and respond to the Level1 grievance. If the ED designee does not reach a decision that is satisfactory to the employee, then the employee may appeal the decision to Levels 2 and 3 as delineated in Board Policy Section 300.120.

