

## Questions and Concerns

# TEA PROPOSES MAJOR CHARTER SCHOOL POLICY CHANGE ON GEOGRAPHIC BOUNDARIES AND STUDENTS SERVED

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The Texas Education Agency has proposed a major charter school policy change in the agency's update of the rules in the 2021-2022 Student Attendance Accounting Handbook (SAAH). Comments on the rules change are due to TEA on November 22, 2021.<sup>i</sup>

TEA proposes to delete the section<sup>ii</sup> in the new SAAH which currently requires charter schools to enroll only students in the approved geographic boundary authorized in the charter school's charter agreement (i.e., deleting the use of attendance Code 3 to identify an ineligible student). This change also deletes language in the SAAH which clearly states that enrolling ineligible students "may constitute a material violation of the charter." Geographic boundaries are approved by TEA and the State Board of Education (SBOE) as part of the charter approval process. Currently, charter schools may only enroll students in the approved geographic boundary with the exception of children of charter employees.

A review of this change in the SAAH raises concerns that deleting this section would have broad implications for charter school policy. The change eliminates TEA's clearly stated prohibition against enrolling students outside the approved geographic boundary and removes the code that TEA uses to identify whether a charter school enrolls an ineligible student.

The geographic boundary is a critical part of a charter's application and approval. It is central to defining the mission of the charter, the actual need for a new charter in that specific geographic area, and which students who will be served by the charter.

Importantly, the change to the SAAH could undermine the SBOE's authority in the charter application approval process which is based in part on which students will be served as defined by an approved geographic boundary. This change opens up the potential for a charter applicant to misrepresent the students to be served and face limited or no consequences. As a result, students the SBOE intended to be served could be crowded out by easier-to-educate "transfers".

In addition, this change would not conform to current TEA rules in TAC 100.1041 (d)(1)<sup>iii</sup> which withholds state funds from a charter that expands its geographic boundary without an approved amendment to the charter.

In its response to concerns about the change in the SAAH, TEA states that that the agency is not

changing the geographic boundary requirement, but is using the change in the SAAH to shift from financial enforcement of the requirement to administrative enforcement through a corrective action plan and/or other governance interventions rather than removing funds for students who have already been served.

However, major questions and concerns exist about how TEA can actually enforce its rule on geographic boundaries given this policy change and how it will play out in real practice. For example:

1. What problem does this amendment to the rule solve? Have charter schools frequently enrolled ineligible students? How does this change help TEA enforce its rule on geographic boundaries?
2. Why is TEA proposing a change in the rule now? And what input has TEA received about this change? Are there specific audits that should be considered by the SBOE as examples?
3. By eliminating the reporting code for charter schools to indicate they have enrolled a student outside their approved geographic boundary, how will TEA identify whether a charter school has violated its charter by enrolling ineligible students? Would a charter then be forced to fraudulently report student attendance as from within the geographic boundary to obtain funding?
4. Should TEA somehow become aware of a violation of an approved geographic boundary, the charter could be subject only to a currently undefined and discretionary “administrative enforcement,” but state aid would not be withheld as is the current practice. Is that a strong enough incentive to ensure compliance?
5. The ambiguity of “administrative enforcement” appears to show there is no longer a consistent policy. Would students “already served” be allowed to remain through graduation as part of a “corrective action plan”? Could a charter improve its academic performance by selectively serving ineligible students and then escape any real consequences by being “successful”?
6. The consequence of enrolling ineligible students changes from a violation that “may constitute a material violation of the charter” which results in withholding state aid to an “administrative enforcement” and a “corrective action plan” that is at the sole discretion of the Commissioner.
7. The subjectivity of the proposed rule does not serve charters well, either. Could “administrative enforcement” include revocation or replacement of a board? Placing this much discretion with the commissioner leaves everyone with no ability to anticipate the agency’s action.

8. TEA is not adequately staffed to monitor the contingencies and commitments currently in the charter contract, so agency capacity to identify and monitor compliance with the approved geographic boundary is extremely unlikely, especially absent the current code in the SAAH that flags an ineligible student.
9. The amendment singles out one type of ineligible student for special consideration. Texas does not fund other ineligible students, including: students from outside of Texas, students who don't meet PreK eligibility requirements, overage students, or those that already have a high school diploma. Why would this one type of "student already served" be singled out for different treatment?
10. The Legislature has determined that charters serve a specific geographic area [TEC 12.111(a)(13)]. This rule effectively reverses the Legislature's policymaking role for public education.

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<sup>i</sup> See TEA [posting](https://tea.texas.gov/sites/default/files/21-10-129-1025.pdf) of this rule change in the Student Attendance Accounting Handbook: <https://tea.texas.gov/sites/default/files/21-10-129-1025.pdf>

<sup>ii</sup> Deleted section on Page 4 of the change document for the Student Attendance Accounting Handbook. [Link](https://tea.texas.gov/sites/default/files/saah2122-changedoc.pdf) to the change document: <https://tea.texas.gov/sites/default/files/saah2122-changedoc.pdf>  
See Section 3.2.1.4 (Code 3) as follows:

3.2.1.4 Code 3 Eligible Transfer Student Full Day

~~Charter schools are only approved to serve students in the geographic boundary authorized in the charter school's charter agreement, unless the student is a child of an employee of the school and regardless of whether the child resides in the geographic boundary served by the school. Reporting a student with ADA eligibility code 3 would demonstrate that the charter school is serving students outside of its approved geographic boundary and may constitute a material violation of the charter. A charter school should not use ADA eligibility code 3.~~

<sup>iii</sup> [TAC 100.1041 \(d\)\(1\)](#)

(d) Eligibility for state funding. A charter holder is not eligible to receive state funds, including grant funds, prior to execution of its contract by the chair and the commissioner of education.

(1) If a charter holder, before or without approval of an amendment under §100.1033 of this title (relating to Charter Amendment), extends the grade levels it serves, adds or changes the address of a campus, facility, or site, expands its geographic boundaries, or exceeds its maximum allowable enrollment, then the charter holder is not eligible to receive state funds for the activities of the unapproved amendment of its charter school operations.