

Figure: 19 TAC §30.1(a)

STATE BOARD OF EDUCATION Petition for Adoption of a Rule

The Texas Government Code, §2001.021, provides that any interested person may petition an agency requesting the adoption of a rule.

The petition should be signed and submitted:

by mail to Rulemaking Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494; or

by using the email button at the bottom of this petition form or by emailing directly to rules@tea.texas.gov.

Name: Starlee Coleman

Affiliation/Organization (if applicable): Texas Public Charter Schools Association

Address: 3005 S. Lamar Blvd., Ste D-447 Austin, TX 78704

Email Address: scoleman@txcharterschools.org

Telephone: 512-584-8282

Date: 11/30/2022

Texas Government Code, §2001.021, specifies that an interested person must meet one of the following criteria. Please check all of the following that apply to you.

- resident of Texas
- business entity located in Texas
- governmental subdivision located in Texas
- public or private organization located in Texas that is not a state agency

Proposed rule text (indicate words to be added or deleted from the current text):

Delete 19 TAC §100.1. Selection Process, subsection (d).

(d) An applicant for an open-enrollment charter, or any person or entity acting on behalf of an applicant for an open-enrollment charter, shall not communicate with the commissioner or the commissioner's designee, a member of the SBOE, or a member of an external application review panel concerning a charter school application
Statutory authority for the proposed rule action:

SB 2, 83rd Texas Legislature, Regular Session, 2013, granted the Commissioner of Education the authority to establish the contents of the charter application and the criteria by which new charters would be awarded. While Why is this rule action necessary or desirable?

The SBOE No-Contact rule is unnecessary. No-Contact rules are intended to protect the integrity of the procurement process between vendors/providers and the contracting agency. Because approved open-enrollment public charter schools enter into a contract with the Texas Education Agency (TEA), a short no-contact period (If more space is required, attach additional sheets.)

Starlee Coleman

Petitioner's Signature

(Typing your name in the field above serves as your signature for the purposes of this petition.)

[Click here to submit petition form](#)



November 30, 2022

Commissioner Mike Morath
Texas Education Agency
1701 North Congress Avenue
Austin, TX 78701

RE: TPCSA Submission of TAC §30.1 Petition for Adoption of Rule Changes

Dear Commissioner Morath,

The Texas Public Charter Schools Association (TPCSA) is a non-profit membership organization that serves the vast majority of the state's 870 charter school campuses with a total enrollment of more than 375,000 students. TPCSA's mission is to support and advocate for a policy and regulatory climate that ensures every student in Texas has access to ever-improving public school options.

As you know, in 2013 the 83rd Texas Legislature passed SB 2, which shifted greater authority over the application and approval process for public charter schools from the State Board of Education (SBOE) to the Commissioner. In August 2014, the SBOE updated its portion of the Chapter 100 rules to accommodate these changes.

At that time, the SBOE adopted a "No-Contact Rule" that allows the disqualification of an applicant for an open-enrollment charter if the applicant or its designee contacts SBOE Members in the period between the submission of the application and 90 days after the Commissioner proposes charter school awards:

19 TAC §100.1. Selection Process.

(d) An applicant for an open-enrollment charter, or any person or entity acting on behalf of an applicant for an open-enrollment charter, shall not communicate with the commissioner or the commissioner's designee, a member of the SBOE, or a member of an external application review panel concerning a charter school application beginning on the date the application is submitted and ending 90 days after the commissioner's proposal. The SBOE may veto a proposed application for violation of this subsection.

We believe this No-Contact period in the SBOE rules is unnecessary, unfair, and unconstitutional.

- **The SBOE No-Contact rule is unnecessary.** No-Contact rules are intended to protect the integrity of the procurement process between vendors/providers and the contracting agency. Because approved open-enrollment public charter schools enter into a contract with the Texas Education Agency (TEA), a short no-contact period between the applicants and the Commissioner and members of the external application review panel may, upon first glance, appear justifiable.

However, an analogy to procurement falls apart upon examination. Unlike typical procurements wherein multiple vendors compete for the same business, charter applicants are not in direct competition with one another. An applicant either passes muster or it does not. Applicants who fail to meet TEA standards are removed from the process, and even if an applicant is recommended to the SBOE, there is no guarantee of approval.

Moreover, we strongly believe that blocking the applicant, as well as those associated with the applicant, from contact with elected SBOE members is uniquely unnecessary. The SBOE holds a vote to (1) veto or (2) take no action on the Commissioner's recommendation, but the SBOE never directly negotiates or contracts with the applicant or school. If an applicant is finally approved, only TEA negotiates terms and conditions with the approved applicant, thereby rendering a No-Contact rule moot and unfounded.

- **The SBOE no-contact rule is unfair.** Notably, the SBOE rule does not apply to all interested parties, but only to applicants and their supporters. Those in opposition remain free to contact their elected officials. If the intention truly was to allow SBOE members to make uninfluenced decisions, the rules would apply equally to all parties. Instead, this was a politically-driven effort that results in SBOE members only hearing from those opposed to the application, while supporters are purposefully excluded and silenced.
- **The SBOE no-contact rule is unconstitutional.** We have identified no other state agency that penalizes constituents for petitioning elected officials. Section 27 of the Texas Constitution mirrors the Federal Constitutional right to petition one's government: Texans have the right to "apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address, or remonstrance." This No-Contact Rule is content- and person-based discrimination, and creates a valid Constitutional complaint that would be ratified by Federal and Texas courts.

For the above-outlined reasons, we are submitting this petition to TEA in accordance with the required process in TAC §30.1 Petition for Adoption of Rule Changes. We encourage the SBOE to take action at its January 2023 meeting to repeal this unfounded rule.

We appreciate your consideration of this petition and look forward to TEA's response.

Thank you,



Starlee Coleman
CEO