

SUBJECT: Prohibiting open-records appeals by school districts and charter schools

COMMITTEE: Public Education — committee substitute recommended

VOTE: 7 ayes — Sadler, Dutton, Dunnam, Hochberg, Lengefeld, Oliveira, Olivo
2 nays — Grusendorf, Smith

WITNESSES: For — Karen Miller, Texas Congress of Parents and Teachers; Robert Lett; Kristy Mikus
Against — None

DIGEST: CSHB 211 would prohibit a school district or open-enrollment charter school from appealing a decision of the attorney general dealing with the release of records. The bill would specify that an open-enrollment charter school is to be treated the same as a school district under all open-records and open-meetings provisions of the Government Code.

CSHB 211 also would establish a new exception to the open-records law barring release of information held by a district in connection with an internal investigation by the district that names a student or employee or a former student or employee. The exception would not apply if the requestor was the person on whom the internal investigation focused or if the person named in the investigation consented to the release of the information.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

SUPPORTERS SAY: CSHB 211 would resolve three major open-records issues relating to school districts and charter schools: limiting delays in providing records by limiting appeals by districts, providing an informant's exception for internal district investigations, and making charter schools subject to the same requirements as districts.

CSHB 211 would resolve the problem of districts attempting to delay the release of records by appealing decisions from the attorney general. In 1997, a Houston school district appealed the release of records all the way to the

Texas Supreme Court. That court refused the districts' appeal, letting stand a court of appeals ruling that had upheld the attorney general's opinion. The case involved a parent wanting to examine the disciplinary records of his child for evidence of possible racial bias. The case took more than four years to resolve and cost the district thousands of dollars in legal fees. The parent's legal fees also would have been substantial except that an attorney represented him free of charge. CSHB 211 would resolve this problem by prohibiting districts from appealing decisions beyond the level of the attorney general. Individuals still could appeal decisions denying access to public records beyond that level.

No public interest is served in allowing a school district to appeal an open-records decision of the attorney general. The attorney general should be the final arbiter of such decisions dealing with governmental bodies. All governmental bodies are limited in their ability to appeal a decision of the attorney general under the Public Information Act. Any district that appealed such a decision would have to spend taxpayer money that otherwise would be used to provide services to students.

The internal investigation exception in CSHB 211 is designed to allow districts to pursue investigations in confidence when the violation is one of rules rather than laws. Violations of law likely would be covered under many exceptions to the Public Information Act, but violations of state or district rules may not be excepted similarly. Providing this exception would allow the district greater means to investigate possible violations without revealing the name of the person or persons who are the focus of the investigation, thus preserving the investigatory process. In addition, allowing this information to be revealed could harm the reputation of persons who had been investigated but later were cleared of any wrongdoing.

Charter schools should be held to the same standards for open meetings and records as school districts, because they are publicly funded institutions that educate children. Like districts, charters receive their authority to operate from the state, are funded by tax dollars, and must follow rules set out by the Texas Education Agency. Charters are allowed additional leeway in how they operate, but their basic function remains the same as a school district's — providing taxpayer-funded public education. CSHB 211 would make it clear that charters should be treated no differently from districts in regard to open-government provisions.

OPPONENTS
SAY:

Prohibiting school districts and charter schools from their otherwise legal right to appeal decisions by the attorney general would restrict their access to the court system unreasonably. Other governmental bodies are not prohibited from appealing such decisions — they, like districts, are limited only in whom they can sue in order to appeal such decisions. Open-records opinions of the attorney general are valid only unless challenged in court. Prohibiting districts from appealing such decisions would mean restricting their access to the judicial branch of government.

Limiting public access to the broad category of internal investigations that name or identify a student or employee, including former students and employees, would impair the public's right to know about problems in their public schools. Such an exception would have limited public access to information about cheating on Texas Assessment of Academic Skills test scores or about other misconduct that could hurt the school system. Adequate protections already exist in the Public Information Act for informers and those subject to an investigation.

Charter schools, while publicly funded, operate as independent, competitive institutions. Requiring them to follow the same rules as school districts could impede their free-market, competitive nature.

OTHER
OPPONENTS
SAY:

Provisions in the original bill would have allowed the commissioner of education to suspend funding for districts or charter schools that failed to comply with an order of the attorney general to release public records. These provisions should be restored to this bill to provide enforcement authority and to demonstrate the state's commitment to providing public access.

NOTES:

The committee substitute also added the provisions excepting certain records relating to internal investigations from the open-records requirements and specifying that open-enrollment charter schools are subject to the same open-government provisions as are school districts.