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The Expansion of Exemption: Texas' Districts of Innovation

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Recent shifts in the U.S. public educational system have continued to push it towards deregulated, market-based educational models (Baltodano, 2012; Berliner & Biddle, 1995; Hursh, 2005; Ladd, 2002). In Texas, this movement towards deregulation has culminated in public school districts assuming unprecedented levels of local control. Beginning in 2015, a change to Texas law provided school districts with the opportunity to convert to so-called “Districts of Innovation” (DOI). Echoing the logics of charter schools, these DOIs grant broad autonomies to traditional public school districts, arguing that allowing schools to circumvent burdensome or counterproductive aspects of state law will result in more efficient and effective schooling (TASB^a, n.d.; Texas Public Policy Foundation, 2012; Raise Your Hand Texas, n.d.).

Texas’ DOI policy has imbued traditional public school districts with considerable powers to exempt themselves from state regulations that govern nearly all aspects of education. Proponents argue that exempting school districts from onerous bureaucratic requirements will allow local authorities to provide education more efficiently. For example, districts may exempt themselves from caps to class sizes (currently set at 22:1 for elementary schools), a move that some have argued will allow districts to realize cost savings without compromising student outcomes (e.g., Hanushek, 1999; TPPF, 2012). In addition, proponents suggest that granting districts the flexibility to set their own school calendars may increase their options for offering professional development opportunities and allow alignment of instruction with state accountability testing and other milestones (TASB^b, n.d.). Moreover, advocates contend that exempting districts from teacher certification and contract requirements will enhance districts’ abilities to recruit and retain effective teachers (e.g., Goldhaber & Brewer, 2000; TPPF, 2012).

In just a few years since the enactment of Texas’ DOI policy, the majority of districts have elected to become DOIs. While Texas’ sweeping DOI reform has been covered by the popular media (e.g., Webb, 2016; Association of Texas Professional Educators, n.d.), it has received scant scholarly attention despite the widespread impact of this policy on nearly all aspects of schooling. In this article, we review Texas’ DOI policy, outlining the scope of exemptions under the policy and exploring the implications of widespread district exemptions from state policies originally established for the protection of teachers and students.

DOI Policy Adoption Procedure

In 2015, Texas precipitated a quiet but dramatic shift in public education by amending its education code to include Chapter 12A, allowing school districts to convert to “Districts of Innovation” (Texas H.B. 1842). Under the new rules, by self-designating as a DOI, traditional public school districts may exempt themselves from state laws governing nearly all aspects of education, including teacher certification and contracts, parental notification of exceptions to state rules, class size, state disciplinary policies, length of school day, and school start/end date. Each DOI plan is developed

by the district and based on its unique needs, and each district can set their own varying levels of exemption.

The rapid expansion of DOIs has been facilitated by the minimal eligibility requirements. According to the Texas Education Code, to be eligible for conversion to a DOI, a district must be rated as “academically acceptable” or better (TEC §12A.001B). To qualify for this designation, a district must meet or exceed the state minimum test score metrics, which under the current system is equivalent to a district rating of ‘C’ or better on the state’s A-F accountability system (TEC §39.054). In practice, this means that the vast majority of public school districts are eligible to become a DOI; In 2019, over 95% of all traditional public school districts earned this designation and met minimal DOI eligibility requirements (TEA, 2020).

The process by which districts may convert to a DOI also presents relatively few obstacles to districts in practice. The DOI conversion process can be initiated by either the school board or a district-level committee (TEC §12A.001C). The district must then notify the public of its intent to draft a plan and identify what exemptions they plan to take, noting which areas of the education code inhibit innovation and providing a rationale for exemption (TEC §12A.002B). The applying district must post the plan for 30 days, notify the public and hold an open meeting, notify the commissioner of its intent, and receive approval from the majority of the DOI committee (TEC §12A.005B). Finally, the motion to convert the district to a DOI must secure a majority two-thirds vote from the school board of trustees to be formally adopted (TEC §12A.005B). Notably, the first public hearing of the plan and the final vote can take place at the same meeting (TEC §12A.005.A3). The plan must have a sunset clause of no longer than five years (TEC §12A.006). Other than these minimal requirements, TEA does not provide any oversight over the process of converting to a DOI (i.e., TEA does not need to formally approve district plans).

To aid districts interested in conversion, the Texas Education Agency has prepared a PowerPoint of DOI examples, which features two district timelines as exemplars of conversion (TEA^a, nd). The figure below illustrates the conversion timelines for the two exemplar districts, Spring Branch ISD and El Paso ISD, including the public’s opportunities for formal comment on the process and plan.

Figure 1

TEA Innovation Overview Exemplars

Spring Branch ISD	El Paso ISD
<ul style="list-style-type: none"> • September 28, 2015 – process initiated • November 4-December 1, 2015 – 4 community meetings held • March 24, 2016 – Plan posted on website • March 29-April 14, 2016 – 4 community meetings held • April 25, 2016 – DOI adopted <p>Total time: ~7 months</p>	<ul style="list-style-type: none"> • December 15, 2015 – process initiated • April 15, 2016 – plan posted on website • May 5, 2016 – public meeting and final plan adopted • May 17, 2016 – DOI adopted <p>Total time: ~ 5 months</p>

Note: Adapted from Spring Branch ISD Plan of Innovation (n.d.). and El Paso ISD Plan of Innovation (n.d.).

A number of districts have followed an even more accelerated timeline than El Paso’s rapid conversion. For example, Grandview ISD converted to a DOI in just 91 days, two months after the first public notice of intent. Moreover, Figure 2 shows that the first public meeting and the final vote of approval occurred on the same day.

Figure 2

Grandview ISD’s DOI Conversion Timeline

Grandview ISD
<ul style="list-style-type: none"> • January 9, 2017 – process initiated • February 20, 2017 – public hearing and board approved committee • March 3, 2017 - DOI committee meeting to develop plan • March 6-April 7, 2017 – 30 days public posting of finalized plan • April 10, 2017- Public hearing to discuss DOI Plan, presentation to Board of Trustees, and Board-approved plan submitted to Commissioner
Total time: ~3 months

Note: Adapted from the Grandview ISD Plan of Innovation (n.d.).

Importantly, while Texas law requires districts to provide an opportunity for community input, the extent to which this meaningfully occurs is unclear. While Spring Branch ISD took public comments prior to finalizing its plan, not all districts have done so. Furthermore, although the final DOI plan must be posted for 30 days prior to the vote, public meetings and comments that take place between the final posting and school board vote may have limited influence. For example, El Paso ISD and Grandview ISD’s public input during these 30 days did not result in any changes to their final plans. While this may indicate unanimity of agreement with the plan, it may also suggest that the public input was disregarded in a process that is largely pro forma. As such, the DOI conversion process at the district level is governed by a small, select group serving on school board appointed committees who secured exemptions to state mandates that were previously ubiquitous in Texas schools.

Scope of DOI Adoption

Facilitated by this streamlined process, the proliferation of DOIs has been staggering: In the first three years of the policy change, more than 740 of Texas’ 1,025 traditional public districts became DOIs (Author Calculations, data from TEA^b). As a result, more than three-quarters of all public school students in Texas are now enrolled in a traditional or charter district that provides exemptions from one of more of the state’s education policies (Author Calculations, TEA data). While charters are subject to extensive public and scholarly debate in Texas as nationally, they enroll less than a tenth as many students as DOI districts (TEA^b). As the popularity of DOI conversion continues throughout Texas, there are now large number of Texas students enrolled in a DOI, which have had far less scrutiny than charter schools, which enroll far fewer students.

Unlike many other reform movements in Texas, DOIs are concentrated in a whiter and more affluent segment of traditional public schools. Whereas charter schools in Texas have generally taken hold in lower-income districts with high minority enrollment, DOIs tend to be wealthier and enroll fewer students of color than non-DOI districts. On average, DOIs enroll 11 percentage points

fewer economically disadvantaged students than non-DOIs (55% vs. 66%), and half the share of black students (7% vs. 14%). While charters tend to be concentrated in urban areas, DOIs tend to be clustered in towns and rural areas. This uneven policy adoption of DOI is perhaps not surprising given that districts must be rated academically acceptable to qualify for DOI status, and districts with concentrated poverty and disadvantaged populations are more likely to be precluded from the process.

Our research in this vein suggests that DOIs have adopted a wide range of exemptions (Texas Education Agency^b, n.d.). In total, DOIs have claimed 40 different exemptions across 8 chapters of the Texas Education Code. One district—Pearland ISD—took 21 separate exemptions. While some of these exemptions are procedural, others present significant substantive changes to district policy. Nearly all DOIs (97%) took exemptions to the school calendar, particularly the first day of school, to balance semesters and improve alignment with university and other calendars (Texas Education Agency^b, n.d.). However, 87% of DOIs also took exemptions allowing them to waive teacher certification requirements, citing financial constraints and teacher shortages. A substantial share of DOI districts (44.0%) claimed exemptions to minimum class sizes and maximum student teacher ratios.

Implications of Local Control

Attributable in part to the speed with which DOI reforms have been adopted, organized opposition to DOI districts has been relatively limited. Teacher organizations have generally expressed reservations about the implications of the law (e.g., Texas Classroom Teachers Association, 2017-18). Additionally, critics have often expressed concerns about similar legal exemptions in the context of charter schools. Indeed, much of the research base on the benefits of the exemptions allowed by Texas' DOIs is limited at best. For example, scholarship has consistently documented associations between teacher preparation and certification and student outcomes (e.g., Clotfelter, Ladd & Vigdor, 2007; Darling-Hammond & Bransford, 2005). Moreover, evidence from Tennessee and Wisconsin suggests that smaller classes are significantly and causally related to student outcomes (e.g., Biddle & Berliner, 2002). As such, there is reason for concern about the impact of such a policy focused on sweeping reductions in state oversight of education.

As local control overrides state regulation in DOIs, it is essential that researchers, policymakers and educators remain vigilant about the impact of these exemptions—particularly as it relates to removing legal safeguards designed to protect students and reversing policies demonstrated to be positively linked with student outcomes (e.g., class sizes, teacher preparation and certification, time in school). In particular, DOIs present a variety of equity-related concerns that warrant further scrutiny. For example, have DOIs led to more low-income students being taught by uncertified teachers? To more students of color being taught in larger classes? Ensuring that DOIs do not worsen already extreme patterns of inequality by race and class will require sustained attention of stakeholders.

At the state level, clear monitoring and standards should be put in place to ensure that districts are not eligible for a renewal of their DOI status if their exemptions have had negative effects on students and teachers. If, however, the policy is associated with unambiguous positive outcomes for students, under current policy the schools most in need of reform (those rated below a 'C') will be excluded from these benefits. In this case, the state should consider allowing underperforming districts, which arguably might benefit most from such exemptions, to become eligible DOIs.

As the sunset clause for DOI designations comes due in a few years, more research is needed to examine the impact of the first wave of exemptions as well as the implications of local instead of state control. As such, it is critically important to direct public and scholarly attention to this profoundly influential policy. Before DOIs become even more deeply entrenched in Texas, it is crucial that school leaders recognize the consequences of DOI reforms for the communities they serve.

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