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Howdy, Partner: Challenges with State Takeovers and Charter Partnerships in Texas School Districts

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HOWDY, PARTNER: CHALLENGES WITH STATE TAKEOVERS AND CHARTER PARTNERSHIPS IN TEXAS SCHOOL DISTRICTS

Hannah Luke*

ABSTRACT

Since President Johnson passed the first federal education legislation in the 1960s, lawmakers at both the state and federal level have been searching for effective ways to hold public schools accountable. The 2015 amendments to the Elementary and Secondary Education Act gave states increased flexibility to implement their own innovative accountability measures, and with this newfound authority, Texas passed two laws: House Bill 1842 (HB 1842) in 2015 and Senate Bill 1882 (SB 1882) in 2017. The stringent measures in HB 1842 threaten struggling schools with state takeover if they consistently fail to meet standards, while SB 1882 incentivizes schools to enter two-year partnerships with charters or nonprofits with the goal of meeting state standards in exchange for a pause on HB 1842 sanctions.

Focusing on the Houston and San Antonio Independent School Districts, this Comment explores the implications of the two recent laws and argues that state takeovers disenfranchise voters and families, and that SB 1882 partnerships—though not without challenges—present a necessary alternative. Taking the legal battles in the Houston and San Antonio school districts as lessons, this Comment proposes some measures that school districts exploring the partnership option could take to ensure that students and their families remain the priority.

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I. INTRODUCTION

A. EDUCATION LAW: THE BIG PICTURE

EDUCATION law in the United States has gone through several iterations since the groundbreaking Elementary and Secondary Education Act (ESEA) of 1965.¹ President Johnson originally contemplated the ESEA to combat poverty and inequality, and therefore, he focused on directing funding specifically to schools with large proportions of economically disadvantaged students.² The original law included no requirements to keep schools academically accountable, nor did it include rules for measuring student performance; its only requirements pertained to funding and how it should be distributed.³

In the decades that followed, the federal government's focus on education shifted away from equality through funding and toward academic standards and accountability as the way forward.⁴ In 2002, President Bush signed No Child Left Behind (NCLB) into law, the largest expansion of the ESEA to date.⁵ NCLB imposed stricter academic accountability measures for schools than did any law before it, requiring states to adopt "challenging" academic standards and to administer standardized tests to assess student proficiency.⁶ However, according to Derek Black, a law professor with expertise in education law and policy, NCLB was flawed from the beginning, with too much emphasis on standardized testing, un-

1. See Derek W. Black, *Abandoning the Federal Role in Education: The Every Student Succeeds Act*, 105 CALIF. L. REV. 1309, 1311 (2017).

2. *Id.* at 1317.

3. *Id.* at 1318.

4. See *id.* at 1321–24.

5. *Id.* at 1323.

6. *Id.* at 1324.

realistic expectations for student performance, and ignorance of structural inequalities in education.⁷ The Every Student Succeeds Act (ESSA) passed in 2015 was thus a “short-term reaction to current realities” created by NCLB.⁸

The ESSA shifted much of the education authority back to state and local agencies.⁹ The Act set career and college readiness standards for states and gave states more flexibility in developing targeted interventions for schools that need improvement.¹⁰ The ESSA also required that states set aside at least 7% of their Title I, Part A funds for “school improvement” efforts.¹¹ The increased flexibility for states and the new funding requirements led to Texas’s System of Great Schools, which includes the new laws for Texas Partnerships (SB 1882) and Public School Accountability (HB 1842) discussed in this Comment.¹² The System of Great Schools initiative represents a movement toward empowering individual schools to take control over their own improvement and results.¹³

The remainder of Part I of this Comment will provide a high-level overview of the accountability measures used to evaluate Texas public schools, including HB 1842, and introduce the role of charter schools in the state. Part II will illuminate the problems with the state takeovers of school boards empowered by HB 1842, using the Houston Independent School District as a case study. In Part III, this Comment turns to SB 1882, exploring the mechanics of partnerships and the challenges San Antonio Independent School District faced as it utilized the option. Finally, in Part IV, this Comment analyzes the experiences of Houston and San Antonio to provide recommendations for school districts that ensure the interests of students and their families remain at the forefront. Ultimately, this Comment argues that while partnerships are not without their challenges and drawbacks, the law provides a better alternative than a state takeover of the elected school board for schools that consistently struggle to meet state standards.

B. PUBLIC SCHOOL ACCOUNTABILITY IN TEXAS

A brief overview of the way Texas evaluates schools provides the context necessary to understand the consequences of House Bill 1842 (HB

7. *Id.* at 1325–27. For more about the failures of NCLB, see Gary Orfield, *A Great Federal Retreat: The 2015 Every Student Succeeds Act*, 3 *EDUC. L. & POL’Y REV.* 273, 279–83 (2016).

8. Black, *supra* note 1, at 1331.

9. Laurie A. Sharp, *ESEA Reauthorization: An Overview of the Every Student Succeeds Act*, 4 *TEX. J. LITERACY EDUC.* 9, 9 (2016).

10. *Id.*

11. 20 U.S.C. § 6303.

12. See generally ALICE OPALKA, ASHLEY JOCHIM & MICHAEL DEARMOND, *CTR. ON REINVENTING PUB. EDUC., A MIDDLE WAY FOR STATES IN THE ESSA ERA: LESSONS FROM TEXAS* (2019), https://www.crpe.org/sites/default/files/tea_report_2019_final.pdf [<https://perma.cc/3KNJ-JJQ4>] (discussing the “middle way” provided by the System of Great Schools initiative, which offers balanced authority and support to school districts).

13. *Id.* at 4–5.

1842) and the significance of Senate Bill 1882 (SB 1882). The Texas Education Agency (TEA) evaluates school performance using three domains.¹⁴ The Student Achievement domain evaluates the academic performance of all students by looking at assessments such as State of Texas Assessments of Academic Readiness (STAAR); College, Career, and Military Readiness (CCMR); and graduation rates.¹⁵ The School Progress domain measures outcomes in districts and individual campuses by looking at the number of on-track students and students who grew academically by at least one grade level (as measured by STAAR results).¹⁶ It also considers how well students are doing relative to districts or campuses with similar socioeconomic demographics.¹⁷ Finally, the Closing the Gaps domain uses detailed data to evaluate “differentials among racial/ethnic groups, socioeconomic backgrounds and other factors.”¹⁸ This final domain covers ESSA’s requirement that a state create a “system of meaningful differentiation.”¹⁹ The TEA then assigns each district and campus a letter grade of “A” (highest) through “F” (lowest) to rate its overall performance, as well as a letter grade to rate its performance in each of the three domains.²⁰ Both independent school districts (ISDs) and charter campuses receive yearly ratings on the “A” through “F” scale.²¹

HB 1842, passed in 2015, overhauled the reform process for Texas schools and gave the TEA the authority to take control of campuses deemed as consistently unacceptable.²² Under the law, a campus that has been identified as unacceptable for two consecutive school years must create a turnaround plan with the assistance of a campus intervention team and submit it to the TEA commissioner for approval.²³ The district must also notify and consult with parents and stakeholders in the preparation of the turnaround plan.²⁴ The turnaround plan must include a detailed description of the academic programs to be offered, written comments from parents and teachers, and a detailed description of the budget, staffing, and financial resources required to implement the plan.²⁵ If the campus receives an unacceptable performance rating for three con-

14. TEX. EDUC. AGENCY, 2020 ACCOUNTABILITY MANUAL FOR TEXAS PUBLIC SCHOOL DISTRICTS AND CAMPUSES 3 (July 2020), <https://tea.texas.gov/sites/default/files/Chapters%201-11%202020%20Accountability%20Manual.pdf> [<https://perma.cc/P8UE-ANEY>].

15. *Id.* at 3–4; Molly Evans, *When Texas Schools Don’t Make the Grade*, KERA (May 11, 2018), <http://stories.kera.org/saving-schools/2018/04/16/when-texas-schools-dont-make-the-grade> [<https://perma.cc/C4NH-7MJY>].

16. TEX. EDUC. AGENCY, *supra* note 14, at 3–4.

17. *Id.*

18. *Id.*

19. 20 U.S.C. § 6311(c)(4)(D).

20. TEX. EDUC. AGENCY, *supra* note 14, at 4.

21. *Id.*

22. See H.B. 1842, 84th Leg., Reg. Sess. (Tex. 2015) (codified as amended in scattered sections of TEX. EDUC. CODE).

23. TEX. EDUC. CODE ANN. § 39A.101.

24. *Id.* § 39A.103.

25. *Id.* § 39A.105.

secutive school years after it is first ordered to submit a turnaround plan, the commissioner can either appoint a new board of managers or may close the campus.²⁶ The failure of just one school in the district to successfully create and implement a turnaround plan for enough consecutive years can trigger the commissioner's authority to appoint new governance for the entire district.²⁷

C. AN INTRODUCTION TO CHARTER SCHOOLS²⁸

Charter schools are public schools that operate “via contracts with an authorizer such as a local school district” or the state education agency that allow them to act outside of the state restrictions that bind the traditional ISDs.²⁹ This means that charter schools are exempt from certain provisions of Texas education law, giving them more autonomy and flexibility than traditional public schools, but with the tradeoff of strict financial and accountability standards.³⁰

There are three types of charters authorized by Texas law. First, Texas permits home-rule school district charters,³¹ which are school districts operating under a charter approved by voters in the district.³² Home-rule school district charters are less common than the better-known open-enrollment charter schools and are subject to more requirements than open-enrollment charters.³³ Second, the State recognizes campus or campus program charters, which are authorized and overseen by ISDs.³⁴ Finally, open-enrollment charter schools, authorized by the commissioner of the TEA, are the most common form of Texas charters.³⁵ Generally, charter schools are like public schools in that they are open enrollment and must

26. *Id.* § 39A.111.

27. *Id.*

28. For a balanced perspective on charter schools from educators, students, and parents, see *THE CHARTER SCHOOL EXPERIENCE: VOICES FROM THE FIELD* (Michael Bitz ed., 2016) (discussing the potential of charter schools to transform lives for the better while also spotlighting charter schools that have failed). For more detailed information about charter schools in Texas, see TEX. PUB. CHARTER SCHS. ASS'N, *WHAT YOU NEED TO KNOW ABOUT PUBLIC CHARTER SCHOOLS IN TEXAS*, https://txcharterschools.org/wp-content/uploads/2020/05/What-You-Should-Know_brochure_v3_preview.pdf [<https://perma.cc/KAQ9-9XS8>].

29. See *Charter Schools*, TEX. EDUC. AGENCY, <https://tea.texas.gov/texas-schools/texas-schools-charter-schools/charter-schools> [<https://perma.cc/XT8W-LFL4>]; TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 2.

30. TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 2; *Charter Schools – History of Charter Schools*, TEX. EDUC. AGENCY, <https://tea.texas.gov/texas-schools/texas-schools-charter-schools/charter-schools-history-of-charter-schools> [<https://perma.cc/T7MY-ADLD>].

31. EDUC. § 12.002.

32. *Id.* § 12.011. For more on home-rule school district charters, see generally Lisa R. McBride, *Home-Rule School Districts: Questions and Answers (and Unanswered Questions)*, Presented at the University of Texas School of Law 30th Annual School Law Conference (Feb. 19, 2015), https://utcle.org/ecourses/OC5409/get-asset-file/asset_id/34844 [<https://perma.cc/HK9V-GD6Q>].

33. McBride, *supra* note 32, at 4.

34. See EDUC. §§ 12.051–12.065; TEX. EDUC. AGENCY, *supra* note 30.

35. See EDUC. §§ 12.101–12.141; TEX. EDUC. AGENCY, *supra* note 30.

accept any student who applies.³⁶ Many charter schools use a lottery system to decide which students will gain admission when class sizes are limited.³⁷

Charter schools, like schools in traditional ISDs, receive funding based on the average daily attendance of students; however, unlike ISDs, open-enrollment charter schools do not receive funds from local tax revenue.³⁸ This means that there is a small funding gap between most ISDs and charters.³⁹ In 2019, the Texas Legislature passed HB 3, which increased funding per pupil and raised the weight of certain allotments so that schools with students from certain populations, such as economically disadvantaged students or English-language learners, receive more funding than they would for the average student.⁴⁰ Because some charters serve higher proportions of these students, they receive a bump in funding from this law.⁴¹ Additionally, the TEA offers two grants specifically for charter schools, awarded to brand new charter schools or existing high-quality charter schools.⁴² However, during the 2018–2019 school year, a small gap still persisted: on average, charters received about 94% of what ISD schools received.⁴³

II. STATE TAKEOVERS

A. THE PROBLEMS WITH STATE TAKEOVERS

State takeovers like the ones authorized by HB 1842 have a controversial history.⁴⁴ As of 2017, more than half of the fifty states have takeover laws, and since the 1980s when the first takeovers occurred, twenty-two states have taken over school districts.⁴⁵

36. *Charter Schools – FAQs*, TEX. EDUC. AGENCY, <https://tea.texas.gov/texas-schools/texas-schools-charter-schools/charter-schools-faqs#Q2> [<https://perma.cc/AXY3-8MSC>].

37. *Charter School Resources for Parents and Students*, TEX. EDUC. AGENCY, <https://tea.texas.gov/texas-schools/texas-schools-charter-schools/charter-school-resources-for-parents-and-students> [<https://perma.cc/28DK-H83V>].

38. *Charter Schools – Funding*, TEX. EDUC. AGENCY, <https://tea.texas.gov/texas-schools/texas-schools-charter-schools/charter-schools-funding> [<https://perma.cc/3EFH-8EWA>].

39. TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 2.

40. TEX. EDUC. AGENCY, HOUSE BILL 3 TEXAS SCHOOL FINANCE 18, 32–33, <https://tea.texas.gov/sites/default/files/HB%203%20Master%20Deck%20Final.pdf> [<https://perma.cc/S5G5-ABHT>]; Patrick Svitek, *Gov. Greg Abbott Signs \$11.6 Billion School Finance Measure into Law*, TEX. TRIB. (June 11, 2019, 11:00 AM), <https://www.texastribune.org/2019/06/11/texas-gov-greg-abbott-signs-116-billion-school-finance-measure-law> [<https://perma.cc/N57G-4BUX>]; TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 4. *See generally* H.B. 3, 86th Leg., Reg. Sess. (Tex. 2019).

41. TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 2.

42. *Charter Schools – Funding*, *supra* note 38.

43. TEX. PUB. CHARTER SCHS. ASS'N, *supra* note 28, at 4.

44. *See generally* Joseph O. Oluwole & Preston C. Green, III, *State Takeovers of School Districts: Race and the Equal Protection Clause*, 42 IND. L. REV. 343 (2009); Matt Barnum, *When States Take Over School Districts, They Say It's About Academics. This Political Scientist Says It's About Race and Power.*, CHALKBEAT (June 12, 2018, 4:34 PM), <https://www.chalkbeat.org/2018/6/12/21105215/when-states-take-over-school-districts-they-say-it-s-about-academics-this-political-scientist-says-i> [<https://perma.cc/4JLN-CWCU>].

45. Barnum, *supra* note 44.

While triggers in state laws for school takeovers vary across the country,⁴⁶ a state typically acts when a school chronically underperforms academically or when there is serious financial mismanagement.⁴⁷ A takeover usually takes the form of the appointment of a new school board, whether by the state governor, the mayor, or the state education agency (as is the case in Texas, where HB 1842 allows the commissioner of TEA to appoint an entirely new board).⁴⁸ Sometimes the original school board will remain in an advisory position.⁴⁹

State takeovers have been heavily criticized for several reasons, key among them being allegations of racial discrimination and voter disenfranchisement,⁵⁰ coupled with the fact that takeovers generally do not lead to improved academic performance.⁵¹ Takeovers are also likely to lead to political and administrative turmoil in the district.⁵²

Critics of state takeovers argue that they exacerbate racial segregation in schools.⁵³ Most state takeovers happen in districts where the student body is majority Black or Latinx.⁵⁴ Furthermore, states are more likely to either appoint an entirely new school board or abolish the school board altogether in majority Black districts than they are in majority white districts.⁵⁵ In a survey of state takeovers from 1989–2013, intervening states left school boards intact 70% of the time and appointed a new board 26% of the time in majority white districts, while in majority Black districts, intervening states left the school board intact 24% of the time and appointed a new board 43% of the time.⁵⁶

When states replace the school boards in majority Black districts and leave the boards intact in majority white districts, they entrench segregation by drawing a line between who controls which students. Where states

46. See Emily Richmond, *What Would Happen if the State Took over Your School District?*, THE ATLANTIC (Apr. 1, 2013), <https://www.theatlantic.com/national/archive/2013/04/what-would-happen-if-the-state-took-over-your-school-district/274527> [https://perma.cc/9YZF-QSVK].

47. See Kristi L. Bowman, *State Takeovers of School Districts and Related Litigation: Michigan as a Case Study*, 45 URB. LAW. 1, 12 (2013).

48. See Oluwole & Green, *supra* note 44, at 343–44.

49. *Id.* at 344.

50. For a survey of takeovers in various states with an eye towards the racial physiognomy of the districts affected, see *id.* 363–394.

51. TERRENCE WILSON & CHLOE LATHAM SIKES, INTERCULTURAL DEV. RSCH. ASS'N, ANOTHER ZERO-TOLERANCE FAILURE—STATE TAKEOVERS OF SCHOOL DISTRICTS DON'T WORK 2 (Mar. 6, 2020), <https://www.idra.org/wp-content/uploads/2020/08/Another-Zero-Tolerance-Failure-State-Takeovers-IDRA-Issue-Brief-2020.pdf> [https://perma.cc/9Q5Q-6MAQ].

52. KENNETH K. WONG & FRANCIS X. SHEN, EDUC. RES. INFO. CTR. CLEARINGHOUSE ON URB. EDUC. N.Y., CITY AND STATE TAKEOVER AS A REFORM STRATEGY 1, 5 (July 2002), <https://files.eric.ed.gov/fulltext/ED467111.pdf> [https://perma.cc/7FHZ-CXMD].

53. WILSON & LATHAM SIKES, *supra* note 51; Adam Harris, *An Attempt to Resegregate Little Rock, of All Places*, THE ATLANTIC (Oct. 22, 2019), <https://www.theatlantic.com/education/archive/2019/10/little-rock-still-fighting-school-integration/600436> [https://perma.cc/9YY7-VB2E].

54. WILSON & LATHAM SIKES, *supra* note 51, at 2.

55. *Id.*; Barnum, *supra* note 44.

56. WILSON & LATHAM SIKES, *supra* note 51, at 2.

have intervened, districts with mostly white students are more likely to be overseen by their locally elected school boards, while districts with mostly Black students are more likely to be controlled by the state.⁵⁷ This is especially concerning as student populations have become “increasingly segregated in intensely segregated schools” over the past thirty years: by 2016, “40% of all [B]lack students were in schools with 90% or more students of color.”⁵⁸

State takeovers also undermine the democratic process by taking the power to elect school board officials out of the hands of voters. In most districts across the country, school board members are elected by the community.⁵⁹ Allowing a state to replace an entire board with its own appointees, especially in states like Texas where the education agency’s commissioner is not an elected official,⁶⁰ disenfranchises voters by removing the board’s democratic accountability.

For example, in 2014, voters in Little Rock, Arkansas elected a majority Black school board for the first time, matching the majority Black student body.⁶¹ But just a few months later, the state voted to take control of the school district and removed the officials the community had just elected.⁶² School boards function to provide “local, citizen governance and oversight of education”⁶³ by bringing elected community members to work with the state, with the goal of providing the best education possible to the district’s students. Guidance for school boards from the Texas Association of School Boards (TASB) focuses specifically on the community aspect of the shared governance model, writing that some education policy issues are best addressed by the local community.⁶⁴ State takeovers of the school board, then, not only work to take power away from voters but also undermine a key purpose of the school board: to give the community a voice in the governance of their school district through elected trustees.

State takeovers involving the replacement of elected school board officials with appointees would perhaps make more sense if they consistently resulted in improved student academic performance. However, studies

57. *Id.*; Harris, *supra* note 53.

58. Press Release, The Civil Rights Project, Brown at 65—No Cause for Celebration 2 (May 10, 2019), <https://www.civilrightsproject.ucla.edu/news/press-releases/press-releases-2019/brown-at-65-no-cause-for-celebration/press-release-brown-at-65-5-9-CLEAN-v6.pdf> [<https://perma.cc/4E5Z-F6XV>].

59. *See Frequently Asked Questions About Running for School Board*, TEX. ASS’N OF SCH. BDS. (Jan. 2020), <https://www.tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/running-for-sch-bd.pdf> [<https://perma.cc/EY5K-HKR6>].

60. *See Commissioner’s Biography*, TEX. EDUC. AGENCY, <https://tea.texas.gov/about-tea/leadership/commissioner/commissioners-biography> [<https://perma.cc/4RZB-U6Q5>].

61. Harris, *supra* note 53.

62. *Id.*

63. *What Are a Texas School Board’s Roles and Responsibilities?*, TEX. ASS’N OF SCH. BDS. [hereinafter *School Board’s Roles and Responsibilities*], <https://www.tasb.org/members/enhance-district/texas-school-board-roles-and-responsibilities/#:~:text=the%20main%20function%20of%20the,to%20govern%20the%20school%20district> [<https://perma.cc/8MP6-LTY2>].

64. *Id.*

have shown that this is not always the case.⁶⁵ A study of a rural school district in South Carolina where the state controlled the school board for almost ten years revealed that the state takeover did not improve academic achievement in any significant manner, failed to solve problems associated with the high rate of turnover in leadership positions, and did not improve the retention of highly qualified personnel.⁶⁶

Similarly, a Tennessee study compared three methods of attempted school turnarounds.⁶⁷ The first two methods took control of the schools away from the districts and gave it to the state.⁶⁸ The third approach left the school in the hands of the district but created “innovation zones” that allowed the district to make changes in school management and personnel.⁶⁹ The study found vastly more improvement in the schools that remained in the hands of the district as compared to those that had been transferred to state control.⁷⁰ Though the authors of the study caution that reforms sometimes take several years to gain ground, the results indicate that when it comes to school turnaround, state-level takeovers generally do not guarantee a school turnaround.⁷¹

The upside, some argue, is that the threat of takeover by the state will incentivize districts to pour their reform energy and resources into their lowest performing schools.⁷² Takeovers may also be a preferable option in districts facing primarily fiscal challenges.⁷³ When takeovers are more successful, they tend to be at the mayoral level rather than the state level.⁷⁴ In those cases, the key components for success were clear goals and focused collaboration between the existing leadership and the mayor and superintendent⁷⁵; however, the same study showed that when a state was the one to appoint a new administrator, political turmoil was more likely.⁷⁶

School takeovers are a troubling way to handle chronically failing schools. They have a shoddy record of improving academic performance, they create a racial skew for which boards remain intact and which do

65. See generally Janice Zissette Bishop, *The Impact of a State Takeover on Academic Achievement, School Performance, and School Leadership in a Rural South Carolina School District* (May 6, 2009) (Ed.D. dissertation, South Carolina State University) (ProQuest).

66. *Id.* at 115.

67. See generally Ron Zimmer, Gary T. Henry & Adam Kho, *The Effects of School Turnaround in Tennessee's Achievement School District and Innovation Zones*, 39 *EDUC. EVALUATION & POL'Y ANALYSIS* 670 (2017).

68. *Id.* at 671.

69. *Id.*

70. *Id.* at 691.

71. *Id.*

72. David Anthony, CEO of Raise Your Hand Texas, FOR House Bill 1842, “School Turnaround,” Testimony Before the Senate Committee on Education (May 21, 2015), <https://www.raiseyourhandtexas.org/advocacy/testimony/testimony-against-hb-1842-school-turnaround-senate-committee-on-education> [https://perma.cc/T2V4-3QPE].

73. See generally Bowman, *supra* note 47.

74. WONG & SHEN, *supra* note 52, at 4–5.

75. *Id.* at 5.

76. *Id.*

not, and they take power over schools out of the hands of voters, often in districts that have majority populations of color.

B. LEGAL BATTLES IN HOUSTON INDEPENDENT SCHOOL DISTRICT

In Texas, HB 1842 has drawn both criticism and support for its stringent requirements for failing campuses.⁷⁷ The Texas branch of the American Federation of Teachers spoke out against HB 1842, calling the fact that one campus in a district of hundreds can trigger the takeover of the school board by the state a “draconian” measure that goes beyond the intent of the legislature.⁷⁸ The lobby group Raise Your Hand Texas, on the other hand, says the strict sanctions in HB 1842 work to incentivize districts to focus on improving their lowest performing schools while giving districts flexibility in the implementation of the turnaround plan.⁷⁹

Houston ISD (HISD), Texas’s largest school district with over 200,000 students, was the first district in the state to face a serious threat of school takeover under the new HB 1842.⁸⁰ Despite a district rating of “B” for 2018–2019 for its almost 300 schools,⁸¹ HISD had a small number of consistently underperforming schools that put the district at risk of state takeover.⁸² On November 6, 2019, Mike Morath, the commissioner of the TEA, sent a letter to Dr. Grenita Lathan, Superintendent of HISD, and Diana Davila, President of the Board, providing the district with notice of his intention to appoint a new board of managers for the district.⁸³ In the letter, the Commissioner cited deficiencies in the conduct of the school board, as well as the seven consecutive unacceptable ratings given to Wheatley High School.⁸⁴ The district responded by filing a request in federal court for injunctive relief that would prohibit the TEA from taking

77. *Release of A-F Ratings Shows Need to Hit Reset Button on State Sanctions*, TEX. AM. FED’N OF TCHRS. (Aug. 16, 2019, 10:46 AM), <https://www.texasaft.org/hotline/release-of-a-f-ratings-shows-need-to-hit-reset-button-on-state-sanctions> [https://perma.cc/K9VA-AD3U].

78. *Id.*

79. Anthony, *supra* note 72.

80. Laura Isensee, *Dozens of Texas Districts Must Improve Failing Schools—Or Outside Managers Could Take Over*, HOUS. PUB. MEDIA (Aug. 7, 2017, 8:00 AM), <https://www.houstonpublicmedia.org/articles/news/2017/08/07/228974/dozens-of-texas-districts-must-improve-failing-schools-or-outside-managers-could-take-over> [https://perma.cc/3AMS-J8JS].

81. *2019 A-F Accountability Listing, Houston ISD*, TEX. EDUC. AGENCY (Nov. 2019), https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&_debug=0&single=N&batch=N&app=PUBLIC&ptype=H&_program=perfrept.perfmast.sas&level=district&search=distnum&namenum=101912&prgopt=2019/acct/campus_list.sas [https://perma.cc/NQS5-SGDK].

82. Isensee, *supra* note 80.

83. Letter from Mike Morath, Comm’r Educ., Tex. Educ. Agency, to Dr. Grenita Lathan, Superintendent, Hous. Indep. Sch. Dist., & Diana Davila, Bd. President, Hous. Indep. Sch. Dist. (Nov. 6, 2019), <https://www.documentcloud.org/documents/6541516-Houston-ISD-11-6-19.html#document/p3> [https://perma.cc/9HP2-A4Y2].

84. *Id.* (“The long-standing failure of the board of trustees to provide better educational opportunities to the students of this campus, compel me to appoint a board of managers pursuant to Tex. Educ. Code §§ 39A.111, 39A.906(b) and 19 Tex. Admin. Code § 97.1061(g).”).

any adverse action against HISD or its Board of Trustees.⁸⁵ In its complaint, the district alleged ten causes of action, including federal violations of the Voting Rights Act, the Equal Protection Clause, and procedural due process.⁸⁶ The district argued that the TEA's attempt to remove HISD's elected board members, when taken together with the fact that the TEA's replacement of elected board members had occurred solely in school districts in which a majority of voters are persons of color, resulted in a "practice and structure that prevents persons of color . . . from possessing the same opportunities to . . . elect representatives of their choice."⁸⁷

HISD also raised a claim under state law that the HB 1842 conditions that trigger the harsh sanctions of a takeover by the state were not met in its case, and thus that the TEA was acting beyond its authority in attempting to oust the board.⁸⁸ The district argued that the timeline for section 39A.111 sanctions only begins with a school's rating in the 2015–2016 school year, and that the earliest the TEA could order the appointment of a new school board would be *after* the 2019–2020 school year—provided that the campus received unacceptable ratings in 2015–2016 and 2016–2017, submitted a turnaround plan pursuant to the law, and received unacceptable ratings for the subsequent three school years.⁸⁹ Essentially, HISD argued that under HB 1842, the TEA was a year too early in attempting to take over the board.⁹⁰

The federal district court remanded HISD's claims seeking declaratory judgment regarding the state-law issue to the state trial court, but dismissed HISD's federal claims and denied the district's application for preliminary injunctive relief.⁹¹ Ultimately, HISD was successful in state court, which granted an injunction preventing the TEA from stepping in to assume control over the school board.⁹² In 2020, the Texas Third Court of Appeals upheld the injunction and concluded that HISD's state-law claims that the TEA acted *ultra vires* should be considered on the merits in district court.⁹³ The next steps in this legal battle between the TEA and HISD, and whether the state will ultimately succeed in ousting HISD's board, remain to be seen.

Although HISD ultimately prevailed on its state-law claims, the federal district court's dismissal of the federal issues, namely claims under the

85. See generally Plaintiff's Second Amended Complaint, *Hous. Ind. Sch. Dist. v. Tex. Educ. Agency*, No. 1:19-CV-684-LY, 2019 WL 6894474, (W.D. Tex. Nov. 4, 2019).

86. *Id.* at 43–44.

87. *Id.*

88. *Tex. Educ. Agency v. Hous. Ind. Sch. Dist.*, 609 S.W.3d 569, 576–77 (Tex. App.—Austin 2020, pet. denied).

89. Plaintiff's Second Amended Complaint, *supra* note 85, at 8–15.

90. See *id.*

91. *Hous. Ind. Sch. Dist. v. Tex. Educ. Agency*, No. 1:19-CV-00684-LY, 2019 WL 6894474 (W.D. Tex. Dec. 18, 2019).

92. Order Granting Temporary Injunction, *Hous. Ind. Sch. Dist. v. Tex. Educ. Agency*, No. D-1-GN-19-003695 (459th Dist. Ct., Travis County, Tex. Jan. 8, 2020).

93. See *Tex. Educ. Agency*, 609 S.W.3d at 576–78.

Voting Rights Act and the Equal Protection Clause,⁹⁴ suggests that despite the reality of school board accountability being taken out of voters' hands, similar claims of voter disenfranchisement are likely doomed to fail from a legal standpoint. Whether or not a claim is legally viable does not always track with whether a particular outcome or situation is just, and in Houston's case, as well as with other cases of state takeover around the country, the fact is that parents, teachers, and board members often feel that their ability to influence what happens in their district is robbed when the state takes over and appoints a new board. The next section will explore a new alternative in Texas for schools that are on the brink of takeover, and why, despite its flaws, it may be a better option for struggling districts.

III. SB 1882 PARTNERSHIPS AS AN ALTERNATIVE

A. HOW PARTNERSHIPS WORK

In 2017, the Texas Legislature passed SB 1882, a new law offering an alternative for districts with schools at risk of being taken over by the state.⁹⁵ The law allows a school district to partner with an outside organization, such as a charter school, nonprofit, or institute of higher learning, with the ultimate goal of improving student outcomes and avoiding state intervention.⁹⁶

SB 1882 provides two main incentives for districts to enter into these partnerships: a potential for increased funding and a pause on the state's accountability timeline.⁹⁷ According to the TASB, a district that enters into an SB 1882 partnership will "receive either the average daily attendance for each student at the campus or, if greater, the amount that an [open-enrollment charter school] would receive for that same average daily attendance."⁹⁸ This difference could amount to almost \$1,500 per student in additional resources, depending on the district.⁹⁹ Further, and more significantly, an approved partnership means that the commissioner of education may not sanction or take action against the campus during the first two years of operation under the campus's charter.¹⁰⁰ This means that the campus can avoid HB 1842's extreme measures: the ousting of the board by the state or school closure.¹⁰¹

A district can partner with two types of entities, "existing Texas part-

94. *Hous. Ind. Sch. Dist.*, 2019 WL 6894474, at *6.

95. S.B. 1882, 85th Leg., Reg. Sess. (Tex. 2017) (codified as amended in scattered sections of TEX. EDUC. CODE).

96. TEX. ASS'N OF SCH. BDS., TEXAS PARTNERSHIP CHARTERS 1 (2020), <https://www.tasb.org/services/legal-services/tasb-school-law-esource/governance/documents/texas-partnership-charters.pdf> [<https://perma.cc/9N68-TW2J>].

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*; TEX. EDUC. CODE ANN. § 11.174(f).

101. TEX. ASS'N OF SCH. BDS., *supra* note 96.

ners” or “new Texas partners.”¹⁰² An existing Texas partner includes state- and district-authorized charter operators in good standing.¹⁰³ Qualifying existing partners are those that have operated a Texas charter school and received acceptable academic and financial accountability ratings for at least three years.¹⁰⁴ New Texas partners can include out-of-state charter operators, institutes of higher education, governmental entities, and nonprofits with less than three years of experience operating charter schools.¹⁰⁵ The law gives districts flexibility to choose the right partner for them; for example, a district could partner with a local community college to open an early college high school or could partner with a nonprofit to open a preschool.¹⁰⁶

There are also two types of partnership schools: turnaround schools (schools that received an overall “F” rating for the year before the contract begins) and innovation schools (schools that received an overall passing grade).¹⁰⁷ To receive the SB 1882 benefits, districts must submit a detailed application that includes evidence of the partner’s capacity to successfully manage the campus and the partner’s vision, as well as information about the proposed curriculum, strategies, recruitment and management of staff, and more.¹⁰⁸ The TEA evaluates each application and approves it, rejects it, requests additional information, or conducts capacity interviews.¹⁰⁹

Since SB 1882 was passed in 2017, twenty-one districts have had partnerships approved by the TEA, with most of those districts creating several partnership schools at a time.¹¹⁰ In a move that sparked outcry from parents and teachers, San Antonio ISD (SAISD) began a partnership with Democracy Prep, a national network of charter schools, to turn around a consistently low-scoring elementary school.¹¹¹ Though the partnerships with charter schools tend to draw the most attention, several

102. TEX. EDUC. AGENCY, TEXAS PARTNERSHIPS GUIDE 5 (2020), <https://txpartnerships.org/wp-content/uploads/2020/08/RESOURCE-Texas-Partnerships-Guide-2020.pdf> [<https://perma.cc/J6ZZ-2T5X>].

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 5–6.

108. *Id.* at 11.

109. *Id.* at 16.

110. Aliyya Swaby, *Texas Tried to Incentivize School Districts to Work with Charters. Districts Are Turning to Local Nonprofits Instead*, TEX. TRIB. (Aug. 2, 2019, 12:00 AM), <https://www.texastribune.org/2019/08/02/texas-school-districts-charters-work-non-profits/> [<https://perma.cc/HY4L-QETV>]; *Current Texas Partnerships*, TEX. EDUC. AGENCY (2020), <https://txpartnerships.org/wp-content/uploads/2020/09/Current-Texas-Partnerships-2020-2021.pdf> [<https://perma.cc/U26C-7P65>].

111. Emily Donaldson, *Judge Denies Request to Halt SAISD’s Partnership with Charter Operator*, SAN ANTONIO REP. (June 4, 2018), <https://sanantonioreport.org/judge-denies-request-to-halt-saisds-partnership-with-charter-operator> [<https://perma.cc/C64Y-YVBD>]; Bekah McNeel, *How Texas is ‘Shifting the Power’ to Give Some Schools Greater Autonomy, Leadership & Innovation*, THE74MILLION (Oct. 7, 2018), <https://www.the74million.org/article/how-texas-is-shifting-the-power-to-give-some-schools-greater-autonomy-leadership-innovation> [<https://perma.cc/CWT9-GDYX>]; see also discussion *infra* Section III.B.

schools choose to partner with nonprofits instead. Waco ISD, for example, partnered with a nonprofit called Transformation Waco to avoid the closure of five schools in the district.¹¹² District officials helped create Transformation Waco for the specific purpose of using it as a partner, and the nonprofit's sole employee is a former superintendent of the district.¹¹³ In Fort Worth, the district partnered with Texas Wesleyan University to create five new innovation campuses at its middle and elementary schools.¹¹⁴

When a district enters an SB 1882 partnership, it cedes most control over the campus to the partner via contract.¹¹⁵ The partner takes authority over running the school, including decisions about curriculum as well as the hiring and management of new and existing staff.¹¹⁶ Subject to approval by the TEA, the parties must agree to eleven different aspects of the contract.¹¹⁷ First, the contract must grant the partner organization with the "necessary authority to operate the campus."¹¹⁸ This means the contract must have provisions ceding power to the partner to recruit, hire, and train all school leadership, with full autonomy to evaluate that leadership, exercise sole discretion in employee hiring, and wield final authority to approve all curriculum decisions.¹¹⁹ The contract must also include specific academic performance goals, such as annual targets for improved performance and specific consequences in the event that the partner does not meet those goals.¹²⁰

The TEA also requires specific financial performance goals to be part of the contract, such as the requirement to complete an annual financial report.¹²¹ The contract must establish enrollment and expulsion policies,¹²² specify a term of agreement for up to ten years with guidelines on how the partnership may be terminated,¹²³ include an agreement for

112. Brooke Crum, *Transformation Waco, First Partnership of Its Kind, Marks First Year*, WACO TRIB.-HERALD (Aug 17, 2019), https://wacotrib.com/news/education/transformation-waco-first-partnership-of-its-kind-marks-first-year/article_044be066-8bc7-5019-8f0d-60a9e87184d1.html [<https://perma.cc/462K-8TG6>].

113. Swaby, *supra* note 110.

114. Beth Hawkins, *Of Houses and Hope: A Promising Fort Worth School Turnaround and the Closely Watched Policy Push Making It Happen*, THE74MILLION (Jan. 6, 2020), <https://www.the74million.org/article/of-houses-and-hope-a-promising-fort-worth-school-turnaround-and-the-closely-watched-policy-push-making-it-happen> [<https://perma.cc/QF37-LSD2>].

115. TEX. EDUC. AGENCY, *supra* note 102, at 1.

116. *Id.*

117. The TEA evaluates proposed contracts between districts and partners using a rubric. For an example copy of the rubric for the SAISD/Democracy Prep partnership, see Letter from Joe Siedlecki, Assoc. Comm'r, Tex. Educ. Agency, to Pedro Martinez, Superintendent, San Antonio Ind. Sch. Dist. (May 22, 2018, 2:49 PM) [hereinafter Letter from Joe Siedlecki], http://www.texasaft.org/wp-content/uploads/2018/05/TEA_SanAntonioISD_letter.pdf [<https://perma.cc/G9AA-3NNJ>].

118. *Id.* at 1.

119. *Id.*

120. *Id.* at 6.

121. *Id.* at 8.

122. *Id.* at 9.

123. *Id.* at 10.

what services the district will provide to the partner,¹²⁴ and indicate the per-pupil allocation from the district to the partner.¹²⁵ Finally and crucially, the contract must include assurance that the district has complied with section 11.174(c) of the Texas Education Code, which requires that before a district partners with an open-enrollment charter school, they consult with the existing campus personnel and give assurance that current employment agreements will not be impacted by the new partnership contract.¹²⁶ This final requirement was the root of the conflict between SAISD and the teachers' union, discussed more in detail below.

B. BUILDING A PARTNERSHIP IN SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

SAISD's rocky road to a partnership with Democracy Prep provides an example of the legal challenges that come with forming an SB 1882 partnership and lends some insight into how districts may more smoothly take advantage of the partnership option in the future. In 2018, SAISD voted to partner with Democracy Prep to operate the P.F. Stewart Elementary School campus starting with the 2018–2019 school year.¹²⁷ After consecutive years of earning poor grades on the TEA's annual accountability report card, P.F. Stewart was at risk of HB 1842 sanctions, such as closure or state takeover.¹²⁸

In a letter to the district, the TEA conditionally approved SAISD's application, provided that the district make certain technical changes to the contract.¹²⁹ Specifically, the evaluation form returned to the district noted that because Democracy Prep is not an "open enrollment charter school" under Texas law, the requirement that existing staff be consulted about the partnership and assured that their employment contracts would not be terminated or altered did not apply.¹³⁰ This meant that, under the contract, the continued employment of the campus's current teachers was handed over to the discretion of Democracy Prep, the new partner.¹³¹ Democracy Prep hired its new teachers using an at-will employment model common at charter schools, making it easier for the school to replace poorly-performing teachers.¹³²

124. *Id.* at 11.

125. *Id.* at 12.

126. *Id.* at 15–16; TEX. EDUC. CODE ANN. § 11.174(c).

127. Camille Phillips, *New School Year, New Management for San Antonio ISD's Stewart Elementary*, TEX. PUB. RADIO (Aug. 13, 2018, 1:24 AM), <https://www.tpr.org/education/2018-08-13/new-school-year-new-management-for-san-antonio-isds-stewart-elementary> [<https://perma.cc/PS3N-GB36>].

128. Emily Donaldson, *SAISD Students Return to Class at a Detail-Oriented Stewart Elementary*, SAN ANTONIO REP. (Aug. 13, 2018), <https://sanantonioreport.org/saisd-students-return-to-class-at-a-detail-oriented-stewart-elementary> [<https://perma.cc/S36G-T4QS>].

129. Letter from Joe Siedlecki, *supra* note 117.

130. *Martinez v. San Antonio All. of Tchrs. & Support Pers.*, No. 04-18-00421-CV, 2019 WL 1548431, *1, *4–5 (Tex. App.—San Antonio Apr. 10, 2019, pet. denied).

131. Letter from Joe Siedlecki, *supra* note 117, at 1–2.

132. *See* Phillips, *supra* note 127.

Soon after the TEA's conditional approval of the partnership between SAISD and Democracy Prep, the Texas American Federation of Teachers (Texas AFT) and the Texas State Teachers Association (TSTA), two prominent teachers' unions in the state, filed a petition for declaratory judgment against Mike Morath and the TEA.¹³³ The Texas AFT and the TSTA argued that because of the significant benefits available to schools who enter SB 1882 partnerships, the legislature intended that there be "strings attached" to the arrangement, namely the provisions in section 11.174(c) that protect the existing district employees and assure them that their contracts will not change when the district hands over control to the partner organization.¹³⁴ Additionally, the unions argued that the distinction in the TEA performance evaluation between program charters and open-enrollment charter schools¹³⁵ conflicted with the administrative rules issued by the agency that said that section 11.174(c) applies to *all* entities eligible for an SB 1882 campus charter, including nonprofits.¹³⁶ Because the district had not sufficiently consulted with teachers at the campus, and because the proposed contract planned to hand off complete hiring and firing discretion to Democracy Prep,¹³⁷ the union argued that the agreement was void and must be abandoned.¹³⁸

Charter-school advocates and critics of the lawsuit argued that at-will contracts provide a greater incentive for teachers to reach academic goals, and that this lawsuit was simply an attempt by teachers to protect and prioritize their own jobs over the needs of struggling students.¹³⁹ Some teachers, on the other hand, said that the board had not been devoting enough time and resources to aid the school in the years it had been struggling, and that the board should have involved the community more in the decision-making process.¹⁴⁰

Ultimately, a judge in the Texas Fourth Court of Appeals in San Antonio held that the plain language of the statute meant that section 11.174(c) only applied to open-enrollment charter schools, and because it was undisputed that Democracy Prep is not an open-enrollment charter

133. Plaintiffs' Second Amended Original Petition for Declaratory Judgment, Tex. Am. Fed. of Tchrs. v. Morath, No. D-1-GN-18-005044 (353rd Dist. Ct., Travis County., Tex. Aug. 23, 2019).

134. *Id.* at 2.

135. See Letter from Joe Siedlecki, *supra* note 117.

136. See E-mail from Russell Ramirez, Gen. Couns., Tex. State Tchrs. Ass'n, to Pedro Martinez, Superintendent, San Antonio Ind. Sch. Dist. (Mar. 5, 2018) [E-mail from Russell Ramirez], <https://sanantonioreport.org/wp-content/uploads/2018/03/20180306-Level-One-Complaint.pdf> [<https://perma.cc/SLY7-FG8D>].

137. See Letter from Joe Siedlecki, *supra* note 117, at 1–2.

138. See E-mail from Russell Ramirez, *supra* note 136, at 2–3.

139. *San Antonio ISD's District-Charter Partnership with Democracy Prep at Stewart Elementary*, SAN ANTONIO CHARTER MOMS (Jan. 20, 2018), <https://sachartermoms.com/san-antonio-isd-district-charter-partnership-democracy-prep-stewart-elementary> [<https://perma.cc/3QTG-N4HL>].

140. Camille Phillips, *San Antonio ISD Unanimously Approves Contract with Democracy Prep Charter*, TEX. PUB. RADIO (Mar. 19, 2018, 2:01 PM), <https://www.tpr.org/education/2018-03-19/san-antonio-isd-unanimously-approves-contract-with-democracy-prep-charter> [<https://perma.cc/K857-SPRT>].

school, SAISD had not broken the law in drafting their contract with Democracy Prep.¹⁴¹ The partnership moved forward, and in the fall of 2018, students returned to school at the same building, newly branded as Democracy Prep at Stewart Elementary School.¹⁴² Unless the Texas legislature changes the wording of the laws, Texas courts will likely continue to allow districts wide latitude in partnering with charter schools when it comes to firing or retaining teachers when the new management takes over. Unfortunately, however, because districts and campuses did not receive “A” through “F” ratings from the TEA in the 2019–2020 school year due to the COVID-19 pandemic, it remains to be seen whether SAISD’s partnership with Democracy Prep will improve student outcomes enough to avoid closure.

IV. LESSONS FOR THE FUTURE

A. TURNING PARTNERSHIPS INTO A BETTER OPTION

Considering the way Texas laws are currently written, the SB 1882 partnership option is a necessary alternative to HB 1842 that preserves the voters’ ability to use their voices and make their opinions known. Although an SB 1882 partnership represents a transfer of power from the school board to a third-party partner (whether that partner is a charter, nonprofit, or institute of higher education), the key is that the elected school board makes the decision. In a takeover under HB 1842, the board is completely ousted.¹⁴³ However, with SB 1882 partnerships, the power stays in the hands of the district to choose a partnership that is right for them. This means that the decision makers remain accountable to families; if voters in the community disagree with the board’s decision to try an SB 1882 partnership, either the district will back down and choose not to enter the partnership,¹⁴⁴ or the voters can make their voices heard by voting the board members out. Based on the recent events in San Antonio, Houston, and in other districts that have elected to enter partnerships, there are lessons that districts can take away that may pave the way for a smoother, more amicable partnership. Further, there are ways that the Texas Legislature could soften HB 1842 while preserving incentives for schools. These cases raise the question of how much deference courts should give to school boards when it comes to the needs of students in struggling schools. Finally, the growing patchwork of SB 1882

141. *Martinez v. San Antonio All. of Tchrs. & Support Pers.*, No. 04-18-00421-CV, 2019 WL 1548431, *1, *5 (Tex. App.—San Antonio Apr. 10, 2019, pet. denied).

142. Donaldson, *supra* note 128.

143. See TEX. EDUC. CODE ANN. § 39A.004.

144. See Bethany Erickson, *After Social Media Uproar, Dallas ISD Backs Off More SB 1882 Partnerships*, PEOPLE NEWSPAPERS (Oct. 16, 2019), [https://www.peoplenewspapers.com/2019/10/16/after-social-media-uproar-dallas-isd-backs-off-more-sb-1882-partnerships/#:~:text=%E2%80%9CSB%201882%20provides%20two%20incentives,school's%20or%20the%20district's\).%E2%80%9D](https://www.peoplenewspapers.com/2019/10/16/after-social-media-uproar-dallas-isd-backs-off-more-sb-1882-partnerships/#:~:text=%E2%80%9CSB%201882%20provides%20two%20incentives,school's%20or%20the%20district's).%E2%80%9D) [https://perma.cc/YN4P-T2GC] (explaining how Dallas ISD backed out of partnerships following public backlash).

partnerships raises some general questions about the growth of charters and the possible drawbacks.

1. *Amplifying Community Leadership*

In addition to preserving power in the hands of voters and avoiding administrative chaos, the partnership option also provides districts the opportunity to seek innovation and reform from within the community itself, if they choose to do so. While it remains to be seen if SB 1882 will lead to long-term improvement in the partner districts, there is evidence that similar partnerships between districts and charters or nonprofits can in fact be successful. The early evidence of improvement resulting from Fort Worth ISD's partnership with the local Texas Wesleyan University has generated buzz in the education world.¹⁴⁵

In 2017, Fort Worth ISD piloted the Leadership Academy Model, which features high-achieving teachers and principals, extended-day learning, social and emotional support for its students, and emphasis on parent and community involvement, to reform five of its schools (including four elementary schools and one middle school).¹⁴⁶ The schools hired new teachers and administrators from a pool of high-quality educators already working within the district.¹⁴⁷ The initiative was initially made possible by a charitable grant, and early metrics from the first year of operation under the new model were extremely promising.¹⁴⁸ Then, in 2019, the district entered into an SB 1882 partnership with Texas Wesleyan, the oldest higher education institute in Fort Worth, to continue and grow the success of the Leadership Academy model.¹⁴⁹ Texas Wesleyan will manage the schools at a high level and utilize its School of Education to provide professional development and data-driven academic oversight, and the university's board will serve as the board of directors for the Leadership Academy Network.¹⁵⁰ Depending on the continued promise

145. See Hawkins, *supra* note 114.

146. *Leadership Academy Network*, FORT WORTH IND. SCH. DIST., <https://www.fwisd.org/Page/10065> [<https://perma.cc/5M3E-29VE>].

147. *Five Schools Will Become FWISD Leadership Academies*, FORT WORTH IND. SCH. DIST., <https://www.fwisd.org/site/default.aspx?PageType=3&DomainID=160&ModuleInstanceID=15855&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=16886&PageID=10902&Comments=true> [<https://perma.cc/7UWC-YJF2>].

148. For more information about the specific metrics and ways the schools improved, see *Fort Worth ISD Leadership Academies Showing Signs of Early Success*, FORT WORTH IND. SCH. DIST., <https://www.fwisd.org/site/default.aspx?PageType=3&DomainID=3174&ModuleInstanceID=14481&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=24501&PageID=10065> [<https://perma.cc/H76C-NJ55>]; *Texas Education Agency 2018–19 School Report Card, Como Elementary*, TEX. EDUC. AGENCY (Dec. 2019), https://rptsvr1.tea.texas.gov/cgi/sas/broker?_service=marykay&_program=perfrest.perfmast.sas&cyr=2019&level=campus&search=district&namenum=Fort+Worth+ISD&district=220905&campus=220905117&_debug=0&prgopt=2019%2Fsrc%2Fsrc.sas [<https://perma.cc/LP8A-4UN2>].

149. *Leadership Academy Network*, *supra* note 146.

150. *FWISD and Texas Wesleyan Announce First-of-Its-Kind, Innovative PK-8 Partnership*, TEX. WESLEYAN UNIV. (Feb. 13, 2019), <https://txwes.edu/news-and-events/all-news/2020-vision/fwisd-and-texas-wesleyan-announce-first-of-its-kind-innovative-pk-8-partnership/#.YBXQDZNKi3J> [<https://perma.cc/ZHM6-Y2AP>].

of the Leadership Academy Model and its partnership with Texas Wesleyan, this type of partnership could prove to be an exemplar for other Texas districts considering the option, particularly for sourcing talent from within the district itself and utilizing a long-standing, trusted institution in the community as a partner.

Similarly, Waco ISD partnered with a nonprofit called Transformation Waco to prevent the closure of five elementary and middle schools in the district.¹⁵¹ At the helm of Transformation Waco are the district's former assistant superintendent of student services and family engagement as CEO, and Waco's former mayor as the nonprofit's board president.¹⁵² To reduce teacher turnover, the nonprofit uses its increased funding to pay for teachers to earn their masters as part of a five-year commitment to the program and school.¹⁵³ Like the Fort Worth model, the Waco partnership preserves and amplifies voices of leaders already in the community and invests in talent with the aim of long-term success.

Districts have the option to follow the examples of places like Fort Worth and Waco and enter community-based partnerships instead of partnering with an out-of-state charter network like Democracy Prep. In fact, most schools that enter SB 1882 partnerships do in fact partner with nonprofits or institutes of higher education rather than charter networks.¹⁵⁴ The benefit is that the district and its current staff, who are familiar with the campus's needs, have more involvement.¹⁵⁵

However, it could be that schools partnering with nonprofits founded from within their own district want to take advantage of the sanctions pause and increased funding without surrendering control of their schools to a partner. There is a question of whether this type of partnership was truly what the legislature intended when it passed SB 1882. One could argue that because the sanctions pause is a "last resort," these partnerships are intended to bring in drastic changes to the campus's leadership and instructional methods. On the other hand, if the end goal is for the school to improve academic outcomes and increase the campus's letter-grade accountability rating from the TEA, and it can do so by rearranging its own leadership and innovating from within, then the sanctions pause as a "last resort" has no bearing.

2. *Securing Buy-In*

State takeovers often result in turmoil and uncertainty in the district, which leads to higher staff turnover and "exclusion of parent and community engagement in district decision-making";¹⁵⁶ whereas, if a partnership is done right, it avoids this turmoil and provides a more harmonious way

151. Crum, *supra* note 112.

152. *Id.*

153. *Id.*

154. Swaby, *supra* note 110.

155. *Id.*

156. WILSON & LATHAM SIKES, *supra* note 51.

forward. Struggling Texas school districts should observe what happened in Houston and San Antonio and adjust their plans accordingly. In Houston, with the threat of state takeover looming, the board of trustees proposed a partnership with Energized for STEM Academies,¹⁵⁷ and several community members voiced strong objections at the public meeting.¹⁵⁸ Similarly, Dallas ISD decided not to pursue an SB 1882 partnership after initially considering the idea when many members of the community expressed strong criticism on social media.¹⁵⁹

The lesson is that for SB 1882 partnerships to go smoothly, districts must get buy-in from both families and teachers. To get parents and students on board, boards of trustees in danger of sanctions should seek community input when they begin exploring a partnership, explain to families what SB 1882 partnerships are and how they work, and ask parents what students need the most. The board could allow families to ask questions to possible partners face-to-face in a public meeting, which would also help the district evaluate which partner is right for them. Considering that one of the key functions of an elected school board is to seek input from the community and act as a link between the school system and the public,¹⁶⁰ it is essential to make sure families are involved in the process of deciding whether to enter a partnership and choosing the partner.

Further, districts could negotiate a shorter partnership term into their contracts. Instead of a ten-year partnership like the one in SAISD,¹⁶¹ the agreement could be for a shorter term such as four or five years, and assuming that the school improves enough to meet the requisite grade to avoid state sanctions, it could build into the contract that the partnership would be periodically reevaluated, taking into account input from families, to determine what is going well and what needs to change. Anything the school board can do to empower families and amplify their voices will help with buy-in.

School boards hoping to enter into an SB 1882 partnership as an alternative to HB 1842 takeover also must get buy-in from existing teachers. The recent opinion from the Texas Fourth Court of Appeals indicates that future challenges to the language in the Texas Education Code, which specifies that only partnerships with open-enrollment charter schools re-

157. Laura Isensee, *Ahead of Board Vote, Houston Teachers Union Raises Question About Proposed Charter Partner*, HOUS. PUB. MEDIA (Apr. 23, 2018, 5:17 PM), <https://www.houstonpublicmedia.org/articles/news/2018/04/23/281249/ahead-of-board-vote-houston-teachers-union-raises-questions-about-proposed-charter-partner> [https://perma.cc/63KL-8RRHU].

158. In fact, the meeting got so heated that it ended with the arrest of two people (although the charges were dropped). Jacob Carpenter & Shelby Webb, *Following Skirmish, HISD Trustees Adjourn Without Partnership Vote*, HOUS. CHRON. (Apr. 25, 2018, 8:10 AM), <https://www.chron.com/news/houston-texas/houston/article/Skirmish-at-school-board-meeting-leads-to-ejections-12862150.php> [https://perma.cc/9676-SJBA].

159. See Erickson, *supra* note 144.

160. *School Board's Roles and Responsibilities*, *supra* note 63.

161. Letter from Joe Siedlecki, *supra* note 117, at 10.

quire consultation with current staff and assurance that current employment contracts will not change, may not be successful.¹⁶²

However, this does not mean that completely handing over the jobs of all current teachers at a campus to the whims of the partner without consulting those teachers is necessarily best practice. Just because a consultation is not required does not mean that seeking input from current teachers would not be helpful. Districts must figure out a way to strike a balance between preserving relationships with their current employees who have the best interests of the district and students at heart, and embracing the overall purpose of an SB 1882 partnership, which is to hand over control to encourage innovation and reform. If partners do not have the discretion necessary to exercise authority over staffing decisions, the partnership might not be able to reach its full potential; however, if districts do not seek input from existing teachers, there may be legal issues down the road, like in San Antonio. Possibly districts could reach a compromise where teachers who meet certain performance and student achievement goals will have their jobs preserved, while teachers who do not will remain at the campus at the discretion of the partner.

Alternately, if the Texas state legislature did in fact intend for current district teachers to be consulted in advance of partnerships with every type of charter, as the union argued in the San Antonio case,¹⁶³ it should amend the text of the statute to make that explicitly clear. As the opinion in the San Antonio case indicates, the plain language reading of the statute as-is requires consultation with teachers and protection of employment only in partnerships with open-enrollment charter schools.¹⁶⁴

3. Evidence of Buy-In Leading to Success

Because SB 1882 is so new, there is not much hard data about whether these types of partnerships work as they are intended. However, there is some evidence to show that collaborative models can produce better academic results, better teachers, more collaboration, and a more positive attitude toward changing methods with the goal of student success.¹⁶⁵

A study by Aaron Alonzo Dominguez gives a history of the status quo “competition” model between ISDs and charter schools, and looks at a case study of a collaborative partnership between a district and a charter public school to determine what leadership and organizational issues and benefits can arise.¹⁶⁶ This was not an SB 1882 partnership, and there was

162. *Martinez v. San Antonio All. of Tchrs. & Support Pers.*, No. 04-18-00421-CV, 2019 WL 1548431, *1, *3-5 (Tex. App.—San Antonio 2019, pet. denied).

163. *See generally* Plaintiffs’ Second Amended Original Petition for Declaratory Judgment, *supra* note 133.

164. *See Martinez*, 2019 WL 1548431, at *3-5.

165. *See generally* Aaron Alonzo Dominguez, *Can District and Charter Partnerships Work? A Look at Emerging Collaborative Models* (2018) (Ed.D. Treatise, The University of Texas at Austin), <https://repositories.lib.utexas.edu/bitstream/handle/2152/65658/DOMINGUEZ-TREATISE-2018.pdf?sequence=1&isAllowed=y> [<https://perma.cc/VWV2-TH59>].

166. *Id.* at vii.

no total takeover of the district school as would be the case in a SB1882 partnership, but rather was a collaborative model where a district and charter came together and blended their staff and students.¹⁶⁷ The study used interviews with district-level leaders, school leaders, and teachers to explore their perceptions on the collaboration between the district and the charter and how it related to the school's success, and whether the collaborative model aligned with the elements of exchange, negotiation, trust, and role differential within the ten functions of schools.¹⁶⁸

All participants in the interviews indicated that they believed the partnership had positively impacted school success—though different stakeholders in the partnership defined success in various ways.¹⁶⁹ Teachers, too, found that the collaborative partnership positively impacted success, with one noting that the district middle school had improved its TEA accountability ratings as a result of the partnership.¹⁷⁰ School leaders noted that the ability to share ideas and work through problems together had a positive impact on the operations of the schools.¹⁷¹ Districts thinking about an SB 1882 partnership should look at this study and note that the key to this particular partnership's success, it seemed, was harmony among the administrators and teachers at the district and at the charter school.¹⁷² Again, this study confirms that for an SB 1882 partnership to work, getting buy-in from teachers and making sure that existing teachers know that, to the extent possible, their work, opinions, and understanding will be valued, is crucial. All stakeholders in the partnership must be on board.

B. THE FUTURE OF HB 1842

In addition to working through some of these legal issues and challenges with buy-in, the legislature could soften some of the “draconian” measures employed by HB 1842 that leave many schools with no choice but to either close or opt for a state takeover.¹⁷³ As HB 1842 stands now, if even one campus out of tens or hundreds in a district fails to make the grade, as in Houston, the sanctions kick in.¹⁷⁴ After watching the turmoil in Houston over the past few years, districts with one or two failing cam-

167. *Id.* at 38.

168. *Id.* at 32. The “ten functions of schools” are “(1) governance operations; (2) curriculum and instruction; (3) elementary and secondary campus operations; (4) instructional support services; (5) human resources; (6) administrative, finance, and business operations; (7) facilities planning and plant services; (8) accountability, information management, and technology services; (9) external and internal communications; and (10) operational support systems—safety and security, food services, and transportation.” *Id.* at 22. These are critical to the success and stability of a school system and are primarily the superintendent's responsibility to oversee.

169. *See id.* at 41–55.

170. *Id.* at 50.

171. *See id.* at 41–55.

172. *See id.*

173. *Release of A-F Ratings Shows Need to Hit Reset Button on State Sanctions, supra* note 77.

174. *See* TEX. EDUC. CODE ANN. § 39A.001; Isensee, *supra* note 80.

puses that cannot meet the required standards may opt to close the schools, an option that has severe consequences of its own. Permanently closing a school displaces students and disrupts their learning, and it may add a strain on the resources of the existing schools that absorb the students. If a district decides an SB 1882 partnership option is not right for the district or is faced with objections from parents and the community, perhaps HB 1842 should provide for more support from the TEA in helping failing schools meet the grade.

The law could also provide for a sliding scale of sanctions based on the proportion of failing schools in the district. For example, if a higher proportion of the campuses are consistently struggling to meet the grade, the law could propose more stringent consequences for the whole district, but if just one school out of hundreds is struggling, the law could provide for more targeted interventions for that particular campus, instead of jeopardizing the structure of the district as a whole. And maybe the TEA should encourage districts that find themselves struggling down the line to enter SB 1882 style partnerships earlier, before it becomes the only alternative to closure or takeover.

HB 1842's "A" through "F" rating system has also drawn much criticism not only in Texas, but across the country.¹⁷⁵ Proponents argue that the system provides clarity for which schools are generally doing well and which schools have work to do.¹⁷⁶ However, critics argue that reducing a school's performance to a single letter not only stigmatizes schools and students who score poorly, but also ignores the variance that exists within schools that are doing well.¹⁷⁷ In the Oklahoma school system, which also uses an "A" through "F" metric, achievement gaps in reading and math were larger in schools that received an "A" than in schools that received a "C" or "D."¹⁷⁸ Although simplicity is good for parents, perhaps a more detailed assessment of schools should take place in the evaluation of whether a campus's performance triggers HB 1842 sanctions. Though Texas's letter-grade system does take improvements in student performance into account, this metric should play a greater role in the HB 1842 evaluation of a school's success on its turnaround plan. Further, if the "A" through "F" system considered achievement gaps within particular schools, even those schools that generally score well, maybe it would paint a more accurate picture of where students are falling through the cracks—the prevention of which is the whole point of the law imposing stringent measures on struggling schools.

175. See John Tanner, *The A-F Accountability Mistake*, TEX. ASS'N OF SCH. ADM'RS at 2 (Nov. 2016), <http://www.futurereadytx.org/wp-content/uploads/2018/06/A-F-mistake.pdf> [<https://perma.cc/SX4J-PDRQ>]; Kara Belew, *Why Texas' A-F School Accountability System is Working*, TEX. PUB. POL'Y FOUND. (Aug. 26, 2018), <https://www.texaspolicy.com/why-texas-a-f-school-accountability-system-is-working> [<https://perma.cc/BM3L-273C>] (arguing for the grade-letter rating system but noting its critiques).

176. Belew, *supra* note 175.

177. Tanner, *supra* note 175, at 7.

178. *Id.*

C. QUESTIONS OF DEFERENCE

The legal battles over HB 1842 and SB 1882 also present the question of how much deference courts should give schools. At the end of the day, who is better suited to make decisions for students? The San Antonio case indicates that in future legal challenges to SB 1882 partnerships, courts may continue to defer to the decision-making power of the elected school board, even over the objection of teachers. Whether the Texas state appeals courts ultimately side with HISD in its battle to stop the state takeover may illuminate to whom the courts will defer in future challenges to HB 1842 sanctions: the state and the TEA or the districts and their school boards. Deferring to the school boards means preserving the voice of the community through its elected officials, but there is an argument that the TEA must receive some deference in order to encourage and incentivize improvements in the districts. Because these laws are relatively new, there are doubtlessly more legal battles that will play out in the future and spark further debate about who is best situated to make the ultimate decisions for students.

D. TAKEAWAYS FROM CHARTER CRITICISMS

Charter schools have faced criticism since they began to grow in the late 1990s and well into the 2000s. One main criticism that may gain ground if more Texas districts decide to begin SB 1882 partnerships is that charters have a higher teacher turnover rate than traditional public schools.¹⁷⁹ Given that teacher turnover leads to disruption in student learning and student–teacher relationships and places a strain on existing staff to repeat training and professional development,¹⁸⁰ Texas districts considering partnering with charter schools must prioritize teacher retention and adjust their partnership contracts accordingly.

Charter schools are also criticized for contributing to the “privatization” of education and turning education into a business opportunity.¹⁸¹ Indeed, according to Zachary Jason in *Harvard Education Magazine*, for-profit charters achieve adequate yearly progress at a much lower rate than nonprofit charters.¹⁸² This is another consideration for Texas districts considering an SB 1882 partnership: partnering with a for-profit charter will likely be less successful, as well as less popular, in the community.

However, it is also crucial to note that Black students and low-income students have made academic gains in charter schools. A study published by Education Next found that over twelve years, Black students at char-

179. See Zachary Jason, *The Battle Over Charter Schools*, HARV. EDUC. MAG., Summer 2017, <https://www.gse.harvard.edu/news/ed/17/05/battle-over-charter-schools> [https://perma.cc/NM34-4ACU].

180. *Teacher Turnover: What You Need to Know and How You Can Curb the Trend*, BRANDMAN UNIV. (July 8, 2020), <https://www.brandman.edu/news-and-events/blog/teacher-turnover> [https://perma.cc/TZ2B-AVRN].

181. Jason, *supra* note 179.

182. *Id.*

ter schools made greater gains on reading and math tests than their peers at district schools.¹⁸³ Economically disadvantaged students at charter schools also had an edge in reading and math over their district school peers, according to the study.¹⁸⁴ Another study by the Center for Research on Education Outcomes at Stanford University found that students in poverty, Black students, and Hispanic students in charter schools in twenty-seven states showed both improved quality and an upward trend in performance between 2009 and 2013.¹⁸⁵ If the ultimate goal of school reform is to close the achievement gap, data showing that students of color and low-income students make academic gains in some charter schools cannot be ignored by critics. In Texas, charter schools enroll a greater number of economically disadvantaged students and students of color than do traditional ISDs¹⁸⁶ and send a greater number of those students to college than do traditional ISDs.¹⁸⁷ Texas school districts must take into account the valid criticisms of charter schools, but they must also consider the fact that they can in fact offer a better educational alternative for some economically disadvantaged students or students of color.

V. CONCLUSION

Due to the COVID-19 pandemic, the TEA paused accountability ratings for the 2019–2020 school year.¹⁸⁸ The annual school report cards will not give schools a letter-grade rating and will not include STAAR and academic growth data.¹⁸⁹ The pandemic’s disruption of in-person instruction and the challenging move to virtual learning means that it remains to be seen whether the first cohort of SB 1882 partnerships will successfully find their way out of “improvement required” territory. The nature of online learning, combined with the mental, physical, and emotional stressors of the pandemic, also means that many students will fall behind, widening the already cavernous achievement gap.¹⁹⁰ These outside fac-

183. M. Danish Shakeel & Paul E. Peterson, *Charter Schools Show Steeper Upward Trend in Student Achievement than District Schools*, EDUC. NEXT (Sept. 8, 2020), <https://www.educationnext.org/charter-schools-show-steeper-upward-trend-student-achievement-first-nationwide-study> [<https://perma.cc/V9JV-AR4L>].

184. *Id.*

185. CTR. RSCH. ON EDUC. OUTCOMES, STANFORD UNIV., NATIONAL CHARTER SCHOOL STUDY 84 (2013), https://credo.stanford.edu/sites/g/files/sbiybj6481/f/ncss_2013_final_draft.pdf [<https://perma.cc/7X8D-YLLF>].

186. TEX. PUB. CHARTER SCHS. ASS’N, *supra* note 28, at 2.

187. Starlee Coleman, *Charter Schools Are Supposed to Be Different*, TEX. TRIB.: TRIBTALK (Feb. 4, 2019), <https://www.tribtalk.org/2019/02/04/charter-schools-are-supposed-to-be-different> [<https://perma.cc/88R8-9R55>]; *see also* Timothy Mattison, *Texas Public Charter School Post-Secondary Outcomes*, TEX. CHARTER SCHS. ASS’N (2019), https://txcharterschools.org/wp-content/uploads/2020/01/Post-Secondary-Outcomes_research-brief_digital2.pdf [<https://perma.cc/3A9U-FAAY>] (using data pulled from the Texas Education Agency).

188. *2019–20 School Report Card (SRC) Definitions*, TEX. EDUC. AGENCY 1 (2020), https://tea.texas.gov/sites/default/files/2020_SRC_definitions.pdf [<https://perma.cc/F6HU-QXX8>].

189. *Id.*

190. *See* Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis & Ellen Viruleg, *COVID-19 and Learning Loss—Disparities Grow and Students Need Help*, MCKINSEY & CO. (Dec.

tors will undoubtedly influence whether a partnership successfully “turns around” a school in the second year of the intervention pause. Unfortunately, because educators don’t yet understand the full toll of the pandemic on students, it may be several years before we see the full extent of the current partnerships play out. As we begin to witness the deepening effects of the pandemic and an entire school year (or more) of virtual, distanced learning, it will become more important than ever for school boards to work with and seek input from parents, many of whom have taken a more involved role in their child’s learning.¹⁹¹

The mission of the original Elementary and Secondary Education Act of the 1960s was equity in education across socioeconomic and racial lines.¹⁹² Sixty years later, the achievement gap, though narrowing, still persists.¹⁹³ The next several years will be crucial in evaluating the real success of the partnership model. With the 2015 ESSA’s wider goal of giving states and local organizations more flexibility to develop targeted interventions, the hope in Texas is that laws like SB 1882 will breed innovation that benefits struggling schools and students, continuing the mission President Johnson’s ESEA started so many years ago.

8, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help#> [https://perma.cc/DEF9-N6XR].

191. Stephen Noonoo, *Parents Are Getting More Involved in Remote Learning. Is That a Good Thing?*, ED SURGE (June 2, 2020), <https://www.edsurge.com/news/2020-06-02-parents-are-getting-more-involved-in-remote-learning-is-that-a-good-thing> [https://perma.cc/WTB2-JU6B].

192. Black, *supra* note 1, at 1311.

193. See *The Educational Opportunity Monitoring Project: Racial and Ethnic Achievement Gaps*, CTR. FOR EDUC. POL’Y ANALYSIS, <https://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race> [https://perma.cc/KKX5-UPJB].