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Texas State Teachers Association

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Teachers unions sue Education Commissioner Mike Morath for making an unlawful power grab to promote charter school expansion in our public school districts

Two teachers unions filed a joint lawsuit against Texas Education Commissioner Mike Morath Wednesday for violating state law in the promotion of charter-school takeovers of struggling public-school campuses.

The suit, filed in state district court in Austin by Texas AFT and the Texas State Teachers Association, challenges the commissioner's handling of SB 1882, a law enacted last year to give school districts additional state revenue and relieve them from state sanctions if they agree to charter takeovers of campuses that have failed state accountability ratings for three consecutive school years after the campus is ordered to submit a campus turnaround plan.

"The education commissioner has made an unlawful power grab to have complete authority over approving these charter takeovers, and most disturbing is his insistence on breaking the law to ensure that these charter campuses are not subject to important rights protecting teachers and students," said Louis Malfaro, Texas AFT president. "Morath is positioning the Texas Education Agency to not only be the cheerleader for charters, but also the facilitator of charter-school expansion at the expense of our students and teachers."

"We have high expectations for our students and our educators, which include obeying the law, and we should expect no less from our education commissioner," said Texas State Teachers Association President Noel Candelaria. "Commissioner Morath violated provisions in SB 1882 that were designed to protect important educational standards for children and essential employment rights for educators. The commissioner is supposed to be the state's chief regulator of charter schools and, as such, must protect students, educators and taxpayers, not cut corners for charter operators."

SB 1882 was passed in response to another law, HB 1842, which mandates that the Texas Education Agency close a school or appoint a board of managers to govern the entire school district if the campus fails to meet state accountability standards for five years.

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SB 1882 allows a district to contract with a charter operator or nonprofit organization to create an in-district charter school and thus avoid the harsh sanctions of school closure or district takeover. Additionally, the law provides additional funding for these charter campuses—up to the \$1,900 more each year per student.

Under SB 1882 districts contracting with an entity to be the charter can choose whether to apply local policies and certain state laws—everything from teacher contracts and employment rights to class-size caps and disciplinary rules for students—to the campus in question. If the contract does not address these policies, the default is that they apply. Regulations published by Morath state the opposite and make the default that no district policies apply unless the commissioner approves their application.

“While the typical Texas charter school does not have to follow many of these policies and laws, which were established over the past 40 years to protect the quality of education, a school district should have the opportunity to consult with the local community to decide what important rights need to be protected at these existing campuses, and that process shouldn’t be left to the sole discretion of the education commissioner in Austin,” Malfaro said.

Also at issue in the lawsuit is how the commissioner has flip-flopped in his rules on what type of charter operator is covered by two key SB 1882 requirements, that school districts consult with school employees on the proposed contract with a charter before approving the agreement, and that no existing contract rights of teachers be adversely affected. The law was intended to cover all types of charter entities—whether they be an independent charter school, a chain of charter schools, or a higher education or nonprofit organization. Morath’s original regulations also included this provision.

However, Morath approved a contract this year for the takeover of Stewart Elementary School in San Antonio ISD by Democracy Prep., a charter chain based in New York. In that approval process, the Commissioner issued a ruling that the requirements for consultation with local campus staff and protection of existing teacher contract rights only applies to one type of charter school, an open-enrollment charter school, not the range of other charter partners that are eligible for a SB 1882 charter contract. While the determination was issued in the context of the Democracy Prep charter contract, the Commissioner’s interpretation of the law applies broadly to all such charter arrangements.

The lawsuit against Morath also challenges his rule that he may—at his discretion—waive requirements for contracts between districts and charters if the commissioner “determines that the approval of the eligibility approval request will improve student outcomes.”

“We’re all for improving student outcomes, but that’s a broad and vague term, and the legislature has not given the education commissioner the ultimate authority to disregard rules and laws for charter takeovers of public school campuses,” Malfaro said.

“If the legislature had intended that the commissioner have complete discretion on approval of SB 1882 contracts, it could and would have said so, and it didn’t,” Candelaria added.

Texas American Federation of Teachers represents teachers, paraprofessionals, support personnel, and higher-education employees across the state. Texas AFT is affiliated with the 1.6-million-member American Federation of Teachers and AFL-CIO.

The Texas State Teachers Association represents teachers and education support professionals in Texas and is affiliated with the National Education Association.

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