

PRESENTED AT

34th Annual School Law Conference

February 28 – March 1, 2019
Austin, Texas

**Districts of Innovation:
Frightening or Freedom?**

**Amanda Bigbee
Julie Leahy**

Amanda Bigbee
Keller ISD
350 Keller Parkway, Keller, TX 76248
Amanda.Bigbee@kellerisd.net
817.744.1000

Julie Leahy
Texas Classroom Teachers Association
P.O. Box 1489, Austin, TX 78767
J.Leahy@tcta.org
512.477.9415

Districts of Innovation: Frightening or Freedom?

FREEDOM!

by Amanda Bigbee, Keller ISD General Counsel

Since the dawn of time (or at least the last two decades) public schools have been overregulated. School districts and their campuses are increasingly buried under unfunded mandates and sometimes-bizarre legislation. Further, a law that makes sense for Keller ISD¹ might be completely vexing for Sundown ISD². In a state as big as Texas, one size fits all laws often feel down right daunting if not impossible to implement.

Districts of Innovation (DOI) is a concept passed by the 84th Texas Legislature through House Bill 1842 in 2015 that gives traditional independent school districts most of the flexibilities available to open enrollment charter schools, including exemption from many requirements mandated in the Texas Education Code. The law permitting districts to adopt local innovation plans is codified in several statutes in Texas Education Code Chapter 12A. Commissioner's Rules are found at 19 TAC Chapter 102, Subchapter JJ.

At the time this paper is being written, 807 of the state's school districts have adopted local innovation plans. Admittedly, many school districts' only innovation is an earlier school start date, but some districts have stretched their innovation legs. This paper aims to give you some basic information as well as details on how one school district took on the DOI challenge a bit more quickly and aggressively than most.

HOW DO YOU BECOME A DISTRICT OF INNOVATION?

In an uncharacteristic moment of legislative clarity, the process for becoming a DOI is not all that burdensome or complicated. It's so straightforward, in fact, that you will likely spend at least two days fretting about what you are missing. If you're one of those attorneys who goes to the primary source for your guidance (as we all should be), please mosey on over to Texas Education Code Chapter 12A and Texas Administrative Code Chapter 102, Subchapter JJ for information on eligibility and the process to become a DOI. If you need a quicker reference, the Texas Education Agency has set up a pretty decent web site that is a good tool to lead you through the process and answer frequently asked questions: [http://tea.texas.gov/Texas Schools/District Initiatives/Districts of Innovation/](http://tea.texas.gov/Texas_Schools/District_Initiatives/Districts_of_Innovation/) And if you just need a process overview to talk about in the elevator or get you through a cocktail party here is a way-too-brief overview of the process that in no way constitutes legal advice or a DOI guarantee:

1. The process begins either with a board of trustees resolution or by signed petition from a majority of your district-level advisory committee. As far as I know everyone has started with a board resolution because a district-level advisory committee that is this informed and proactive is akin to finding a leprechaun riding a unicorn.
2. The board conducts a public hearing to consider developing an innovation plan. If your district is anything like Keller ISD there are approximately zero community members showing up to talk

¹ Student population just over 35,000

² Student population of 670 (give or take a few)

about the idea at this point. You may get more interest once the process begins, and you will definitely get teacher interest if they hear you are considering limiting their conference periods or increasing their class size.

3. Within 30 days of the public hearing the Board must formally decide to pursue or decline the opportunity.
4. The Board then appoints an Innovation Plan committee to write a plan that provides for a comprehensive educational program for the district and identifies requirements imposed by the Education Code that inhibit the goals of the plan and from which the district should be exempted on adoption of the plan. More on what this committee can look like later in this paper. The “comprehensive educational program for the district” may include:
 - a. innovative curriculum, instructional methods, and provisions regarding community participation, campus governance, and parental involvement;
 - b. modifications to the school day or year;
 - c. provisions regarding the district budget and sustainable program funding;
 - d. accountability and assessment measures that exceed the requirements of state and federal law; and
 - e. any other innovations prescribed by the board of trustees.
5. Once you have a plan you must post it on your district website for at least 30 days.
6. The Board notifies the Commissioner of its intent to adopt the plan. I need someone smarter than me to tell me why this step is necessary, as the Commissioner doesn’t approve the plan or have the authority to nix the plan. The only rationale I can see is that if you are ineligible to be a DOI the Commissioner might tap your breaks at this point.³ If you know the answer to this, I’d love your words of wisdom because it seemed like a waste of time to me.
7. Your Chapter 11 district committee (district-wide planning and improvement committee – whatever you call it) holds a public meeting to consider and approve the final version of the Plan with a majority vote.
8. Board of Trustees adopts with two-thirds majority vote. For my math-challenged friends, that means you need 5 of your 7 Trustees to give the thumbs up.
9. Notify the commissioner of adoption.

Sounds easy, right? The devil, my friends, is in the details.

WHAT LAWS ARE UP FOR GRABS?

This question has proven to be a bit more complicated than it appeared to be on its face. I would advise that you consider what laws are legally up for grabs, which laws you can financially manage exempting yourselves from, and which exemptions your school community will tolerate.

These are areas that are prohibited exemptions by law:

- District Governance
- Curriculum
- State Assessment System

³ “To be eligible for designation as a district of innovation, a school district’s most recent academic performance rating must be at least acceptable. A district with a preliminary accountability rating that is not acceptable will not be able to approve an innovation plan.” (Shamelessly stolen from TASB’s FAQ, which is helpful: https://www.tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/Districts-of-Innovation/documents/districts_of_innovation.aspx)

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Districts of Innovation: Frightening or Freedom

Also available as part of the eCourse

[2019 School Law eConference](#)

First appeared as part of the conference materials for the
34th Annual School Law Conference session

"Districts of Innovation: Frightening or Freedom"