IN THE SUPREME COURT OF TEXAS

NO. 09-0794

LTTS CHARTER SCHOOL, INC. D/B/A UNIVERSAL ACADEMY, PETITIONER,

v.

C2 CONSTRUCTION, INC., RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FIFTH DISTRICT OF TEXAS

Argued December 7, 2010

JUSTICE WILLETT delivered the opinion of the Court, in which JUSTICE HECHT, JUSTICE WAINWRIGHT, JUSTICE GREEN, JUSTICE JOHNSON, and JUSTICE LEHRMANN joined.

JUSTICE GUZMAN delivered a dissenting opinion, in which CHIEF JUSTICE JEFFERSON and JUSTICE MEDINA joined.

Since 1995, open-enrollment charter schools have been a part of the Texas public-school system. These nontraditional public schools, created and governed by Chapter 12 of the Education Code, receive government funding and comply with the state's testing and accountability system, but they operate with greater flexibility than traditional public schools, in hopes of spurring innovation and improving student achievement.

This interlocutory appeal poses a narrow issue: Is an open-enrollment charter school a "governmental unit" as defined in Section 101.001(3)(D) of the Tort Claims Act[1] and thus able to take an interlocutory appeal from a trial court's denial of its plea to the jurisdiction?[2] We answer yes. An open-enrollment charter school qualifies under the Tort Claims Act as an "institution, agency, or organ of government" deriving its status and authority from legislative enactments.[3] Accordingly, it may bring an interlocutory appeal. We reverse the court of appeals' judgment dismissing the interlocutory appeal for lack of jurisdiction and remand to that court to reach the merits of the school's immunity claim.

I. Background

LTTS Charter School, Inc., d/b/a Universal Academy, is an open-enrollment charter school that retained C2 Construction, Inc. to build school facilities at a site Universal Academy had leased. C2 filed a breach-of-contract suit, and Universal Academy filed a plea to the jurisdiction claiming immunity from suit. The trial court denied the plea, and Universal Academy brought an interlocutory appeal under Section 51.014(a)(8) of the Civil Practice and Remedies Code. In the court of appeals, C2 moved to dismiss the interlocutory appeal, arguing Universal Academy was not

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[1] *See* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

[2] *Id.* § 51.014(a)(8) (permitting an appeal from an interlocutory order of a district court order that "grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001").

[3] *See id.* § 101.001(3)(D).

entitled to one because it is not a "governmental unit" under the Tort Claims Act.[4] The court of appeals agreed and dismissed the interlocutory appeal.[5]

We granted Universal Academy's petition for review to address whether the court of appeals properly dismissed the interlocutory appeal. Regardless of whether we have jurisdiction over the substance of an interlocutory appeal, we have jurisdiction to determine whether the court of appeals properly determined its own jurisdiction—the only issue raised in the petition and the briefing.[6]

II. Discussion

A. Standard of Review

A statute's meaning is a question of law we review de novo.[7] Our goal in construing a statute is to honor the Legislature's expressed intent,[8] and ordinarily the truest manifestation of legislative intent is legislative language—the words the Legislature chose.[9] We thus give unambiguous text its ordinary meaning, aided by the interpretive context provided by "the surrounding statutory landscape."[10]

B. Statutory Provisions

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[4] 288 S.W.3d 31, 32.

[5] *Id.* at 38.

[6] *See Klein v. Hernandez*, 315 S.W.3d 1, 3 (Tex. 2010).

[7] *See First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 631 (Tex. 2008).

[8] *See City of DeSoto v. White*, 288 S.W.3d 389, 394 (Tex. 2009).

[9] *See Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651 (Tex. 2006).

[10] *See Presidio Ind. Sch. Dist. v. Scott*, 309 S.W.3d 927, 929–30 (Tex. 2010).

Section 51.014(a)(8) permits an appeal of an interlocutory order that "grants or denies a plea to the jurisdiction by a governmental unit as that term is defined in Section 101.001."[11] Section 101.001(3) states a four-part definition of "governmental unit," including this broad provision:

> (D) any other institution, agency, or organ of government the status and authority of which are derived from the Constitution of Texas or from laws passed by the legislature under the constitution.[12]

Universal Academy argues it qualifies under this catch-all language as an "institution, agency, or organ of government" deriving its status and authority from statutory enactments.[13] C2 Construction disputes that this statutory provision, or any other, bestows "governmental unit" status on open-enrollment charter schools.

Our cases "strictly construe Section 51.014(a) as a narrow exception to the general rule that only final judgments are appealable."[14] Today's decision, however, turns not on the "strictness" or "narrowness" of Section 51.014(a) but on a simpler ground: whether Universal Academy fits within the Legislature's broad definition of "governmental unit" in Section 101.001(3)(D).[15]

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[11] TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8).

[12] *Id.* § 101.001(3)(D).

[13] Universal Academy also argues it qualifies for "governmental unit" status as a "political subdivision" under Section 101.001(3)(B), specifically as a "school district." *See id.* § 101.001(3)(B). We need not discuss Subsection (3)(B) since we hold that open-enrollment charters fall under Subsection (3)(D).

[14] *See, e.g.*, *Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 841 (Tex. 2007) (quotations and citation omitted).

[15] TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

We have received two amici curiae briefs, both supporting Universal Academy, one from the State of Texas (whose views the Court requested) and one from the Texas Charter Schools Association. Both amici echo Universal Academy's contention that it falls within Section 101.001(3)(D), and we agree: An open-enrollment charter school qualifies as a "governmental unit" under the Tort Claims Act.

C. The "Status and Authority" of Open-Enrollment Charter Schools Arise From Statute.

Open-enrollment charter schools, governed by Chapter 12 of the Education Code, are indisputably part of the Texas public-education system. Several statutes in the Education Code and elsewhere amply demonstrate that open-enrollment charter schools derive their governmental "status and authority" from legislative enactments. Capped at 215 statewide,[16] open-enrollment charter schools are one of three classes of charter schools created by Chapter 12.[17] These open-enrollment charter schools are authorized to "operate in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district."[18]

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[16] TEX. EDUC. CODE § 12.101.

[17] *Id.* § 12.002 (stating that the three classes of charter schools are: "(1) a home-rule school district charter . . . ; (2) a campus or campus program charter . . . ; or (3) an open-enrollment charter . . . ."); *see id.* § 12.011 (describing the "[a]uthorization" for and "[s]tatus" of home-rule school district charter schools); *see id.* § 12.052 (describing the "[a]uthorization" for campus or campus program charter schools); *see id.* § 12.101 (describing the "[a]uthorization" for open-enrollment charter schools); *see id.* § 12.105 (describing the "[s]tatus" of open-enrollment charter schools).

[18] *Id.* § 12.101.

Chapter 12 of the Education Code, which authorizes the operation of charter schools, seeks to "ensure[] the fiscal and academic accountability" of charter holders while still preserving the "innovations of charter schools" from excessive regulation.[19] As publicly funded institutions,[20] charter schools are designed to spark academic innovation and thus boost student learning.[21] Additionally, charter schools "increase the choice of learning opportunities within the public school system," "create professional opportunities that will attract new teachers to the public school system," and "establish a new form of accountability for public schools."[22]

As for status, Section 12.105 of the Education Code—titled "Status"—statutorily (and categorically) declares open-enrollment charter schools to be "part of the public school system of this state."[23] In addition, Section 11.002 explains that charter schools are "created in accordance with the laws of this state" and, together with traditional public schools, "have the primary

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[19] *Id.* § 12.001(b).

[20] *Id.* § 12.106(a) (A charter holder is entitled to receive funding for the open-enrollment charter school that is based in part on student "weighted daily attendance" and on "the state average tax effort."); *id.* § 12.106(b) ("An open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding."); *see id.* § 12.106(c) ("The commissioner may adopt rules to provide and account for state funding of open-enrollment charter schools under this section.").

[21] *See id*. § 12.001(a).

[22] *Id.*

[23] *Id.* § 12.105.

responsibility for implementing the state's system of public education . . . ."[24] Moreover, Section 12.1053 confers "governmental entity" status, "political subdivision" status, and "local government" status on open-enrollment charter schools for purposes of myriad public purchasing and contracting laws (like dealings with construction companies).[25]

As for authority, that too derives from "laws passed by the legislature under the constitution."[26] Several statutes discuss the authority that open-enrollment charter schools may exercise under their charters. The most explicit grant of authority is Section 12.104(a), which provides that open-enrollment charter schools have "the powers granted to [traditional public] schools" under Title 2 of the Education Code.[27] The scope of a charter school's authority is further detailed in Section 12.102, titled "Authority Under Charter": An open-enrollment charter school "is governed under the governing structure described by the charter" and "retains authority to operate under the charter" assuming acceptable student performance.[28] But just as importantly, that section

[24] *Id.* § 11.002.

[25] *See id.* § 12.1053.

[26] TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

[27] TEX. EDUC. CODE § 12.104(a).

[28] *Id.* § 12.102.

is also authority-limiting, itemizing what powers open-enrollment charter schools do *not* possess—namely, broad authority to impose taxes[29] and tuition.[30]

Put simply, open-enrollment charter schools wield many of the same powers as traditional public schools. They have statutory entitlements to state funding[31] and to the same services that school districts receive;[32] they are generally subject to "state laws and rules governing public schools";[33] and they are subject to the "specifically provided" provisions of and rules adopted under the Education Code.[34] Many specific provisions applicable to the educational programs of traditional public schools also apply to open-enrollment charter schools, including provisions relating to "the Public Education Information Management System," reading instruments and instruction, high school graduation, special education, bilingual education, prekindergarten programs, health and safety, and "public school accountability."[35]

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[29] *Id.* § 12.102(4) (An open-enrollment charter school "does not have authority to impose taxes.").

[30] *Id.* § 12.108(a) ("An open-enrollment charter school may not charge tuition to an eligible student who applies under Section 12.117.").

[31] *Id.* § 12.106(a) ("A charter holder is entitled to receive for the open-enrollment charter school funding under Chapter 42 . . . .").

[32] *Id.* § 12.104(c) ("An open-enrollment charter school is entitled to the same level of services provided to school districts by regional education service centers.").

[33] *Id.* § 12.103(a).

[34] *Id.* § 12.103(b).

[35] *Id.* § 12.104.

Chapter 12 further subjects open-enrollment charter schools to a host of statutes that govern governmental entities outside the Education Code. For example, for purposes of the Government Code's regulation of open meetings and access to public information, "the governing body of an open-enrollment charter school [is] considered to be [a] governmental bod[y]."[36] Likewise, for purposes of the Government Code's and Local Government Code's regulation of government records, "an open-enrollment charter school is considered to be a local government" and its records "are government records for all purposes under state law."[37] And lastly, under Section 12.1053, as noted above, an open-enrollment charter school is considered to be: (1) a "governmental entity" for purposes of Government Code and Local Government Code provisions relating to property held in trust and competitive bidding; (2) a "political subdivision" for purposes of Government Code provisions on procurement of professional services; and (3) a "local government" for purposes of Government Code provisions on authorized investments.[38]

In sum, numerous provisions of Texas law confer "status" upon and grant "authority" to open-enrollment charter schools. Their status as "part of the public school system of this state"[39]—and their authority to wield "the powers granted to [traditional public] schools"[40] and to

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[36] *Id.* § 12.1051.

[37] *Id.* § 12.1052.

[38] *See id.* § 12.1053.

[39] *Id.* § 12.105.

[40] *Id.* § 12.104(a).

receive and spend state tax dollars[41] (and in many ways to function as a governmental entity[42])—derive wholly from the comprehensive statutory regime described above. With this legislative backdrop in mind, we are confident that the Legislature considers Universal Academy to be an "institution, agency, or organ of government" under the Tort Claims Act[43] and thus entitled to take an interlocutory appeal here.[44]

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[41] *See id.* §§ 12.106, .107.

[42] *See id.* § 12.1053.

[43] *See* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

[44] We leave undecided the separate issue of whether Universal Academy is immune from suit. The Solicitor General of Texas—responding to our request for briefing from the State—contends that denying "governmental unit" status "would make little sense because the Legislature has expressly granted open-enrollment charter schools immunity from liability." It is true that Section 12.1056 of the Education Code, while not mentioning immunity from suit, specifies that open-enrollment charter shools are "immune from liability to the same extent as a school district." TEX. EDUC. CODE § 12.1056. Our holding today that Universal Academy is a "governmental unit" under the Tort Claims Act entitled to take an interlocutory appeal does not turn on Section 12.1056's mention of immunity from liability. While that provision, like several other Education Code provisions, implies legislative recognition of "governmental unit" status for open-enrollment charter schools, we reserve judgment on: (1) whether Universal Academy, while entitled to take an interlocutory appeal, also has immunity from suit; and more fundamentally (2) whether the Legislature in fact has the authority to confer (as opposed to waive) immunity, a common-law creature traditionally delimited by the judiciary. That said, the Solicitor General pivots on Section 12.1056's grant of immunity from liability to argue that if open-enrollment charter schools are *not* governmental units under the Tort Claims Act, then the Act does not apply. And if the Act does not apply, then an open-enrollment charter school's immunity from tort liability is never waived. And if immunity is never waived, then Section 12.1056 would suggest that open-enrollment charter schools are immune from all tort liability, unique among all governmental entities in the State. The Solicitor General sees this as an illogical and surely unintended outcome—traditional public schools exposed to tort liability but charter schools exempt from it. We do not consider today the scope or effect of Section 12.1056, but assuming *arguendo* the Legislature can grant immunity from liability, it would seem odd for lawmakers to imbue open-enrollment charter schools with greater tort immunity than cities, counties, school districts, and other purely governmental entities. Again, we reserve judgment on Universal's immunity from suit, an issue not before us.

D. Arguments Against "Governmental Unit" Status Fall Short.

C2 suggests that Universal Academy is not a "governmental unit" because it is a private institution and can engage in for-profit activities. This is unpersuasive. It is true that open-enrollment charter schools can be operated by private institutions or private entities.[45] However, Universal Academy cannot earn profits and direct those profits to shareholders as do private for-profit corporations, as the statute does not permit private for-profit corporations to operate open-enrollment charter schools. In this case, Universal Academy is run by a non-profit corporation organized under Texas law and qualifying under Section 501(c)(3) of the Internal Revenue Code. As Section 12.101(a) provides, this non-profit organization is eligible to operate an open-enrollment charter school.[46] The open-enrollment charter granted to Universal Academy specifically states that the charter holder "shall take and refrain from all acts necessary to be and remain in good standing as an organization exempt from taxation under Section 501(c)(3)." Though C2 points out that Universal Academy subleased a portion of its facilities to a private prekindergarten school that charges tuition, nothing in the record suggests the proceeds went to anywhere but the operations of Universal Academy.[47]

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[45] *See* TEX. EDUC. CODE § 12.101(a). Open-enrollment charter schools may be operated by any one of four eligible entities: a public institution of higher education, a governmental entity, a private or independent institution of higher education, or, in this case, a non-profit organization. *Id.*

[46] *See id.* § 12.101(a)(3).

[47] Further, more than 93% of Universal Academy's funding comes from the State of Texas, through per-pupil allotments similar to allotments paid to public independent school districts. *See id.* § 12.106. Universal Academy also receives federal funding and private donations, so the revenue from the sublease generates only a minuscule portion of Universal Academy's revenues.

Further, even though Universal Academy is in some sense a nonpublic entity, its activities are narrowly circumscribed by statute. Universal Academy has no authority to operate outside of the educational mandate contained in its governing statutory framework, its articles of incorporation, and its charter. A charter may be granted only if Universal "meets any financial, governing, and operational standards adopted by the commissioner under" Subchapter D of Chapter 12,[48] the subchapter governing open-enrollment charter schools. The Commissioner of Education may audit Universal Academy[49] and may revoke its charter for failure to satisfy generally accepted accounting standards of fiscal management or for failure to comply with its charter or Subchapter D.[50] Like all other open-enrollment charter schools, Universal Academy is required by law to "provide instruction to students at one or more elementary or secondary grade levels as provided by the charter."[51] Further, Universal Academy's articles of incorporation state that "[t]he corporation is organized exclusively for the following purpose: the non profit operation of an open-enrollment charter school which shall be operated for educational purposes."

Universal Academy's use of state-funded property and state funds is also carefully circumscribed. Property purchased or leased with state public funds—the source of more than 93%

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[48] *Id.* § 12.101(b); *see also id.* § 12.113(a)(1).

[49] *Id.* § 12.1163(a)(1). The Commissioner also has the power to audit the records of the charter holder and any management company that provides management services to the school. *See id.* §§ 12.1163(a)(1)–(2), .1012.

[50] *Id.* § 12.115. Whether Universal Academy complied with statutory accountability and financial standards is not before us today.

[51] *Id.* § 12.102(1).

of Universal Academy's funding—is held in trust for the benefit of the students[52] and "may be used only for a purpose for which a school district may use school district property."[53] In other words, if traditional public schools can rent their facilities to private groups—like to churches for Sunday services or to dance studios for ballet recitals—then so can charter schools.[54] Likewise, open-enrollment charter schools may spend state funds only in the manner that public schools may spend such funds,[55] and such funds are also held in trust for the benefit of the students.[56]

The dissent, however, maintains that Universal Academy lacks "governmental unit" status because, while the overall charter-school regime is set forth by statute, it is the State Board of Education (SBOE) that issues charters and the Commissioner of Education who revokes or denies renewal.[57] That is, the dissent views open-enrollment charter schools as creatures of a state agency, not the state legislature.[58] Because "specific charter schools are not mentioned"—one by one—in statute, "they therefore do not derive status as governmental units" under Section 101.001(3)(D) of

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[52] *Id.* § 12.128(a)(2).

[53] *Id.* § 12.128(a)(3).

[54] *See id.*; *see also id.* § 45.033. Under Chapter 45, which covers school district funding, the governing board of a school district "may set and collect rentals, rates, and charges from students and others for the occupancy or use of any of the facilities, in the amounts and manner determined by the board . . . ."

[55] *Id.* § 12.107(a)(3).

[56] *Id.* § 12.107(a)(2).

[57] __ S.W.3d __, __.

[58] *Id.* at __.

the Tort Claims Act.[59] In other words, unless and until our biennial Legislature passes statutes that identify each open-enrollment charter school by name, a school can never achieve "governmental unit" status under Subsection (3)(D).[60] This argument is textually untenable.

True enough, a charter school cannot operate without a charter. And charters are granted by the SBOE, not by 181 legislators sifting through mounds of applications.[61] But that does not mean a charter school's status and authority derive from administrative as opposed to legislative action. The dispositive issue is not who grants a charter but who grants a charter *meaning*. Who bestows the status and authority that a charter brings; what does having a charter mean, and who says so? The wellspring of open-enrollment charter schools' existence and legitimacy is the Education Code and its multiplicity of provisions that both detail and delimit what these public schools can and cannot do. The SBOE can issue no charters absent the Education Code,[62] which dictates the

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[59] *Id*. at __.

[60] *Id.* at __. The dissent sees two narrow paths to "governmental unit" status for privately run open-enrollment charter schools: (1) under Subsection (3)(B), if such schools are added as a general category of "political subdivision" like junior college districts, or (2) under Subsection (3)(D), if each school has its existence statutorily declared, like each of our State's various public universities. *Id.* As explained above, this constrained view lacks any textual support, and we decline to graft this ancillary requirement onto the Legislature's straightforward definition of "governmental unit" in Subsection (3)(D).

[61] TEX. EDUC. CODE § 12.101 (providing that the SBOE "may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, and operational standards adopted by the commissioner").

[62] *Id.* § 12.113.

requirements for charter eligibility[63] and details with precision what powers are conferred.[64] The "powers" of an open-enrollment charter school derive from statute;[65] likewise its "authority to operate under the charter"[66] (along with limitations upon that authority[67]); same for its "[s]tatus."[68] All emanate from legislative command. The Legislature has tasked the SBOE and the Texas Education Agency with certain day-to-day duties, but the fact that non-legislators have been delegated such tasks does not obscure the all-encompassing legislative regime that called charter schools into existence and that defines their role in our public-education system.[69] The Legislature's own pronouncements declare the status and authority of open-enrollment charter schools. Other state

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[63] *Id.* § 12.101(a).

[64] *See id.* § 12.102 (titled "Authority Under Charter"). The Education Code is the authority for these charter agreements; it defines the scope of their content and limits their effect on future renewals. Section 12.111, titled "Content," says that "each charter granted under this subchapter must" include, among other things, the period of the charter's validity, the conditional nature of its renewal, the minimum level of student performance, and the basis for revoking a charter. *Id.* § 12.111. Furthermore, "[t]he grant of a charter under [Subchapter D] does not create an entitlement to a renewal of a charter on the same terms as it was originally issued." *Id.* § 12.113(b).

[65] *Id.* § 12.104(a) (Open-enrollment charter schools have "the powers granted to [traditional public] schools" under Title 2 of the Education Code.).

[66] *Id.* § 12.102(3).

[67] *See id.* § 12.102(4) (An open-enrollment charter school "does not have authority to impose taxes."); *see also id.* § 12.108(a) ("An open-enrollment charter school may not charge tuition to an eligible student who applies under Section 12.117.").

[68] *Id.* § 12.105 (titled "Status").

[69] *Edgewood Indep. Sch. Dist. v. Meno*, 917 S.W.2d 717, 730 n.8 (Tex. 1995) ("As long as the Legislature establishes a suitable regime that provides for a general diffusion of knowledge, the Legislature may decide whether the regime should be administered by a state agency, by the districts themselves, or by any other means.").

entities and officials may exercise a measure of oversight pursuant to those statutory commands, but the commands themselves, and that they are legislative, are what matter most.

III. Conclusion

Open-enrollment charter schools are governmental units for Tort Claims Act purposes because: (1) The Act defines "governmental unit" broadly to include "any other institution, agency, or organ of government" derived from state law;[70] (2) the Education Code defines open-enrollment charter schools as "part of the public school system,"[71] which are "created in accordance with the laws of this state,"[72] subject to "state laws and rules governing public schools,"[73] and, together with traditional public schools, "hav[ing] the primary responsibility for implementing the state's system of public education;"[74] and (3) the Legislature considers open-enrollment charter schools to be "governmental entit[ies]"[75] under a host of other laws outside the Education Code.

Accordingly, because Universal Academy is a "governmental unit" under the Tort Claims Act, the court of appeals had jurisdiction to hear Universal Academy's interlocutory appeal under Section 51.014(a)(8).[76] Our holding does not resolve the underlying issue of whether Universal

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[70] *See* TEX. CIV. PRAC. & REM. CODE § 101.001(3)(D).

[71] TEX. EDUC. CODE § 12.105.

[72] *Id.* § 11.002.

[73] *Id.* § 12.103(a).

[74] *Id.* § 11.002.

[75] *Id.* § 12.1053; *see also id.* §§ 12.1051–.1052.

[76] *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(8).

Academy enjoys immunity from C2's contract claim. We reverse the court of appeals' judgment dismissing the appeal and remand to that court for further proceedings.

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Don R. Willett
Justice

OPINION DELIVERED: June 17, 2011