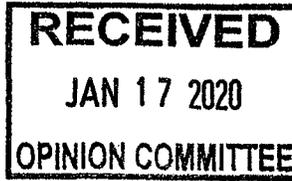




TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

January 17, 2020



Hon. Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

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Re: Request for Opinion

Dear General Paxton:

Please accept this as a request for a legal opinion interpreting House Bill No. 1, General Appropriations Act (GAA), Eighty-Sixth Legislature, Article III, Rider 52 (pp. III-60-61), related to the Program to Encourage Certification to Teach Bilingual Education, English as a Second Language, or Spanish. Several of the institutions named in Rider 52 have asked that the Texas Higher Education Coordinating Board provide them with guidance on whether student passage of alternative tests meets the requirement of "successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test."

The program was first introduced in the GAA by Rider 58 during the 78th Legislative Session. At that time, the program was restricted to the UNT System Center at Dallas, and the Rider did not include any eligibility criteria. The Rider language remained unchanged until the 84th Legislative Session, when the program was expanded to seven institutions. Eligibility and reporting criteria were added at that time.

The eligibility section of the Rider in the 86th Legislative Session was modified to indicate that "the program shall make awards to qualified students admitted to the Teacher Education program in Bilingual Education or other comparable programs for teacher education in English as a second language or Spanish." The Rider then proceeds to state that: "Qualified students must: 1) have demonstrated financial need, as determined by the completion of a Free Application for Federal Student Aid form and the institution's financial aid office; 2) *Successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test*; and 3) Maintain a minimum cumulative 3.0 GPA." (*Emphasis added.*)

The aforementioned institutions recently brought to this agency's attention that the second prong of the eligibility criteria is an issue for two reasons. First, students typically do not sit for the Bilingual Target Language Proficiency Test until the last semester of their program. Second, students pursuing English as a Second Language or Spanish teaching certifications do not necessarily sit for that exam at all. As a result, institutions have asked for clarification on what tests are required for student eligibility for grant awards and whether passage of practice tests would meet the eligibility requirements. All three of the tests mentioned in Rider 52 (Bilingual Target Language Proficiency Test, which is mentioned in the eligibility section, as well as Bilingual Education Supplemental exam and English as a Second Language Supplemental exam, which are mentioned in

the reporting requirements) are part of the Texas Examinations of Education Standards (TExES). (There is an additional TExES test that seems relevant to the Rider, Languages Other than English (LOTE) Spanish EC-12, but which is not mentioned in the Rider.) In discussions with representatives of all the schools impacted by the Rider, agency staff have learned that there are inconsistent views across the institutions regarding how the eligibility requirements should be interpreted and applied.

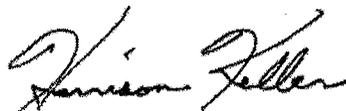
A direct interpretation of the Rider would mean that students pursuing bilingual education certification could not receive funding through the program until after their final tuition bill is due and that students pursuing English as a Second Language or Spanish certification could not receive funding through the program at all unless they took the Bilingual Target Language Proficiency Test in addition to whatever exam is required for their certification. This does not seem to align with the goal of the program, but it is unclear the extent to which the Coordinating Board can provide any broader interpretation of the eligibility criteria given that the program does not exist in statute outside of the GAA and the agency has no rule-making authority for the program.

I am respectfully requesting a legal opinion on two issues:

1. For students enrolled in "other comparable programs for teacher education in English as a second language or Spanish," are institutions allowed to use passage of comparable exams for these "other comparable programs" as a means of meeting the requirement that "qualified students must ... successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test?"
2. Does passage of a practice exam for the Bilingual Target Language Proficiency Test meet the requirement that "qualified students must ... successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test?"

For your ready reference, the language of Rider 52 is attached. Thank you for your consideration in this matter.

Respectfully submitted,

A handwritten signature in black ink that reads "Harrison Keller". The signature is written in a cursive style with a large initial 'H'.

Harrison Keller, PH.D.

Attachment