

Warren Chisum
STATE REPRESENTATIVE

COMMITTEES:
Appropriations, Chair
Energy Resources



House of Representatives

Austin Office:
P.O. Box 2910
Austin, Texas 78768-2910
(512) 463-0736

District Office:
P.O. Box 2061
Pampa, Texas 79066-2061
(806) 665-3552

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AUG 15 2008

August 15, 2008

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I.D. # 45797

OPINION COMMITTEE

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin, Texas 78701

RQ-0735-GA

Dear General Abbott:

As chair of the House Committee on Appropriations, I ask for your opinion regarding the proper interpretation of the child-care facility licensing exemption provided to certain educational facilities accredited by the Texas Education Agency (TEA) under Section 42.041(b)(7), Human Resources Code. Specifically, I ask whether, given the unique legislative history surrounding Section 42.041(b)(7) and TEA's express recognition of accreditation by members of the Texas Private School Accreditation Commission (TEPSAC), an educational facility accredited by a member of TEPSAC is exempt under the provision of Section 42.041(b)(7) that provides an exemption to an educational facility accredited by TEA.

Section 42.041(a), Human Resources Code, prohibits a person from operating a child-care facility or child-placing agency without a license issued by the Department of Family and Protective Services (DFPS), subject to certain exemptions listed in Subsection (b) of that section. Section 42.041(b)(7), in particular, provides an exemption for an educational facility that is accredited by TEA and that operates primarily for educational purposes in grades kindergarten and above.¹ The exemption was originally introduced into statute when the Child Care Licensing Act took effect on January 1, 1976, and at the time the exemption applied to a facility accredited by the Central Education Agency (CEA).² CEA, which would later become TEA,³ was an agency composed of the State Board of Education (including the State Board for Vocational Education) (SBOE), the State Commissioner of Education, and the State Department of Education.⁴ Of significance is the fact that at the time the exemption passed, SBOE had statutory authority to accredit nonpublic schools. According to Chapter 299 (S.B. 115), Acts of the 51st Legislature, Regular Session, 1949, SBOE "as one part of the [CEA]," had the "specific responsibility for adopting policies, enacting regulations and establishing general rules for

¹ See Section 42.041(b)(7), Human Resources Code.

² See Section 4, Child Care Licensing Act, Chapter 708 (S.B. 965), Acts of the 64th Legislature, Regular Session, 1975.

³ See Section 80, Chapter 260 (S.B. 1), Acts of the 74th Legislature, Regular Session, 1995.

⁴ See Section 1, Article I, Chapter 299 (S.B. 115), Acts of the 51st Legislature, Regular Session, 1949.

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the 51st Legislature, Regular Session, 1949, SBOE "as one part of the [CEA]," had the "specific responsibility for adopting policies, enacting regulations and establishing general rules for carrying out the duties placed upon it or upon the [CEA] by the Legislature."⁵ In addition to this general rulemaking authority, SBOE had statutory authority to "establish regulations for the accreditation of schools."⁶ These provisions allowed the board to implement a process of accrediting both public and nonpublic schools.⁷ Consequently, when the exemption now found in Section 42.041(b)(7) was passed in 1976, a statement exempting an educational facility accredited by TEA, then CEA, from the child-care licensing requirements was a statement exempting both public and nonpublic schools from those requirements.

TEA's accreditation of both public and nonpublic schools continued until May 31, 1986, when TEA discontinued the direct accreditation of nonpublic schools.⁸ By 1989, TEA's accreditation of nonpublic schools was phased out.⁹ However, before TEA discontinued its accreditation of nonpublic schools, the agency, through SBOE, adopted 19 T.A.C. Section 97.7 to authorize the Commissioner of Education to recognize an accrediting body that accredits nonpublic schools in the state if the accrediting body's standards are comparable to the standards applicable to public schools under 19 T.A.C. Chapter 97.¹⁰ In 1987, in response to TEA's rule changes, TEPSAC was created to ensure the continued accreditation of private schools through the organization's member bodies.¹¹ In accordance with 19 T.A.C. Section 97.7, TEPSAC "established criteria, standards, and reporting and appeals procedures to accomplish an accreditation process comparable to that administered by TEA for public schools" and soon thereafter the Commissioner of Education began recognition of TEPSAC's role in accrediting nonpublic schools. TEA's recognition of this role has been consistently acknowledged in Letters

⁵ See Section 2, Article III, Chapter 299 (S.B. 115), Acts of the 51st Legislature, Regular Session, 1949.

⁶ See Section 3(5), Article III, Chapter 299 (S.B. 115), Acts of the 51st Legislature, Regular Session, 1949.

⁷ See 11 Tex. Reg. 546 (which adopted 19 T.A.C. Chapter 97). See also Letter from Thomas E. Anderson, Jr., Interim Commissioner of Education, Texas Education Agency, to Mr. George D. Solana, Director, Education Department - Texas Catholic Conference dated April 26, 1991, at 1 (copy enclosed) (explaining that the removal of general rulemaking authority by S.B. 1 in 1990 required the repeal of 19 T.A.C. Chapter 97 which previously dealt with accreditation of nonpublic schools).

⁸ *Id.*

⁹ See Letter from Ruben D. Olivarez, Executive Deputy Commissioner for Accountability, Texas Education Agency, to the Administrator Addressed, dated November 6, 1992, at 1 (copy enclosed); Letter from Mike Moses, Commissioner of Education, Texas Education Agency, to Dr. William P. Scheel, Chairman, Texas Private School Accreditation Commission, dated December 18, 1995; Letter from Felipe Alanis, Commissioner of Education, Texas Education Agency, to Marquita Moss, Chairman, Texas Private School Accreditation Commission, dated May 30, 2002; Letter from Shirley J. Neeley, Ed. D., Commissioner of Education, Texas Education Agency, to Mr. Geoffrey Butler, Chairperson, Texas Private School Accreditation Commission, dated May 14, 2004; and Letter from Robert Scott, Chief Deputy Commissioner, Texas Education Agency, to Dr. Bonnie Eder, Chairperson, Texas Private School Accreditation Commission, dated September 28, 2007.

¹⁰ See 11 Tex. Reg. 546; See also Letter from Ruben D. Olivarez, Executive Deputy Commissioner for Accountability, Texas Education Agency, to the Administrator Addressed, not dated, at 1.

¹¹ *Id.*

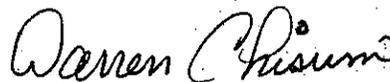
The Honorable Greg Abbott
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of Understanding regularly addressed to TEPSAC,¹² a few of which are enclosed for your convenience. The most recent of these Letters of Understanding was dated September 28, 2007,¹³ and its content further details the unique relationship TEA and TEPSAC share. For example, the most recent letter references:

1. the transferability of student credits earned in nonpublic to public schools under 19 T.A.C. Section 74.26(a)(2);
2. the recognition of teacher service credit earned in nonpublic schools under 19 T.A.C. Section 153.1021(h)(8);
3. TEA's acknowledgment of all accredited nonpublic elementary and secondary schools in the Texas School Directory;
4. a website link maintained on TEA's website to TEPSAC's directory; and
5. the practice of agency liaisons attending biannual TEPSAC meetings to "review the nonpublic school accreditation process and criteria to ensure the ongoing integrity and quality [of TEPSAC's] process."¹⁴

Given the unique legislative history with respect to Section 42.041(b)(7) and TEA's ongoing recognition of TEPSAC's role in accrediting nonpublic schools, I ask for your opinion regarding the proper interpretation of that section as it relates to exempting nonpublic schools. Is an education facility accredited by a member of TEPSAC exempt under the provision of Section 42.041(b)(7) that provides an exemption to an education facility accredited by TEA?

Sincerely,



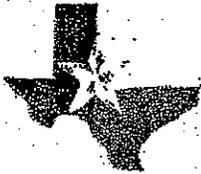
Warren Chisum, State Representative
Chair, House Appropriations Committee

Enclosures (7)

¹² See Letter from Mike Moses, Commissioner of Education, Texas Education Agency, to Dr. William P. Scheel, Chairman, Texas Private School Accreditation Commission, dated December 18, 1995; Letter from Felipe Alanis, Commissioner of Education, Texas Education Agency, to Marquita Moss, Chairman, Texas Private School Accreditation Commission, dated May 30, 2002; Letter from Shirley J. Neeley, Ed. D., Commissioner of Education, Texas Education Agency, to Mr. Geoffrey Butler, Chairperson, Texas Private School Accreditation Commission, dated May 14, 2004; and Letter from Robert Scott, Chief Deputy Commissioner, Texas Education Agency, to Dr. Bonnie Eder, Chairperson, Texas Private School Accreditation Commission, dated September 28, 2007.

¹³ Letter from Robert Scott, Chief Deputy Commissioner, Texas Education Agency, to Dr. Bonnie Eder, Chairperson, Texas Private School Accreditation Commission, dated September 28, 2007.

¹⁴ *Id.*



TEXAS EDUCATION AGENCY

1701 North Congress Ave. • Austin, Texas 78701 • TEL: 512/463-9731 • FAX: 512/463-9732 • <http://www.tea.state.tx.us>

September 28, 2007

Dr. Bonnie Eder, Chairperson
Texas Private School Accreditation Commission
Box 12073
Longview, Texas 75607

Dear Dr. Eder:

This letter of understanding is written to verify the continuing recognition of the Texas Private School Accreditation Commission (TEPSAC) and its affiliated associations for the purpose of determining the accreditation of nonpublic schools.

Since 1986 the Texas Education Agency (Agency), through the Commissioner of Education, has recognized the accreditation responsibilities of TEPSAC and its affiliated associations. Subsequent to the establishment of TEPSAC, direct accreditation of nonpublic schools by the Agency was phased out and was discontinued after 1988.

The following activities related to the accreditation of nonpublic schools will continue:

- transferability of student credits earned in accredited nonpublic schools to Texas public schools as permitted by Texas Administrative Code, Title 19, Part II, Chapter 74.28 (a) (2)
- recognition of teacher service in accredited nonpublic schools for salary increment purposes in Texas public schools, as authorized in the Texas Administrative Code, Title 19, Part II, Chapter 153.1021(h)(8)
- acknowledgment of all accredited elementary and secondary nonpublic schools in the Texas School Directory
- the Texas Education Agency website will link to the TEPSAC directory

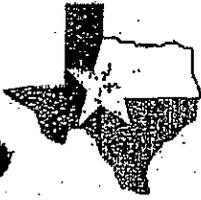
Agency liaisons attend biannual TEPSAC meetings to review the nonpublic school accreditation process and criteria to ensure the ongoing integrity and quality of the process. If further information or assistance is needed, please contact Judith De La Garza, Deputy Associate Commissioner for Governance and Charter Schools, at (512) 463-8998.

Thank you for all that you do for education. I look forward to working with you.

Sincerely,

Robert Scott

Robert Scott
Chief Deputy Commissioner



TEXAS EDUCATION AGENCY

1701 North Congress Ave. * Austin, Texas 78701-1494 * 512/463-9734 * FAX: 512/463-9838 * <http://www.tea.state.tx.us>

Shirley J. Neeley, Ed.D.
Commissioner

May 14, 2004

Mr. Geoffrey Butler, Chairperson
Texas Private School Accreditation Commission
Box 12073
Longview, Texas 75607

Dear Mr. Butler:

This letter of understanding is written to verify the continuing recognition of the Texas Private School Accreditation Commission (TEPSAC) and its affiliated associations for the purpose of determining the accreditation of nonpublic schools.

Since 1988 the Texas Education Agency (Agency), through the Commissioner of Education, has recognized the accreditation responsibilities of TEPSAC and its affiliated associations. Subsequent to the establishment of TEPSAC, direct accreditation of nonpublic schools by the Agency was phased out and was discontinued after 1989.

The following activities related to the accreditation of nonpublic schools will continue:

- transferability of student credits earned in accredited nonpublic schools to Texas public schools
- recognition of teacher service in accredited nonpublic schools for salary increment purposes in Texas public schools, as authorized in the Texas Administrative Code, Title 19, Part II, Chapter 153.1021(h)(8)
- acknowledgment of all accredited elementary and secondary nonpublic schools in the Texas School Directory.

Agency liaisons attend biannual TEPSAC meetings to review the nonpublic school accreditation process and criteria to ensure the ongoing integrity and quality of the process. If further information or assistance is needed, please contact Dr. Karen Case, Deputy Associate Commissioner for Interventions and Special Investigations, at (512) 463-8998.

Thank you for all that you do for education. I look forward to working with you.

Sincerely,

Shirley J. Neeley, Ed.D.
Commissioner of Education

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"



TEXAS EDUCATION AGENCY

1701 North Congress Ave. * Austin, Texas 78701-1494 * 512/463-9734 * FAX: 512/463-9838 * <http://www.tea.state.tx.us>

Felipe T. Alanis
Commissioner of Education

May 30, 2002

Marquita Moss, Chairman
Texas Private School Accreditation Commission
10810 Dreamland
San Antonio, Texas 78230-4204

Dear Mrs. Moss:

Thank you for your kind letter of congratulations on my appointment as Commissioner of Education. I am honored to have been selected and recognize and respect the tremendous opportunity that Governor Perry has entrusted to me. Your pledge of support is very important to me as we work to provide all children of Texas a quality education.

This letter of understanding is written to verify the continuing recognition of the Texas Private School Accreditation Commission (TEPSAC) and its affiliated associations for the purpose of determining the accreditation of nonpublic schools.

Since 1986 the Texas Education Agency, through the Commissioner of Education, has recognized the accreditation responsibilities of TEPSAC and its affiliated associations. Subsequent to the establishment of TEPSAC, direct accreditation of nonpublic schools by the agency was phased out and was discontinued after 1989.

The following activities related to the accreditation of nonpublic schools will continue:

- transferability of student credits earned in accredited nonpublic schools to Texas public schools;
- recognition of teacher service in accredited nonpublic schools for salary increment purposes in Texas public schools, as authorized in the Texas Administrative Code, Title 19, Part II, Chapter 153.1021(h)(8); and
- the listing of all accredited elementary and secondary nonpublic schools in the Texas School Directory.

Agency liaisons attend biannual TEPSAC meetings to review the nonpublic school accreditation process and criteria to ensure the ongoing integrity and quality of the process. If further information or assistance is necessary, please contact Dr. Ron McMichael, Deputy Commissioner, Finance and Accountability, at (512) 463-9451.

Thank you for all that you do for education, and I look forward to working with you.

Sincerely,

Felipe Alanis
Commissioner of Education

Fulfilling the Promise for All Texas Children



TEXAS
EDUCATION
AGENCY

1701 NORTH CONGRESS AVENUE • AUSTIN, TEXAS 78701-1494 • (512) 463-9773

December 18, 1995

Dr. William P. Scheel, Chairman
Texas Private School Accreditation Commission
10610 Dreamland Drive
San Antonio, Texas 78230

Dear Dr. Scheel:

This letter of understanding is written to verify the continuing recognition of the Texas Private School Accreditation Commission (TEPSAC) and its affiliated associations for the purpose of determining the accreditation of non-public schools.

Since 1988, the Texas Education Agency, through the Commissioner of Education, has recognized the accreditation responsibilities of TEPSAC and its affiliated associations. Subsequent to the establishment of TEPSAC, direct accreditation of non-public schools by the Agency was phased out and was discontinued after 1989.

The following activities related to the accreditation of non-public schools will continue:

- transference of student credits earned in accredited non-public schools to Texas public schools
- the listing of all accredited non-public schools in the Texas School Directory
- TEPSAC meetings held biannually with agency liaisons to review the non-public school accreditation process and criteria to ensure the ongoing integrity and quality of the process.

State Board of Education rule-making authority regarding credit for teaching experience was repealed in Senate Bill 1, 74th Texas Legislature, 1995. I am enclosing a letter from the Agency's Chief Counsel explaining the circumstances surrounding that repeal.

If further information or assistance is necessary, please contact Dr. Ruben Olivarez, Associate Commissioner for Accountability and School Accreditation, at (512)463-8998.

Sincerely yours,

Mike Moses
Commissioner of Education

mv
Enclosure

cc: Ruben Olivarez



Texas Education Agency

1271

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

INFORMATION
ONLY

November 6, 1992

TO THE ADMINISTRATOR ADDRESSED:

Subject: Non-Public School Accreditation and Acceptance of Student Credits and Teacher Experience from Accredited Non-Public Schools

The Texas Education Agency (TEA) has received a number of calls concerning policies governing the acceptance of student credits and teacher experience earned in non-public schools. This communication is to further clarify earlier correspondence from this office.

In January 1986 the State Board of Education (SBOE) revised the rule for accrediting non-public schools (19 TAC §97.6). The commissioner of education was authorized to recognize private accrediting associations with standards comparable to 19 TAC, Chapter 97. In response to the revision of this rule, Texas non-public school leaders organized the Texas Private School Accreditation Commission (TEPSAC). In 1987, TEPSAC established criteria, standards, and reporting and appeals procedures to accomplish an accreditation process comparable to that administered by TEA for public schools. The commissioner of education has recognized TEPSAC and all its affiliated associations for the purpose of accreditation of non-public schools. Subsequent to the establishment of TEPSAC, direct accreditation of non-public schools by TEA was phased-out and discontinued after 1989.

It is important to understand that student credits earned in non-public schools accredited by a recognized association shall be transferable to Texas public schools and teacher service in these accredited non-public schools shall be creditable in Texas public schools for salary increment purposes (19 TAC 97.6).

TO THE ADMINISTRATOR ADDRESSED
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The Texas School Directory includes a listing of all currently accredited non-public schools as well as a list of all recognized private accrediting organizations. Information about these schools and procedures for becoming an accredited non-public school can be obtained from:

Texas Private School Accreditation Commission (TEPSAC)
P. O. Box 140493
Austin, Texas 78714-0493
(512) 832-9666
(Open Monday, Wednesday and Friday, 3:00 to 5:00 p.m.)

If further information is needed, please contact Dr. Robert Alexius in the Office of Accountability at (512) 463-9627.

Sincerely,



Rubén D. Olivárez
Executive Deputy Commissioner
for Accountability



Texas Education Agency

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

April 26, 1991

Mr. George D. Solana, Director
Education Department
Texas Catholic Conference
3001 South Congress Avenue
Austin, Texas 78704

Re: Commissioner's Recognition of Nonpublic School
Accrediting Agencies

Dear Mr. Solana:

This letter is in response to your letter raising concerns regarding the repeal of 19 TAC Chapter 97.

As you are aware, the provisions of S.B. 1 which passed the Texas Legislature in June, 1990 mandated that the State Board of Education conduct a Sunset review of all of its rules. Simultaneously, S.B. 1 removed the State Board of Education's general rulemaking authority. Since the State Board of Education was not granted specific authority to promulgate rules governing nonpublic schools, the provisions of State law mandated the repeal of 19 TAC Chapter 97 in its entirety. There was simply no board discretion to do otherwise.

However, a review of other statutory provisions specifically regarding curriculum, credit for teacher service and the like convinces me that the Commissioner of Education is authorized to recognize nonpublic schools in this State as being accredited. Since the Texas Education Agency has neither the staff nor the statutory authority to accredit schools, the Agency's only option is to recognize private accrediting entities. Accordingly, the Commissioner of Education will continue to recognize accrediting agencies.

Since this office has previously recognized the Texas Private School Accreditation Commission (TEPSACO), I will continue to recognize that entity for the same purposes as in the past. In sum, although the elimination of Chapter 97 may have been a cause of some concern, it will not occasion a significant change in the relation between TEPSAC and my office.

Mr. George D. Solana
April 26, 1991
Page 2

I hope this letter answers the concerns raised in your letter. If you have further concerns, please contact either your liaison or me.

Sincerely,

Thomas E. Anderson, Jr.
Thomas E. Anderson, Jr.
Interim Commissioner of Education



Texas Education Agency

1701 NORTH CONGRESS AVENUE

AUSTIN, TEXAS 78701-1494

(512) 463-9734

INFORMATION
ONLY

TO THE ADMINISTRATOR ADDRESSED:

Subject: Non-Public School Accreditation

In January 1986 the State Board of Education (SBOE) revised the rule for accrediting non-public schools. Title 19, Texas Administrative Code (TAC), Chapter 97, Section 97.7, Non-public Schools, (now 97.6) was amended to authorize the commissioner of education to recognize accrediting associations with standards comparable to 19 TAC, Chapter 97. All Texas Education Agency (TEA) accreditation of non-public schools was discontinued, effective May 31, 1986.

In response to the revision of this rule, Texas non-public school leaders organized the Texas Private School Accreditation Commission (TEPSAC). In 1987, TEPSAC established criteria, standards, and reporting and appeals procedures to accomplish an accreditation process comparable to that administered by the TEA for public schools. The commissioner of education has recognized TEPSAC and all its affiliated associations for the purpose of accreditation of non-public schools. Member associations of TEPSAC serve in an advisory capacity to the commissioner of education concerning the accreditation of non-public schools and recommending accrediting associations in Texas.

To obtain recognition by the commissioner and TEPSAC, the operations, curriculum, staffing, instruction, and student performance of a non-public school must be comparable to those of the public schools. Administrative procedures, fiscal policies, and time requirements are determined by the unique situations of each non-public school system and may vary from public school requirements. Student credits earned in non-public schools accredited by a recognized association shall be transferable to Texas public schools, in accordance with the receiving district's transfer policies. Teacher service in these accredited non-public schools shall be creditable in Texas public schools for salary increment purposes.

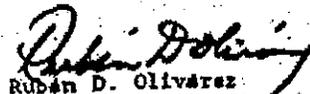
TO THE ADMINISTRATOR ADDRESSED
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Texas Private School Accreditation Commission (TEPSAC)
P. O. Box 140493
Austin, Texas 78714
(512) 832-9666

If further information is needed, please contact Dr. Robert Alexis in the Office of Accountability at (512) 463-9620.

Sincerely,


Rubén D. Olivarez
Executive Deputy Commissioner
for Accountability