



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 14, 2020

Harrison Keller, Ph.D.
Commissioner of Higher Education
Texas Higher Education Coordinating Board
Post Office Box 12788
Austin, Texas 78711

Opinion No. KP-0320

Re: Whether Rider 52 to the Higher Education Coordinating Board's appropriation in the General Appropriations Act allows students to qualify for financial assistance through the Program to Encourage Certification to Teach Bilingual Education, English as a Second Language, or Spanish by taking an exam comparable to the State Board for Educator Certification Bilingual Target Language Proficiency Test or by passing a practice exam (RQ-0329-KP)

Dear Commissioner Keller:

During the Eighty-Sixth Legislative Session, the Legislature's General Appropriations Act included funding for a program to encourage certification to teach bilingual education, English as a second language, or Spanish.¹ The Act appropriated funds to the Higher Education Coordinating Board ("the Board") to allocate to certain institutions of higher education funds "to be used for grants to provide financial incentives in the form of tuition assistance, to encourage students who enroll in an educator preparation program at the university to become certified to teach bilingual education, English as a Second Language, or Spanish in school districts with high critical needs." GAA, at III-62.

While this program has existed in some form since 2003, you explain that during the past legislative session, the Legislature revised the qualifications necessary to receive the grants.² Rider 52 to the Board's appropriation explains the program and the specific qualifications required:

¹General Appropriations Act, 86th Leg., R.S., H.B. 1, art. III, § 1, at III-62-3 (2020), *available at* http://www.lbb.state.tx.us/Documents/GAA/General_Appropriations_Act_2020_2021.pdf (to be codified at chapter 1353, Texas General Laws, 86th Legislature) (the "GAA").

²*See* Letter from Harrison Keller, Ph.D., Comm'r of Higher Educ., Tex. Higher Educ. Coordinating Bd., to Honorable Ken Paxton, Tex. Att'y Gen. at 1-2 (Jan. 17, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0329KP.pdf> ("Request Letter").

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.

Id. at III-62–3.

You explain that the specific test listed in the second prong of the eligibility requirements has raised questions from institutions of higher education receiving the funding. Request Letter at 1. You note that “students pursuing English as a Second Language or Spanish teaching certifications do not necessarily sit for that exam at all,” but instead take different certification exams for their specific subject areas. *Id.*³ Thus, you state 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.” *Id.* at 2. You also note that “students typically do not sit for the Bilingual Target Language Proficiency Test until the last semester of their program.” *Id.* at 1. Thus, under a plain reading of Rider 52, “students pursuing bilingual education certification could not receive funding through the program until after their final tuition bill is due.” *Id.* at 2. Based on these concerns you ask whether institutions of higher education may “use passage of comparable exams” for different programs to meet the requirement that qualified students pass the State Board for Educator Certification Bilingual Target Language Proficiency Test, and whether “passage of a practice exam for the Bilingual Target Language Proficiency Test” meets the requirement to pass that test. *Id.*

Our primary objective in construing a statute is to give effect to the Legislature's intent. *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d 53, 59 (Tex. 2019). Rules applicable to the construction of statutes also apply to the construction of items of appropriation and riders. *Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593, 599-600 (Tex. 1975). We construe a statute's words according to their plain and common meaning unless they are statutorily defined otherwise, a different meaning is apparent from the context, or unless such a construction leads to absurd results. *See Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). “We take statutes as we find them, presuming the Legislature included words that it intended to include and omitted words it intended to omit.” *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 52 (Tex. 2014). “We do not read words into a statute to make it what we consider to be more reasonable, rather we may do so only to prevent an absurd result.” *Id.*

“In addition to appropriating money and stipulating the amount, manner, and purpose of the various items of expenditure, a general appropriation bill may contain any provisions or riders which detail, limit, or restrict the use of the funds” Tex. Att'y Gen. Op. No. GA-0378 (2005) at 3. The language of Rider 52 allows specified institutions of higher education to “make awards to *qualified students* admitted to the Teacher Education Program in Bilingual Education or other

³See https://tea.texas.gov/sites/default/files/Required%20and%20Replacement%20Test%20Chart%202019-20_0.pdf (2019-2020 Required Test Chart for Teacher Certification).

comparable programs for teacher education in English as a second language or Spanish.” GAA, at III-62 (emphasis added). It then defines “qualified students” as those who “[s]uccessfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test,” among other requirements. *Id.* at III-62–3. Thus, under the plain meaning of Rider 52, to receive funds under this program, students must pass the specific test listed. No language in Rider 52 suggests that passing a practice test satisfies the qualification requirement, and no court should read words into a statute to make it what the court considers to be more reasonable. *Union Carbide Corp.*, 438 S.W.3d at 52. However, if an as-written statute leads to patently nonsensical results, the “absurdity doctrine” allows a court to consider alternatives to a statute’s plain meaning. *Combs v. Health Care Servs. Corp.*, 401 S.W.3d 623, 630 (Tex. 2013). But as the Texas Supreme Court explained, “the bar for reworking the words our Legislature passed into law is high, and should be. The absurdity safety valve is reserved for truly exceptional cases, and mere oddity does not equal absurdity.” *Id.*

Here, the Legislature’s stated purpose of the underlying program is “to encourage students who enroll in an educator preparation program at the university *to become certified* to teach bilingual education, English as a Second Language, or Spanish in school districts with high critical needs.” GAA, at III-62 (emphasis added). And yet, to qualify for the grants, the Legislature requires that the students pass the certification exam. *Id.* at III-62–3. Thus, at most the grant will be available to students who pass the exam. While this may limit the number of students eligible to receive the grants, “[e]nforcing the law as written is a court’s safest refuge in matters of statutory construction,” and a court would likely do so in construing Rider 52. *Entergy Gulf States, Inc., v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009). Utilizing this principle of statutory construction, a court is unlikely to conclude that institutions of higher education may use passage of other exams for comparable programs to meet the grant award requirement in Rider 52 that qualified students pass the State Board for Educator Certification Bilingual Target Language Proficiency Test. A court is also unlikely to conclude that passage of a practice exam for the Bilingual Target Language Proficiency Test meets the requirement in Rider 52 to pass that test.

S U M M A R Y

The Eighty-Sixth Legislature appropriated funds to the Higher Education Coordinating Board for grants to encourage students to become certified to teach bilingual education, English as a Second Language, or Spanish in school districts with high critical needs. Pursuant to Rider 52 of the Board's appropriation, in order to qualify for the grants, students must "successfully pass the State Board for Educator Certification Bilingual Target Language Proficiency Test," among other requirements. Given the plain language of the General Appropriations Act, a court is unlikely to conclude that institutions of higher education may use passage of other exams for comparable programs to meet this qualification requirement or that passage of a practice exam satisfies the testing requirement.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive style with a large, prominent "K" and "P".

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