



State Board for Educator Certification

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OPINION COMMITTEE
January 27, 2000

Office of the Attorney General
Executive Administration (001)
P.O. Box 12548
Austin, TX 78711

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Hon. John Cornyn, Texas Attorney General
Office of the Attorney General
Price Daniel, Jr., State Office Bldg.
209 West 14th St.
Austin, Texas 78701

Re: State Board for Educator Certification: *Request for Attorney General Opinion*

Dear General Cornyn:

As the executive director for the State Board for Educator Certification (SBEC or Board), I am requesting your legal advice in the form of an Attorney General Opinion on the following issues:

1. *Through the agency's Internet website, may SBEC serve as a portal for distance-learning courses developed and offered by other entities as an alternative to site-based programs for certification candidates satisfying educator preparation requirements; renewable certificate holders needing continuing education credit; and school personnel seeking professional or career development training?*
2. *If the answer to Question No. 1 is "Yes," may a third-party, information technology (IT) vendor contract with SBEC to facilitate the delivery of distance-learning courses through SBEC's website? If so, would the services of such a third-party vendor need to be procured through the competitive bidding process, even if one of the potential contractors was willing not to charge SBEC?*

3. *If the answers to Questions No. 1 and 2 are "Yes," may a Board member of SBEC lawfully serve as such and also be employed by a third-party IT vendor that contracts with SBEC to facilitate the delivery of other entities' distance-learning courses through SBEC's website?*

Background of Board's Powers and Duties

The Texas Legislature established the State Board for Educator Certification (SBEC) in 1995 to, among other things, regulate and oversee all aspects of the certification of public school educators. TEX. EDUC. CODE ANN. § 21.031(a). (Vernon 1996). The Legislature further provided that, in proposing rules, the Board must ensure that all candidates for certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of Texas. TEX. EDUC. CODE ANN. § 21.031(b). (Vernon 1996). Additionally, the Board must establish the training requirements and minimum academic qualifications required for an educator's certificate. TEX. EDUC. CODE ANN. § 21.044. (Vernon 1996).

SBEC accredits public and private programs to deliver educator preparation. TEX. EDUC. CODE ANN. § 21.045. (Vernon 1996). If accredited, traditional university-based programs as well as alternative certification programs may prepare candidates for certification. TEX. EDUC. CODE ANN. § 21.049. (Vernon 1996). SBEC may withdraw a program's accreditation if it fails to meet certain performance standards, including acceptable pass-rates of students on certification examinations. TEX. EDUC. CODE ANN. § 21.045. (Vernon 1996). The Board's rules governing accreditation are found in Title 19 of the Texas Administrative Code at Chapters 227, 228, and 230 (Subchapter G, §§ 230.191, *et seq.*).

SBEC does not establish specific criteria for admission to an educator preparation program. Rather, the Board's rules generally direct programs to develop basic admission criteria and to consistently apply them. 19 TEX. ADMIN. CODE § 227.10.

In addition to regulating the preparation of candidates for initial certification, SBEC establishes and enforces standards for the continuing education of certificate holders. TEX. EDUC. CODE ANN. §§ 21.031(a) and (b); 21.041(b)(9); and 21.054. (Vernon 1996). The Board's rules governing continuing education for certificate holders are found in Title 19 of the Texas Administrative Code at Chapter 232, Subchapter R, §§ 232.850 *et seq.* Under these rules, SBEC may both regulate and provide continuing education programs. 19 TEX. ADMIN. CODE § 232.870.

Summary of the Proposed Web-based Distance-Learning System

SBEC has been asked to serve as a portal for distance-learning courses offered by educator preparation programs and continuing professional education providers. Related to educator certification, these courses would be delivered over the Internet. The persons taking the courses would be educator preparation students seeking certification and certificate holders satisfying certification renewal requirements. Entities delivering the courses would include the following:

- SBEC-accredited educator preparation programs;
- SBEC-approved providers offering continuing education courses to holders of renewable certificates; and
- providers of professional development training, such as school districts that require their staff to participate in professional development programs.

The educator preparation courses would meet Board standards, but SBEC would not participate in developing the courses. The prospective educators would apply for admission to an educator preparation program and register for courses by accessing SBEC's website, but staff at the preparation program would process the admission application and course registration materials. The preparation program would administer the coursework. The student would enter the virtual classroom at SBEC's website and travel down a cybernated corridor to a server operated by the preparation program or by a third-party contractor on behalf of the program and SBEC.

The continuing education courses might be developed by SBEC in collaboration with other approved entities, but they could also be offered independently of SBEC as a provider. Educators wanting to obtain continuing education credits would register for courses through SBEC's website, but the registration would be processed and the course delivered by the provider. The same would be true for career development courses not taken for credit.

All course providers would process any fees charged for the offerings.

The Internet is proposed as the delivery system because it would allow approved entities to collaborate in developing and offering the courses. A single website for such collaborative programs would facilitate effective communication of the course offerings and simplify access for the enrollees. SBEC's website is proposed as a portal for entering the system because of the agency's name identification and affiliation with educator preparation and continuing professional education.

By way of example, four Texas universities with approved educator preparation programs could jointly develop a curriculum for the alternative certification of persons who already hold a baccalaureate degree and want to become teachers. Candidates for such alternative certification would go to SBEC's website, where they could then apply and register for the appropriate courses. Then, from anywhere in the world with Internet access, the enrolled candidates would take the courses through SBEC's website. Satisfactory completion of the coursework would qualify the candidates to take the examinations required for certification.

I am asking for your legal opinion on the propriety of this proposal because users--the persons taking the courses--might believe SBEC was endorsing a certain course by providing access to it. In short, I need to know whether SBEC's allowing access to distance-learning providers through the agency's website and possible putative endorsement of programs the agency regulates conflicts or is incompatible with the agency's statutory powers and duties.

I would also ask you to consider any liability issues related to SBEC's hosting of distance-learning opportunities for educators. Such issues may include the agency's responsibility for responding to requests for accommodations under the Americans with Disabilities Act (ADA) and the Texas Commission on Human Rights Act. Another issue would be SBEC's obligations to protect the privacy of distance-learning students under the Family Educational Rights and Privacy Act (FERPA).

On the other hand, I believe the proposal offers an innovative approach to educator preparation and continuing professional education, one that will help the state address its critical teacher shortage. In addition, such a system would provide greater access to higher education in Texas, an initiative Lt. Governor Rick Perry is promoting.

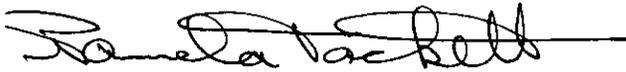
Summary of Third-party Vendor Issues

I have also asked you related questions concerning the role of a third-party IT vendor in the proposal. The vendor would provide the technological means for interactively connecting distance-learning providers and users through SBEC's website. A prospective vendor, which is a non-profit corporation, has offered its services to SBEC for free. The vendor is not regulated by SBEC, and the agency's Executive Director is empowered to select vendors in accordance with state law and the rules of the General Services Commission. This vendor also employs one of SBEC's voting members.

I ask you to determine whether SBEC may agree with the vendor to provide such services without charge to SBEC and without notice or opportunity to other potential vendors, i.e., without going through the competitive bidding process. I also ask you to determine whether there are any ethical barriers to entering into an agreement with the vendor because the organization employs a voting Board member.

Thank you for timely considering this important matter. If you need to clarify this request or require further information, please contact SBEC's general counsel, Dan Junell, at 469-3014.

Sincerely,

A handwritten signature in black ink, appearing to read "Pamela B. Tackett", followed by a horizontal line extending to the right.

Pamela B. Tackett
Executive Director

cc: Mr. James Harris, SBEC
Mr. Art Lacy, SBEC