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OPINION COMMITTEE



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February 16, 2010

The Honorable Greg Abbott
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RQ-0866-GA

Request for Opinion Re: Meaning of Section 42.159, Education Code, as added by HB 3646,
81st Legislature, Regular Session

Dear General Abbott:

Issue

Section 42.159, Education Code, as added by HB 3646, 81st Legislature, Regular Session, provides for two different funding methods for school districts that provide or offer certain electronic courses through the State Virtual School Network established under Section 30A, Education Code.

Which method is used depends on whether or not a course is "part of a normal course load" (Section 42.159(b)) or "exceeds a normal course load" (Section 42.159(d)).

For courses that are "part of a normal course load", the district or charter school that provides the course is entitled, under Section 42.159(b), to an allotment of \$400, and the district or school in which the student is enrolled is entitled to an allotment of \$80.

For a course that "exceeds a normal course load", the district that provides the course "may be entitled to an allotment in an amount determined by the commissioner based on the amount of funds appropriated for purposes of [Section 42.159(d)]."

At issue is the meaning of "normal course load" for the purposes of determining whether a course falls under the funding method of 42.159(b) or 42.159(d).

Members

Alma Allen · Jimmie Don Aycock · Harold Dutton, Jr. · Joe Farias · Jim Jackson · Dora Olivo · Diane Patrick · Mark Shelton · Randy Weber

Discussion

Section 42.159(a) provides a definition of "normal course load" for the purposes of Section 42.159. The term is defined as "the number of classes or credit hours generally required to be taken by a student to generate the full amount of funding provided under this chapter for a student in average daily attendance, as determined by the commissioner [of education]".

The Education Code does not contain a definition of the number or classes or credit hours generally required by a student to generate the full amount of funding. However, the number of hours a student must attend class during a school day to generate the full amount of funding is clearly defined in rules adopted by the Commissioner of Education, at 129.21(h), Part 2, Title 19, TAC.

That rule reads: "A student must be enrolled for at least two hours to be considered in membership for one half day, and for at least four hours to be considered in membership for one full day". There are various exceptions and alternative methods of accounting for flexible programs, etc., but the general requirement is as stated.

So, according to Commissioner's rule, a student generally must be enrolled in a program of at least four hours per day to "generate the full amount of funding provided for under [Chapter 42, Education Code] for a student in average daily attendance".

Using this rule as the basis for definition of "normal course load", it would appear that the funding amount and source described in Section 42.159(d) would apply to students who are taking more than a four-hour per day course load, which would be nearly all of the students enrolled in public schools who are taking virtual courses.

Students who may enroll in public schools with less than a four-hour per day course load who may take virtual courses under Section 30A include military dependents who have moved outside of Texas due to military deployment or transfer (Section 30A.002(c), Education Code, as amended by HB 3646.) For such students, 42.159(b) would appear to provide funding through a fixed allotment from the Foundation School Program.

This means that almost all funding under 42.159 would flow through the specific appropriation mentioned in 42.159(d), with only a small amount coming from the Foundation School Program as prescribed in 42.159(b).

(Funding is also subject to other requirements and limitations. For example, subsections 42.159(b) and (d) both limit the funding only to a "course that satisfies a curriculum requirement for graduation adopted under Section 28.025".)

Consistency with HB 3646 fiscal note and SB 1 rider:

The interpretation above is consistent with the fiscal note for HB 3646, and with the appropriation rider provided in SB 1.

Rider 80, SB 1, 81st Legislature, Regular Session, provides a specific appropriation, as follows:

"80. Virtual School Networks. From funds appropriated above in Strategy B.2.1, Technology and Instructional Materials, \$10,150,000 in General Revenue in each year of the 2010-11 biennium shall be used for the operation of a state virtual school network in accordance with Texas Education Code, Chapter 30A."

In the fiscal note for HB 3646 as enrolled, the Legislative Budget Board wrote that "For the purposes of this fiscal note, it is assumed that costs associated with TxVSN would be covered by appropriations already approved *for this purpose* by the conference committee in the General Appropriations bill" [emphasis added]. The LBB's reliance on the specific appropriation, rather than attributing any additional cost to the Foundation School Program, is consistent with an interpretation that flows most of the funding in 42.159 through subsection (d) rather than subsection (b), leaving any impact on the Foundation School Program to be minimal.

That interpretation is further supported by comparing the amount provided in the rider with TEA's exceptional item request. The LBB base bill contained rider 84, providing \$1,150,000 in each year for operation of the virtual school network. The agency requested an additional \$9,000,000 in each year as an exceptional item "to provide online courses for schools unable to offer classes due to teacher shortages or scheduling conflicts due to 4x4 graduation requirements." Commissioner Robert Scott testified that these funds were intended to "subsidize the cost of online courses". (House Committee on Appropriations, Subcommittee on Education, February 23, 2009).

Rider 80 in SB 1, as enrolled, provides all of the funds in the base bill plus the entire amount of the exceptional item request, indicating that all of the funding sought was provided via the rider, with no reference to any use of Foundation School Program funds. That is consistent with an interpretation flowing most funding under Section 42.159 through subsection (d) with only a minimal amount through subsection (b).

I appreciate your assistance in confirming this interpretation and will provide any additional information you might request.

Sincerely,



Rob Eissler, Chair
House Committee on Public Education