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July 23, 2013 **OPINION COMMITTEE**

FILE # ML-47331-13  
ID. # 47331

**RQ-1140-CA**

The Honorable Greg Abbott  
ATTN: Opinion Committee  
Attorney General of Texas  
P.O. Box 12548  
Austin, TX 78711

RE: Whether the Records Retention Requirements of the Local Government Records Act and/or Chapter 441 of the Texas Government Code and Associated Regulations Apply to Model Lesson Plans Developed by the Texas Education Service Center Curriculum Collaborative (TESCCC) and Maintained by TESCCC or Regional Education Service Centers

Dear General Abbott:

The purpose of this letter is to seek your opinion regarding whether model lesson plans developed by the Texas Education Service Center Curriculum Collaborative ("TESCCC" or "the collaborative") are subject to the records retention requirements applicable to local governments and/or those applicable to state agencies. In order to put this question into context, I would first like to provide some background information regarding TESCCC and the Regional Education Service Centers (ESCs) that are members of the collaborative.

The State's twenty ESCs are created by Chapter 8 of the Texas Education Code with the designated purposes of assisting school districts in improving student performance, enabling school districts to operate more efficiently and economically, and implementing other initiatives as assigned by the legislature or the commissioner. TEX. EDUC. CODE § 8.003. In order to fulfill these purposes, ESCs are required to maintain core services for purchase by school districts, including training and assistance in: teaching the subjects tested by the State testing program; providing special education, compensatory education, bilingual, and gifted and talented programs; and complying with state laws and rules. TEX. EDUC. CODE § 8.051. ESCs also are authorized to offer any service requested and purchased by any school district or campus in the state. TEX. EDUC. CODE § 8.053. ESCs may contract with public and private entities to help them provide needed services to Texas school districts and educators. TEX. EDUC. CODE § 8.053. ESCs are prohibited from exercising any regulatory authority over public school districts or charter schools. TEX. EDUC. CODE § 8.054.



During the 2005-06 school year, in response to widespread requests from school districts for assistance in implementing the state's curriculum requirements (known as the Texas Essential Knowledge and Skills or "TEKS"), four of the regional ESCs began to work together to create a curriculum management system. While the state's larger districts typically have their own curriculum departments to develop scope and sequencing documents and the instructional materials, resources and professional development needed to properly implement the TEKS, it often is cost prohibitive for smaller districts to develop these resources by themselves. By working together, the member ESCs were able to pool their resources—both financial and intellectual—to provide an efficient, cost-effective, and high quality curriculum management program (now known as "CSCOPE") to assist these districts in implementing the TEKS and in meeting the State's rigorous academic achievement standards. In June 2007, the four original ESCs joined with six others to enter an interlocal agreement formally creating the TESCCC.<sup>1</sup> In 2009, the TESCCC filed the necessary paperwork to incorporate as a nonprofit corporation under the Texas Nonprofit Corporation Act and Section 501(c)(3) of the federal Internal Revenue Code. The board of directors of the nonprofit was composed of the executive directors of the member ESCs. Under the terms of the nonprofit's bylaws and the interlocal agreement, the ESCs that were members of TESCCC maintained joint ownership of CSCOPE, including all the associated ancillary materials. Over the years, TESCCC expanded available CSCOPE materials in response to the expressed needs and wishes of the school districts and charter schools served by the ESCs. One of the resources provided by CSCOPE is exemplar lesson plans, which are regularly updated by TESCCC. These lesson plans are maintained on a website available to the member school districts, as well as to the public.

On May 24, 2013, the board of directors of TESCCC voted to discontinue providing lesson plans as part of CSCOPE. At the same meeting, the board voted to dissolve the nonprofit and wind up its affairs, including transferring the ownership and management of CSCOPE to the members of a new cooperative formed by the regional ESCs through a shared service arrangement (the "SSA") under the authority of Chapter 791 of the Texas Government Code. Under the terms of the new SSA, the future development of CSCOPE will be managed by a committee composed of ESC representatives and school district superintendents.

In order to comply with TESCCC's contractual obligations to the school districts and charter schools served by CSCOPE, the lessons will remain online and available through August 31, 2013, the term of the current contracts. As the management of CSCOPE is transferred to the new SSA, questions have arisen regarding how to handle the discontinued lessons after August 31, 2013, and what provisions govern their retention and/or destruction. Specifically, I am asking:

- Are the lesson plans maintained by TESCCC and/or the member ESCs considered to be local government records that are subject to Subtitle C, Title 6 of the Local Government Code (the "Local Government Records Act")?
- Are the lesson plans maintained by TESCCC and/or the member ESCs considered to be state government records that are subject to Subchapter L, Chapter 441 of the Government Code regarding preservation and management of state agency records?

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<sup>1</sup> In the years since TESCCC's formation, the other ten regional ESCs have joined the collaborative.

- Are the lesson plans maintained by TESCCC and/or the member ESCs subject to any of the other retention requirements of Chapter 441 of the Government Code?
- If the lesson plans are subject to any of the above provisions, which of the retention schedule(s) adopted by the Texas State Library and Archives Commission applies to the lesson plans and what is the minimum retention time under that schedule(s)?
- If the lesson plans are not subject to any of the above provisions, must TESCCC or the member ESCs maintain archival copies of the lesson plans, or may they be destroyed?

As you analyze these questions, it is important to note that under Chapter 8 of the Texas Education Code, ESCs are treated as state agencies for some purposes, such as laws related to political activities and sunset review. *See, e.g.,* TEX. EDUC. CODE §§ 8.008-.010. For other purposes, ESCs are treated by statute as political subdivisions, such as immunity from liability, nepotism, and for selection of a depository of public funds. *See, e.g.,* TEX. EDUC. CODE §§ 8.005-.006, 8.009, 8.011. ESCs are governed by boards of directors selected by their school districts in accordance with rules adopted by the Commissioner of Education. *See* TEX. EDUC. CODE § 8.003; 19 Tex. Admin Code Ch. 53.

I appreciate your prompt consideration of this opinion request. This request does not deal with any issue that is currently subject to litigation and neither TESCCC nor the member ESCs are currently a party to litigation regarding this issue. Your opinion regarding the applicability of these provisions to the exemplar lesson plans maintained by TESCCC and the member ESCs will enable the ESCs to ensure that they are in full compliance with State law regarding the maintenance, retention, and disposition of these lesson plans. Indeed, the TESCCC and the member ESCs have determined to wait for your opinion before making any decisions regarding the disposition of the exemplar lesson plans.

If I may provide any additional information to assist you with your consideration of this opinion request, please contact me at any time.

Sincerely,



Senator Robert Duncan  
Chair, Senate Committee on State Affairs

cc: Senator Dan Patrick, Chair, Senate Committee on Education  
Representative Jimmie Don Aycok, Chair, House Committee on Education  
Mr. Daniel Hodge, First Assistant Attorney General  
Ms. Anne Poplin, Chair, TESCCC and Executive Director, Region 9 ESC  
Mr. Jack Damron, Executive Director, Region 1 ESC  
Dr. Rick Alvarado, Executive Director, Region 2 ESC

Dr. Julius Cano, Executive Director, Region 3 ESC  
Dr. Pam Wells, Executive Director, Region 4 ESC  
Dr. Danny Lovett, Executive Director, Region 5 ESC  
Mr. Thomas Poe, Executive Director, Region 6 ESC  
Ms. Elizabeth Abernethy, Executive Director, Region 7 ESC  
Dr. Raymond Glynn, Executive Director, Region 8 ESC  
Mr. Wilburn O. (Buddy) Echols, Jr., Executive Director, Region 10 ESC  
Dr. Clyde Steelman, Executive Director, Region 11 ESC  
Dr. Jerry Maze, Executive Director, Region 12 ESC  
Dr. Terry Smith, Executive Director, Region 13 ESC  
Mr. Ronnie Kincaid, Executive Director, Region 14 ESC  
Mr. Scot Goen, Executive Director, Region 15 ESC  
Mr. John Bass, Executive Director, Region 16 ESC  
Dr. Kyle Wargo, Executive Director, Region 17 ESC  
Mr. John Thomas, Executive Director, Region 18 ESC  
Dr. James R. Vasquez, Executive Director, Region 19 ESC  
Dr. Ronald L. Beard, Executive Director, Region 20 ESC  
Ms. Julie Beisert-Smith, Education Service Centers Director, Texas Education Agency