

Texas Workforce Commission

A Member of Texas Workforce Solutions

Tom Pauken, Chairman

Ronald G. Congleton
Commissioner Representing
Labor

Andres Alcantar
Commissioner Representing
the Public

Larry E. Temple
Executive Director

January 3, 2012

The Honorable Arne Duncan
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW, Room 7W301
Washington, DC 20202-7100

Dear Secretary Duncan:

The Texas Workforce Commission (TWC) finds it necessary to weigh in on interpretations of Texas law and rules in the context of federal regulations being applied by U.S. Department of Education (ED) representatives. We understand that ED representatives have taken the position that under Texas law a career school or college is required to operate and measure time in clock hours.

As stated in our August 12, 2011, letter, Texas law requires that career schools and colleges operating in Texas track student progress in accordance with the program-length measurement method employed by the individual school and reported in its application for a certificate of approval. Texas does not require that schools use a single program-length calculation method in order to operate in the state. To read otherwise deprives Texas career schools and colleges of the regulatory framework upon which they operate in compliance with state requirements.

TWC shares concerns about proper use of federal financial aid that have led to changes in federal rules intended to better oversee these funds. In fact, TWC has taken steps to address violations of school operating requirements that may be associated with misuse of federal financial aid. However, we believe that establishing the clock hour standard as a default position for Texas career schools and colleges runs counter to Texas laws and rules.

Texas Education Code §132.055(b)(7) does not prescribe the method of record-keeping as a criterion for state approval; rather, the law defers to TWC to determine the adequacy of each school's record-keeping method:

Adequate records as prescribed by the Commission are kept to show progress or grades, and satisfactory standards relating to progress and conduct are enforced.

While TWC's approval process does mandate the submittal of course times and curriculum content, the rules allow schools to operate using either clock hours or credit hours—both of

Arne Duncan
Page 2
January 3, 2012

which are equally acceptable under Texas Education Code §132.055(b)(17):

The school or college furnishes to the Commission for approval or disapproval the course times and curriculum content for each program offered by the school or college.

In establishing the adequacy of application materials, §807.222(c) of TWC's Career Schools and Colleges Rules (40 Texas Administrative Code, Chapter 807) links a school's method of progress evaluation to the school's specified basis for approval:

For schools approved on a course time basis and offering programs in excess of 200 hours, the school shall evaluate progress at least every eight weeks. A school approved on a credit hour basis shall evaluate progress at the midpoint and end-of-term for academic semester or academic quarter or at least every eight weeks.

Neither the Texas legislature nor TWC has imposed a particular method of student progress measurement on career schools and colleges as a condition of approval to operate in Texas.

TWC strongly promotes informed consumer decision making and publishes information using a common standard of reporting, thereby allowing potential students and their families to compare school offerings on an "apples-to-apples" basis. This information is provided on a clock-hour basis, as well as on the measurement basis employed by the school. TWC's Career Schools and Colleges rule §807.122(e) provides a credit-hour conversion table; however, nothing in Texas law prohibits the use of credit hours or requires the use of clock hours. While translating schools' recordkeeping to a single standard may afford increased regulatory efficiency in providing consumer information and in the calculation of student refunds, TWC does not believe that imposing one recordkeeping approach is reasonable.

Both TWC and ED have a duty to provide certainty and clarity in a regulatory framework that includes the opportunity for affected businesses to provide input. ED has exercised that responsibility in its Notice of Proposed Rulemaking and response to comments. However, the laudable goal of improving integrity in programs is separate from applying Texas laws and regulations in a manner inconsistent with the state's own application of those laws and regulations.

Arne Duncan
Page 3
January 3, 2012

TWC agrees that student financial aid must be reformed—but not by superseding a state’s administration of its own laws and rules. We welcome the opportunity to continue working with ED to address these matters.

Sincerely,

Tom Pauken
Chairman

Ronald G. Congleton
Commissioner Representing Labor

Andres Alcantar
Commissioner Representing the Public

cc: Kimberley Peeler, U.S. Department of Education
Larry E. Temple, Executive Director, TWC

Arne Duncan
Page 4
January 3, 2012

bcc: Laureen M. Biscoe, Deputy Director, Workforce State Operated Services
Paul N. Jones, General Counsel