

Executive Summary

The 80th Session of the Texas State Legislature resulted in one of the most significant regressions in the State's relationship with private schools ever. Accredited private schools lost a longstanding exemption, shared by public schools, from having to license childcare programs through the Department of Family and Protective Services. While negotiations regarding enforcement with DFPS are ongoing and a strategy to reinstate the exemption in the next Session is forming, this legislation represents a potential watershed in the ability of state officeholders, either intentionally or from sheer negligence, to regulate private schools out of business in Texas. TANS is joining the fight for the standing of private schools in Texas with renewed vigor and more concentrated resources.

We need the support of every accredited school to carry this fight forward!

A Brief History of TANS, TEPSAC and TEA

The arrangement negotiated between TANS and the Texas Education Agency (TEA) in the 1980s that resulted in the creation of the Texas Private School Accreditation Commission (TEPSAC) was designed to ensure that accredited private schools would maintain equal standing with their public school counterparts. This arrangement has been upheld by TEA and other state offices for twenty years. In the past, when legislation has been proposed which might affect this standing, the Legislature has honored the arrangement, even to the point of setting aside controversial bills.

80th Legislative Session

The 80th Legislative Session began in January 2007 with a flurry of bills seeking to amend Human Resources Code Section 42.041 (<http://tlo2.tlc.state.tx.us/statutes/docs/HR/content/htm/hr.002.00.000042.00.htm#42.041.00>). Most of these bills limited or removed the exemption that accredited schools had enjoyed from licensing childcare programs with DFPS.

In response to these bills, TANS mounted a lobbying effort designed to accomplish two things:

1. Maintain the current exemption for accredited schools.
2. Insert TEPSAC's name into the Human Resources Code so that the source of the standing of accredited private schools would be in statute and more clear to legislators.

In most instances, legislators who were approached by TANS were amenable to our suggestions, and they quickly came to understand the importance of the legislation they had proposed and the potential damage it could do to private schools.

As the Session wore on, fewer and fewer of these bills, even those which we had successfully lobbied for changes, survived. As deadlines in both the House and Senate approached, only one bill affecting HR Code Section 42.041, HB 332, proposed by Rep. Chisum, remained. Early in the session, we had met with Rep. Chisum's staff,

expressing support for his bill, which had incorporated our “TEPSAC language” and further strengthened the exemption from licensing. Within the last weeks of the Session, however, Rep. Chisum’s bill suddenly appeared with an amendment which eliminated the exemption for more than 80% of accredited schools (see Rep. Chisum’s explanation to Governor Perry at the end of this report).

At this point, it appeared that HB 332 was not going to make the deadline to be passed in the House, so we made a strategic decision not to address the issue. In fact, the bill did die, and we breathed a collective sigh of relief. We thought that we had dodged the bullet.

Two weeks later, however, we received a call from DFPS alerting us to the fact that the offending amendment in Rep. Chisum’s bill had shown up in a bill authored by Rep. Villareal—HB 1385. Rep. Villareal’s bill was intended to provide oversight for employer-based childcare centers, and when HB 332 died in the House, Rep. Chisum asked that his amendment be carried over into Rep. Villareal’s bill. This resulted in the surprising situation that a provision which eliminated a longstanding exemption for accredited private schools was passed under cover through both the House and Senate.

Rep. Villareal was unwilling to request a veto from Governor Perry, since the main body of his bill provided important benefits to business, despite his acknowledgment that the bill harmed private schools (see Rep. Villareal’s letter to Governor Perry at the end of this report). Lacking a request for a veto from the sponsoring legislators, Governor Perry allowed the bill to become law without his signature (see his statement regarding the effect on private schools at the end of this report).

Current Status

1. We succeeded in amending the Human Resources Code to designate TEPSAC as an organization whose related schools have identical standing to public schools when it comes to exemptions from licensing, etc.
2. Late in the session, an amendment surfaced in at least two bills, limiting this standing to schools operating in counties with populations of 25,000 or less—about 1% of accredited private schools. This amendment was first attached to a bill that died, but it re-surfaced later in a non-education related bill that passed.
3. Governor Perry has issued a message stating his reasons for allowing this bill to become law and noting his concern about the potential impact of the bill on private schools.
4. TANS has received a copy of a letter from the offending amendment’s author, Rep. Chisum, to Governor Perry, describing his confusion regarding the exemptions that previously existed and stating that the removal of those exemptions from 99% of accredited private schools was unintended—a drafting error. Rep. Villareal, the author of the original bill, has also drafted a letter to the Director of Family Protective Services urging her to enforce the law in accordance with the intent of the legislature.
5. In August, TEPSAC Executive Director Dr. Jimmy Ames, Texas Catholic Conference Education Director Margaret McGettrick, and TANS Executive Director Chuck Evans met with three representatives from DFPS to discuss their enforcement plans and to explore other existing exemptions which may permit schools still not to license their programs.

- a. The best news is that DFPS will not begin enforcement of the law until September 1, 2008. We have 11 months to prepare.
- b. Schools accredited by SACS have not lost their exemption, regardless of their location (SACS is mentioned in the HR code in its original form and was not removed from the language. The exemption removal applies to TEPSAC schools, but SACS is still listed as an exempted entity.)
- c. There is a smattering of other exemptions that may apply to a small number of schools, but that discussion is not very promising.

TANS' Plans

Since the end of the 80th Legislative Session, TANS has located an office in Austin, three blocks from the Capitol. We hope that this proximity to state offices and officeholders will help to increase our visibility and our access to the legislative and regulatory processes that affect us.

Beginning early in 2008, TANS will initiate a multi-faceted approach to dealing with this problem. The plan will include the following components:

1. We will continue to negotiate with DFPS, looking with them for ways to further delay enforcement of this legislation until the end of the 81st Legislative Session.
2. We will explore other means by which DFPS's enforcement may be delayed, including litigation.
3. We will begin to lay the groundwork for new legislation to be carried by sympathetic legislators in the 81st Session, to restore and further solidify the privileges of accredited private schools.
4. We will update our warning and response system with our member schools and organizations in the event that a mass response from private schools is needed to address our needs with legislators.

What TANS Needs

Our only means of support is the membership of individual schools. TANS needs all of the 850 accredited schools in Texas to support this work through their membership.

Join TANS now, and encourage your friends and colleagues in schools throughout the state to join with you.

Text of Statements from Representatives Chisum and Villareal and Governor Perry

The Honorable Rick Perry
Governor, State of Texas
State Capitol, Room 2S.1
Austin, Texas 78701

Dear Governor:

I'd like to take this opportunity to explain the legislative intent behind my HB 332 which was amended onto HB 1385 before final passage. SECTION 1 of HB 1385 contains the language from HB 332. It amends Section 42.041 of the Human Resources Code that exempts certain types of facilities and operations from being licensed by the Department of Family and Protective Services (DFPS) Child Care Licensing division. The intent of my bill is to make it easier for certain educational and religious organizations in small counties to provide educational programs for children ages 4 and up without having to be licensed as a day care. As way of explanation, I share my talking points with you below:

The Department of Family and Protective Services has contacted facilities which conduct educational programs sponsored by a religious organization or other educational facility. They have indicated that because the school serves children below the age of 5, a child-care license is required. The programs are not child-care facilities; they are educational programs which serve children who are four years and older in a preschool setting. HB 332 allows a 4 year old to attend an educational facility without requiring the facility to get a day care license. I was asked to delete the term "preschool" and replace it with "pre-kindergarten." However, our attorneys tell me that there are pre-kindergarten programs that do not allow 4 year olds, and therefore "pre-kindergarten" would not cover the intent.

In addition to this exemption, the bill adds educational facilities accredited by Texas Private School Accreditation Commission (TEPSAC) to the general exemption for schools in Section 42.041(b)(7). I have since found out that schools that are accredited by TEPSAC are already exempt under DFPS rule. In HB 1385, that exemption is added to statute in Sec. 42.041(b)(7); but only for counties with a population of less than 25,000. New 42.041(b-1) now states that the exemption for schools accredited by TEPSAC applies only in counties of less than 25,000 in population. I am told that this statutory language will take precedence over DFPS rules that currently exempt all TEPSAC-accredited schools. As a result, TEPSAC-accredited programs in counties of more than 25,000 (about 700 in total that are currently exempt under DFPS rule), would now be required to be licensed.

However, it was my intent to ensure that TEPSAC-accredited educational facilities in smaller counties are exempt from licensing by placing it in statute. The requirement to now license the 700 TEPSAC-accredited programs in counties of more than 25,000 is an unintended consequence of the bill. It was definitely *not* my intent to add new licensing requirements for TEPSAC-accredited facilities in larger counties!

I trust this explanation will make it clear what my intent was. Please call me if you have further concerns.

Sincerely,

Warren Chisum

June 21, 2007

Carey D. Cokerell
DFPS Commissioner
701 W. 51st Street
P.O. Box 149030
Austin, Texas 78714-9030

Dear Commissioner Cockerell,

I am writing to you today to clarify the legislative intent of Section 1 of my House Bill 1385.

Section 1, which was amended to the bill on the floor of the House of Representatives, was based on Representative Warren Chisum's House Bill 332. The intent of HB 332 and Section 1 of HB 1385 was to make it easier for certain educational and religious organizations in small counties to provide educational programs to children ages four and up without having to be licensed as a day care. The intent was not to add new licensing requirements for Texas Private School Accreditation Commission-accredited facilities in larger counties, as that Section has recently been interpreted to do. I encourage you to use any discretion that DFPS may have to implement this Section, to the extent possible, in the manner intended by the Legislature. I appreciate your attention to this important matter.

Sincerely,

Michael U. Villarreal
MV/pc

Message - June 15, 2007

I am allowing House Bill No. 1385 to become law without my signature. The chief purpose of the bill is to streamline the licensing process for small employer-based day-care facilities with up to twelve children and a one to four caregiver ratio. The concept of employer-based day-care is desirable for both the child and the parent.

However, I have serious concerns about the portion of the legislation regulating approximately 700 private school after-school programs in counties with a population exceeding 25,000 people. The Department of Family and Protective Services by rule currently exempts from regulation all private school after-school programs accredited by the Texas Private School Accreditation Commission. Additionally, while the safety of Texas children is always the paramount issue on my mind, I believe House Bill No. 1385 may place an undue and unintended regulatory burden on these private schools.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 15th day of June, 2007.

RICK PERRY
Governor of Texas

ATTESTED BY:
ROGER WILLIAMS
Secretary of State