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June 17, 2014

The Honorable Dan Patrick  
Chair, Committee on Education  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Opinion No. GA-1067

Re: Use of the Common Core State Standards  
Initiative by Texas school districts to teach  
state standards (RQ-1175-GA)

Dear Senator Patrick:

You ask whether school districts using the Common Core State Standards Initiative (“Common Core Standards”) “in any way to teach state standards violate the law.”<sup>1</sup> As background, you explain that during the Eighty-third Legislative Session you sponsored House Bill 462 regarding the prohibition of the Common Core Standards in Texas. Request Letter at 1. House Bill 462 amended section 28.002 of the Education Code, which relates to required curriculum in Texas public schools, by adding subsections (b-1) through (b-4). Act of May 23, 2013, 83rd Leg., R.S., ch. 861, § 1, 2013 Tex. Gen. Laws 2210, 2210. Section 28.002 now states, in relevant part:

(b) The State Board of Education by rule shall designate subjects constituting a well-balanced curriculum to be offered by a school district that does not offer kindergarten through grade 12.

(b-1) In this section, “common core state standards” means the national curriculum standards developed by the Common Core State Standards Initiative.

(b-2) The State Board of Education may not adopt common core state standards to comply with a duty imposed under this chapter.

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<sup>1</sup>Letter from Honorable Dan Patrick, Chair, Senate Comm. on Educ., to Honorable Greg Abbott, Tex. Att’y Gen. at 2 (Dec. 20, 2013), <http://www.texasattorneygeneral.gov/opin> (“Request Letter”).

(b-3) A school district may not use common core state standards to comply with the requirement to provide instruction in the essential knowledge and skills at appropriate grade levels under Subsection (c).

(b-4) Notwithstanding any other provision of this code, a school district or open-enrollment charter school may not be required to offer any aspect of a common core state standards curriculum.

TEX. EDUC. CODE ANN. § 28.002(b)–(b-4) (West Supp. 2013). The Common Core Standards describes itself as a single set of educational standards for kindergarten through 12th grade in English language arts and mathematics that states may voluntarily adopt. COMMON CORE STATE STANDARDS INITIATIVE, <http://www.corestandards.org/resources/frequently-asked-questions> (last visited Apr. 3, 2014).

Subsection 28.002(c) of the Education Code requires the State Board of Education (“SBOE”) to “by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate.” TEX. EDUC. CODE ANN. § 28.002(c) (West Supp. 2013). Subsection 28.002(b-2) directs that in doing so the SBOE may not adopt the Common Core Standards. *Id.* § 28.002(b-2). Pursuant to the statutory mandate to promulgate rules establishing a required curriculum, SBOE has adopted its own set of educational standards, the Texas Essential Knowledge and Skills (“TEKS”) standards, which are located in title 19 of the Texas Administrative Code. 19 TEX. ADMIN. CODE §§ 110.11–128.32 (2013).

With regard to individual school districts, the SBOE “shall require each district to provide instruction in the essential knowledge and skills at appropriate grade levels.” TEX. EDUC. CODE ANN. § 28.002(c) (West Supp. 2013). Under subsection (b-3), school districts “may not use common core state standards to . . . provide instruction in the essential knowledge and skills at appropriate grade levels.” *Id.* § 28.002(b-3). Pursuant to the requirement in subsection (c), SBOE has adopted rules requiring school districts to provide instruction to students using its TEKS standards. 19 TEX. ADMIN. CODE § 74.1(b) (2013). Thus, school districts must utilize the TEKS standards, not the Common Core Standards, to comply with the requirement that they provide instruction in the essential knowledge and skills at appropriate grade levels. TEX. EDUC. CODE ANN. § 28.002(b-3) (West Supp. 2013).

Briefing submitted to this office states that the TEKS and the Common Core Standards overlap in many instances.<sup>2</sup> For example, the math TEKS explain that the “primary focal areas in Grade 4 are use of operations, fractions, and decimals and describing and analyzing geometry and measurement.” 19 TEX. ADMIN. CODE § 111.6(a)(4) (2013). Similarly, the Common Core Standards for fourth grade recommend the following:

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<sup>2</sup>Brief from Kelli H. Karczewski, Karczewski, Bradshaw, LLP, on behalf of the Tex. Ass’n of Sch. Bds. at 8–11 (Jan. 21, 2014) (“TASB Brief”) (on file with the Op. Comm.).

focus on three critical areas: (1) developing understanding and fluency with multi-digit multiplication, and developing understanding of dividing to find quotients involving multi-digit dividends; (2) developing an understanding of fraction equivalence, addition and subtraction of fractions with like denominators, and multiplication of fractions by whole numbers; (3) understanding that geometric figures can be analyzed and classified based on their properties.<sup>3</sup>

The briefing raises the concern that if teachers cannot use the Common Core Standards “in any way,” it will result in an inability to teach many of the required TEKS due to this overlap. TASB Brief at 11. That concern is baseless. To use a simple example, if TEKS requires teaching that  $2+2=4$ , the bill plainly does not prevent this instruction simply because Common Core also teaches that  $2+2=4$ . The Legislature was aware of the frequent overlap between the TEKS and the Common Core Standards, as evidenced by the bill author’s explanation that it was not his intent “to prevent the use of materials where the two standards may overlap.” H.J. of Tex., 83rd Leg., R.S., 4469 (2013). The stated intent of the bill was to prohibit the “outright adoption of national common core standards.” *Id.* Accordingly, school districts must not use the Common Core Standards to comply with the requirement to provide instruction in “the essential knowledge and skills at appropriate grade levels.” TEX. EDUC. CODE ANN. § 28.002(b-3) (West Supp. 2013).

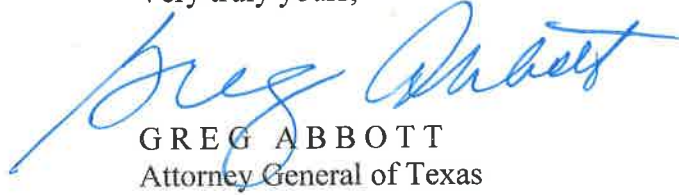
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<sup>3</sup>COMMON CORE, <http://www.corestandards.org/Math/Content/4/introduction> (last visited Apr. 3, 2014).

S U M M A R Y

Texas school districts are required to provide instruction in the essential knowledge and skills at appropriate grade levels, and pursuant to subsection 28.002(b-3) of the Education Code, they may not use the Common Core State Standards Initiative to comply with this requirement.

Very truly yours,



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