



TEXAS

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BUSINESS REPORT



The Education Session

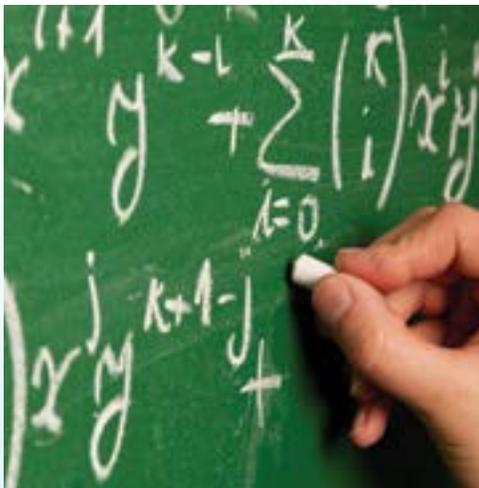
Where do we go from here?

The 83rd regular session of the Texas Legislature will be remembered for the major changes that were made to our education system. While TAB did not always agree with those changes, TAB is pledging to make the new system work to ensure employers have an educated workforce far into the future.

“This wasn’t an easy session for our education issues,” said Bill Hammond, President and CEO of the Texas Association of Business. “We fought hard for a number of education issues and were successful with some and not successful with others. What is done is done, and it is our job now to support the changes made by lawmakers and make those changes work for the betterment of our children and our state’s employers.”

To that end, TAB has recently sent a letter to lawmakers explaining this position and the willingness to help make the new system work. The letter lays out a number of education goals under the new system that the state should strive to meet. Those include helping students pass the five required end of course exams on the first try; helping middle and elementary students pass their yearly exams on the first try so they do not fall behind academically; and working for an overall improvement in classroom instruction so students do not have to take as many remedial classes.

“Of course, all of those goals are extremely challenging,” said Hammond. “Just because there are fewer exams required to graduate high school that does not mean the path to improving education has gotten easier. Now that there are fewer exams our goal should be ensuring our students pass them the first time. There is no reason we cannot meet that goal, but it will take a lot of hard work.”



TAB pledges to make new system work

WORKFORCE Q&A

During a performance counseling meeting, the employee reveals for the first time that he or she has an intellectual disability. How should an employer handle such a situation in compliance with the Americans with Disabilities Act (ADA)?

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1 p.m. Shotgun Start

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TAB MISSION

To make the Texas business climate the best in the world.

WORKFORCE Q&A



Kate Suh,
Norton Rose Fulbright

During a performance counseling meeting or while an employer is in the process of placing an employee on a Performance Improvement Plan (PIP), the employee reveals for the first time that he or she has an intellectual disability, such as Attention Deficit Hyperactivity Disorder (ADHD). The employee voluntarily provides the information as a justification for the substandard performance while objecting to being placed on the PIP. How should an employer handle such a situation in compliance with the Americans with Disabilities Act (ADA)?

Individuals may have an intellectual disability under the ADA if they (1) have a mental impairment substantially limiting one or more major life activities; (2) have a “record of,” or a history of, such an impairment; or (3) are “regarded as” having such an impairment by the employer. An employee with ADHD may qualify as having a disability under the ADA if the employee is substantially limited in a major life activity, such as concentrating or thinking. Further, if an employer takes prohibited action against an individual because of the employer’s mistaken belief that the individual has an intellectual disability, that individual may be protected under the ADA because he or she has been “regarded as” disabled by the employer, even if the employee does not actually have an impairment.

Going back to the scenario in the question above, an employer should first request reasonable medical documentation regarding the disability if it was not previously known or obvious. While employers can ask the employee’s doctor if the condition would cause the conduct subject to the PIP, they should be careful to request only documentation relevant to the disability and the employee’s job duties and not the employee’s entire medical file.

The ADA also places an affirmative obligation on employers to engage in a flexible, “interactive process,” with an employee requesting a reasonable accommodation. The employer should clarify with the employee which accommodation is being requested and discuss whether any alternative accommodations are effective.

Courts have stated that no “magic words” are required for an employee to request an accommodation under the ADA. Thus, while the employee may not have requested a specific accommodation in the scenario above, a court or jury may interpret the employee’s voluntary disclosure of an intellectual disability and subsequent objection to being placed on a PIP as a request for accommodation. If the employee waited until after counseling or being placed on a PIP to notify the employer of any disability and to request an accommodation, the employer likely will not have to withdraw the PIP, but may have to grant a reasonable request for accommodation, such as a 90-day PIP rather than a 60-day PIP.

It also should be noted that an employer is not required to eliminate an essential function of the job as a reasonable accommodation, create a new position, or excuse conduct or behavior such as violence, theft, or destruction of company property.

Employment Relations questions?

***Don't forget to call TAB's Employment Relations Hotline
for your next HR Question
1.800.856.6721, ext. 164 or E-mail smcgee@txbiz.org***

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To Fund or Not To Fund

The plan to pull funding from the Affordable Care Act.



Sen. Ted Cruz and Bill Hammond

There are several schools of thought on whether de-funding the Affordable Care Act is the best way to force a fix for the plan, or simply abolish it, before it goes into effect in January.

“It is an idea that we would support,” said Bill Hammond, President and CEO of the Texas Association of Business. “We need time to repeal the act and make something that is workable for employers and employees. As it stands now the Affordable Care Act is an economy and jobs killer and must be fixed.”

The idea is being pushed by U.S. Sen. Ted Cruz, who has told conservative groups that it will be an uphill battle to strip money for the Affordable Care Act (ACA) from the latest budget resolution, which could lead to a government shutdown. There has also been separate legislation filed to de-fund the ACA.

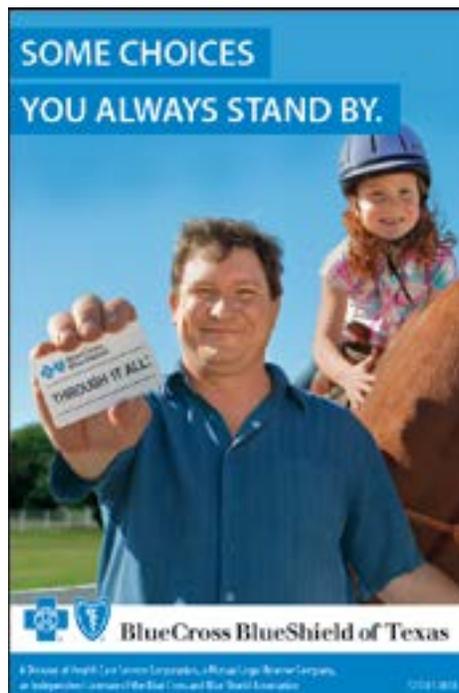
“The real issue here is forcing a government shutdown in order to push the point that the Affordable Care Act must be changed or abolished,” said Hammond. “Most elected officials from either side of the aisle do not want to be blamed for that. It is a tough sell.”

Cruz agreed in a Texas Tribune interview. “We don’t have the votes,

and we are unlikely to get the votes in closed-door meetings in Washington,” he told the *Tribune*. “The only way that we win this fight is if the American people rise up.”

Cruz said Democrats will be quick to blame Republicans for shutting down the government, when in reality Cruz said that would not be the case. Cruz said the continuing resolution would fund everything that needs funding to keep government operating; it would only de-fund the Affordable Care Act. Cruz said Republicans would have to make the argument that the only reason the government is shutting down is because the President and Democrats are trying to save “Obamacare.”

Why press this idea now? Cruz said in the *Tribune* that the answer is simple. Starting January 1, 2014 subsidies kick in to help people meet the individual health insurance mandate in the law, creating another entitlement program. “The Obama administration knows that in modern times, no major entitlement program that’s been implemented has ever been unwound,” said Cruz.



Education

continued from page one

The letter also lays out a course of action to achieve those lofty goals:

- ★ If students cannot write, they will have problems throughout their academic and working lives. Educators, business leaders, citizens, and parents must join together, with Commissioner Michael Williams, to help implement systematic writing instruction in all districts.
- ★ Work together to ensure all students achieve proficiency in Algebra I.
- ★ A better job must be done at the middle school transition to higher math courses like algebra, geometry and calculus. Let us join together in transformational activity to make effective practice and higher expectations more commonplace for all our students in this phase of their math education.
- ★ Studies and test results show that students do not read adequately to study and work at higher levels. All students must be more proficient readers. Let us build a statewide coalition to implement fundamental change in our schools to turn that research into pervasive and improved practice in our classrooms all across our states.

“Again, this is not an easy course to follow, but all of these ideas are achievable in our classrooms with hard work by teachers, superintendents, school boards, the State Board of Education and the Education Commissioner all working together,” said Hammond.

MEMBER PROFILE

Responsive Education Solutions – Providing Hope Through Quality Education

Having worked to educate the homeless on the streets of Los Angeles, Chuck Cook, CEO of Responsive Education Solutions, moved back to Texas on a mission to better the lives of young students and help solve the drop out problem. Today, ResponsiveEd operates more than 60 campuses throughout Texas and is the state's largest system of public charter schools. These tuition-free schools are dedicated to giving students of all ages options for a better education.

At ResponsiveEd, the mission is clear: All students deserve personalized learning experiences, and an atmosphere where the systems adapt to the students, rather than the students adapting to the systems. The ResponsiveEd program is based on a plan that involves conducting diagnostics for proper placement within the school, developing a plan that addresses the student's individual learning needs and providing relevant learning opportunities in an environment where educators collaborate with each other, while putting the student first.

From its humble beginnings in LA, to a 16,000+ student organization that is Responsive Education Solutions today, this company has come a long way and is doing just what it set out to: utilizing the best technology has to offer, while passionately believing in every student's ability to learn and giving parents a quality educational choice for their children.

Alan Wimberley, Ed.D., is one of the innovative thinkers behind this program, working directly with the CEO. Dr. Wimberley is the Chief Learning Officer of Responsive Education Solutions and his primary focus is designing and implementing innovative education systems for students, as well as training the educators of those systems. His work has created new schools within the district designed for high expectation elementary school students, new school systems for middle school

students blending personalized and teacher-directed environments, and high schools for students integrating personalized learning with 21st century technology.

Since 1979, Dr. Wimberley has worked with students and educators. His career goals centered around creating more effective learning systems. As he explains, "At no time in our history have we been faced with a more crucial mandate than we do today in the 21st century: to

take a hard look at what we are doing in education and taking the necessary steps to ensure effective career and college readiness for our graduates. I believe the TAB is strategically positioned to effect needed change and influence decision-makers in such a way that students will receive greater opportunities as they move into adulthood and become active participants of our communities in our state."

Dr. Wimberley is not only passionate about education but proudly sits on the TAB's Board of Directors. He has been extensively involved in school accreditation, serving on the Texas State Council of AdvancED (Southern Association of Colleges and Schools). He also has led several school districts through the accreditation process including Responsive Education Solutions becoming "one of the first 200 school systems" in the

nation to achieve a systems accreditation distinctive (Dr. Mark Elgart, President—SACS).

"TAB is strategically positioned to effect needed change and influence decision-makers in such a way that students will receive greater opportunities as they move into adulthood and become active participants of our communities in our state."

***- Alan Wimberley, Ed.D.,
Chief Learning Officer
Responsive Education
Solutions***



Responsive Education Solutions
Lewisville, Texas

Legal Watchdogs Kick Off “Small Business Summer” Campaign.

Citizens Against Lawsuit Abuse (CALA) organizations across Texas recently launched a “Small Business Summer” campaign to highlight the negative impact of lawsuit abuse and how small employers can help protect themselves from abusive litigation.

“A single lawsuit can put a small business out of business, which affects employees and the local community,” said Garry Bradford, chairman of Bay Area CALA in Corpus Christi. “While we’ve passed meaningful lawsuit reforms in Texas, ‘Small Business Summer’ is a reminder that we must work to protect these reforms to ensure a successful future for the small businesses that drive our economy.”

The CALAs are partnering with small businesses for the summer effort. As part of the campaign, the CALAs are distributing legal consumer guides, flyers about the impact of lawsuit abuse on small businesses and window decals employers can display to show their support for the campaign.

Diane Davis, executive director of East Texans Against Lawsuit Abuse based in Longview, noted that nationally lawsuits cost small businesses hundreds of billions of dollars. In a survey by the Institute for Legal Reform, more than

one-third of small businesses said they have been sued. The same survey found that more than 60 percent of employers take burdensome precautions to protect themselves from litigation – precautions that ultimately make their products and services more expensive. Texas is home to more than 350,000 small businesses, employing 2.9 million Texans.

“Armed with the right information, business owners can take steps to protect themselves,” said Febe Zepeda, executive director of Rio Grande Valley CALA in Weslaco.

Jennifer Harris, spokesperson for CALA of Central Texas, noted, “Businesses can take basic steps to fight lawsuit abuse, like increasing documentation and quickly addressing customer concerns. In the end, Texas lawmakers have done their job – passing meaningful reforms – but we all have a role to play in ensuring our courts are used for justice, not greed.”

**To join in
“Small Business Summer”
and receive a packet of briefing
materials, please contact
800-476-1442 or
info@tala.com.**

QUOTES

“We don’t think a bureaucrat sitting in Washington D.C. should be making the decisions about the number of legal immigrants that come to America. That should be driven by the economy.”

– Bill Hammond on *YNN Austin* speaking about immigration reform.

“Clearly, businesses in Texas are, in fact, paying more than their fair share of the cost of government at all levels in the state of Texas.”

– Bill Hammond on *NewsChannel 10 Amarillo* speaking about businesses paying the majority of taxes in Texas.

“Today, Texas is a hub for one of the most promising parts of the biomedical sector — advanced pharmaceutical research.”

– Bill Hammond in the *Waco Herald-Tribune* talking about Texas’ bio-tech boom.

SMALL BUSINESS
SUMMER

Texans Against Lawsuit Abuse



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Talk **About** Business



Bill Hammond, TAB President

The Texas Biotech Boom Is Around the Corner

America is on the cusp of an unprecedented explosion in biomedical innovation—and Texas is leading the way.

Nationwide, there are 907 medicines and vaccines in the biotech development pipeline. Together, these therapies will target more than 100 diseases, from lupus to asthma. In Texas, officials at Texas A&M University recently announced plans to partner with the drug firm GlaxoSmithKline on a \$91 million facility dedicated to creating flu vaccines. All this work will benefit millions of Americans.

And yet, this biomedical progress could be at risk if some lawmakers in Congress have their way. For the sake of patients around the world—and the Texas economy—lawmakers must support smart policies that foster growth and innovation in this valuable sector.

Today, Texas is a hub for one of the most promising parts of the biomedical sector—advanced pharmaceutical research. Last year, the Lone Star State housed more than 3,400 drug firms that supported more than 88,500 jobs.

In 2009, according to the Texas Healthcare and Bioscience Institute, the industry had an economic impact of \$75 billion. Given Texas' attractive

business climate, it's no surprise that our state is drawing in so many biotech start-ups.

Despite the financial impact of this industry and the promising number of treatments in development, there's no guarantee of long-term success. Poorly conceived legislation could upend the biotech market and put an end to this boom before it really gets going. That's why a number of the policies supported by President Obama and his allies are so troubling.

The push to change the Medicare Part D prescription drug program is a prime example of the kind of legislation that could set biotech innovation back indefinitely. In his budget for fiscal year 2014, the President has proposed a Part D rebate for pharmaceuticals sold to low-income beneficiaries.

Such a change would seriously disrupt drug research. Pharmaceutical producers will have a harder time recouping the costs of drug development, and they'll have fewer resources to put toward new research lines.

What's more, this rebate scheme will undermine the market mechanisms that have made Part D such a success. This program is on track to

cost 45 percent less than originally forecast over its first 10 years. Rebates could drive up premiums for most beneficiaries by 20 and 40 percent.

Another troubling development is the president's position on the intellectual property of research firms. In his budget and ongoing international trade talks, the president has pushed for a shorter data protection period for biologic medicines.

Currently, biotech firms that release an innovative new drug are given a 12-year protection period. This window of exclusivity provides biotech firms a chance to earn a return on that investment in sales.

Shortening this period would weaken the incentive for companies to invest in new cures by making biotech research more economically uncertain.

In both of these instances, the proposed reforms would distort the biotechnology market and leave firms less able to invest in tomorrow's medical breakthroughs.

In order to ensure that the biopharmaceutical sector continues to flourish in Texas, leaders in Washington need to protect the incentives that motivate firms to invest and grow.