

July 12, 2005
OPINION NO. 05-0285

**96 - A - EDUCATION – Colleges & Other
Institutions of Higher Learning**

La. R.S. 17:2053
La. R.S. 17:3048.1
LAC 28:IV § 301

Dr. E. Joseph Savoie
Commissioner of Higher Education
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The Louisiana Tuition Opportunity Program for Students as set forth in La. R.S. 17:3048.1 is not “any other program authorized by the legislature” within the meaning of La. R.S. 17:2053(E). The receipt of a portion of student tuition payments from TOPS does not prevent eligible independent colleges and universities from being paid for completed semester hours pursuant to the Aid to Independent Colleges program.

Dear Dr. Savoie:

You have requested an Attorney General Opinion regarding the interpretation of La. R.S. 17:2053, which establishes a program for payments to independent institutions of higher education for the education of Louisiana residents (“Aid to Independent Colleges”). Specifically, you seek clarification as to the applicability of La. R.S. 17:2053(E) in reference to the Tuition Opportunity Program for Students (“TOPS”). Before responding to the question you pose, we must first examine both programs.

Act 562 of the 1975 Regular Legislative Session established the Aid to Independent Colleges program. The program is set forth in La. R.S. 17:2053, which provides in pertinent part as follows:

A. The Board of Regents shall semiannually, in January and June of each year, upon application therefor, reimburse nonpublic institutions of higher education located within the state for educating Louisiana residents. Such payments shall be made only from funds appropriated solely for this purpose. The Board of Regents shall report to the legislature annually the eligible institutions, the number of Louisiana residents enrolled, and the total amount paid to each institution hereunder.

B. Payments to such eligible institutions for each semester completed by a Louisiana resident who is a full-time undergraduate or graduate or professional student shall be one tenth of the average state formula appropriated per full-time equivalent student in Louisiana publicly supported colleges and universities during the preceding fiscal year. Reimbursement for educating Louisiana residents will be limited to eight full-time semesters at the undergraduate level and eight full-time semesters at the graduate or professional level.

C. Reimbursement for the education of Louisiana residents who are part-time students shall be calculated according to the following formula. At the end of each semester, the total of all semester hours of instruction completed by Louisiana residents who are part-time undergraduate students shall be divided by twelve to establish full-time equivalency, and the total of all semester hours of instruction completed by part-time graduate students and by part-time professional students shall be divided by nine to establish full-time equivalency. Payments to the eligible nonpublic institutions for educating part-time Louisiana residents shall then be the product of this aggregate full-time equivalency multiplied by one tenth of the average state formula appropriated per full-time equivalent student in Louisiana's publicly supported colleges and universities during the preceding year. Reimbursement for educating part-time students shall be limited to the equivalent of eight full-time semesters at the undergraduate level and eight full-time semesters at the graduate or professional level provided funds are appropriated for such purpose by the Louisiana Legislature.

* * *

E. In computing the amount due eligible institutions under this Section, there shall be excluded completed semester hours of instruction that have been included for purposes of reimbursement pursuant to any other program authorized by the legislature. Students majoring in theology or divinity shall be excluded from the computation of reimbursement due to any eligible institution.

F. Notwithstanding any other provisions of this Section, the total payments to any eligible institution in any year shall not exceed fifteen per cent of its total educational and general expenditures.

* * *

I. The Board of Regents shall adopt, implement, and enforce regulations to insure that all funds herein provided are used solely for academic purposes.

J. Nothing in this Section shall prohibit an eligible institution from accepting funds for the benefit of students who are Louisiana residents and using such funds as student aid.

As set forth in La. R.S. 17:2053, the Aid to Independent Colleges program provides for the reimbursement of expenses incurred by Louisiana nonpublic institutions of higher education in the education of Louisiana residents. The Board of Regents distributes the reimbursement payments from funds appropriated for that purpose. All payments are made after the completion of semesters and are for services previously rendered. Such payments are to be used solely for academic purposes and are not to exceed fifteen per cent of a nonpublic institution's total educational and general expenditures. The amount of reimbursement received by an institution is based on each semester completed by a Louisiana resident and amounts to one tenth of the average state formula appropriated for an equivalent student in Louisiana publicly supported colleges and universities during the preceding fiscal year. In essence, the Aid to Independent Colleges program reimburses nonpublic institutions for some expenses incurred in the performance of the public function of educating Louisiana residents.

TOPS is a state financed merit based student aid program, whereby eligible students can receive one of several types of awards. As stated in La. R.S. 17:3048.1(A)(1), "[a]s part of the Louisiana Tuition Opportunity Program for Students, the state shall financially assist any student who enrolls on a full-time basis in a public college or university in this state or a regionally accredited independent college or university in the state that is a member of the Louisiana Association of Independent Colleges or Universities . . . to pursue an academic undergraduate degree or . . . skill or occupational training. . ." Awards include Opportunity, Performance, Honors and TOPS-Tech. In order to receive a TOPS award, students must meet specific criteria with the level of award varying based on academic achievement and standardized test scores.

A student meeting the qualifications to receive a TOPS award must enroll in a public college or university in the state or a regionally accredited independent college or university in the state that is a member of the Louisiana Association of Independent Colleges or Universities to receive the award. All awards include, at a minimum, the amount of tuition at a public college or university a student chooses to attend or a weighted average at an eligible independent college or university a student chooses to attend.¹ The recipient of a

1 La. R.S. 17:3048.1(A)(2), (A)(3)(b) & (c), and (B)(2)(f)(i) provide that the tuition equivalent TOPS award for qualifying students who are enrolled in an eligible independent college or university is to be equal to the weighted average of amounts paid for students attending public colleges and universities. For students receiving a TOPS Opportunity, Performance or Honors award enrolled in an academic degree program at an eligible independent college or university, the weighted average is the total dollar value of awards made under TOPS in the prior academic year, excluding award stipends, to students attending public colleges and universities that offer academic degrees at the baccalaureate level, divided by the total number of students that received the awards. LAC 28:IV § 301. For students receiving a TOPS Opportunity, Performance or Honors award or a TOPS-Tech award enrolled in a vocational, technical education certificate or diploma program or non-academic undergraduate degree program at an eligible independent college or university, the

TOPS award is the student qualifying for the award, not the institution the student chooses to attend. The award includes tuition if attending a public institution or the weighted average or a portion of tuition if attending an eligible independent college or university and, for certain awards, an additional amount applied to the cost of attendance. For students attending an independent college or university, TOPS serves, in most cases, as an offset to a tuition amount that must be satisfied for attendance.

The TOPS program is administered by the Louisiana Student Financial Assistance Commission ("LASFAC").² La. R.S. 17:3048.1(E) provides:

The legislature annually shall appropriate to the administering agency funds which, together with any other funds available, are sufficient to cover the costs required to be paid, both initial and continuing, for the coming academic year. All such payments shall be made by the administering agency directly to the institution to which such payment is due after notice to the institution that the state shall pay, on behalf of the qualifying student, the applicable amount stipulated in this Section and after notice from the institution that the student has actually enrolled.

Pursuant to La. R.S. 17:3048.1(E), funds are appropriated to cover costs for the "coming academic year." TOPS awards are essentially held by the administering agency for each student that has received the award and, once enrolled at an eligible institution, such funds are transferred on behalf of the student. For the purposes of this opinion, we believe that the receipt of this payment by an eligible institution from LASFAC does not differ from the receipt of funds representing any other type of scholarship on behalf of a student.

We turn now to the question you pose. Citing La. R.S. 17:2053(E),³ you seek an opinion as to whether the participation of independent colleges and universities otherwise eligible to participate in the Aid to Independent Colleges program is affected by the attendance of TOPS recipients at their respective institutions. In short, does the receipt of a portion of student tuition payments from TOPS prevent eligible independent colleges and universities

weighted average (or average award amount as defined by rule) is determined by dividing the total dollar value of awards, which are made to students enrolled in the same types of programs in the prior Program Year (Non-Academic Program) at eligible public colleges and universities that do not offer academic degrees at the baccalaureate level, by the total number of students that received the awards. LAC 28:IV § 301

2 La. R.S. 17:3048.1(C)(1)

3 La. R.S. 17:2053(E) provides that "[i]n computing the amount due eligible institutions under this Section, there shall be excluded completed semester hours of instruction that have been included for purposes of reimbursement pursuant to any other program authorized by the legislature."

from being paid for completed semester hours pursuant to the Aid to Independent Colleges program.

We begin our interpretation of La. R.S. 17:2053(E) with the language employed therein. La. R.S. 17:2053(E) provides for the exclusion of “. . . completed semester hours that have been included for purposes of reimbursement pursuant to any other program authorized by the legislature.” Essential to the analysis is the phrase “for the purposes of reimbursement” and the meaning of the term “reimbursement.” Such analysis should be based on the following well-established rules of statutory construction: When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. La. Civ.Code art. 9. The words of a law must be given their generally prevailing meaning. Words or art and technical terms must be given their technical meaning when the law involves a technical matter. La. Civ.Code art. 11. Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the language. Technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning. La. R.S. 1:3. When the wording of a Section is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit. La. R.S. 1:4

Applying the above principles, we examine the generally prevailing meaning and the common and approved usage of the term “reimbursement” and the context in which it appears. The term “reimbursement” is defined in *The American Heritage Dictionary of the English Language*, as “to repay (money spent); refund; to pay back or compensate (another party) for money spent or losses incurred.”⁴ *Merriam Webster’s Collegiate Dictionary* defines “reimburse” as “to pay back to someone: repay; to make restoration or payment of an equivalent to.”⁵

Based on the meaning of reimbursement and the fact that the excluded hours are those “that have been included for the purposes of reimbursement,” it is our opinion that the type of program authorized by the legislature that would result in semester hours being excluded from payment pursuant to La. R.S. 17:2053(E) is one wherein an independent college or university would be compensated for money previously spent in the performance of some function or service. It would include programs similar to the Aid to Independent College program. The language employed by the legislature in creating an exclusion from payment for those completed semester hours that were reported for the purposes of reimbursement as opposed to creating an exclusion if any payments were received by any other program authorized by the legislature, in our opinion, restricts the type of program referenced in La.

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referenced in La. R.S. 17:2053(E). The exclusion demonstrates the intent of the legislature to ensure that eligible independent colleges and universities do not receive compensation from more than one reimbursement program for the same completed semester hours, but, in our opinion, based on the language used, does not extend to the receipt of any funds that originate from the state with no regard to the purpose, beneficiary or application of the funds.

As outlined above, TOPS is a program with the purpose of financially assisting students in the payment of tuition and other costs of attendance when enrolling in eligible Louisiana colleges and universities. It is not a program designed to compensate institutions for money spent for services previously rendered. TOPS awards are appropriated by the state and transferred to eligible institutions on behalf of the student, representing an award made to a student. Payments made to independent colleges and universities represent a payment of part, if not all, of a student's tuition for the semester in which the student has enrolled and is beginning. As previously stated, for the purposes of this opinion, a TOPS award is no different than an institution receiving the payment of funds through a scholarship to be applied to tuition or a student making a direct payment of tuition. It is a payment that is tied to a student, not to an institution performing a function or service for which it is eligible to receive reimbursement through a program authorized by the legislature.

Based on the foregoing analysis of La. R.S. 17:2053(E) and the programs at issue, it is the opinion of this office that TOPS is not "any other program authorized by the legislature" within the meaning of La. R.S. 17:2053(E). As a result, the receipt of a portion of student tuition payments from TOPS does not prevent eligible independent colleges and universities from being paid for completed semester hours pursuant to the Aid to Independent Colleges program.

I hope this opinion sufficiently addresses your concerns. If I can be of further assistance, please let me know.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
Katherine M. Whitney
Assistant Attorney General

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