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XX.

TEXAS WORKFORCE COMMISSION

The rules are adopted under Texas Labor Code §§301.0015 and 302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

CHAPTER 805. ADULT EDUCATION AND LITERACY

SUBCHAPTER A. GENERAL PROVISIONS

§805.1. Purpose.

- (a) The rules contained in this chapter may be cited as the Adult Education and Literacy (AEL) rules.
- (b) The purpose of the AEL programs is to provide adults with sufficient basic education that enables them to effectively:
 - (1) acquire the basic educational skills necessary for literate functioning;
 - (2) participate in job training and retraining programs;
 - (3) obtain and retain employment; and
 - (4) continue their education to at least the level of completion of secondary school.

The provisions of this §805.1 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Adult education--Basic and secondary instruction and services for adults.
 - (A) Adult basic education (ABE)--Instruction in reading, writing, and speaking and comprehending English, and solving quantitative problems, including functional context, designed for adults who:
 - (i) have minimal competence in reading, writing, and solving quantitative problems;
 - (ii) are not sufficiently competent to speak, read, or write the English language; or
 - (iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.
 - (B) Adult secondary education (ASE)--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.
 - (C) English literacy education (EL)--Instruction designed to help adults with limited English proficiency achieve competence in the English language.
- (2) AEL consortium--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s).

Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

- (3) AEL fiscal agent--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.
- (4) AEL grant recipient--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.
- (5) AEL lead organization of a consortium--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.
- (6) AEL service provider--An entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.
- (7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.
- (8) Clock hour--60 minutes.
- (9) College and career transitional support--Support that may include, but is not limited to recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.
- (10) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, or assessment services by a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.
 - (A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this title (relating to Staff Qualifications and Training).
 - (B) A student contact hour is 60 minutes.
- (11) Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients include:
 - (A) a local educational agency;
 - (B) a community-based organization of demonstrated effectiveness;
 - (C) a volunteer literacy organization of demonstrated effectiveness;

- (D) an institution of higher education;
 - (E) a public or private nonprofit agency;
 - (F) a library;
 - (G) a public housing authority;
 - (H) a nonprofit institution that is not described in any of subparagraphs (A) – (G) of this paragraph and has the ability to provide literacy services to adults and families; and
 - (I) a consortium of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) – (H) of this paragraph.
- (12)Literacy--An individual's ability to read, writ, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.
- (13)Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.
- (14)Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.
- (15)Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e. the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.
- (16)Program year--The AEL program year is July 1 through June 30.
- (17)Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.
- (18)Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in Workforce Innovation and Opportunity Act (WIOA) §2.
- (19)Workforce training--Services described in WIOA §134(c)(3)(D), including the following:
- (A) occupational skills training, including training for nontraditional employment;
 - (B) on-the-job training;

- (C) incumbent worker training;
- (D) programs that combine workplace training with related instruction, which may include cooperative education programs;
- (E) training programs operated by the private sector;
- (F) skill upgrading and retraining;
- (G) entrepreneurial training;
- (H) transitional jobs;
- (I) job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;
- (J) AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and
- (K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

The provisions of this §805.2 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205; amended to be effective July 20, 2016, 41 TexReg 5231.

§805.3. Federal and State AEL Funds.

- (a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:
 - (1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
 - (2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
 - (3) are unable to speak, read, or write the English language.
- (b) State AEL funds are to be used for AEL programs for out-of-school individuals who are beyond the compulsory age of attendance unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:
 - (1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
 - (2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
 - (3) are unable to speak, read, or write the English language.
- (c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

- (d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

The provisions of this §805.3 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205; amended to be effective July 20, 2016, 41 TexReg 5231.

§805.4. Essential Program Components.

An AEL grant recipient shall ensure that AEL programs provide the following essential program components:

- (1) Adult basic education;
- (2) programs for adults of limited English proficiency;
- (3) adult secondary education, including programs leading to a high school equivalency certificate or a high school diploma;
- (4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;
- (5) assessment and guidance services related to paragraphs (1) - (4) of this section; and
- (6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

The provisions of this §805.4 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.5. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under 19 Texas Administrative Code, Chapter 74, Subchapter A (relating to Curriculum Requirements) with the following exceptions.

- (1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.
- (2) Adults may earn the required physical education credits by one or more of the following:
 - (A) Satisfactory completion of approved secondary physical education courses; or
 - (B) Substitution of state-approved secondary elective courses.
- (3) Adults shall meet the requirements for successful performance on a secondary-level test designated by the commissioner of education.

The provisions of this §805.5 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

SUBCHAPTER B. STAFF QUALIFICATIONS

§805.21. Staff Qualifications and Training.

The requirements of this section shall apply to all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff.

- (1) AEL aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students shall have at least a high school equivalency certificate.
- (2) AEL directors, supervisors, staff that oversees program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.
- (3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.
- (4) Requests for exemptions for staff qualification requirements in individual cases:
 - (A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and
 - (B) shall be submitted and approved prior to an individual being placed in the position in question.
- (5) All AEL directors and supervisors, and other staff with program oversight or coordination responsibilities shall receive 15 clock hours of professional development each program year with the following exception:

Staff hired on or after January 1 of a program year may require half of the professional development time required for that program year.
- (6) All AEL instructional staff, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:
 - (A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:
 - (i) receive three hours of training in principles of adult learning;
 - (ii) receive six hours in relevant areas of literacy instruction; and
 - (iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:
 - (I) acquire the basic educational skill necessary for literate functioning;
 - (II) participated in job training and retraining programs;
 - (III) obtain and retain employment; and
 - (IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

- (iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.
- (B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.
- (C) Staff described in paragraph (6) of this subsection shall receive at least six clock hours of the required professional development outlined in paragraph (6)(A)(i) – (iii) of this subsection within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructions services.
- (7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.
- (8) AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.
- (9) The requirements for professional development may be reduced by grant recipients in individual cases in which exceptional circumstances prevent employees from completing the required hours of professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff.
- (10) Records of staff qualifications and professional development shall be maintained by each grant recipient and shall be available for monitoring.

The provisions of this §805.21 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205; amended to be effective July 20, 2016, 41 TexReg 5231.

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

§805.41. Procurement and Contracting.

- (a) Beginning with Program Year 2014, eligible grant recipients shall compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding shall be allocated as set forth in §800.68 of this title.
- (b) Eligible grant recipients shall apply directly to the Agency using the request for proposals (RFP) process, and shall meet all deadlines, requirements, and guidelines set forth in the RFP.
- (c) Contracts awarded to AEL grant recipients shall be limited to two years, with the option of three one-year renewals, at the Commission's discretion. In considering a renewal, the Commission shall take into account performance and other factors.

- (1) Renewals for years three, four, and five are not automatic, and are based on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission.
 - (2) At the completion of the five-year maximum contract term, the Agency shall conduct a new competitive statewide procurement, including those contracts that have been in effect for less than the maximum five-year contract term.
- (d) Determinations by the Agency in the statewide procurement process will be based on the indicated ability of the eligible grant recipient to effectively perform all services and activities needed to fully comply with contract performance requirements and all contract terms and conditions, and may be influenced by factors used to determine the allocation of AEL funds or other objective data or criteria.

The provisions of this §805.41 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.42. Program Delivery System.

- (a) There shall be a statewide AEL program delivery system that provides AEL services on a coordinated basis within each workforce area.
- (b) An eligible grant recipient must apply directly to the Agency for AEL funding.
- (c) Each eligible grant recipient must demonstrate an ability to:
 - (1) plan and develop a service delivery strategy that includes a broad analysis of the educational, economic, and workforce development trends across the entire workforce area to provide eligible AEL students with comprehensive and locally responsive services; and
 - (2) expand, improve, and coordinate delivery of education, career training, workforce development, and support services.
- (d) Each eligible grant recipient applying for AEL funding on behalf of an AEL consortium must:
 - (1) meet the requirements set forth in subsection (c)(1) - (2) of this section;
 - (2) designate an entity to serve as the AEL lead organization of the consortium; and
 - (3) designate an entity to serve as AEL fiscal agent for the AEL consortium. The AEL fiscal agent is responsible for making and filing all financial reports to the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.
- (e) An AEL grant application must reflect service delivery strategies for the workforce area. In workforce areas that are heavily populated or have large service regions, the Agency may elect to contract with more than one AEL grant recipient within a workforce area.
- (f) An AEL grant recipient, awarded AEL funds by the Agency, shall be responsible for performing all services and activities required to fully comply with contract performance requirements and all contract terms and conditions. Responsibilities include, but are not limited, to the following:
 - (1) Communication.
 - (A) The AEL grant recipient shall serve as the point of contact with the Agency.
 - (B) For an AEL consortium, on behalf of AEL consortium members, the AEL grant recipient shall:

- (i) transmit questions and grant-related needs for AEL consortium members to the Agency; and
 - (ii) carry out the programmatic functions of an AEL grant by communicating regularly with members of the AEL consortium and by sharing information, policy or procedural changes, and technical assistance provided by the Agency to oversee the grant.
- (2) Monitoring. The AEL grant recipient shall:
 - (A) monitor programmatic and fiscal progress against goals and project deliverables; and
 - (B) timely notify the Agency of problems related to achievement of programmatic and fiscal goals of the grant in accordance with appropriate systems to receive and compile outcome measures and fiscal reports.
- (3) Technical assistance. The AEL grant recipient shall carry out the programmatic and reporting functions of an AEL grant by providing or requesting technical assistance for its program, or in an AEL consortium for AEL consortium members, related to the design, implementation, and internal evaluation of their AEL services or support services.
- (4) Professional development. The AEL grant recipient shall plan and coordinate the provision of necessary professional development opportunities for its program, or in an AEL consortium to the AEL consortium members.
- (5) Reporting. The AEL grant recipient shall:
 - (A) collect and compile all fiscal and programmatic information regarding the activities, expenses, and performance outputs and outcomes of the AEL grant; and
 - (B) submit this information to the Agency.
- (6) Workforce area coverage.
 - (A) The AEL grant recipient shall ensure that services are provided to the portion of the workforce area designated in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.
 - (B) For an AEL consortium, the AEL grant recipient shall ensure that services are provided to the portion of the workforce area, as designated for the consortium in the AEL grant application, whether through in-person services or distance learning, or a combination of methods.
 - (i) If a consortium member fails to perform in accordance with the AEL consortium's coordinated service delivery plan, the AEL grant recipient shall provide technical assistance, as appropriate;
 - (ii) If a consortium member withdraws from a consortium, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The AEL grant recipient shall coordinate with remaining consortium members to develop an alternative proposal for service delivery and submit it to the Agency for approval;
 - (iii) If an AEL lead organization of a consortium withdraws from a consortium or from its role as the lead organization of the consortium, the AEL grant recipient must ensure that a letter of intent to withdraw is provided to the Agency contract manager. The AEL grant recipient must coordinate with remaining

consortium members to identify an alternative lead organization of the consortium and submit it to the Agency for approval; and

- (iv) If, in a workforce area with multiple consortiums that cover the entire workforce area, one or more consortiums withdraws, the AEL grant recipient shall ensure that a letter of intent to withdraw is provided to the Agency's grant contract manager. The Agency will coordinate with the remaining consortiums to develop an alternative proposal for service delivery for the entire workforce area.
- (g) For an AEL consortium, the Agency reserves the right to reevaluate an AEL grant in light of any change in the AEL consortium membership based on the consortium's continued ability to meet the terms of the original grant award as demonstrated through an alternative proposal. The Agency's reevaluation may include termination of all awards under the AEL consortium if deemed appropriate.
 - (1) If an AEL consortium or AEL consortium member withdraws, the funds and activities committed to in the application shall not be shifted to another AEL consortium, AEL consortium member, or a new institution without written Agency approval.
 - (2) The AEL grant recipient shall contact the Agency's grant contract manager to discuss options for replacement grants within the AEL consortium.

The provisions of this §805.42 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.43. Advisory Committees.

Statewide Advisory Committee. The Commission shall establish a statewide AEL advisory committee, composed of no more than nine members appointed by the Commission.

- (1) Committee members shall:
 - (A) have AEL expertise and may include adult educators, providers, advocates, current or former AEL students, and leaders in the nonprofit community engaged in literacy promotion efforts;
 - (B) include at least one representative of the business community and at least one representative of a Local Workforce Development Board (Board); and
 - (C) serve for staggered two-year terms and be limited to one term.
- (2) Membership shall be reviewed when a member's employment changes to determine whether the individual continues to meet the requirements for membership.
- (3) The committee shall meet at least quarterly and submit a written report to the Commission on an annual basis.
- (4) The committee shall select a presiding officer as required by Texas Government Code, Chapter 2110.
- (5) The committee shall advise the Commission on:
 - (A) the development of:
 - (i) policies and program priorities that support the development of an educated and skilled workforce in the state;

- (ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;
 - (iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and
 - (iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;
- (B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and
- (C) any other issue the Commission considers appropriate.

The provisions of this §805.43 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.44. Match Requirements.

- (a) AEL grant recipients shall provide and document any cash or in-kind match. The match shall be met using nonfederal (i.e., local or state) sources.
- (b) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.
- (c) The match may include allowable costs, including the following:
 - (1) Goods and services;
 - (2) Fair market value of third-party goods and services donated by volunteers and employees or other organizations; and
 - (3) Supplies, equipment, and building space not owned by the AEL fiscal agent.
- (d) The AEL grant recipient shall maintain auditable records for all expenditures relating to the cash or in-kind match, the same as for funds granted through an approved application.
- (e) If public funds are used, other than state and federal AEL funds, in AEL instructional programs, the programs may claim a proportionate share of the student contact time as the cash or in-kind match.

The provisions of this §805.44 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.45. Tuition and Fees.

Tuition and fees shall not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by tuition and fees shall be used for the AEL instructional programs.

The provisions of this §805.45 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

SUBCHAPTER D. OTHER PROVISIONS

§805.61. Staff Development and Special Projects.

From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.

The provisions of this §805.61 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.

§805.62. Evaluation of Programs.

The Commission shall evaluate AEL programs based on the indicators of program quality for adult education.

The provisions of this §805.62 adopted to be effective February 24, 2014, as published in the Texas Register, February 21, 2014, 39 TexReg 1205.