

CHAPTER 805. ADULT EDUCATION AND LITERACY

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON FEBRUARY 4, 2014, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

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The Texas Workforce Commission (Commission) adopts new Chapter 805, relating to Adult Education and Literacy, comprising the following subchapters and sections, *without* changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8612):

Subchapter A. General Provisions, §§805.1, 805.2, 805.4, and 805.5

Subchapter B. Staff Qualifications, §805.21

Subchapter C. Service Delivery Structure and Alignment, §§805.41, 805.42, 805.44, and 805.45

Subchapter D. Other Provisions, §805.61 and §805.62

The Commission adopts new Chapter 805, relating to Adult Education and Literacy, comprising the following subchapters and sections, *with* changes, as published in the November 29, 2013, issue of the *Texas Register* (38 TexReg 8612):

Subchapter A. General Provisions, §805.3

Subchapter B. Staff Qualifications, §805.22 (withdrawn)

Subchapter C. Service Delivery Structure and Alignment, §805.43

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Senate Bill (SB) 307, enacted by the 83rd Texas Legislature, Regular Session (2013), added Texas Labor Code, Chapter 315, which transferred adult education and literacy (AEL) programs from the Texas Education Agency (TEA) to the Commission no later than January 1, 2014.

SB 307 mandates that the Commission:

- develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;
- develop the mechanism and guidelines for the coordination of comprehensive adult education and related skills training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

- administer adult education funding;
- prescribe rules and standards for teacher certification and accreditation; and
- develop a standardized assessment mechanism, and monitor and evaluate educational and employment outcomes of students who participate in AEL programs.

In addition, SB 307 mandates that the Agency use a competitive procurement process to award contracts to service providers of local education programs. To complete a competitive procurement and have contracts in place by July 2014, a January 2014 target date has been set for the adoption of new Chapter 805, regarding AEL.

Further, to fully incorporate AEL programs into the Agency's administrative oversight framework, amendments are necessary in Chapter 800, regarding General Administration, and Chapter 802, regarding Integrity of the Texas Workforce System. To ensure a seamless transition of rules, the Chapter 800 and Chapter 802 amendments are adopted concurrently with this rulemaking.

The Commission is well positioned to administer the AEL programs due to its existing network of partnerships and long-standing commitment to promote and support an effective workforce system that offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. The Commission, in partnership with 28 Local Workforce Development Boards (Boards) across the state, forms Texas Workforce Solutions, which is available to employers, workers, job seekers, and youth throughout the state. Texas Workforce Solutions provides vital workforce development tools that help workers find and keep good jobs, and help employers hire the skilled workers they need to expand their businesses. Through Workforce Solutions Offices across the state and in collaboration with workforce partners, including community colleges, AEL providers, local independent school districts, economic development groups, and other state agencies, Texas Workforce Solutions provides innovative services to support employers and workers. Collaboration and coordination across these agencies and local entities play a critical role in the success of the Texas workforce system.

To better understand the major issues currently facing adult education, the Commission held a series of nine public meetings across the state to hear from stakeholders concerning the transfer of the AEL programs from TEA to the Commission, and to gather input about what is currently working well and where there is opportunity for improvement. AEL stakeholder communication has continued throughout the transition, and the Commission greatly values the thoughts, recommendations, and suggestions provided by the AEL stakeholder community.

The purpose of new Chapter 805 is to set forth the following for AEL programs:

- General provisions
- Allowable use of state and federal funds
- Essential program components
- Diploma requirements
- Staff qualifications and training
- Staff service requirements
- Procurement and contract provisions
- Program delivery system

- Advisory committees
- Match requirements
- Tuition and fees
- Staff development and special projects
- Evaluation of programs

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts new Subchapter A, General Provisions, as follows:

§805.1. Purpose

New §805.1(a) states that this chapter may be referred to as the AEL rules.

New §805.1(b) sets forth the purpose of the AEL programs, which is to provide adults with sufficient basic education that enables them to effectively:

- acquire the basic educational skills necessary for literate functioning;
- participate in job training and retraining programs;
- obtain and retain employment; and
- continue their education to at least the level of completion of secondary school and preparation for postsecondary education.

In enacting SB 307, the Texas legislature expressed the importance of obtaining and retaining employment, continued education, and acquiring basic skills needed for literate functioning.

The mission of the Commission is to promote and support an effective workforce system that offers employers, individuals, and communities the opportunity to achieve and sustain economic prosperity. By providing opportunities for literacy and basic educational development, the AEL program clearly aligns with this mission by delivering the foundational skills Texas needs for both economic competitiveness and community development.

The Texas workforce system offers a diverse range of services within Texas communities that support current and future economic prosperity for employers, workers, job seekers, students, and communities. The Commission has a long-standing commitment to providing employment services, consistent with Workforce Investment Act, Title I, including job training and retraining programs, which lead to obtaining and retaining productive employment. Providing employment services and developing innovative ways to help eligible individuals find employment opportunities in high-growth, high-wage industries are central to that commitment. The Commission and its workforce partners provide services that lead to thousands of eligible job seekers entering employment each year. These services include job search assistance, labor market and career-planning information, access to training, and unemployment benefits to those who lose their jobs through no fault of their own.

Additionally, the Commission:

- provides services to targeted populations within communities to help them find or maintain

- employment and become self-sufficient;
- oversees federal funds, which subsidize child care for low-income families and enable parents to work or attend workforce training or education activities; and
- supports job readiness and job-specific skills training for targeted populations with the goal of leading these individuals to self-sustaining employment.

Providing Texas' current and future workforce with education, training, and workplace opportunities is essential to the state's future growth and success, and critical to the Commission's mission. To ensure that Texas' workforce has the skills to meet workforce needs now and into the future, the Commission:

- supports programs that identify educational and career paths for students, including vocational and technical training, as well as those that require two-year, four-year, and higher education levels; and
- develops and distributes educational materials and online tools to help students of all ages and at all levels identify career pathways.

In past years, the Commission has reinforced that commitment by funding workplace literacy training projects across Texas, thereby providing eligible individuals with limited English proficiency or individuals in need of adult education with workplace literacy training integrated with occupational skills training. These projects have allowed eligible individuals to increase functional education levels and earn a certificate or other credential, ultimately leading to employment, career advancement, and increased wages.

Comment: Nine commenters expressed support of the proposed rules and the direction of the AEL program moving forward. Of these, seven commenters expressed appreciation for the Commission's commitment to move more adults into career and technical postsecondary education and focus on promoting career pathways and integrated service delivery, and believe this focus will help provide the skills necessary for moving more adults into stable and higher-paying jobs.

Response: The Commission appreciates the comments.

§805.2. Definitions

New §805.2(1) defines "adult education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rules at 19 Texas Administrative Code (TAC) §89.21(1), without modification.

New §805.2(1)(A) defines "adult basic education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(A), with modifications to clarify that adult basic education instruction is in reading, writing, "and speaking and comprehending" English.

New §805.2(1)(B) defines "adult secondary education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(B), without modification.

New §805.2(1)(C) defines "English literacy education." Based on an extensive review of TEA rules and consideration of input from numerous AEL stakeholders, the Commission retains this definition as contained in TEA rule §89.21(1)(C), without modification.

New §805.2(2) defines "AEL consortium" as 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, 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.

A consortium may include a Board, but Board membership is not required. However, in order to ensure a connection to local workforce needs, an AEL consortium must consider and use local labor market data and information regarding employer needs in designing and proposing service delivery strategies.

New §805.2(3) defines "AEL fiscal agent" as 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.

New §805.2(4) defines "AEL grant recipient" as an eligible grant recipient within a local workforce development area (workforce area), as defined in new §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.

New §805.2(5) defines "AEL lead organization of a consortium" as 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 have taken responsibility as the lead organization of the consortium.

New §805.2(6) defines "AEL service provider" as an entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

New §805.2(7) defines "contact time." Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, this section retains the provisions of TEA rule §89.21(3), with modifications to replace the reference to TEA rule "§89.25" with a reference to Commission rule "§805.21."

New §805.2(8) defines "eligible grant recipient" as an entity 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.

§805.3. Federal and State AEL Funds

New §805.3(a) provides that federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and:

- (1) function at less than a secondary school completion level;
- (2) lack a secondary school credential; or
- (3) are unable to speak, read, or write in English.

New §805.3(b) provides that state AEL funds are to be used for AEL programs for out-of-school individuals who are beyond compulsory school attendance age and:

- (1) function at less than a secondary school completion level;
- (2) lack a secondary school credential; or
- (3) are unable to speak, read, or write in English.

New §805.3(c) provides that 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, must not exceed the grant recipient's percentage of federal funds to the total allocation.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.3(a) - (c) retains the provisions of TEA rule §89.22, without modification.

Although the requirements outlining the allowable use of federal and state funds are retained, the Commission supports employment and training awareness, readiness, and transition opportunities for students and understands that often those who seek services with defined career and higher education goals, who have previous work experience, or who may be functioning at higher levels and need very targeted remedial strategies, are most likely to benefit from service alignment. It is the Commission's intent to support program designs and operations to deliver increased secondary education and career and higher education outcomes for students, including individuals who are low income or have minimal literacy skills.

New §805.3(d) states that the Commission must 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 Commission's goal is to incrementally increase the proportion of students who exit

workforce services work ready or are enrolled or coenrolled in college and career training, including those who are registered for work; receiving workforce services through Texas Workforce Solutions; enrolled or coenrolled in a postsecondary education or training program; or currently working in low-wage, low-skill jobs and desire a career change, promotion, or wage increase. The Commission will use the current program year to determine baseline numbers of students across these metrics.

The Commission recognizes that the increase in career and higher education outcomes will occur gradually over multiple years through enhanced enrollment and performance criteria, incentives for innovative acceleration, integration and transition models, and related technical assistance and professional development to support expansion. This comprehensive approach will allow continuity of services, while steadily supporting an upward trajectory in the program's overall direction toward increased employment and training, outcome-based performance (consistent with the requirements in SB 307), recent changes in performance standards at the federal level, and local employer demand.

Comment: Four commenters recommended that the Commission enhance data collection and reporting of ABE and literacy services and ensure that performance outcome data be made available to the public on a quarterly and annual basis.

Response: The Commission recognizes the importance of data in program design, development, implementation, management, and evaluation, and thus, strongly supports data collection for all programs it administers. The Commission also recognizes the importance of transparency and openness, and is committed to making AEL performance outcome data available to the public on at least an annual basis.

Comment: Two commenters pointed out that while the Commission's goal of increasing the proportion of students who exit services ready to work or who are enrolled in college or career training is admirable, the unintended consequence may be that programs become more focused on serving higher-functioning AEL students to the detriment of lower-functioning students.

Response: The Commission has stated clearly that, although it supports positive employment and career training outcomes for all, there are certain individuals who have low incomes or minimal literacy skills who will benefit from AEL services. While there may be a correlation between students functioning at higher levels and work or career readiness, data indicates that many students functioning at lower levels are already working in low-wage, low-skill jobs and often enter AEL services to gain the skills or English fluency needed to advance in the workforce. Additionally, while many career and technical training programs are aligned to the abilities of higher-skill students, Texas has developed and implemented models, such as the Texas Higher Education Coordinating Board's Accelerate Texas initiative, that provide students with lower skills or limited English with access to career and technical training.

The Commission is committed to making long-term investments in the system that develop the capacity of providers to implement such research-based models, including

programs that promote concurrent education and workforce training and distance learning, and provide services that result in employment-advancement outcomes for students. The Commission strongly supports the use of innovative career pathway programs that provide opportunities for students at all levels to obtain incremental success, and ultimately to achieve their goals. The Commission believes that the use of a number of innovative strategies, often using interagency collaborations, allows the program to develop increased employment and workforce training outcomes over time, while serving more students, regardless of functional level.

Comment: Three commenters expressed concern that the Commission's goal of increasing the proportion of students who exit services ready to work or who are enrolled in college or career training will have the consequence of fostering an adult education program environment that would be less welcoming to Texas immigrants and individuals who are not legal citizens.

Response: SB 307 requires the Commission to implement the state AEL program and to develop the mechanisms and guidelines for the coordination of AEL services with workforce and career and technical education services, which are designed to ensure employers have a ready and skilled workforce. When implementing AEL services that are coordinated with workforce and career and technical education services, the Agency leverages the services available through our complementary programs.

Consistent with both SB 307 and federal guidance, the Commission will focus on advancing positive career and postsecondary transition outcomes, building expectations based on current year performance. Texas benefits economically from its large and diversified immigrant population and will continue innovative models that build the educational attainment, English fluency, and technical skills of this population.

Comment: One commenter suggested that the regulations regarding allowable use of federal funds, specifically the population that can be served, set forth in §805.3(a), be brought in line with the rules regarding the population that can be served with state funds.

Response: The Commission clarifies that requirements pertaining to the population that can be served with federal funds are set forth at 20 USC §9202 et seq. The Commission does not have authority to change federal requirements. Under AEFLA, federal funds can be used for services to individuals age 16 and older, but only if those out-of-school individuals are not enrolled or required to be enrolled in secondary school under state law and also meet certain functional criteria. Because the compulsory age of attendance in Texas public schools is 18 years of age, state funds can be used only for individuals age 18 and older, unless specifically exempted from compulsory school attendance by Texas Education Code §25.086.

Thus, the Commission modifies this section to clarify the distinction and fully align the rules with state and federal provisions, including that 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 lack

sufficient mastery of basic educational skills to enable the individuals to function effectively in society; do not have a secondary school diploma or its recognized equivalent and have not achieved an equivalent level of education; or are unable to speak, read, or write the English language.

Comment: Eight commenters stressed the importance of family literacy and urged the Commission to ensure alignment with SB 307, which directs the Commission to "provide, within the context of administering adult education and literacy programs, training opportunities for parents regarding how to be the primary teachers for their children and full partners in their children's education."

Response: The Commission agrees that providing AEL services to parents is an important, and required, component of the AEL system. Not only do these services benefit the parents but they benefit the children and the family as a whole. Parents who engage in adult education, and enter and complete career training and higher education, greatly increase their potential earnings and become important role models and guides for their children.

The Commission envisions great opportunities for AEL to support intergenerational literacy efforts based on implementing the objectives of SB 307 and aligning these efforts with other recently passed legislation designed to increase high school completion and seamless transitions to college and career. For example, House Bill 5 presents an opportunity for supporting intergenerational literacy and career exploration objectives by providing parents who are exploring career pathway options in AEL programs with an opportunity to support their children in selecting career endorsements for high school coursework.

The Commission believes it is critical for AEL programs to create innovative ways to align curriculum and classroom activities that support career awareness and exploration for the enrichment of AEL students and to support these students in becoming effective guides and teachers for their children. The Commission is focused on identifying opportunities to ensure that all partners in the AEL service delivery system have the tools, professional development, and support necessary to provide services that prepare adults to support their families, careers, and communities.

Comment: Four commenters recommended that the Commission promote access to ABE and literacy services for immigrant youth potentially eligible for legal relief under the Deferred Action for Early Childhood Arrivals (DACA) program.

Response: The Commission strongly believes in the value of local control and flexibility for local programs--including AEL. While targeting immigrant youth who may be eligible to obtain legal relief through DACA may be one mechanism to further strengthen the Texas workforce, the Commission supports an environment where local programs have discretion to establish service options that will most that benefit their local communities.

§805.4. Essential Program Components

New §805.4 identifies the following essential program components that AEL grant recipients must ensure are provided by AEL programs:

- (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.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.4 retains the provisions of TEA rule §89.23, with modifications to make minor, nonsubstantive, editorial changes.

Comment: Four commenters requested that the Commission include financial literacy training and resource materials in AEL curriculum.

Response: Texas Labor Code §302.0027 requires the Agency and Boards to ensure that all workforce development programs include financial literacy training, and the Commission has emphasized the importance of this need to Boards in several directives. The Commission recognizes the value of financial literacy training and resources for AEL students, as well as for all individuals served through the Texas workforce system. Boards and local community colleges provide financial literacy training for the customers they serve. The Commission's intent is for grantees to coordinate the provision of financial literacy services with other entities in the workforce area.

§805.5. Diploma Requirements

New §805.5 identifies that the standards for the awarding of diplomas to adults must be those established under 19 TAC, 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 must meet the requirements for successful performance on a secondary-level test designated by the commissioner of education.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.5 retains the provisions of TEA rule §89.24, without modification.

Comment: One commenter requested clarification regarding the procedures in place for awarding high school diplomas.

Response: The procedures for awarding of diplomas to high school adults remain unchanged. With the exceptions set forth in §805.3, the procedures continue to follow TEA rules at 19 TAC, Chapter 74, Subchapter A.

SUBCHAPTER B. STAFF QUALIFICATIONS

The Commission adopts new Subchapter B, Staff Qualifications, as follows:

§805.21. Staff Qualifications and Training

New §805.21 sets forth the following provisions regarding staff qualifications and training for all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff:

- (1) All staff must receive at least 12 clock hours of professional development annually.
- (2) All staff new to AEL and assigned assessment and instructional duties must receive six clock hours of in-service professional development before they begin work in assessment and instructional activities, in addition to the annual professional development requirements set forth in paragraph (1) of this section.
- (3) Aides must have at least a high school diploma or high school equivalency certificate.
- (4) Directors, teachers, counselors, and supervisors shall possess at least a bachelor's degree.
- (5) Directors, teachers, counselors, and supervisors without valid Texas teacher certification shall attend 12 clock hours of in-service professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of AEL college credit or attained two years of AEL experience.
- (6) The requirements for in-service professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of in-service professional development. Documentation justifying these circumstances must be maintained. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Commission for approval in the application for funding and must include justification and proposed qualifications.
- (7) Records of staff qualifications and professional development must be maintained by each fiscal agent and must be available for monitoring.
- (8) The requirements in paragraphs (1) - (6) of this section also apply to volunteers who generate student contact time, as defined in §805.2, which is accrued by the AEL program and reported to the Commission for funding purposes.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.21 retains the provisions of TEA rule §89.25, with modifications.

Current TEA rule at §89.25(2) requires that staff receive six clock hours of preservice professional development before they can begin work in an adult education program. Historically, the preservice requirement has led to issues and misunderstanding regarding the types of acceptable, compensable pre- and post-hire activities. Concern has been expressed that noncompensated preservice requirements hinder local programs in hiring qualified staff. An exhaustive review of local program preservice requirements indicated that many of the

requirements should be considered post-hire activities, and thus staff should be compensated for their time. Thus, new §805.21(2) provides that all staff new to AEL and assigned assessment and instructional duties must receive six clock hours of in-service professional development before they begin work in assessment and instructional activities.

§805.22. Staff Service Requirements

New §805.22 provides that teachers and aides must be assigned to instruction, counseling, or assessment for a minimum of 75 percent of the hours for which they are employed. Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.22 retains the provisions of TEA rule §89.26, without modification.

Comment: One commenter expressed concern with §805.22, requiring teachers and aides to be assigned to instruction, counseling, or assessment for a minimum of 75 percent of the hours for which they are employed. The commenter stated that although the allowable percentage of time spent on instruction may be appropriate to experienced teachers, teachers with less than two years of experience in adult education need more professional development and training outside of the classroom, exceeding the 25 percent threshold for these activities.

Response: The Commission agrees with the comment and withdraws §805.22 regarding staff service requirements. The Commission concurs that uniform time-allocation requirements related to instructional and non-instructional duties do not give providers the flexibility needed to accommodate the instructional, preparation, professional development, and other responsibilities they are required to participate in, or consider the time constraints of a largely part-time instructional workforce. Removing this requirement allows providers the flexibility to assign duties to instructors in accordance with job descriptions and program demands. While making the change, the Commission underscores its commitment to quality classroom instruction and stresses the importance of maximizing the time that teachers and aides spend in the classroom, where they can positively impact the lives of students by providing AEL services that assist in meeting career and life goals.

SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT

The Commission adopts new Subchapter C, Service Delivery Structure and Alignment, as follows:

§805.41. Procurement and Contracting

New §805.41 establishes the structure of the AEL program delivery system as follows:

- (a) Beginning with Program Year 2014, eligible grant recipients must compete for funding through a statewide procurement process conducted in accordance with federal and state procurement requirements. AEL funding must be allocated as set forth in new §800.68 of this title.
- (b) Eligible grant recipients must apply directly to the Agency using the request for proposals (RFP) process, and must meet all deadlines, requirements, and guidelines set forth in the RFP.
- (c) Contracts awarded to AEL grant recipients must be limited to two years, with the option of

three one-year renewals, at the Commission's discretion. In considering a renewal, the Commission must 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 must 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.

SB 307 mandates that the Commission ensure that public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations have direct and equitable access to those funds. It is the intent of the Commission that these entities each have direct and equitable access to AEL funding opportunities, as evidenced in the proposed AEL program delivery system, and that the appropriate safeguards are in place to ensure access.

Both SB 307 and federal law mandate that a competitive procurement process be used to award AEL funds. The last competitive procurement for these funds occurred in 2003. The lack of competitive procurement for 10 years has effectively removed incentives for performance and detrimentally affected equal and equitable access for those looking to become a part of the system. To comply with the competitive procurement process mandated by SB 307 and federal law, the Commission must address these and other issues surrounding competitive procurement, including alignment with the workforce system.

Beginning with Program Year 2014, eligible grant recipients will be required to compete for funding through a competitive procurement process. Eligible grant recipients must apply directly to the Agency for AEL funding. Eligible grant recipients may compete against other eligible grant recipients for all or a portion of the funds allocated to each workforce area. More than one AEL grant recipient may be awarded in a workforce area. An application may represent an eligible grant recipient, consortium, or multiple consortiums, in order to demonstrate administrative efficiencies and maximization of available funds for services across a workforce area.

It is the intent of the Commission that preference be given to grant applications that demonstrate:

- the ability to expand access to services through the judicious use of distance-learning strategies in urban and rural areas, and for populations where physical access is limited;
- the use of research-based models that achieve substantial learning gains in reading, writing, speaking the English language, numeracy, problem solving, and other literacy skills;
- the use of research-based models that facilitate and accelerate the transition of students to employment or postsecondary education and training in high-growth, high-demand occupations and career pathway models that lead to employment; and

--the capability to leverage community groups in the delivery of services, including volunteer-based literacy providers, libraries, and other organizations providing AEL services.

Preference will also be given to grant applicants that can demonstrate:

--the coordination of service delivery and data sharing with Boards and workforce service providers;

--administrative efficiencies, including proposals reflecting less administrative costs than the maximum allowed, and maximization of funds for service delivery in workforce areas where multiple eligible grant recipients are present; and

--an ability to comprehensively provide services to an entire workforce area.

Preference will not necessarily be given to an eligible grant recipient application to serve an entire workforce area, but rather for an approach, regardless of the number of eligible grant recipients, that is the most administratively effective within a workforce area.

Contracts awarded to AEL grant recipients will be limited to two years, providing enough time to establish programs, but with the option of three one-year renewals at the Commission's discretion, taking into account performance and other factors. Renewals for years three, four, and five are not automatic, and will be based on satisfactory performance on meeting or exceeding performance and expenditure benchmarks, or other factors as determined by the Commission. At the completion of the five-year maximum contract term, the Commission will conduct a new competitive statewide procurement. All contracts, including those that have been in effect for less than the maximum five-year contract term, must be competitively procured during subsequent statewide procurements.

Comment: One commenter requested clarification on the type of Boards that are expected to support AEL grant recipients as referenced in §805.41.

Response: The Commission clarifies that the Boards referenced in §805.41, and throughout this chapter, refer to Local Workforce Development Boards, which partner with the Commission to form the Texas workforce system.

Comment: One commenter requested clarification regarding whether there could be more than one program in a workforce area.

Response: The Commission clarifies that more than one AEL grant recipient in a workforce area may be awarded AEL funds. Eligible grant recipients will apply directly to the Agency for funding, and may compete against other eligible grant recipients for all or a portion of the funds allocated to each workforce area.

Comment: Four commenters pointed out that proposed rules should encourage and reward competitive programming that embeds career, workforce, and career readiness into all levels of ABE and ESL instruction.

Response: The Commission has been vocal about the importance of embedding workforce and career readiness throughout the AEL program using integration and

innovative strategies such as career pathways and bridge models, which allow students to reach goals and obtain positive outcomes. The Commission intends to give preference to grant applications that demonstrate an ability to embed workforce and career readiness throughout their AEL programs, in addition to a number of other criteria. Further, the Commission intends to reward local programs that achieve performance benchmarks, as set forth in §800.68 of this title.

Comment: One commenter agreed that adult education will benefit from a grant competition beginning in 2014 and that a five-year funding cycle is appropriate.

Response: The Commission appreciates the comment.

Comment: One commenter asked that the Commission consider the relatively small amount of money available under the EL/Civics set-aside and whether it is efficient or effective to grant these funds under a separate competition in any or all of the workforce areas.

Response: The Commission will allocate the EL/Civics federal funds to workforce areas in Texas on the same basis (and using the same data) as used by ED in allocating the funds to Texas. Based on the comment, the Commission will consider whether including the AEL and EL/Civics funding in one competition is a more effective use of the available funds.

§805.42. Program Delivery System

New §805.42 sets forth the requirements for the AEL 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 from 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 must:
 - (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 must:
 - (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 must 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 must 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 must:
 - (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 must ensure that services are provided to the portion of the workforce area 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 consortium's coordinated service delivery plan, the AEL grant recipient must provide or request technical assistance, as appropriate.
 - (ii) If a consortium member withdraws from a 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 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 upon the consortium's continued ability to meet the terms of the original grant award as demonstrated through the 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 may not be shifted to another AEL consortium, AEL consortium member, or to a new institution without written Agency approval.
 - (2) The AEL grant recipient must contact the Agency-designated grant contract manager to discuss options for replacement grants within the AEL consortium.

TEA rule §89.22 mandated a statewide system of adult education cooperatives for the coordinated provision of adult education services. Service delivery areas, while not clearly defined, must be large enough to support required program activities while allowing for the efficient and effective delivery of services. Under the existing model, eligible grant recipients have applied directly to TEA for funding often working in coordination with a consortium/cooperative to reduce duplication of services and minimize excessive costs. Each consortium has been headed by a grant applicant that serves as the lead for the consortium and acts as the fiscal agent. There has been no prohibition against entities that directly provide AEL services from acting as the fiscal agent of the consortium.

Currently, there is a statewide network of 55 consortium grantees that deliver AEL services and 53 grantees, often overlapping, that deliver English Literacy and Civics services. TEA service delivery areas are not consistently aligned with the Commission's workforce areas, independent school districts, education service center regions, or community college districts. As a result, each workforce area may have multiple service providers, potentially creating inefficiencies and difficulties in aligning AEL programs with workforce services, data, and resources, and, ultimately, programmatic employment goals and objectives.

The Texas workforce system is organized geographically across the state, comprising 28 workforce areas with workforce services managed by a network of Boards. Boards are

responsible for contracting out most direct services through local contractors that operate largely through Workforce Solutions Offices. Recognizing the importance of program efficiencies and avoiding duplication of services, and that one service delivery model may not work in all parts of the state, the new AEL program delivery system will require that service delivery areas be defined and represented by grant recipients that drive service delivery, but enhancing efficiency and coordination with the Texas workforce system by requiring that service delivery areas be aligned geographically with workforce areas. Thus, AEL funds will be allocated geographically to workforce areas, and eligible grant recipients, as defined in §805.2(8), will apply directly to the Commission for AEL funding.

The Commission believes that students are best served through a model where partners can provide an array of services. The main function of the grant recipient is to apply and execute AEL funds in a strategic, coordinated, and cost-efficient manner. If the eligible grant recipient is an AEL consortium, it must include an AEL grant recipient, AEL service provider(s), and an AEL fiscal agent. Definitions of AEL grant recipient, AEL service provider, and AEL fiscal agent are set forth in §805.2. Consortium members may serve in one or more of these capacities. Historically, AEL grantees have assumed all of these roles. By defining these functions independently, the Commission intends to provide flexibility and to open access to different organizations to execute roles centered on their individual organizational strengths. For example, a Board may have strong fiscal and monitoring abilities and provide a variety of organizational and workforce development resources, while a regional literacy council may be less established in these areas, but better able to coordinate, direct, and align educational services across a workforce area. Community colleges and local education agencies, each within their specific service areas, would act in their traditional role as service providers. By acting in concert, and leveraging their organizational strengths, these diverse consortium members would be more competitively positioned to effectively and efficiently address the needs of regions larger than many grant recipients historically have been able to address, but without forcing organizations to operate outside their areas of strength or designated service areas. To complement and augment services to address the varied needs of adult learners, consortiums may include other educational and human service agencies, community-based organizations, libraries, and volunteer-based literacy providers that agree to collaborate for the provision and support of AEL services. These groups would combine resources and services to comprehensively serve and support those eligible to receive AEL services.

At a minimum, Boards are expected to support AEL grant recipients with strategic and program design guidance through analysis of employment statistics and local labor market information, regional economic development, and industry or occupational demand studies; identification of targeted high-growth or emerging industries; and prioritization or targeting of high-growth, high-demand occupations for which Boards direct their training resources. Boards may also support direct services for eligible individuals by aligning the education, training, and employment services and support services provided by their workforce service providers with AEL service providers such as enrollment or coenrollment in technical training, related support services, on-the-job training, and employment guidance.

The intent of the Commission is to establish a statewide system of AEL grant recipients aligned and coordinated with the workforce system that provide AEL services on a coordinated basis

within each workforce area. Each AEL grant recipient must 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. AEL grant recipients must also expand, improve, and coordinate delivery of education, career training, workforce development, and support services to support both program performance and greater efficiencies.

An AEL grant recipient must perform all services and activities required to fully comply with the Agency's contract performance requirements and all contract terms and conditions. An AEL grant recipient's responsibilities include, but are not limited to, communication, monitoring, technical assistance, professional development, reporting, and ensuring workforce area coverage, as set forth in §805.42(d).

It is also the Commission's intent that if the AEL grant recipient is an AEL consortium, it must designate an entity to serve as the AEL lead organization of the consortium and 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 with the AEL grant recipient that will review all reports and submit to the Agency on behalf of the consortium.

Comment: One commenter recommended that AEL programs be encouraged to partner with other institutions and agencies that provide further education, employment-related training, and opportunities for employment.

Response: The Commission reiterates its intent that AEL programs work closely with workforce partners, including Boards and Workforce Solutions Offices across the state, and community colleges, AEL providers, independent school districts, economic development groups, community and volunteer-based literacy providers, and other state agencies to help meet the employment, education, and training needs of students. Collaboration and coordination with these partners play a critical role in the success of AEL programs, as well as the Texas workforce system.

Comment: One commenter suggested that the Commission consider expanding its vision for adult education programs to embrace service delivery models that "expand, improve, and coordinate delivery of education, career training, workforce development and support services" to include the coordination and delivery of entrepreneurship training and small business development.

Response: The Commission and Boards, in partnership with a number of state and local organizations, provide access to information and resources for individuals starting or expanding their businesses, and directly administer programs that support the needs of growing and expanding small businesses. Individuals who are served through AEL programs will have access to information and resources to assist with business creation or expansion.

Comment: One commenter requested that the Commission strengthen the AEL system by building capacity for community and volunteer-based literacy providers and incentivizing their inclusion in regional consortiums.

Response: As stated in the preamble discussion of §805.1 and §805.41, the Commission recognizes the importance of building capacity for community and volunteer-based literacy providers to serve AEL students. Community and volunteer-based literacy providers may serve as AEL service providers and AEL grant recipients as specified in 20 USC §9202 and Texas Labor Code §315.003. The Commission recognizes the value these entities offer to the community's advancement, and has provided that preference be given to grant applications that demonstrate the capacity to leverage community groups in the delivery of services, including volunteer-based literacy providers, libraries, and other organizations providing AEL services.

Comment: Four commenters expressed support for the proposed emphasis on analyzing workforce needs within each region, specifically the guidance given to "expand, improve, and coordinate delivery of education, career training, workforce development, and support services to support both program performance and greater efficiencies." The commenters also recommended revising this section to ensure that support services are clearly defined to incorporate research-based integrated service delivery systems.

Response: The Commission intends to expand upon the delivery of integrated AEL and vocational training models, such as the Accelerate Texas initiative administered by the Texas Higher Education Coordinating Board. Critical to the success of such programs is the identification and provision of support services. The continued enhancement of AEL providers' partnerships with Boards, community colleges, community-based and faith-based organizations, and other local organizations ensures that AEL students have the infrastructure and support services to gain necessary basic skills and successfully transition to productive career and postsecondary pathways.

§805.43. Advisory Committees

New §805.43 sets forth the criteria regarding a statewide AEL advisory committee.

--Statewide Advisory Committee--The Commission shall establish a statewide AEL advisory committee, composed of not more than nine members appointed by the Commission.

--(1) Committee members must:

--(A) have expertise in AEL and may include adult educators, providers, advocates, current or former AEL program 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 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 report to the Commission on an annual basis.

SB 307 mandates the establishment of a statewide AEL committee. The statute requires that the committee must meet at least quarterly, and advise the Agency annually on a number of issues pertaining to the AEL community. These issues include the development of policies and program priorities that support the development of an educated and skilled workforce in Texas, statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skill development, a statewide strategy for improving student transitions to postsecondary education and career and technical education training, and a centralized system for collecting and tracking comprehensive data on performance outcomes.

Consistent with statutory requirements, the committee must be composed of no more than nine members appointed by the Commission, and members must have expertise in AEL; may include adult educators, providers, advocates, current or former AEL program students, and leaders in the nonprofit community engaged in literacy promotion efforts; and must include at least one representative of the business community and at least one representative of a Board.

To support the statewide advisory committee, the Agency will plan, organize, and staff the meetings of the advisory committee. Members will be appointed for staggered two-year terms, with initial terms being two years or three years based on random selection by the members, with membership limited to one term. Continued membership will be reviewed when a member no longer serves in the same employment capacity as when appointed.

Current TEA rule §89.28 provides a basis for the use of local advisory committees. There are currently a number of local advisory committees in place, linked in large part with the existing AEL cooperatives. Although not mandated in rule, the Commission recognizes the importance of local communities using local advisory committees or other mechanisms to bring a broad spectrum of community representatives together locally to ensure that the resources available to support AEL efforts are fully integrated with other partner services. The Commission expects that workforce areas will establish methods for ensuring that Boards and AEL grant recipients regularly communicate and plan for the delivery of services to their common customers.

Comment: One commenter requested clarification on whether or not AEL programs will have access to the statewide advisory committee to voice issues or concerns.

Response: The Commission notes that the purpose of the advisory committee is to advise the Commission on program and policy priorities. The advisory committee's first meeting is scheduled for January 2014, where the methods it will use to advise the Commission will be discussed. Organizations are urged to communicate directly with the Agency to identify areas that would benefit from technical assistance, whether to individual providers or more broadly. As the Commission continues to develop, administer, and support a comprehensive AEL program, it will continue to pursue opportunities for collaboration and engagement with all partners in the AEL community.

Comment: Four commenters requested that the statewide advisory committee select from among its members a presiding officer, pursuant to Texas Government Code, Chapter 2110, and that the rules pertaining to the advisory committee include specific references

to SB 307's intent for the committee to advise the Commission on program and policy priorities.

Response: The Commission agrees and modifies the rule. The Commission notes that Texas Government Code §2110.003 indicates that an advisory committee must select a presiding officer from among its members. The rule is modified to indicate that the AEL Advisory Committee must select a presiding officer from among its members who must preside over the committee.

Further, §2110.005 requires a state agency that establishes an advisory committee to state by rule the purpose and tasks of the committee and describe the manner in which the committee will report to the agency. SB 307 added Texas Labor Code §315.005(c), which lists the purposes of the advisory committee and indicates that the committee must report to the Commission at least annually. The Commission incorporates these provisions in rule to clarify that the purpose and tasks of the advisory committee are to advise the Commission on the following:

- (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.

In addition, the Commission modifies §805.43(3) to state that the advisory committee must submit a written report to the Commission, as required by SB 307.

§805.44. Match Requirements

New §805.44 sets forth the requirements for match requirements, as follows:

- (a) AEL grant recipients must provide and document any cash or in-kind match. The match must be met using non-federal (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 fiscal agent.
- (d) The AEL grant recipient is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved

application.

--(e) If public funds, other than state and federal adult education funds, are used in the AEL instructional program, the program may claim a proportionate share of the student contact time as the cash or in-kind match.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.44 retains the provisions of TEA rule §89.32, without modification.

§805.45. Tuition and Fees

New §805.45 provides that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by tuition and fees must be used for the AEL instructional programs.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, this section retains the provisions of TEA rule §89.33, without modification.

Comment: One commenter requested clarification regarding whether or not AEL programs will be allowed to charge tuition and fees to students.

Response: The Commission clarifies, as set forth in §805.45, that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. If statutorily authorized, an entity must use funds generated by tuition and fees for AEL instructional programs.

SUBCHAPTER D. OTHER PROVISIONS

The Commission adopts new Subchapter D, Other Provisions, as follows:

§805.61. Staff Development and Special Projects

New §805.61 provides that 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.

Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.61 retains the provisions of TEA rule §89.34(b), without modification.

§805.62. Evaluation of Programs

New §805.62 sets forth that the Commission shall evaluate AEL programs based on the indicators of program quality for adult education. Based on the Commission's extensive review of TEA rules and consideration of input from numerous AEL stakeholders, new §805.62 retains the provisions of TEA rule §89.34(c), with modifications to make minor, nonsubstantive, editorial changes.

Comment: One commenter requested clarification regarding whether or not AEL programs will be allowed to charge tuition and fees to students.

Response: The Commission clarifies, as set forth in §805.45, that tuition and fees must not be charged unless the entity charging them is statutorily authorized to do so. If statutorily authorized, an entity must use funds generated by tuition and fees for AEL instructional programs.

COMMENTS WERE RECEIVED FROM:

Amy Beneski, Associate Executive Director, Texas Association of School Administrators
Carole Belver, Executive Director of Community Action Inc. of Central Texas
Kay Brooks, Grant Project Manager for GED & ESL Program, Brazosport College
Mary Alice Carlson, Community Action, Inc.
Bret Champion, Superintendent, Leander ISD
Lori Donley, Executive Director of Literacy Texas
Leslie Helmcamp, Policy Analyst for the Center for Public Priorities
Selsa Lerma, Odessa College
Dean Ransdell, Director of Adult Education, Texarkana ISD
Lee Rector, Director of the Texas Workforce Investment Council
Kendra Shaffer, Executive Director of K-12 programs, Leander ISD
Mike Temple, Director of the Gulf Coast Workforce Development Board
Kimberly B. Vinton, Coordinator III of the Region 20 Adult Education Service Center
Barbara Yoder, Adult Education, Cleburne ISD

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The new 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.

The new rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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.

§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) 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.

- (8) 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.

§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) ~~function at less than a secondary school completion level~~ lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
 - (2) ~~lack a secondary school credential~~ 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 ~~in the~~ English language.
- (b) State AEL funds are to be used for AEL programs for out-of-school individuals who ~~are beyond compulsory school attendance age~~ have attained 18 years of age unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

- (1) ~~function at less than a secondary school completion level~~ lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
 - (2) ~~lack a secondary school credential~~ 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 ~~in 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.

§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.

§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.

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) All staff shall receive at least 12 clock hours of professional development annually.
- (2) All staff new to AEL and assigned assessment and instructional duties shall receive six clock hours of in-service professional development before they begin work in assessment and instructional activities, in addition to the annual professional development requirements set forth in paragraph (1) of this section.
- (3) Aides shall have at least a high school diploma or high school equivalency certificate.
- (4) Directors, teachers, counselors, and supervisors shall possess at least a bachelor's degree.
- (5) Directors, teachers, counselors, and supervisors without valid Texas teacher certification shall attend 12 clock hours of in-service professional development annually, in addition to that specified in paragraph (2) of this section, until they have completed either six clock hours of AEL college credit or attained two years of AEL experience.
- (6) The requirements for in-service professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of in-service professional

development. Documentation justifying these circumstances shall be maintained. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Commission for approval in the application for funding and shall include justification and proposed qualifications.

- (7) Records of staff qualifications and professional development shall be maintained by each fiscal agent and shall be available for monitoring.
- (8) The requirements in paragraphs (1) - (6) of this section also apply to volunteers who generate student contact time, as defined in §805.2, which is accrued by the AEL program and reported to the Commission for funding purposes.

~~§805.22. Staff Service Requirements.~~

~~Teachers and aides shall be assigned to instruction, counseling, or assessment for a minimum of 75 percent of the hours for which they are employed.~~

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.

§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.

§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.

§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.

§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.

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.

§805.62. Evaluation of Programs.

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