

1 **CHAPTER 805. ADULT EDUCATION AND LITERACY**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
4 **REGISTER. THIS DOCUMENT WILL NOT HAVE ANY SUBSTANTIVE**
5 **CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED**
6 **BY THE TEXAS REGISTER.**

7
8 **ON JULY 31, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
9 **RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE TEXAS**
10 **REGISTER.**

11
12 Estimated Publication Date of the Proposal in the *Texas Register*: **August 17, 2018**
13 Estimated End of Comment Period: **September 17, 2018**

14
15 The Texas Workforce Commission (TWC) proposes amendments to the following
16 sections of Chapter 805, relating to Adult Education and Literacy:

- 17
- 18 Subchapter A. General Provisions, §§805.1 - §805.4
- 19 Subchapter B. Staff Qualifications, §805.21
- 20 Subchapter C. Service Delivery Structure and Alignment, §§805.41 - 805.43,
- 21 §805.45
- 22

23 TWC proposes the repeal of the following sections of Chapter 805, relating to Adult
24 Education and Literacy:

- 25
- 26 Subchapter A. General Provisions, §805.5
- 27 Subchapter D. Other Provisions, §805.62
- 28

- 29 **PART I. PURPOSE AND BACKGROUND**
- 30 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 31 **PART III. IMPACT STATEMENTS**
- 32 **PART IV. COORDINATION ACTIVITIES**
- 33

34 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

35 The purpose of the proposed amendments to Chapter 805 is to align Adult Education and
36 Literacy (AEL) provisions and definitions with the Workforce Innovation and
37 Opportunity Act (WIOA) Title II, clarify language, delete obsolete terms, and extend the
38 allowable terms of AEL advisory committee members.

39
40 WIOA was signed into law on July 22, 2014, replacing the Workforce Investment Act of
41 1998. Title II of WIOA includes substantial changes to definitions relating to AEL,
42 participant eligibility, and eligible providers, as well as changes to the overall intent of
43 the law. TWC staff has evaluated TWC Chapter 805 Adult Education and Literacy rules
44 and determined that definitions must be updated and rules amended to align with WIOA.
45

1 Additionally, staff has identified the need to amend and repeal certain parts of Chapter
2 805 based on management of the program and the addition of new rules in the Texas
3 Education Code (TEC).

4
5 In 2013, the AEL program and its appropriate rules were transferred from the Texas
6 Education Agency (TEA) to TWC. One of the transferred rules relates to the awarding of
7 diplomas to adults based on the secondary school curriculum, course credit requirements,
8 and tests designated by the commissioner of education. That rule was not relevant to
9 TWC operations, as it pertained to graduation criteria for secondary students who are
10 adults. In 2017, legislation established specific requirements for adult high school
11 diploma requirements, but limited the application of those requirements to nonprofit
12 charter schools. Accordingly, based on TWC operations and the change in state law, there
13 is a no longer a need for diploma requirements that were included when AEL was
14 transferred to TWC. Proposed amendments would repeal §805.5 and defer diploma
15 requirements for adults to the TEA.

16 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

17 **SUBCHAPTER A. GENERAL PROVISIONS**

18 **TWC proposes the following amendments to Subchapter A:**

19 **§805.1. Purpose**

20 Section 805.1(b) is amended to align with the purpose of AEL as outlined in WIOA
21 §203(1)(a) and (b). In §805.1(b), the term "basic education" is replaced by "academic
22 instruction and education services below the postsecondary level," and "enables them to
23 effectively" is replaced with "increase an individual's ability to." Section 805.1(b)(1) is
24 amended to state, "read, write, and speak in English and perform mathematics or other
25 activities necessary for the attainment of a secondary school diploma or its recognized
26 equivalent." Amended §805.1(b)(2) adds "or transition to postsecondary education and
27 training." Section 805.1(b)(4) is removed.

28 **§805.2. Definitions**

29 Section 805.2(1) is amended to align the definition of "adult education" with the
30 definition at WIOA §203(2), which is "programs, activities, and services that include
31 adult education, literacy, workplace adult education and literacy activities, family literacy
32 activities, English language acquisition activities, integrated English literacy and civics
33 education, workforce preparation activities, or integrated education and training."
34 Sections 805.2(1)(A), 805.2(1)(B), and 805.2(1)(C) are repealed.

35
36 In §805.2(10), the definition of "contact time" is amended to distinguish between testing
37 and assessment services by adding "testing services," specifying "except for testing
38 services used to determine eligibility."

39
40 The current definition of an eligible grant recipient in §805.2(11) is amended to align
41 with the definition of an eligible provider in WIOA §203(5), adding that eligible grant
42 recipients "are organizations that have demonstrated effectiveness in providing adult
43
44
45
46

1 education and literacy activities." The list of eligible grant recipients in current
2 §§805.2(11)(A) - (I) is amended as follows:
3 --Section 805.2(11)(B) is modified to replace the phrase "of demonstrated effectiveness"
4 with "or faith-based organization."
5 --The phrase "of demonstrated effectiveness" is removed from §805.2(11)(C).
6 --Section 805.2(11)(H) is amended to specify that literacy services are AEL services, and
7 "adults and families" is replaced with "eligible individuals."
8 --Current §805.2(11)(I) is amended to add "or coalition" after "consortium."
9 --New §805.2(11)(J) adds "a partnership between an employer and an entity described in
10 any of subparagraphs (A) through (I)" as an eligible grant recipient.

11 12 **§805.3. Federal and State AEL Funds**

13 Section 805.3 is amended to align with the description of an individual in AEL programs
14 for which federal AEL funds may be used to the definition of an eligible individual under
15 WIOA. Amended §805.3(a) removes "out-of-school." Section 805.3(a)(1) replaces "lack
16 sufficient mastery of basic educational skills to enable the individuals to function
17 effectively in society," with "are basic skills deficient." Section 805.3(a)(3) replaces "are
18 unable to speak, read, or write the English language" with "are English language
19 learners."

20
21 Section 805.3(b)(1) replaces "lack sufficient mastery of basic educational skills to enable
22 the individuals to function effectively in society," with "are basic skills deficient."

23 Section 805.3(b)(3) replaces "are unable to speak, read, or write the English language"
24 with "are English language learners."

25
26 Section 805.3(d) is amended to remove language that states that the use of AEL funds is
27 for specific student populations.

28 29 **§805.4. Essential Program Components**

30 Section 805.4 is amended to align the essential AEL program components to the
31 allowable and required AEL activities in WIOA. The current six essential program
32 components are expanded and revised as follows:

33 --Section 805.4(1) is amended to remove "basic" from "adult basic education."

34 --Section 805.4(2) is amended to replace "programs for adults of limited English
35 proficiency" with "literacy."

36 --Section 805.4(3) is amended to replace "adult secondary education, including programs
37 leading to a high school equivalency certificate or a high school diploma" with
38 "workplace adult education and literacy activities."

39 --Section 805.4(4) is amended to replace "instructional services to improve student
40 proficiencies necessary to function effectively in adult life, including accessing further
41 education, employment-related training, or employment" with "family literacy activities."

42 --Section 805.4(5) is renumbered as §805.4(9) and "paragraphs (1) - (4) of this section" is
43 changed to "paragraphs (1) - (8) of this section."

44 --Section 805.4(6) is renumbered as §805.4(10).

45 --New §805.4(5) is added to include "English language acquisition services."

46 --New §805.4(6) adds "integrated English literacy and civics education."

1 --New §805.4(7) adds "workforce preparation activities."
2 --New §805.4(8) adds "integrated education and training."

3
4 **§805.5. Diploma Requirements**

5 Section 805.5 is repealed because these rules on diploma requirements are no longer
6 relevant to AEL.

7
8 **SUBCHAPTER B. STAFF QUALIFICATIONS**

9 **TWC proposes the following amendments to Subchapter B:**

10
11 **§805.21. Staff Qualifications and Training**

12 Section 805.21(1) is amended by adding "instructional" before "aides," to clarify that
13 instructional aides who provide direct instruction shall receive 15 hours of professional
14 development each year. Section 805.21(6) adds "including instructional aides."

15
16 **SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT**

17 **TWC proposes the following amendments to Subchapter C:**

18
19 **§805.41. Procurement and Contracting**

20 Section §805.41(b) is amended to replace "request for proposals (RFP)" with "grant
21 solicitation" to align with TWC's direction on AEL competition process and
22 requirements.

23
24 **§805.42. Program Delivery System**

25 Section 805.42(c)(2) is amended to replace "career training" with "workforce training," to
26 align with WIOA policy on postsecondary education and training.

27
28 **§805.43. Advisory Committees**

29 Section 805.43(1)(C) replaces "one term" with "no more than two terms. The
30 Commission shall provide direction when appointing a member to a second term," to
31 expand Statewide Advisory Committee term limits to ensure allowable consistency and
32 continuity on committee projects.

33
34 **§805.45. Tuition and Fees**

35 Section 805.45 adds a provision to align to 2 CFR §200.305(b)(5), specifying that funds
36 generated by tuition and fees "must be expended before federal and state grant funds."

37
38 **SUBCHAPTER D. OTHER PROVISIONS**

39 **TWC proposes the following amendments to Subchapter D:**

40
41 **§805.62. Evaluation of Programs**

42 Section 805.62 is repealed, as WIOA requires that funds provided under WIOA §231 be
43 used on state leadership activities, including monitoring and evaluating the quality of and
44 improvement in AEL activities.

45
46 **PART III. IMPACT STATEMENTS**

1 Randy Townsend, Chief Financial Officer, has determined that for each year of the first
2 five years the rules will be in effect, the following statements will apply:

3
4 There are no additional estimated costs to the state and to local governments expected as
5 a result of enforcing or administering the rules.

6
7 There are no estimated cost reductions to the state and to local governments as a result of
8 enforcing or administering the rules.

9
10 There are no estimated losses or increases in revenue to the state or to local governments
11 as a result of enforcing or administering the rules.

12
13 There are no foreseeable implications relating to costs or revenue of the state or local
14 governments as a result of enforcing or administering the rules.

15
16 There are no anticipated economic costs to individuals required to comply with the rules.

17
18 There is no anticipated adverse economic impact on small businesses, microbusinesses,
19 or rural communities as a result of enforcing or administering the rules.

20
21 Based on the analyses required by Texas Government Code §2001.024, TWC has
22 determined that the requirement to repeal or amend a rule, as set forth in Texas
23 Government Code §2001.0045, does not apply to this rulemaking.

24
25 Takings Impact Assessment

26 Under Texas Government Code, §2007.002(5), "taking" means a governmental action
27 that affects private real property, in whole or in part or temporarily or permanently, in a
28 manner that requires the governmental entity to compensate the private real property
29 owner as provided by the Fifth and Fourteenth Amendments to the United States
30 Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the
31 owner's right to the property that would otherwise exist in the absence of the
32 governmental action, and is the producing cause of a reduction of at least 25 percent in
33 the market value of the affected private real property, determined by comparing the
34 market value of the property as if the governmental action is not in effect and the market
35 value of the property determined as if the governmental action is in effect. The
36 Commission completed a Takings Impact Analysis for the proposed rulemaking action
37 under Texas Government Code, §2007.043. The primary purpose of this proposed
38 rulemaking action, as discussed elsewhere in this preamble, is to align AEL provisions
39 and definitions with WIOA Title II, clarify language, delete obsolete terms, and extend
40 the allowable terms of AEL advisory committee members.

41
42 The proposed rulemaking action will not create any additional burden on private real
43 property. The proposed rulemaking action will not affect private real property in a
44 manner that would require compensation to private real property owners under the United
45 States Constitution or the Texas Constitution. The proposal also will not affect private
46 real property in a manner that restricts or limits an owner's right to the property that

1 would otherwise exist in the absence of the governmental action. Therefore, the proposed
2 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

3
4 Government Growth Impact Statement

5 TWC has determined that during the first five years the proposed amendments will be in
6 effect:

- 7 --the proposed amendments will not create or eliminate a government program;
- 8 --implementation of the proposed amendments will not require the creation or elimination
9 of employee positions;
- 10 --implementation of the proposed amendments will not require an increase or decrease in
11 future legislative appropriations to TWC;
- 12 --the proposed amendments will not require an increase or decrease in fees paid to TWC;
- 13 --the proposed amendments will not create a new regulation;
- 14 --the proposed amendments will not expand, limit, or eliminate an existing regulation;
- 15 --the proposed amendments will not change the number of individuals subject to the
16 rules; and
- 17 --the proposed amendments will not positively or adversely affect the state's economy.

18
19 Economic Impact Statement and Regulatory Flexibility Analysis

20 TWC has determined that the proposed rules will not have an adverse economic impact
21 on small businesses or rural communities, as these proposed rules place no requirements
22 on small businesses or rural communities.

23
24 Mariana Vega, Director of Labor Market and Career Information, has determined that
25 there is no significant negative impact upon employment conditions in the state as a result
26 of the rules.

27
28 Courtney Arbour, Director, Workforce Development Division, has determined that for
29 each year of the first five years the rules are in effect, the public benefit anticipated as a
30 result of enforcing the proposed rules will be to ensure delivery of AEL services in
31 accordance with current federal standards.

32
33 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to
34 be within TWC's legal authority to adopt.

35
36 **PART IV. COORDINATION ACTIVITIES**

37 In the development of these rules for publication and public comment, TWC sought the
38 involvement of Texas' 28 Local Workforce Development Boards. TWC provided the
39 concept paper regarding these rule amendments to AEL grant recipients for consideration
40 and review on May 22, 2018. TWC also conducted a conference call with AEL grantees
41 on May 24, 2018, to discuss the concept paper. During the rulemaking process, TWC
42 considered all information gathered in order to develop rules that provide clear and
43 concise direction to all parties involved.

44
45 Comments on the proposed rules may be submitted to TWC Policy Comments,
46 Workforce Program Policy, Attn: Workforce Editing, 101 East 15th Street, Room 459T,

1 Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to
2 TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no
3 later than 30 days from the date this proposal is published in the *Texas Register*.

4
5 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which
6 provide TWC with the authority to adopt, amend, or repeal such rules as it deems
7 necessary for the effective administration of TWC services and activities.

8
9 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

10

1 CHAPTER 805. ADULT EDUCATION AND LITERACY

2
3 SUBCHAPTER A. GENERAL PROVISIONS

4
5 §805.1. Purpose.

- 6
- 7 (a) The rules contained in this chapter may be cited as the Adult Education and
- 8 Literacy (AEL) rules.
- 9
- 10 (b) The purpose of the AEL programs is to provide adults with sufficient
- 11 academic instruction and education services below the postsecondary level to
- 12 increase an individual's ability to~~basic education that enables them to~~
- 13 ~~effectively:~~
- 14
- 15 (1) read, write, and speak in English and perform mathematics or other
- 16 activities necessary for the attainment of a secondary school diploma or
- 17 its recognized equivalent~~acquire the basic educational skills necessary~~
- 18 ~~for literate functioning;~~
- 19
- 20 (2) participate in job training and retraining programs or transition to
- 21 postsecondary education and training; and
- 22
- 23 (3) obtain and retain employment;~~and~~
- 24
- 25 ~~(4) continue their education to at least the level of completion of secondary~~
- 26 ~~school.~~

27
28 §805.2. Definitions.

29
30 The following words and terms, when used in this chapter, shall have the

31 following meanings, unless the context clearly indicates otherwise.

- 32
- 33 (1) Adult education--Programs, activities, and services that include adult
- 34 education, literacy, workplace adult education and literacy activities,
- 35 family literacy activities, English language acquisition activities,
- 36 integrated English literacy and civics education, workforce preparation
- 37 activities, or integrated education and training. ~~Basic and secondary~~
- 38 ~~instruction and services for adults.~~
- 39
- 40 ~~(A) Adult basic education (ABE) Instruction in reading, writing, and~~
- 41 ~~speaking and comprehending English, and solving quantitative~~
- 42 ~~problems, including functional context, designed for adults who:~~
- 43 ~~—~~
- 44 ~~(i) have minimal competence in reading, writing, and solving~~
- 45 ~~quantitative problems;~~
- 46 ~~—~~

1 ~~(ii) are not sufficiently competent to speak, read, or write the~~
2 ~~English language; or~~

3 ~~—~~
4 ~~(iii) are not sufficiently competent to meet the requirements of~~
5 ~~adult life in the United States, including employment~~
6 ~~commensurate with the adult's real ability.~~

7 ~~-~~
8 ~~(B) Adult secondary education (ASE)—Comprehensive secondary~~
9 ~~instruction below the college credit level in reading, writing and~~
10 ~~literature, mathematics, science, and social studies, including~~
11 ~~functional context, and instruction for adults who do not have a~~
12 ~~high school diploma or its equivalent.~~

13 ~~-~~
14 ~~(C) English literacy education (EL)—Instruction designed to help~~
15 ~~adults with limited English proficiency achieve competence in~~
16 ~~the English language.~~

- 17
- 18 (2) AEL consortium--A partnership of educational, workforce
19 development, social service entities, and other public and private
20 organizations that agree to partner, collaborate, plan, and apply for
21 funding to provide AEL and related support services. Consortium
22 members shall include an AEL grant recipient, AEL fiscal agent, an
23 AEL lead organization of a consortium, and AEL service provider(s).
24 Consortium members may serve in one or more of the functions in
25 accordance with state statutes and Commission rules.
- 26
- 27 (3) AEL fiscal agent--An entity that is assigned financial management
28 duties as outlined in an Agency-AEL contract or is assigned this
29 function as a member of an AEL consortium.
- 30
- 31 (4) AEL grant recipient--An eligible grant recipient within a local
32 workforce development area (workforce area), as defined in §800.2(11)
33 of this title, that is awarded AEL funds by the Agency. The AEL grant
34 recipient also may act as an AEL lead organization of a consortium,
35 AEL fiscal agent, or AEL service provider as designated in an
36 agreement with an AEL consortium.
- 37
- 38 (5) AEL lead organization of a consortium--An organization designated as
39 the AEL consortium manager in a written agreement between AEL
40 consortium members. The AEL lead organization of a consortium is
41 responsible for planning and leadership responsibilities as outlined in
42 the written agreement and also may serve as an AEL grant recipient,
43 AEL fiscal agent, or AEL service provider. If a consortium does not
44 identify the lead organization of a consortium through a written
45 agreement, the AEL grant recipient will be presumed to assume the
46 responsibility of the lead organization of the consortium.

- 1
2 (6) AEL service provider--An entity that is eligible to provide AEL
3 services as specified in 20 USC §9202 and Texas Labor Code
4 §315.003.
5
6 (7) Assessment services--The processes, administration, review, and
7 consultation provided to individuals in accordance with the AEL
8 assessment procedure and other agency guidance that direct placement,
9 progress, achievement, and overall program accountability in AEL and
10 other services, including the identification of potential academic or
11 support service needs.
12
13 (8) Clock hour--60 minutes.
14
15 (9) College and career transitional support--Support that may include, but
16 is not limited to, recruiting and outreach, intensive individual case
17 management, career and academic counseling, enrollment and financial
18 aid support, self-advocacy skills development, academic and career
19 support strategies, college and workforce system capacity building,
20 student data records management, and providing access to other
21 support and employment services.
22
23 (10) Contact time--The cumulative sum of minutes during which an eligible
24 adult student receives instructional, counseling, ~~or~~ assessment, or
25 testing services (except for testing services used to determine
26 eligibility) from ~~by~~ a staff member supported by federal and state AEL
27 funds as documented by local attendance and reporting records.
28
29 (A) Student contact time generated by volunteers may be accrued by
30 the AEL program when volunteer services are verifiable by
31 attendance and reporting records and volunteers meet
32 requirements under §805.21 of this title (relating to Staff
33 Qualifications and Training).
34
35 (B) A student contact hour is 60 minutes.
36
37 (11) Eligible grant recipient--An entity, as specified in state and federal law,
38 that is eligible to receive AEL program funding. Eligible grant
39 recipients are organizations that have demonstrated effectiveness in
40 providing adult education and literacy activities, and may include:
41
42 (A) a local educational agency;
43
44 (B) a community-based organization or faith-based organization~~of~~
45 ~~demonstrated effectiveness~~;
46

- (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) ~~–through (G) of this paragraph~~ and has the ability to provide adult education and literacy services to eligible individuals ~~adults and families~~; ~~and~~
- (I) a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) ~~–through (H) of this paragraph~~; and
- (J) a partnership between an employer and an entity described in any of subparagraphs (A) through (I).

(12) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

(13) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(14) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(15) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop,

1 lecture, presentation, poster session, roundtable discussion, study circle,
2 or demonstration that meets for a minimum of one hour and upwards in
3 increments of one half ~~(0.5)~~ hour (~~that is i.e.~~, the hours assigned for
4 purposes of tracking AEL staff professional development requirements
5 in TEAMS, the Texas Educating Adults Management System) to
6 accomplish a predetermined educational or learning outcome.

- 7
- 8 (16) Program year--The AEL program year is July 1 through June 30.
- 9
- 10 (17) Substitute--An instructor who works on call, does not have a full-time
11 assignment, and does not assume permanent responsibilities for class
12 instruction. An individual is considered a substitute if he or she
13 instructs a particular class for four or fewer consecutive class meetings.
- 14
- 15 (18) Support services--Services such as transportation, child care, dependent
16 care, housing, and needs-related payments, which are necessary to
17 enable an individual to participate in activities as defined in Workforce
18 Innovation and Opportunity Act (WIOA) §2.
- 19
- 20 (19) Workforce training--Services described in WIOA §134(c)(3)(D),
21 including the following:
- 22
- 23 (A) occupational skills training, including training for nontraditional
24 employment;
- 25
- 26 (B) on-the-job training;
- 27
- 28 (C) incumbent worker training;
- 29
- 30 (D) programs that combine workplace training with related
31 instruction, which may include cooperative education programs;
- 32
- 33 (E) training programs operated by the private sector;
- 34
- 35 (F) skill upgrading and retraining;
- 36
- 37 (G) entrepreneurial training;
- 38
- 39 (H) transitional jobs;
- 40
- 41 (I) job readiness training provided in combination with services
42 described in any of subparagraphs (A) through (H) of this
43 paragraph;
- 44
- 45 (J) AEL activities, including activities of English language
46 acquisition and integrated education and training programs,

1 provided concurrently or in combination with services described
2 in any of subparagraphs (A) through (G) of this paragraph; and

- 3
4 (K) customized training conducted with a commitment by an
5 employer or group of employers to employ an individual upon
6 successful completion of the training.
7

8 **§805.3. Federal and State AEL Funds.**
9

- 10 (a) Federal AEL funds may be used for AEL programs for ~~out-of-school~~
11 individuals who have attained 16 years of age and who are not enrolled or
12 required to be enrolled in secondary school under state law and:
13
14 (1) ~~are basic skills deficient~~~~lack sufficient mastery of basic educational skills~~
15 ~~to enable the individuals to function effectively in society;~~
16
17 (2) do not have a secondary school diploma or its recognized equivalent, and
18 have not achieved an equivalent level of education; or
19
20 (3) ~~are English language learners~~~~are unable to speak, read, or write the~~
21 ~~English language.~~
22
23 (b) State AEL funds are to be used for AEL programs for out-of-school
24 individuals who are beyond the compulsory age of attendance unless
25 specifically exempted from compulsory school attendance by Texas
26 Education Code §25.086 and:
27
28 (1) ~~are basic skills deficient~~~~lack sufficient mastery of basic educational~~
29 ~~skills to enable the individuals to function effectively in society;~~
30
31 (2) do not have a secondary school diploma or its recognized equivalent,
32 and have not achieved an equivalent level of education; or
33
34 (3) ~~are English language learners~~~~are unable to speak, read, or write the~~
35 ~~English language.~~
36
37 (c) The proportion of students served who meet the requirements of subsection
38 (a) of this section, but do not meet the requirements of subsection (b) of this
39 section, shall not exceed the grant recipient's percentage of federal funds to
40 the total allocation.
41
42 (d) The Commission shall establish annual performance benchmarks for the use
43 of AEL funds. ~~in serving specific student populations, including the~~

1 population of students receiving other workforce services or enrolled in
2 postsecondary education or training.

3
4 **§805.4. Essential Program Components.**

5
6 An AEL grant recipient shall ensure ~~that AEL programs provide~~ the following
7 essential program components are provided:

- 8
9 (1) Adult ~~Adult basic~~ education;
- 10
11 (2) Literacy ~~programs for adults of limited English proficiency~~;
- 12
13 (3) Workplace adult education and literacy activities ~~adult secondary~~
14 ~~education, including programs leading to a high school equivalency~~
15 ~~certificate or a high school diploma~~;
- 16
17 (4) Family literacy activities ~~instructional services to improve student~~
18 ~~proficiencies necessary to function effectively in adult life, including~~
19 ~~accessing further education, employment-related training, or~~
20 ~~employment~~;
- 21
22 (5) English language acquisition services;
- 23
24 (6) Integrated English literacy and civics education;
- 25
26 (7) Workforce preparation activities;
- 27
28 (8) Integrated education and training;
- 29
30 (9)(5) Assessment ~~assessment~~ and guidance services related to paragraphs
31 (1) - (8)(4) of this section; and
- 32
33 (10)(6) Collaboration ~~collaboration~~ with multiple partners in the community
34 to expand the services available to adult learners and to prevent
35 duplication of services.

36
37 **~~§805.5. Diploma Requirements.~~**

38
39 ~~The standards for the awarding of diplomas to adults shall be those established~~
40 ~~under 19 Texas Administrative Code, Chapter 74, Subchapter A (relating to~~
41 ~~Curriculum Requirements) with the following exceptions:~~

- 42
43 (1) ~~There shall be no limit to the number of secondary credits adults may~~
44 ~~earn by demonstration of competence.~~
- 45

1 ~~(2) Adults may earn the required physical education credits by one or more~~
2 ~~of the following:~~

3
4 ~~(A) Satisfactory completion of approved secondary physical~~
5 ~~education courses; or~~

6
7 ~~(B) Substitution of state-approved secondary elective courses.~~

8
9 ~~(3) Adults shall meet the requirements for successful performance on a~~
10 ~~secondary level test designated by the commissioner of education.~~

11
12 **SUBCHAPTER B. STAFF QUALIFICATIONS**

13
14 **§805.21. Staff Qualifications and Training.**

15
16 The requirements of this section shall apply to all AEL staff hired after July 1,
17 2013, excluding clerical and janitorial staff.

- 18
19 (1) AEL instructional aides, administrative, data entry, proctoring staff,
20 and staff providing support or employment services to students shall
21 have at least a high school diploma or high school equivalency
22 certificate.
- 23
24 (2) AEL directors, supervisors, and staff that oversee ~~oversees~~ program
25 assessment services and/or overall program accountability, and
26 instructors in the content areas of reading, writing, mathematics, and
27 English language acquisition, including substitutes, shall possess at
28 least a bachelor's degree.
- 29
30 (3) Workforce training instructors must meet the requirements of the
31 institution and/or the associated accrediting or credentialing entity, if
32 applicable.
- 33
34 (4) Requests for exemptions for staff qualification requirements in
35 individual cases:
36
37 (A) may be submitted to the Agency for approval with a justification
38 outlining extenuating circumstances; and
39
40 (B) shall be submitted and approved prior to an individual being
41 placed in the position in question.
- 42
43 (5) All AEL directors and supervisors, and other staff with program
44 oversight or coordination responsibilities shall receive 15 clock hours
45 of professional development each program year with the following
46 exception: Staff hired on or after January 1 of a program year may

1 require half of the professional development time required for that
2 program year.

3
4 (6) All AEL instructional staff, including instructional aides, except
5 substitutes, paid with AEL grant funds or who acquire student contact
6 hours, including volunteers, shall receive at least 15 clock hours of
7 professional development each program year, with the following
8 specifications:

9
10 (A) Instructors in the content areas of reading, writing, mathematics,
11 and English language acquisition shall:

12
13 (i) receive three clock hours of training in principles of adult
14 learning;

15
16 (ii) receive six clock hours in relevant areas of literacy
17 instruction; and

18
19 (iii) receive the remaining six clock hours of training in content
20 areas at the discretion of the program, but consisting of
21 content related to the AEL program's purpose, which is to
22 provide adults with sufficient basic education that enables
23 them to effectively:

24
25 (I) acquire the basic educational skills necessary for
26 literate functioning;

27
28 (II) participate in job training and retraining programs;

29
30 (III) obtain and retain employment; and

31
32 (IV) continue their education to at least the level of
33 secondary school completion and postsecondary
34 education preparation; or

35
36 (iv) waive six clock hours of content area in staff professional
37 development for individuals who have 18 or more college
38 semester undergraduate or graduate credit hours in relevant
39 areas of literacy instruction.

40
41 (B) Staff, as described in subparagraph (A) of this paragraph, hired
42 on or after January 1 of a program year, may require half of the
43 professional development time required for that program year.
44 For instructors in the content areas of reading, writing,
45 mathematics, and English language acquisition, these hours must
46 include three clock hours of training in principles of adult

1 learning and three clock hours in the relevant areas of literacy
2 instruction.

3
4 (C) Staff described in paragraph (6) of this subsection shall receive at
5 least six clock hours of the required professional development
6 outlined in paragraph (6)(A)(i) - (iii) of this subsection within 30
7 calendar days of providing instructional activities, if new to AEL
8 or to direct student service delivery. The six hours include the
9 required three hours of principles of adult learning and three
10 hours of the relevant areas of literacy instruction. Waiving of the
11 requirements for staff new to direct student services must be
12 approved by Agency AEL staff prior to the individual providing
13 any instructional services.

14
15 (7) All staff providing support services or college and career transitional
16 support who are paid through an AEL grant shall receive at least three
17 clock hours of professional development each program year.

18
19 (8) AEL staff assigned test proctoring or data entry duties shall receive at
20 least three clock hours of professional development related to their
21 primary job duties each program year.

22
23 (9) The requirements for professional development may be reduced by
24 grant recipients in individual cases in which exceptional circumstances
25 prevent employees from completing the required hours of professional
26 development. Exceptional circumstances can include absence from the
27 program or work due to personal health reasons or emergency familial
28 responsibilities, including maternity/paternity. Documentation
29 justifying these circumstances shall be available for monitoring and as
30 requested by AEL staff.

31
32 (10) Records of staff qualifications and professional development shall be
33 maintained by each grant recipient and shall be available for
34 monitoring.

35
36 **SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT**

37
38 **§805.41. Procurement and Contracting.**

39
40 (a) Beginning with Program Year 2014, eligible grant recipients shall compete
41 for funding through a statewide procurement process conducted in
42 accordance with federal and state procurement requirements. AEL funding
43 shall be allocated as set forth in §800.68 of this title.
44

- 1 (b) Eligible grant recipients shall apply directly to the Agency using the grant
2 solicitation ~~request for proposals (RFP)~~ process, and shall meet all deadlines,
3 requirements, and guidelines set forth in the grant solicitation ~~RFP~~.
4
- 5 (c) Contracts awarded to AEL grant recipients shall be limited to two years, with
6 the option of three one-year renewals, at the Commission's discretion. In
7 considering a renewal, the Commission shall take into account performance
8 and other factors.
9
- 10 (1) Renewals for years three, four, and five are not automatic, and are
11 based on meeting or exceeding performance and expenditure
12 benchmarks, or other factors as determined by the Commission.
13
- 14 (2) At the completion of the five-year maximum contract term, the Agency
15 shall conduct a new competitive statewide procurement, including
16 those contracts that have been in effect for less than the maximum five-
17 year contract term.
18
- 19 (d) Determinations by the Agency in the statewide procurement process will be
20 based on the indicated ability of the eligible grant recipient to effectively
21 perform all services and activities needed to fully comply with contract
22 performance requirements and all contract terms and conditions, and may be
23 influenced by factors used to determine the allocation of AEL funds or other
24 objective data or criteria.
25

26 **§805.42. Program Delivery System.**

- 27
- 28 (a) There shall be a statewide AEL program delivery system that provides AEL
29 services on a coordinated basis within each workforce area.
30
- 31 (b) An eligible grant recipient must apply directly to the Agency for AEL
32 funding.
33
- 34 (c) Each eligible grant recipient must demonstrate an ability to:
35
- 36 (1) plan and develop a service delivery strategy that includes a broad
37 analysis of the educational, economic, and workforce development
38 trends across the entire workforce area to provide eligible AEL students
39 with comprehensive and locally responsive services; and
40
- 41 (2) expand, improve, and coordinate delivery of education, workforce
42 training, ~~career training~~, workforce development, and support services.
43
- 44 (d) Each eligible grant recipient applying for AEL funding on behalf of an AEL
45 consortium must:
46

- 1 (1) meet the requirements set forth in subsection (c)(1) - (2) of this section;
- 2
- 3 (2) designate an entity to serve as the AEL lead organization of the
- 4 consortium; and
- 5
- 6 (3) designate an entity to serve as AEL fiscal agent for the AEL
- 7 consortium. The AEL fiscal agent is responsible for making and filing
- 8 all financial reports to the AEL grant recipient that will review all
- 9 reports and submit to the Agency on behalf of the consortium.
- 10
- 11 (e) An AEL grant application must reflect service delivery strategies for the
- 12 workforce area. In workforce areas that are heavily populated or have large
- 13 service regions, the Agency may elect to contract with more than one AEL
- 14 grant recipient within a workforce area.
- 15
- 16 (f) An AEL grant recipient, awarded AEL funds by the Agency, shall be
- 17 responsible for performing all services and activities required to fully comply
- 18 with contract performance requirements and all contract terms and
- 19 conditions. Responsibilities include, but are not limited, to the following:
- 20
- 21 (1) Communication.
- 22
- 23 (A) The AEL grant recipient shall serve as the point of contact with
- 24 the Agency.
- 25
- 26 (B) For an AEL consortium, on behalf of AEL consortium members,
- 27 the AEL grant recipient shall:
- 28
- 29 (i) transmit questions and grant-related needs for AEL
- 30 consortium members to the Agency; and
- 31
- 32 (ii) carry out the programmatic functions of an AEL grant by
- 33 communicating regularly with members of the AEL
- 34 consortium and by sharing information, policy or procedural
- 35 changes, and technical assistance provided by the Agency to
- 36 oversee the grant.
- 37
- 38 (2) Monitoring. The AEL grant recipient shall:
- 39
- 40 (A) monitor programmatic and fiscal progress against goals and
- 41 project deliverables; and
- 42
- 43 (B) timely notify the Agency of problems related to achievement of
- 44 programmatic and fiscal goals of the grant in accordance with
- 45 appropriate systems to receive and compile outcome measures
- 46 and fiscal reports.

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- (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;

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(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;

1 (B) include at least one representative of the business community and
2 at least one representative of a Local Workforce Development
3 Board (Board); and

4
5 (C) ~~serve for staggered two-year terms, and be limited to no more~~
6 ~~than two terms. The Commission shall provide direction when~~
7 ~~appointing a member to a second an additional term one term.~~

8
9 (2) Membership shall be reviewed when a member's employment changes
10 to determine whether the individual continues to meet the requirements
11 for membership.

12
13 (3) The committee shall meet at least quarterly and submit a written report
14 to the Commission on an annual basis.

15
16 (4) The committee shall select a presiding officer as required by Texas
17 Government Code, Chapter 2110.

18
19 (5) The committee shall advise the Commission on:

20
21 (A) the development of:

22
23 (i) policies and program priorities that support the development
24 of an educated and skilled workforce in the state;

25
26 (ii) statewide curriculum guidelines and standards for AEL
27 services that ensure a balance of education and workplace
28 skills development;

29
30 (iii) a statewide strategy for improving student transitions to
31 postsecondary education and career and technical education
32 training; and

33
34 (iv) a centralized system for collecting and tracking
35 comprehensive data on AEL program performance
36 outcomes;

37
38 (B) the exploration of potential partnerships with entities in the
39 nonprofit community engaged in literacy-promotion efforts,
40 entities in the business community, and other appropriate entities
41 to improve statewide literacy programs; and

42
43 (C) any other issue the Commission considers appropriate.
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§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, and must be expended before federal and state grant funds, in accordance with 2 CFR §200.305(b)(5).

SUBCHAPTER D. OTHER PROVISIONS

~~**§805.62. Evaluation of Programs.**~~

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