ATTACHMENT II
Text of Adopted New 19 TAC

Chapter 89. Adaptations for Special Populations

Subchapter CC. Commissioner's Rules Concerning Adult and Community Education

§89.1301. Service Provider Contracts for Adult Education Programs.

(a) Definitions. The following words and terms, when used in this section, 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--Instruction in reading, writing, 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--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.

(2) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).

(B) Student contact hour is 60 minutes.

(3) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, and human service entities and other agencies that agree to collaborate for the provision of adult education and literacy services.

(4) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.

(5) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.

(6) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency (TEA).

(b) Use of funds.

(1) Federal adult education and literacy funds may be used for programs of adult education and literacy for out-of-school individuals who have attained 16 years of age and:

(A) function at less than a secondary school completion level;

(B) lack a secondary school credential; or

(C) are unable to speak, read, or write in English.

(2) State adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school individuals who are beyond compulsory school attendance age and:

(A) function at less than a secondary school completion level;

(B) lack a secondary school credential; or

(C) are unable to speak, read, or write in English.

(3) The proportion of students served who meet the requirements of paragraph (1) of this subsection but do not meet the requirements of paragraph (2) of this subsection may not exceed the grantee's percentage of federal funds to the total allocation.

(c) Essential program components. The following essential program components shall be provided:

(1) adult basic education;

(2) programs for adults who are English language learners;

(3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/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 subsection; and

(6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

(d) Allocation of funds beginning with school year 2013-2014.

(1) Allocation of funds in the first year of each biennium.

(A) After federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds will be made available for application under a statewide competitive procurement process each biennium, as specified in subsection (e) of this section.

(B) Funds will be allocated based on the number and costs of students served and the quality of services proposed in the applications submitted as determined by competitive review and ranking.

(C) The TEA shall ensure the competitive procurement is conducted in accordance with all applicable policies, procedures, rules, and statutes governing applicable state and federal procurement processes.

(2) Allocation of state and federal funds in the second year of each biennium.

(A) In the second year of each biennium, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated to the service providers selected in the previous year through competitive procurement.

(B) Each grantee's total allocation shall be based on the following components with equal weight assigned to each:

(i) need;

(ii) student contact hours reported; and

(iii) student and program progress made.

(e) Application process. The TEA shall select the adult education service providers through a competitive procurement process conducted in accordance with federal and state procurement requirements.

(1) Each service provider contract will be for a two-year period.

(2) An eligible entity must apply through the TEA request for application (RFA) process to receive a grant.

(3) An eligible entity submitting an application on behalf of a consortium must agree to serve as the fiscal agent for the grant and will be held responsible for all compliance and audit recoveries.

(4) An eligible entity submitting an application must meet all deadlines, requirements, and guidelines outlined in the RFA.

(f) Match requirements.

(1) Service providers shall provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.

(2) 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.

(3) The match may include allowable costs such as the following:

(A) goods and services;

(B) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and

(C) supplies, equipment, and building space not owned by the fiscal agent.

(4) The grantee 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.

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

(g) Tuition and fees. Tuition and fees may not be charged unless the entity charging them is statutorily authorized to do so. Funds generated by such tuition and fees shall be used for the adult education instructional programs.

[~~(1) No student tuition or fees shall be charged for adult basic education as a condition for membership and participation in a class.~~]

[~~(2) Tuition and fees for adult secondary education may be charged and be established by local fiscal agent board policy. Funds generated by such tuition and fees shall be used for the adult education instructional program.~~]

(h) Other provisions.

(1) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.

(2) 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.

(3) Evaluation of programs. The TEA shall evaluate adult education programs based on the indicators of program quality for adult education as defined in the RFA.

(i) Revocation and recovery of funds.

(1) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this subsection;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to participate in data collection and audits;

(D) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or

(E) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the adult education program.

(2) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.

(3) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.