



# TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

## MEMORANDUM

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<http://www.thecb.state.tx.us>

TO: Negotiated Rulemaking Committee on Dual Credit Course Limitations

FROM: Mary E. Smith, Alternative Dispute Resolution Coordinator

DATE: September 22, 2017

RE: Appointment of Members to Negotiated Rulemaking Committee

Senate Bill 1091, 85th Texas Legislature, Regular Session, relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education, amends Texas Education Code Sections 28.009, 51.968, and 130.008. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board") and the Texas Education Agency ("TEA") to coordinate the adoption of rules for the implementation of these amendments using negotiated rulemaking.

On August 30, the THECB submitted a Notice of Intent (NOI) to engage in negotiated rulemaking to the *Texas Register*. This NOI included a list of stakeholders and proposed membership for the negotiated rulemaking committee. The NOI was published on September 8 for ten days with a public comment deadline of September 18. The THECB received the following two comments:

1. Texas A&M University requested that Timothy P. Scott, Assistant Provost for Undergraduate Studies, be reconsidered for appointment to the committee; and
2. The University of Texas System requested that Elizabeth Mayer, Senior Research and Policy Analyst, be appointed to the negotiated rulemaking committee.

Both requests were granted. In accordance with Texas Government Code, Section 2008.54 (Negotiated Rulemaking Act, 1997), I hereby appoint the following 19 individuals to serve as committee members to represent affected parties and the THECB on the Negotiated Rulemaking Committee on Dual Credit Course Limitations:

### Public Universities

Bob Mong, President, University of North Texas at Dallas (University of North Texas System)  
Donald Topliff, Provost, Angelo State University (Texas Tech University System)  
Elizabeth Mayer, Senior Research and Policy Analyst, The University of Texas System  
(The University of Texas System)  
Heidi Kennedy, Assistant Dean, Undergraduate Academic Affairs, University of Houston  
(University of Houston System)  
Michael Adams, Interim Dean, Texas Southern University  
Peggy Semington, Associate Professor, Literacy Studies, The University of Texas at Arlington  
(The University of Texas System)  
Susan Allen, Assistant Vice President, Academic Affairs, West Texas A&M University  
(Texas A&M University System)  
Timothy Scott, Assistant Provost, Undergraduate Studies, Texas A&M University  
(Texas A&M University System)

### Public Community Colleges

Andrew Fisher, Provost, North Central Texas College  
Bob Montez, Director, Early College Programs, Del Mar College  
Deana Savage, Special Advisor to the President, Midland College

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Hector Gonzales, President, Southwest Texas Junior College  
Pamela Campbell, Associate Vice Chancellor, Student Success Partnerships, San Jacinto  
College District  
Shasta Buchanan, Executive Director, College-High School Relations, Austin Community  
College  
Terry Booker, Coordinator, Dual Credit, Kilgore College  
William Coppola, President, Southeast Campus, Tarrant County College District

**Lamar State Colleges**

Gwen Whitehead, Vice President, Academic Affairs, Lamar State College-Orange  
(Texas State University System)

**Texas Education Agency**

Lily Laux, Executive Director, School Programs

**Texas Higher Education Coordinating Board**

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce



Texas Higher Education  
Coordinating Board

1200 East Anderson Lane, Austin, Texas 78752

**Negotiated Rulemaking Committee on  
Dual Credit Course Limitations**

November 2, 2017  
9:30a – 4:30p  
Board Room

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**MEETING MATERIALS**

Materials include the following:

- I. Meeting Agenda
- II. THECB Rules Relating to Negotiated Rulemaking
- III. Ground Rules for Negotiated Rulemaking
- IV. Convener's Report
- V. Notice of Intent Filed with the *Texas Register*
- VI. Facilitator's Bio
- VII. Senate Bill 1091
- VIII. THECB General Information
- IX. Box Lunch Menu

**LUNCH**

For committee members attending the meeting, we will be ordering individual box lunches. **Please email your lunch order to [Laurie.Frederick@THECB.state.tx.us](mailto:Laurie.Frederick@THECB.state.tx.us) by October 23.** Payment for lunch will be collected at the meeting (exact change appreciated).



Texas Higher Education  
Coordinating Board

1200 East Anderson Lane, Austin, Texas 78752

**Negotiated Rulemaking Committee on  
Dual Credit Course Limitations**

November 2, 2017

9:30a – 4:30p

Board Room

**AGENDA**

- I. Introductions
- II. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- III. Brief Overview of Roles and Responsibilities
  - A. Role of Facilitator
  - B. Role of Sponsor Agency
    - Technical and administrative support
  - C. Role of Committee Members
    - Representative role
    - Commitment to negotiate in good faith
- IV. Consideration of Facilitator
- V. Procedural Issues
  - A. Discussion and Consideration of Ground Rules
  - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion of Draft Rule Language on Dual Credit Course Limitations
- VII. Consideration of Proposed Rule Language on Dual Credit Course Limitations

## **THECB Adopted Rules Related to Negotiated Rulemaking**

### CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Business (HUBs) Program
- 1.9. Training for Members of Governing Boards and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees

1.1 – 1.13 (No change.)

#### 1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

(2) a description of the subject and scope of the rule(s) to be developed;

- (3) a description of the known issues to be considered in developing the rule(s);
  - (4) a list of the interests likely to be affected by the proposed rule(s);
  - (5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);
  - (6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and
  - (7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).
- (f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.
- (g) Costs of Participating in Negotiated Rulemaking.
- (1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:
    - (A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and
    - (B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,
    - (C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.



(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1)The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2)The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3)The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4)The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1)the Board used negotiated rulemaking in developing the proposed rule, and

(2) the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

## **Ground Rules For Negotiated Rulemaking**

### **I. GOAL**

To reach consensus on the language of a proposed rule

### **II. REACHING DECISIONS**

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

*Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.*

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

### **III. AGREEMENT**

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
  - 1. All members concurred in the proposed rule; and
  - 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

### **IV. COMMITTEE MEETINGS**

- A. Meeting Attendance
  - 1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
  - 2. Scheduled meetings will proceed even if some members are absent.

3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

**B. During the Meetings**

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
  - a. Channel comments through one of the Committee members;
  - b. Submit written comments to the Committee members; or
  - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

**C. Caucuses**

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives.** Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

**V. NEGOTIATING**

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree

to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.

- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

## VI. COMMUNICATIONS

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions expressed in a non-public setting and identified as confidential to a particular group or individual, even if that party withdraws from negotiations.

### Committee Members:

Name	Title	Institution/System
Andrew Fisher	Provost	North Central Texas College
Bob Mong	President	University of North Texas at Dallas (University of North Texas System)
Bob Montez	Director, Early College Programs	Del Mar College
Deana Savage	Special Advisor to the President	Midland College
Donald Topliff	Provost	Angelo State University (Texas Tech University System)
Elizabeth Mayer	Senior Research and Policy Analyst	The University of Texas System (The University of Texas System)
Gwen Whitehead	Vice President, Academic Affairs	Lamar State College-Orange (Texas State University System)
Hector Gonzales	President	Southwest Texas Junior College
Heidi Kennedy	Assistant Dean, Undergraduate Academic Affairs	University of Houston (University of Houston System)
Lily Laux	Executive Director, School Programs	Texas Education Agency
Michael Adams	Interim Dean	Texas Southern University
Pamela Campbell	Associate Vice Chancellor, Student Success Partnerships	San Jacinto College District
Peggy Semingson	Associate Professor, Literacy Studies	The University of Texas at Arlington (The University of Texas System)
Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Shasta Buchanan	Executive Director, College-High School Relations	Austin Community College
Susan Allen	Assistant Vice President, Academic Affairs	West Texas A&M University (Texas A& M University System)
Terry Booker	Coordinator, Dual Credit	Kilgore College
Timothy Scott	Assistant Provost, Undergraduate Studies	Texas A&M University (Texas A&M University System)
William Coppola	President, Southeast Campus	Tarrant County College District

To: Mary E. Smith, Ph.D., Alternative Dispute Resolution Coordinator  
From: Laurie A. Frederick, Convener  
Date: August 26, 2017  
Re: Dual Credit Course Limitations

Senate Bill 1091, 85th Texas Legislature, Regular Session, relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education, amends Texas Education Code Sections 28.009, 51.968, and 130.008. The legislation requires the Texas Higher Education Coordinating Board ("THECB" or "Board") and the Texas Education Agency ("TEA") to coordinate the adoption of rules for the implementation of these amendments using negotiated rulemaking.

The procedure for negotiated rulemaking is found in Texas Government Code Chapter 2008, which contains requirements for notice and the duties of those involved. The convener is charged with responsibility for:

1. Assisting the agency in determining whether it is advisable to proceed with negotiated rulemaking;
2. Assisting in the identification of persons likely affected by the proposed rule;
3. Recommending to the agency whether negotiated rulemaking is feasible as a means to develop the proposed rule; and
4. Reporting to the agency on the relevant considerations.

In determining whether it is advisable to proceed with negotiated rulemaking, the agency need only refer to the recently enacted legislation, above, requiring negotiated rulemaking. It is recommended that negotiated rulemaking proceed.

In identifying persons likely affected by the proposed rule, a memo was sent via email to all chancellors and presidents of Texas public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/institution (see Attachment 1). From this effort, 43 individuals (see Attachment 2) volunteered or were nominated to participate on the dual credit course limitations negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented.

The positions held by the volunteers and nominees include presidents, provosts, directors, and coordinators. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

Given the requirement of negotiated rulemaking, doing so will not unreasonably delay notice and eventual adoption of the proposed rule. Similarly, the adequacy of agency resources to participate and the willingness of the agency to accept the consensus of the negotiated rulemaking committee as the basis for the proposed rule is also compulsory in accordance with law.

The probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests is also good. As mentioned, memos were sent to all affected institutions and we have received nominations of 43 individuals for consideration to the negotiated

rulemaking committee from throughout the state. The stakeholders who could be significantly affected by this rule and should be represented on this committee are:

1. Public Universities;
2. Public Community Colleges;
3. Lamar State Colleges;
4. Texas State Technical Colleges; and
5. Texas Higher Education Coordinating Board.

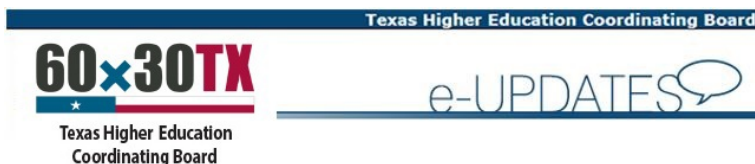
The volunteers and nominees represent various institutional types and sizes, and geographic locations throughout the state.

With the above considerations, it is recommended that the THECB move forward with negotiated rulemaking. It is also recommended that a notice be posted for 10 days in the *Texas Register* for public comment in accordance with Section 2008.053 of the Texas Government Code.



## Attachment 1: Convening Memo

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TO: Chancellors and Presidents of Texas Public Universities, Community Colleges, Lamar State Colleges, and Texas State Technical Colleges

FROM: Laurie A. Frederick, Convener, Negotiated Rulemaking

RE: Nomination for the Negotiated Rulemaking Committee on Dual Credit Course Limitations

Senate Bill 1091, 85th Texas Legislature, relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education amends Texas Education Code Sections 28.009, 51.968, and 130.008. The legislation requires the Texas Higher Education Coordinating Board (THECB) and Texas Education Agency (TEA) to coordinate the adoption of rules for the implementation of these amendments.

The THECB and TEA will engage institutions of higher education in developing these rules through the negotiated rulemaking process in accordance with Texas Government Code Section 2008 (Negotiated Rulemaking Act). Pursuant to the Act, I have been appointed to serve as the Convener for the negotiated rulemaking process.

The purpose of this memo is to solicit your willingness to participate on the **Negotiated Rulemaking Committee on Dual Credit Course Limitations** or to nominate a designee from your system/institution for potential selection by the THECB's Alternative Dispute Resolution Coordinator. Please respond to me via email at [Laurie.Frederick@theeb.state.tx.us](mailto:Laurie.Frederick@theeb.state.tx.us) by no later than 5 pm on August 25, 2017.

Targeted dates for convening the committee are October 23, 30, November 1, and 2 from 9:30 am to 4:30 pm at the THECB offices in Austin. We ask that you hold these dates on your calendar in the event you are selected to serve on this committee, or if you nominate someone from your system/institution, please share these dates with your nominee as well.

If you have questions or concerns, feel free to contact me at (512) 427-6446. Thank you in advance for your assistance in this matter.

Enclosures

c: Lily Laux, Executive Director, Texas Education Agency  
Jacob Fraire, President, Texas Association of Community Colleges  
Chief Academic Officers  
Chief Instructional Officers  
Institution Liaisons

- [Government+Code%2C+Section+2008%2C+NRM+Act.pdf](#)
- [SB+1091%2C+Final.pdf](#)



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## Attachment 2: Nominations

<b><u>Name</u></b>	<b><u>Title</u></b>	<b><u>System/District/Institution</u></b>
Akilah Martin	Director, College and Career Pathways	Alvin Community College
Amy Whitworth	Vice President, Academic Success	Alamo Colleges District
Andrew Fisher	Provost	North Central Texas College
Bob Mong	President	University of North Texas System: University of North Texas at Dallas
Bob Montez	Director, Early College Programs	Del Mar College
Carol Hanes	Vice President of Academic Affairs	Navarro College
Catherine O'brien	Associate Vice Chancellor, College Readiness	Houston Community College
David Mosley	Vice President, Strategic Initiatives	Texas State University System: Lamar Institute of Technology
Deana Savage	Special Advisor to the President	Midland College
Donald Topliff	Provost	Texas Tech University System: Angelo State University
Genevieve Durhan DeCesaro	Vice Provost, Academic Affairs	Texas Tech University System: Texas Tech University
Gwen Whitehead	Vice President, Academic Affairs	Texas State University System: Lamar State College-Orange
Hector Gonzales	President	Southwest Texas Junior College
Heidi Kennedy	Assistant Dean, Undergraduate Academic Affairs	University of Houston System: University of Houston
Janill Deal	Director of Public Education and Special Projects	Central Texas College
Katie Nisbet	Associate Dean, Academic Partnerships	Odessa College
Kayla D. Jones	Assistant Dean of Academics	Coastal Bend College
Kelley Townsend	Director, Dual Credit	Trinity Valley Community College
Kerry Schindler	Senior Vice President, Instruction	Ranger College
Kimberly Faris	Accreditation Coordinator	University North Texas System: University of North Texas
Lawrence Abraham	Associate Dean, Undergraduate Studies	The University of Texas System: The University of Texas at Austin
Lily Laux	Executive Director, School Programs	Texas Education Agency
Llolanda Carriveau	Program Director/Professor and Dual Credit Liaison	McLennan Community College
Lynda Villanueva	Vice President, Academic and Student Affairs	Brazosport College
Maria Badilo	Dean, Dual Credit and Early College High School	El Paso Community College
Mark Smith	Vice President, Educational Services	Temple College
Michael Adams	Interim Dean	Texas Southern University
Nicolas Gonzalez	Administrator, High School Programs and Services	South Texas College
Otoniel Matamoros	Director, Dual Credit	South Texas College
Pamela Campbell	Associate Vice Chancellor, Student Success Partnerships	San Jacinto College District
Peggy Semingson	Associate Professor, Literacy Studies	The University of Texas System: The University of Texas at Arlington
Raul Martinez	Associate Vice President of P-12 Partnerships	Collin College District
Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Ron Spears	Dean, Continuing and Distance Education	South Plains College
Sarah Lock	Associate Dean, Dual Credit and eLearning	Weatherford College
Shasta Buchanan	Executive Director, College-High School Relations	Austin Community College
Susan Allen	Assistant Vice President, Academic Affairs	Texas A&M University System: West Texas A&M University
Tam Nannen	Assistant Vice President, Academic Affairs	Tyler Junior College
Terry Booker	Coordinator, Dual Credit	Kilgore College
Tiannay Brally	Director, Dual Credit	Cisco College
Timothy Scott	Assistant Provost, Undergraduate Studies	Texas A&M University System: Texas A&M University
Tracy Steenholdt	Director, Dual Enrollment	Lee College
William Coppola	President, Southeast Campus	Tarrant County College District

TEXAS HIGHER EDUCATION COORDINATING BOARD  
NOTICE OF INTENT TO ENGAGE IN NEGOTIATED RULEMAKING—DUAL CREDIT COURSE LIMITATIONS  
(Texas Public Universities, Community Colleges, Lamar State Colleges, and Texas State Technical Colleges)

Senate Bill 1091, 85th Texas Legislature, Regular Session, relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education, amends Texas Education Code Sections 28.009, 51.968, and 130.008. The Texas Higher Education Coordinating Board (“THECB” or “Board”) and Texas Education Agency (“TEA”) plan to engage in negotiated rulemaking to coordinate the adoption of rules for the implementation of these amendments.

In identifying persons likely affected by the proposed rules, the Convener of Negotiated Rulemaking sent a memo via email to all chancellors and presidents at Texas public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus.

From this effort, 43 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated someone from their system/institution to participate on the negotiated rulemaking committee for dual credit course limitations. The positions held by the volunteers and nominees include presidents, provosts, directors, and coordinators. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

The following is a list of the stakeholders who are significantly affected by this rule and will be represented on the negotiated rulemaking committee for dual credit course limitations:

1. Public Universities;
2. Public Community Colleges;
3. Lamar State Colleges;
4. Texas State Technical Colleges; and
5. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 17 individuals to the negotiating rulemaking committee for dual credit course limitations to represent affected parties and the agencies:

Public Universities

Susan Allen, Assistant Vice President, Academic Affairs, West Texas A&M University (Texas A&M University System)  
Michael Adams, Interim Dean, Texas Southern University  
Donald Topliff, Provost, Angelo State University (Texas Tech University System)  
Peggy Semington, Associate Professor, Literacy Studies, The University of Texas at Arlington (The University of Texas System)  
Heidi Kennedy, Assistant Dean, Undergraduate Academic Affairs, University of Houston  
Bob Mong, President, University of North Texas at Dallas (University North Texas System)

Public Community Colleges

Shasta Buchanan, Executive Director, College-High School Relations, Austin Community College  
Bob Montez, Director, Early College Programs, Del Mar College  
Terry Booker, Coordinator, Dual Credit, Kilgore College  
Deana Savage, Special Advisor to the President, Midland College  
Andrew Fisher, Provost, North Central Texas College  
Pamela Campbell, Associate Vice Chancellor, Student Success Partnerships, San Jacinto College District  
Hector Gonzales, President, Southwest Texas Junior College  
William Coppola, President, Southeast Campus, Tarrant County College District

Lamar State Colleges

Gwen Whitehead, Vice President, Academic Affairs, Lamar State College-Orange (Texas State University System)

Texas Education Agency

Lily Laux, Executive Director, School Programs

Texas Higher Education Coordinating Board

Rex Peebles, Assistant Commissioner, Academic Quality and Workforce

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- \*Name and contact information of the person submitting the application;
- \*Description of how the persons are significantly affected by the rule and how their interests are different than those represented by the persons named above;
- \*Name and contact information of the person being nominated for membership; and
- \*Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for dual credit course limitations. Comments and applications for membership on the committee must be submitted by September 18, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: [laurie.frederick@theqb.state.tx.us](mailto:laurie.frederick@theqb.state.tx.us).

TRD-201703420  
William Franz  
General Counsel  
Texas Higher Education Coordinating Board  
Filed: August 30, 2017

**Mary E. Smith, Ph.D.**

Assistant Deputy Commissioner for Academic Planning and Policy  
Alternative Dispute Resolution Coordinator  
Texas Higher Education Coordinating Board

Mary E. Smith has been a staff member of the Texas Higher Education Coordinating Board since 1987 and now serves as the Assistant Deputy Commissioner for Academic Planning and Policy. In this role, she is responsible for the administration and management of matters related to the Board's higher education academic planning and policy functions, and she provides leadership and coordination on key projects that cut across divisions of the agency. Smith also serves as the agency's Alternative Dispute Resolution (ADR) Coordinator for negotiated rulemaking. In this role, she is responsible for managing the agency's consensus-based process of developing policies, procedures, or rules relating to certain matters in collaboration with stakeholders who have shared interests. She has taught communication courses at The University of Texas at Austin and at St. Edward's University.

Smith served for five years as a program director in the Coordinating Board's former Division of Universities and Health-Related Institutions where her primary responsibilities included the review of new degree program proposals and the administration of the Minority Health Research and Education Grant Program. Smith spent her first 12 years of employment with the Coordinating Board in the Department of Personnel Services, where from 1996 to 1999 she served as the department's assistant director. Prior to her employment with the Coordinating Board, Smith spent 13 years working in health care organizations, with nine of those years serving in direct patient care positions.

Smith holds a Ph.D. in Communication Studies, a Certificate in Dispute Resolution, a Master of Arts degree in Speech Communication, and a Bachelor of Arts degree in Psychology, all from The University of Texas at Austin.

AN ACT

relating to limitations on courses that may be offered for dual credit by school districts and public institutions of higher education.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 28.009, Education Code, is amended by adding Subsections (a-4), (a-5), and (b-1) to read as follows:

(a-4) A dual credit course offered under this section must be:

(1) in the core curriculum of the public institution of higher education providing college credit;

(2) a career and technical education course; or

(3) a foreign language course.

(a-5) Subsection (a-4) does not apply to a dual credit course offered as part of the early college education program established under Section 29.908 or any other early college program that assists a student in earning a certificate or an associate degree while in high school.

(b-1) The agency and the Texas Higher Education Coordinating Board shall coordinate as necessary to adopt rules for the implementation of Subsections (a-4) and (a-5). In adopting those rules, the agency and the coordinating board shall use the negotiated rulemaking procedures under Chapter 2008, Government Code, and consult with relevant stakeholders.

SECTION 2. Section 51.968, Education Code, is amended by amending Subsections (b) and (c) and adding Subsections (d), (d-1), and (d-2) to read as follows:

(b) Each institution of higher education that offers freshman-level courses shall adopt and implement a policy to grant undergraduate course credit to entering freshman students who have:

(1) successfully completed the International Baccalaureate Diploma Program;

(2) [~~who have~~] achieved required scores on one or more examinations in the Advanced Placement Program or the College-Level Examination Program; [~~or~~] or

(3) [~~who have~~] successfully completed one or more dual credit courses [~~offered through concurrent enrollment in high school and at an institution of higher education~~].

(c) In the policy, the institution shall:

(1) establish the institution's conditions for granting course credit, including the minimum required scores on CLEP examinations, Advanced Placement examinations, and examinations for courses constituting the International Baccalaureate Diploma Program; and

(2) based on the correlations identified under Subsection (f), identify the specific course credit or other academic requirements of the institution, including the number of semester credit hours or other course credit, that the institution will grant to a student who:

(A) successfully completes the diploma program;

(B) achieves required scores on CLEP

1 examinations or Advanced Placement examinations; or

2 (C) [~~7, who~~] successfully completes a dual credit  
3 course [~~through concurrent enrollment, or who achieves required~~  
4 ~~scores on CLEP examinations or Advanced Placement examinations~~].

5 (d) The policy adopted by an institution of higher education  
6 under Subsection (b) must provide that the institution may grant  
7 undergraduate course credit for a dual credit course only if the  
8 course is:

9 (1) in the core curriculum of the institution of  
10 higher education that offered the course;

11 (2) a career and technical education course; or

12 (3) a foreign language course.

13 (d-1) Subsection (d) does not apply to a dual credit course  
14 completed by a student as part of the early college education  
15 program established under Section 29.908 or any other early college  
16 program that assists a student in earning a certificate or an  
17 associate degree while in high school.

18 (d-2) The coordinating board, in coordination with the  
19 Texas Education Agency, shall adopt rules to implement Subsections  
20 (d) and (d-1). In adopting those rules, the coordinating board  
21 shall use the negotiated rulemaking procedures under Chapter 2008,  
22 Government Code, and consult with relevant stakeholders.

23 SECTION 3. Section 130.008, Education Code, is amended by  
24 adding Subsections (a-1), (a-2), and (a-3) to read as follows:

25 (a-1) A course offered for joint high school and junior  
26 college credit under this section must be:

27 (1) in the core curriculum of the public junior

1 college;

2 (2) a career and technical education course; or

3 (3) a foreign language course.

4 (a-2) Subsection (a-1) does not apply to a course offered  
5 for joint high school and junior college credit to a student as part  
6 of the early college education program established under Section  
7 29.908 or any other early college program that assists a student in  
8 earning a certificate or an associate degree while in high school.

9 (a-3) The Texas Higher Education Coordinating Board, in  
10 coordination with the Texas Education Agency, shall adopt rules to  
11 implement Subsections (a-1) and (a-2). In adopting those rules,  
12 the coordinating board shall use the negotiated rulemaking  
13 procedures under Chapter 2008, Government Code, and consult with  
14 relevant stakeholders.

15 SECTION 4. The changes in law made by this Act apply  
16 beginning with dual credit courses offered for the 2018 spring  
17 semester.

18 SECTION 5. This Act takes effect immediately if it receives  
19 a vote of two-thirds of all the members elected to each house, as  
20 provided by Section 39, Article III, Texas Constitution. If this  
21 Act does not receive the vote necessary for immediate effect, this  
22 Act takes effect September 1, 2017.



\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1091 passed the Senate on April 3, 2017, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2017, by the following vote: Yeas 30, Nays 1.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1091 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 135, Nays 11, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor



**Texas Higher Education Coordinating Board**  
**1200 East Anderson Lane**  
**Austin, Texas 78752**  
**(512) 427-6101**

### **Driving Directions to the THECB**

From IH-35:

- Exit Hwy 183 South
- Turn East onto 183 South access road (Coming from the North, turn left; From the South, turn right)
- Get in far left lane and Make a U-Turn under 183 at Cameron Road (the first light)
- The Coordinating Board is on the right (after Luby's)

From Austin-Bergstrom International Airport:

- Take Hwy 71 West
- Exit to Hwy 183 North
- Continue along 183 North and take the Cameron Rd exit onto E Anderson Ln
- The Coordinating Board is on the right after the intersection (after Luby's)

Link to [Area Hotels](#)

Link to [Area Restaurants](#)

\*For security reasons, visitors must enter the building using the front entrance only.

\*Visitors must sign-in at security desk to obtain a visitor badge. The visitor (or institution ID) badge must be worn/visible while in the building.

\*Free parking available.

NOTE: Information above can also be found on the THECB website at <http://www.thecb.state.tx.us/apps/events/>.

Box lunch selection due to [Laurie.Frederick@THECB.state.tx.us](mailto:Laurie.Frederick@THECB.state.tx.us) by October 20.  
Cost includes tea and delivery fee.

## SANDWICH, PRESSATA AND WRAP BOX LUNCHES (\$15.00)

### Premium Sandwich Box Lunch

Your choice of one delicious premium sandwiches.  
Includes chips and a fresh-baked jumbo cookie.

- Curry Chicken on Ciabatta Roll
- Turkey with Tomato Confit on Focaccia
- Harissa Beef with Tomato Jam on Brioche Roll
- Buttermilk Baked Chicken on Jalapeño Roll
- Capri Chicken on Wheat
- Stacker on Focaccia
- Tuscan Turkey on Focaccia
- New England Chicken Salad on Raisin Walnut
- Mediterranean Vegetarian on Ciabatta Roll (v)
- Ham & Swiss on Marble Rye
- Tiger Thai Beef on Brioche Roll
- Vegetarian on Focaccia (v)
- California Club on Ciabatta Roll
- Monterey Chicken with Avocado on Jalapeño Roll
- Big Al's Club on Wheat

### Traditional Sandwich Box Lunch

Your choice of one traditional sandwiches.  
Includes chips and a fresh-baked jumbo cookie.

- Ham on Rye
- Turkey on Ciabatta Roll
- New England Chicken Salad on Wheat
- Roasted Chicken on Focaccia
- Beef Brisket on Jalapeño Roll

### Wrap Box Lunch

Your choice of one delicious wraps.  
Includes chips and a fresh-baked jumbo cookie.

- Asian Crispy Chicken in Spinach Tortilla
- Ancho BBQ Beef in Chipotle Tortilla
- Vegetarian in Honey Wheat Tortilla (v)
- Tuscan Turkey in Spinach Tortilla
- Santa Fe Chicken in Chipotle Tortilla
- Chicken Caesar in Wheat Tortilla

### Gluten-Free Sandwich Box Lunch (+\$2.00)

Your choice of sandwich on gluten-free ancient grains bread. Includes chips and a housemade pistachio oatmeal bar. (Ancient grains bread is made with amaranth, quinoa, millet, sorghum and teff)

- Tuscan Turkey
- Vegetarian (v)
- Mediterranean Vegetarian
- Capri Chicken
- Curry Chicken
- California Club
- Big Al's Club
- Stacker
- Monterey Chicken with Avocado
- Black Russian Ham & Swiss
- Harissa Beef with Tomato Jam
- Tiger Thai Beef
- Roast Turkey
- Ham
- Brisket
- Roasted Chicken

### Pressata Box Lunch

Your choice of one European grilled sandwiches.  
Includes chips and a fresh-baked jumbo cookie.

- Pepper Jack Chicken
- Chicken Margherita
- The Antonio
- Honey Mustard BBQ Beef
- Chipotle Beef
- Turkey Provençal
- Vegetarian (v)

## SALAD BOX LUNCHES (\$15.00)

Your choice of salad. Includes chips and a fresh-baked jumbo cookie.

### Harissa Chicken

Fresh greens topped with a delicious combination of diced housemade green harissa curried chicken, roasted red peppers, cucumbers, confit tomatoes, arugula, pickled onions, sliced fresh mozzarella and crisp flatbread strips. Served with our curry yogurt dressing.

### Chicken Caesar

Fresh romaine lettuce with tender roasted chicken breast, homemade croutons and shredded Parmesan cheese.

### Caesar

Fresh romaine lettuce with shredded Parmesan, crisp homemade croutons and our own creamy Caesar dressing.

### Mixed Green with Balsamic Vinaigrette

Premium mix of spring, romaine and leaf lettuces, cucumber, tomato and croutons. Served with ranch and balsamic vinaigrette dressings. (v)

### Cobb with Ranch Dressing

Fresh greens with tender roasted chicken, tomatoes, bacon, diced eggs, avocado and cheddar cheese. Served with ranch dressing.

### Mediterranean Chicken with Balsamic Vinaigrette

Spinach and spring mix, roasted chicken, red onions, tomatoes, green olives, roasted red peppers, feta cheese and flatbread crisps.

### Pesto Chicken with Ranch Dressing

Romaine and spring mix topped with pesto-coated roasted chicken, cucumbers, tomatoes, shredded Parmesan cheese and flatbread crisps.

### Trio Salad with Balsamic Vinaigrette

Fresh lettuce topped with housemade chicken salad, tuna salad and pasta salad, garnished with flatbread crisps.