



TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

MEMORANDUM

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TO: Negotiated Rulemaking Committee on Open Educational Resources Grant Program

FROM: Mary E. Smith, Alternative Dispute Resolution Coordinator

DATE: September 22, 2017

RE: Appointment of Members to Negotiated Rulemaking Committee

Texas Education Code Section 61.0331 directs the Texas Higher Education Coordinating Board ("THECB" or "Board") to employ the negotiated rulemaking process described in Chapter 2008 of the Texas Government Code when adopting a policy, procedure, or rule relating to the allocation or distribution of funds, including financial aid or other trusted funds under Section 61.07761 of the Texas Education Code.

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 no comments.

In accordance with Texas Government Code, Section 2008.54 (Negotiated Rulemaking Act, 1997), I hereby appoint the following 13 individuals to serve as committee members to represent affected parties and the THECB on the Negotiated Rulemaking Committee on Open Educational Resources Grant Program:

Public Universities

Ashley Purgason, Assistant Vice President, Strategic Initiatives, The University of Texas at Arlington

Demetrios Kazakos, Ex-Dean, Professor of Mathematics, Texas Southern University

Justin Louder, Associate Vice Provost, World Wide eLearning, Texas Tech University

Kris Helge, Assistant Dean, Libraries, Texas Woman's University

Owen Ellard, Senior Director, Libraries, The University of Texas Health Science Center at San Antonio

Thomas Halling, Associate Professor, University Libraries, Texas A&M University

Public Community Colleges

Carrie Gits, HLC Librarian and Open Educational Resources Team Leader, Austin Community College

Jotisa Klemm, Director, Library Services (Southeast Campus), Tarrant County College District

Julie Penley, Interim Vice President, Research and Accountability; Associate Vice President, Instruction and Student Services, El Paso Community College

Karla Bryan, Director, Learning Resource Centers, Trinity Valley Community College

Phillip Anaya, Digital and Open Education Resource Coordinator, Alamo Colleges

Texas State Technical Colleges

Kyle Smith, Associate Vice Chancellor for Dual Enrollment and Innovation

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
Open Educational Resources Grant Program**

November 1, 2017
9:30a – 4:30p
Board Room

MEETING MATERIALS

Materials include the following:

- I. Meeting Agenda
- II. Texas Education Code Section 61.0331 (Relevant Provisions)
- III. THECB Rules Relating to Negotiated Rulemaking
- IV. Ground Rules for Negotiated Rulemaking
- V. Convener's Report
- VI. Notice of Intent Filed with the *Texas Register*
- VII. Facilitator's Bio
- VIII. Senate Bill 810
- IX. THECB General Information
- X. 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 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
Open Educational Resources Grant Program**

November 1, 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 Allocation Methodology for Open Educational Resources Grant Program
- VII. Consideration of Proposed Allocation Methodology for Open Educational Resources Grant Program

Texas Education Code Applicable Provisions Negotiated Rulemaking for Financial Aid and Trusteed Funds

SECTION 29. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0331 to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

(1) an admission policy regarding the common admission application under Section 51.762, a uniform admission policy under Section 51.807, graduate and professional admissions under Section 51.843, or the transfer of credit under Section 61.827;

(2) the allocation or distribution of funds, including financial aid or other trusteed funds under Section 61.07761;

(3) the reevaluation of data requests under Section 51.406; or

(4) compliance monitoring under Section 61.035.

SECTION 46. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.07761 to read as follows:

Sec. 61.07761. FINANCIAL AID AND OTHER TRUSTEED FUNDS ALLOCATION.
(a) For any funds trusteed to the board for allocation to institutions of higher education and private or independent institutions of higher education, including financial aid program funds, the board by rule shall:

(1) establish and publish the allocation methodologies; and

(2) develop procedures to verify the accuracy of the application of those allocation methodologies by board staff.

(b) The board shall consult with affected stakeholders before adopting rules under this section.

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
Ashley Purgason	Assistant Vice President, Strategic Initiatives	The University of Texas at Arlington
Carrie Gits	HLC Librarian and Open Educational Resources Team Leader	Austin Community College
Demetrios Kazakos	Ex-Dean, Professor of Mathematics	Texas Southern University
JoTisa Klemm	Director, Library Services (Southeast Campus)	Tarrant County College District
Julie A. Penley	Interim Vice President, Research and Accountability; Associate Vice President, Instruction and Student Services	El Paso Community College
Justin Louder	Associate Vice Provost, World Wide eLearning	Texas Tech University
Karla Bryan	Director, Learning Resource Centers	Trinity Valley Community College
Kris Helge	Assistant Dean, Libraries	Texas Woman's University
Kyle Smith	Associate Vice Chancellor for Dual Enrollment and Innovation	Texas State Technical College
Owen Ellard	Senior Director, Libraries	The University of Texas Health Science Center at San Antonio
Phillip Anaya	Digital and Open Education Resource Coordinator	Alamo Colleges
Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Thomas Halling	Associate Professor, University Libraries	Texas A&M University

To: Mary E. Smith, Ph.D., Alternative Dispute Resolution Coordinator
From: Laurie A. Frederick, Convener
Date: August 26, 2017
Re: Open Educational Resources Grant Program

Texas Education Code Section 61.0331 contains provisions requiring the Texas Higher Education Coordinating Board (“THECB” or “Board”) to engage in negotiated rulemaking in certain instances. Among the instances that require negotiated rulemaking is the Open Educational Resources Grant Program allocation methodology. The requirement is found in the Texas Education Code, Chapter 61, which states in relevant part:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

[...]

(2) the allocation or distribution of funds, including financial aid or other trustee funds under Section 61.07761.

Section 61.07761 provides, in pertinent part, as follows:

Sec. 61.07761. FINANCIAL AID AND OTHER TRUSTEED FUNDS ALLOCATION.

(a) For any funds trustee to the board for allocation to institutions of higher education and private or independent institutions of higher education, including financial aid program funds, the board by rule shall:

- (1) establish and publish the allocation methodologies; and*
- (2) develop procedures to verify the accuracy of the application of those allocation methodologies by board staff.*

(b) For purposes of this section, student financial assistance includes grants, scholarships, loans, and work-study.

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 presidents and chancellors at 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 (see Attachment 1). From this effort, 21 individuals

(see Attachment 2) volunteered or were nominated to participate on the Open Educational Resources Grant Program allocation methodology 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 coordinators, team leaders, deans, directors, and professors. 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.

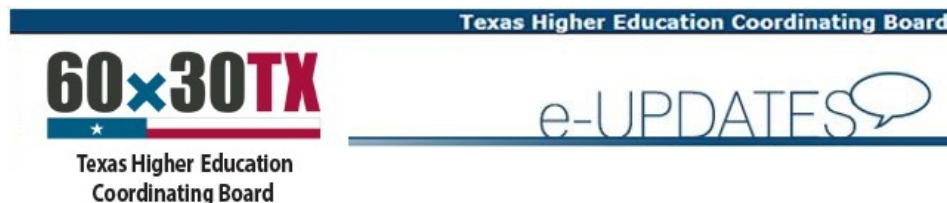
The probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests is also good. As mentioned, memos were sent to all affected institutions and we have received nominations of 21 individuals for consideration to the negotiated rulemaking 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



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 Open Educational Resources Grant Program

Senate Bill 810, 85th Texas Legislature, relating in part to the use of open educational resources, amends Texas Education Code (TEC) Chapter 61, Subchapter C, by adding Section 61.0668, Open Educational Resources Grant Program. TEC Section 61.0331 directs the Texas Higher Education Coordinating Board (THECB) to employ the negotiated rulemaking process described in Texas Government Code Chapter 2008 (Negotiated Rulemaking Act) when adopting rules relating to trustee funds allocation methodologies. 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 Open Educational Resources Grant Program** or to nominate a designee from your system/campus for potential selection by the THECB's Alternative Dispute Resolution Coordinator. Please respond to me via email at 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: Jacob Fraire, President, Texas Association of Community Colleges
Chief Academic Officers
Chief Instructional Officers
Institution Liaisons

- [SB+810.pdf](#)
- [TEC+61.0331%2C+Financial+Aid+%26+Trusteed+Funds.pdf](#)
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Attachment 2: Nominations

<u>Name</u>	<u>Title</u>	<u>System/District/Institution</u>
Agostine Trevino	Associate Professor, Government; Co-chair, Textbook Subcommittee	Temple College
Andra Cantrell	Executive Vice President, Financial and Administrative Affairs	Weatherford College
Ashley Purgason	Assistant Vice President, Strategic Initiatives	The University of Texas at Arlington
Brett Millan	Professor, English	South Texas College
Carrie Gits	HLC Librarian and Open Educational Resources Team Leader	Austin Community College
Demetrios Kazakos	Ex-Dean, Professor of Mathematics	Texas Southern University
Earnstein Dukes	Associate Dean, Libraries for Resource Management	Texas Tech University
Fred Peters	Grant Writer	Kilgore College
Jan McCauley	Professor, History/Government	Tyler Junior College
Jotisa Klemm	Director, Library Services (Southeast Campus)	Tarrant County College District
Julie Penley	Interim Vice President, Research and Accountability; Associate Vice President, Instruction and Student Services	El Paso Community College
Justin Louder	Associate Vice Provost, World Wide eLearning	Texas Tech University
Karla Bryan	Director, Learning Resource Centers	Trinity Valley Community College
Kevin Hawkins	Assistant Dean, Scholarly Communications	University of North Texas
Kris Helge	Assistant Dean, Libraries	Texas Woman's University
Kyle Smith	Associate Vice Chancellor for Dual Enrollment and Innovation	Texas State Technical College
Mark Johnson	Dean, Business and Technology (North Campus)	San Jacinto College
Owen Ellard	Senior Director, Libraries	The University of Texas Health Science Center at San Antonio
Phillip Anaya	Digital and Open Education Resource Coordinator	Alamo Colleges
Rex Peebles	Assistant Commissioner, Academic Quality and Workforce	Texas Higher Education Coordinating Board
Thomas Halling	Associate Professor, University Libraries	Texas A&M University

TEXAS HIGHER EDUCATION COORDINATING BOARD
NOTICE OF INTENT TO ENGAGE IN NEGOTIATED RULEMAKING—OPEN EDUCATIONAL RESOURCES GRANT
PROGRAM
(Texas Public Universities, Community Colleges, Lamar State Colleges, and Texas State Technical Colleges)

Senate Bill 810, 85th Texas Legislature, Regular Session, relating in part to the use of open educational resources, amends Texas Education Code Chapter 61, Subchapter C, by adding Section 61.0668, Open Educational Resources Grant Program. The Texas Higher Education Coordinating Board ("THECB" or "Board") intends to engage in negotiated rulemaking to develop rules for the Open Educational Resources Grant Program allocation methodology for public universities, community colleges, Lamar State Colleges, and Texas State Technical Colleges and to develop procedures for THECB staff to verify the accuracy of the application of that allocation methodology. This is in accordance with the provisions of Texas Education Code 61.0331.

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 campus.

From this effort, 21 individuals responded (out of approximately 149 affected entities) and expressed an interest to participate or nominated someone from their institution to participate on the negotiated rulemaking committee for Open Educational Resources Grant Program. The positions held by the volunteers and nominees include coordinators, team leaders, deans, directors, and professors. 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 Open Educational Resources Grant Program:

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 13 individuals to the negotiating rulemaking committee for Open Educational Resources Grant Program to represent affected parties and the agency:

Public Universities

Thomas Halling, Associate Professor, University Libraries, Texas A&M University
Demetrios Kazakos, Ex-Dean, Professor of Mathematics, Texas Southern University
Justin Louder, Associate Vice Provost, World Wide eLearning, Texas Tech University
Kris Helge, Assistant Dean, Libraries, Texas Woman's University
Ashley Purgason, Assistant Vice President, Strategic Initiatives, The University of Texas at Arlington
Owen Ellard, Senior Director, Libraries, The University of Texas Health Science Center at San Antonio

Public Community Colleges

Phillip Anaya, Digital and Open Education Resource Coordinator, Alamo Colleges
Carrie Gits, HLC Librarian and Open Educational Resources Team Leader, Austin Community College
Julie Penley, Interim Vice President, Research and Accountability; Associate Vice President, Instruction and Student Services, El Paso Community College
Jotisa Klemm, Director, Library Services (Southeast Campus), Tarrant County College District
Karla Bryan, Director, Learning Resource Centers, Trinity Valley Community College

Texas State Technical Colleges

Kyle Smith, Associate Vice Chancellor for Dual Enrollment and Innovation, Texas State Technical College

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 Open Educational Resources Grant Program. 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@theccb.state.tx.us.

TRD-201703421
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: August 30, 2017

Mindy Nobles

Program Director, Academic Quality and Workforce
Texas Higher Education Coordinating Board

Mindy Nobles has been employed with the Texas Higher Education Coordinating Board since 2013 and serves as Program Director in the Academic Quality and Workforce Division. She supervises the T-STEM Challenge Scholarship Program and performs administrative and grant management duties in the Carl D. Perkins Grant Program. Ms. Nobles also assists with Methods of Administration monitoring for compliance with Civil Rights in Vocational Education regulations of the U.S. Department of Education. Among her other duties, Ms. Nobles has served as key staff to field of study advisory committees.

Ms. Nobles has more than 20 years of experience in Texas community and technical college education and administration. At Northeast Texas Community College (NTCC), Ms. Nobles served as Associate Professor of English. In addition to her faculty responsibilities, Ms. Nobles served for three years as Director of Instruction for Humanities and as NTCC's Director of Distance Education *ad interim* for two years. Prior to coming to NTCC, Ms. Nobles supervised the Job Training Partnership Act (JTPA) Program at Kilgore College (KC) and later served as KC's grants writer. At Texas State Technical College–Marshall, Ms. Nobles served as Workforce Development Coordinator in the college's JTPA program.

Ms. Nobles holds an M.A. and B.A. in English from the University of Texas at Tyler and an A.A. in Liberal Arts from Kilgore College, graduating from all programs with highest honors. She completed doctoral coursework in Written Discourse at Texas A&M University–Commerce prior to joining the Coordinating Board. Ms. Nobles is certified in Dispute Resolution and is an active member of the Austin Association of Mediators.

AN ACT

relating to the purchase and use of open educational resources.

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

SECTION 1. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS. Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials and technology allotment.

SECTION 2. Sections 31.002(1) and (1-a), Education Code, are amended to read as follows:

(1) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open education resource [~~open-source~~]

instructional material.

(1-a) "Open education resource [~~Open-source~~ instructional material" means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that allows for free use, reuse, modification, and sharing with others, including full courses, course materials, modules, textbooks, streaming videos, tests, software, and any other tools, materials, or techniques used to support access to knowledge [~~electronic instructional material that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional material~~]. The term includes state-developed open education resource [~~open-source~~] instructional material purchased under Subchapter B-1.

SECTION 3. Section [31.004\(b\)](#), Education Code, is amended to read as follows:

(b) To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), a school district or open-enrollment charter school may consider:

(1) instructional materials adopted by the State Board of Education;

(2) materials adopted or purchased by the commissioner under Section [31.0231](#) or Subchapter B-1;

(3) open education resource [~~open-source~~]

1 instructional materials submitted by eligible institutions and
2 adopted by the State Board of Education under Section 31.0241;

3 (4) open education resource ~~[open-source]~~
4 instructional materials made available by other public schools;
5 ~~[and]~~

6 (5) instructional materials developed or purchased by
7 the school district or open-enrollment charter school; and

8 (6) open education resource instructional materials
9 and other electronic instructional materials included in the
10 repository under Section 31.083.

11 SECTION 4. Sections 31.005 and 31.021, Education Code, are
12 amended to read as follows:

13 Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS.
14 An open-enrollment charter school is entitled to the instructional
15 materials and technology allotment under this chapter and is
16 subject to this chapter as if the school were a school district.

17 Sec. 31.021. STATE INSTRUCTIONAL MATERIALS AND TECHNOLOGY
18 FUND. (a) The state instructional materials and technology fund
19 consists of:

20 (1) an amount set aside by the State Board of Education
21 from the available school fund, in accordance with Section
22 43.001(d); and

23 (2) all amounts lawfully paid into the fund from any
24 other source.

25 (c) Money in the state instructional materials and
26 technology fund shall be used to:

27 (1) fund the instructional materials and technology

allotment, as provided by Section 31.0211;

(2) purchase special instructional materials for the education of blind and visually impaired students in public schools;

(3) pay the expenses associated with the instructional materials adoption and review process under this chapter;

(4) pay the expenses associated with the purchase or licensing of open education resource ~~[open-source]~~ instructional material;

(5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping;

(6) ~~[fund the technology lending grant program established under Section 32.201; and~~

~~[(7)]~~ provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Juvenile Justice Department; and

(7) pay the expenses associated with the instructional materials web portal developed under Section 31.081.

(d) Money transferred to the state instructional materials and technology fund remains in the fund until spent and does not lapse to the state at the end of the fiscal year.

SECTION 5. The heading to Section 31.0211, Education Code, is amended to read as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ALLOTMENT.

SECTION 6. Sections 31.0211(a), (b), and (c), Education Code, are amended to read as follows:

(a) A school district is entitled to an allotment each biennium from the state instructional materials and technology fund for each student enrolled in the district on a date during the last year of the preceding biennium specified by the commissioner. The commissioner shall determine the amount of the allotment per student each biennium on the basis of the amount of money available in the state instructional materials and technology fund to fund the allotment. An allotment under this section shall be transferred from the state instructional materials and technology fund to the credit of the district's instructional materials and technology account as provided by Section 31.0212.

(b) A juvenile justice alternative education program under Section 37.011 is entitled to an allotment from the state instructional materials and technology fund in an amount determined by the commissioner. The program shall use the allotment to purchase items listed in Subsection (c) for students enrolled in the program. The commissioner's determination under this subsection is final and may not be appealed.

(c) Subject to Subsection (d), funds allotted under this section may be used to:

(1) purchase:

(A) materials on the list adopted by the commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of whether the instructional materials are on the list adopted under

Section 31.024;

(C) consumable instructional materials, including workbooks;

(D) instructional materials for use in bilingual education classes, as provided by Section 31.029;

(E) instructional materials for use in college preparatory courses under Section 28.014, as provided by Section 31.031;

(F) supplemental instructional materials, as provided by Section 31.035;

(G) state-developed open education resource ~~[open-source]~~ instructional materials, as provided by Subchapter B-1;

(H) instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011; and

(I) technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with an allotment under this section; and

(2) pay:

(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and

(B) the salary and other expenses of an employee who provides technical support for the use of technological

equipment directly involved in student learning.

SECTION 7. The heading to Section 31.0212, Education Code, is amended to read as follows:

Sec. 31.0212. INSTRUCTIONAL MATERIALS AND TECHNOLOGY ACCOUNT.

SECTION 8. Sections 31.0212(a), (b), (d), and (e), Education Code, are amended to read as follows:

(a) The commissioner shall maintain an instructional materials and technology account for each school district. In the first year of each biennium, the commissioner shall deposit in the account for each district the amount of the district's instructional materials and technology allotment under Section 31.0211.

(b) The commissioner shall pay the cost of instructional materials requisitioned by a school district under Section 31.103 using funds from the district's instructional materials and technology account.

(d) Money deposited in a school district's instructional materials and technology account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

(e) The commissioner shall adopt rules as necessary to implement this section. The rules must include a requirement that a school district provide the title and publication information for any instructional materials requisitioned or purchased by the

1 district with the district's instructional materials and
2 technology allotment.

3 SECTION 9. Section 31.0213, Education Code, is amended to
4 read as follows:

5 Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL
6 MATERIALS AND TECHNOLOGY ALLOTMENT. Each school district shall
7 annually certify to the commissioner that the district's
8 instructional materials and technology allotment has been used only
9 for expenses allowed by Section 31.0211.

10 SECTION 10. Section 31.0214(a), Education Code, is amended
11 to read as follows:

12 (a) Each year the commissioner shall adjust the
13 instructional materials and technology allotment of school
14 districts experiencing high enrollment growth. The commissioner
15 shall establish a procedure for determining high enrollment growth
16 districts eligible to receive an adjustment under this section and
17 the amount of the instructional materials and technology allotment
18 those districts will receive.

19 SECTION 11. The heading to Section 31.0215, Education Code,
20 is amended to read as follows:

21 Sec. 31.0215. INSTRUCTIONAL MATERIALS AND TECHNOLOGY
22 [MATERIAL] ALLOTMENT PURCHASES.

23 SECTION 12. Sections 31.0215(b) and (c), Education Code,
24 are amended to read as follows:

25 (b) The commissioner may allow a school district or
26 open-enrollment charter school to place an order for instructional
27 materials before the beginning of a fiscal biennium and to receive

1 instructional materials before payment. The commissioner shall
 2 limit the cost of an order placed under this section to 80 percent
 3 of the estimated amount to which a school district or
 4 open-enrollment charter school is estimated to be entitled as
 5 provided by Subsection (a) and shall first credit any balance in a
 6 district or charter school instructional materials and technology
 7 account to pay for an order placed under this section.

8 (c) The commissioner shall make payments for orders placed
 9 under this section as funds become available to the instructional
 10 materials and technology fund and shall prioritize payment of
 11 orders placed under this section over reimbursement of purchases
 12 made directly by a school district or open-enrollment charter
 13 school.

14 SECTION 13. Section 31.022, Education Code, is amended by
 15 amending Subsection (d) and adding Subsections (g) and (h) to read
 16 as follows:

17 (d) At least 12 months before the beginning of the school
 18 year for which instructional materials for a particular subject and
 19 grade level will be adopted under the review and adoption cycle, the
 20 board shall publish notice of the review and adoption cycle for
 21 those instructional materials. A request for production must allow
 22 submission of open education resource ~~[open-source]~~ instructional
 23 materials that are available for use by the state without charge on
 24 the same basis as instructional materials offered for sale.

25 (g) In reviewing and adopting instructional materials, the
 26 board shall consider a school district's need for technology as
 27 well as instructional materials and in any biennium may limit the

1 adoption of instructional materials to provide sufficient
2 resources to purchase technology resources, including digital
3 curriculum.

4 (h) The board shall include information regarding open
5 education resource instructional materials during the adoption
6 cycle, including any cost savings associated with the adoption of
7 open education resource instructional materials.

8 SECTION 14. Section 31.0231(b), Education Code, is amended
9 to read as follows:

10 (b) A school district may select material on the list
11 adopted under Subsection (a) to be funded by the district's
12 instructional materials and technology allotment under Section
13 31.0211.

14 SECTION 15. The heading to Section 31.0241, Education Code,
15 is amended to read as follows:

16 Sec. 31.0241. ADOPTION OF OPEN EDUCATION RESOURCE
17 ~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIALS.

18 SECTION 16. Section 31.0241(b), Education Code, is amended
19 to read as follows:

20 (b) The State Board of Education shall place open education
21 resource ~~[open-source]~~ instructional material for a
22 secondary-level course submitted for adoption by an eligible
23 institution on the list adopted under Section 31.023 if:

24 (1) the instructional material is written, compiled,
25 or edited primarily by faculty of the eligible institution who
26 specialize in the subject area of the instructional material;

27 (2) the eligible institution identifies each

contributing author;

(3) the appropriate department of the eligible institution certifies the instructional material for accuracy; and

(4) the eligible institution determines that the instructional material qualifies for placement on the list based on the extent to which the instructional material covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material is written and certifies that:

(A) for instructional material for a senior-level course, a student who successfully completes a course based on the instructional material will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional material for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material will be prepared for entry into the senior-level course.

SECTION 17. Section 31.0242, Education Code, is amended to read as follows:

Sec. 31.0242. REVIEW OF OPEN EDUCATION RESOURCE ~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIAL. Not later than the 90th day after the date open education resource ~~[open-source]~~ instructional material is submitted as provided by Section 31.0241, the State Board of Education may review the instructional material. The board shall:

(1) post with the list adopted under Section 31.023

1 comments made by the board regarding the open education resource
2 [~~open-source~~] instructional material placed on the list; and

3 (2) distribute board comments to school districts.

4 SECTION 18. Section 31.026(d), Education Code, is amended
5 to read as follows:

6 (d) This section does not apply to open education resource
7 [~~open-source~~] instructional material.

8 SECTION 19. Section 31.0261, Education Code, is amended to
9 read as follows:

10 Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN EDUCATION
11 RESOURCE [~~OPEN-SOURCE~~] INSTRUCTIONAL MATERIALS. The State Board of
12 Education may execute a contract for the printing of open education
13 resource [~~open-source~~] instructional materials placed on the list
14 adopted under Section 31.023. The contract must allow a school
15 district to requisition printed copies of open education resource
16 [~~open-source~~] instructional materials as provided by Section
17 31.103.

18 SECTION 20. Section 31.027(c), Education Code, is amended
19 to read as follows:

20 (c) This section does not apply to open education resource
21 [~~open-source~~] instructional material.

22 SECTION 21. Section 31.029(a), Education Code, is amended
23 to read as follows:

24 (a) A school district shall purchase with the district's
25 instructional materials and technology allotment or otherwise
26 acquire instructional materials for use in bilingual education
27 classes.

SECTION 22. Section 31.031(a), Education Code, is amended to read as follows:

(a) A school district may purchase with the district's instructional materials and technology allotment or otherwise acquire instructional materials for use in college preparatory courses under Section 28.014.

SECTION 23. The heading to Subchapter B-1, Chapter 31, Education Code, is amended to read as follows:

SUBCHAPTER B-1. STATE-DEVELOPED OPEN EDUCATION RESOURCE

~~[OPEN-SOURCE]~~ INSTRUCTIONAL MATERIALS

SECTION 24. Sections 31.071, 31.072, 31.073, 31.074, and 31.075, Education Code, are amended to read as follows:

Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may purchase state-developed open education resource ~~[open-source]~~ instructional materials in accordance with this subchapter.

(b) The commissioner:

(1) shall purchase any state-developed open education resource ~~[open-source]~~ instructional materials through a competitive process; and

(2) may purchase more than one state-developed open education resource ~~[open-source]~~ instructional material for a subject or grade level.

(c) State-developed open education resource ~~[open-source]~~ instructional material must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the instructional material after purchase.

(d) The commissioner may issue a request for proposals for state-developed open education resource ~~[open-source]~~ instructional material:

(1) in accordance with the instructional material review and adoption cycle under Section 31.022; or

(2) at any other time the commissioner determines that a need exists for additional instructional material options.

(e) The costs of administering this subchapter and purchasing state-developed open education resource ~~[open-source]~~ instructional materials shall be paid from the state instructional materials and technology fund, as determined by the commissioner.

Sec. 31.072. CONTENT REQUIREMENTS. (a) State-developed open education resource ~~[open-source]~~ instructional material must:

(1) be evaluated by teachers or other experts, as determined by the commissioner, before purchase; and

(2) meet the requirements for inclusion on the instructional material list adopted under Section 31.023.

(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of state-developed open education resource ~~[open-source]~~ instructional material relating to that curriculum. The commissioner may, at any time, require an additional revision of state-developed open education resource ~~[open-source]~~ instructional material or contract for ongoing revisions of state-developed open education resource ~~[open-source]~~ instructional material for a period not to exceed the period under Section 31.022 for which instructional material for that subject

and grade level may be adopted. The commissioner shall use a competitive process to request proposals to revise state-developed open education resource ~~[open-source]~~ instructional material under this subsection.

Sec. 31.073. SELECTION BY SCHOOL DISTRICT.

(c) Notwithstanding Section 31.022, a school district or open-enrollment charter school may adopt state-developed open education resource ~~[open-source]~~ instructional material at any time, regardless of the instructional material review and adoption cycle under that section.

(d) A school district or open-enrollment charter school may not be charged for selection of state-developed open education resource ~~[open-source]~~ instructional material in addition to instructional material adopted under Subchapter B.

Sec. 31.074. DISTRIBUTION. (a) The commissioner shall

provide for the distribution of state-developed open education resource ~~[open-source]~~ instructional materials in a manner consistent with distribution of instructional materials adopted under Subchapter B.

(b) The commissioner may use a competitive process to contract for printing or other reproduction of state-developed open education resource ~~[open-source]~~ instructional material on behalf of a school district or open-enrollment charter school. The commissioner may not require a school district or open-enrollment charter school to contract with a state-approved provider for the printing or reproduction of state-developed open education resource ~~[open-source]~~ instructional material.

1 Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed
2 open education resource [~~open-source~~] instructional material is
3 the property of the state.

4 (b) The commissioner shall provide a license to each public
5 school in the state, including a school district, an
6 open-enrollment charter school, and a state or local agency
7 educating students in any grade from prekindergarten through high
8 school, to use and reproduce state-developed open education
9 resource [~~open-source~~] instructional material.

10 (c) The commissioner may provide a license to use
11 state-developed open education resource [~~open-source~~]
12 instructional material to an entity not listed in Subsection (b).
13 In determining the cost of a license under this subsection, the
14 commissioner shall seek, to the extent feasible, to recover the
15 costs of developing, revising, and distributing state-developed
16 open education resource [~~open-source~~] instructional materials.

17 SECTION 25. Section 31.076(b), Education Code, is amended
18 to read as follows:

19 (b) A decision by the commissioner regarding the purchase,
20 revision, cost, or distribution of state-developed open education
21 resource [~~open-source~~] instructional material is final and may not
22 be appealed.

23 SECTION 26. Section 31.077, Education Code, is amended to
24 read as follows:

25 Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall
26 develop a schedule for the adoption of state-developed open
27 education resource [~~open-source~~] instructional materials under

1 this subchapter. In developing the adoption schedule under this
2 section, the commissioner shall consider:

- 3 (1) the availability of funds;
- 4 (2) the existing instructional material adoption
5 cycles under Subchapter B; and
- 6 (3) the availability of instructional materials for
7 development or purchase by the state.

8 SECTION 27. Chapter 31, Education Code, is amended by
9 adding Subchapter B-2 to read as follows:

10 SUBCHAPTER B-2. INSTRUCTIONAL MATERIALS WEB PORTAL

11 Sec. 31.081. INSTRUCTIONAL MATERIALS WEB PORTAL. (a) The
12 commissioner shall develop and maintain a web portal to assist
13 school districts and open-enrollment charter schools in selecting
14 instructional materials under Section 31.101.

15 (b) The web portal must include general information such as
16 price, computer system requirements, and any other relevant
17 specifications for each instructional material:

18 (1) on the instructional materials list, including the
19 list adopted under Section 31.0231; or

20 (2) submitted by a publisher for inclusion in the web
21 portal.

22 (c) The commissioner by rule shall establish the procedure
23 by which a publisher may submit instructional materials for
24 inclusion in the web portal.

25 (d) The commissioner shall use a competitive process to
26 contract for the development of the web portal.

27 (e) The commissioner shall use money in the state

instructional materials and technology fund to pay any expenses associated with the web portal.

Sec. 31.082. QUALITY OF INSTRUCTIONAL MATERIALS SUBMITTED BY PUBLISHER. (a) The commissioner shall contract with a private entity to conduct an independent analysis of each instructional material submitted by a publisher for inclusion in the web portal developed under Section 31.081. The analysis must:

(1) evaluate the quality of the material; and

(2) determine the extent to which the material covers the essential knowledge and skills identified under Section 28.002 for the subject and grade level for which the material is intended to be used, including an identification of:

(A) each of the essential knowledge and skills for the subject and grade level or levels covered by the material; and

(B) the percentage of the essential knowledge and skills for the subject and grade level or levels covered by the material.

(b) The commissioner shall include in the web portal developed under Section 31.081 the results of each analysis conducted under Subsection (a).

Sec. 31.083. INSTRUCTIONAL MATERIALS REPOSITORY. (a) The commissioner shall include in the web portal developed under Section 31.081 a repository of open education resource instructional materials and other electronic instructional materials that school districts and open-enrollment charter schools may access at no cost.

1 (b) A publisher may submit instructional materials for
2 inclusion in the repository.

3 Sec. 31.084. RULES. The commissioner may adopt rules as
4 necessary to implement this subchapter.

5 SECTION 28. Section 31.101, Education Code, is amended by
6 adding Subsection (b) and amending Subsection (f) to read as
7 follows:

8 (b) In selecting instructional material each year, a school
9 district or open-enrollment charter school may consider the use of
10 open education resource instructional materials.

11 (f) The commissioner shall maintain an online requisition
12 system for school districts to requisition instructional materials
13 to be purchased with the district's instructional materials and
14 technology allotment.

15 SECTION 29. Section 31.103(d), Education Code, is amended
16 to read as follows:

17 (d) A school district or open-enrollment charter school
18 that selects open education resource [~~open-source~~] instructional
19 material shall requisition a sufficient number of printed copies
20 for use by students unable to access the instructional material
21 electronically unless the district or school provides to each
22 student:

23 (1) electronic access to the instructional material at
24 no cost to the student; or

25 (2) printed copies of the portion of the instructional
26 material that will be used in the course.

27 SECTION 30. Sections 31.104(b), (g), and (h), Education

Code, are amended to read as follows:

(b) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of open education resource ~~[open-source]~~ instructional material.

(g) At the end of the school year for which open education resource ~~[open-source]~~ instructional material that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open education resource ~~[open-source]~~ instructional material becomes the property of the student to whom it is distributed.

(h) This section does not apply to an electronic copy of open education resource ~~[open-source]~~ instructional material.

SECTION 31. Sections [31.151](#)(d) and (e), Education Code, are amended to read as follows:

(d) A penalty collected under this section shall be deposited to the credit of the state instructional materials and technology fund.

(e) An eligible institution, as defined by Section [31.0241](#)(a), that offers open education resource ~~[open-source]~~ instructional materials under Section [31.0241](#) is not a publisher or manufacturer for purposes of this section.

SECTION 32. Section [32.001](#)(b), Education Code, is amended to read as follows:

(b) The State Board of Education shall update ~~[as necessary]~~ the plan developed under Subsection (a) at least every five years.

SECTION 33. Section 41.124(c), Education Code, is amended to read as follows:

(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the instructional materials and technology allotment under Section 31.0211.

SECTION 34. Section 43.001(d), Education Code, is amended to read as follows:

(d) Each biennium the State Board of Education shall set aside an amount equal to 50 percent of the distribution for that biennium from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials and technology fund established under Section 31.021.

SECTION 35. Section 51.451, Education Code, is amended by adding Subdivision (4-a) to read as follows:

(4-a) "Open educational resource" means a teaching, learning, or research resource that is in the public domain or has been released under an intellectual property license that permits the free use, adaptation, and redistribution of the resource by any person. The term may include full course curricula, course materials, modules, textbooks, media, assessments, software, and any other tools, materials, or techniques, whether digital or otherwise, used to support access to knowledge.

SECTION 36. Section 51.452, Education Code, is amended by

1 amending Subsection (a) and adding Subsection (d) to read as
2 follows:

3 (a) Each institution of higher education shall:

4 (1) for each semester or academic term, compile a
5 course schedule indicating each course offered by the institution
6 for the semester or term to postsecondary students;

7 (2) with respect to each course, include with the
8 schedule a list of the required and recommended textbooks that
9 specifies, to the extent practicable, the following information for
10 each textbook:

11 (A) the retail price;

12 (B) the author;

13 (C) the publisher;

14 (D) the most recent copyright date; ~~and~~

15 (E) the International Standard Book Number
16 assigned, if any; and

17 (F) whether the textbook is an open educational
18 resource;

19 (3) except as provided by Subsection (b), at the time
20 required by Subsection (c)(2):

21 (A) publish the textbook list with the course
22 schedule on the institution's Internet website and with any course
23 schedule the institution provides in hard copy format to the
24 students of the institution; and

25 (B) make that information available to college
26 bookstores and other bookstores that generally serve the students
27 of the institution; and

(4) except as provided by Subsection (b), as soon as practicable after the information becomes available disseminate as required by Subdivision (3) specific information regarding any revisions to the institution's course schedule and textbook list.

(d) If an institution of higher education or a college bookstore publishes a textbook list with a course schedule on an Internet website that provides a search function, the institution or bookstore must:

(1) ensure that the search function permits a search based on whether a course or section of a course requires or recommends only open educational resources; or

(2) provide a searchable list of courses and sections of courses that require or recommend only open educational resources.

SECTION 37. Section 51.453, Education Code, is amended to read as follows:

Sec. 51.453. TEXTBOOK ASSISTANCE INFORMATION FOR STUDENTS. To the extent practicable, an institution of higher education shall make reasonable efforts to disseminate to its students information regarding:

(1) available institutional programs for renting textbooks or for purchasing used textbooks;

(2) available institutional guaranteed textbook buyback programs;

(3) available institutional programs for alternative delivery of textbook content; ~~and~~

(4) the availability of courses and sections of

1 courses that require or recommend only open educational resources;
2 and

3 (5) other available institutional textbook
4 cost-savings strategies.

5 SECTION 38. Section 51.454(a), Education Code, is amended
6 to read as follows:

7 (a) When a textbook publisher provides information
8 regarding a textbook or supplemental material other than an open
9 educational resource to a faculty member or other person in charge
10 of selecting course materials at an institution of higher
11 education, the publisher shall also provide to the faculty member
12 or other person written information that includes:

13 (1) the price at which the publisher would make the
14 textbook or supplemental material available to a college bookstore
15 or other bookstore that generally serves the students of the
16 institution and, if applicable, to the public;

17 (2) the copyright dates of the current and three
18 preceding editions of the textbook;

19 (3) a description of any substantial content revisions
20 made between the current edition of the textbook or supplemental
21 material and the most recent preceding edition of the textbook or
22 material, including the addition of new chapters, new material
23 covering additional time periods, new themes, or new subject
24 matter;

25 (4) information as to whether the textbook or
26 supplemental material is available in other formats, such as a
27 paperback or unbound version; and

(5) the price at which the publisher would make the textbook or supplemental material in any alternative format available to a bookstore described by Subdivision (1) and, if applicable, to the public.

SECTION 39. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0668 to read as follows:

Sec. 61.0668. OPEN EDUCATIONAL RESOURCES GRANT PROGRAM.

(a) In this section, "open educational resource" has the meaning assigned by Section 51.451.

(b) The board shall establish and administer a grant program to encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only open educational resources.

(c) Under the program, a faculty member of an institution of higher education may apply to the board for a grant to adopt, modify, redesign, or develop one or more courses at the institution to exclusively use open educational resources.

(d) For each course identified in an application for a grant under this section, the board shall select at least three persons qualified to review the curriculum of the course, as determined by the board, to evaluate the application with respect to that course. If the application is rejected, the reviewing persons must provide feedback on the application to the faculty member. The feedback may be provided anonymously.

(e) A faculty member who receives a grant under the program shall ensure that any open educational resource used in each applicable course is provided to a student enrolled in the course at

1 no cost other than the cost of printing.

2 (f) A faculty member who receives a grant under the program
3 must submit to the board for each of the four semesters immediately
4 following the implementation of each applicable course a report
5 that includes:

6 (1) the number of students who have completed the
7 course;

8 (2) an estimate of the amount of money saved by a
9 student due to the use of open educational resources in the course;

10 (3) a description of the open educational resources
11 used in the course;

12 (4) the number of other faculty members, if any, who
13 adopted the curriculum of the course; and

14 (5) any other information required by the board.

15 (g) A faculty member who receives a grant under the program
16 may continue to submit a report described by Subsection (f) for a
17 semester that occurs after the faculty member's duty to submit a
18 report under that subsection has expired. The board may consider a
19 faculty member's failure to submit additional reports under this
20 subsection in evaluating a subsequent grant application submitted
21 by the faculty member.

22 (h) A faculty member who is no longer employed by an
23 institution of higher education forfeits any grant awarded under
24 the program.

25 (i) The board may not award a grant under the program to a
26 faculty member of a postsecondary educational institution other
27 than an institution of higher education.

1 (j) Not later than December 1 of each even-numbered year,
2 the board shall submit to the governor, lieutenant governor,
3 speaker of the house of representatives, and each standing
4 legislative committee with primary jurisdiction over higher
5 education a report on:

6 (1) the total number of grants distributed under the
7 program;

8 (2) the number of students who completed a course
9 adopted, modified, redesigned, or developed under the program;

10 (3) an estimate of the total amount of money saved by
11 students due to the use of open educational resources in courses
12 adopted, modified, redesigned, or developed under the program;

13 (4) a list of any subject areas that would benefit from
14 the adoption, modification, or development of open educational
15 resources; and

16 (5) recommendations on future steps for adopting,
17 modifying, or developing open educational resources.

18 (k) The board may solicit and accept gifts, grants, and
19 donations from any public or private source for purposes of the
20 program.

21 (l) The board shall adopt rules for the administration of
22 the program.

23 (m) This section expires September 1, 2021.

24 (n) The board may not use appropriated funds in an amount
25 greater than \$200,000 for purposes of the program in the state
26 fiscal biennium ending August 31, 2019. The board may use any
27 amount of other funds available for those purposes. This

1 subsection expires December 1, 2019.

2 SECTION 40. Subchapter C, Chapter 61, Education Code, is
3 amended by adding Section 61.0669 to read as follows:

4 Sec. 61.0669. FEASIBILITY STUDY ON STATE REPOSITORY OF OPEN
5 EDUCATIONAL RESOURCES. (a) In this section, "open educational
6 resource" has the meaning assigned by Section 51.451.

7 (b) The board shall conduct a study to determine the
8 feasibility of creating a state repository of open educational
9 resources. The study must consider:

10 (1) methods for facilitating public access to open
11 educational resources;

12 (2) the resources needed to create the repository; and

13 (3) any potential challenges in creating the
14 repository.

15 (c) In conducting the study, the board shall collaborate
16 with relevant state agencies, textbook publishers, representatives
17 of the open educational resource community, and other stakeholders,
18 including the Texas Education Agency and representatives of public
19 institutions of higher education and school districts.

20 (d) Not later than September 1, 2018, the board shall submit
21 to the governor, lieutenant governor, speaker of the house of
22 representatives, and each standing legislative committee with
23 primary jurisdiction over higher education a report on the results
24 of the study and any recommendations for legislative or other
25 action. The report must include information on:

26 (1) methods by which open educational resources would
27 be gathered and curated;

1 (2) measures to ensure public access to the
2 repository;
3 (3) methods of encouraging the use of the repository;
4 (4) management of intellectual property rights; and
5 (5) any other measures necessary to ensure the
6 repository's success.

7 (e) The board may not use appropriated funds in an amount
8 greater than \$100,000 for purposes of the study. The board may use
9 any amount of other available funds for purposes of the study and
10 may solicit and accept gifts, grants, and donations for that
11 purpose.

12 (f) This section expires September 1, 2019.

13 SECTION 41. Section 403.093(d), Government Code, is amended
14 to read as follows:

15 (d) The comptroller shall transfer from the general revenue
16 fund to the foundation school fund an amount of money necessary to
17 fund the foundation school program as provided by Chapter 42,
18 Education Code. The comptroller shall make the transfers in
19 installments as necessary to comply with Section 42.259, Education
20 Code, and permit the Texas Education Agency, to the extent
21 authorized by the General Appropriations Act, to make temporary
22 transfers from the foundation school fund for payment of the
23 instructional materials and technology allotment under Section
24 31.0211, Education Code. Unless an earlier date is necessary for
25 purposes of temporary transfers for payment of the instructional
26 materials and technology allotment, an installment must be made not
27 earlier than two days before the date an installment to school

1 districts is required by Section 42.259, Education Code, and must
2 not exceed the amount necessary for that payment and any temporary
3 transfers for payment of the instructional materials and technology
4 allotment.

5 SECTION 42. Not later than September 1, 2018, the
6 commissioner of education shall develop the web portal required
7 under Subchapter B-2, Chapter 31, Education Code, as added by this
8 Act.

9 SECTION 43. Sections 51.451, 51.452, 51.453, and 51.454,
10 Education Code, as amended by this Act, apply beginning with the
11 2018 spring semester.

12 SECTION 44. (a) As soon as practicable after the effective
13 date of this Act, the Texas Higher Education Coordinating Board
14 shall adopt rules for the administration of the open educational
15 resources grant program under Section 61.0668, Education Code, as
16 added by this Act.

17 (b) Notwithstanding Section 61.0668(j), Education Code, as
18 added by this Act, the Texas Higher Education Coordinating Board
19 shall submit its initial report required under that section not
20 later than December 1, 2019.

21 SECTION 45. In the event that S.B. 1784, 85th Legislature,
22 Regular Session, 2017, is enacted and becomes law, any provisions
23 repealed or language struck by that Act shall also be considered
24 repealed or struck, as applicable, by this Act.

25 SECTION 46. This Act takes effect immediately if it
26 receives a vote of two-thirds of all the members elected to each
27 house, as provided by Section 39, Article III, Texas Constitution.

1 If this Act does not receive the vote necessary for immediate
2 effect, this Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 810 passed the Senate on April 25, 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 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 810 passed the House, with amendments, on May 24, 2017, by the following vote: Yeas 133, Nays 13, 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 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.