

AGENDA ITEM VII-B

Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to the new Chapter 4, Subchapter O, Sections 4.230 – 4.238 of Board rules concerning the Open Educational Resources Grant Program

RECOMMENDATION: Approval

Background Information:

The intent of the new Chapter 4, Subchapter O, Open Educational Resources Grant Program, Sections 4.230 – 4.238 is to implement Senate Bill 810, passed by the 85th Texas Legislature, Regular Session, which requires the board to establish and administer a new grant program to encourage faculty at institutions of higher education to adopt, modify, redesign, or develop courses that use only Open Educational Resources (OER). The rule amendments proposed for this section were reviewed and approved by the Negotiated Rulemaking Committee on Open Educational Resources Grant Program on November 1, 2017.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, will present this item and be available to answer questions.

Date approved by the Commissioner for Publication in the *Texas Register*: November 6, 2017.

Date published in the *Texas Register*: November 17, 2017.

The 30-day comment period with the Texas Register ended on: December 17, 2017.

One comment was received from the Association of American Publishers (AAP).

COMMENT: AAP suggested three changes to the proposed rules, affecting 4.236 (Review Criteria) and 4.237 (Reporting Criteria).

(1) The Board should require faculty to report the distribution of letter grades for the grant-funded course as well as distribution of letter grades for sections of similar, non-grant funded courses at the institution.

(2) The cost comparison should take into account reduced prices that are available through inclusive access and other discount programs.

(3) The review criteria should also be revised to specifically require that the quality of the educational materials must be considered and that the materials should be aligned with the articulated educational goals of the course.

STAFF RESPONSE: Staff disagrees with the suggested changes to proposed rules.

The first suggestion, to require faculty to report the distribution of letter grades for the grant-funded course as well as distribution of letter grades for sections of similar, non-grant funded courses at the institution, would prove to be unwieldy and burdensome on those faculty and departments not directly receiving benefits from the OER Grant Program, and could potentially violate FERPA protections.

The second suggestion, to take into account reduced prices that are available through inclusive access and other discount programs, requires faculty to 1) know which courses use inclusive access materials, and 2) to have knowledge of the costs associated with such materials. It is unlikely that this information would be available to them and requiring awardees to report such data would be impractical.

Staff believes that the third suggestion, that the review criteria should also be revised to specifically require that the quality of the educational materials must be considered and that the materials should be aligned with the articulated educational goals of the course, is already addressed in 4.236(3). Applications will be evaluated, as per statute, by three qualified reviewers. The RFA is the appropriate place for language that will outline review guidelines. Reviewers can be asked to review each application for quality of proposed materials, alignment of proposed OER materials with the courses student learning objectives (SLOs), and other measures of quality as appropriate.

Comments and staff response were sent to the Negotiated Rule Making Committee. The Committee agreed with the staff assessment and response.

Legal Review:

Approved by the Office of General Counsel

 Date: 1/8/18

Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas
Subchapter O. Open Educational Resources Grant Program

4.230 Purpose4.231 Authority4.232 Definitions4.233 Eligibility4.234 Grant Application Procedures4.235 Award Amounts4.236 Review Criteria4.237 Reporting Criteria4.238 General Information4.230 Purpose

The purpose of this subchapter is to implement rules to establish the Open Educational Resources (OER) Grant Program, under which the Board awards grant payments to eligible institutional faculty employed by a Texas higher education institution, as defined in Texas Education Code 61.003(8), to adopt, modify, redesign, or develop one or more courses using only open educational resources.

4.231 Authority

The authority for this subchapter is found in Texas Education Code, Chapter 61, Subchapter 61.0668, which provides the board with the authority to adopt rules to administer this grant program.

4.232 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the text clearly indicates otherwise.

(1) Board or THECB – The Texas Higher Education Coordinating Board.

(2) Commissioner – The Commissioner of Higher Education.

(3) Eligible Applicant – a faculty member as defined in Texas Education Code 51.917 or group of faculty currently employed at an institution of higher education, as defined in Texas Education Code 61.003(8).

(4) Institution of Higher Education – Any public technical institute, public junior college, public senior college or university, or medical or dental unit, or other agency of higher education as defined by Texas Education Code, 61.003(8).

(5) Open Educational Resources (OER) – 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.

(6) Request for Applications (RFA) – A type of solicitation notice in which the THECB announces available grant funding, sets forth the guidelines governing the program, provides evaluation criteria for submitted applications, and provides instructions for eligible entities to submit applications for such funding. The guidelines governing the program may include a Letter of Intent, eligibility requirements, performance expectations, budget guidelines, reporting requirements, and other standards of accountability for this program.

4.233 Eligibility

Faculty employed by a Texas public institution of higher education are eligible to apply for a grant under this program

4.234 Grant Application Procedures

To qualify for funding consideration, each eligible applicant must submit an application to Board staff. Each application must:

- (1) Be submitted electronically in a format specified in the RFA; and
- (2) Adhere to the grant program requirements contained in the RFA; and
- (3) Be submitted with proper authorization on or before the day and time specified by the RFA.

4.235 Award Amounts

(1) The maximum amount of funding available to the program is dependent on the legislative appropriation for each biennium. Award levels and the maximum number of awards will be specified in the RFA.

(2) The Board shall delegate to the Commissioner general authority to award all OER grant program grants after receiving recommendations from qualified reviewers.

(3) Award criteria may be adjusted by Board staff to best fulfill the purpose of a single request for applications if those adjusted award criteria are included in the request for applications.

4.236 Review Criteria

Applicants shall be selected for funding based on requirements and award criteria provided in the RFA. Award criteria will include, but may not be limited to, consideration of the following factors:

- (1) The number of students projected to annually enroll in the course;
- (2) The projected amount of money saved by a student due to the use of OER in the course; and
- (3) The evaluation of the application by three selected qualified reviewers of the curriculum of the course, as determined by Board staff.

4.237 Reporting Criteria

Grantees must file reports with Board staff as required by the RFA for each applicable course for each of the four semesters immediately following OER implementation. Grantees will provide information that includes, but is not limited to the following:

- (1) The number of students who have completed the course;
- (2) An estimate of the amount of money saved by a student due to the use of open educational resources in the course;
- (3) A description of the open educational resources used in the course;
- (4) The number of other faculty members, if any, who adopted the curriculum of the course associated with the grant; and
- (5) Any other information required by the RFA.

4.238 General Information

(1) Cancellation or Suspension of Grant Solicitations. The Board has the right to reject all applications and cancel a grant solicitation at any point.

(2) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by Board staff.