

Chapter 89. Adaptations for Special Populations

Subchapter B. Adult Basic and Secondary Education

Statutory Authority: The provisions of this Subchapter B issued under Texas Education Code, §§7.102(c)(16), 29.253, and 29.2535, and the General Appropriations Act, Senate Bill 1, Article III, Rider 46, 81st Texas Legislature, 2009, unless otherwise noted.

§89.21. Definitions.

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

- (1) Adult education--Basic and secondary instruction and services for adults.
 - (A) Adult basic education--Instruction in reading, writing, English and solving quantitative problems, including functional context, designed for adults who:
 - (i) have minimal competence in reading, writing, and solving quantitative problems;
 - (ii) are not sufficiently competent to speak, read, or write the English language; or
 - (iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.
 - (B) Adult secondary education--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.
- (2) Base allocation--An amount of funds set aside for each grantee to provide adult basic education services to eligible adults within its service area in compliance with provisions of the grant application and the state's federally approved adult education plan.
- (3) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, and/or assessment services by a staff member supported by federal and state adult education funds as documented by local attendance and reporting records.
 - (A) Student contact time generated by volunteers may be accrued by the adult education program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §89.25 of this title (relating to Qualifications and Training of Staff).
 - (B) Student contact hour is 60 minutes.
- (4) Cooperative/consortium adult education program--A community or area partnership of educational, work force development, and human service entities and other agencies that agree to collaborate for the provision of adult education and literacy services.
- (5) Eligible grant recipient--Eligible grant recipients for adult education programs are those entities specified in state and federal law.
- (6) Fiscal agent--The local entity that applies for, receives, and manages funds on behalf of the cooperative or adult education partnership.
- (7) Grantee--Recipient of award of federal and/or state adult education funds from the Texas Education Agency.

- (8) Performance definitions--
- (A) Allocation--A performance allocation is an amount of funds set aside for each grantee from which it is eligible to withdraw funds once it has demonstrated that it has met or exceeded set performance targets.
 - (B) Payment--A performance payment is a financial incentive awarded to grantees based on the number of performance points earned by meeting or exceeding identified federal and state performance targets.
 - (C) Points--Performance points are the basis by which the grantee can earn performance payments. Performance points are earned by grantees by meeting or exceeding state and federal performance targets.
 - (D) Target--A performance target is a quantifiable measurement that identifies the degree or extent to which grantees are expected to achieve performance measures.
 - (i) Federal targets--A quantifiable measurement assigned to individual federal performance measures set forth in the Texas plan for adult education approved by the United States Department of Education (USDE).
 - (ii) State targets--A quantifiable measurement assigned to individual state performance measures set forth in the Texas plan for adult education approved by the USDE.
- (9) Reallocation fund--Monies from grantee's performance allocations that grantees fail to earn because they did not achieve all federal performance targets that are placed in a fund to be distributed among grantees based on their performance on state performance measures.

Source: The provisions of this §89.21 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386; amended to be effective December 25, 2006, 31 TexReg 10297; amended to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.22. Use of Funds.

- (a) Federal adult education and literacy funds may be used for programs of adult education and literacy for out-of-school individuals who have attained 16 years of age and:
 - (1) function at less than a secondary school completion level;
 - (2) lack a secondary school credential; or
 - (3) are unable to speak, read, or write in English.
- (b) State adult education and literacy funds are to be used for programs of adult education and literacy for out-of-school individuals who are beyond compulsory school attendance age and:
 - (1) function at less than a secondary school completion level;
 - (2) lack a secondary school credential; or
 - (3) are unable to speak, read, or write in English.
- (c) The proportion of students served who meet the requirements of subsection (a) of this section but do not meet the requirements of subsection (b) of this section may not exceed the grantee's percentage of federal funds to the total allocation.

Source: The provisions of this §89.22 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.23. Essential Program Components.

The following essential program components shall be provided:

- (1) adult basic education;
- (2) programs for adults of limited English proficiency;
- (3) adult secondary education, including programs leading to the achievement of a high school equivalency certificate and/or a high school diploma;
- (4) instructional services to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;
- (5) assessment and guidance services related to paragraphs (1)-(4) of this section; and
- (6) collaboration with multiple partners in the community to expand the services available to adult learners and to prevent duplication of services.

Source: The provisions of this §89.23 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.24. Diploma Requirements.

The standards for the awarding of diplomas to adults shall be those established under Chapter 74 of this title (relating to Curriculum Requirements) with the following exceptions.

- (1) There shall be no limit to the number of secondary credits adults may earn by demonstration of competence.
- (2) Adults may earn the required physical education credits by one or more of the following:
 - (A) satisfactory completion of approved secondary physical education courses; or
 - (B) substitution of state-approved secondary elective courses.
- (3) Adults must meet the requirements for successful performance on a secondary level test designated by the commissioner of education.

Source: The provisions of this §89.24 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective September 1, 1999, 24 TexReg 386.

§89.25. Qualifications and Training of Staff.

The requirements of this section shall apply to all adult education staff hired after September 1, 1996, excluding clerical and janitorial staff.

- (1) All staff shall receive at least 12 clock hours of professional development annually.
- (2) All staff new to adult education shall receive six clock hours of preservice professional development before they begin work in an adult education program.
- (3) Aides shall have at least a high school diploma or high school equivalency certificate.
- (4) The following apply to directors, teachers, counselors, and supervisors.
 - (A) Persons must possess at least a bachelor's degree.
 - (B) Persons without valid Texas teacher certification must attend 12 clock hours of inservice professional development annually in addition to that specified in paragraph (1) of this section until they have completed either six clock hours of adult education college credit or attained two years of adult education experience.
- (5) The requirements for inservice professional development may be reduced by local programs in individual cases where exceptional circumstances prevent employees from completing the required hours of inservice professional development. Documentation shall be kept justifying such circumstances. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Texas Education Agency (TEA) for approval in the application for funding and must include justification and proposed qualifications.

- (6) Records of staff qualifications and professional development shall be maintained by each fiscal agent and must be available for monitoring.
- (7) The requirements in paragraphs (1)-(5) of this section also apply to volunteers who generate student contact time, as defined under §89.21 of this title (relating to Definitions), which is accrued by the adult education program and reported to TEA for funding purposes.

Source: The provisions of this §89.25 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.26. Service Requirements for Staff.

Teachers and aides shall be assigned to instruction, counseling, and/or assessment for a minimum of 75% of the hours for which they are employed.

Source: The provisions of this §89.26 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.27. Program Delivery System.

- (a) There shall be a statewide system of adult education cooperatives/consortia for the coordinated provision of adult education services. To the extent possible, service delivery areas shall be large enough to support a program meeting the requirements of §89.23 of this title (relating to Essential Program Components) and to ensure efficient and effective delivery of services.
- (b) Eligible grant recipients may apply directly to the Texas Education Agency (TEA) for adult education and literacy funding. Eligible grant recipients are encouraged to maximize the fiscal resources available for service to undereducated adults and avoid unproductive duplication of services and excessive administrative costs by forming consortia or cooperatives and using fiscal agents for the delivery of services.
- (c) Grant applicants who will serve as a fiscal agent for a cooperative/consortium must consult with other adult education and literacy providers in the cooperative/consortium in developing applications for funding to be submitted to TEA.
- (d) Each fiscal agent shall be responsible for:
 - (1) the overall management of the cooperative/consortium, including technical assistance to consortium members, on-site visits, staff qualifications and professional development, and program implementation in accordance with the requirements of this subchapter;
 - (2) the employment of an administrator for the cooperative/consortium;
 - (3) development of written agreements with consortium members for the operation of the adult education program; and
 - (4) expenditures of funds for the conduct of the project and making and filing composite reports for the consortium.
- (e) Nonconsortium applicants must also provide evidence of coordination of existing adult education and literacy services in the area proposed to be served and maintain an advisory committee.

Source: The provisions of this §89.27 adopted to be effective September 1, 1996, 21 TexReg 5690.

§89.28. Advisory Committee.

At least one collaborative advisory committee shall be formed in each funded adult education service area. That committee shall be composed of a broad spectrum of community representatives, including work force development representatives, to review the activities of and make recommendations to the fiscal agent in planning, developing, and evaluating the adult education program. The fiscal agent shall be responsible for convening the collaborative advisory committee at least twice each year.

Source: The provisions of this §89.28 adopted to be effective September 1, 1996, 21 TexReg 5690; amended to be effective July 1, 2010, 35 TexReg 5556.

§89.30. Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013.

- (a) Allocation of state and federal funds. The provisions of this section apply to the allocation of state and federal adult education funds beginning with school year 2010-2011 and ending after school year 2012-2013. Annually, after federal adult education and literacy funds have been set aside for state administration, special projects, staff development, and leadership, state and federal adult education funds shall be allocated based upon grantees':
 - (1) funding received in the second year of the previous biennium; and
 - (2) proportionate share of need.
- (b) Total grantee allocation. Each grantee's total shall be comprised of the following components:
 - (1) base allocation; and
 - (2) performance allocation.
- (c) Calculation of base allocation. Each grantee will receive a base allocation equal to the amount of funding it received in the second year of the previous biennium, provided that:
 - (1) the grantee serves, at a minimum, the same or equivalent school district geographic areas as it served in the second year of the previous biennium; and
 - (2) the total amount of federal and state funds available statewide is equal to or greater than the amount available in the second year of the previous biennium.
- (d) Reduction of base allocation. If the calculation of the base allocation results in a total that is greater than the state and federal funds available, each grantee's base allocation shall be reduced proportionately.
- (e) Calculation of performance allocation. The sum of all grantees' base allocations, which are calculated based on subsection (c) of this section, will be subtracted from the total amount of federal and state funds available, excluding the amount of federal funds set aside for state administration, special projects, staff development, and leadership. The remainder then will be allocated among all grantees based upon need and will be designated as each grantee's performance allocation.
- (f) Future allocations. Beginning with school year 2013-2014, allocation of state and federal adult education funds shall be governed by §89.1301(d) of this title (relating to Service Provider Contracts for Adult Education Programs).

Source: The provisions of this §89.30 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.31. Payment of Funds.

- (a) Base payments. Each grantee will receive its base allocation as calculated in accordance with §89.30(c) of this title (relating to Allocation of Funds Beginning with School Year 2010-2011 and Ending After School Year 2012-2013).
- (b) Performance payments. Each grantee may earn performance payments from:
 - (1) its performance allocation as calculated in accordance with §89.30(e) of this title by achieving federal performance targets; and
 - (2) the reallocation fund by achieving state performance targets.
- (c) Earning payments from a grantee's performance allocation. Each grantee is eligible to earn performance payments from its performance allocation by meeting or exceeding federal performance targets.
 - (1) For each federal performance target that the grantee meets or exceeds, the grantee will earn:
 - (A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and

- (B) one performance point for meeting or exceeding all other targets.
- (2) The amount of funds that each grantee will receive from its performance allocation is calculated by adding the number of performance points the grantee earned and dividing it by the total number of performance points possible to earn and multiplying that number by 100. The resulting percentage of possible points earned is then multiplied by the amount of funds set aside in the grantee's performance allocation.
- (3) The amount of funds in each grantee's performance allocation that are not earned will be placed in a statewide reallocation fund.
- (d) Earning payments from the reallocation fund. All grantees, regardless of performance on the federal performance measures, will be eligible to earn funds from the reallocation fund by meeting or exceeding state performance targets for state performance measures.
 - (1) For each state performance target that a grantee meets or exceeds, the grantee will earn:
 - (A) one and one-half performance points for meeting or exceeding a target that advances students from the lowest literacy level for either adult basic education or English as a second language to the next literacy level; and
 - (B) one performance point for meeting or exceeding all other targets.
 - (2) The total number of performance points earned by all grantees will be summed and divided into the total amount of funds in the reallocation fund to determine a cost per state performance point earned.
 - (3) The amount of funds that each grantee will receive from the reallocation fund is calculated by adding the number of performance points the grantee earned for meeting or exceeding state performance targets and multiplying that number by the cost per state performance point earned.

Source: The provisions of this §89.31 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.32. Match Requirements.

- (a) Service providers shall provide and document any cash or in-kind match. The match must be met using non-federal (i.e., local or state) sources.
- (b) The cash or in-kind match may be obtained from any state or local source that is fairly evaluated, excluding any sources of federal funds.
- (c) The match may include allowable costs such as the following:
 - (1) goods and services;
 - (2) fair market value of third-party goods and services donated by volunteers and employees or other organizations; and
 - (3) supplies, equipment, and building space not owned by the fiscal agent.
- (d) The grantee is required to maintain auditable records for all expenditures relating to the cash or in-kind match the same as for the funds granted through an approved application.
- (e) If public funds, other than state and federal adult education funds, are used in the adult education instructional program, the program may claim a proportionate share of the student contact time as the cash or in-kind match.

Source: The provisions of this §89.32 adopted to be effective July 1, 2010, 35 TexReg 5556.

§89.33. Tuition and Fees.

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

Source: The provisions of this §89.33 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.34. Other Provisions.

- (a) Allowable and nonallowable expenditures. Supervisory and administrative costs shall not exceed 25% of the total budget. These costs may include supervisory payroll costs, rental of administrative space, indirect costs, and clerical costs.
- (b) Staff development and special projects. From the federal funds set aside for state administration, special projects, staff development, and leadership, a portion of funds shall be used to provide training and professional development to organizations that are not currently receiving grants but are providing literacy services.
- (c) Evaluation of programs. The Texas Education Agency shall evaluate adult education programs based on the indicators of program quality for adult education.

Source: The provisions of this §89.34 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.

§89.35. Revocation and Recovery of Funds.

- (a) The commissioner of education may revoke a grant award for the adult education grant program based on the following factors:
 - (1) noncompliance with application assurances and/or the provisions of this section;
 - (2) lack of program success as evidenced by progress reports and program data;
 - (3) failure to participate in data collection and audits;
 - (4) failure to meet performance standards specified in the application or in the Texas state plan for adult education approved by the U.S. Department of Education; or
 - (5) failure to provide accurate, timely, and complete information as required by the Texas Education Agency (TEA) to evaluate the effectiveness of the adult education program.
- (b) A decision by the commissioner and the TEA to revoke the grant award of an adult education program is final and may not be appealed.
- (c) The commissioner may audit the use of grant funds and may recover funds against any state provided funds.

Source: The provisions of this §89.35 adopted to be effective July 1, 2010, 35 TexReg 5556; amended to be effective February 28, 2013, 38 TexReg 1179.