

1 **CHAPTER 805. ADULT EDUCATION AND LITERACY**

2
3 **ADOPTED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT**
5 **TO FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF THE**
6 **SECRETARY OF STATE.**

7
8 **ON OCTOBER 18, 2022**, THE TEXAS WORKFORCE COMMISSION ADOPTED
9 THE RULES BELOW WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS*
10 *REGISTER*.

11
12 Publication Date of the Adoption in the *Texas Register*: **November 18, 2022**
13 The Rules are Effective: **November 24, 2022**

14
15 The Texas Workforce Commission (TWC) adopts amendments to the following sections
16 of Chapter 805, relating to Adult Education and Literacy:

17
18 Subchapter A. General Provisions, §805.2 and §805.4

19 Subchapter B. Staff Qualifications, §805.21

20 Subchapter C. Service Delivery Structure and Alignment, §805.41 and §805.43

21
22 The amendment to §805.2 is adopted *with changes* to the proposed text as published in
23 the July 22, 2022, issue of the *Texas Register* (47 TexReg 4285), and, therefore, the
24 adopted rule text will be published. The amendments to §§805.4, 805.21, 805.41, and
25 805.43 are adopted *without changes* to the proposed text as published and, therefore, the
26 adopted rule text will not be published.

27
28 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

29 The purpose of the adopted amendments to Chapter 805 is to add and clarify Adult
30 Education and Literacy (AEL) terms and definitions, clarify professional development
31 requirements and activities that must be provided by AEL programs, and modify an
32 advisory committee term requirement.

33
34 Further, the General Appropriations Act (Senate Bill (SB) 1, Article VII, Texas
35 Workforce Commission, Rider 46, 87th Legislature, Regular Session (2021)) requires
36 TWC to ensure and require that digital skill building is permitted in its programs. Terms
37 and definitions for "digital literacy skills" and "workforce preparation activities" are
38 adopted to indicate that such activities are expressly allowed under the Workforce
39 Innovation and Opportunity Act (WIOA) and to support digital skill building.

40
41 Texas Government Code, §2001.039 requires that every four years each state agency
42 review and consider for re-adoption, revision, or repeal each rule adopted by that agency.
43 TWC reviewed the rules in Chapter 805 and determined that the rules are needed, reflect
44 current legal and policy considerations, and reflect current TWC procedures. The reasons
45 for initially adopting the rules continue to exist, and any changes to the rules are
46 described in Part II of this preamble.

1 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4 TWC adopts the following amendments to Subchapter A:

5
6 **§805.2. Definitions**

7 Section 805.2 is amended to both modify and add definitions.

8
9 Section 805.2(4) is amended to modify the definition for "AEL grant recipient" to update
10 the definition reference for "workforce development area" and to clarify that an AEL
11 grant recipient is one that is awarded AEL funds by TWC through a statewide
12 procurement process described in §805.41.

13
14 Section 805.2(6) is amended to include a reference to WIOA and update the reference to
15 the United States Code in the definition for "AEL service provider." At adoption, the
16 Commission corrected the WIOA reference from WIOA §203(4) to WIOA §203(5) and
17 also revised the reference to the United States Code for consistency.

18
19 New §805.2(11) is added to define "digital literacy skills." Subsequent paragraphs are
20 renumbered accordingly.

21
22 Renumbered §805.2(16) is amended to modify the definition for "professional
23 development" to remove the duration for what is considered a professional development
24 activity.

25
26 At adoption, the Commission corrected the WIOA reference under renumbered
27 §805.2(19) from WIOA §2 to WIOA §3(59).

28
29 New §805.2(20) is added to define "workforce preparation activities." The subsequent
30 paragraph is renumbered accordingly.

31
32 **§805.4. Essential Program Components**

33 Section 805.4 provides that an AEL grant recipient must ensure the essential program
34 components are provided. The section is amended to add language to clarify that those
35 essential program components are outlined in the grant applications for statewide AEL
36 funds.

37
38 Section 805.4(7) is amended to clarify that workforce preparation activities include
39 digital literacy skills.

40
41 Section 805.4(9) is amended to change "and" to "or" to clarify options for meeting the
42 section's requirements.

43
44 **SUBCHAPTER B. STAFF QUALIFICATIONS**

45 TWC adopts the following amendments to Subchapter B:

1 **§805.21. Staff Qualifications and Training**

2 Section 805.21 is amended to clarify that the subchapter is applicable to all AEL staff by
3 deleting the language that specifies the subchapter applies to all AEL staff hired after July
4 1, 2013.

5
6 Section 805.21(6) is amended to clarify that instructional aides who provide instruction to
7 students require 15 clock hours of professional development.

8
9 Section 805.21(8) is amended to specify that non-instructional AEL staff must have at
10 least three hours of professional development.

11
12 **SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT**

13 TWC adopts the following amendments to Subchapter C:

14
15 **§805.41. Procurement and Contracting**

16 Section 805.41 is amended to delete "beginning with Program Year 2014" when
17 describing when eligible grant recipients are required to compete for funding through a
18 statewide procurement process.

19
20 **§805.43. Advisory Committees**

21 Section §805.43 is amended to rename the section "AEL Advisory Committee."

22
23 Section 805.43 is amended to modify the requirement that AEL advisory committee
24 members serve for staggered two-year terms; the adopted amendment removes the word
25 "staggered" from the two-year term requirement.

26
27 TWC hereby certifies that the adoption has been reviewed by legal counsel and found to
28 be within TWC's legal authority to adopt.

29
30 **PART III. PUBLIC COMMENTS**

31 The public comment period closed on August 22, 2022. No comments were received.

32
33 **PART IV. STATUTORY AUTHORITY**

34 The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which
35 provide TWC with the authority to adopt, amend, or repeal such rules as it deems
36 necessary for the effective administration of TWC services and activities.

37
38 The adopted rules implement the requirements set out in the General Appropriations Act
39 (SB 1, Article VII, Texas Workforce Commission, Rider 46) and bring the rules into
40 alignment with WIOA Title II and Texas Labor Code, Chapter 315.

1 **CHAPTER 805. ADULT EDUCATION AND LITERACY**

2
3 **SUBCHAPTER A. GENERAL PROVISIONS**

4
5 **§805.2. Definitions.**

6
7 The following words and terms, when used in this chapter, shall have the
8 following meanings, unless the context clearly indicates otherwise.

- 9
- 10 (1) Adult education--Programs, activities, and services that include adult
11 education, literacy, workplace adult education and literacy activities,
12 family literacy activities, English language acquisition activities,
13 integrated English literacy and civics education, workforce preparation
14 activities, or integrated education and training.
- 15
- 16 (2) AEL consortium--A partnership of educational, workforce
17 development, social service entities, and other public and private
18 organizations that agree to partner, collaborate, plan, and apply for
19 funding to provide AEL and related support services. Consortium
20 members shall include an AEL grant recipient, AEL fiscal agent, an
21 AEL lead organization of a consortium, and AEL service provider(s).
22 Consortium members may serve in one or more of the functions in
23 accordance with state statutes and Commission rules.
- 24
- 25 (3) AEL fiscal agent--An entity that is assigned financial management
26 duties as outlined in an Agency-AEL contract or is assigned this
27 function as a member of an AEL consortium.
- 28
- 29 (4) AEL grant recipient--An eligible grant recipient within a local
30 workforce development area (workforce area), as defined in §800.2 of
31 this title, that is awarded AEL funds by the Agency through the
32 statewide procurement process described in §805.41 of this chapter
33 (relating to Procurement and Contracting). The AEL grant recipient
34 also may act as an AEL lead organization of a consortium, AEL fiscal
35 agent, or AEL service provider as designated in an agreement with an
36 AEL consortium.
- 37
- 38 (5) AEL lead organization of a consortium--An organization designated as
39 the AEL consortium manager in a written agreement between AEL
40 consortium members. The AEL lead organization of a consortium is
41 responsible for planning and leadership responsibilities as outlined in
42 the written agreement and also may serve as an AEL grant recipient,
43 AEL fiscal agent, or AEL service provider. If a consortium does not
44 identify the lead organization of a consortium through a written
45 agreement, the AEL grant recipient will be presumed to assume the
46 responsibility of the lead organization of the consortium.

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- (6) AEL service provider--An entity that is eligible to provide AEL services as specified in the Workforce Innovation and Opportunity Act (WIOA) §203(5)/29 United States Code §3272(5) and Texas Labor Code, §315.003.
- (7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.
- (8) Clock hour--60 minutes.
- (9) College and career transitional support--Support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.
- (10) Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, assessment, or testing services (except for testing services used to determine eligibility) from a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.
 - (A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this chapter (relating to Staff Qualifications and Training).
 - (B) A student contact hour is 60 minutes.
- (11) Digital literacy skills--The skills associated with:
 - (A) using technology to enable users to find, evaluate, organize, create, and communicate information; and
 - (B) developing digital citizenship and the responsible use of technology.

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- (12) Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients are organizations that have demonstrated effectiveness in providing adult education and literacy activities, and may include:
 - (A) a local educational agency;
 - (B) a community-based organization or faith-based organization;
 - (C) a volunteer literacy organization;
 - (D) an institution of higher education;
 - (E) a public or private nonprofit agency;
 - (F) a library;
 - (G) a public housing authority;
 - (H) a nonprofit institution that is not described in any of subparagraphs (A) - (G) of this paragraph and has the ability to provide adult education and literacy services to eligible individuals;
 - (I) a consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) - (H) of this paragraph; and
 - (J) a partnership between an employer and an entity described in any of subparagraphs (A) - (I) of this paragraph.

- (13) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

- (14) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

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- (15) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.
- (16) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration to accomplish a predetermined educational or learning outcome that is tracked in the statewide AEL data management information system.
- (17) Program year--The AEL program year is July 1 through June 30.
- (18) Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.
- (19) Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in WIOA §3(59).
- (20) Workforce preparation activities--Activities, programs, or services described in WIOA §203(17), which are designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in utilizing resources, using information, working with others, understanding systems, and obtaining skills necessary for successful transition into and completion of postsecondary education, training, or employment.
- (21) Workforce training--Services described in WIOA §134(c)(3)(D), including the following:
 - (A) occupational skills training, including training for nontraditional employment;
 - (B) on-the-job training;
 - (C) incumbent worker training;

- 1 (D) programs that combine workplace training with related
2 instruction, which may include cooperative education programs;
3
- 4 (E) training programs operated by the private sector;
5
- 6 (F) skill upgrading and retraining;
7
- 8 (G) entrepreneurial training;
9
- 10 (H) transitional jobs;
11
- 12 (I) job readiness training provided in combination with services
13 described in any of subparagraphs (A) - (H) of this paragraph;
14
- 15 (J) AEL activities, including activities of English language
16 acquisition and integrated education and training programs,
17 provided concurrently or in combination with services described
18 in any of subparagraphs (A) - (G) of this paragraph; and
19
- 20 (K) customized training conducted with a commitment by an
21 employer or group of employers to employ an individual upon
22 successful completion of the training.
23

24 **§805.4. Essential Program Components.**

25
26 An AEL grant recipient shall ensure that essential program components are
27 provided, as outlined in the grant application for statewide AEL funds, which
28 include:

- 29
- 30 (1) Adult education;
- 31
- 32 (2) Literacy;
- 33
- 34 (3) Workplace adult education and literacy activities;
- 35
- 36 (4) Family literacy activities;
- 37
- 38 (5) English language acquisition services;
- 39
- 40 (6) Integrated English literacy and civics education;
- 41
- 42 (7) Workforce preparation activities, which includes digital literacy skills;
- 43
- 44 (8) Integrated education and training;
45

- 1 (9) Assessment and guidance services related to paragraphs (1) - (8) of this
2 section; or
3
4 (10) Collaboration with multiple partners in the community to expand the
5 services available to adult learners and to prevent duplication of
6 services.
7

8 **SUBCHAPTER B. STAFF QUALIFICATIONS**

9
10 **§805.21. Staff Qualifications and Training.**

11
12 The requirements of this section shall apply to all AEL staff, excluding clerical
13 and janitorial staff.
14

- 15 (1) AEL instructional aides, administrative, data entry, proctoring staff,
16 and staff providing support or employment services to students shall
17 have at least a high school diploma or high school equivalency
18 certificate.
19
20 (2) AEL directors, supervisors, and staff that oversee program assessment
21 services and/or overall program accountability, and instructors in the
22 content areas of reading, writing, mathematics, and English language
23 acquisition, including substitutes, shall possess at least a bachelor's
24 degree.
25
26 (3) Workforce training instructors must meet the requirements of the
27 institution and/or the associated accrediting or credentialing entity, if
28 applicable.
29
30 (4) Requests for exemptions for staff qualification requirements in
31 individual cases:
32
33 (A) may be submitted to the Agency for approval with a justification
34 outlining extenuating circumstances; and
35
36 (B) shall be submitted and approved prior to an individual being
37 placed in the position in question.
38
39 (5) All AEL directors and supervisors, and other staff with program
40 oversight or coordination responsibilities shall receive 15 clock hours
41 of professional development each program year with the following
42 exception: Staff hired on or after January 1 of a program year may
43 require half of the professional development time required for that
44 program year.
45

1 (6) All AEL instructional staff, including instructional aides providing
2 instruction to students, except substitutes, paid with AEL grant funds or
3 who acquire student contact hours, including volunteers, shall receive
4 at least 15 clock hours of professional development each program year,
5 with the following specifications:
6

7 (A) Instructors in the content areas of reading, writing, mathematics,
8 and English language acquisition shall:
9

10 (i) receive three clock hours of training in principles of adult
11 learning;
12

13 (ii) receive six clock hours in relevant areas of literacy
14 instruction; and
15

16 (iii) receive the remaining six clock hours of training in content
17 areas at the discretion of the program, but consisting of
18 content related to the AEL program's purpose, which is to
19 provide adults with sufficient basic education that enables
20 them to effectively:
21

22 (I) acquire the basic educational skills necessary for
23 literate functioning;
24

25 (II) participate in job training and retraining programs;
26

27 (III) obtain and retain employment; and
28

29 (IV) continue their education to at least the level of
30 secondary school completion and postsecondary
31 education preparation; or
32

33 (iv) waive six clock hours of content area in staff professional
34 development for individuals who have 18 or more college
35 semester undergraduate or graduate credit hours in relevant
36 areas of literacy instruction.
37

38 (B) Staff, as described in subparagraph (A) of this paragraph, hired
39 on or after January 1 of a program year, may require half of the
40 professional development time required for that program year.
41 For instructors in the content areas of reading, writing,
42 mathematics, and English language acquisition, these hours must
43 include three clock hours of training in principles of adult
44 learning and three clock hours in the relevant areas of literacy
45 instruction.
46

1 (C) Staff described in this paragraph shall receive at least six clock
2 hours of the required professional development outlined in
3 subparagraph (A)(i) - (iii) of this paragraph within 30 calendar
4 days of providing instructional activities, if new to AEL or to
5 direct student service delivery. The six hours include the required
6 three hours of principles of adult learning and three hours of the
7 relevant areas of literacy instruction. Waiving of the requirements
8 for staff new to direct student services must be approved by
9 Agency AEL staff prior to the individual providing any
10 instructional services.

11
12 (7) All staff providing support services or college and career transitional
13 support who are paid through an AEL grant shall receive at least three
14 clock hours of professional development each program year.

15
16 (8) AEL non-instructional support staff, such as, but not limited to, those
17 assigned test proctoring or data entry duties, shall receive at least three
18 clock hours of professional development related to their primary job
19 duties each program year.

20
21 (9) The requirements for professional development may be reduced by
22 grant recipients in individual cases in which exceptional circumstances
23 prevent employees from completing the required hours of professional
24 development. Exceptional circumstances can include absence from the
25 program or work due to personal health reasons or emergency familial
26 responsibilities, including maternity/paternity. Documentation
27 justifying these circumstances shall be available for monitoring and as
28 requested by AEL staff.

29
30 (10) Records of staff qualifications and professional development shall be
31 maintained by each grant recipient and shall be available for
32 monitoring.

33 34 **SUBCHAPTER C. SERVICE DELIVERY STRUCTURE AND ALIGNMENT**

35 36 **§805.41. Procurement and Contracting.**

37
38 (a) Eligible grant recipients shall compete for funding through a statewide
39 procurement process conducted in accordance with federal and state
40 procurement requirements. AEL funding shall be allocated as set forth in
41 §800.68 of this title.

42
43 (b) Eligible grant recipients shall apply directly to the Agency using the grant
44 solicitation process, and shall meet all deadlines, requirements, and
45 guidelines set forth in the grant solicitation.

46

1 (c) Contracts awarded to AEL grant recipients shall be limited to two years, with
2 the option of three one-year renewals, at the Commission's discretion. In
3 considering a renewal, the Commission shall take into account performance
4 and other factors.

5
6 (1) Renewals for years three, four, and five are not automatic, and are
7 based on meeting or exceeding performance and expenditure
8 benchmarks, or other factors as determined by the Commission.

9
10 (2) At the completion of the five-year maximum contract term, the Agency
11 shall conduct a new competitive statewide procurement, including
12 those contracts that have been in effect for less than the maximum five-
13 year contract term.

14
15 (d) Determinations by the Agency in the statewide procurement process will be
16 based on the indicated ability of the eligible grant recipient to effectively
17 perform all services and activities needed to fully comply with contract
18 performance requirements and all contract terms and conditions and may be
19 influenced by factors used to determine the allocation of AEL funds or other
20 objective data or criteria.

21
22 **§805.43. AEL Advisory Committee.**

23
24 The Commission shall establish a statewide AEL advisory committee, composed
25 of no more than nine members appointed by the Commission.

26
27 (1) Committee members shall:

28
29 (A) have AEL expertise and may include adult educators, providers,
30 advocates, current or former AEL students, and leaders in the
31 nonprofit community engaged in literacy promotion efforts;

32
33 (B) include at least one representative of the business community and
34 at least one representative of a Local Workforce Development
35 Board; and

36
37 (C) serve for two-year terms. The Commission shall provide direction
38 when appointing a member to an additional term.

39
40 (2) Membership shall be reviewed when a member's employment changes
41 to determine whether the individual continues to meet the requirements
42 for membership.

43
44 (3) The committee shall meet at least quarterly and submit a written report
45 to the Commission on an annual basis.
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- (4) The committee shall select a presiding officer as required by Texas Government Code, Chapter 2110.
- (5) The committee shall advise the Commission on:
 - (A) the development of:
 - (i) policies and program priorities that support the development of an educated and skilled workforce in the state;
 - (ii) statewide curriculum guidelines and standards for AEL services that ensure a balance of education and workplace skills development;
 - (iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and
 - (iv) a centralized system for collecting and tracking comprehensive data on AEL program performance outcomes;
 - (B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy-promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and
 - (C) any other issue the Commission considers appropriate.