Senate Bill 215

Applicable Provisions Relating to Negotiated Rulemaking and Allocation Methodology for Financial Aid Programs

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.

AGENDA

Negotiated Rulemaking Committee on Texas College Work Study
November 20, 2013
1:30pm
Lone Star Room, 2.140

Texas Higher Education Coordinating Board
1200 E. Anderson Lane
Austin, TX 78752

I. Introductions of Committee Members and Facilitators

II. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not

III. Overview of Roles and Responsibilities
- Role of Facilitator
- Role of Sponsor Agency
  - Technical and administrative support
- Role of Committee Members
  - Representative role
  - Commitment to negotiate in good faith

IV. Procedural Issues
- Discussion and Adoption of Ground Rules
- Definition of Consensus

V. Discussion of Draft Rules Language on Allocation Methodology for Texas College Work Study

VI. Consensus on Draft Rules Language

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.

Texas College Work-Study Program Allocations

Draft Rule Language

21.407. Allocation and Disbursement of Funds.

(a) Allocations. [~~The Board shall allocate work-study funds to participating institutions in proportion to the financial need of the students at each school.~~] Allocations for the Texas College Work-Study Program are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited to participate; those choosing not to participate will be left out of the calculations for the relevant year.

(2) The allocation base for each institution choosing to participate will be the number of students it reported in the most recent financial aid database report who met the following criteria:

(A) were classified as Texas residents,

(B) were enrolled at least half-time,

(C) completed either the FAFSA or TASFA, and

(D) received some type of financial aid.

(3) Each institution's share of the available funds will equal its share of the state-wide total of students who meet the criteria in (a)(2) of this Section.

(b) Verification of Data. Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting.

(c) Disbursements. At the beginning of each year or upon request by the institution, the year's full allocation or funds needed for immediate disbursement to students will be provided to each participating institution for use in reimbursing students for their work.

(d)[~~(b)~~] Reallocations. Institutions will have until February 20 or the first workday thereafter if it falls on a holiday or a weekend [~~a date specified by the Board via a policy memo addressed to the Program Officer at the institution~~] to encumber all funds allocated to them. On that date, institutions lose claim to their unencumbered funds and the unencumbered funds are available to the Board for reallocation to other institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(e)[~~(c)~~] Summer Awards. Unless given specific permission by the Board to use funds for summer awards, schools will be required to utilize their state work-study funds for employment during the nine-month academic year (fall and spring terms).

(f) Should funding for the program decrease in a given biennium by as much as 30 percent compared to funding in the prior biennium, the allocation of funds will be based on the number of full-time students meeting the other criteria listed in (a)(2).

Texas College Work-Study Primary Issues

Primary Issues from Survey
Lack of current funding
1. Accuracy 2. Transparency & Clear Communication 3. Efficiency (avoid redundancy in reporting)
1. How many students receive the benefit of Texas Work Study, relative to the allocation 2. As with Federal Work Study, encourage Community Service- with a required % to be spent on that; those with higher % on average could receive more allocation
1. Equitably assisting students with need 2. Equity among institutions 3. Flexibility in meeting the future needs of a changing demographic
Amount of funding. Allocation ordering of funding. Allocation based on need. Allocation based on # of students with need.
Increase in funding Inability to use funds in the summer
1) Tie allocation to a fixed Pell Eligibility; this will show true need of the student 2) Univerisities have more sources of private funding than community colleges; therefore, community colleges should have a greater percentage of there eligible students funded 3) Allow schools to estimate needed allocation; thereby, eliminating the reallocation process 4) More efficient reporting processes and fewer reporting benchmarks
Ensure transparency of allocation methodology. Ensure allocation methodology is equitable. Include in the methodology information about institutions that do not fully utilize their TCWS allocation.
1. Expansion/contraction of eligibility 2. using work study to meet state targets/goals 3. Connecting eligibility for WS to performance/success/progression to degree
Increased funding for additional positions. Increased wages so students can choose an on-campus position over an off-campus position. More accountability of supervisors on work study students - to better prepare the student worker and to give the positions more purpose.
A maximum Cost of Attendance (COA) should be determined should be determined for all colleges/universities, whether public or private, based on the average cost to attend a public college/university in Texas
1. Funding should go to colleges who demonstrate a need for the funds. 2. Funding should be equitable between all participating institutions. 3. History of spending should be considered. 4. An allowance should be made for institutions with under-served populations.
Amount of Funds Available Formula for Distribution of Funds
1. what are the current policies and procedures 2. Review of any proposed changes going forward 3. Impact of any changes on Texas public universities
Joint Goverance of THECB Rules Simplified Rules

Texas College Work-Study Primary Issues

Primary Issues from Survey

I am a New Financial Aid Director my views are very limited at this time
Funding levels for community colleges (compared to four year institutions) should have equity for in-state students.
*First go over the current methodology being used. *Then go over the expenditures being done by each institution, are they using the funds appropriately. *If no, find out why, do these institutions need more training on how to use their funds? Should we give more to those who do use their funds? *If yes, review the current methodology and see what we can improve or change to assist institutions wisely.
Review the current allocation methodology used in the distribution of program funds to institutions and to students, including perceived pros/cons of these methodologies. Examine how program funds are being used by institutions of higher education. Explore the utilization of work-study jobs in enhancing student learning/career-building opportunities. Clarify the need for increased funding for the TCWS program.
Ensuring funding is distributed equitably among institutions. How will overall "need" versus the cost of attendance be factored into the allocations. The timing of the annoncements to the participating universities.
1. Work study program funding levels should be increased, especially for colleges/universities with high percentage of students with high unmet need. Total allocations have increased some, in recent years, however the need still remains high. Work study provides students the opportunity to work on campus. On campus positions allows students, who may lack transportation an opportunity to work. Students, who work on campus, are usually more successful. They have an opportunity to develop working relationships on campus, they get to know the colleges, and they receive additional support from faculty and staff. It's a win/win situation.
Limited availability of funds at the beginning of the aid year. Delayed availability of additional funds that occurs late in the academic year.
Determining the priority of the different programs that might be affected such as AVID and or Go Programs. Determining effectivess of awarded programs and gow this effectiveness is formulated with the allocation. FInally, I think sustainability of the programs is important is determining the awards.
Is performance based fundng/outcome funding a part of the negotiated rules making process? Where did the use of "sector funding " come from for the different two-year institutions--Community colleges, TSTC institutions. and the three Lamar institutions. Was that or is that part of the negotiated rulemaking process?
Allocations

Texas College Work-Study Primary Issues

Primary Issues from Survey

1.) The ability of the University to adequately utilize the funds awarded 2.) Setting standard award criteria for student awards. Ex: minimum GPA, hours enrolled etc... 3.) Matching of Institutional Funds
Parity of allocations job descriptions
The current methdology appears to focus on the financial need of the student body. This methodology will need to be evaluated in combination with reallocation methodlogy to ensure the most efficient and timely delivery of allocations.
1. Allocations to small universities is inadequate. even when allocations are fully dispensed, the amount of increase is small compared to the number of students. We never have enough money to make a difference.
1. Eligibility 2. Number of hours per week 3. Satisfactory academic progress to participate
Ensuring a fair allocation process that includes stakeholder input.