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TEXAS HIGHER EDUCATION COORDINATING BOARD

A G E N D A

Special Called Board Meeting

**1200 EAST ANDERSON LANE, ROOM 1.170
AUSTIN, TEXAS**

10:00 A.M., Wednesday, December 11, 2019

This meeting is convened pursuant to section 61.025 of the Texas Education Code and section 551.121 of the Texas Government Code. The Texas Higher Education Coordinating Board may convene in Executive Session at any point in this meeting, concerning any item listed in the agenda, or to seek or to receive its attorney's advice on legal matters related thereto, pursuant to Texas Government Code Ann. 551.071.

PUBLIC TESTIMONY: The presiding chair shall designate whether public testimony will be taken at the beginning of the meeting, at the time the related item is taken up by the Board after staff has presented the item, or any other time as determined by the presiding chair. For procedures on testifying please go to http://www.thecb.state.tx.us/public_testimony.

I. Call to Order: Opening Remarks and Announcements

A. Introduction of New Board Members

B. Committee Appointments

II. Public Testimony

III. Matters relating to the Full Board

A. Proposed Rules:

(1) Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed new rules for Chapter 4, Subchapter T, Sections 4.340 through 4.347, and proposed revisions to Chapter 4, Subchapter D, Section 4.85 and Chapter 9, Subchapter L, Section 9.555 of Board rules, concerning required degree plans for students at public institutions of higher education in Texas (*Senate Bill 25, Section 4 and House Bill 3808, Section 3, 86th Texas Legislature, Regular Session*)

(2) Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed new rules for Chapter 3, Subchapter B, Section 3.16, and proposed revisions to Chapter 4, Subchapter A, Section 4.2 and Chapter 4, Subchapter A, Section 4.7 of Board rules, concerning required transcript notation when a student is ineligible to reenroll in an institution of higher education due to a non-academic or non-financial reason (*House Bill 449, 86th Texas Legislature, Regular Session*)

(3) Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed repeal and replacement of Chapter 3, Subchapter A, Sections 3.11 – 3.15 and proposed new rules for Chapter 3, Subchapter A, Sections 3.1 – 3.10 and 3.16 – 3.20 of Board rules, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions (*Senate Bill 212 and House Bill 1735, 86th Texas Legislature, Regular Session*)

Note: Highlighted items in gray are on the Consent Calendar

December 2019 Agenda

- B. Consideration of adopting the staff's recommendation to the Board relating to the acquisition of contract services for Phase II of the Identity and Access Management (IAM) Modernization Project
- C. Consideration of adopting the Committee's recommendation to the Board relating to the request from Texas Tech University for a Doctor of Veterinary Medicine (DVM) degree with a major in Veterinary Medicine
- D. Consideration of adopting the Certification Advisory Council and the Commissioner's recommendation to the Board relating to a request from Burrell College of Osteopathic Medicine for an initial Certificate of Authority

IV. Adjournment

Texas Penal Code Section 46.035(c) states: "A license holder commits an offense if the license holder intentionally, knowingly, or recklessly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, regardless of whether the handgun is concealed or carried in a shoulder or belt holster, in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code, and the entity provided notice as required by that chapter." Thus, no person can carry a handgun and enter the room or rooms where a meeting of the THECB is held if the meeting is an open meeting subject to Chapter 551, Government Code.

Please Note that this governmental meeting is, in the opinion of counsel representing THECB, an open meeting subject to Chapter 551, Government Code and THECB is providing notice of this meeting as required by Chapter 551. In addition, please note that the written communication required by Texas Penal Code Sections 30.06 and 30.07, prohibiting both concealed and open carry of handguns by Government Code Chapter 411 licensees, will be posted at the entrances to this governmental meeting.

Special Called Board Meeting

AGENDA ITEM I

Opening Remarks: Opening Remarks and Announcements

Mr. Stuart Stedman, Chair of the Board, will call the meeting to order and provide opening remarks.

Special Called Board Meeting

AGENDA ITEM I-A

Introduction of New Board Members Cody C. Campbell and R. Sam Torn

RECOMMENDATION: No Action Required

Background Information:

The Board Chair will introduce Mr. Campbell and Mr. Torn.

Cody Campbell is Co-Founder and Co-Chief Executive Officer of DoublePoint Energy, LLC ("DoublePoint"). DoublePoint is a Joint Venture between Double Eagle Energy Holdings III LLC (backed by Apollo Global Management, LLC & Magnetar Capital) and FourPoint Energy (backed by Quantum Energy Partners & GSO Capital Partners LP). DoublePoint, headquartered in Fort Worth, Texas, is focused on acquiring and developing oil and gas interests in the Permian Basin.

Double Eagle Energy Holdings III LLC ("Double Eagle") was formed in 2017 following the successful sale of Double Eagle Energy Holdings II LLC to Parsley Energy Inc. (NYSE:PE) earlier in 2017 and the successful sale of Double Eagle Energy Holdings I LLC to American Energy Non-Op LLC in 2014. Double Eagle has been one of the largest organic acquirers of acreage in the Permian over the past ten years, having completed tens of thousands of individual transactions encompassing over one million acres and more than five billion dollars in value. Double Eagle also has a strong history of operational success in the Permian Basin, having run multiple horizontal drilling programs and having consistently achieved industry-leading benchmarks in well cost and well performance.

Mr. Campbell graduated with honors from the Texas Tech Rawls College of Business in 2003, with a Bachelor of Business Administration degree in finance and economics and earned a Master of Science in finance degree from Texas Tech in 2004.

Mr. Campbell was a four-year football letterman at Texas Tech, was a multi-year starter on the offensive line, and received multiple All Big XII and Academic All Big XII honors. After his college career, he spent just under two years on the roster of the Indianapolis Colts. Mr. Campbell lives in Fort Worth and is married with four children. He is a member of YPO and serves on the Advisory Council for the Texas Tech Rawls College of Business.

Sam Torn and his wife, Susan, own and operate Incomparable Camp Ozark, one of the largest residential summer camps in the nation. In addition, Mr. Torn is the Executive Director of Camp War Eagle, a not-for-profit, year-round youth development organization for underserved children, developed in cooperation with the Walton Family Foundation of Bentonville, Arkansas. Additionally, Mr. Torn is the chairman of the Camp Ozark Foundation and

Ozone Ministries, which provides year-round support for youth in eight cities across the southern United States. He is the founding director of Ozark for All, a summer camp experience for inner city children, and has served on the Board of Directors of GAP Ministries, which provides community development services to the indigent population of southwestern Mexico. Mr. Torn is also a featured speaker for a national teen abstinence program.

Mr. Torn received his BBA from Texas A&M in 1970, his MBA from the University of Texas in 1973 and his Juris Doctor, Summa Cum Laude, from the South Texas College of Law in 1977.

While at Texas A&M, Mr. Torn served as Head Yell Leader, was a member of the Corps of Cadets, and a varsity baseball squadsman. Mr. Torn served as Chairman of the 12th Man Foundation's Board of Trustees, coordinated the redevelopment of Olsen Field at Blue Bell Park, Co-Chaired the university-wide Kyle Field Redevelopment Committee, as well as chaired the 225 Million Dollar Campaign for Kyle Field. Mr. Torn is also an active member of the Athletic Ambassadors and the Houston Champions Council. He formerly served as President of the Southwest Houston A&M Club, area representative for the Association of Former Students, Class Agent for the class of '70 and President of the Association of Former Yell Leaders and is an active member of the Lettermen's Association. In 2013 Mr. Torn was inducted into the Texas A&M Letterman's Association Hall of Honor for his efforts on behalf of Texas A&M athletes. In 2015, Mr. Torn was inducted into the Corps of Cadets Hall of Honor. In 2016, Mr. and Mrs. Torn were awarded the prestigious E. King Gill Award for their efforts on behalf of Texas A&M athletics.

Mr. and Mrs. Torn have three children: Scott married to Secily, Chris married to Ceci; and Angela married to Stephan Shaw, as well as thirteen grandchildren.

AGENDA ITEM I-B

Committee Appointments

RECOMMENDATION: No Action Required

Background Information:

The Board Chair will announce Committee Appointments.

Special Called Board Meeting

AGENDA ITEM II

Public Testimony

RECOMMENDATION: No action required

Background Information:

PUBLIC TESTIMONY: The presiding chair shall designate whether public testimony will be taken at the beginning of the meeting, at the time the related item is taken up by the Board after staff has presented the item, or any other time as determined by the presiding chair.

Special Called Board Meeting

AGENDA ITEM III-A (1)

Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed new rules Chapter 4, Subchapter T, Sections 4.340 through 4.347, and proposed revisions to Chapter 4, Subchapter D, Section 4.85 and Chapter 9, Subchapter L, Section 9.555 of Board rules, concerning required degree plans for students at public institutions of higher education in Texas (Senate Bill 25, Section 4 and House Bill 3808, Section 3, 86th Texas Legislature, Regular Session)

RECOMMENDATION: Approval

Background Information:

The intent of the new Subchapter is to establish provisions enacted by House Bill 3808 and Senate Bill 25, 86th Texas Legislature, Regular Session. The proposed new Chapter 4, Subchapter T establishes the policies and procedures regarding the required filing of degree plans for students enrolled in public institutions of higher education. A negotiated rulemaking committee met September 24, 2019, and provided the Board with recommended rules for implementation of required degree plans for students, including institutional and student responsibilities.

The revisions to existing rules, Chapter 4, Subchapter D, Section 4.85 and Chapter 9 Subchapter L, Section 9.555, reference the proposed new Subchapter T to make the existing rules consistent with the provisions of the proposed new rules.

Dr. Stacey Silverman, Interim 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*: October 7, 2019.

Date Published in the *Texas Register*: October 18, 2019.

The 30-day comment period with the *Texas Register* ended on: November 17, 2019.

Public comments were received from two public higher educational representatives.

Comment: The institutional representative for The University of Texas at Arlington (UTA) offered comments after review with multiple stakeholders. Specifically:

1. Dual credit students are currently classified as non-degree seeking students at UTA, and thus they do not have a specific major. Requiring these students to declare a major after the completion of 15 hours may create data reporting challenges and potentially impact retention and graduate rates.

2. Regarding 4.345 item 2, preventing a student from obtaining their official transcript if they do not have a degree plan filed (major) is antithetical to the goal of degree completion and presents a real-world situation of students selecting a major just to get their transcript, which impacts reporting (this rule currently exist for students who have a 45-hour on their account).

Staff response: Staff recommends no action as a result of the first comment, because the proposed rules largely mirror the statutory language. Texas Education Code (TEC) 51.9685 (c-2) (1)-(2) requires students enrolled in dual credit courses with a cumulative 15 semester credit hours (SCH) to file a degree plan. The Negotiated Rulemaking Committee discussed and recognized the challenges and provided clarification in rules to stipulate that the 15 SCH of accumulated credit be at a single institution.

Staff recommends no action as a result of the second comment because the proposed rules also align with statute concerning withholding transcripts from students failing to file a degree plan. TEC 51.9685 (f) states, "The student may not obtain an official transcript from the institution until the student has filed a degree plan with the institution." Institutions are obligated to withhold the transcript of students not filing the required degree plan.

Comments and staff responses were sent to the Negotiated Rulemaking Committee for consensus. The committee agreed with the staff assessments and responses to the comments.

Comment: Dallas County Community College District (DCCCD) commented to suggest that the requirement of filing a degree plan include students enrolled in dual credit courses with the intent to earn a certificate. DCCCD also suggested a definition of certificate programs be added.

Staff response: Staff recommends no action as a result of the DCCCD comment. The statute references associate and bachelor's degree programs only, and rules mirror the statutory language. Rules and statute do not prohibit institutions from requiring students in certificate programs to file a degree plan.

Comment and staff response were sent to the Negotiated Rulemaking Committee for consensus. The committee agreed with the staff assessment and response to the comment.

Approved by the Office of General Counsel  Date: 12/4/19

Proposed Rules

Texas Administrative Code

Title 19 Education

Part 1 Texas Higher Education Coordinating Board

Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas

Subchapter T. Required Degree Planning

4.340 Purpose

4.341 Authority

4.342 Definitions

4.343 Degree Plans for a Student Enrolled in an Associate or Bachelor's Degree Program

4.344 Degree Plans for a Student Enrolled in Dual Credit Courses

4.345 Responsibilities of Institutions

4.346 Responsibilities of Students

4.347 Institutional Compliance

4.340 Purpose

The purpose of this subchapter is to ensure students file degree plans adhering to institutional process early in their enrollment at public institutions of higher education and graduate from their degree programs without excess hours.

4.341 Authority

Texas Education Code (TEC), Section 51.9685, Required Filing of Degree Plan, authorizes the Board to adopt rules necessary for the administration of the section and to ensure compliance.

4.342 Definitions

(1) Degree plan - defined in TEC Section 51.9685 (a) (1) A statement of the course of study requirements that an undergraduate student at an institution of higher education must complete in order to be awarded an associate or bachelor's degree from the institution.

(2) Institution of higher education - has the meaning assigned by TEC Section 61.003 (8).

(3) Board or Coordinating Board - The Texas Higher Education Coordinating Board

(4) Dual credit courses - College courses in which an eligible high school student enrolls and receives credit for the course(s) from both the college and the high school.

(5) Associate degree program - A grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to an associate degree from an institution of higher education.

(6) Bachelor's degree program - Any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a baccalaureate degree from an institution of higher education.

4.343 Degree Plans for a Student Enrolled in an Associate or Bachelor's Degree Program

(a) A student enrolled in an associate or bachelor's degree program at an institution of higher education must file a degree plan with the institution after the 12th class day but before the end of the semester or term immediately following the semester or term in which the student earned a cumulative total of 30 or more semester credit hours for coursework successfully completed by the student, including transfer courses, international baccalaureate courses, dual credit courses, and any other course for which the institution the student attends has awarded the student college course credit, including course credit awarded by examination.

(b) A student who enrolls in an associate or bachelor's degree program at an institution of higher education for the first time with a cumulative total of 30 or more semester credit hours, shall file a degree plan with the institution after the 12th class day but before the end of the semester of first enrollment.

4.344 Degree Plans for a Student Enrolled in Dual Credit Courses

(a) A student enrolled in dual credit courses at an institution of higher education shall file a degree plan with the institution not later than:

(1) the end of the second regular semester or term immediately following the semester or term in which the student earned a cumulative total of 15 or more semester credit hours of course credit for dual credit courses successfully completed by the student at that institution; or

(2) if the student begins the student's first semester or term at the institution with 15 or more semester credit hours of course credit for dual credit courses successfully completed by the student, the end of the student's second regular semester or term at the institution.

4.345 Responsibilities of Institutions, in accordance with TEC 51.9685 (d) and (f), institutions shall:

(a) Provide students information about the degree plan filing requirement and options for academic advising, including electronic communication; and

(b) Notify students failing to file a degree plan and shall not provide official transcripts to the students until a degree plan is filed.

4.346 Responsibilities of Students, in accordance with TEC 51.9685 (e) (1) and (2), students shall:

(a) File a degree plan with the institution as specified in this subchapter;

(b) Notify appropriate offices at the institution of higher education of changes in their choice of degree programs; and

(c) Enroll in courses consistent with the filed degree plan.

4.347 Institutional Compliance

The Board reserves the right to audit institutional student records at any time to ensure compliance with any of the conditions of this subchapter.

Texas Administrative Code
Title 19 Education
Part 1 Texas Higher Education Coordinating Board
Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas
Subchapter D. Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges

- 4.81 Purpose
- 4.82 Authority
- 4.83 Definitions
- 4.84 Institutional Agreements

4.81 - 4.84 No change

4.85 Dual Credit Requirements

(a) – (e) No change.

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at the college's main campus must also apply to dual credit courses. These policies could include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc.

(2) Students in dual credit courses must be eligible to utilize the same or comparable support services that are afforded college students on the main campus. The college is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

~~(3) A student enrolled in dual credit courses at an institution of higher education shall file a degree plan with the institution as prescribed by TAC 4.344 Degree Plans for a Student Enrolled in Dual Credit Courses.~~

(h) No change.

(i) No change.

Texas Administrative Code
Title 19 Education
Part 1 Texas Higher Education Coordinating Board
Chapter 9. Program Development in Public Two-Year Colleges
Subchapter L. Multidisciplinary Studies Associate Degrees

- 9.552 Definitions
- 9.553 Multidisciplinary Studies Associate Degree Program
- 9.554 Adoption of Program
- 9.555 Student Advising

9.552 - 9.554 No change.

9.555 Student Advising

A student enrolled in a multidisciplinary studies associate degree program shall file a degree plan as prescribed by TAC Chapter 4, Subchapter T. The ~~[Notwithstanding Texas Education Code §51.9685, before the beginning of the regular semester or term immediately following the semester or term in which a student successfully completes a cumulative total of 30 or more semester credit hours for coursework in a multidisciplinary studies associate degree program established under this section, the]~~ student must meet with an academic advisor to complete a degree plan, as defined by §9.553 of this title (relating to Multidisciplinary Studies Associate Degree Program, that:

- (1) Accounts for all remaining credit hours required for the completion of the degree program; and
- (2) Emphasizes the student's transition to a particular four-year college or university that the student chooses; and
- (3) Preparations for the student's intended field of study or major at the four-year college or university.

Special Called Board Meeting

AGENDA ITEM III-A (2)

Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed new rules for Chapter 3, Subchapter A, Section 3.16, and proposed revisions to Chapter 4, Subchapter A, Section 4.2 and Chapter 4, Subchapter A, Section 4.7 of Board rules, concerning required transcript notation when a student is ineligible to reenroll in an institution of higher education due to a non-academic or non-financial reason (House Bill 449, 86th Texas Legislature, Regular Session)

RECOMMENDATION: Approval

Background Information:

The intent of the new rules for Chapter 3, Subchapter A and revised rules for Chapter 4, Subchapter A, is to establish provisions enacted by House Bill 449, 86th Texas Legislature, Regular Session. The proposed amendments of existing rules reference new transcript notation requirements when a student is ineligible to reenroll at public and private or independent institutions of higher education in Texas. A negotiated rulemaking committee meet on September 25, 2019, and provided the Board with recommended rules regarding notations on transcripts when a student is ineligible to reenroll at public and private or independent institutions of higher education in Texas due to a non-academic or nonfinancial reason. Legislation requires that the Board have rules in place by January 1, 2020.

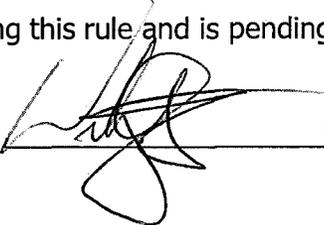
Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, will present this item and be available to answer questions.

Date approved by the Commissioner for publication in the *Texas Register*: October 7, 2019.

Date Published in the *Texas Register*: October 18, 2019.

The 30-day comment period with the *Texas Register* ended on: November 17, 2019.

One public comment was received regarding this rule and is pending consideration by The Negotiated Rulemaking Committee.

Approved by the Office of General Counsel  Date: 11/20/19

Proposed Rules

Texas Administrative Code

Title 19 Education

Part 1 Texas Higher Education Coordinating Board

Chapter 3. Rules Applying to all Public and Private or Independent Institutions of Higher Education in Texas Regarding Electronic Reporting Option for Certain Offenses; Amnesty; Transcript Notation When a Student is Ineligible to Reenroll

Subchapter A. Required Transcript Notation for Certain Ineligibility to Reenroll

Rule §3.16 Required Transcript Notation When a Student is Ineligible to Reenroll due to Non-academic or Non-financial Reason

(a) Each postsecondary educational institution as defined by Texas Education Code 51.9364 will publish its process for transcript notations. "Ineligible to reenroll" will be defined by the notating postsecondary educational institution.

(b) For students ineligible to reenroll in a postsecondary educational institution for a reason other than academic or financial, including, but not limited to disciplinary actions, each postsecondary educational institution must include on the student's transcript a notation stating the student is ineligible to reenroll in the postsecondary educational institution for a reason other than academic or financial. The postsecondary educational institution must use language to indicate the student is ineligible to reenroll in the institution, regardless of instructional modality. The postsecondary educational institution is neither required nor prohibited from stating the specific reason for ineligibility.

(c) If a student withdraws from the postsecondary educational institution prior to final resolution of the postsecondary educational institution's published disciplinary process that may result in the student becoming ineligible to reenroll for a reason other than an academic or financial reason, the postsecondary educational institution:

(1) may not end the disciplinary process until the postsecondary educational institution makes a final determination of responsibility, including, if applicable, a determination of whether the student will be ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason; and

(2) shall include on the student's transcript the notation required under subsection (b) of this section if, as a result of the disciplinary process, the student is ineligible to reenroll in the postsecondary educational institution for a reason other than an academic or financial reason.

(d) Upon request by a student, a postsecondary educational institution may remove from a student's transcript a notation required under subsection (b) of this section if:

(1) the student becomes eligible to reenroll in the postsecondary educational institution;

or

(2) the postsecondary educational institution determines that good cause exists to remove the notation.

Proposed Rules

Texas Administrative Code

Title 19 Education

Part 1 Texas Higher Education Coordinating Board

Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas

Subchapter A. General Provisions

Rule §4.2 Authority

Unless otherwise noted in a section, the authority for these provisions is provided by Texas Education Code ~~§51.9364~~ and §61.051 which describes the Board's role in the Texas system of higher education.

Proposed Rules

Texas Administrative Code

Title 19 Education

Part 1 Texas Higher Education Coordinating Board

Chapter 4. Rules Applying to All Public Institutions of Higher Education in Texas

Subchapter A. General Provisions

Rule §4.7 Student Transcripts

(a) Student transcripts shall contain a record of each state funded course attempted by a student at the transcribing institution after January 1, 1998. This includes all courses for which the student was enrolled as of the official census date each term, including developmental education courses, courses that were not completed, courses that were dropped, and courses that were repeated.

(b) The student transcript or an addendum to the transcript certified by the appropriate institutional official shall contain a record of the student's status in regard to the Texas Success Initiative (TSI). The document should include the status for each section of a test taken for TSI purposes (reading, mathematics, writing) with information as to how the student met the TSI requirement. The information provided should enable receiving institutions to use the transcript or the addendum as a single source of information to determine the student's TSI status.

(c) Student transcripts created after September 1, 2000 should be maintained by the institutions in a format suitable for electronic interchange. The format of transcripts shall be the format that is used to store the most transcripts by Texas institutions of higher education as of September 1, 1998 or another format adopted by a majority of the members of the Texas Association of Collegiate Registrars and Admissions Officers.

(d) Student transcripts or an addendum to the transcript certified by the appropriate institutional official shall identify all courses completed in satisfaction of the core curriculum as specified in §4.28(h) of this title (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula).

(e) Transcript notations are required for students ineligible to reenroll for a reason other than academic or financial as specified in Chapter 3, Subchapter B, Rule §3.16.

Special Called Board Meeting

AGENDA ITEM III-A (3)

Consideration of adopting the Negotiated Rulemaking Committee's recommendation to the Board relating to proposed repeal of Chapter 3, Subchapter A, Sections 3.11 – 3.15 and proposed new rules for Chapter 3, Subchapter A, Sections 3.1 – 3.20 of Board rules, concerning required reporting rules and policies regarding certain incidents of sexual harassment, sexual assault, dating violence, and stalking at postsecondary educational institutions (Senate Bill 212 and House Bill 1735, 86th Texas Legislature, Regular Session)

RECOMMENDATION: Approval

Background Information:

The intent of the revised Subchapter is to establish provisions enacted by House Bill 1735 and Senate Bill 212, 86th Texas Legislature, Regular Session. The proposed revised Chapter 3, Subchapter A establishes the requirements for policies and procedures regarding sexual misconduct at postsecondary educational institutions. A negotiated rulemaking committee met on September 23, 2019, and on October 16-17, 2019, and provided the Board with recommended rules regarding incidents of sexual misconduct at institutions of higher education. The Title IX Training Advisory Committee met electronically and endorsed the recommended rules regarding incidents of sexual misconduct at institutions of higher education. Legislation requires that the Board have rules in place by January 1, 2020.

Dr. Stacey Silverman, Interim 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 1, 2019.

Date Published in the *Texas Register*: November 1 and 8, 2019.

The 30-day comment period with the *Texas Register* ended on: December 1 and 8, 2019.

No comments were received regarding this rule.

Approved by the Office of General Counsel K Cm Date: 11/20/19

Chapter 3, RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING POLICIES FOR INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING

~~Subchapter A, [ELECTRONIC REPORTING AND AMNESTY FOR STUDENTS REPORTING CERTAIN INCIDENTS]~~

3.11 [Purpose]

3.12 [Authority]

3.13 [Definitions]

3.14 [Electronic Reporting for Certain Incidents]

3.15 [Amnesty for Students Reporting Certain Incidents]

3.11 [Purpose]

~~[The purpose of this subchapter is to establish rules for postsecondary educational institutions to provide an option for enrolled students and employees of the institution to electronically report sexual harassment, sexual assault, dating violence, or stalking to the institution; and to provide amnesty to enrolled students who report incidents of sexual harassment, sexual assault, dating violence, or stalking. The rules established in this subchapter do not supersede or replace state or federal employment law.]~~

3.12 [Authority]

~~[Texas Education Code; Subchapter Z, Chapter 51, §51.9365 and §51.9366 authorize the Texas Higher Education Coordinating Board to adopt rules necessary to administer Subchapter Z, Chapter 51.]~~

3.13 [Definitions]

~~[(a) Dating violence—abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.~~

~~(b) Postsecondary educational institution—an institution of higher education or a private or independent institution of higher education, as those terms are defined by Texas Education Code, §61.003.~~

~~(c) Sexual assault—sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse.~~

~~(d) Sexual harassment—unwelcome, sex-based verbal or physical conduct that:~~

~~(1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or~~

~~(2) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.~~

~~(e) Stalking—a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.]~~

3.14 [Electronic Reporting for Certain Incidents]

~~-(a) Each postsecondary educational institution shall provide an option for electronic reporting to the institution by an enrolled student or an employee of the institution of an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:~~

~~(1) Allow for anonymous reporting; and~~

~~(2) Be easily accessible via a clearly identifiable link on the institution's website home page.~~

~~(b) A protocol adopted pursuant to Texas Education Code §51.9363 for reporting sexual assault shall comply with subsection (a) of this section.~~

~~(c) Institutions may contract with a third-party vendor to provide the electronic reporting option.~~

~~(d) Each public or private postsecondary educational institution shall provide the electronic reporting option by January 1, 2018.]~~

3.15 [Amnesty for Students Reporting Certain Incidents]

~~-(a) A postsecondary educational institution may not take any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim~~

of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

(b) Subsection (a) of this section does not apply to a student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

(c) A postsecondary educational institution may investigate to determine whether a report of an incident of sexual harassment, sexual assault, dating violence, or stalking was made in good faith. For the purposes of subsection (a) of this section, the institution has discretion to determine good faith, but in no event will good faith exist if the student is found responsible for sexual harassment, sexual assault, dating violence, or stalking at or near the time of the incident.

(d) A determination that a student is entitled to amnesty under subsection (a) of this section is final and may not be revoked.

(e) This section may not be construed to limit a postsecondary educational institution's ability to provide amnesty from application of the institution's policies in circumstances not described by subsection (a) of this section.]

Chapter 3, RULES APPLYING TO ALL PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION IN TEXAS REGARDING POLICIES FOR INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING

Subchapter A, REQUIREMENTS FOR CERTAIN INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, OR STALKING AT CERTAIN PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION; AUTHORIZING ADMINISTRATIVE PENALTIES

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3.1 Purpose

The purpose of this subchapter is to establish rules to require public, private, and independent institutions of higher education to report incidents of sexual harassment, sexual assault, dating violence, and stalking; to adopt a policy on sexual harassment, sexual assault, dating violence, and stalking; implement electronic reporting protocols for such incidents; develop a comprehensive prevention and outreach program; establish penalties for noncompliance; and provide amnesty or immunities to students and employees who report incidents of sexual harassment, sexual assault, dating violence, and stalking.

3.2 Authority

Texas Education Code Subchapters E-2, Chapter 51, § 51.259 and Subchapter E-3, Chapter 51, § 51.295 authorize the Texas Higher Education Coordinating Board to adopt rules necessary to administer these Subchapters.

3.3 Definitions

(a) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(b) Course and Scope of Employment--means an employee performing duties in the furtherance of the institution's interests.

(c) "Dating violence," "sexual assault," and "stalking" have the same meanings assigned by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092 (f)(6)(A)).

(d) Postsecondary educational institution--an institution of higher education or a private or independent institution of higher education, as those terms are defined by Texas Education Code, §61.003.

(e) Sexual harassment--unwelcome, sex-based verbal or physical conduct that:

(1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

(2) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

(f) Substantial Compliance—a postsecondary educational institution has made a good faith effort to comply with the requirements under these rules provided that the deficiencies identified by the Coordinating Board can be readily corrected.

3.4 Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking

(a) Each postsecondary educational institution shall adopt a policy on sexual harassment, sexual assault, dating violence, and stalking applicable to each enrolled student and employee of the

institution and have the policy approved by the institution's governing body. The policy must include:

- (1) Definitions of prohibited behavior;
- (2) Sanctions for violations;
- (3) Protocol for reporting and responding to reports of sexual harassment, sexual assault, dating violence, and stalking that complies with the electronic reporting requirement in Subsection 3.7 of this section;
- (4) Interim measures to protect victims of sexual harassment, sexual assault, dating violence, or stalking pending the institution's disciplinary process, including protection from retaliation, and any other accommodations or supportive measures available to those victims at the institution. This section is not intended to limit an institution's ability to implement accommodations to others as needed; and
- (5) A statement regarding:
 - (A) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
 - (B) the right of a victim of sexual harassment, sexual assault, dating violence, or stalking to report the incident to the institution and to receive a prompt and equitable resolution of the report; and
 - (C) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

(b) Each postsecondary educational institution shall make its policy on sexual harassment, sexual assault, dating violence, and stalking available to students, faculty, and staff members by:

- (1) including the policy in the student handbook and personnel handbook or the institution's equivalent(s); and
- (2) creating and maintaining a web page dedicated solely to the policy that is easily accessible through a clearly identifiable link on the institution's homepage.

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term of enrollment at the institution. The orientation:

(1) may be provided online; and

(2) must include the statements described by Subsection (a)(5) of this section.

(d) Each postsecondary educational institution shall develop and implement a comprehensive prevention and outreach program on sexual harassment, sexual assault, dating violence, and stalking for enrolled students and employees of the institution. The program must:

(1) address a range of strategies to prevent sexual harassment, sexual assault, dating violence, and stalking, including a public awareness campaign; a victim empowerment program; primary prevention; bystander intervention; and risk reduction, and

(2) provide students with information regarding the protocol for reporting incidents of sexual harassment, sexual assault, dating violence, and stalking, including the name, office location, and contact information of the institution's Title IX coordinator, by:

(A) e-mailing the information to each student at the beginning of each semester or other academic term;

(B) including the information in the institution's orientation (which may be provided online); and

(C) as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking adopted under Subsection (a), each postsecondary educational institution shall:

(i) to the greatest extent practicable based on the number of counselors employed by the institution, ensure each alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident and any other person who reports such incidents are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and

(ii) notwithstanding any other law, allow an alleged victim or alleged perpetrator of a sexual harassment, sexual assault, dating violence, and stalking incident to drop a course in which both parties are enrolled without any academic penalty.

(e) Each postsecondary educational institution shall review its sexual harassment, sexual assault, dating violence, and stalking policy at least each biennium and revise the policy as necessary and obtain approval from the institution's governing board.

3.5 Reporting Required for Certain Incidents

(a) An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(1) The employee's duty to report an incident begins on the effective date of these regulations or January 1, 2020, whichever is later;

(2) The employee is required to report an incident regardless of when or where the incident occurred; and

(3) Institutions may establish additional reporting avenues to comply with this section provided that the reports are promptly routed to the Title IX coordinator or deputy Title IX coordinator.

(b) Except as provided by Subsection (c), the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

(c) In making a report under this section,

(1) the employees of a postsecondary educational institution identified below shall only report as follows:

(A) absent consent from the reporting student, an employee designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall only state the type of incident reported and may not include any information that would violate a student's expectation of privacy;

(B) absent consent from the reporting individual, an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking under circumstances that render the employee's communications confidential or privileged under other law shall only state the type of incident reported and may not include any information that would violate an expectation of privacy; or

(C) absent consent from the victim(s), an employee who receives information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking in the course and scope of employment as a healthcare provider, mental health care provider, or other medical provider shall only state the type of incident reported and may not include any information that would violate an expectation of privacy.

(2) This subsection does not affect the employee's duty to report an incident under any other law, including but not limited to, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092 (f)), Texas Family Code Section 261.101, or Health and Safety Code Section 611.004. When multiple confidential employees receive information about the same incident (e.g. student health center or counseling center), only a single report stating the type of incident is required.

(d) Notwithstanding Subsection (a), a person is not required to make a report under this section concerning:

(1) an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking;

(2) an incident of which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking public awareness event sponsored by a postsecondary educational institution or by a student organization affiliated with the institution; or

(3) a sexual harassment, sexual assault, dating violence, or stalking incident in which the person has either learned of the incident during the course of their institution's review or process or has confirmed with the person or office overseeing the review or process, that the incident has been previously reported.

(e) A person acting in good faith who reports or assists in the investigation of a report of an incident described by this section or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's policy or code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment.

(f) Subsection (e) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this section.

3.6 Administrative Reporting Requirements

(a) Not less than once every three months, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report ("Title IX Coordinator Report") on the reports received for the institution's reporting period under § 3.5, including information regarding:

(1) the investigation of those reports;

(2) the disposition, if any, of any disciplinary processes arising from those reports; and

(3) the reports for which the institution determined not to initiate a disciplinary process, if any.

(b) The Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under § 3.5 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

(c) Subject to Subsection (d), at least once annually, during either the fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body and post on the institution's Internet website a report ("CEO Report") concerning the reports received under § 3.5. The CEO report:

(1) may not identify any person; and

(2) must include:

(A) the number of reports received under § 3.5;

(B) the number of investigations conducted as a result of those reports;

(C) the disposition, if any, of any disciplinary processes arising from those reports;

(D) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and

(E) any disciplinary actions taken under § 3.8.

(d) If for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, the chief executive officer of the institution shall submit and post a report required under Subsection (c) for that semester only if more than five reports were received under § 3.5 during that semester.

(e) For purposes of this section, disposition means the final result under the institution's disciplinary process.

(f) For all reports under this section:

(1) When identifiable, reports may exclude duplicate reports of a single alleged incident;

(2) Reports may separately specify the number of confidential reports received by employees designated under section 3.5(c); and

(3) The Coordinating Board shall make available to institutions a recommended template for the Title IX Coordinator Report and the CEO Report, which satisfies the reporting requirements of this section.

3.7 Electronic Reporting

Each postsecondary educational institution shall provide an option for a student enrolled at or an employee of the institution to electronically report to the institution an allegation of sexual harassment, sexual assault, dating violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The electronic reporting option must:

- (1) Allow for anonymous reporting; and
- (2) Be easily accessible via a clearly identifiable link on the institution's website home page.

3.8 Failure to Report or False Report

A postsecondary educational institution shall terminate the employment of an employee whom the institution determines, in accordance with the institution's disciplinary procedure, to have committed an offense under Texas Education Code Sec. 51.255.

3.9 Victim Request Not to Investigate

a) If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Texas Education Code Section 51.291 and Section 3.17 of this Subchapter. In determining whether to investigate the alleged incident, the institution shall consider:

- (1) the seriousness of the alleged incident;
- (2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
- (3) whether the alleged incident poses a risk of harm to others; and
- (4) any other factors the institution determines relevant.

(b) If a postsecondary educational institution decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking based on the alleged victim's request not to investigate, the institution shall take any reasonable steps the institution determines necessary and consistent with the institution's policy and applicable law to protect the health and safety of the institution's community in relation to the alleged incident.

(c) A postsecondary educational institution shall inform an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking who requests the institution not to investigate the alleged incident of the institution's decision whether to investigate the alleged incident.

3.10 Disciplinary Process for Certain Violations

A postsecondary educational institution that initiates a disciplinary process concerning an allegation that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking shall:

(1) provide to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process;

(2) ensure that both the student and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the institution's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality;
and

(3) take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

3.11 Student Withdrawal or Graduation Pending Disciplinary Charges; Request for Information from Another Postsecondary Educational Institution

(a) If a student withdraws or graduates from a postsecondary educational institution pending a disciplinary charge alleging that the student violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

(1) may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

(2) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall, as permitted by state or federal law, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, provide to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's policy or code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

3.12 Trauma-Informed Investigation Training

A postsecondary educational institution shall ensure each of its employed peace officers completes training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking.

3.13 Memoranda of Understanding Required

To facilitate effective communication and coordination regarding allegations of sexual harassment, sexual assault, dating violence, and stalking at the institution, a postsecondary educational institution shall enter into one or more memoranda of understanding with an entity from one or more of the following categories:

- (1) local law enforcement agencies;
- (2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
- (3) hospitals or other medical resource providers.

3.14 Responsible and Confidential Employee

(a) Each postsecondary educational institution shall:

(1) designate:

(A) one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.); and

(B) one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking; and

(2) inform each student enrolled at the institution of the responsible and confidential employees designated under Subsection (1).

(b) A confidential employee designated under Subsection (a)(1)(B) may not disclose any communication made by a student to the employee unless the student consents to the disclosure or the employee is required to make the disclosure under Section 3.5(c), state law, or federal law.

3.15 Student Advocate

(a) A postsecondary educational institution may designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. The institution shall notify each student enrolled at the institution of the student advocate(s) designated under this subsection.

(b) A student advocate designated under Subsection (a) may not disclose any communication made by a student to the advocate unless the student consents to the disclosure or the advocate is required to make the disclosure under state or federal law.

3.16 Equal Access

In implementing the requirements under this subchapter, a postsecondary educational institution shall, to the greatest extent practicable, ensure equal access for students enrolled at or employees of the institution who are persons with disabilities. The institution shall make reasonable efforts to consult with a disability services office of the institution, advocacy groups for people with disabilities, and other relevant stakeholders to assist the institution with complying with the institution's duties under this section.

3.17 Confidentiality

(a) The protections provided by this section apply to:

- (1) an alleged victim;
- (2) a person who reports an incident to an institution;
- (3) a person who sought guidance from the institution concerning an incident;
- (4) a person who participated in the institution's investigation of an incident; or
- (5) a person who is alleged in a report made to an institution to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking, if after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

(b) Unless waived in writing by the person, the identity of a person described by Subsection (a):

- (1) is confidential and not subject to disclosure under Chapter 552, Government Code; and
- (2) may be disclosed only to:
 - (A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary for an investigation of the report or other related hearings;
 - (B) a law enforcement officer as necessary to conduct a criminal investigation of the report by persons described by Subsection (a);
 - (C) a health care provider in an emergency, as determined necessary by the institution;
 - (D) the person or persons alleged to have perpetrated the incident, to the extent required by other law; and
 - (E) potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law.

(c) For the purposes of this section, investigation includes the coordination of the incident response, implementation of interim measures, adjudication of the report, and disclosure by the institution as required under state or federal law.

3.18 Retaliation Prohibited

(a) A postsecondary educational institution may not discipline or otherwise discriminate against an employee who in good faith:

(1) makes a report as required by § 3.5; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by § 3.5.

(b) Subsection (a) does not apply to an employee who:

(1) reports an incident of sexual harassment, sexual assault, dating violence, and stalking perpetrated by the employee; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident of sexual harassment, sexual assault, dating violence, and stalking.

3.19 Compliance

(a) The chief executive officer of each postsecondary educational institution shall annually certify in writing to the Coordinating Board, in October of each year, that the institution is in substantial compliance with Texas Education Code Subchapter E-2. The Coordinating Board shall make available to institutions a required template for the certification which satisfies the requirements of this section.

(b) If the Coordinating Board determines that a postsecondary educational institution is not in substantial compliance with Texas Education Code Subchapters E-2 on or after January 1, 2020, and E-3 on or after August 1, 2020, the Coordinating Board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the Coordinating Board shall consider the nature of the violation and the number of students enrolled at the institution.

(c) If the Coordinating Board assesses an administrative penalty against a postsecondary educational institution under Subsection (b), the Coordinating Board shall provide to the institution written notice of the Coordinating Board's reasons for assessing the penalty.

(d) A postsecondary educational institution assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

(e) A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (b) using state or federal money.

(f) The Coordinating Board shall deposit an administrative penalty collected under this section to the credit of the sexual assault program fund established under Section 420.008, Texas Government Code.

(g) The Coordinating Board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the calendar year preceding the date of the report.

3.20 Applicability

Sections 3.1-3.3, 3.5-3.6, 3.8, 3.14, and 3.17-3.20 of this subchapter are effective on January 1, 2020 or 30 days after the publication of these rules in the Texas Register, whichever is later. The remainder of this subchapter is effective on August 1, 2020.

Special Called Board Meeting

AGENDA ITEM III-B

Consideration of adopting the staff's recommendation to the Board relating to the acquisition of contract services for Phase II of the Identity and Access Management (IAM) Modernization Project

RECOMMENDATION: Approval

Background Information:

Identity and Access Management (IAM) is a framework of business processes, policies and technologies that facilitates the management of electronic or digital identities. The framework includes the organizational policies for managing digital identity as well as the technologies needed to support identity management.

A robust, scalable, and ubiquitous IAM solution is key to advancing the Texas Higher Education Coordinating Board's (THECB) outreach efforts and to protecting the confidentiality of critical data maintained at the agency. It ensures that access privileges are granted according to one interpretation of policy and that all individuals and services are properly authenticated, authorized, and audited.

The IAM project is one of the key cybersecurity initiatives planned by the agency for FY2020. It serves to improve the maturity level of the agency cybersecurity framework by protecting confidential data pertaining to higher education and extending efforts to meet state and federal requirements, including Texas Administrative Code (TAC) 202 and the Family Educational Rights and Privacy Act (FERPA).

Phase I of the project was completed in fiscal year 2019.

The THECB was appropriated \$215K for the FY2020-2021 biennium by the 86th Texas Legislature to continue the IAM project.

For Phase II, the agency is seeking vendor services to build the agency's new cloud-based solution and make it production ready, and help explore and define the multi-factor authentication strategy moving forward.

Ms. Zhenzhen Sun, Assistant Commissioner for Information Solutions and Services/Chief Information Officer, will present this item and be available to answer questions.

Special Called Board Meeting

AGENDA ITEM III-C

Consideration of adopting the Committee's recommendation to the Board relating to the request from Texas Tech University for a Doctor of Veterinary Medicine (DVM) degree with a major in Veterinary Medicine.

RECOMMENDATION: Approval, beginning fall of 2021

Rationale:

The proposed Doctor of Veterinary Medicine (DVM) program would prepare students for licensure and employment as veterinarians beginning fall 2021. If approved, the new DVM program in the Texas Tech University (TTU) School of Veterinary Medicine (SVM) would be the second comprehensive program established at a public university in the United States in approximately four decades, and make Texas the only state with two public DVM programs.

The proposed DVM program is intended by TTU to increase access to affordable veterinary education for Texans. The DVM program would be a comprehensive, four-year program that is intended to address the workforce demand for primary care veterinarians that serve the needs of food- and fiber-animal industries, and small, agricultural, and regional communities across Texas. The curriculum would also provide students with the marketable skills needed to pursue careers as research scientists, public-health professionals, academics, and in other relevant fields.

The workforce demand for veterinarians exceeds supply and is likely to continue to do so well into the future. The 2015 unemployment rate for veterinarians was approximately 4.1 percent nationwide. According to data from the American Veterinary Medical Association (AVMA), the number of job openings for the past year has outpaced the number of applicants. The U.S. Bureau of Labor Statistics (BLS) predicts the national veterinary job market will grow by 18.8 percent with the creation of 15,000 new positions during the period from 2016 to 2026. The BLS describes this rate as 'much faster than average' (i.e., relative to average growth rate of all occupations of 7.4%). The projected rate of veterinary job market growth in Texas (24.52%) is even greater than the robust national rate.

The primary facilities would be immediately adjacent to Texas Tech University Health Sciences Center's Regional Academic Health Center in Amarillo. Opportunities for cost efficiencies include joint faculty appointments with the School of Pharmacy, given the disciplinary similarities of pharmacological biology, education, and practice across human and animal medicine. The proposed doctoral degree program in veterinary medicine would also build on teaching, research, and service strengths at TTU across fields such as agriculture, animal nutrition, engineering, ecology, genomics, and business.

In accordance with the institution’s hiring schedule, TTU will hire 65 to 70 full-time equivalent (FTE) faculty, including administrators with faculty appointments, during the first five years of the program. TTU will hire 30 FTE faculty by the beginning of the first year, and 35 to 40 additional FTE faculty by the fifth year. By June 1, prior to the academic year in which faculty are hired, the institution will provide documentation of the hires through submission of a letter of intent, curricula vitae, and list of courses to be taught. Formula funding for courses is dependent on having the appropriate hires in place at the specified times.

The institution will obtain accreditation from the American Veterinary Medical Association’s Council on Education, the national accreditor for veterinary medicine.

The institution will also submit five Annual Progress Reports confirming institutional commitments and assessing the progress of program implementation.

Texas Tech University (*Accountability Peer Group: **Emerging Research University***)

Completion Measures		Institution	State
<i>Graduate</i>	Master’s 5-Year Graduation Rate	79.4 %	77.1 %
	Doctoral 10-Year Graduation Rate	51.7 %	64.7 %
<i>Status of Recently Approved Doctoral Programs</i>	The institution has met its projected enrollments for all new doctoral program(s) approved in the last five years:	Yes	No N/A
	Recently Approved Doctoral Programs: <ul style="list-style-type: none"> • Music Education (PhD, 2018) enrollment met • Exercise Physiology (PhD, 2018) enrollment is 2 below projected (projected 5, enrolled 3) • Educational Leadership (PhD, 2014) enrollments not met for first 4 years of program operation 		
	The institution has met its resource commitments for new doctoral program(s) approved in the last five years:	Yes	No N/A

Proposed Program:

The proposed four-year, face-to-face program would enroll up to 240 students starting in fall 2021. The proposed DVM is intended by TTU to address specific workforce needs in Texas and increase access to affordable veterinary education for Texans. The proposed program is intended to address the workforce demand for primary care veterinarians that serve the needs of food- and fiber-animal industries, and small, agricultural, and regional communities across Texas.

The institution estimates that five-year costs would total \$78,390,140.

Existing Programs:

Texas A&M University (TAMU) in College Station offers the only doctoral veterinary program in Texas. There are no existing programs within a 60-minute drive of the proposed program. The TAMU program is located 512 miles from the proposed program and enrolled its first class in 1916.

Enrollments at TAMU’s College of Veterinary Medicine have remained flat during most of the past two decades. Administrators at TAMU have been constrained from increasing class sizes by the capacity of their existing infrastructure. Data from earlier periods show the size of first-year cohorts consistently averaging between 130 and 135. In recent years, TAMU has increased its entering class to 142 in 2018, and by 2020 plans to admit 162 students annually.

Start-Up Projections:	Yr. 1	Yr. 2	Yr. 3	Yr. 4	Yr. 5
<i>Students Enrolled</i>	40	100	160	220	240
<i>Graduates</i>	0	0	0	38	57
<i>Avg. Financial Assistance</i>	TBD*	TBD	TBD	TBD	TBD
<i>Students Assisted</i>	TBD*	TBD	TBD	TBD	TBD
<i>Core Faculty (FTE)</i>	30	30	30	30	65-70
<i>Total Costs</i>	\$10,719,400	\$13,699,120	\$16,758,840	\$18,556,740	\$18,656,040
<i>Total Funding</i>	\$11,696,600	\$15,216,500	\$18,563,976	\$20,083,876	\$20,240,266
<i>% From Formula Funding</i>	-	-	30%	28%	60%

*To be determined: An initial \$1M endowment has been established by the Amarillo Area Foundation to support scholarships for students of the DVM program. TTU states that additional scholarships will be raised; however, at this time, the amount and number of scholarships are not certain.

FIVE-YEAR COSTS	
Personnel	
Faculty	\$ 30,602,300
Faculty (Reallocated)	\$ 0
Program Administration (New)	\$ 6,450,000
Program Administration (Reallocated)	\$ 0
Graduate Assistants (New)	\$ 0
Graduate Assistants (Reallocated)	\$ 0
Clerical/Staff (New)	\$ 4,320,000
Student Support	\$ 0
Supplies and Materials	\$ 4,360,000
Library and IT Resources	\$ 1,425,000
Equipment	\$ 5,000,000
Facilities	\$ 3,780,000
Other	\$ 21,452,840
Total	\$ 77,390,140

FIVE-YEAR FUNDING	
Formula Funding (Years 3-5)	\$ 23,215,818
Special Item Funding	\$ 43,000,000
Reallocation of Existing Resources	\$ 0
Federal Funding (In-Hand Only)	\$ 0
Tuition and Fees, Service Fees, Grants, & Contracts	\$ 19,585,400
Other	\$ 0
Total	\$ 85,801,218

Major Commitments:

In accordance with the institution’s hiring schedule, TTU will hire 65 to 70 FTE faculty, including administrators with faculty appointments, during the first five years of the program. TTU will hire 30 FTE faculty by the beginning of the first year, and 35 to 40 FTE faculty by the fifth year. By June 1, prior to the academic year in which faculty are hired, the institution will provide documentation of the hires through submission of letters of intent, curricula vitae, and lists of courses to be taught. Formula funding for courses is dependent on having the appropriate hires in place at the specified times.

The institution will obtain accreditation from the AVMA Council on Education.

The institution will submit five annual reports confirming institutional commitments and assessing the progress of program implementation.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, will present this item and be available to answer questions.

Online Resume for Legislators and Other Policymakers TEXAS TECH UNIVERSITY

Location: Lubbock, High Plains Region

Emerging Research Accountability Peer Group: Texas State Univ, UT Arlington, UT Dallas, UT El Paso, UT San Antonio, Univ of Houston, Univ of North Texas

Out-Of-State Peers: University Of Arkansas, University Of Louisville, University Of New Mexico-Main Campus, University Of Oklahoma-Norman Campus, University Of South Carolina-Columbia

Degrees Offered: Bachelor's, Master's, Doctoral, Professional

[Institutional Resumes](#)

[Accountability System](#)

[Definitions](#)

[Institution Home Page](#)

Enrollment						
Race/Ethnicity	Fall 2013		Fall 2017		Fall 2018	
	Number	Percent	Number	Percent	Number	Percent
White	19,858	60.5%	20,156	55.0%	20,358	53.8%
Hispanic	6,294	19.2%	9,630	26.3%	10,283	27.2%
African American	2,139	6.5%	2,535	6.9%	2,646	7.0%
Asian	1,020	3.1%	1,070	2.9%	1,147	3.0%
International	1,630	5.0%	2,223	6.1%	2,153	5.7%
Other & Unknown	1,856	5.7%	1,020	2.8%	1,258	3.3%
Total	32,797	100.0%	36,634	100.0%	37,845	100.0%
TX First Time Transfers	Number	% of UG	Number	% of UG	Number	% of UG
Two-Year Institutions	1,670	6.2%	1,752	5.7%	1,684	5.3%
Other Institutions	396	1.5%	414	1.4%	420	1.3%

Student Success							
One-Year Persistence of First-time, Full-time, Degree Seeking Undergraduates				Graduation Rates			
		Enter Fall 2012	Enter Fall 2016	Enter Fall 2017	Cohort	Institution Rate	Peer Group Rate
Cohort		4,496	4,687	5,789	Fall 2009 4-year	38.8%	27.4%
Total		91.4%	92.4%	92.6%	Fall 2013 4-year	41.9%	34.4%
Same		81.9%	84.0%	84.9%	Fall 2014 4-year	43.1%	36.7%
Other		9.5%	8.3%	7.8%	Fall 2008 5-year	62.3%	49.3%
Two-Year Persistence of First-time, Full-time, Degree Seeking Undergraduates					Fall 2012 5-year	64.2%	54.6%
		Enter Fall 2011	Enter Fall 2015	Enter Fall 2016	Fall 2013 5-year	65.3%	55.9%
Institution Persistence					Fall 2007 6-year	70.0%	57.6%
Cohort		4,397	5,081	4,680	Fall 2011 6-year	69.5%	60.8%
Total		85.9%	87.0%	87.6%	Fall 2012 6-year	71.6%	62.6%
Same		70.7%	72.0%	74.2%	National Comparison (IPEDS Definition)		
Other		15.2%	15.1%	13.3%	Cohort	Institution Rate	OOS Peers Rate
Peer Group Persistence					Fall 2008 4-year	37.0%	32.5%
Cohort		3,494	4,012	4,030	Fall 2012 4-year	34.0%	36.0%
Total		81.5%	82.5%	82.4%	Fall 2013 4-year	35.0%	38.0%
Same		64.3%	67.8%	68.7%	Fall 2007 5-year	57.0%	53.5%
Other		17.2%	14.7%	13.7%	Fall 2011 5-year	55.0%	55.6%
					Fall 2012 5-year	54.0%	57.0%
					Fall 2006 6-year	62.0%	58.5%
					Fall 2010 6-year	60.0%	60.4%
					Fall 2011 6-year	59.0%	61.0%

Costs				
Average Annual Total Academic Costs for Resident Undergraduate Student Taking 30 SCH				
Fiscal Year	Texas Rates			
	Institution Average	Percent Increase	Peer Group Average	Percent Increase
2014	\$9,242	.0%	\$9,345	.0%
2015	\$9,608	4.0%	\$9,598	2.7%
2016	\$9,866	2.7%	\$9,777	1.9%
2017	\$10,622	7.7%	\$10,201	4.3%
2018	\$10,772	1.4%	\$10,443	2.4%
2019	\$11,046	2.5%	\$10,712	2.6%

Average Number of Fall & Spring Semesters and SCH Attempted for Bachelor's Degree						
Year	Institution			Peer Group Average		
	Grads	Sem	SCH	Grads	Sem	SCH
FY 2014	4,080	9.52	141.67	3,391	10.91	142.56
FY 2017	4,485	9.60	140.00	3,929	10.72	139.00
FY 2018	5,043	9.60	139.00	4,194	10.62	138.12

Six-year Graduation & Persistence Rate, Fall 2012		
Student Group	Cohort	Rate
<i>For Students Needing Dev Ed</i>		
Institution	163	61.3%
Peer Group	253	52.2%
<i>For Students NOT Needing Dev Ed</i>		
Institution	4,333	79.6%
Peer Group	3,202	74.0%

*Peer Group data is average for peer group.

Financial Aid						
Fiscal Year	Institution		Peer Group		OOS Peer Group	
	Percent	Avg Amt	Percent	Avg Amt	Percent	Avg Amt
Federal Student Loans						
2016	45%	\$8,385	46%	\$6,403	37%	\$6,112
2017	46%	\$8,485	46%	\$7,469	39%	\$6,866
Federal, State, Institutional or Other Grants Known by Institutions						
2016	53%	\$7,042	57%	\$7,308	69%	\$7,472
2017	54%	\$6,868	57%	\$7,502	74%	\$7,282
Federal (Pell) Grants						
2016	27%	\$4,212	37%	\$4,231	26%	\$4,094
2017	27%	\$4,210	37%	\$4,226	25%	\$4,165

Funding						
Source	FY 2013 Amount	Pct of Total	FY 2017 Amount	Pct of Total	FY 2018 Amount	Pct of Total
Appropriated Funds	\$202,914,440	33.3%	\$267,607,286	37.2%	\$258,732,291	36.6%
Federal Funds	\$65,710,454	10.8%	\$78,128,414	10.9%	\$79,758,158	11.3%
Tuition & Fees	\$257,319,023	42.2%	\$299,280,815	41.6%	\$307,738,012	43.6%
Total Revenue	\$609,167,765	100.0%	\$719,431,074	100.0%	\$706,158,290	100.0%

Online Resume for Prospective Students, Parents and the Public TEXAS TECH UNIVERSITY

Location: Lubbock, High Plains Region

Emerging Research Accountability Peer Group: Texas State Univ, UT Arlington, UT Dallas, UT El Paso, UT San Antonio, Univ of Houston, Univ of North Texas

Out-Of-State Peers: University Of Arkansas, University Of Louisville, University Of New Mexico-Main Campus, University Of Oklahoma-Norman Campus, University Of South Carolina-Columbia

Degrees Offered: Bachelor's, Master's, Doctoral, Professional

[Institutional Resumes](#)

[Accountability System](#)

[Definitions](#)

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Enrollment		
Race/Ethnicity	Fall 2018	
	Number	Percent
White	20,358	53.8%
Hispanic	10,283	27.2%
African American	2,646	7.0%
Asian	1,147	3.0%
International	2,153	5.7%
Other & Unknown	1,258	3.3%
Total	37,845	100.0%
TX First Time Transfers		
Number	% of UG	
Two-Year Institutions	1,684	5.3%
Other Institutions	420	1.3%

Baccalaureate Success			
Graduation Rate of First-time, Full-time Degree-seeking Students			
Measure	Entering		Rate
	Fall		
4-year Rate Total	2014		43.1%
Same Institution			37.1%
Other Institutions			6.0%
5-year Rate Total	2013		65.3%
Same Institution			56.1%
Other Institutions			9.2%
6-year Rate Total	2012		71.6%
Same Institution			59.7%
Other Institutions			11.8%

[Grad Rates by Ethnicity](#)

1-Year Persistence, Fall 2017	
Total	92.6%
Same	84.9%
Other	7.8%

2-Year Persistence, Fall 2016	
Total	87.6%
Same	74.2%
Other	13.3%

Avg Number SCH for Bachelor's Degree		
FY 2018 Average		
Sem	SCH	
All	9.60	139.00

Degrees Awarded	
Type	FY 2018
Bachelor's	6,302
Master's	1,629
Doctoral	349
Professional	155
Total	8,435

[Degrees by Ethnicity](#)

First-time Licensure or Certification Examination Pass Rate	
Field	FY 2018 Rate
Education*	96.80%
Law	90.0%
Pharmacy	%
Nursing	%
Engineering	79.0%

*Data for FY 2017

Admissions		
Middle 50% of Test Scores, for First-Time Undergraduates, Fall 2018		
Test Section	ACT	SAT
Composite		
Math	http://www.CollegePortraits.org	
English		
Critical Reading		

Application for First-time Undergraduate Admission			
Fall 2018			
Race/Ethnicity	Applicants	Accepted	Enrolled
White	8,968	77.3%	47.6%
African American	2,320	44.5%	37.5%
Hispanic	10,710	57.0%	33.7%
Asian	907	73.9%	25.1%
International	746	66.9%	14.6%
Other	623	67.9%	42.6%
Total	24,274	64.5%	39.3%

Costs						
Average Annual Academic Costs for Resident Undergraduate Student Taking 30 SCH					Annual Costs for Resident Undergraduate Student Taking 30 SCH, FY 2019	
Fiscal Year	Institution Average	Percent Increase	Peer Group Average	Percent Increase	Type of Cost	Average Amount
2014	\$9,242	.0%	\$9,359	.0%	Total Academic Cost	\$11,046
2015	\$9,608	3.8%	\$9,596	2.5%	On-campus Room & Board	\$9,772
2016	\$9,866	2.6%	\$9,764	1.7%	Books & Supplies	\$1,200
2017	\$10,622	7.1%	\$10,140	3.7%	Off-Campus Transportation & Personal Expenses	\$4,420
2018	\$10,772	1.4%	\$10,396	2.5%	Total Cost	\$26,438
2019	\$11,046	2.5%	\$10,664	2.5%		

[Rates of Tuition per SCH](#)

[Mandatory Fees](#)

Instruction	
Measure of Excellence	Fall 2018
Undergraduate Classes with < 20 Students	29.2%
Undergraduate Classes with > 50 Students	14.9%
% of Teaching Faculty Tenured/Tenure-track *	70.2%
Student/Faculty Ratio *	23:1

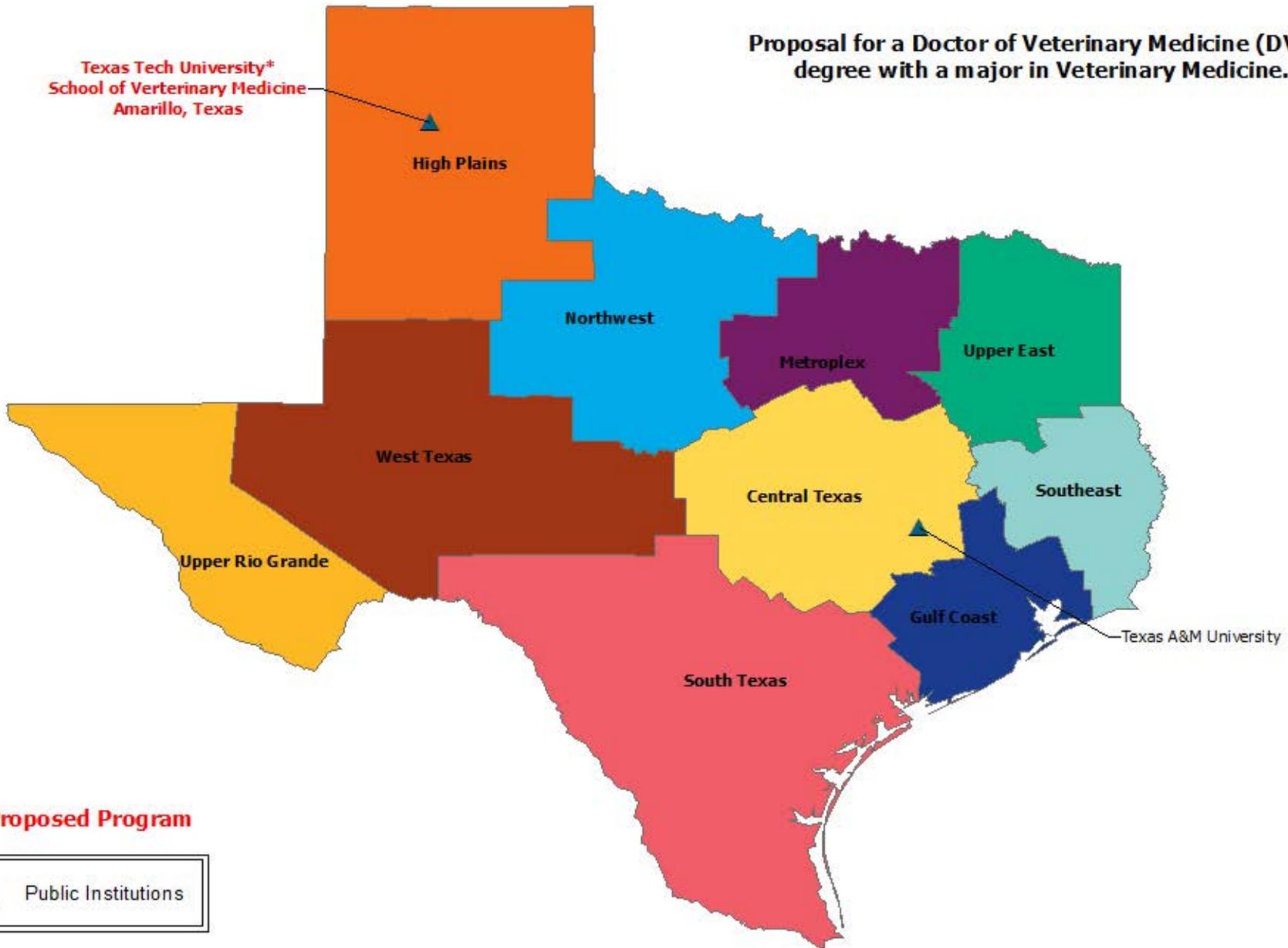
Financial Aid		
Enrolled in FY 2017		
Type of Aid	% of UGs Receiving	Average Amount
Grants or Scholarships	54%	\$6,868
Federal (Pell) Grants	27%	\$4,210
Federal Student Loans	46%	\$8,485

Funding		
Source	FY 2018 Amount	Pct of Total
Appropriated Funds	\$258,732,291	36.6%
Federal Funds	\$79,758,158	11.3%
Tuition & Fees	\$307,738,012	43.6%
Total Revenue	\$706,158,290	100.0%

* Fall 2017 Data

Proposal for a Doctor of Veterinary Medicine (DVM) degree with a major in Veterinary Medicine.

Texas Tech University*
School of Veterinary Medicine
Amarillo, Texas



*** Proposed Program**

▲ Public Institutions

Special Called Board Meeting

AGENDA ITEM III-D

Consideration of adopting the Certification Advisory Council's and the Commissioner's recommendation to the Board relating to a request from Burrell College of Osteopathic Medicine for an initial Certificate of Authority

RECOMMENDATION: Approval

Background Information:

Burrell College of Osteopathic Medicine, LLC (Burrell), Las Cruces, New Mexico, requests approval for an initial Certificate of Authority to coordinate a limited number of clinical clerkships in Texas for its third- and fourth-year osteopathic medical students in El Paso, Texas. The Texas Higher Education Coordinating Board (THECB) issues a Certificate of Authority that covers two-year periods. Institutions operating under a Certificate of Authority in Texas may receive up to four successive Certificates of Authority for a total of eight years. After eight years, the institution must have obtained accreditation from a THECB-recognized accrediting agency.

Burrell's stated mission is to improve the health of the Southwestern United States and Northern Mexico "through culturally humble undergraduate, graduate, and continuing osteopathic medical education, research and clinical service to the community." Burrell is focused on "increasing diversity in the physician workforce and fostering a practice of life-long learning, compassion, respect, and excellence in its students."

In November 2018, Burrell applied for an initial Certificate of Authority as the institution works toward accreditation by the Higher Learning Commission, an accrediting agency recognized by the THECB. Burrell is also pre-accredited by the American Osteopathic Association's Commission on Osteopathic College Accreditation. Burrell anticipates pre-accreditation status will remain until it graduates its first class in spring 2020, at which time it will become eligible for full programmatic accreditation. The initial Certificate of Authority would be valid from December 2019 to December 2021.

A two-day, on-site evaluation was conducted at Burrell's main campus in Las Cruces in February 2019. The THECB's Certification Advisory Council (CAC) reviewed the evaluation team's report and Burrell's response to the evaluation report at its April 30, 2019 meeting. A quorum of five members participated in the meeting and unanimously voted to recommend approval to the Board, with the following conditions:

- Burrell must continue to meet requirements of and be authorized by the New Mexico Higher Education Department;
- Burrell may not pay hospitals, clinics, or other entities for clerkship rotations now or in the future; and
- Burrell is limited to 50 students per class completing a clerkship rotation in El Paso at any time.

Texas Tech University Health Sciences Center El Paso (TTUHSC El Paso) objected to the issuance of a Certificate of Authority, raising concerns about the availability of enough clerkships (3rd and 4th year rotations) in the El Paso region to accommodate both Burrell and the Paul Foster School of Medicine (PFSOM).

In June 2019, the Committee on Academic and Workforce Success (CAWS) decided to postpone the item to the Board meeting in July 2019. THECB staff attempted to craft a compromise between the two institutions, but no agreement was reached. The item was removed from the July Board meeting agenda.

However, discussions continued. The result was a signed Memorandum of Understanding (MOU) between Burrell and PFSOM. The CAC was apprised of the terms of the agreement and agreed they should be accepted. In consideration of the signed MOU acting as restrictions on the activities of Burrell under the Certificate of Authority, TTUHSC El Paso withdrew its objections. The MOU between Burrell and PFSOM provides the flexibility needed to protect the interests of the students of both entities. The conditions as outlined in the MOU between Burrell and PFSOM are:

1. Once accredited by an accrediting agency recognized by the U.S. Department of Education and the Texas Higher Education Coordinating Board, Burrell must maintain full accreditation and continue to meet the requirements of, and be authorized by, the New Mexico Higher Education Department to operate as an institution of higher education.
2. Burrell shall not pay or provide, or cause to be paid or provided, any financial incentives, gifts or donations to hospitals, clinics, physicians, or other entities or health care professionals for clerkship rotations now or in the future.
3. Burrell will confer with the Dean of the PFSOM in December of each year beginning in 2019, to determine the size of the cohort of students designated for clinical assignment in El Paso County for the following July. The size of the cohort of students must be mutually agreed to by the parties; however, in no event will the annual number of medical students exceed 30 per class.
4. At the request of PFSOM, Burrell will reduce the number of designated students to the extent necessary to enable PFSOM to make application for and accommodate future class size increases or to offset identified current specialty shortages.

Subsequent to the MOU between Burrell and PFSOM, a letter of objection, dated September 16, 2019, was received. At its September CAWS meeting, the item was postponed by the Board until the letter could be adequately reviewed. The item was then placed on the October Board meeting agenda but there continued to be objections

to Burrell being granted a Certificate of Authority. As a result, the item was withdrawn from the agenda shortly before the October Board meeting.

In December 2019, THECB staff drafted a separate MOU with Burrell that outlines seven terms and conditions. THECB staff sought agreement from the Texas medical schools that the MOU would provide additional assurance that Burrell would not infringe on clinical clerkships of other Texas medical schools. The MOU serves as a permanent agreement and is attached on the following pages. With the MOU now in place, the CAC and the Commissioner recommend approval to issue a Certificate of Authority.

Dr. Stacey Silverman, Interim Assistant Commissioner for Academic Quality and Workforce, will present this item and be available to answer questions.

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
TEXAS HIGHER EDUCATION COORDINATING BOARD
AND
BURRELL COLLEGE OF OSTEOPATHIC MEDICINE**

This Memorandum of Understanding ("MOU") is entered into by and between the Texas Higher Education Coordinating Board (hereinafter usually referred to as "THECB" or "Coordinating Board") and Burrell College of Osteopathic Medicine (hereinafter referred to as "Burrell") or its successor in interest, if any. THECB and Burrell shall singularly be referred to as "Party" and collectively be referred to as "Parties."

PREAMBLE

WHEREAS, THECB is an agency of the State of Texas established to provide leadership, authorization, and oversight of institutions of higher education operating in the State of Texas;

WHEREAS, Burrell is a private, for-profit, and free-standing osteopathic medical college primarily based in Las Cruces, New Mexico; it has received a status of pre-accreditation from the Commission on Osteopathic College Accreditation in 2016, and admitted its first class in August 2016;

WHEREAS, Burrell is licensed by the New Mexico Higher Education Department (NMHED). The Private Postsecondary Division of the NMHED is responsible for the oversight and authorization of private postsecondary institutions operating in New Mexico;

WHEREAS, Burrell desires to have clinical clerkship opportunities in El Paso County, Texas available to its students and, in order to do so, has requested that the THECB issue it a Certificate of Authority pursuant to the Texas Education Code and rules adopted thereunder to operate in El Paso County;

WHEREAS, Burrell enters into this MOU in order to demonstrate its good faith and to supplement its already filed request for a Certificate of Authority; and

WHEREAS, it is not Burrell's intent to create a competitive environment with the Paul L Foster School of Medicine (PLFSOM) at Texas Tech University Health Sciences Center at El Paso (TTUHSCEP) or other Texas medical schools for the establishment of clinical clerkship experiences in the El Paso County health services area. Additionally, Burrell does not wish to, in any way, impede the growth strategies of the PLFSOM at TTUHSCEP and in that regard has entered into a Memorandum of Understanding with TTUHSCEP.

NOW, THEREFORE, in consideration of the foregoing, THECB and Burrell agree to the following terms and conditions, as a supplement to Burrell's already filed request for a Certificate of Authority:

TERMS AND CONDITIONS

First, Burrell agrees that once it is accredited by an accrediting agency recognized by the United States Department of Education and the THECB, Burrell must maintain full accreditation and continue to meet the requirements of, and be authorized by, the NMHED to operate as an institution of higher education.

Second, Burrell agrees that it shall not pay or provide, or cause to be paid or provided, any financial incentives, gifts, or donations to hospitals, clinics, physicians, or other persons or entities or health care professionals located within the State of Texas for clerkship rotations now or in the future.

Third, Burrell agrees that the Memorandum of Understanding by and between Burrell and TTUHSCEP is not impacted in any way by this MOU by and between THECB and Burrell.

Fourth, Burrell agrees that the number of 3rd year students and the number of 4th year students training in El Paso cannot exceed the number agreed to with the Dean of the PLFSOM at TTUHSCEP as stipulated in the TTUHSCEP agreement with Burrell. Accordingly, the size of the cohort of students designated for clinical assignment each year cannot exceed thirty 3rd or 4th year medical students, meaning that Burrell agrees to have no more than thirty 3rd year students and no more than thirty 4th year students training in Texas any academic year.

Fifth, Burrell agrees to make clinical assignments in the State of Texas only in El Paso County, meaning that Burrell agrees not to pursue additional locations for clerkships in Texas.

Sixth, Burrell agrees to refer to itself as Burrell College of Osteopathic Medicine, and that at no time will it refer to itself as BCOM.

Seventh, Burrell agrees that, effective July 1 2021, at least ninety percent (90%) of its students designated for training in Texas must be Texas students (i.e., have established Texas residency), meaning that, for example, if Burrell has the full complement of students on clinical assignments in Texas permitted under this MOU, Burrell agrees to document that at least 54 of its 60 students have established Texas residency consistent with the laws of the State of Texas. For purposes of this covenant, the THECB agrees to include students who established residency in Dona Ana County, New Mexico, which is part of the same federally designated combined service and planning area (CSA) that includes El Paso County, at least one year prior to matriculating at Burrell.

GENERAL PROVISIONS

This MOU constitutes the entire agreement of the Parties regarding the subject matter hereof and supersedes any other agreement, understanding or representations, whether oral or written, among the Parties. This MOU is subject to, and limited by, the laws of the State of Texas and venue in any action brought to enforce any or all provisions of this MOU shall be in a court of competent jurisdiction in Travis County, Texas.

The THECB, in its sole discretion, is the only Party that can terminate this MOU.

IN WITNESS WHEREOF, each of the Parties hereto has caused this MOU to be executed by its duly authorized official on the date indicated below.

Harrison Keller, Ph.D.
Commissioner, Texas Higher Education Coordinating Board

Date

John Hummer
President, Burrell College of Osteopathic Medicine

Date