

SUPPLEMENTAL MATERIALS

AGENDA ITEM VII-E (1)

Consideration of adopting the Committee's recommendation to the Board relating to proposed amendments to Chapter 1, Subchapter A, Section 1.18 of Board rules, concerning the Operation of Education Research Centers

RECOMMENDATION: Approval

Background Information:

The Texas Higher Education Coordinating Board (THECB) proposes amendments to Title 19, Part 1, Chapter 1, Subchapter A, Section 1.18 Operation of Education Research Centers.

Specifically, this amendment will allow for improved access to data for education researchers while maintaining controls for data security. By law, up to three Education Research Centers (ERCs) are authorized to operate in Texas. The ERCs are under the oversight of the THECB and are governed by an Advisory Board which meets at least quarterly and includes representation from the Texas Education Agency, the Texas Workforce Commission, and each ERC, among others. Researcher proposals are reviewed and acted upon by the Advisory Board, and research must be of benefit to the state of Texas. The ERCs are self-funded.

Currently, researchers must access the P-16/Workforce Data Repository available through the ERCs by physically accessing special terminals at the ERC locations. The rule amendments would allow a researcher or researchers, when approved by the Advisory Board, to access the de-identified data approved for their project via remote access. Security guidelines for this access, including required Virtual Private Network (VPN) and multifactor authentication have been developed and approved by the ERC Advisory Board. All FERPA and other federal and state education privacy law requirements must be met, as stipulated by existing ERC law and rule.

There would be minimal costs to public institutions of higher education to adjust to the revised rules, given the security measures that the authorized ERCs already have in place and the self-supporting nature of the Education Research Centers.

Dr. Julie Eklund, Assistant Commissioner for Strategic Planning, will present this item and be available to answer questions.

Date approved by the Commissioner for publication in the *Texas Register*: June 8, 2020.

Date Published in the *Texas Register*: June 19, 2020.

The 30-day comment period with the *Texas Register* ends on: July 18, 2020.

The following comments were received within the public comment period.

COMMENTS: Researchers commented in favor of the amendments to allow remote access to data at the Education Research Centers for researchers so approved. Researchers who submitted comments are affiliated with organizations and higher education institutions including the: Houston Education Research Consortium at Rice University, Yale University's Economics Department, the University of Michigan's Gerald R. Ford School of Public Policy, Michigan State University, and the University of California-Davis. Another researcher who submitted written testimony has prior affiliations with the Texas Education Agency and Texas State University. The comments and written testimony, all in favor of the rule change, centered on a few common themes.

Researchers anticipate the proposed rule changes will lead to increased use of the ERC data to address key policy questions across educational and workforce sectors since researchers will now have the potential to access the data remotely. Further, remote access can occur while maintaining the rigorous data security standards that already are in place under ERC onsite data access policies, without researchers having to travel or schedule time to use limited physical facilities onsite at the ERCs. In addition, risks and challenges due to the potential spread of COVID-19, while not expected to be long-term, can be mitigated for both researchers and ERC staff under approved remote access policies. Otherwise, many researchers' projects may remain on hold or even if restarted, may have to be halted again due to travel, shelter-in-place, safety, or other restrictions.

The proposed changes allow for enhanced ERC capacity and self-sufficiency without compromising researcher access to data or creating the need for ERCs to acquire more physical space, which were limitations even before the current pandemic restrictions began. Among the researchers who commented, there is agreement that the value of the ERC data holdings will increase, along with greater production of high-quality research focused on improving educational policy and practice and enhancing, thereby, the state's academic and workforce competitiveness. They also observed that some research studies have been funded from federal and foundation sources that also support ERC operations and staff, along with faculty and graduate students at universities hosting the ERCs. Thus, these changes in rule can foster the sustained presence of the ERCs in the long run, in addition to other statewide benefits.

Finally, in the written testimony that was submitted, it was noted that when the ERCs were created 13 years ago, VPN technology did not meet the desired standards for functionality and security that were deemed necessary to protect the confidentiality of the ERC data, which was of paramount concern. Thus, providing researchers physical access to the data onsite at an ERC under established policies and controls mitigated concerns about compromised data confidentiality that would have arisen in the early years with less secure, offsite VPN access. Under current VPN technology, functionality and security features are vastly improved, and the rule changes continue to reinforce the necessity for ERCs to train researchers on policies and procedures for ensuring that the confidentiality of the ERC data remains paramount in researcher use of the data, even when data are accessed remotely. In addition, while approved researchers will still pay fees to access ERC data, due to the self-sustaining nature of the ERCs, they no longer need to incur additional costs due to travel and time away from their organizations or academic institutions.

STAFF RESPONSE: Staff agree with the comments.

Chapter 1 Agency Administration

Subchapter A General Provisions

- 1.1 Dates for Regular Quarterly Meetings of the Board
- 1.2 Authority of the Commissioner to Interpret Rules
- 1.3 Educational Data
- 1.4 Rules of Order
- 1.5 Coordinating Board Committees
- 1.6 Advisory Committees
- 1.7 Petition for the Adoption of Rules
- 1.8 Historically Underutilized Business (HUBs) Program
- 1.9 Training for Members of Governing Boards and Board Trustees
- 1.10 Administration of the Open Records Act
- 1.11 Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12 Foreign Travel
- 1.13 Internal Auditor and Compliance Monitoring
- 1.14 Negotiated Rulemaking
- 1.15 Authority of the Commissioner to Propose Board Rules
- 1.16 Contracts, Including Grants, for Materials and/or Services
- 1.17 Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18 Operation of Education Research Centers
- 1.19 Education and Training of Board Administrators and Employees

1.18 Operation of Education Research Centers

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) No change.

(3) P-20/Workforce Data Repository refers to the collection of data from each Cooperating Agency. The cooperating agencies shall execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at Education Research Centers (ERCs). In accordance with the agreements, each cooperating agency shall make available all appropriate data, including to the extent possible data collected by the cooperating agency for at least the preceding 20 years. A cooperating agency shall periodically update the data as additional data is collected, but not less than once each year. The repository shall be operated by the CB.

(4) – (5) No change.

(b) Purpose.

(1) ERCs shall be established by the CB. An ERC may only be established at a sponsoring public institution of higher education in Texas but may be awarded to a consortium of such institutions. An ERC must be physically located within Texas and must retain all data at that location except for secure off-site data back-up in accordance with written procedures approved by the Advisory Board. Individual level data from the ERC P-20/Workforce Data Repository may not be provided to a researcher except in the following ways:

(A) Individual level data may ~~not~~ be provided to a researcher at a ~~[location other than a]~~ Research Center or the CB or a public institution of higher education located in Texas that is an acknowledged consortium member of the ERC.

(B) Individual level data may be accessed by approved researchers via secure, restricted, VPN remote access provided all other provisions of this chapter are met and established policies are followed regarding additional controls.

(2) – (3) No change.

(4) The ERCs may provide researchers access to shared data only through secure methods and require each researcher to execute an agreement regarding compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g) and rules and regulations adopted under that Act. Each ERC shall adopt rules or policies to protect the confidentiality of information used or stored at the center in accordance with applicable state and federal law, including rules or policies establishing procedures to ensure that confidential information is not duplicated or removed from an Education Research C[e]nter or from a remote access interface in an unauthorized manner.

(c) No change.

(d) Operation.

(1) – (2) No change.

(3) All research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board or by request of the Texas Workforce Commission, Commissioner of Higher Education or the Commissioner of Education if the requesting agency provides sufficient funds to the ERC to finance the project. All remote access research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board.

(4) – (9) No change.

(e) – (f) No change.