



TEXAS HIGHER EDUCATION COORDINATING BOARD

P.O. Box 12788 Austin, Texas 78711

October 6, 2017

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<http://www.thecb.state.tx.us>

TO: Negotiated Rulemaking Committee on Data Request Reevaluation
FROM: Mary E. Smith, Alternative Dispute Resolution Coordinator
RE: Appointment of Members to Negotiated Rulemaking Committee

Texas Education Code (TEC) Section 51.406 directs the Texas Higher Education Coordinating Board ("THECB" or "Board") to reevaluate its rules and policies to ensure the need for the data requests it imposes on institutions of higher education and to consult with the institutions to identify any unnecessary data request(s) that are appropriate for removal from Board Rules. TEC Section 61.0331 requires the THECB to employ the negotiated rulemaking process when adopting a policy, procedure, or rule relating to the reevaluation of data requests.

On September 13, the THECB submitted a Notice of Intent (NOI) to Engage in Negotiated Rulemaking to the *Texas Register*. This NOI included a list of stakeholders and proposed membership for the Negotiated Rulemaking Committee and was shared with stakeholders and proposed members at that time. The NOI was published on September 22 for ten days with a public comment deadline of October 4. The Coordinating Board received one comment from The University of Texas System ("System") requesting that Stephanie Huie, Vice Chancellor for Strategic Initiatives, be appointed to the committee. The request was not granted because the interests of the System are sufficiently represented by the three System institutional representatives selected to the committee.

In accordance with Texas Government Code, Section 2008.54 (Negotiated Rulemaking Act, 1997), I hereby appoint the following individuals to serve as committee members to represent affected parties and the THECB on the Negotiated Rulemaking Committee on Data Request Reevaluation:

Public Community Colleges

Arjun Banjade, Director, State Reporting and Student Success, Tarrant County College District

Elizabeth Chivers, Director, Institutional Research, Navarro College

Kimberly Sanders, Director, State Reporting, Alamo Colleges District

Michael K. Fleming, Executive Director, Institutional Research, Effectiveness & Planning, Lee College

Phil Rhodes, Vice President, Research, Effectiveness and Information Technology, McLennan Community College

Ryan Fitzgerald, Director, Institutional Research, South Plains College

Serkan Celtek, Director, Research and Analytical Services, South Texas College

Tammy Denney, Registrar, Trinity Valley Community College

Thomas K. Martin, Associate Vice President, Institutional Research, Collin College District

Wanda Simpson Munson, Dean, Student Records Management and College Registrar, San Jacinto College District

Public Health-Related Institutions

Deanne Hernandez, Director, Institutional Research and Accreditation, The University of Texas Health Science Center at Houston (The University of Texas System)

Tanisha Barren, Director, Institutional Reporting, University of North Texas Health Science Center (University of North Texas System)

Public Universities

Faiza Khoja, Associate Vice President, Academic Affairs, University of Houston Downtown (University of Houston System)

Jason Simon, Associate Vice President, Data, Analytics, and Institutional Research, University of North Texas (University of North Texas System)

Joseph P. Pettibon, II, Vice President, Enrollment and Academic Services, Texas A&M University (Texas A&M University System)

Katherine Austin-Beltz, Assistant Vice President, Information Technology, Texas Tech University (Texas Tech University System)

Mark S. Hamner, Vice Provost, Institutional Research and Improvement, Texas Woman's University

Mark McClendon, Director, Institutional Research, Midwestern State University

Mary Knight, Associate Vice President, Finance, The University of Texas at Austin (The University of Texas System)

Susan Brown, Assistant Vice President, Strategic Analysis and Institutional Reporting, The University of Texas Rio Grande Valley (The University of Texas System)

Tami Rice, Associate Director, Institutional Research, Texas State University (Texas State University System)

Independent Colleges and Universities

Cecelia Jones, Director, Financial Aid, Jarvis Christian College

Kara Larkan-Skinner, Assistant Vice President, Institutional Effectiveness and Accreditation, Our Lady of the Lake University

Texas Higher Education Coordinating Board

Julie Eklund, Assistant Commissioner, Strategic Planning and Funding



Texas Higher Education
Coordinating Board

1200 East Anderson Lane, Austin, Texas 78752

Negotiated Rulemaking Committee on Data Request Reevaluation

December 5, 2017
9:30a – 4:30p
Lonestar Room

MEETING MATERIALS

Materials include the following:

- I. Meeting Agenda
- II. Texas Education Code Sections 51.406 and 61.0331 (Relevant Provisions)
- III. THECB Rules Relating to Negotiated Rulemaking
- IV. Ground Rules for Negotiated Rulemaking
- V. Convener's Report
- VI. Notice of Intent Filed with the *Texas Register*
- VII. Facilitator's Bio
- VIII. THECB General Information
- IX. Box Lunch Menu

Lunch

For committee members attending the meeting, we will be ordering individual box lunches. **Please email your lunch order to Laurie.Frederick@THECB.state.tx.us by November 28.** Payment for lunch will be collected at the meeting (exact change appreciated).



Texas Higher Education
Coordinating Board

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Negotiated Rulemaking Committee on Data Request Reevaluation

December 5, 2017
9:30a – 4:30p
Lonestar Room

DRAFT AGENDA

- I. Introductions
- II. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- III. Brief Overview of Roles and Responsibilities
 - A. Role of Facilitator
 - B. Role of Sponsor Agency
 - Technical and administrative support
 - C. Role of Committee Members
 - Representative role
 - Commitment to negotiate in good faith
- IV. Consideration of Facilitator
- V. Procedural Issues
 - A. Discussion and Consideration of Ground Rules
 - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion and Consideration of the Continuing Need for the Data Requests

Texas Education Code Applicable Provisions Negotiated Rulemaking for Reevaluation of Data Requests

SECTION 29. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0331 to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

(1) an admission policy regarding the common admission application under Section 51.762, a uniform admission policy under Section 51.807, graduate and professional admissions under Section 51.843, or the transfer of credit under Section 61.827;

(2) the allocation or distribution of funds, including financial aid or other trustee funds under Section 61.07761;

(3) the reevaluation of data requests under Section 51.406; or

(4) compliance monitoring under Section 61.035.

SECTION 2. Section 51.406, Education Code, is amended by adding Subsection (d) to read as follows:

(d) At least every five years, the Texas Higher Education Coordinating Board shall reevaluate its rules and policies to ensure the continuing need for the data requests the coordinating board imposes on university systems, institutions of higher education, or private or independent institutions of higher education. The coordinating board shall consult with those entities to identify unnecessary data requests and shall eliminate data requests identified as unnecessary from its rules and policies. In this subsection, "private or independent institution of higher education" has the meaning assigned by Section 61.003.

THECB Adopted Rules Related to Negotiated Rulemaking

CHAPTER 1. AGENCY ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

Section

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

1.1 – 1.13 (No change.)

1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

(2) a description of the subject and scope of the rule(s) to be developed;

(3) a description of the known issues to be considered in developing the rule(s);

(4) a list of the interests likely to be affected by the proposed rule(s);

(5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);

(6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and

(7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).

(f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.

(g) Costs of Participating in Negotiated Rulemaking.

(1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:

(A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and

(B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,

(C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.

(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1)The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2)The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3)The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4)The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1)the Board used negotiated rulemaking in developing the proposed rule, and

(2) the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

Ground Rules For Negotiated Rulemaking

I. GOAL

To reach consensus on the language of a proposed rule

II. REACHING DECISIONS

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

III. AGREEMENT

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
1. All members concurred in the proposed rule; and
 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

IV. COMMITTEE MEETINGS

- A. Meeting Attendance
1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
 2. Scheduled meetings will proceed even if some members are absent.

3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

B. During the Meetings

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
 - a. Channel comments through one of the Committee members;
 - b. Submit written comments to the Committee members; or
 - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

C. Caucuses

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives.** Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

V. NEGOTIATING

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree

to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.

- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

VI. COMMUNICATIONS

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions expressed in a non-public setting and identified as confidential to a particular group or individual, even if that party withdraws from negotiations.

Committee Members:

| Name | Title | System/District/Institution |
|------------------------|--|--|
| Arjun Banjade | Director, State Reporting and Student Success | Tarrant County College District |
| Cecelia Jones | Director, Financial Aid | Jarvis Christian College |
| Deanne Hernandez | Director, Institutional Research and Accreditation | The University of Texas Health Science Center at Houston (The University of Texas System) |
| Elizabeth Chivers | Director, Institutional Research | Navarro College |
| Faiza Khoja | Associate Vice President, Academic Affairs | University of Houston Downtown (University of Houston System) |
| Jason Simon | Associate Vice President, Data, Analytics, and Institutional Research | University of North Texas (University of North Texas System) |
| Joseph P. Pettibon II | Vice President, Enrollment and Academic Services | Texas A&M University (Texas A&M University System) |
| Julie Eklund | Assistant Commissioner, Strategic Planning and Funding | Texas Higher Education Coordinating Board |
| Kara Larkan-Skinner | Assistant Vice President, Institutional Effectiveness and Accreditation | Our Lady of the Lake University |
| Katherine Austin-Beltz | Assistant Vice President, Information Technology | Texas Tech University (Texas Tech University System) |
| Kimberly Sanders | Director, State Reporting | Alamo Colleges District |
| Mark McClendon | Director, Institutional Research | Midwestern State University |
| Mark S. Hamner | Vice Provost, Institutional Research and Improvement | Texas Woman's University |
| Mary Knight | Associate Vice President, Finance | The University of Texas at Austin (The University of Texas System) |
| Michael K. Fleming | Executive Director, Institutional Research, Effectiveness & Planning | Lee College |
| Phil Rhodes | Vice President, Research, Effectiveness and Information Technology | McLennan Community College |
| Ryan Fitzgerald | Director, Institutional Research and Chief Reporting Official | South Plains College |
| Serkan Celtek | Director, Research and Analytical Services | South Texas College |
| Susan Brown | Assistant Vice President, Strategic Analysis and Institutional Reporting | The University of Texas Rio Grande Valley (The University of Texas System) |
| Tami Rice | Associate Director, Institutional Research | Texas State University (Texas State University System) |
| Tammy Denney | Registrar | Trinity Valley Community College |
| Tanisha Barren | Director, Institutional Reporting | University of North Texas Health Science Center (University of North Texas System) |
| Thomas K. Martin | Associate Vice President, Institutional Research | Collin College District |
| Wanda Simpson Munson | Dean, Student Records Management and College Registrar | San Jacinto College District |

To: Mary E. Smith, Ph.D., Alternative Dispute Resolution Coordinator
From: Laurie A. Frederick, Convener
Date: September 12, 2017
Re: Data Request Reevaluation

Texas Education Code 61.0331 contains provisions requiring the Texas Higher Education Coordinating Board (“THECB” or “Board”) to engage in negotiated rulemaking in certain instances. Among the instances that require negotiated rulemaking is the reevaluation of data requests. The requirement is found in the Texas Education Code, Chapter 61, which states in relevant part:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

[...]

(3) the reevaluation of data requests under Section 51.406.

Section 51.406 provides, in pertinent part, as follows:

Sec. 51.406. EXPIRATION OF CERTAIN REPORTING REQUIREMENTS APPLICABLE TO INSTITUTIONS OF HIGHER EDUCATION AND UNIVERSITY SYSTEMS.

[...]

(d) At least every five years, the Texas Higher Education Coordinating Board shall reevaluate its rules and policies to ensure the continuing need for the data requests the coordinating board imposes on university systems, institutions of higher education, or private or independent institutions of higher education. The coordinating board shall consult with those entities to identify unnecessary data requests and shall eliminate data requests identified as unnecessary from its rules and policies.

The procedure for negotiated rulemaking is found in Texas Government Code Chapter 2008, which contains requirements for notice and the duties of those involved. The convener is charged with responsibility for:

1. Assisting the agency in determining whether it is advisable to proceed with negotiated rulemaking;
2. Assisting in the identification of persons likely affected by the proposed rule;
3. Recommending to the agency whether negotiated rulemaking is feasible as a means to develop the proposed rule; and
4. Reporting to the agency on the relevant considerations.

In determining whether it is advisable to proceed with negotiated rulemaking, the agency need only refer to the enacted legislation, above, requiring negotiated rulemaking. It is recommended that negotiated rulemaking proceed.

In identifying persons likely affected by the proposed rule, a memo was sent via email to all chancellors and presidents of Texas institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/campus (see Attachment 1). From this effort, 30 individuals (see Attachment 2) volunteered or were nominated to participate on the data request reevaluation negotiated rulemaking committee. This presents a good probability that the identified interests will be adequately represented.

The positions held by the volunteers and nominees include vice presidents, directors, and deans. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule.

Given the requirement of negotiated rulemaking, doing so will not unreasonably delay notice and eventual adoption of the proposed rule. Similarly, the adequacy of agency resources to participate and the willingness of the agency to accept the consensus of the negotiated rulemaking committee as the basis for the proposed rule is also compulsory in accordance with law.

The probability that the negotiated rulemaking committee will provide a balanced representation between public and regulated interests is also good. As mentioned, memos were sent to all affected institutions and we have received nominations of 30 individuals for consideration to the negotiated rulemaking committee from throughout the state. The stakeholders who could be significantly affected by this rule and should be represented on this committee are:

1. Public Community Colleges;
2. Public Health-Related Institutions;
3. Public Universities;
4. Public Technical Colleges;
5. Public State Colleges;
6. Independent Colleges and Universities; and
7. Texas Higher Education Coordinating Board.

The volunteers and nominees represent various institutional types and sizes, and geographic locations throughout the state.

With the above considerations, it is recommended that the THECB move forward with negotiated rulemaking. It is also recommended that a notice be posted for 10 days in the *Texas Register* for public comment in accordance with section 2008.053 of the Texas Government Code.

Attachment 1: Convening Memo



Texas Higher Education
Coordinating Board

Texas Higher Education Coordinating Board

e-UPDATES 

TO: Chancellors and Presidents of Texas Institutions of Higher Education

FROM: Laurie A. Frederick, Convener, Negotiated Rulemaking

RE: Nomination for the Negotiated Rulemaking Committee on Data Request Reevaluation

Texas Education Code (TEC) Section 51.406 directs the Texas Higher Education Coordinating Board (THECB) to reevaluate its rules and policies to ensure the need for the data requests it imposes on institutions of higher education and to consult with the institutions to identify any unnecessary data request(s) that are appropriate for removal from Board rules. TEC Section 61.0331 requires the THECB to employ the negotiated rulemaking process described in Texas Government Code Chapter 2008 (Negotiated Rulemaking Act) when adopting a policy, procedure, or rule relating to the reevaluation of data requests. Pursuant to the Act, I have been appointed to serve as the Convener for the negotiated rulemaking process.

The purpose of this memo is to solicit your willingness to participate on the **Negotiated Rulemaking Committee on Data Request Reevaluation** or to nominate a designee from your system/campus for potential selection by the THECB's Alternative Dispute Resolution Coordinator. Suggested nominees include institutional research leads, chief financial aid officers, chief academic/instructional officers, chief reporting officials, chief financial officers, and others at your institution who are responsible for reporting information to the THECB. Please respond to me via email at Laurie.Frederick@thecb.state.tx.us by no later than 5 pm on September 11, 2017.

Targeted dates for convening the committee are Nov. 10, Nov. 15, Dec. 4, or Dec. 5 from 9:30 am to 4:30 pm at the THECB offices in Austin. We ask that you hold these dates on your calendar in the event you are selected to serve on this committee, or if you nominate someone from your system/institution, please share these dates with your nominee as well.

If you have questions or concerns, feel free to contact me at (512) 427-6446. Thank you in advance for your assistance in this matter.

Enclosures

c: Jacob Fraire, President, Texas Association of Community Colleges
Ray Martinez, President, Independent Colleges and Universities of Texas
Rissa McGuire, Executive Director, Council of Public University Presidents and Chancellors
Chief Academic Officers
Chief Instructional Officers
Institution Liaisons

- [TEC+51.406+%26+61.0331%2C+Reevaluation+of+Data+Request.pdf](#)
- [Government+Code%2C+Section+2008%2C+NRM+Act.pdf](#)



Texas Higher Education
Coordinating Board

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Attachment 2: Nominations

| Name | Title | System/District/Institution |
|------------------------|--|---|
| Arjun Banjade | Director, State Reporting and Student Success | Tarrant County College District |
| Brandon Hennington | Managing Director, Operations Division and Administration | Texas Tech University System: Texas Tech University |
| Cecelia Jones | Director, Financial Aid | Jarvis Christian College |
| Deanne Hernandez | Director, Institutional Research and Accreditation | The University of Texas System: The University of Texas Health Science Center at Houston |
| Elizabeth Chivers | Director, Institutional Research | Navarro College |
| Faiza Khoja | Associate Vice President, Academic Affairs | University of Houston System: University of Houston Downtown |
| Jason Simon | Associate Vice President, Data, Analytics, and Institutional Research | University of North Texas System: University of North Texas |
| John Chris McKee | Associate Vice President, Institutional Effectiveness | The University of Texas System: The University of Texas Medical Branch at Galveston |
| Joseph P. Pettibon, II | Vice President, Enrollment and Academic Services | Texas A&M University System: Texas A&M University |
| Julie Eklund | Assistant Commissioner, Strategic Planning and Funding | Texas Higher Education Coordinating Board |
| Kara Larkan-Skinner | Assistant Vice President, Institutional Effectiveness and Accreditation | Our Lady of the Lake University |
| Katherine Austin-Beltz | Assistant Vice President, Information Technology | Texas Tech University System: Texas Tech University |
| Kimberly Sanders | Director, State Reporting | Alamo Colleges District |
| Mark McClendon | Director, Institutional Research | Midwestern State University |
| Mark S. Hamner | Vice Provost, Institutional Research and Improvement | Texas Woman's University |
| Mary Knight | Associate Vice President, Finance | The University of Texas System: The University of Texas at Austin |
| Matt Murrah | Chief Financial Officer | Dallas Baptist University |
| Michael K. Fleming | Executive Director, Institutional Research, Effectiveness & Planning | Lee College |
| Michael Mueller | Assistant Vice President, Administrative Affairs | Texas Tech University System: Texas Tech University Health Science Center |
| Phil Rhodes | Vice President, Research, Effectiveness and Information Technology | McLennan Community College |
| Ryan Fitzgerald | Director, Institutional Research | South Plains College |
| Samuel (Pete) Smith | Chief Analytics Officer | The University of Texas System: The University of Texas at Arlington |
| Serkan Celtek | Director, Research and Analytical Services | South Texas College |
| Susan Brown | Assistant Vice President, Strategic Analysis and Institutional Reporting | The University of Texas System: The University of Texas Rio Grande Valley |
| Tami Rice | Associate Director, Institutional Research | Texas State University System: Texas State University |
| Tammy Denney | Registrar | Trinity Valley Community College |
| Tanisha Barren | Director, Institutional Reporting | University of North Texas System: University of North Texas Health Science Center |
| Thomas K. Martin | Associate Vice President, Institutional Research | Collin College District |
| Vicky Dueer | Director, Institutional Research | University of Dallas |
| Wanda Simpson Munson | Dean, Student Records Management and College Registrar | San Jacinto College District |

TEXAS HIGHER EDUCATION COORDINATING BOARD
NOTICE OF INTENT TO ENGAGE IN NEGOTIATED RULEMAKING–DATA REQUEST REEVALUATION
(Texas Institutions of Higher Education)

Texas Education Code (TEC) Section 51.406 directs the Texas Higher Education Coordinating Board (“THECB” or “Board”) to reevaluate its rules and policies to ensure the need for the data requests it imposes on institutions of higher education and to consult with the institutions to identify any unnecessary data request(s) that are appropriate for removal from Board Rules. The THECB intends to engage in negotiated rulemaking in accordance with the provisions of TEC 61.0331 which requires the THECB to employ the negotiated rulemaking process when adopting a policy, procedure, or rule relating to the reevaluation of data requests.

In identifying persons likely affected by the proposed rules and policies, the Convener of Negotiated Rulemaking sent a memo via email to all chancellors and presidents at Texas institutions of higher education soliciting their interest and willingness to participate in the negotiated rulemaking process, or to nominate a representative from their system/institution.

From this effort, 29 individuals responded (out of approximately 191 affected entities) and expressed an interest to participate or nominated someone from their system/institution to participate on the negotiated rulemaking committee for data request reevaluation. The positions held by the nominees include vice presidents, directors, and deans. This indicates a probable willingness and authority of the affected interests to negotiate in good faith and a reasonable probability that a negotiated rulemaking process can result in a unanimous or, if the committee so chooses, a suitable general consensus on the proposed rule and policies.

The following is a list of the stakeholders who are significantly affected by this rule and policy and will be represented on the negotiated rulemaking committee for data request reevaluation:

1. Public Community Colleges;
2. Public Health-Related Institutions;
3. Public Universities;
4. Public Technical Colleges;
5. Public State Colleges;
6. Independent Colleges and Universities; and
7. Texas Higher Education Coordinating Board.

The THECB proposes to appoint the following 24 individuals to the negotiating rulemaking committee for data request reevaluation to represent affected parties and the agency:

Public Community Colleges

Kimberly Sanders, Director, State Reporting, Alamo Colleges District
Thomas K. Martin, Associate Vice President, Institutional Research, Collin College District
Michael K. Fleming, Executive Director, Institutional Research, Effectiveness & Planning, Lee College
Phil Rhodes, Vice President, Research, Effectiveness and Information Technology, McLennan Community College
Elizabeth Chivers, Director, Institutional Research, Navarro College
Wanda Simpson Munson, Dean, Student Records Management and College Registrar, San Jacinto College District
Ryan Fitzgerald, Director, Institutional Research, South Plains College
Serkan Celtek, Director, Research and Analytical Services, South Texas College
Arjun Banjade, Director, State Reporting and Student Success, Tarrant County College District
Tammy Denney, Registrar, Trinity Valley Community College

Public Health-Related Institutions

Tanisha Barren, Director, Institutional Reporting, University of North Texas Health Science Center (University of North Texas System)
Deanne Hernandez, Director, Institutional Research and Accreditation, The University of Texas Health Science Center at Houston (The University of Texas System)

Public Universities

Mark McClendon, Director, Institutional Research, Midwestern State University
Joseph P. Pettibon, II, Vice President, Enrollment and Academic Services, Texas A&M University (Texas A&M University System)
Mark S. Hamner, Vice Provost, Institutional Research and Improvement, Texas Woman's University

Tami Rice, Associate Director, Institutional Research, Texas State University (Texas State University System)
Katherine Austin-Beltz, Assistant Vice President, Information Technology, Texas Tech University (Texas Tech University System)
Faiza Khoja, Associate Vice President, Academic Affairs, University of Houston Downtown (University of Houston System)
Jason Simon, Associate Vice President, Data, Analytics, and Institutional Research, University of North Texas (University of North Texas System)
Mary Knight, Associate Vice President, Finance, The University of Texas at Austin (The University of Texas System)
Susan Brown, Assistant Vice President, Strategic Analysis and Institutional Reporting, The University of Texas Rio Grande Valley (The University of Texas System)

Independent Colleges and Universities

Cecelia Jones, Director, Financial Aid, Jarvis Christian College
Kara Larkan-Skinner, Assistant Vice President, Institutional Effectiveness and Accreditation, Our Lady of the Lake University

Texas Higher Education Coordinating Board

Julie Eklund, Assistant Commissioner, Strategic Planning and Funding

Meetings will be open to the public. If there are persons who are significantly affected by these proposed rules and policies and are not represented by the persons named above, those persons may apply to the agency for membership on the negotiated rulemaking committee or nominate another person to represent their interests. Application for membership must be made in writing and include the following information:

- *Name and contact information of the person submitting the application;
- *Description of how the persons are significantly affected by the rule and policy and how their interests are different than those represented by the persons named above;
- *Name and contact information of the person being nominated for membership; and
- *Description of the qualifications of the nominee to represent the person's interests.

The THECB requests comments on the Notice of Intent to engage in negotiated rulemaking and on the membership of the negotiated rulemaking committee for data request reevaluation. Comments and applications for membership on the committee must be submitted by October 2, 2017 to: Laurie A. Frederick, Convener, Negotiated Rulemaking, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711, Fax: (512) 427-6127, Email: laurie.frederick@theccb.state.tx.us.

TRD-201703629
William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: September 13, 2017

Claudette Jenks

Assistant Director, College Readiness and Success
Texas Higher Education Coordinating Board

Claudette Jenks has been employed with the Texas Higher Education Coordinating Board since 2007 and now serves as Assistant Director for College Readiness and Success. She is responsible for the management and oversight of state-wide college readiness and success initiatives for the division. Jenks has more than 15 years of work experience in secondary and post-secondary education, and non-profit organizations.

Jenks serves as the project coordinator of major initiatives including Academic Vertical Alignment Training and Renewal, AVID for Higher Education Success Initiative, College Readiness Assignments for Texas, and TransitionTX. Jenks served for three years as a program coordinator in the former Division of P-16 Initiatives where her primary responsibilities included the implementation and management of a \$1.5 million grant for the Collegiate G-Force AmeriCorps State program funded by the OneStar Foundation. Jenks has also worked in outreach coordinating the development of local P-16 Councils and high school GO Centers. She has made a number of presentations at various regional, state, and professional conferences and meetings related to the work of the division including vertical alignment and House Bill 5. Prior to her employment with the Coordinating Board, Jenks worked with the Educational Talent Search TRIO program at Texas State University-San Marcos, assisting low income, first generation students pursue higher education after graduation and was a Speech, Debate, and Theater educator with Pleasanton ISD.

Jenks holds two bachelor's degrees in Speech and Mass Communication from Texas State University-San Marcos, a Certificate in Dispute Resolution, and is pursuing a Project Management Professional (PMP) certification.



Texas Higher Education Coordinating Board
1200 East Anderson Lane
Austin, Texas 78752
(512) 427-6101

Driving Directions to the THECB

From IH-35:

- Exit Hwy 183 South
- Turn East onto 183 South access road (Coming from the North, turn left; From the South, turn right)
- Get in far left lane and Make a U-Turn under 183 at Cameron Road (the first light)
- The Coordinating Board is on the right (after Luby's)

From Austin-Bergstrom International Airport:

- Take Hwy 71 West
- Exit to Hwy 183 North
- Continue along 183 North and take the Cameron Rd exit onto E Anderson Ln
- The Coordinating Board is on the right after the intersection (after Luby's)

Link to [Area Hotels](#)

Link to [Area Restaurants](#)

*For security reasons, visitors must enter the building using the front entrance only.

*Visitors must sign-in at security desk to obtain a visitor badge. The visitor (or institution ID) badge must be worn/visible while in the building.

*Free parking available.

NOTE: Information above can also be found on the THECB website at <http://www.thecb.state.tx.us/apps/events/>.

Box lunch selection due to Laurie.Frederick@THECB.state.tx.us by November 28.

Cost includes tea and delivery fee. Payment will be collected at meeting (exact change appreciated).

SANDWICH, PRESSATA AND WRAP BOX LUNCHES (\$15.00)

Premium Sandwich Box Lunch

Your choice of one delicious premium sandwiches. Includes chips and a fresh-baked jumbo cookie.

- Curry Chicken on Ciabatta Roll
- Turkey with Tomato Confit on Focaccia
- Harissa Beef with Tomato Jam on Brioche Roll
- Buttermilk Baked Chicken on Jalapeño Roll
- Capri Chicken on Wheat
- Stacker on Focaccia
- Tuscan Turkey on Focaccia
- New England Chicken Salad on Raisin Walnut
- Mediterranean Vegetarian on Ciabatta Roll (v)
- Ham & Swiss on Marble Rye
- Tiger Thai Beef on Brioche Roll
- Vegetarian on Focaccia (v)
- California Club on Ciabatta Roll
- Monterey Chicken with Avocado on Jalapeño Roll
- Big Al's Club on Wheat

Traditional Sandwich Box Lunch

Your choice of one traditional sandwiches. Includes chips and a fresh-baked jumbo cookie.

- Ham on Rye
- Turkey on Ciabatta Roll
- New England Chicken Salad on Wheat
- Roasted Chicken on Focaccia
- Beef Brisket on Jalapeño Roll

Wrap Box Lunch

Your choice of one delicious wraps. Includes chips and a fresh-baked jumbo cookie.

- Asian Crispy Chicken in Spinach Tortilla
- Ancho BBQ Beef in Chipotle Tortilla
- Vegetarian in Honey Wheat Tortilla (v)
- Tuscan Turkey in Spinach Tortilla
- Santa Fe Chicken in Chipotle Tortilla
- Chicken Caesar in Wheat Tortilla

SALAD BOX LUNCHES (\$15.00)

Your choice of salad. Includes chips and a fresh-baked jumbo cookie.

Harissa Chicken

Fresh greens topped with a delicious combination of diced housemade green harissa curried chicken, roasted red peppers, cucumbers, confit tomatoes, arugula, pickled onions, sliced fresh mozzarella and crisp flatbread strips. Served with our curry yogurt dressing.

Chicken Caesar

Fresh romaine lettuce with tender roasted chicken breast, homemade croutons and shredded Parmesan cheese.

Caesar

Fresh romaine lettuce with shredded Parmesan, crisp homemade croutons and our own creamy Caesar dressing.

Mixed Green with Balsamic Vinaigrette

Premium mix of spring, romaine and leaf lettuces, cucumber, tomato and croutons. Served with ranch and balsamic vinaigrette dressings. (v)

Gluten-Free Sandwich Box Lunch (+\$2.00)

Your choice of sandwich on gluten-free ancient grains bread. Includes chips and a housemade pistachio oatmeal bar. (Ancient grains bread is made with amaranth, quinoa, millet, sorghum and teff)

- Tuscan Turkey
- Vegetarian (v)
- Mediterranean Vegetarian
- Capri Chicken
- Curry Chicken
- California Club
- Big Al's Club
- Stacker
- Monterey Chicken with Avocado
- Black Russian Ham & Swiss
- Harissa Beef with Tomato Jam
- Tiger Thai Beef
- Roast Turkey
- Ham
- Brisket
- Roasted Chicken

Pressata Box Lunch

Your choice of one European grilled sandwiches. Includes chips and a fresh-baked jumbo cookie.

- Pepper Jack Chicken
- Chicken Margherita
- The Antonio
- Honey Mustard BBQ Beef
- Chipotle Beef
- Turkey Provençal
- Vegetarian (v)

Cobb with Ranch Dressing

Fresh greens with tender roasted chicken, tomatoes, bacon, diced eggs, avocado and cheddar cheese. Served with ranch dressing.

Mediterranean Chicken with Balsamic Vinaigrette

Spinach and spring mix, roasted chicken, red onions, tomatoes, green olives, roasted red peppers, feta cheese and flatbread crisps.

Pesto Chicken with Ranch Dressing

Romaine and spring mix topped with pesto-coated roasted chicken, cucumbers, tomatoes, shredded Parmesan cheese and flatbread crisps.

Trio Salad with Balsamic Vinaigrette

Fresh lettuce topped with housemade chicken salad, tuna salad and pasta salad, garnished with flatbread crisps.