

SUPPLEMENTAL MATERIALS

Committee on Innovation, Data, and Educational Analytics

AGENDA ITEM V-D (10)

Consideration and possible action to adopt new Board Rules in Chapter 13, Subchapter R, 13.520 through 13.529, relating to reporting, audit, and overallocation for community colleges

RECOMMENDATION: Approval

Background Information:

The Texas Higher Education Coordinating Board (THECB) staff proposes the adoption of new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter R, Sections 13.520-529, concerning the certification of compliance, required reporting, correction of errors, audit, and overallocation for the new State Public Junior College Finance Program. As authorized by HB 8, this rule was adopted on an emergency basis at the August Special Called Board Meeting because all rules necessary for HB 8 implementation were required to be adopted prior to the start of fiscal year 2024.

Specifically, proposed rules set out policies and procedures for public junior colleges to submit certifications of compliance and submit required reporting through various reporting collection mechanisms established by the Coordinating Board. The rules also describe how the Coordinating Board will conduct audits, review of required reporting for data errors, and correct those errors through either a payment of under-allocated funds or the recovery of over-allocated funds.

Rule 13.520 and 13.521 sets out the purpose and authority of the subchapter, relating to compliance, data reporting, audit, and correction of error requirements, as well as over-allocation and under-allocation procedures. Rule 13.522 contains definitions used in the subchapter.

Rule 13.523 contains the policy and procedures necessary for public junior colleges to submit certifications of compliance with statute and rules. Under state law, public junior colleges must submit attestations of compliance, including compliance with all state laws and Coordinating Board rules, as a condition of receiving state funds. Rule 13.523 establishes clear guidelines for institutions to comply with statute.

Rule 13.524 describes the required financial and academic reporting for institutions to submit the data necessary for the Coordinating Board to administer the State Public Junior College Finance Program. The Coordinating Board collects data through a variety of established mechanisms: the Community College Annual Reporting and Analysis Tool, Annual Financial Report Reporting, the Report of Fundable Operating Expenses, Education Data Systems reporting, and through ad hoc reporting as necessary. The data from these tools provides a cornerstone of the financial modeling necessary to determine precise funding amounts for the public junior colleges.

Rule 13.525 establishes the process for the Commissioner to review required reporting for errors and formally establish when a data reporting error resulting in a material impact in formula funding was made. This section establishes parameters and expectations for the methods the Coordinating Board will use to detect data errors, as well as how the Commissioner will make a formal determination of a data reporting error requiring a funding adjustment.

Rule 13.526 provides for compliance monitoring and auditing of funds disbursed under the new finance model for public junior colleges. This section establishes parameters and expectations of internal audit offices at institutions for data collection and examination assistance by the internal audit offices as institutional resources allow, as well as expectations for ongoing or completed audits.

Rule 13.527 states that institutions must retain records for a period of no less than seven years for purposes of Coordinating Board review, which mirror the timeline of seven years in HB 8.

Rule 13.528 lays out the process for the Coordinating Board to recover overallocated funds in the event a public junior college has received more funding than was due. This section provides how the Coordinating Board will provide notice to institutions of an error finding and lays out an appeal process for institutions, in accordance with HB 8.

This rule establishes a fair procedure with due process for institutions of higher education, giving them notice and the opportunity to submit a written appeal in the case that the Commissioner may need to make an adverse funding adjustment. The procedures established for overallocation under 13.528(d) ensure that the Coordinating Board is accurately disbursing appropriated funds as intended by the Legislature, while also providing flexibility for the method used to recoup the funds. This flexibility includes providing an option to recover a sum in a lump payment under 13.528(d)(1)(B), or alternatively over a five-year timespan under 13.528(d)(2). The flexibility is intended to limit extreme adverse financial impacts to public junior colleges that might detrimentally impact institutional operations, local communities, and students served by the institution, while still carrying out the Coordinating Board's obligation to disburse appropriated funds according to law.

Rule 13.529 likewise establishes how the Coordinating Board may make a financial adjustment in light of finding that an institution was allocated less in funding than was due, as provided by law.

Subsequent to the posting of the rules in the Texas Register, THECB staff recommends amendments to 13.522, 13.524, 13.528, and 13.529. Specifically, the proposed rule amendments would accomplish two objectives: establishing a reporting requirement for the Integrated Financial Reporting System in Coordinating Board rules; and updating cross-references throughout the subchapter to include the Coordinating Board's forthcoming community college finance subchapter, which will govern from fiscal year 2025 forward.

Sections 13.522, 13.528, and 13.529 contain amendments reflecting the Coordinating Board's future intended organization of the Community College Finance Program rules. While Chapter 13, Subchapter P contains most rules governing this system, that subchapter will cease effectiveness at the end of the 2024 fiscal year, to be replaced by new language in Chapter 13, Subchapter S.

Section 13.524 describes the required reporting mechanisms through which institutions must submit data for the Community College Finance Program, in accordance with Texas Education Code, §130A.006. The Coordinating Board proposes to amend this rule by adding the Integrated Fiscal Reporting System – an existing reporting program already in use by the Coordinating Board – to give Board staff more accurate and timely data to use for the tuition and fees calculation required to determine Base Tier allotments.

Arby Gonzales, Assistant Commissioner, Internal Audit and Compliance, and Paul Maeyaert, Director of Compliance, Internal Audit and Compliance, will present this item and be available to answer questions.

Date Published in the *Texas Register*: October 13, 2023

The 30-day comment period with the *Texas Register* ended on: November 11, 2023.

Summary of comments received:

No comments were received regarding this rule.

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING,
AUDIT, AND OVERALLOCATION

§13.520. Purpose.

The purpose of this subchapter is to establish the definitions, certification of compliance, data reporting, audit, and correction of error requirements for institutions of higher education, as well as over-allocation and under-allocation procedures, under the State Public Junior College Finance Program (the Program). The subchapter further specifies the process for recovery of overallocated funds as required by statute. These provisions additionally apply to audit and overallocation of funds under the Financial Aid for Swift Transfer (FAST) Program.

§13.521. Authority.

The Coordinating Board adopts this subchapter pursuant to its authority under Texas Education Code, §§28.0095, 61.035, 61.063, 61.065, 130.003, and 130A.006-130A.009.

§13.522. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Audit--An engagement to audit the program conducted by the Coordinating Board's Internal Auditor and internal audit or compliance monitoring staff pursuant to either Texas Education Code, §§130A.006(4) or 61.035. This term may include a site visit, desk review, or examination of the institution's use of funds allocated by the Coordinating Board and data reported to the Coordinating Board. The term includes auditing undertaken to obtain evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(2) Census Date--Prior to September 1, 2024, a[A]s defined in subchapter P, §13.472, of this chapter (relating to Definitions). On or after September 1, 2024, as defined in subchapter S, §13.553, of this chapter (relating to Definitions).

(3) Chief Audit Executive--The Internal Auditor hired by the Coordinating Board to perform internal auditing and compliance monitoring on behalf of the Coordinating Board pursuant to Texas Education Code, Chapters 61, 130, and 130A.

(4) Compliance Monitoring--A risk-based audit and compliance function conducted by the Coordinating Board pursuant to either Texas Education Code, §§130A.006(4) or 61.035, for the purpose of reviewing and assessing programmatic, legal, and fiscal compliance. This function may include conducting audits, site visits, desk reviews, or other examinations, to ensure that funds allocated or distributed by the Coordinating Board are allocated, distributed, and used in accordance with applicable law and Coordinating Board rule. The function includes obtaining evidence to sufficiently examine or verify data submitted to the Coordinating Board to be used by the Coordinating Board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(5) Data Reporting Error--An error in data or other information reported and certified by a public junior college to the Coordinating Board that the Commissioner of Higher Education in his or her discretion determines may result in a material impact in the formula funding a public junior college was entitled to or received.

(6) Desk Review--An administrative review by the Coordinating Board that is based on information reported by an institution of higher education or a private or independent institution of higher education, including supplemental information required by the Coordinating Board for purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the Coordinating Board during a site visit.

(7) Full-Time Student Equivalent (FTSE)--Prior to September 1, 2024, a[A]s defined in subchapter P, §13.472, of this chapter. On or after September 1, 2024, as defined in subchapter S, §13.553, of this chapter.

(8) Funding Adjustment--Any increase or decrease in funding by the Coordinating Board to an institution of higher education based on an over- or under-allocation of funds.

(9) Over-allocation--The over-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments beyond what the institution is due.

(10) Site Visit--An announced or unannounced in-person visit by a representative of the Coordinating Board or its agent to an institution of higher education or a private or independent institution of higher education for the purposes of conducting an audit.

(11) Under-allocation--The under-payment of funds to a public junior college due to a data reporting error or other error by either the institution or the Coordinating Board that results in payments less than what the institution was owed for the fiscal year.

§13.523. Certification of Compliance.

(a) A public junior college is not eligible to receive funds under this subchapter unless that public junior college submits a certification of compliance with the requirements of Texas Education Code, §130.003(b,) and as stated herein.

(b) A public junior college must submit an attestation via email to CTC@highered.texas.gov certifying to compliance with Texas Education Code, §130.003(b), to the Coordinating Board by August 1 of each year. The certification must be signed by the public junior college's president, or Chief Executive Officer, as applicable. The certification must certify the following:

(1) That the public junior college is currently in compliance with each provision of Texas Education Code, §130.003; and

(2) The public junior college has complied with all laws and Coordinating Board rules for the establishment and operation of a public junior college.

(c) If a junior college district has an unresolved or ongoing audit finding that the certifying official determines may preclude the district's certification under Texas Education Code, §130.003(b), the district shall disclose the finding(s) and provide an explanation of the finding(s) and proposed resolution.

(1) The Commissioner of Higher Education shall determine whether the junior college district can demonstrate that the district will be in compliance for the purpose of receiving a scheduled payment.

(2) Any payment that the Coordinating Board makes to an institution pursuant to this subchapter is subject to recovery or recoupment if the certifying official does not make the required certification for the fiscal year for which the certification was required.

§13.524. Required Reporting.

(a) Required Reporting. A public junior college must submit data through required reporting mechanisms established by the Coordinating Board. The Coordinating Board may use information obtained through required reporting for:

- (1) calculating funding disbursed under this chapter;
- (2) providing timely data and analyses to inform management decisions by the governing body of each public junior college district;
- (3) administering or evaluating the effectiveness of programs; or
- (4) auditing the program.

(b) Financial Reporting: The Community College Annual Reporting and Analysis Tool (CARAT) and Annual Financial Report (AFR) Reporting.

(1) Standards. Each public junior college district must submit their Annual Financial Report (AFR) for the preceding fiscal year by January 1. The public junior college must submit the AFR following the requirements provided in the Coordinating Board's Budget Requirements and Annual Financial Reporting Requirements for Texas Public Community Colleges, also known as the AFR Manual, for that fiscal year, in accordance with Texas Education Code, §61.065.

(2) Format. Each public junior college must report AFR data for each completed fiscal year as prescribed in the Community College Reporting and Analysis Tool (CARAT) by January 31 of the following fiscal year.

(3) Review Process. The Commissioner of Higher Education will update the AFR Manual, as required by Texas Education Code, §61.065. The AFR Manual will conform to Governmental Accounting Standards Board (GASB) statements and guidance.

(c) Financial Reporting: Report of Fundable Operating Expenses (RFOE).

(1) Standards. Each public junior college must report all instructional expenses from each completed fiscal year for each institutional discipline and unallocated administrative expenses as defined in the RFOE by January 31 of the following fiscal year.

(2) Coordinating Board staff shall use the data provided on expenses at public junior colleges to produce a study of costs for each instructional discipline each year. This study will review all expenses made by institutions for instruction and administration from all unrestricted sources of funds, including appropriated general revenue, tuition and fees, contract instruction, other educational and general revenue, and local tax revenue.

(d) Financial Reporting: Integrated Fiscal Reporting System (IFRS).

(1) Standards. Each public junior college shall report comprehensive tuition and fee financial data each fiscal year through IFRS.

(2) The Coordinating Board may use data reported through IFRS to establish average annual tuition and fee charges as necessary to implement this chapter.

(e) Academic Reporting: Education Data System reporting.

(1) Standards. Each public junior college must use data standards established by the Commissioner of Higher Education to submit required information relating to the

delivery of educational programs. The Commissioner of Higher Education shall adopt and publish annually data standards in official Coordinating Board publications, including through the Coordinating Board Management (CBM) Reporting and Procedures Manual for Texas Community, Technical, and State Colleges. The Coordinating Board will widely disseminate this publication, which will include:

(A) descriptions of the data collections and submission requirements;
(B) descriptions of data elements and the codes used to report them, including data used to calculate Full-Time Student Equivalent enrollments, Texas Success Initiative eligibility of students, student transfer, dual credit or dual enrollment, the number and type of credentials conferred, and other relevant student characteristics;
(C) detailed responsibilities of public junior colleges in connection to the data submission process, including each deadline for submission and resubmission; and
(D) descriptions of data submission requirements, including submission record layout specifications and data edit specifications.

(2) A public junior college may report a student in attendance on the approved course census date for the purpose of funding under this subchapter, in accordance with Texas Education Code, §130A.008.

(3) Review Process. The Commissioner of Higher Education shall review the CBM Reporting and Procedures Manuals annually. The Commissioner of Higher Education may approve changes to the data and reporting standards outside of the annual review process to expedite implementation of data collections and reporting.

(4) Certification. The reporting official for each public junior college must certify the accuracy of the report by a certification statement submitted to the Coordinating Board's Educational Data Center in accordance with the template and instructions provided in the CBM Reporting and Procedures Manual.

(f[e]) Academic Reporting: Ad Hoc Reporting Requests. As necessary to implement this chapter, the Commissioner of Higher Education may determine the need for additional, limited, supplemental requests for data and information from public junior colleges. To the extent Ad Hoc Reporting Requests may determine or influence funding disbursements under this subchapter, the Coordinating Board shall require the reporting official or another Coordinating Board designated official for each public junior college to certify the accuracy of the information contained in the report.

§13.525. Commissioner Review of Required Reporting; Data Reporting Errors.

(a) The Commissioner of Higher Education at his or her discretion or upon recommendation of the Chief Audit Executive may direct Coordinating Board staff to review the accuracy of the data reported to the Coordinating Board by public junior colleges under this subchapter using any of the following methods or combination thereof:

(1) The Chief Audit Executive or Coordinating Board staff may conduct periodic file reviews, desk-reviews, site visits, or audits of the accuracy of the data and information submitted for funding purposes, including regular reviews of submitted data carried out through standard data management, supporting data, audits conducted under this subchapter, or as a result of any other audit. Upon identifying a data reporting error that may impact formula funding, Coordinating Board staff shall notify the Commissioner of Higher Education as soon as practicable.

- (2) Upon receiving a notification from the Chief Audit Executive or Coordinating Board staff of a potential data reporting error, the Commissioner of Higher Education may:
- (A) direct staff to continue to gather additional information;
 - (B) determine that the discrepancy does not rise to the level of a data reporting error as defined in this chapter due to the materiality impact of the error; or
 - (C) determine that the discrepancy rises to the level of a data reporting error that requires a funding adjustment due to the materiality impact of the error or the amount of overallocation or under-allocation.
- (b) The Coordinating Board may review and or require correction of a data reporting error that occurred not more than seven years prior to a review conducted by Coordinating Board staff.
- (c) Upon the Commissioner of Higher Education's determination that the discrepancy constitutes a data reporting error requiring a funding adjustment, staff will notify the public junior college within 30 business days.
- (d) The Commissioner of Higher Education may use any method provided in §13.528 or §13.529 of this subchapter to make the necessary funding adjustments to correct an over- or under-allocation.

§13.526. Public Junior College Audits.

- (a) A public junior college shall report financial and academic data to the Coordinating Board under §13.524 of this subchapter (relating to Required Reporting).
- (b) The Chief Audit Executive may conduct compliance monitoring or audits of public junior colleges' compliance with Texas Education Code, Chapter 130A, the General Appropriations Act, and other related formula funding statutes.
- (c) In conducting an audit or compliance monitoring under this section, the Coordinating Board may request the assistance of the internal audit office at an institution of higher education and private or independent institution of higher education, as institutional resources allow, to examine the institution's use of funds allocated by, and data reported to, the Coordinating Board.
- (d) To avoid duplication of effort and assist the Coordinating Board in identifying risk, an internal auditor at an institution shall notify the Coordinating Board of any audits conducted by the institution's internal or external auditor involving funds allocated or administered by the Coordinating Board or data reported to the Coordinating Board.

§13.527. Records Retention.

An institution of higher education shall retain records related to financial and educational data and information reported to the Coordinating Board under Chapter 13 for a period of not less than seven years.

§13.528. Recovery of Overallocated Funds.

- (a) If the Coordinating Board determines after closing out a fiscal year pursuant to subchapter P, §13.477, of this chapter (relating to Close Out), or any close-out or settle-up provisions contained in subchapter S of this chapter, that a data reporting error or any other error resulted in an overallocation of funds to the institution, the Coordinating Board shall use any method authorized under statute or this rule to make a funding adjustment necessary to correct the over-allocation.

(b) The Coordinating Board shall notify the institution not later than 30 business days after the Commissioner of Higher Education makes a determination of a data reporting error under §13.525 of this subchapter (relating to Commissioner Review of Required Reporting; Data Reporting Errors) or otherwise identifies an error requiring a funding adjustment to recover an overallocation. This notification must contain the amount of the overallocation and the basis for the determination.

(c) The institution may submit a written appeal to the Commissioner of Higher Education within 30 business days of receiving notification of an overallocation. The institution may attach any data or other written documentation that supports its appeal. The Commissioner of Higher Education shall review the appeal and determine in his or her sole discretion whether to affirm, deny, or modify the determination of overallocation within 30 business days of receipt. The Commissioner of Higher Education or Chief Audit Executive shall make an annual report of overallocation determinations to the Board.

(d) If the institution does not appeal or the Commissioner of Higher Education affirms the determination that an overallocation requiring a funding adjustment has occurred, the Coordinating Board shall recover an amount equal to the amount overallocated to the public junior college through one of the following methods:

(1) The Coordinating Board shall:

(A) withhold an amount equivalent to the overallocation by withholding from subsequent allocations of state funds for the current fiscal year as part of the close out of the current fiscal year; or

(B) request and obtain a refund from the public junior college during the current fiscal year an amount equivalent to the amount of the overallocation; or

(C) If the Commissioner of Higher Education in his or her sole discretion determines that the recovery of an overallocation in the current or subsequent fiscal year will have a substantial negative impact on the operations of the institution or the education of students, the Commissioner of Higher Education may instead recover the overallocation pursuant to subsection (d)(2) of this section.

(2) If the Commissioner of Higher Education in his or her sole discretion determines that an overallocation pursuant to paragraphs (1) or (2) of this section was the result of exceptional circumstances reasonably caused by statutory changes to Texas Education Code, Chapters 130 or 130A, and related reporting requirements, the Coordinating Board may recover the overallocation over a period not to exceed the subsequent five fiscal years.

(e) In addition to the recovery of an over-allocation under this section, the Commissioner of Higher Education may establish a corrective action plan for a public junior college that has received an overallocation of funds.

(f) If the public junior college fails to comply with an agreement to submit a refund established under this section, the Coordinating Board must report to the Comptroller of Public Accounts for recovery pursuant to Texas Education Code, Section 130A.009.

§13.529. Payment of Under-allocated Funds.

If the Commissioner of Higher Education determines that a data reporting error or any other error resulted in an under-allocation of funds, the Coordinating Board shall provide the funds to the institution pursuant to the close-out process in subchapter P,

§13.477, of this chapter (relating to Close Out), any close-out or settle up provisions contained in subchapter S of this chapter, or as otherwise authorized by law.