



Open Educational Resources in Higher Education:

A State- and System-level Policy Analysis

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Executive Summary

The four regional education compacts — the Midwestern Higher Education Compact (MHEC), New England Board of Higher Education (NEBHE), Southern Regional Education Board (SREB), and Western Interstate Commission for Higher Education (WICHE) — in collaboration as the National Consortium for Open Educational Resources (NCOER), commissioned this report to analyze state legislation and system-level policies pertaining to open educational resources (OER). The purpose of this report is to understand the history and foci of legislation on OER. The following analysis is intended to broaden legislative transparency on OER policy, practices, language, funding, and metrics for assessment and scaling. Following the analysis of both state- and system-level policies, this report highlights policy language supporting the adoption and growth of OER and offers recommendations for best practices in policymaking to scale OER in higher education.

Introduction

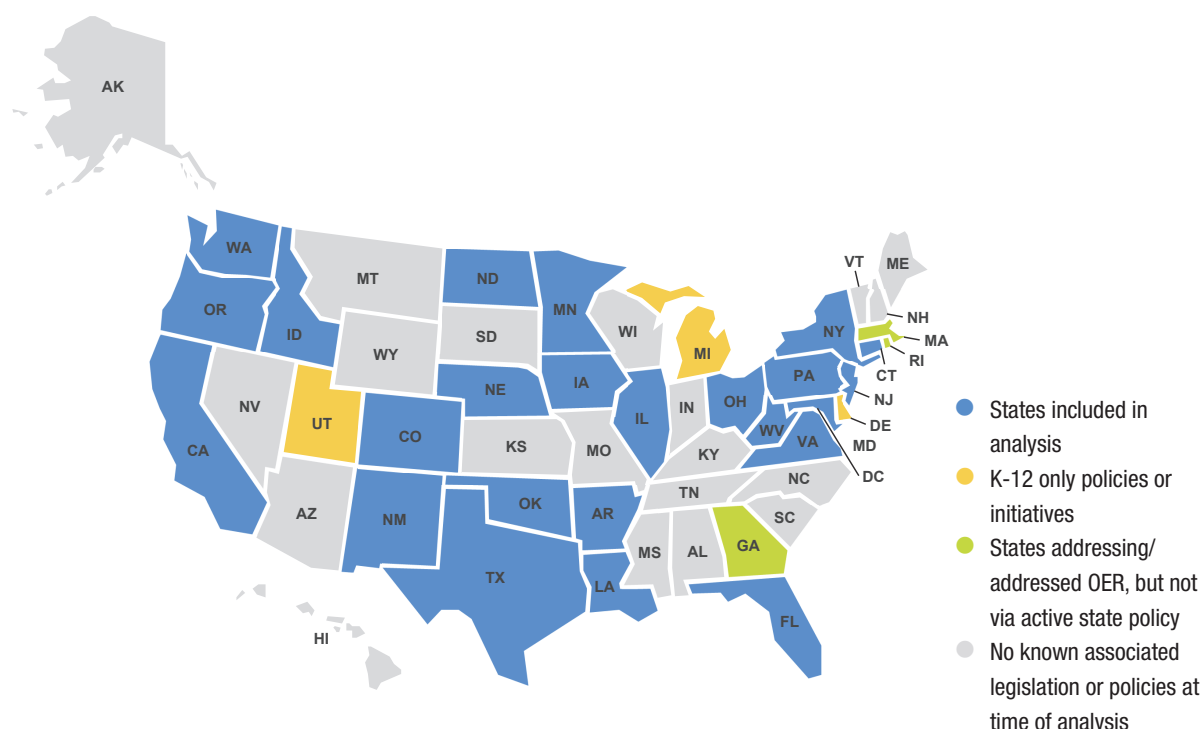
The four regional higher educational compacts (MHEC, NEBHE, SREB, WICHE) are nonpartisan, nonprofit organizations representing 47 U.S. states, three territories, three freely associated states, and six state-affiliate partners. As entities created by their states, regional compacts have deep knowledge and extensive experience in states, as well as their education systems and institutions. In 2020, the four regional compacts formed a nationwide network of open educational resources (OER) support known as the National Consortium for Open Educational Resources (NCOER). NCOER defines OER as “high-quality teaching and learning materials in any medium that reside in the public domain or have been released under an open license that permits no-cost access, adaptation, and redistribution by others.”¹ Following the creation of this consortium, each regional compact received support from the William and Flora Hewlett Foundation to increase OER capacity and implementation in its partner states, share best practices, scale successful efforts, and leverage collective resources to enhance OER implementation across the country.

Together, the regional compacts, working collaboratively as NCOER, elevate policies and practices that advance open education. This is accomplished through scaling the use of high-quality OER, enabling research, developing sustainable solutions, creating infrastructure, and increasing collaboration among the broader open education community in the United States and beyond. NCOER commissioned this report to analyze state legislation and system-level policies on OER.

The Scholarly Publishing and Academic Resources Coalition (SPARC), a national nonprofit organization advocating for open, equitable research and education practices and policies, has become a leading resource in tracking state and federal legislation pertaining to open education. With approximately half of all U.S. states having introduced or passed legislation leveraging OER as a path to increasing affordability and accessibility to postsecondary education, one of SPARC’s most popular resources has become its [OER State Policy Tracker](#), which follows live legislative actions concerning OER and other relevant practices at both the state and federal level.² This report leverages this tool to better understand the history and focus of OER legislation and policies across the United States.

OER State Policy Analysis

Tracking OER Legislation Developments



Collection Methodology

Of the dozens of state policies and initiatives tracked by SPARC from 2009 through 2023, 24 states enacted 64 policies directly related to adopting or scaling OER. SPARC defines policies as any law, regulation, appropriation or funding allocation, or endorsement by a state government. These policies address a range of issues and practices, such as creating or adopting OER, creating Z-degree programs (degree programs that offer all learning materials at no cost for students), requiring course marking in online registration systems, and addressing textbook affordability through the use of OER.

Some of the policies or initiatives included on the SPARC Policy Tracker were excluded from this report for various reasons (see Appendix for a full list of excluded policies). First, a policy was not included if it only referenced K-12 or other educational systems outside of higher education. Other policies relevant to higher education, but excluded from this report, referenced course marking, textbook affordability, or campus bookstore policies that did not explicitly include OER or open access language. Initiatives supported or funded by states, but not backed by legislation, or those without legislation published online, were also excluded. An additional 10 state policies enacted in eight states were introduced, passed, or added to the SPARC Policy Tracker after data collection and, therefore, are also excluded from this report.

Findings

The following analysis covers seven key areas of interest in OER state legislation:

- Genesis of legislation
- Policymaking
- Definition alignment
- Appropriations
- Governance and oversight
- Assessment and metrics
- Timeframe of legislation

The OER State Policy Database, intended for use in conjunction with the SPARC Policy Tracker, provides further details about included policies addressing each of these seven areas of interest.³

Genesis of Legislation

State OER policies were most likely to reach the state legislature through introduction by a committee on education, higher education, or workforce development; 39 policies were introduced in this way. Alternatively, 21 policies were included in an omnibus or trailer bill.

Three states (Iowa, Pennsylvania, and Texas) leveraged federal funding from Governor's Emergency Educational Relief Funds (GEER) to expand OER in higher education. Idaho was the only state with a statewide OER policy set by the state board of education.

Policymaking

The trajectory of OER policymaking varied greatly across states, with a few key similarities. First initial policies tended to focus on studying OER, or exploring a variety of affordable textbook options to help lower college costs for students and increase transparency in the publishing process.

Colorado and Connecticut were the first to pass OER legislation requiring a study of the existing use of OER and the feasibility of scaling and sustainability across institutions. Following these studies, each state passed subsequent legislation to fund the expansion of OER. Not all of these policies succeeded in expanding OER in higher education.

North Dakota introduced concurrent OER resolutions in 2013 (HCR 3009 and HCR 3013); one requested a study on the use of open textbooks, and the other urged higher education leaders to expand the use of open textbooks. A 2015 bill (HR 1003) provided one-time funding for OER training, but no additional OER policies impacting higher education have been introduced or passed in the state since.

OER Grant Programs

Another similarity across policy purposes was the use of grant programs to influence the expansion of OER and Z-degree programs. California Senate Bill 117 (2023) is an example of one of the most recent bills created to mitigate the impacts of the COVID-19 pandemic on community college students and staff.⁴ The bill provided a block grant to the California Community Colleges with the intent to develop OER and Z-degrees, and address student basic needs and staff professional development. Even though this grant uniquely referenced OER and Z-degrees as solutions to pandemic-related setbacks, all state OER grant programs were otherwise similarly designed. The main goal of each state OER grant program was to provide funding to support faculty and staff in projects relating to creating, scaling, or promoting OER.

Course Marking

Course marking, or displaying the price level of required educational materials on course registration pages, is a more recent policy trend intended to provide increased transparency of textbook costs before students enroll in classes or start coursework.



In 2009, Washington was the first state to require course marking in an OER policy. House Bill 1025 called for bookstores to publicly display prices of course materials at least four weeks before course start dates.”⁵

Since 2017, six states have passed legislation requiring institutions to increase transparency of course materials costs or designate that a course uses OER. In 2021, Oregon passed House Bill 2919, which was solely related to a course marking requirement for public institutions.⁶ While this bill addressed textbook affordability and transparency, it did not mention OER or open educational practices.

Textbook Affordability and Transparency

As demonstrated by the growth in policies requiring course marking, textbook affordability and transparency have become front-and-center for state higher education policymakers. Several policies included in SPARC’s State Policy Tracker addressed textbook affordability without directly mentioning OER, but these policies were still important to include, given the prominence of affordability in OER discussions. For example, Minnesota added a section in its 2018 education appropriations bill (HF 4328) requiring the Minnesota State Board of Trustees to develop a plan “to increase the use of affordable textbooks and instructional materials.”⁷ The bill text further stated that the board must define key terms, including what counted as an affordable textbook. This Minnesota example was particularly interesting, as the state had appropriated funding in other bills for the expansion of OER across the Minnesota state system dating back to 2013. Even though the textbook affordability language in Minnesota’s 2018 bill did not explicitly include OER, the issue closely aligned with other state OER goals and exemplified how state policies could approach similar goals (e.g., affordability) via different paths.

Definition Alignment

State policies varied in their definitions of OER. Some policies used vague language, defining OER as a wide range of educational materials. Other policies used language that almost identically mirrored the definitions of OER used by SPARC and UNESCO.⁸ Key language that aligned state policy definitions with those of SPARC or UNESCO included references to materials residing in the public domain or those released under an open copyright license. In 2019, West Virginia adopted the following language in its originating OER legislation:



“...teaching, learning and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low-cost access, use, adaptation and redistribution by others with no or limited restrictions.”⁹

Cost

In addition to a variety of OER definitions, state policies contrasted widely on their designation for what counts as affordable or low-cost course materials. Often, there was a disconnect between defining OER and low-cost course materials across states. While all aim to minimize barriers of affordability and accessibility, OER, no-cost, and low-cost are not terms to be used interchangeably.

A third of the states with signed OER legislation did not clearly define low-cost materials, while the remaining states either did not explicitly define OER (e.g., Arkansas SB 265), or expanded OER to include materials offered at low or affordable cost to students. For example, Oregon’s 2015 House Bill 2817 defined OER as being “in the public domain or [materials] that have been released under an intellectual property license that permits their free use and repurposing by others.” The bill later referred to increasing the use of “low- or no-cost open educational resources,”¹⁰ which seemingly conflates the foundational definition of OER with low-cost commercial materials.

This dual message of OER being freely accessible, but also potentially coming at a cost, ran counter to the purpose of OER to consist of materials that resided in the public domain, or under an open copyright for free access and use. Other states included language assigning a cost to OER in the policy definition, but did not specify what that cost should be. Only two policies (Connecticut HB 7424 and Idaho’s Instructional Material Access and Affordability board policy) specified what amount would constitute low-cost materials. Connecticut’s cost definition was broadly defined to fluctuate with market conditions stating that resources must be “at a cost lower than the market value of the printed textbook or other educational resource.”¹¹ An Idaho board policy on instructional materials access and affordability shared a more detailed scale, ranging from zero to high-cost (more than \$100). In this scale, low cost was defined as materials listed between \$31 and \$50.¹² Ultimately, what might be considered a low-cost resource in one state might not be considered a low-cost in another.

Quality

Reference to the quality of OER materials was common throughout state policies. The term “high-quality” was often used to define what type of OER materials the legislation would expand or fund, but high-quality was not defined, and no policy provided guidance on how to measure the quality of OER. For example, West Virginia’s House Bill 3555 (2023) requested that an affordability committee at each institution provide recommendations for selecting “appropriate, high-quality course educational materials” without clarification on who would be responsible for determining what was deemed appropriate or high-quality.¹³ Similarly, Maryland passed Senate Bill 424 (2017) with the intent to ensure that all students had access to “high-quality” educational materials.¹⁴ OER was an example of such materials, but the lack of clarity on how to determine quality, as well as a lack of definition of OER itself, followed the pattern of vague policy language in OER legislation.

Appropriations

It was uncommon to have state appropriations tied to OER legislation. When funding was provided, it was for limited activities or timelines. Many appropriations were directed towards OER creation and expansion, such as creating an OER grant program available to public postsecondary faculty and staff. In 2020, Pennsylvania used its COVID-19-related GEER to provide grants supporting the creation and adoption of OER.¹⁵ Colorado designated appropriations in each of its three bills to advance OER across the state, which varied based on policy purpose. The Colorado bills included funds to study OER usage, grants to support faculty and staff creating or adopting OER, and a salary for an additional staff member at the Colorado Department of Higher Education to oversee the program.^{16, 17, 18} Another growing trend was offering state funds to create Z-degree programs. Idaho appropriated \$1 million to the state Board of Education to create a community college zero-textbook-cost program.¹⁹ New York’s 2018 budget invested \$8 million to provide OER to students in the state’s CUNY and SUNY systems and to target high-enrollment courses.²⁰

Five policies in three states (Minnesota, Washington, and California) had conditional requirements to receive funding. For example, Washington House Bill 1946 (2009) and House Bill 1375 (2017) included a note that the bills would be void if funding was not provided in that fiscal year’s omnibus appropriations act.^{21, 22} Two 2012 policies in California, Senate Bill 1052 and 1053, included similar conditions, but added that funding could also be provided by federal or private funders.^{23, 24} Minnesota Senate Bill 1236 (2013) had the strictest conditions, tying partial disbursement of 2015 appropriations to the Minnesota State Board of Trustees if it met three of their five listed performance goals. One of Minnesota’s goals was to collect data on OER usage in the system and create a plan “to actualize a 1% reduction” in instruction costs.²⁵

Governance and Oversight

The group, organization, or institution charged with implementing or overseeing the policy purpose varied by state. New positions were not commonly funded in legislation. However, there were a few exceptions. In addition to Colorado’s policy noted in the previous section, Oregon’s 2015 House Bill 2871 established an educational resource specialist within the state’s higher education department to oversee

state OER expansion.²⁶ It was more common to assign oversight to existing state or institutional group, or to appoint a council to serve as an intermediary body. Whether it was the designated OER council, institutional leaders, or the state's higher education agency, state policies required implementing bodies to submit regular reports to the state legislature or other governing bodies with progress updates and/or recommendations for additional uses of OER. (See the "Assessment and Metrics" section for details of reporting requirements.)

Establishment of OER Councils

A pattern identified among state policies was the creation of OER councils. Specifically, these policies stated that funding would not be provided for council members' service, but the state would consider reimbursement of expenses such as necessary travel or training. California was the only state to appropriate funds to be used for an OER council (in addition to an OER library and an incentive program for OER expansion) in the 2015 Assembly Bill 798.²⁷ Colorado appropriated funds for the state's OER council to hire a consultant to study the use of OER in House Bill 258 (2017). However, the bill did not directly fund council members' time or service.²⁸

Council Membership

OER council membership varied. Legislative language left some flexibility to the appointing body (e.g., governor, legislative leaders, the state's higher education department, etc.), but set requirements for an attempt at broad representation of institutional leaders and faculty members from two-year and four-year public postsecondary institutions. Notably, students were often a part of councils or task forces, but their participation was subject to stipulations varying by state. In Colorado, for example, students on the council were required to attend a public postsecondary institution. In Illinois, they were required to serve on the student advisory council. In Oklahoma's HB 2693, students were required to attend a career and technical education school to serve. Other common inclusions on these appointed councils were library professionals, instructional designers, and higher education administrators.

State context and policy goals determined the makeup of OER councils. While many policies only referred to public postsecondary institutions, states with a large share of independent institutions, like Connecticut, included representatives from those institutions. Illinois (HB 0332, 2021) was the only state that appointed a task force requiring a member of the textbook publishing industry, in addition to a representative from a national association of higher education bookstores and one from a higher education digital content platform.²⁹ West Virginia's (HB 2853, 2019) and Louisiana's (HCR 80, 2016) OER councils combined K-12 and postsecondary system representatives.^{30, 31} Washington's Senate Bill 5092 (2021) on open-access climate science educational curricula also included both sectors, with the intent to collaborate on teacher preparation programs.³² When a policy did not appoint a new implementing body, it often assigned oversight responsibilities to existing state governing agencies or institutions. Examples included Minnesota's SF 2415 (2019), which had the Minnesota State Board of Trustees report directly to members of the appropriate legislative committee;³³ Texas SB 810 (2017), requiring the Texas State Board of Education to report to state government leaders;³⁴ and New Jersey's S 768 (2018), which required the state secretary to review and submit institutional plans.³⁵

Assessment and Metrics

Many state policies mentioned specific metrics that must be reported to the state or other oversight bodies but did not require or recommend data collection methods. The most common metrics requested by state policies included:

- Total cost savings to students enrolled in courses using OER
- Number of courses using OER categorized as highly-enrolled, general education courses that might also be easily transferred to other state public institutions
- Number of OER materials created
- Number of courses primarily using OER

Assessment language was often vague and deferred to the implementing body to determine exact measurements or practices. For example, Washington’s 2017 House Bill 1561 required a report of how OER grants were used. However, the policy did not specify what that evaluation process should look like, stating that, “The report must include information on the number of grant applications received, the number of grants awarded, and an evaluation of how the grants were used to expand the use of open educational resources.”³⁶ Other examples of vague language included policies that stated general overarching goals (e.g., lowering student costs or improving student learning outcomes) without any way to assess or track progress towards those goals.

Timeframe of Legislation

Almost all bills had an endpoint of some kind related to funding, reporting, or the designated council or task force’s service period. Timelines varied by state and policy, ranging from one year (e.g., Connecticut HB 6117) to five years (e.g., Oklahoma HB 2693). Multiple states updated policies in subsequent amendments, or enacted new policies that acted before previous legislation ended. In 2018, Colorado established funding for the statewide OER grant program over a three-year period in House Bill 1331,³⁷ which was then expanded in Senate Bill 215 (2021) for an additional five years.³⁸

Examples of state policies establishing long-term practices or programs included Maryland (HB 318, 2020), which established a textbook transparency act,³⁹ Minnesota, which created new Z-degree textbook programs (SF 2415),⁴⁰ and Texas, which developed an online OER state repository (HB 3652).⁴¹ While policies may not have issued a repeal date, that did not mean they were funded in perpetuity. For example, funding for Minnesota’s new Z-degree textbook program included a one-time appropriation split across two fiscal years, while the Texas online repository did not mention additional funding provided for this purpose.

Legislative Challenges and Areas of Opportunity

The top three legislative challenges observed in existing state policies included inconsistent definitions of OER and open educational practices, lack of financial support, and vague goals or assessment procedures.

Definition and Use of Key Terms

Clear definitions and use of key terms, such as OER, can be especially important in ensuring that policies translated to actions that aligned with policy goals. Broadening the scope of OER, beyond materials in the public domain or published under an open license, could create further confusion in not only defining OER, but understanding the purpose and outcomes of using OER in higher education classrooms. For example, New Jersey's S 768 (2018) required institutions to create a plan "to expand the use of open textbooks and commercial digital learning materials in order to achieve savings for students." Although the New Jersey legislation uses a widely recognized definition of OER at the outset, the addition of "and commercial digital learning materials" in the subsequent section introduces a broader, less common conception of the term "open textbook."

State Funding

Coleman-Prisco (2017) studied challenges to the adoption of OER, with a primary focus on faculty and staff perceptions regarding usage of OER.⁴² A key challenge is a lack of funding to adequately support faculty in creating, adopting, or scaling OER. State policymakers could further support and expand OER access by addressing this issue through increased state funding. State funding could be used for a variety of purposes, like creating grant programs to incentivize and properly compensate faculty and staff for their time to adopt OER, as well to sustain open educational practices. This example, among similarly funded programs created by other states, showed how even a small investment from the state could result in big returns.



North Dakota's state-funded OER grant program included a \$110,000 appropriation to the North Dakota state university system to support an institutional OER grant program. A state audit reported that the program saved students "between 10 and 20 times the original investment within just two years."⁴³

Clear Goals and Assessment Practices

In addition to defining key terms and providing funding, the goals and assessment requirements within a policy could shape the success of these bills. Even with the best intentions, policies with vague assessment requirements may not get the data needed to accurately measure progress or success. A lack of standardized assessment practices across institutions and states resulted in vague assessment and metric components in legislation. This limits the ability to effectively compare or evaluate data. Despite a lack of clarity in assessment practices, aligning assessment measures with

best practices in open education is important. Examples of improved assessment and data collection include evaluating the accessibility of OER and assessing student learning outcomes in addition to cost savings. On the other hand, being too heavy-handed with data and information requests could result in resistance, especially if incentives or additional support are not provided. Determining the best path forward would depend on the policy context and require collaboration with stakeholders to create buy-in at multiple levels of the state or institution.⁴⁴ Balancing the creation of clear goals and assessment measurements in consultation with a broad group of stakeholders could lead to successful implementation and creation of future OER policies.

Promising Policies

The following examples of promising policies were selected based on their holistic approach to creating a supportive and sustainable environment to advance OER in higher education. These policies can serve as examples for legislation in other states.

For more information on best practices for advancing OER state policy, download the latest edition of the SPARC OER State Policy Playbook.⁴⁵

Additional resources for creating institutional- and system-level policies include the College and University OER Policy Development Tool and Institutional OER Policy Template.^{46, 47}

Promising State Legislation Examples

Colorado SB 215 (2021): Use of Open Educational Resources in Higher Education⁴⁸

Colorado's 2021 legislation concerning the use of OER was the state's third enacted bill advancing OER in higher education. This bill was built on prior legislation (SB17-258, 2017) and (HB18-1331, 2018) that created a statewide OER Council and OER grant program for public postsecondary institutions.^{49, 50} Colorado passed a supplemental appropriations bill in 2023,⁵¹ providing \$1.1 million according to SB 215.

The 2021 bill extended the grant program and funding for an additional five years after the initial two cohorts of faculty and staff were funded in 2019 and 2020. Highlights from this policy included a one-time appropriation for the grant program in that fiscal year and an additional state higher education department employee to implement this act. The SPARC OER State Policy Playbook highlighted the 2018 Colorado bill updating the OER Council makeup to include a broad range of higher education stakeholders clearly outlined in state policy. While the 2021 legislation did not make any changes to the council, it did reference the continuation of this oversight body to consist of:

- Five faculty members
- Three library professionals
- One student enrolled at a public institution of higher education
- One instructional design expert
- One informational technology expert
- One administrator

The most notable change from prior legislation was an updated OER definition:



Open educational resources means high-quality teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits free use and repurposing by others. Open educational resources may include full courses, course materials, modules, textbooks, faculty-created content, streaming videos, exams, software, and other tools, materials, or techniques used to support access to knowledge.

In this version, the policy was updated to exclude 2017 and 2018 policy language stating that OER could be available to students for a “very low cost.” The new definition reflected the SPARC and UNESCO definition of OER being free to access, use, and repurpose. Similarly, the definition for a Z-degree was described as using OER or other educational materials that were “entirely free to the student.”

The final bill included reporting procedures with required metrics for annual reports but followed the pattern of other state policies by allowing institutions to determine the best way to track and measure data being requested. The policy text began with a statement applauding the success of OER in reducing student costs for Colorado students, which in turn improved “student equity in higher education and [led] to increased student success.” However, the policy did not define these terms or provide metrics to support this.

Illinois HB 0332 2021: College Course Materials Affordability and Equitable Access Collaborative Study Act⁵²

Illinois’s first legislative bill addressing OER in higher education created the *College Course Materials Affordability and Equitable Access Task Force*, assigned to submit a report studying a range of affordable course materials, including OER. The goal of the report was to explore student cost-saving methods,



An Illinois task force was charged with examining whether methods of improving equity in higher education:

- (A) improved equitable access to required course materials by the first day of class;
- (B) increased the affordability of required course materials; and
- (C) improved access to learning materials and improved student outcomes for minority, low-income, and first-generation students.

across private and public institutions, in Illinois and nationwide, and to improve “students’ equitable first-day-of-class access to required course materials.” This policy stood out based on broad representation on the task force, a clear goal and steps to achieve that goal, and the inclusion of equity.

The task force consisted of 20 members representing various institutions and interests appointed by select state government leaders. Each task force member was appointed by a designated leader, which complicated the appointment process (e.g., the member of the public was appointed by the Minority Leader of the House of Representatives). However, this appointment structure resulted in a task force representing a broad group of stakeholders, with members from the general assembly, the general public, institutional leadership, the student advisory council, the library, and the textbook publishing industry. The task force was also assigned a clear goal: to submit a report that addressed a specific list of items.

Promising Institutional Policy Example

Virginia Tidewater Community College

Of the identified system- and institutional- level policies, [Virginia’s Tidewater Community College](#) (TCC) OER policy was regularly cited by leading open education advocates as an exemplar in its support of OER usage and development across the college.⁵⁴ While it is not an example of a statewide policy, the approach taken by this college provides an insightful example of what an effective OER policy could look like at the institutional level. Through grant funding, primarily via private foundations, TCC expanded its Z-degree program by creating new OER materials to meet demand at the institution.



TCC was one of the first U.S. postsecondary institutions to launch a Z-degree program in 2013.⁵⁵

Despite having an institutional policy on OER, TCC leaders did not mandate the use of OER. The policy established as a living document in 2013 and updated in 2016, “provides guidance to faculty” who intend to use OER in the classroom. Faculty seeking a Z-course designation had to meet the required procedures outlined in the policy, but faculty simply using OER were encouraged, not required, to do the same. Other strengths of this institutional policy included:

- **Nationally recognized OER definition:** OER selected for Z-courses must be published under the Creative Commons License (CC-BY) or exist in the public domain. Faculty were encouraged to follow the “Five Rs of OER.”⁵⁶
- **Professional development opportunities:** Faculty training was required for those creating a Z-course and which was also offered to those seeking to use OER.
- **Broad group of stakeholders:** In addition to providing faculty training, librarians were offered as support to faculty in finding and creating OER. Additional support was provided by faculty leaders, instructional designers, and an OER advisory group.

- **Transparent course marking:** Z-courses, or those that solely used OER, were marked as “ZERO” courses in the catalog, while courses requiring materials less than \$40 were marked as “LT40.”
- **Regular assessment and review process:** Faculty must track and report data on the effectiveness of OER, including its impact on student learning outcomes, which is reviewed every three years to ensure quality standards were being met.

Conclusion

As advocates have invested time and resources in increasing awareness of the potential benefits of OER in higher education, OER policies at the state level have also grown. More than half of U.S. states have passed 64 pieces of OER legislation, with an additional 10 bills in 2023 alone. It is more important than ever to understand the history as well as the implications and challenges of addressing OER practices through legislation.

State- and system-level policies vary greatly in their approach to the adoption or scaling of OER: from the size of state appropriations to the stakeholders who were assigned oversight, each state has adapted its own approach to addressing postsecondary affordability by expanding access to and use of OER. Recently, state policy language has standardized in its definition of OER and in its creation of similar programs to support the expansion of OER across institutions. As OER, textbook affordability, and cost transparency continue to be issues addressed at the state legislative level, state policymakers may increasingly look to other policy examples to adapt to their own state context.

Appendix: SPARC Policies Not Included in Analysis

As of February 27, 2024

Referencing K-12 education

- States that joined the U.S. Department of Education's **#GoOpen campaign** for openly licensed courseware educational resources in K-12 education: California, Connecticut, Delaware, Georgia, Massachusetts, Michigan, Oregon, Rhode Island, Virginia, and Washington.
- **Illinois HB 2878 (2021)**: Requires the Board of Higher Education and the Illinois Community College Board to create the Early Childhood Access Consortium for Equity. Among other provisions, the consortium is directed to create an open educational resources library if deemed beneficial and feasible. Last action: 2021-05-31 – Passed both houses. Bill not available on Legiscan, presumably failed.
- **Michigan HB 5579 (2018)**: Appropriations bill including funding for the Michigan Virtual University. Includes provision requiring that funds shall be used to provide leadership for the state's system of virtual learning education by providing an internet-based platform that educators can use to create student-centric learning tools and resources for sharing in the state's open educational resource repository and facilitate a user network that assists educators in using the content creation platform and state repository for open educational resources. As part of this initiative, the Michigan Virtual University shall work collaboratively with districts and intermediate districts to establish a plan to make available virtual resources that align to Michigan's K-12 curriculum standards for use by students, educators, and parents.
- **North Dakota HB 1358 (2017)**: This bill requires the legislative management to consider studying the use of open educational resources in the elementary and secondary school system. The study must include an analysis of potential cost savings for school districts and the department of public instruction, the availability of private sector partnerships to aid in the development, adoption, implementation, and funding of OER, and the steps necessary to establish North Dakota as a #GoOpen state with the U.S. Department of Education.
- **Oregon COVID-19 Relief Funds (2020)**: The state combined funds from the Elementary and Secondary School Emergency Relief and Governor's Emergency Education Relief (GEER) Funds, both authorized by the CARES Act, to create a Comprehensive Distance Learning Grant Program to address student needs and overcome barriers to distance learning. As part of the grant program's "professional learning for educators" category, funds may be used to create OER.
- **Utah HB 391 (2020)**: This bill amends the definition of "textbook" and expands the costs and materials provided by a school for which a fee may not be charged to students. Textbook is defined to mean "a hardcopy book or printed pages of instructional material, including a consumable workbook; or computer hardware, software, or digital content." This new definition specifies that "textbook" does not include instructional equipment or instructional supplies.
- **Washington HB 2337 (2012)**: Requires the superintendent of public instruction to take the lead in developing openly licensed courseware aligned with its state standards and placed under a Creative Commons attribution license that allows others to use, distribute,

Appendix: SPARC Policies Not Included in Analysis (continued)

and create derivative works based upon digital material, while still allowing the authors or creators to retain the copyright and to receive credit for their efforts. Allocates 1.5% of the amount otherwise allocable to school districts for curriculum and textbooks under RCW 28A.150.260(8) to be allocated to the office of the superintendent of public instruction solely for the development of openly licensed courseware.

No reference to OER or open education

- **Florida SB 72 (2020):** Amends existing law to require innovative pricing techniques and payment options to include an opt-out provision (existing law requires an opt-in provision) for students and may be approved only if there is documented evidence that the options reduce the cost of textbooks and instructional materials for students taking a course.
- **Florida SB 6 (2019):** Would delete the requirement in statute that the Florida College System institution and state university board of trustees examine the cost of textbooks and instructional materials each semester for all general education courses offered. This section was set to be repealed on July 1, 2018, unless reviewed and saved from repeal through reenactment by the legislature.
- **Florida SB 190 (2019):** This bill would require the Board of Governors to develop a training program for trustees which addresses the role of university boards of trustees in governing institutional resources and protecting the public interest. This would require training related to establishing policies that promote college affordability, including ensuring the costs of university fees, textbooks, and instructional materials are minimized whenever possible. Training program not referenced in the filed bill.
- **Massachusetts H4201 (2016):** Language was inserted into the FY 2017 appropriations bill authorizing the U.S. Department of Higher Education to establish suggested guidelines and protocols in accordance with 34 CFR 668.164(c)(2) to encourage and assist colleges and universities with the implementation of programs to reduce the cost of textbooks and other educational materials. This language was circulated by the Association of American Publishers (AAP) to legislators in many different states.
- **Minnesota SF 3656 / HF 4328 (2018):** This education appropriations bill included a new section that would require the Minnesota State Board of Trustees to develop a plan to increase the use of affordable textbooks and instructional materials. The plan must establish a goal for the percentage of all courses offered at state colleges and universities that will use affordable textbooks and instructional materials.
- **Oregon HB 2919 (2021):** Requires each public university and community college to prominently display total costs of all required course materials and fees for no less than 75% of total courses offered by public university or community college. Requires annual reporting to Higher Education Coordinating Commission detailing compliance with the requirement.
- **Texas HB 33 (2011):** Requires institutions of higher education to make information about

Appendix: SPARC Policies Not Included in Analysis (continued)

required and recommended textbooks for each course available to students, and to disseminate information about available programs to assist with purchasing textbooks. Requires textbook publishers to provide information to faculty about textbook prices and revision information. Requires that publishers offer the components of textbook bundles for sale separately.

- **Virginia HB 2262 (2017):** Established the Online Virginia Network Authority and requires each public institution of higher education and each consortium of public institutions of higher education that offers online courses, online degree programs, or online credential programs to offer courses, degree programs, or credential programs through the authority. The authority shall, to the extent practicable, manage and reduce program costs by reducing textbook costs through open access. “Open access” language was not in the filed bill.
- **Washington HB 2300 (2007):** Publishers must immediately make available to faculty at higher education institutions the wholesale price of college textbooks and a history of revisions.

Initiative not supported by legislation

- **Affordable Learning Georgia (2014-Present):** A University System of Georgia initiative to promote student success by supporting the implementation of affordable alternatives to expensive commercial textbooks, particularly OER and open textbooks. The program was funded by appropriations from the legislature in 2014 and subsequent years. Appropriations language was not available in online legislation.
- **Massachusetts Performance Incentive Grants (2018):** The FY 2019 call for applications for the state’s Performance Incentive Fund (PIF) explicitly listed OER as a possible avenue to achieving one of the three strategic goals. The PIF program awarded several grants for OER projects in previous fiscal years. Legislative texts not available online.
- **Massachusetts Strategic Initiative (2018):** The Massachusetts Department of Higher Education launched a strategic initiative entitled Massachusetts Open Education – Achieving Access for All, a collaborative project focused on building capacity for open educational resources across the state. The initiative benefits 28 public higher education institutions and includes holding training events and a statewide OER landscape assessment.
- **Rhode Island Open Textbook Initiative (2016-2021):** In 2016, Governor Gina Raimondo announced a statewide Open Textbook Initiative challenging Rhode Island’s higher education institutions to reduce college costs by saving students \$5 million over five years using openly licensed textbooks. The Rhode Island Office of Innovation coordinated the Open Textbook Initiative in partnership with Rhode Island College’s Adams Library and Roger Williams University. Funding for memberships with the Open Textbook Network (now Open Education Network) and micro-grants for the state’s public institutions were provided by Rhode Island Office of the Postsecondary Commissioner and the Office of Innovation. No legislation is associated with this initiative.

Appendix: SPARC Policies Not Included in Analysis (continued)

2023 legislation unavailable at time of data collection

- **California SB 101 (2023):** Appropriates \$3 million to the California Community Colleges to provide textbooks or digital course content to incarcerated students and encourages the colleges to use OER when possible.
- **California AB 607 (2023):** Makes changes to the course marking statute by adding a requirement that institutions prominently display the estimated course materials costs for no less than 75% of the classes listed in the online course schedule.
- **Colorado SB 118 (2023):** Continued appropriations for the Colorado OER Council and associated activities pursuant to SB 215 (2021), which provided \$1 million in appropriations for the Colorado OER Council for each of the next five fiscal years.
- **Connecticut HB 6771 (2023):** Implements the governor's recommendations to (1) redefine "open educational resource," (2) require the development of a model policy to adopt common definitions and data collection methods, (3) require a biennial, rather than annual, report concerning use of open educational resources, and (4) add a part-time staff position.
- **Connecticut HB 6941 (2023):** Implements the governor's recommendations, including making the Connecticut Open Educational Resource Coordinating Council part of the Connecticut State University System and requiring the council to develop model OER policies for institutions of higher education to adopt.
- **Illinois SB 250 (2023):** Appropriates \$3 million for grants to academic libraries for OER.
- **Louisiana HB 644 (2023):** Establishes the Affordable Digital Textbook and Learning Materials Pilot Program through the Louisiana Board of Regents to provide open and no-cost digital textbooks, study tools, online homework, and OER that can be used to improve student outcomes.
- **Minnesota HF 2073 (2023):** Appropriates \$1 million in FY 2024 and \$1 million in FY 2025 to implement the Z-degree program under section 136F.305 of Minnesota statutes.
- **Washington SB 5187 (2023):** Provides \$300,000 for the College of Education to collaborate with teacher preparation programs and the office of the superintendent of public instruction to develop open access climate science educational curriculum for use in teacher preparation programs; \$250,000 for open K-12 educational resources.
- **Wisconsin SB 70 (2023):** Requires the Technical College System Board to award grants to technical college district boards for the creation of OER that will allow the public and technical colleges across the TCS to access technical college course materials.

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