

Text of Proposed New 19 TAC
Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter AA. Commissioner's Rules Concerning the Commissioner's List of Approved Electronic Textbooks and Instructional Materials

§66.1001. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commissioner—commissioner of education
- (2) Electronic textbook—computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium; or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.
- (3) Instructional materials—any material or resource that conveys information to the student or otherwise contributes to the learning process; including tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through grade five. With the exception of tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through grade five, instructional materials in this subchapter are limited to materials that are delivered electronically.
- (4) Open-Source Textbook—an electronic textbook that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook.
- (5) Publisher—any developer or distributor of electronic textbooks and instructional materials.

§66.1002. Scope of Rules.

The commissioner of education shall adopt a list of electronic textbooks and instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this subchapter.

§66.1003. Requirement for Registers.

The commissioner of education shall require Agency staff to keep a register to record:

- (1) all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, hardware or software providers or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or

- (2) contact regarding any instructional materials submitted and being considered for commissioner approval.

§66.1004. Manufacturing Standards and Specifications.

- (a) Electronic textbooks and instructional materials included on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials shall comply with the requirements of the technical standards of the Federal Rehabilitation Act, Section 508. If it is determined that good cause exists, the commissioner of education may grant an exception to this requirement.
- (b) A publisher shall file a statement certifying that electronic textbooks and instructional materials submitted for consideration will meet the requirements of the technical standards of the Federal Rehabilitation Act, Section 508. Each statement must be made on a form provided by the commissioner, signed by a company official, and filed on or before the deadline specified in the schedule for the adoption process.
- (c) If, during the contract period, the commissioner determines that any adopted electronic textbooks and instructional materials do not meet the requirements of the technical standards of the Federal Rehabilitation Act, Section 508, the materials shall be replaced by the publisher without cost to the state.
- (d) This section applies to the State Board of Education open source textbook submitted by an eligible institution as defined in Section 31.0241.

§66.1005. Procedures Governing Violations of Statutes -- Administrative Penalties.

- (a) Administrative penalties. The commissioner may impose a reasonable administrative penalty against a publisher found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the commissioner has granted the publisher a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.
- (b) Penalties for failure to correct factual errors.
- (1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.
- (2) A factual error repeated in a single item or contained in both the student and teacher components of electronic textbooks and instructional materials shall be counted once for the purpose of determining penalties.
- (3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher or for failure to correct a factual error identified in the report of the commissioner under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the commissioner of education. The publisher shall correct any errors within 30 days of notice from the commissioner.

- (4) A penalty not to exceed \$5,000 may be assessed for each factual error identified after the deadline established in the request by which publishers must have submitted corrected versions of adopted electronic textbooks and instructional materials.
- (c) Categories of factual errors.
- (1) Category 1. A factual error in a student component that interferes with student learning.
 - (2) Category 2. A factual error in a teacher component only.
 - (3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.
- (d) First-year penalties. The base and per-license penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.
- (1) Category 1 error. \$25,000 base plus 1% of sales for electronic textbooks and instructional materials on the commissioner List of Approved Electronic Textbooks and Instructional Materials.
 - (2) Category 2 error. \$15,000 base plus 1% of sales for electronic textbooks and instructional materials on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials.
 - (3) Category 3 error. \$5,000 base plus 1% of sales for electronic textbooks and instructional materials on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials.
- (e) Second-year penalties. The base penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c)-(e) of this section, repeats the violation in the subsequent adoption.
- (1) Category 1 error. \$30,000 base plus 1% of sales for electronic textbooks and instructional materials on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials.
 - (2) Category 2 error. \$20,000 base plus 1% of sales for electronic textbooks and instructional materials on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials.
 - (3) Category 3 error. \$10,000 base plus 1% of sales for electronic textbooks and instructional materials on the Commissioner's List of Approved Electronic Textbooks and Instructional Materials.
- (f) Penalties for failure to make adopted electronic textbooks and instructional materials readily available, including teacher components, in a timely manner and with consistent 24/7 access. The commissioner may assess penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components specified by §66.51(a)(3) of this

- title (relating to Instructional Materials Purchased by the State), in accordance with provisions in the contracts.
- (g) Penalties for selling electronic textbooks and instructional materials with factual errors. The commissioner may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of electronic textbooks and instructional materials.
- (h) Penalties for failure to maintain websites in state-adopted products. The commissioner may assess administrative penalties against a publisher who:
- (1) Fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection..
 - (2) Fails to monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in the contract for the period determined by the commissioner for electronic textbooks and instructional materials.
- (i) If the commissioner determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information during the contract period, the instructional materials or information shall be replaced with complying materials or information by the publisher without cost to the state.
- (j) The publisher must submit a request to the commissioner of education as specified in 66.75 for approval to revise or substitute content.
- (k) The publisher agrees that electronic, web-based or online instructional materials listed in the contract will not be altered in any way that would remove content from the curriculum, or that would change content in the curriculum without prior commissioner approval.
- (l) The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses.
- (m) Commissioner of education discretion regarding penalties. The commissioner may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.
- (o) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, the commissioner is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a

timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

§66.1006. Review and Adoption Cycles.

- (a) The commissioner of education may adopt a review and adoption cycle for subjects in the foundation and enrichment curriculum for electronic textbooks and instructional materials.
- (b) In determining an adoption cycle, the commissioner shall consider the adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the SBOE. The commissioner may issue requests for content outside of the normal SBOE adoption cycle.

§66.1007. Request, Public Notice, and Schedule for Adopting Electronic Textbooks and Instructional Materials.

- (a) The commissioner of education shall issue a request calling for electronic textbooks and instructional materials according to a cycle for foundation and enrichment subjects as determined by the commissioner or according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The request shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited.
- (b) At a minimum, the requests shall contain the following:
 - (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
 - (2) information regarding the technical standards of the Federal Rehabilitation Act, Section 508;
 - (3) a schedule for the adoption process for electronic textbooks and instructional materials; and
- (c) All request shall require instructional materials to cover specific essential knowledge and skills a designated number of times.
- (d) Under extraordinary circumstances, the commissioner of education may adopt an emergency, supplementary, or revised request without complying with the timelines and other requirements of this section.

§66.1009. Commissioner Review Panels: Eligibility.

A person is not eligible to serve on a commissioner review panel if, during the three years immediately preceding the appointment, the person:

- (1) was employed by or received funds from any individual or entity in any way affiliated with a publishing or software company participating in the adoption under which the commissioner review panel will evaluate instructional content; or

- (2) owned or controlled, directly or indirectly, any interest in a publishing or software company or an entity receiving funds from a publishing company.

§66.1010. Electronic Textbook Review Panels: Appointment.

(a) The commissioner of education shall:

- (1) determine the number of review panels needed to review electronic textbooks and instructional materials under consideration for adoption, and
- (2) determine the number of persons to serve on each panel.

(b) Each appointment to a electronic textbook review panel shall be made by the commissioner of education.

(c) The commissioner of education shall make appointments to electronic textbook review panels that ensure that each panel consists of at least two recognized experts in the subject area of the electronic textbooks and instructional materials and at least one expert in the field of educational technology.

(d) The term recognized expert includes not only university professors but also public school teachers, member of the business community, and citizens of Texas with a strong background in a particular discipline.

(e) The commissioner of education shall solicit recommendations for possible appointees to electronic textbook review panels from:

- (1) school districts, open-enrollment charter schools, and educational organizations in the state.
- (2) members of the State Board of Education
- (3) recommendations may be accepted from any Texas resident.
- (4) nominations shall not be made by or accepted from any publishers; authors; depositories; hardware or software providers; or any person who holds any official position with a publisher, author, depository, or agent.

(f) Members of a electronic textbook review panel may be removed at the discretion of the commissioner of education.

§66.1011. Electronic Textbook Review Panels: Duties and Conduct.

(a) The duties of each member of an electronic textbook review panel are to:

- (1) evaluate all electronic textbooks and instructional materials submitted for adoption in each subject assigned to the panel to determine if essential knowledge and skills are covered in the student version of the textbook, as well as in the teacher version of the textbook. Panel members will use commissioner of education-approved procedures for

evaluating coverage of the essential knowledge and skills. The approved procedures include the following.

- (a) Electronic textbook review panel members must participate in online training to ensure clear and consistent guidelines for determining full Texas Essential Knowledge and Skills (TEKS) coverage within the instructional materials.
 - (b) Electronic textbook review panel members must participate in a team during the review and reach a consensus to determine if the TEKS have been covered sufficiently in the instructional materials.
 - (c) Instructional materials shall be evaluated for TEKS coverage at each grade level.
 - (d) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.
 - (e) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.
- (2) submit to the commissioner of education a report indicating the percentage of required TEKS that each submission assigned to be evaluated by the electronic textbook review panel covers;
 - (3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated by the electronic textbook review panel; and
 - (4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).
- (b) Electronic textbook review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, hardware or software providers or depositories; agents for publishers, authors, hardware or software providers, or depositories; any person who holds any official position with publishers, authors, hardware or software providers, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.
 - (c) A member of an electronic textbook review panel shall have no contact with other members of the panel except during official meetings. Electronic textbook review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

§66.1012. Electronic Textbook Review Panels: Orientation.

Electronic textbook review panel members shall receive an orientation including at least the following:

- (1) the responsibilities of an electronic textbook review panel member;
- (2) statutes and rules pertaining to electronic textbooks;
- (3) essential knowledge and skills specified for subjects included in the request for electronic textbooks and instructional materials;
- (4) identifying factual errors;
- (5) the schedule for the adoption process;
- (6) training in technology appropriate to media submitted for adoption; and
- (7) regulatory requirements, including the Government Code, §572.051 (relating to Standards of Conduct), and the Texas Penal Code, §36.02 (relating to Bribery). Copies of the statutes mentioned in this section shall be supplied to each electronic textbook review panel member.

§66.1013. Electronic Textbook Review Panels: No-Contact Periods.

- (a) Electronic textbook review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to an electronic textbook review panel and end after all final recommendations have been made to the commissioner of education. During this period, electronic textbook review panel members shall not be contacted either directly or indirectly by any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel.
- (b) Electronic textbook review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding content of instructional materials being evaluated by the panel.

§66.1014. Response to Request for Qualifications of Electronic Textbooks and Instructional Materials.

- (a) Each publisher who intends to offer electronic textbooks and instructional materials for adoption shall respond to the request to include title, description and price information on or before the date specified in the request. The response shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.
- (b) A publisher shall indicate the percentage of Texas Essential Knowledge and Skills (TEKS) that electronic textbooks and instructional materials are intended to cover.
- (c) If a student or teacher component of a submission consists of more than one electronic content component, a publisher shall provide complete and correct title and description of each item included in the student and/or teacher component at the time the response is due.
- (d) A publisher shall specify hardware, software or special equipment needed to review any item included in an electronic textbooks and instructional materials submission.

(e) Additions to a publisher's submission shall not be accepted after the deadline for responses except as allowed in the request. A publisher who wishes to withdraw electronic textbooks and instructional materials submission after submitting a response shall notify the commissioner of education in writing on or before the date specified.

§66.1015. Electronic Textbooks and Instructional Materials Offered for Adoption by the Commissioner

- (1) Publishers may not submit electronic textbooks or instructional materials that have been authored by an employee of the Texas Education Agency (TEA).
- (2) A teacher's component submitted to accompany student electronic textbooks and instructional materials under consideration for adoption shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school.
- (3) Electronic textbooks and instructional materials adopted by the commissioner of education shall include appropriate training for teachers at no additional cost to districts or open-enrollment charter schools. Appropriate training for teachers is defined as acquiring knowledge and skills that are necessary to effectively provide instruction in the classroom utilizing the electronic textbooks and instructional materials.
- (4) Any discounts offered for numbers of users of adopted electronic textbooks and instructional materials shall be included in price information.
- (5) The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for the entire contract period at the same price. Individual component prices may be listed to show school districts the replacement costs of components.
- (6) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of an electronic textbook or instructional material contributed to the development of the electronic textbook or instructional material. The affidavit shall also state in general terms each author's involvement in the development of the electronic textbook or instructional material.
- (7) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of electronic textbooks and instructional materials submitted for adoption with essential knowledge and skills required by the request. These correlations shall include essential knowledge and skills covered a certain number of times. Correlations shall be submitted in a format approved by the commissioner of education.

§66.1018. Public Comment on Instructional Materials.

Written comments.

- (1) Any resident of Texas may submit written comments for, against, or about any electronic textbooks or instructional materials submitted for adoption.
- (2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the request.
- (3) Copies of written comments and lists of factual errors shall be provided to the participating publishers, regional education service centers (ESCs), and persons who have filed written requests.

§66.1019. Consideration and Adoption of Electronic Textbooks and Instructional Materials.

- (a) The commissioner of education shall review all electronic textbooks and instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:
 - (1) evaluations of instructional materials prepared by electronic textbook review panel members, including the extent to which the materials align to the required Texas Essential Knowledge and Skills (TEKS);
 - (2) compliance with applicable manufacturing standards and specifications and, if applicable, technical requirements of the Federal Rehabilitation Act, Section 508;
 - (3) recommended corrections of factual errors identified by electronic textbook review panels;
 - (4) prices of electronic textbooks and instructional materials submitted for adoption.
- (b) Based on the review specified in subsection (a) of this section, the commissioner of education shall make a final decision regarding the electronic textbooks and instructional materials that will be placed on the approved list that will be made available for schools. Electronic textbooks and/or instructional materials may be rejected for several reasons. They include, but are not limited to:
 - (1) failure to meet essential knowledge and skills specified in the request;
 - (2) failure to meet applicable manufacturing standards and specifications or, if applicable, the technical requirements of Section 508 of the Federal Rehabilitation Act;
 - (3) failure to correct errors of fact; or
 - (4) content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).
- (c) The commissioner of education may allow a publisher to withdraw from the adoption process after the date specified in the request due to recommended placement on a conforming or

nonconforming list, manufacturing specifications required as a condition of adoption that the publisher states cannot be met, or failure to agree to make corrections required by the commissioner.

- (d) The decision by the commissioner regarding the final disposition of electronic textbooks or instructional materials submitted for inclusion on the commissioner's approved list is final and may not be appealed.
- (e) Before the commissioner places an electronic textbook or instructional material on the approved list, the State Board of Education must be given an opportunity to comment on the electronic textbook or instructional material.

§66.1020. Statewide License.

- (a) The commissioner will accept one or more statewide license(s) submitted by a publisher.
- (b) A statewide license grants the right to use and makes a program submitted for adoption available to every student in the state taking the subject and/or in the grade level for which the material is intended and every teacher in the state teaching the subject and/or grade level for which the materials is intended.
- (c) The statewide license price should be the total amount for providing the materials as described in (b). It should not be a per-pupil price.
- (d) Districts will have an option to consider a state-wide license submission or select from other content providers.
- (e) Submission of a statewide license will not prohibit the submission of a bid based on unit price.

§66.1022. Updates to Electronic Textbooks and Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to update the content of state-adopted electronic textbooks and instructional material. A publisher may request to the commissioner to update the navigational features or management system related to the electronic textbook or instructional material. A publisher requesting an update shall provide the request in writing, providing a comparison that includes the changes made in the update with the corresponding sections of the state-adopted electronic textbooks and instructional materials along with access to both the revised electronic textbook and instructional material and the adopted version.
- (b) Requests for approval of updates shall provide that there will be no additional cost to the state.
- (c) Requests for approval of updates shall not be approved during the first year of the original contract unless the commissioner of education determines that changes in technology, curriculum, or other reasons warrant the updates.
- (d) Publishers submitting requests for approval of updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

- (e) The commissioner of education may request publishers to update electronic textbooks and instructional materials at a minimum to accurately reflect current knowledge or information. Publishers shall provide details of the changes, and must be made at least 30 days before the changes are implemented. The commissioner must review the new content before it is included in the materials.
- (f) Publishers shall notify the commissioner of education before making electronic design changes and/or updates that improve performance, design, and technology capabilities, including updates to the navigational features or management system, that enhance the operation and usage for students and teachers but do not include changes to Texas Essential Knowledge and Skills (TEKS) coverage or new content. Notifications must detail the changes, and must be made at least 30 days before the changes are implemented.
- (g) A publisher of electronic instructional materials may provide alternative formats for use by school districts if the cost to the state and school is equal to or less than the cost of the original product.
- (h) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.
- (i) Publishers must notify the commissioner of education in writing if they are providing commissioner-approved products in alternative formats.
- (j) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.
- (k) The commissioner of education may add alternative formats of commissioner-approved products to the list of available products disseminated to school districts.
- (l) The commissioner of education may remove an electronic textbook or instructional material from the list. Before the commissioner removes an electronic textbook or instructional material from the updated list, the removal must be recommended by a panel of recognized experts in the subject area of the electronic textbook or instructional material and experts in education technology.

§66.1023. Delivery of Adopted Electronic Textbooks and Instructional Materials.

- (a) Each publisher is required to have adopted electronic textbooks and instructional materials available for access to school districts throughout the entire adoption period.
- (b) Each publisher shall guarantee accessibility of electronic textbooks and instructional materials at least ten business days before the opening day of school of the year for which the electronic textbooks and instructional materials are ordered if the textbooks and materials have been ordered by a date specified in the sales contract.
- (c) Each publisher with electronic instructional materials and textbooks in development and otherwise inaccessible shall notify affected school districts of the expected accessibility dates for each title not available.

- (d) Payments from the district or open-enrollment charter school for adopted electronic textbooks and instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.

§66.1024. Sample Copies of Electronic Textbooks and Instructional Materials for School Districts.

- (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes adopted electronic textbooks and instructional materials. Descriptive information provided to each school district or open-enrollment charter school shall be identical.
- (b) Upon request by the textbook coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete sample of adopted electronic textbooks and instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstrations or representative format, provided that identical samples are provided to each school district or open-enrollment charter school.
- (c) Samples supplied to school districts shall be provided and distributed at the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. Publishers may make arrangements with school districts or open-enrollment charter schools to retrieve samples after local selections are completed, but the state does not guarantee return of sample instructional materials.

§66.1025. Selection of Instructional Materials by School Districts.

- (a) If a school district or open-enrollment charter school selects for a particular subject or grade level an electronic textbook or instructional material on the list adopted under Section 31.0231, the state shall pay the district or school an amount equal to the cost of the electronic textbook or instructional material plus textbook credits under Section 31.1011 equal to 50 percent of the difference between that cost and the limitation established under Section 31.025 for a textbook for that subject and grade level, multiplied by the number of electronic textbooks or instructional materials the district or school needs for that subject and grade level.
- (b) A school district or open-enrollment charter school that selects a subscription-based electronic textbook or instructional material from either the SBOE's conforming or nonconforming list or the Commissioner's Approved List of Electronic Textbooks and Instructional Materials may cancel the subscription and subscribe to a new electronic textbook or instructional material if:
- (1) the district or school has used the electronic textbook or instructional material for at least one year; and
 - (2) the agency approves the change based on a written request to the agency by the district or school that specifies the reasons for changing the electronic textbook or instructional material used by the district or school.

Subchapter BB. Commissioner's Rules for State-Developed Open-Source Textbooks

§66.1040. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Commissioner—commissioner of education
- (2) Electronic textbook—computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, on-line services, an electronic medium; or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.
- (3) Instructional materials—any material or resource that conveys information to the student or otherwise contributes to the learning process; including tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through grade five. With the exception of tools, models, and investigative materials designed for use as part of the foundation curriculum for science in kindergarten through grade five, instructional materials in this subchapter are limited to materials that are delivered electronically.
- (4) Open-Source Textbook—an electronic textbook that is available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook.
- (5) Publisher—any developer or distributor of electronic textbooks and instructional materials.

§66.1041. Scope of Rules.

The commissioner may purchase, through a competitive process, state-developed open-source textbooks for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this subchapter for open-source textbooks recommended as suitable for use in special populations, including bilingual education programs, shall be adopted or purchased according to the rules in this subchapter for adopting or purchasing regular instructional materials.

§66.1042. Requirement for Registers.

The commissioner of education shall require Agency staff to keep a register to record:

- (1) all personal contacts with publishers, their representatives, agents, authors, consultants, editors, hardware or software providers, depositories, or any other person who has

received or expects to receive any money, thing of value, or financial benefit for an appearance; or

- (2) contact regarding any instructional materials submitted and being considered for commissioner approval.

§66.1044. Manufacturing Standards and Specifications.

- (a) All state-developed open-source textbooks shall comply with the requirements of the technical standards of the Federal Rehabilitation Act, Section 508. If it is determined that good cause exists, the commissioner of education grant an exception to this requirement.
- (b) A publisher shall file a statement certifying that state-developed open-source textbooks submitted for consideration will meet the requirements of the technical standards of the Federal Rehabilitation Act, Section 508. Each statement must be made on a form provided by the commissioner, signed by a company official, and filed on or before the deadline specified in the schedule for the adoption process.
- (c) If, during the contract period, the commissioner determines that any state-developed open-source textbooks do not meet the requirements of the technical standards of the Federal Rehabilitation Act, Section 508, the materials shall be replaced by the publisher without cost to the state.
- (d) This section applies to the State Board of Education open source textbook submitted by an eligible institution as defined in Section 31.0241.

§66.1046. Review and Adoption Cycles.

- (a) The commissioner of education may adopt a review and adoption cycle for subjects in the foundation and enrichment curriculum for state developed open-source textbooks.
- (b) In determining an adoption cycle, the commissioner shall consider the adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the SBOE.

§66.1047. Request, Public Notice, and Schedule for the Adoption of State-Developed Open-Source Textbooks.

- (a) The commissioner of education shall develop a schedule for the adoption of state-developed open-source textbooks under this subchapter. In developing the adoption schedule under this section, the commissioner shall consider:
- (1) the availability of funds;
 - (2) the existing textbook adoption cycles under Subchapter B; and
 - (3) the availability of textbooks for development or purchase by the state.
- (b) The commissioner of education may issue a request calling for state-developed open-source textbooks according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE or at any other time the commissioner determines that a need exists for

additional textbook options. The request shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited.

- (c) At a minimum, the requests shall contain the following:
 - (1) specifications for essential knowledge and skills in each subject for which bids are being invited;
 - (2) information regarding the technical standards of the Federal Rehabilitation Act, Section 508;
 - (3) a schedule or important dates and deadlines for state-developed open-source textbooks.
- (d) All requests shall require instructional materials to cover specific essential knowledge and skills a designated number of times.
- (e) Under extraordinary circumstances, the commissioner of education may adopt an emergency, supplementary, or revised request without complying with the timelines and other requirements of this section.

§66.1052. State-Developed Open-Source Textbooks.

- (a) The commissioner of education may purchase state-developed open-source textbooks in accordance with TEC §31.071. The purchase shall be through a competitive process.
- (b) State-developed open-source textbooks must be irrevocably owned by or licensed to the state for use in the applicable subject and grade level.
- (c) The state must have unlimited authority to modify, delete, combine, or add content to the textbook after purchase.
- (d) State-developed open-source textbooks must be created using the industry-standard software specified in the request for proposal.
- (e) The state must be given access to all final digital files used for the state-developed open-source materials.
- (f) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of an electronic textbook or instructional material contributed to the development of the electronic textbook or instructional material. The affidavit shall also state in general terms each author's involvement in the development of the electronic textbook or instructional material.
- (g) Publishers may not submit state-developed open-source textbooks that have been authored by an employee of the Texas Education Agency (TEA).
- (h) Following the revision of curriculum by the State Board of Education, the commissioner of education shall, by competitive process, request proposals to revise a state-developed open-source textbook relating to that curriculum.

- (i) The commissioner of education may, at any time, require the revision of a state-developed open-source textbook for a period not to exceed the period under TEC §31.022 for which a textbook for that subject and grade level may be adopted.
- (j) The review of revised state-developed open-source textbooks shall have the same requirements and occur according to the same process as new state-developed open-source textbooks.
- (o) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of a state-developed open-source textbook relating to that curriculum.

§66.1057. Cost of State-Developed Open-Source Textbooks

- (a) The commissioner of education shall determine the cost to a school district or open-enrollment charter school for a state-developed open-source textbook in an amount sufficient to cover state expenses associated with the textbook, including expenses incurred by the state in soliciting, evaluating, revising, and purchasing the textbook.
- (b) Textbook credits shall be accredited and used in accordance with TAC 66.102
- (c) A school district or open-enrollment charter school that chooses state-developed open-source textbook instead of another textbook adopted under Subchapter B of TEC 3, the difference between the cost determined by the commissioner under subsection (a) and the maximum price for a textbook in the same subject area, as determined by the State Board of Education under Section 31.025, shall be allocated as follows:
 - (1) 50 percent of the amount shall be credited to the state textbook fund under Section 31.021 to be used for purposes of this subchapter; and
 - (2) 50 percent of the amount shall be credited to the school district or open-enrollment charter school for use as provided by Section 31.1011(c).

§66.1058. Ownership and Licensing of State-Developed Open-Source Textbooks.

- (a) A state-developed open-source textbook is the property of the state. The commissioner of education shall provide a license to each public school in the state, including a school district, and open-enrollment charter school, and a state or local agency educating students in any grade from prekindergarten through high school, to use and reproduce a state-developed open-source textbook.
- (b) The commissioner of education may provide a license to use a state-developed open-source textbook to an entity not listed in Subsection B. In determining the cost of a license under this subsection, the commissioner shall seek, to the extent feasible, to recover the costs of developing, revising, and distributing state-developed open-source textbooks.

§66.1059. Preparing and Completing Contracts.

- (a) The state contract form shall not be changed or modified without approval of the Texas Education Agency's (TEA) legal counsel and the procurement office at the Agency.
- (b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by Agency staff. Properly signed contracts shall be filed with the TEA.
- (c) The commissioner of education may use a competitive process to contract for printing or other reproduction of a state-developed open-source textbook on behalf of a school district or open-enrollment charter school. The commissioner may not require a school district or open-enrollment charter school to contract with a state-approved provider for the printing or reproduction of a state-developed open-source textbook.

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