Chapter 66. State Adoption and Distribution of Instructional Materials

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Statutory Authority: The provisions of this Chapter 66 issued under the Texas Education Code, §7.102(c) and Chapter 31, unless otherwise noted.

Subchapter A. General Provisions

§66.1. Scope of Rules.

The State Board of Education (SBOE) shall adopt a list of instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this chapter. Instructional materials recommended as suitable for use in special populations, including bilingual education programs, shall be adopted according to the rules in this chapter for adopting regular instructional materials.

Source: The provisions of this §66.1 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.4. Requirement for Registers.

(a) A register shall be kept by the commissioner of education and appropriate staff of the Texas Education Agency (TEA) to record all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or contact regarding any instructional materials submitted and being considered for State Board of Education (SBOE) approval.

(b) Publishers shall file with the commissioner of education, on or before a date specified in the schedule of adoption procedures, a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

Source: The provisions of this §66.4 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.7. Manufacturing Standards and Specifications.

(a) Instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the national Advisory Commission on Textbook Specifications. If it is determined that good cause exists, the commissioner of education may recommend that the SBOE grant an exception to this requirement.

(b) If no standards exist for a particular media submitted for adoption, the instructional material is eligible for adoption.

(c) A publisher shall file a statement certifying instructional materials submitted for consideration will meet minimum manufacturing standards if adopted. Each statement must be made on a form provided by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures.

(d) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

Source: The provisions of this §66.7 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 22, 2010, 35 TexReg 1454.

(a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).

(b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.

(c) 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 instructional material shall be counted once for the purpose of determining penalties. An identical error in materials with multiple components and formats shall be counted as one error.

   (3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.54(i) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall identify errata in an appropriate manner.

(d) Penalties. A penalty of $5,000 shall be assessed for each failure to correct a factual error after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(e) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid. The SBOE may assess penalties as allowed by law against publishers who fail to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts.

(f) Penalties for selling instructional materials with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of instructional materials who sells instructional materials with factual errors.

(g) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who 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. Where applicable, the publisher shall 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 State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education 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 that is not in alignment with the Texas essential knowledge and skills that were in place at the time of the materials' original adoption, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers 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 SBOE approval. 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. This section applies only to a website that
is a component used to address Texas essential knowledge and skills as part of a state-adopted product.

(h) State Board of Education discretion regarding penalties. The SBOE 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.

(i) 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, TEA 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.

Statutory Authority: The provisions of this §66.10 issued under the Texas Education Code, §§7.102(c), 31.003, and
31.151.

Source: The provisions of this §66.10 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be
effective August 15, 1999, 24 TexReg 5699; amended to be effective March 4, 2001, 26 TexReg 1706; amended to
be effective February 7, 2002, 27 TexReg 746; amended to be effective October 12, 2006, 31 TexReg 8352;
amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35
TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.
§66.21. Review and Adoption Cycles.

(a) The State Board of Education (SBOE) shall adopt a review and adoption cycle for subjects in the foundation curriculum. No more than one-fourth of the subjects in the foundation curriculum may be reviewed each biennium. Estimated expenditures shall be considered when determining placement of subjects in the cycle.

(b) In adopting the cycle, the SBOE:

(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) shall give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under the Texas Education Code (TEC), Chapter 39, Subchapter B, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n);

(C) foundation curriculum subjects not described by subparagraph (A) or (B) of this paragraph, including career and technical education courses that satisfy foundation curriculum requirements as provided by the TEC, §28.002(n); and

(D) enrichment curriculum subjects.

(c) The SBOE shall adopt a review and adoption cycle for subjects in the enrichment curriculum. Placement of a subject in the cycle shall be based on the need for up-to-date materials due to changes in essential knowledge and skills, changing information, and/or changing technology. Estimated expenditures shall also be considered when determining placement of subjects in the cycle.

Source: The provisions of this §66.21 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.22. Midcycle Review and Adoption.

(a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for instructional materials for a subject for which instructional materials are not currently under review by the SBOE under the Texas Education Code (TEC), §31.022.

(b) The SBOE shall establish a fee not to exceed $10,000 for each instructional materials program submitted for midcycle review.

(c) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid that includes a commitment from the publisher to provide the instructional materials to school districts in the manner specified by the publisher, which may include:

(1) providing the instructional materials to any district in a regional education service center area identified by the publisher; or

(2) providing a certain maximum number of instructional materials specified by the publisher.
§66.B. Instructional materials submitted for midcycle review shall be placed on the adopted list or rejected as specified in the TEC, §31.023 and §31.024.

The publisher of instructional materials submitted for midcycle review shall enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for instructional materials for the same subject and grade level.

The publisher of instructional materials submitted for midcycle review is not required to ship samples to education service centers or school districts as specified in the TEC, §31.027.

The publisher of instructional materials submitted for midcycle review shall make available up to three examination copies of each submitted instructional materials product, including teacher editions and ancillaries, to each SBOE member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the midcycle review process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

Publishers of Internet-based instructional content submitted for midcycle review shall provide the TEA, and SBOE members upon request, with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the midcycle review period.

The midcycle adoption process shall follow the same procedures as the regular adoption except to the extent specified in this chapter.

The SBOE will implement this section only to the extent the commissioner of education determines that funds are appropriated for that purpose.

Source: The provisions of this §66.22 adopted to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.


The commissioner of education shall review contracts for instructional materials and recommend which contracts should be renewed for terms not to exceed four years and which contracts should not be renewed.

The State Board of Education (SBOE) shall decide to renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:

1. placement of subject areas in the foundation and enrichment review and adoption cycles;
2. availability of new instructional materials;
3. willingness of publishers to offer materials for readoption and renewal of contracts; and
4. cost of instructional materials under new contract.

Publishers awarded new contracts shall be prepared to make the adopted instructional materials available for at least one extended contract period of not more than four years at prices that are mutually agreeable to publishers and to the commissioner of education. The SBOE may consider refusing to award future contracts to a publisher who, after receiving written notice to do so, refuses to rebid instructional materials at least one time. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.

Contracts with publishers are limited to the Texas Education Code, Chapter 31.

Source: The provisions of this §66.24 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective August 23, 2012, 37 TexReg 6304.

(a) The State Board of Education (SBOE) shall issue a proclamation calling for new instructional materials according to the review and adoption cycles for foundation and enrichment subjects adopted by the SBOE. The proclamation shall serve as notice to all publishers and to the public that bids to furnish new materials to the state are being invited. The proclamation shall be issued at least 18 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production.

(b) The proclamation shall contain the following:

1. specifications for essential knowledge and skills in each subject for which bids are being invited;
2. the requirement that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by the Texas Education Code, §31.027(a) and (b), and may not submit a print sample copy;
3. the requirement that publishers file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs;
4. an estimated number of units to be purchased during the first contract year for each subject in the proclamation;
5. specifications for providing computerized files to produce braille versions of adopted instructional materials;
6. a schedule of adoption procedures; and
7. instructions for the submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(c) The proclamation shall require the instructional materials submitted in response to the proclamation to cover at least 50% of the specific essential knowledge and skills for the subject area and grade level for which the materials are intended at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents.

(d) A draft copy of the proclamation shall be provided to each member of the SBOE and to representatives of the publishing industry to solicit input regarding the draft proclamation prior to the scheduled adoption by the SBOE. The Texas Education Agency may use the Internet to facilitate this process. Any revisions recommended as a result of input from publishers shall be presented to the SBOE along with the subsequent draft of the proclamation.

(e) Under extraordinary circumstances, the SBOE may adopt an emergency, supplementary, or revised proclamation without complying with the timelines and other requirements of this section.

(f) The SBOE may issue a proclamation for instructional materials eligible for midcycle review. The midcycle proclamation shall contain the following:

1. specifications for essential knowledge and skills in each subject for which bids are being invited;
2. specifications for providing computerized files to produce braille versions of adopted instructional materials;
3. a fee not to exceed $10,000 for each program or system of instructional materials intended for a certain subject area and grade level submitted for midcycle review; and
4. a schedule of midcycle adoption procedures.

Source: The provisions of this §66.27 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective March 4, 2001, 26 TexReg 1706; amended to
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be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.28. Adoption by Reference.

(a) The sections titled "Content Requirements" in the Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials can be accessed from the Texas Education Agency official website.

(b) The sections titled "Content Requirements" in the Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials may be accessed from the Texas Education Agency official website.

(c) The sections titled "Content Requirements" in the Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2010. A copy of the Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials may be accessed from the Texas Education Agency official website.

(d) The sections titled "Content Requirements" in the Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2011. A copy of the Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials may be accessed from the Texas Education Agency official website.

Statutory Authority: The provisions of this §66.28 issued under the Texas Education Code, §28.002.

Source: The provisions of this §66.28 adopted to be effective February 15, 1998, 23 TexReg 1019; amended to be effective September 1, 1999, 24 TexReg 3859; amended to be effective September 1, 2000, 25 TexReg 5330; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective September 1, 2003, 28 TexReg 6023; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.


(a) A person is not eligible to serve on a state 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 company or participating in an adoption under which the state or a state review panel will evaluate instructional materials; or

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

(b) For the purposes of this section, an eligible institution under §66.67 of this title (relating to Adoption of Open-Source Instructional Materials) that has submitted open-source materials for adoption is considered to be an entity participating in an adoption.

Source: The provisions of this §66.30 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.


(a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the criteria for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with the advice and consent of the State Board of Education (SBOE) member whose district is to be represented. The commissioner of education shall make appointments to state review panels that ensure participation by academic experts in each subject area for which instructional materials are being considered. The appointments shall include educators, parents, business and industry representatives, and employers.

(b) The commissioner of education shall solicit nominations for possible appointees to state review panels from the SBOE, school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.

(c) The SBOE shall be notified of appointments made by the commissioner of education to state review panels.

(d) Members of a state review panel may be removed at the discretion of the commissioner of education.

Source: The provisions of this §66.33 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.


(a) The duties of each member of a state review panel are to:

(1) evaluate all 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 instructional materials as well as in the teacher version of the instructional materials. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.

(A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.
(B) State 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) A TEKS standard is considered sufficiently covered if the instructional materials provide one of the following:
   (i) an opportunity for the teacher to teach the knowledge or skill;
   (ii) an opportunity for the student to learn the knowledge or skill; or
   (iii) an opportunity for the student to demonstrate the knowledge or practice the skill.

(E) If a TEKS standard has multiple student expectations, the requirements of subparagraph (D) of this paragraph will be applied to each student expectation to ensure sufficient coverage.

(F) TEKS standards are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.

(G) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.

(2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;

(3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state 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 TEC, §28.002(h).

(b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.

(c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.

(d) State review panel members shall be afforded the opportunity to collaborate with other panel members during the official meetings to discuss coverage of TEKS, errors, manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel regarding the instructional materials being reviewed, except during official meetings. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

(e) State review panel members shall affix their signatures to all recommendations to the commissioner of education.

(f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

Source: The provisions of this §66.36 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

(a) State review panel members shall be reimbursed for expenses incurred in attending official meetings according to the applicable provisions of the General Appropriations Act.

(b) Expenses shall be paid for designated state review panel members to attend the State Board of Education (SBOE) meeting at which instructional materials are considered for adoption.

Source: The provisions of this §66.39 adopted to be effective September 1, 1996, 21 TexReg 7236.


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

1. the responsibilities of a state review panel member;
2. statutes and rules pertaining to the state adoption process;
3. essential knowledge and skills specified for subjects included in the proclamation;
4. identifying factual errors;
5. the schedule of adoption procedures;
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 state review panel member.

Source: The provisions of this §66.42 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.45. State Review Panels: No-Contact Periods.

(a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected. During this period, state 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. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from the State Board of Education.

(b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.

(c) State review panel members shall not discuss content of instructional materials under consideration with any subject area staff member of the Texas Education Agency (TEA), except during the official orientation meeting. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all questions from individual members shall be distributed with responses to all members of the appropriate state review panel. This restriction is not intended to prohibit members of the state review panels from contacting designated staff of the TEA regarding adoption procedures.

Source: The provisions of this §66.45 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.48. Statement of Intent to Bid Instructional Materials.

(a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption.
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procedures. The statement of intent with preliminary price information 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 that it believes are sufficiently covered in the instructional materials.

c) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.

(d) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures included in the proclamation. A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures.

e) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:

(1) specify the manner in which instructional materials will be provided to school districts, including:
   (A) the regional education service center area(s) to be served; or
   (B) the certain maximum number of copies of instructional materials to be provided under the contract; and

(2) include payment of the fee for review of instructional materials submitted for midcycle review.

Source: The provisions of this §66.48 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.51. Instructional Materials Ordered Through the State.

Instructional materials offered for adoption by the State Board of Education.

(1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).

(2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).

(3) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.

(4) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)

(5) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials. The affidavit shall also state in general terms each author's involvement in the development of the instructional materials.

(6) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.
(A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.

(B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.

(C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.

(7) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall include essential knowledge and skills covered at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. Correlations shall be submitted in a format approved by the commissioner of education.

Source: The provisions of this §66.51 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 2001, 26 TexReg 5807; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.54. Samples.

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and functional for review purposes.

(b) The publisher of instructional materials submitted for adoption shall make available an electronic copy in an open file format or closed format of each submitted student and teacher component to each State Board of Education (SBOE) member upon that member's request, beginning on the date in the adoption schedule when publishers file their samples at the Texas Education Agency (TEA).

(c) One electronic sample copy in an open file format or closed format of the student and teacher components of each instructional materials submission shall be filed with each of the 20 regional education service centers (ESCs) on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. These samples shall be available for public review. Publishers of Internet-based instructional content submitted for review shall provide the ESCs with appropriate information, such as locator and login information and passwords, required to ensure public access to their programs throughout the review period. Samples to ESCs are not required for instructional materials submitted for midcycle review, as specified in §66.22(f) of this title (relating Midcycle Review and Adoption).

(d) If it is determined that good cause exists, the commissioner of education may extend the deadline for filing samples with ESCs. At its discretion, the SBOE may remove from consideration any materials proposed for adoption that were not properly deposited with the ESCs, the TEA, or members of the state review panel.

(e) One electronic sample copy in an open file format or closed format of each student and teacher component of an instructional materials submission shall be filed with the TEA on or before the date specified in the schedule of adoption procedures. The TEA may request additional samples if they are needed. In addition, the publisher shall provide a complete description of all items included in a student and teacher component of an instructional materials submission.

(f) On request of a school district, a publisher shall provide an electronic sample of submitted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of submitted prekindergarten instructional materials. Samples of submitted prekindergarten materials must match the format of the products to be provided to schools upon ordering.
(g) One sample copy of each student and teacher component of an instructional materials submission shall be filed with each member of the appropriate state review panel in accordance with instructions provided by the TEA. Publishers have the option to file with the state review panels print samples, electronic samples in an open file format or closed format, or galley proofs. To ensure that the evaluations of state review panel members are limited to student and teacher components submitted for adoption, publishers shall not provide ancillary materials or descriptions of ancillary materials to state review panel members. Texas Education Code, §31.002, defines instructional materials as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material.

(h) The TEA, ESCs, and affected publishing companies shall work together to ensure that hardware or special equipment necessary for review of any item included in a student and/or teacher component of an instructional materials submission is available in each ESC. Affected publishers may be required to loan such hardware or special equipment to any member of a state review panel who does not have access to the necessary hardware or special equipment.

(i) A publisher shall provide a list of all corrections necessary to each student and teacher component of an instructional materials submission. The list must be in a format designated by the commissioner of education and filed on or before the deadline specified in the schedule of adoption procedures. If no corrections are necessary, the publisher shall file a letter stating this on or before the deadline in the schedule for submitting the list of corrections. On or before the deadline for submitting lists of corrections, publishers shall submit certification that all instructional materials have been edited for accuracy, content, and compliance with requirements of the proclamation.

(j) One complete electronic sample copy in an open file format or closed format of each student and teacher component of adopted instructional materials that incorporate all corrections required by the SBOE shall be filed with the commissioner of education on or before the date specified in the schedule of adoption procedures. The complete sample copies filed with the TEA must be representative of the final program. In addition, each publisher shall file an affidavit signed by an official of the company verifying that all corrections required by the commissioner of education and SBOE have been made.

(k) On request of a school district, a publisher shall provide an electronic sample of adopted instructional materials and, at the publisher's discretion or upon request, may also provide print sample copies. A publisher of prekindergarten materials is not required to submit electronic samples of adopted prekindergarten instructional materials. Samples of adopted prekindergarten materials must match the format of the products to be provided to schools upon ordering.

(l) Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of sample instructional materials.

Source: The provisions of this §66.54 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective September 1, 2002, 27 TexReg 7105; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.57. Regional Education Service Centers: Procedures for Handling Samples; Public Access to Samples.

(a) Handling procedures.

(1) Each regional education service center (ESC) executive director shall designate one person to supervise all shipments of instructional materials. The Texas Education Agency (TEA) shall provide to each designated person forms to be used in reporting receipt of sample shipments.
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(2) On or before the date specified in the schedule of adoption procedures, each ESC representative shall notify the commissioner of education of all irregularities in sample shipments. The appropriate publisher shall be notified of any sample shipment irregularities reported by the ESCs.

(b) Public access to samples.

(1) One electronic sample of all instructional materials under consideration for adoption shall be retained in each ESC for review by interested persons until notification is received from the TEA. Appropriate information, such as locator and login information and passwords, shall be made available by the ESCs to ensure public access to Internet-based instructional content throughout the review period.

(2) Regional ESCs shall ensure reasonable public access to sample instructional materials, including access outside of normal working hours that shall be scheduled by appointment.

(3) On or before the date specified in the schedule of adoption procedures, each ESC shall issue a news release publicizing the date on which sample instructional materials will be available for review at the center and shall notify all school districts in the region of the schedule.

Source: The provisions of this §66.57 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 2002, 27 TexReg 7105; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.60. Public Comment on Instructional Materials.

(a) Written comments.

(1) Any resident of Texas may submit written comments for, against, or about any 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 schedule of adoption procedures.

(3) Copies of written comments and lists of factual errors shall be provided to the State Board of Education (SBOE), participating publishers, regional education service centers (ESCs), and persons who have filed written requests.

(b) Public hearing before the SBOE. On a date specified in the schedule of adoption procedures, the SBOE shall hold a hearing on instructional materials submitted for adoption that may, at the discretion of the SBOE chair, be designated an official meeting of the SBOE.

(1) Testimony at the hearing shall be accepted from Texas residents and non-residents with priority given to Texas residents. Copies of testimony made at the hearing may be distributed to SBOE members. No other written material may be distributed during the hearings. Persons who wish to testify must notify the commissioner of education on or before the date specified in the schedule of adoption procedures. The notice must identify the subject areas and titles about which testimony will be presented. The SBOE may limit the time available for each person to testify.

(2) Oral responses to testimony at the hearing may be made by official representatives of publishing companies who have requested time to present responses on or before the date specified in the schedule of adoption procedures.

(3) The commissioner of education shall have a complete record of the hearing. The recorded hearing or transcript of the hearing shall be provided to the SBOE, ESCs, participating publishers, and persons who have filed written requests. The official record shall be held open for ten business days after the close of the hearings. During this period, any person who participated in a hearing before the SBOE and any official representative of a publishing company may submit a written response to written comments and/or oral testimony presented at the hearing.
(4) Within ten business days after the record is closed, the commissioner shall send copies of responses to written and/or oral testimony to members of the SBOE, ESCs, participating publishers, and persons who have filed written requests.

(c) Public comment on instructional materials not adopted on schedule. Public comment on instructional materials not adopted by the SBOE on the date specified in the schedule of adoption procedures shall be accepted according to the SBOE Operating Rules, §2.10 (relating to Public Testimony).

Source: The provisions of this §66.60 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective February 22, 2010, 35 TexReg 1454.


(a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:

(1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the adopted list or rejected. To be adopted, instructional materials must cover at least 50% of the essential knowledge and skills as required by the proclamation at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents;

(2) compliance with established manufacturing standards and specifications;

(3) recommended corrections of factual errors identified by state review panels;

(4) prices of instructional materials submitted for adoption; and

(5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).

(b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare preliminary recommendations that instructional materials under consideration be placed on the adopted list or rejected. According to the schedule of adoption procedures, a publisher shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.

(c) The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the adopted list or rejected.

(d) The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as brailists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

Source: The provisions of this §66.63 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.

(a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.

(b) A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.
The SBOE shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;

(2) meet the established physical specifications adopted by the SBOE;

(3) are free from factual errors or the publisher has agreed to correct any identified factual errors prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and

(4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

A publisher may withdraw from the adoption process at any time prior to final adoption for any reason.

Source: The provisions of this §66.66 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1997, 22 TexReg 3779; amended to be effective October 12, 2006, 31 TexReg 8354; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.67. Adoption of Open-Source Instructional Materials.

"Open-Source Materials" are defined by the Texas Education Code (TEC), §31.002, as electronic instructional materials that are 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 instructional materials. The term includes state-developed open-source instructional materials purchased under the TEC, Chapter 31, Subchapter B-1.

The State Board of Education (SBOE) shall place open-source instructional materials submitted for a secondary-level course on the adopted list if the instructional materials meet the criteria outlined in subsections (c) and (d) of this section.

Open-source instructional materials must be:

(1) submitted by an eligible institution, defined as a public institution of higher education that is designated as a research university or emerging research university under the Texas Higher Education Coordinating Board's accountability system, or a private university located in Texas that is a member of the Association of American Universities, or a public technical institute, as defined by the TEC, §61.003;

(2) intended for a secondary-level course; and

(3) written, compiled, or edited primarily by faculty of an eligible institution who specialize in the subject area of the instructional materials.

To submit open-source instructional materials, an eligible institution must:

(1) certify by the board of regents, or corresponding governing body, or president of the university, or by an individual authorized by one of these entities, that the instructional materials qualify for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills identified under the TEC, §28.002;
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(2) identify each contributing author;
(3) certify by the appropriate academic department of the submitting institution that the instructional materials are accurate; and
(4) certify that:
   (A) for instructional materials for a senior-level course, a student who successfully completes a course based on the instructional materials will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or
   (B) for instructional materials for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional materials will be prepared for entry into the senior-level course.

(e) All submissions required by subsection (d) of this section shall be made in a format approved by the SBOE and the commissioner of education.

(f) Technology-based open-source instructional materials shall be required to comply with the technical standards in the Rehabilitation Act, §508, as applicable.

(g) All university-developed open-source instructional materials submissions shall be reviewed independently by the same process used in §66.36 of this title (relating to State Review Panels: Duties and Conduct) to confirm the content meets the criteria for placement on the adopted list based on the extent to which the instructional materials cover the essential knowledge and skills. The SBOE shall notify the submitting institution of any discrepancy with alignment with essential knowledge and skills.

(h) Before placing open-source instructional materials submitted under subsection (b) of this section on the adopted list, the SBOE shall direct the Texas Education Agency (TEA) to post the materials on the TEA website for 60 days to allow for public comment and the SBOE shall hold a public hearing on the instructional materials.

(i) Not later than the 90th day after the date open-source instructional materials are submitted as provided by the TEC, §31.0241, the SBOE may review the instructional materials. The SBOE shall:
   (1) post with the list adopted under the TEC, §31.023, comments made by the SBOE regarding the open-source instructional materials placed on the list; and
   (2) distribute SBOE comments to school districts.

Statutory Authority: The provisions of this §66.67 issued under the Texas Education Code, §7.102(c) and §31.003.
Source: The provisions of this §66.67 adopted to be effective April 27, 2010, 35 TexReg 3257; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.72. 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.

(b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

(c) The publisher of instructional materials submitted for midcycle review shall:
   (1) enter into a contract with the SBOE for a term that ends at the same time as any contract entered into by the SBOE for other instructional materials for the same subject and grade level; and
   (2) commit to provide the instructional materials in the manner specified by the publisher in the statement of intent to bid midcycle materials in §66.48(e) of this title (relating to Statement of Intent to Bid Instructional Materials).
§66.73. Contracts for Printing of Open-Source Instructional Materials.

(a) The State Board of Education (SBOE) may execute a contract for the printing of open-source instructional materials listed on the adopted list.

(b) The contract shall allow a school district or an open-enrollment charter school to requisition printed copies of open-source instructional materials as provided by the Texas Education Code, §31.103.

(c) The contract form shall be approved by, and shall not be changed or modified without approval of, the Texas Education Agency's (TEA) legal counsel.

(d) Contract forms shall be sent to the awarded vendor for signature. Signed contracts returned by the awarded vendor shall be signed by the chair of the SBOE and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with the TEA.

Source: The provisions of this §66.73 adopted to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.75. Updates.

(a) A publisher may submit a request to the commissioner of education for approval to substitute an updated edition of state-adopted instructional materials. A publisher requesting an update shall provide the request in writing, along with two mock-ups or screen capture copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic instructional materials and Internet products for which all users receive the same updates.

(b) Requests for approval of the updated edition shall provide that there will be no additional cost to the state.

(c) Requests for approval of the 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 the updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(e) Responses from the commissioner of education to update requests shall be provided within 30 days after receipt of the request. If no action has been taken by the end of the 30 days, the updates shall be deemed approved.

(f) All requests for updates involving content in state-adopted instructional materials must be approved by the State Board of Education (SBOE) prior to their introduction into state-adopted instructional materials. The SBOE may assess penalties as allowed by law against publishers who fail to obtain approval for updates to content in state-adopted instructional materials prior to delivery of the materials to school districts. Publishers may, at any time, make changes that do not affect Texas essential knowledge and skills coverage.

(g) Publishers must agree to supply the previous version of state-adopted instructional materials to school districts that choose to continue using the previous version during the duration of the original contract. This subsection does not apply to online instructional materials.

(h) A publisher of instructional materials may provide alternative formats for use by school districts if:

(1) the content is identical to SBOE-approved content;
(2) the alternative formats include the identical revisions and updates as the original product; and
(3) the cost to the state and school is equal to or less than the cost of the original product.
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(i) 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.

(j) Publishers must notify the commissioner of education in writing if they are providing SBOE-approved products in alternative formats.

(k) Publishers are responsible for informing districts of the availability of the alternative formats and for accurate fulfillment of these orders.

(l) The commissioner of education may add alternative formats of SBOE-approved products to the list of available products disseminated to school districts.

Source: The provisions of this §66.75 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective October 12, 2006, 31 TexReg 8334; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.78. Delivery of Adopted Instructional Materials.

(a) Each publisher is required to have adopted instructional materials in stock and available for distribution to school districts throughout the entire adoption period. A back order is defined as adopted instructional material not in stock when ordered and not available for delivery to school districts or open-enrollment charter schools on the specified shipment date. The commissioner of education shall report the number of back-ordered materials by publisher to the State Board of Education (SBOE).

(b) Each publisher shall guarantee delivery of instructional materials at least ten business days before the opening day of school of the year for which the instructional materials are ordered if the instructional materials have been ordered by a date specified in the sales contract.

(c) Each publisher with instructional materials on back order shall notify affected school districts of the expected ship dates for each title on back order.

(d) Payments from the Texas Education Agency (TEA) for adopted instructional materials shall be made directly to the publisher or to any agent or trustee designated in writing by the publisher.

(e) Any publisher, at its discretion, and at least 60 days after notifying the TEA in writing, may change from one depository to another approved depository, except with respect to newly adopted instructional materials in the first year of adoption, when at least 120 days written notice to the TEA is required.

Source: The provisions of this §66.78 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.79. Adding Content During the Review and Adoption Process.

A publisher may add content to an instructional material during the review and adoption process only to allow the material to meet the percentage of Texas essential knowledge and skills the publisher had specified the material covered.

Source: The provisions of this §66.79 adopted to be effective August 23, 2012, 37 TexReg 6304.
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Subchapter C. Local Operations


(a) According to the schedule of adoption procedures, a publisher shall provide each school district and open-enrollment charter school with information that fully describes instructional materials submitted for adoption. Descriptive information provided to each school district or open-enrollment charter school shall be identical.

(b) Upon request by the instructional materials coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete electronic sample in an open file format or closed format of adopted instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstration or representative format. Samples of instructional materials provided to school districts shall be labeled, "Sample Copy - Not for Classroom Use." Samples to schools are not required for materials submitted for midcycle review, as specified in §66.22(f) of this title (relating Midcycle Review and Adoption).

(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.

Source: The provisions of this §66.101 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.104. Selection of Instructional Materials by School Districts.

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.

(b) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.

(c) In making a requisition, a school district or open-enrollment charter school may requisition instructional materials on the list adopted under the Texas Education Code, §31.023, for grades above the grade level in which the student is enrolled.

(d) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(e) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials.

(f) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of instructional materials.

(g) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

Source: The provisions of this §66.104 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective October 12, 2006, 31 TexReg 8358; amended to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

(a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the State Board of Education (SBOE) and commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE. The certification shall be submitted in a format approved by the commissioner of education. Upon request by the commissioner of education, the certification shall include supporting documentation describing the instructional materials on which the certificate is based.

(b) The certifications shall be ratified by local school boards in public, noticed meetings.

(c) The provisions in subsections (a) and (b) of this section are applicable both to state-adopted instructional materials and to non-state-adopted instructional materials.

Source: The provisions of this §66.105 adopted to be effective February 22, 2010, 35 TexReg 1454; amended to be effective July 8, 2012, 37 TexReg 4911.

§66.107. Local Accountability.

(a) Each school district or open-enrollment charter school shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by, and delivered to, the district. The results of the inventory shall be recorded in the district's files. Reimbursement and/or replacement shall be made for all instructional materials determined to be lost.

(b) All instructional materials must be turned in at the end of the school year or when the student withdraws from school.

(c) The board of trustees of a school district may not require an employee of the district to pay for instructional materials or instructional technology that is stolen, misplaced, or not returned by a student.

Source: The provisions of this §66.107 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective September 1, 1998, 24 TexReg 7779; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective October 12, 2006, 31 TexReg 8358; amended to be effective July 8, 2012, 37 TexReg 4911.
Chapter 66. State Adoption and Distribution of Instructional Materials

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


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

(1) Instructional materials--Content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional materials.

(2) Publisher--Any developer or distributor of instructional materials or online service.

Statutory Authority: The provisions of this §66.1001 issued under the Texas Education Code, §31.0231.
Source: The provisions of this §66.1001 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1003. Scope of Rules.

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

Statutory Authority: The provisions of this §66.1003 issued under the Texas Education Code, §31.0231.
Source: The provisions of this §66.1003 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


The commissioner of education shall require Texas Education 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 electronic instructional materials submitted and being considered for commissioner approval.

Statutory Authority: The provisions of this §66.1005 issued under the Texas Education Code, §31.0231.
Source: The provisions of this §66.1005 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


(a) Electronic instructional materials included on the Commissioner's List of Electronic Instructional Materials shall comply with the requirements of the technical standards of the Rehabilitation Act, §508. If it is determined that good cause exists, the commissioner of education may grant an exception to this requirement.
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(b) A publisher shall file a statement certifying that electronic instructional materials submitted for
consideration will meet the requirements of the technical standards of the Rehabilitation Act, §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 of adoption procedures.

(c) If, during the contract period, any adopted electronic instructional materials are revised and the
commissioner determines they no longer meet the requirements of the technical standards of the
Rehabilitation Act, §508, the materials shall be made compliant by the publisher without cost to the state. If
it is determined that good cause exists, the commissioner may grant an exception to this requirement. This
subsection applies only if the instructional materials do not meet the requirements in effect at the time of the
contract and does not apply if the Rehabilitation Act, §508, accessibility standards change subsequently.

Statutory Authority: The provisions of this §66.1007 issued under the Texas Education Code, §31.0231.
Source: The provisions of this §66.1007 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to
be effective July 23, 2012, 37 TexReg 5413.


(a) Administrative penalties. The commissioner of education may impose a reasonable administrative penalty
against a publisher found in violation of a provision of the Texas Education Code (TEC), §31.151(a), if the
publisher fails to correct the errors within the time period provided by the commissioner. An administrative
penalty shall be assessed only after the commissioner has granted the publisher a hearing in accordance with
the TEC, §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 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 adopted electronic 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 by the electronic
instructional materials review panel under §66.1031 of this title (relating to Consideration and
Adoption of Electronic Instructional Materials) and required by the commissioner. The publisher
shall correct any errors within 30 business days after receipt of notice from the commissioner.

(4) A penalty not to exceed $5,000 may be assessed for each factual error identified after the
electronic instructional materials have been delivered to public schools.

(5) The amount of the penalty will be determined by the commissioner based on the severity of the
factual error.

(6) The penalty may be reduced or waived if the publisher corrects the factual error within three
business days of notification.

(c) Penalties may be assessed for failure to make adopted electronic instructional materials readily available,
including teacher components, in a timely manner and with consistent access 24 hours a day and 7 days a
week. The commissioner may assess penalties as allowed by law against publishers who fail to deliver
adopted electronic instructional materials, including teacher components specified by §66.1027 of this title
(relating to Electronic Instructional Materials Offered for Adoption by the Commissioner), in accordance
with provisions in the contracts.

(d) Penalties may be assessed for selling adopted electronic instructional materials with factual errors. The
commissioner may assess administrative penalties in accordance with the TEC, §31.151, against a seller of
adopted electronic instructional materials.
(e) 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; or

(2) fails to monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the adopted electronic instructional materials specified in the contract for the period determined by the commissioner for adopted electronic instructional materials.

(f) Replacement requirements. 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 outdated information during the contract period, the online instructional materials or information shall be updated by the publisher without cost to the state.

(g) Content update requests. The publisher must submit a request to the commissioner as specified in §66.1035 of this title (relating to Updates to Electronic Instructional Materials) for approval to substitute updated content or add content. The publisher shall not update or add content without prior commissioner approval. The commissioner shall respond to such a request within 30 business days after receipt of the request. Factual or software coding errors that require updates or changes shall not require commissioner approval.

(h) Content removal. 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. The commissioner shall respond to such a request within 30 business days after receipt of the request.

(i) Online requirements. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. The publisher will be allowed to collect information necessary for legitimate operational tasks, including authenticating and managing student access and detecting and preventing security vulnerabilities. The result of the information will be used to deliver the material and provide an educational value per the intended design. Use of such information will follow the federal Family Educational Rights and Privacy Act (FERPA).

(j) Internet links. The publisher may only add Internet links or redirect to other Internet or electronic sites as needed to correct an error or correct a broken link to the materials without the approval of the commissioner. The publisher will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites unless a resource is no longer available or appropriate. The publishers shall provide such new or corrected Internet links to the commissioner at the time the addition or correction is made, and the commissioner shall have up to 30 business days to retroactively reject such changes.

(k) Commissioner 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.

(l) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency 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 business days. Each affected publisher who pays a fine for failure to deliver adopted electronic 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 electronic instructional materials in a timely manner.

Statutory Authority: The provisions of this §66.1009 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1009 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.
§66.1011. 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 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 State Board of Education (SBOE). The commissioner may issue requests for content outside of the normal SBOE adoption cycle.

Statutory Authority: The provisions of this §66.1011 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1011 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


(a) The commissioner of education shall issue a request calling for electronic instructional materials according to a cycle for foundation and enrichment subjects as determined by the commissioner or according to the review and adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the State Board of Education. The request shall serve as notice to all publishers and to the public that bids to furnish new electronic instructional materials to the state are being invited.

(b) At a minimum, the request for electronic instructional materials 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 Rehabilitation Act, §508; and

(3) a schedule of adoption procedures for electronic instructional materials.

(c) The request for electronic instructional materials shall require coverage of specific essential knowledge and skills a designated number of times.

(d) The commissioner will provide a minimum of 90 calendar days for content development upon the release of the request for electronic instructional materials.

(e) Under extraordinary circumstances, the commissioner may adopt an emergency, supplementary, or revised request for electronic instructional materials without complying with the timelines and other requirements of this section.

Statutory Authority: The provisions of this §66.1013 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1013 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


A person is not eligible to serve on an electronic instructional materials 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 an adoption under which the electronic instructional materials 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 or software company.

Statutory Authority: The provisions of this §66.1015 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1015 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

(a) The commissioner of education shall:

(1) determine the number of review panels needed to review electronic instructional materials under consideration for adoption; and

(2) determine the number of persons to serve on each panel.

(b) Each appointment to an electronic instructional materials review panel shall be made by the commissioner.

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

(d) The term recognized expert includes university professors, public school teachers, members 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 instructional materials review panels from:

(1) school districts, open-enrollment charter schools, and educational organizations in the state; and

(2) members of the State Board of Education.

(f) Recommendations may be accepted from any Texas resident.

(g) Nominations shall not be made by or accepted from any publishers, authors, depositaries, or hardware or software providers or any person who holds any official position with a publisher, author, depository, hardware or software provider, or agent.

(h) Members of an electronic instructional materials review panel may be removed at the discretion of the commissioner.

Statutory Authority: The provisions of this §66.1017 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1017 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


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

(1) evaluate all electronic 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 electronic instructional materials, as well as in the teacher version of the electronic instructional materials. 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 instructional materials 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 electronic instructional materials.

(B) Electronic instructional materials 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 electronic instructional materials.

(C) Electronic instructional materials shall be evaluated for TEKS coverage at each grade level, including the number of opportunities that TEKS are addressed for students to demonstrate knowledge;

(2) submit to the commissioner a report indicating the percentage of required TEKS that each submission assigned to be evaluated by the electronic instructional materials review panel covers;
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(3) submit to the commissioner a list of any factual errors in electronic instructional materials assigned to be evaluated by the electronic instructional materials review panel; and

(4) as appropriate to a subject area and/or grade level, ascertain that electronic 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 instructional materials 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 electronic instructional materials.

(c) A member of an electronic instructional materials review panel shall have no contact with other members of the panel except during official meetings. Electronic instructional materials review panel members shall not discuss electronic instructional materials being evaluated with any party having a direct or indirect interest in adoption of electronic instructional materials.

Statutory Authority: The provisions of this §66.1019 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1019 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


Electronic instructional materials review panel members shall receive an orientation, including at least the following:

(1) the responsibilities of an electronic instructional materials review panel member;

(2) statutes and rules pertaining to the adoption of electronic instructional materials;

(3) essential knowledge and skills specified for subjects included in the request for electronic instructional materials;

(4) identification of factual errors;

(5) the schedule of adoption procedures;

(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 instructional materials review panel member.

Statutory Authority: The provisions of this §66.1021 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1021 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1023. Electronic Instructional Materials Review Panels: No-Contact Periods.

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

(b) Electronic instructional materials review panel members shall report immediately to the commissioner any communication or attempted communication by any person regarding content of electronic instructional materials being evaluated by the panel.

(a) Each publisher who intends to offer electronic instructional materials for adoption shall respond to the request for electronic instructional materials and 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 instructional materials are intended to cover.

(c) If a student or teacher component of a submission consists of more than one electronic content item, a publisher shall provide a 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 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 for electronic instructional materials. A publisher who wishes to withdraw an electronic instructional materials submission after submitting a response shall notify the commissioner in writing on or before the date specified in the schedule of adoption procedures.

§66.1027. Electronic Instructional Materials Offered for Adoption by the Commissioner.

(a) Publishers may not submit electronic instructional materials that have been authored by an employee of the Texas Education Agency (TEA).

(b) A teacher's component submitted to accompany student electronic 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.

(c) Electronic 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 necessary to effectively use the adopted electronic instructional materials in the classroom.

(d) Any discounts offered for numbers of users of adopted electronic instructional materials shall be included in price information submitted with the publisher's response.

(e) 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 and open-enrollment charter schools the replacement costs of components.

(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 instructional material contributed to the development of the electronic instructional material. The affidavit shall also state in general terms each author's involvement in the development of the electronic instructional material.

(g) Publishers shall incorporate hyperlinked correlations of the required essential knowledge and skills to the electronic instructional materials submitted for adoption.
§66.1029. Public Comment on Electronic Instructional Materials.

(a) Written comments.
   (1) Any resident of Texas may submit written comments for, against, or about any electronic 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 schedule of adoption procedures.
   (3) Copies of written comments and lists of factual errors shall be provided to the participating publishers, regional education service centers, and persons who have filed written requests.

(b) Public testimony. Before placing materials on the Commissioner's List of Electronic Instructional Materials, a discussion item will be included on the State Board of Education (SBOE) agenda for the Committee of the Full Board and public testimony will be taken at that time.

(c) SBOE comment. Before placing materials on the Commissioner's List of Electronic Instructional Materials, the SBOE must be given an opportunity to comment on the electronic instructional materials. If the commissioner places electronic instructional materials on the Commissioner's List of Electronic Instructional Materials, the SBOE may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list.

Statutory Authority: The provisions of this §66.1029 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1029 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1031. Consideration and Adoption of Electronic Instructional Materials.

(a) The commissioner of education shall review all electronic instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:
   (1) evaluations of electronic instructional materials prepared by electronic instructional materials 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 Rehabilitation Act, §508;
   (3) recommended corrections of factual errors identified by electronic instructional materials review panels; and
   (4) prices of electronic instructional materials submitted for adoption.

(b) Based on the review specified in subsection (a) of this section, the commissioner shall make a final decision regarding the electronic instructional materials that will be placed on the adopted list and made available for schools. The commissioner will establish a period of time for a publisher to respond to the reasons its electronic instructional materials were rejected. Electronic instructional materials may be rejected for several reasons. The reasons for rejection include, but are not limited to:
   (1) failure to meet the minimum essential knowledge and skills specified in the request for electronic instructional materials;
   (2) failure to meet applicable manufacturing standards and specifications or, if applicable, the technical requirements of the Rehabilitation Act, §508;
   (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 may allow a publisher to withdraw from the adoption process after the date specified in the request for electronic instructional materials due to recommended placement as conforming or nonconforming, 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 instructional materials submitted for inclusion on the commissioner's adopted list is final and may not be appealed.

Statutory Authority: The provisions of this §66.1031 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1031 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1033. Statewide License.

(a) The commissioner of education may accept one or more statewide license(s) submitted by a publisher.

(b) A statewide license grants the right to use and makes a program placed on the Commissioner's List of Electronic Instructional Materials available to every student in the state enrolled in 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 material is intended.

(c) The statewide license price should be the total amount for providing the materials as described in subsection (b) of this section. The statewide license price should not be a per-pupil price.

(d) School districts and open-enrollment charter schools will have an option to consider a statewide 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.

Statutory Authority: The provisions of this §66.1033 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1033 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1035. Updates to Electronic Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to update the content of state-adopted electronic instructional materials. 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 instructional materials along with access to both the updated electronic instructional materials 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 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 may request publishers to update electronic instructional materials at a minimum to accurately reflect current knowledge or information. Publishers shall provide details of the changes at least 30 business days before the changes are implemented. The commissioner must review the new content before it is included in the materials. The commissioner shall respond to such a request within 30 business days after receipt of the request.

(f) Publishers shall notify the commissioner 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 the applicable essential knowledge and skills coverage or new content. Publishers shall provide details of the changes at least 30 business days before the changes are implemented.
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(g) A publisher of adopted electronic instructional materials may provide alternative formats for use by school districts and open-enrollment charter schools if the cost to the state and schools 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 in writing if they are providing commissioner-approved products in alternative formats.

(j) Publishers are responsible for informing districts and open-enrollment charter schools of the availability of the alternative formats and for accurate fulfillment of these orders.

(k) The commissioner may add alternative formats of commissioner-adopted products to the list of available products disseminated to school districts and open-enrollment charter schools.

(l) The commissioner may remove an adopted electronic instructional material from the list of available products. Before the commissioner removes an adopted electronic instructional material from the list of available products, the removal must be recommended by a panel of recognized experts in the subject area of the electronic instructional material and experts in education technology.

Statutory Authority: The provisions of this §66.1035 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1035 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1037. Delivery of Adopted Electronic Instructional Materials.

(a) Each publisher is required to have adopted electronic instructional materials available for access to school districts and open-enrollment charter schools throughout the entire adoption period.

(b) Each publisher shall guarantee access to adopted electronic instructional materials at least ten business days before the opening day of school of the year for which the electronic instructional materials are ordered if the materials have been ordered by a date specified in the sales contract. If the publisher cannot meet this deadline, the publisher shall notify affected school districts and open-enrollment charter schools of the date on which each title will be available.

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

Statutory Authority: The provisions of this §66.1037 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1037 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


(a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes adopted electronic instructional materials. Descriptive information provided to each school district or open-enrollment charter school shall be identical.

(b) Upon request by the instructional materials coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete sample of adopted electronic instructional materials. The sample may be delivered as a web-based or online material as determined by the publisher. 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. A school district or open-enrollment charter school receiving a sample shall not make a copy of that sample without the explicit permission of the publisher.
(c) Samples supplied to school districts or open-enrollment charter schools 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. Publishers shall set a reasonable time period for school district or open-enrollment charter school review of the sample.

Statutory Authority: The provisions of this §66.1039 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1039 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1041. Selection of Electronic Instructional Materials by School Districts.

A school district or open-enrollment charter school that selects a subscription-based electronic instructional material from either the State Board of Education's adopted list or the Commissioner's List of Electronic Instructional Materials may cancel the subscription and subscribe to a new electronic instructional material if:

(1) the district or school has used the electronic instructional material for at least one year; and

(2) the Texas Education Agency (TEA) processes the change based on a written request to the TEA by the district or school via the educational materials (EMAT) system to change to another adopted product or request a disbursement for purchase of a non-adopted product.

Statutory Authority: The provisions of this §66.1041 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1041 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.
Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter BB. Commissioner's Rules Concerning State-Developed Open-Source Instructional Materials

§66.1101. Definitions.

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

1. Instructional materials—Content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional materials.

2. Open-source instructional materials—Electronic instructional materials that are 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 instructional materials.

3. Publisher—Any developer or distributor of instructional materials or online service.

Statutory Authority: The provisions of this §66.1101 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1101 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1103. Scope of Rules.

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

Statutory Authority: The provisions of this §66.1103 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1103 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


The commissioner of education shall require Texas Education 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.

Statutory Authority: The provisions of this §66.1105 issued under the Texas Education Code, §31.076, as added by HB 2488, 81st Texas Legislature, 2009.

Source: The provisions of this §66.1105 adopted to be effective November 21, 2010, 35 TexReg 10220.

(a) All state-developed open-source instructional materials shall comply with the requirements of the technical standards of the Rehabilitation Act, §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 state-developed open-source instructional materials submitted for consideration will meet the requirements of the technical standards of the Rehabilitation Act, §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 of adoption procedures.

(c) If, during the contract period, any state-developed open-source instructional materials are revised and the commissioner determines they no longer meet the requirements of the technical standards of the Rehabilitation Act, §508, the materials shall be made compliant by the publisher without cost to the state. If it is determined that good cause exists, the commissioner may grant an exception to this requirement. This subsection applies only if the instructional materials do not meet the requirements in effect at the time of the contract and does not apply if the Rehabilitation Act, §508, accessibility standards change subsequently.

Statutory Authority: The provisions of this §66.1107 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1107 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1109. 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 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 State Board of Education.

Statutory Authority: The provisions of this §66.1109 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1109 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1111. Request, Public Notice, and Schedule for the Adoption of State-Developed Open-Source Instructional Materials.

(a) The commissioner of education shall develop a schedule for the adoption of state-developed open-source instructional materials under this subchapter. In developing the adoption schedule under this section, the commissioner shall consider:

(1) the availability of funds;

(2) the existing instructional materials adoption cycles under the Texas Education Code, Chapter 31, Subchapter B; and

(3) the availability of instructional materials for development or purchase by the state.

(b) The commissioner may issue a request calling for state-developed open-source instructional materials according to the review and adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the State Board of Education or at any other time the commissioner determines that a need exists for additional instructional materials 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 request for state-developed open-source instructional materials 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 Rehabilitation Act, §508; and
(3) a schedule of adoption procedures for state-developed open-source instructional materials.

(d) The request for state-developed open-source instructional materials shall require instructional materials to cover specific essential knowledge and skills a designated number of times.

(e) Under extraordinary circumstances, the commissioner may adopt an emergency, supplementary, or revised request for state-developed open-source instructional materials without complying with the timelines and other requirements of this section.

Statutory Authority: The provisions of this §66.1111 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1111 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1113. Requirements for State-Developed Open-Source Instructional Materials.

(a) The commissioner of education may purchase state-developed open-source instructional materials in accordance with the Texas Education Code (TEC), §31.071. The purchase shall be through a competitive process.

(b) State-developed open-source instructional materials 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 open-source instructional materials after purchase.

(d) State-developed open-source instructional materials must be created using the industry-standard software specified in the request for state-developed open-source instructional materials.

(e) The state must be given access to digital files necessary for content modification used for the state-developed open-source instructional materials.

(f) Publishers shall submit to the Texas Education Agency (TEA) a signed affidavit certifying that each individual whose name is listed as an author or contributor of a state-developed open-source instructional material contributed to the development of the state-developed open-source instructional material. The affidavit shall also state in general terms each author's involvement in the development of the state-developed open-source instructional material.

(g) Publishers may not submit state-developed open-source instructional materials that have been authored by an employee of the TEA.

(h) Following the revision of curriculum by the State Board of Education, the commissioner shall require the revision of state-developed open-source instructional materials relating to that curriculum. The commissioner shall use a competitive process to request proposals to revise state-developed open-source instructional materials.

(i) The commissioner may, at any time, require the revision of a state-developed open-source instructional material for a period not to exceed the period under the TEC, §31.022, for which an instructional material for that subject and grade level may be adopted.

(j) The review of revised state-developed open-source instructional materials shall have the same requirements and occur according to the same process as new state-developed open-source instructional materials.

Statutory Authority: The provisions of this §66.1113 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1113 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1115. Cost of State-Developed Open-Source Instructional Materials.

(a) The commissioner of education shall determine the cost to a school district or open-enrollment charter school for state-developed open-source instructional materials in an amount sufficient to cover state
expenses associated with the instructional materials, including expenses incurred by the state in soliciting, evaluating, revising, and purchasing the open-source instructional materials.

(b) Ownership and licensing of state-developed open-source instructional materials shall be in accordance with the TEC, §31.075.

Statutory Authority: The provisions of this §66.1115 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1115 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.


(a) The state contract form shall not be changed or modified without approval of the Texas Education Agency (TEA) legal counsel and the TEA procurement office.

(b) Contract forms shall be sent to the publishers for signature. Signed contracts returned by the publishers shall be signed by TEA staff designated by the commissioner of education. Properly signed contracts shall be filed with the TEA.

(c) The commissioner may use a competitive process to contract for printing or other reproduction of state-developed open-source instructional materials 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 state-developed open-source instructional materials.

Statutory Authority: The provisions of this §66.1117 issued under the Texas Education Code, §31.076.

Source: The provisions of this §66.1117 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.
Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter CC. Commissioner's Rules Concerning Acceptable Condition of Public School Printed Instructional Materials, Electronic Instructional Materials, and Technological Equipment


Printed instructional materials are considered to be in acceptable condition if:

(1) the cover, binding, pages, spine, and all integral components of the instructional materials are wholly intact and the instructional materials are fully usable by other students; and

(2) all components of the instructional materials are not soiled, torn, or damaged--whether intentionally or by lack of appropriate care--such that any portion of the content is too disfigured or obscured to be fully accessible to other students.

Statutory Authority: The provisions of this §66.1201 issued under the Texas Education Code, §31.104(d).

Source: The provisions of this §66.1201 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1203. Electronic Instructional Materials.

Electronic instructional materials are considered to be in acceptable condition if:

(1) all components or applications that are a part of the electronic instructional materials are returned;

(2) the electronic instructional materials do not contain computer code (bug, virus, worm, or similar malicious software) that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer's memory, file system, or software; and

(3) the electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the school district.

Statutory Authority: The provisions of this §66.1203 issued under the Texas Education Code, §31.104(d).

Source: The provisions of this §66.1203 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1205. Technological Equipment.

Technological equipment is considered to be in acceptable condition if:

(1) the equipment is returned with the software and hardware in their original condition unless the school district authorized changes; and

(2) the physical condition of the equipment has been cared for appropriately such that the equipment is not broken or damaged beyond cost-effective replacement or repair.

Statutory Authority: The provisions of this §66.1205 issued under the Texas Education Code, §31.104(d), as amended by HB 1332, 81st Texas Legislature, 2009.

Source: The provisions of this §66.1205 adopted to be effective November 21, 2010, 35 TexReg 10220.
Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter DD. Commissioner's Rules Concerning Instructional Materials Allotment

§66.1301. Definitions.

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

1. Disbursement--A request made through the Texas Education Agency online ordering system for funds for non-adopted instructional materials, technological equipment, and/or technology services.

2. Educational Materials (EMAT) system--The Texas Education Agency online ordering system through which school districts, open-enrollment charter schools, and juvenile justice alternative education programs submit requisitions for instructional materials and requests for disbursement.

3. Instructional materials--Content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book; supplementary materials; a combination of a book, workbook, and supplementary materials; computer software; magnetic media; DVD; CD-ROM; computer courseware; online services; or an electronic medium or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional materials.

4. Instructional materials allotment--A specified enrollment-based amount of funds set aside from the state instructional materials fund, as determined by the commissioner in accordance with the Texas Education Code, §31.0211, allocated each school year to every Texas school district, open-enrollment charter school, and juvenile justice alternative education program.

5. Juvenile justice alternative education program (JJAEP)--A juvenile justice alternative education program established under the Texas Education Code, §37.011.

6. Open-source instructional materials--Electronic instructional materials that are 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 instructional materials.

7. Publisher--Any developer or distributor of instructional materials or online service.

8. Requisition--A request made through the Texas Education Agency online ordering system for State Board of Education or commissioner of education adopted instructional materials.

9. Special instructional materials--Instructional materials in Braille, large type, or any other medium or any apparatus intended for students who are blind or visually impaired that convey information to students or otherwise contribute to the learning process.

10. Technological equipment--Hardware, device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials, or for professional use by a classroom teacher.


Source: The provisions of this §66.1301 adopted to be effective July 23, 2012, 37 TexReg 5413.
§66.1303. Scope of Rules.

The commissioner of education shall provide an allotment to purchase adopted and non-adopted instructional materials, technological equipment, and technology services for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this subchapter.


Source: The provisions of this §66.1303 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1305. Certification of Instructional Materials.

(a) Prior to the beginning of each school year, each school district and open-enrollment charter school shall submit to the commissioner of education certification that for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter school provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education. The certification shall be submitted in a format approved by the commissioner. Upon request by the commissioner, the certification shall include supporting documentation describing the instructional materials on which the certification is based.

(b) The certifications shall be ratified by local school boards in public, noticed meetings.

(c) The provisions in subsections (a) and (b) of this section are applicable both to state- and commissioner-adopted instructional materials and to non-adopted instructional materials.

(d) A school district or an open-enrollment charter school may not submit a requisition or request for disbursement through the EMAT system for the next school year until the required annual certification has been received by the commissioner for the current school year.


Source: The provisions of this §66.1305 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1307. Instructional Materials Allotment.

(a) The commissioner of education shall determine the amount of the instructional materials allotment for a school district or an open-enrollment charter school based on Public Education Information Management System (PEIMS) student enrollment data on a date during the preceding school year specified by the commissioner.

(b) The amount of the instructional materials allotment determined by the commissioner is final and may not be appealed.

(c) The instructional materials allotment may be used to:

(1) purchase:

(A) instructional materials on the list adopted by the commissioner under the Texas Education Code (TEC), §31.0231;

(B) instructional materials on the list adopted by the State Board of Education under the TEC, §31.024;

(C) non-adopted instructional materials;

(D) consumable instructional materials;

(E) instructional materials for use in bilingual education classes, as provided by the TEC, §31.029;

(F) supplemental instructional materials, as provided by the TEC, §31.035;
(G) state-developed open-source instructional materials, as provided by the TEC, Chapter 31, Subchapter B-1;

(H) instructional materials and technological equipment under any continuing contracts of the school district or open-enrollment charter school in effect on September 1, 2011; and

(I) technological equipment that contributes to student learning, including equipment that supports the use of instructional materials; and

(2) pay:

(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials;

(B) for providing access to technological equipment for instructional use; and

(C) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

(d) The instructional materials allotment may not be used to:

(1) purchase:

(A) services for installation;

(B) the physical conduit that transmits data such as cabling and wiring or electricity; or

(C) office and school supplies; or

(2) pay for travel expenses.


Source: The provisions of this §66.1307 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1309. High-Enrollment Growth Adjustment.

(a) Calculations for high-enrollment growth at the district level will be adjusted automatically for the biennium based on current Public Education Information Management System (PEIMS) enrollment data before the EMAT system opens in the spring.

(b) A school district or an open-enrollment charter school that experiences a minimum enrollment growth of 10% over the previous five-year period for which the instructional materials allotment amount is being determined is eligible to receive an adjustment to accommodate high-enrollment growth.

(c) A school district or an open-enrollment charter school that is experiencing a student population growth that is not reflected in the state calculation may submit an application to be considered for additional funding if the district or charter experienced:

(1) a net increase of 3,500 students over the last 5 years; or

(2) an unexpected enrollment growth due to unforeseen circumstances.

(d) A school district or an open-enrollment charter school may request additional funding for its instructional materials allotment for high enrollment once during each school year in accordance with procedures established by the commissioner of education.


Source: The provisions of this §66.1309 adopted to be effective July 23, 2012, 37 TexReg 5413.
§66.1311. Special Instructional Materials.

(a) All laws and rules applying to instructional materials provided to students with no visual impairments that
are not in conflict with the Texas Education Code, §31.028, or this section shall apply to the distribution
and control of Braille and large type instructional materials, including, but not limited to, the following.

(1) A requisition for special instructional materials shall be based on actual student enrollment to meet
individual student needs.

(2) Each school district or open-enrollment charter school shall conduct an annual physical inventory
of all currently adopted accessible instructional materials that have been requisitioned by and
delivered to the district or charter. The results of the inventory shall be recorded in the district's or
charter's files and made available to the Texas Education Agency (TEA) upon request.

(b) Reimbursement and/or replacement shall be made for all volumes of Braille and large type instructional
materials determined to be lost.

(c) Publishers shall grant permission to the state to have adopted instructional materials transcribed into Braille,
large type, and audiotape without penalty or royalty.

(d) On or before the deadline specified in the schedule of adoption procedures, each publisher of newly adopted
print instructional materials shall provide computerized files to the state as specified in the proclamation to
be used for producing Braille or other versions of materials to be used by students with disabilities. All
information contained in adopted instructional materials shall be included on the computerized files.
Computerized files may be copied and distributed to a school district, upon request, for instructional use
with a student with a disability who requires the use of computerized instructional materials, pursuant to an
individualized plan developed for the student under the Rehabilitation Act, §504; the Americans with
Disabilities Act; or the Individuals with Disabilities Education Act.

(e) The state shall make suitable student instructional materials available in large type. The commissioner of
education shall develop specifications for large type instructional materials and notify publishers of student
instructional materials suitable for production in large type. The publisher may elect to supply the large type
materials, or the commissioner may enter into contracts for producing large type instructional materials.

(f) Gifts of instructional materials for educating students who are blind or visually impaired tendered by
individuals, groups, or school district officials may be accepted by the commissioner and shall become state
property. Gift materials may be shipped by Free Matter for the Blind and Other Physically Handicapped
Persons to the Special Textbook Redistribution Center or other location designated by the TEA.

(g) Copies of adopted instructional materials in Braille and large type needed by a person who is blind or
visually impaired to carry out the duties of a teacher in the public schools of this state shall be furnished
without cost. The materials are to be loaned to the public school districts as long as needed and are to be
returned to the state when they are no longer needed. Materials in the medium needed by the teacher may be
requisitioned by an instructional materials coordinator after the superintendent of schools has certified the
following to the commissioner:

(1) the name of the teacher;
(2) the grade or subject taught; and
(3) the fact of the teacher's visual impairment.

(h) Large type instructional materials shall meet or exceed the Manufacturing Standards and Specifications for
Textbooks approved by the national Advisory Commission of Textbook Specifications and any additional
specifications that may be prescribed.

(i) Copies of adopted instructional materials in Braille, large type, or an electronic file that are requested by a
parent who is blind or visually impaired shall be furnished without cost by the state. Materials in the
medium needed by the parent may be requisitioned by an instructional materials coordinator. Requests for
electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through
the appropriate school district, promising that the parent will safeguard the security of the files and observe
all current copyright laws, including those that forbid reproduction of the files and their transfer to other parties. All Braille and large type instructional materials and electronic files with educational content that have been provided to parents who are blind or visually impaired must be returned to the local school district at the end of the school year for reuse.


Source: The provisions of this §66.1311 adopted to be effective July 23, 2012, 37 TexReg 5413.


(a) A school district shall purchase with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes.

(b) Bilingual education is defined in Chapter 89, Subchapter BB, of this title (relating to Commissioner's Rules Concerning State Plan for Educating English Language Learners).

(c) The calculation used for adjusting the instructional materials allotment for bilingual education student enrollment is based on the Texas Education Code, §42.153. The calculation will take into account funds used for Texas Education Agency administrative purposes and juvenile justice alternative education programs and include adjustments for bilingual education student enrollment and high-enrollment growth.


Source: The provisions of this §66.1313 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1315. Title and Custody.

(a) Each instructional material and technological equipment purchased through the instructional materials allotment is the property of the school district or an open-enrollment charter school.

(b) Each instructional material that was previously adopted by the State Board of Education or commissioner of education is the property of the school district or an open-enrollment charter school.

(c) Ownership of electronic or online instructional materials applies only to the extent of any applicable licensing agreement.

(d) The instructional materials allotment allocated to a school district or an open-enrollment charter school is considered revenue and must be coded by the district or charter business office in a manner required by the Texas Education Agency.

(e) Current instructional materials in a district's or charter's inventory are considered assets and a value must be determined by the district or charter.

(f) The board of trustees of a school district or the governing body of an open-enrollment charter school shall distribute or provide access to instructional materials to students in the manner that the board or governing body determines is most effective and economical.


Source: The provisions of this §66.1315 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1317. Sale or Disposal of Instructional Materials and Technological Equipment.

The board of trustees of a school district or governing body of an open-enrollment charter school must notify the Texas Education Agency of its intent to sell or dispose of instructional materials or technological equipment by a process established by the commissioner of education.

(1) Sale of instructional materials and technological equipment.
§66.DD. Commissioner's Rules Concerning Instructional Materials Allotment

(A) The board of trustees or governing body may sell any printed or electronic instructional materials purchased with the district's or charter's instructional materials allotment on the date the instructional material is discontinued for use in the public schools.

(B) The ability of the board of trustees or governing body to sell or dispose of online or electronic instructional materials is conditional on the terms of any applicable licensing agreement.

(C) The board of trustees or governing body may sell technological equipment owned by the district or charter that was purchased with the district's or charter's instructional materials allotment.

(D) The board of trustees or governing body must report to the commissioner the amount of funds to be received from the sale of the instructional materials and technological equipment, identify the purchaser, and identify the instructional materials and/or technological equipment to be sold.

(E) Funds received by a district or charter from a sale of instructional materials or technological equipment purchased with the instructional materials allotment must be used to purchase instructional materials and technological equipment allowed under the Texas Education Code, §31.0211.

(F) The board of trustees or governing body must certify to the commissioner that the new instructional materials acquired from the sale of discontinued instructional materials will cover the Texas essential knowledge and skills and be made available to students and/or teachers.

(2) Disposal of instructional materials and technological equipment.

(A) The board of trustees or governing body may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the State Board of Education if the board of trustees or governing body determines that the instructional material is not needed by the district or charter and the board of trustees or governing body does not reasonably expect that the instructional material will be needed.

(B) The board of trustees or governing body shall determine how the district or charter will dispose of discontinued printed instructional materials and technological equipment.

(C) The board of trustees or governing body must notify the commissioner prior to the disposal of any instructional materials. The notice must identify the instructional materials to be disposed and the method of disposal.

(D) A regional education service center (ESC) may dispose of instructional materials one year after adoption by the State Board of Education or the commissioner as determined by the ESC executive director.


Source: The provisions of this §66.1317 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1319. Local Accountability.

(a) Each school district or open-enrollment charter school shall conduct an annual inventory of:

(1) all currently adopted instructional materials delivered to the district;

(2) all non-adopted instructional materials purchased with funds from the instructional materials allotment; and

(3) all technological equipment purchased with funds from the instructional materials allotment.
(b) The results of the annual inventory shall be recorded in the district's or charter's files and in the EMAT system.

(c) All instructional materials owned by the district or charter and in the physical possession of the student must be returned by the student to the district or charter at the end of the school year or when the student withdraws from school.

(d) The board of trustees of a school district or governing board of an open-enrollment charter school may not require an employee of the district or charter to pay for instructional materials or technological equipment that is stolen, misplaced, or not returned by a student.

(e) Non-adopted instructional materials purchased by the district or charter shall be made available and provided in the specified format needed to students who are blind and visually impaired at the district's or charter's expense.


Source: The provisions of this §66.1319 adopted to be effective July 23, 2012, 37 TexReg 5413.

§66.1321. Lost, Damaged, or Worn out Instructional Materials.

(a) Each school district or open-enrollment charter school is fiscally responsible for lost, damaged, or worn out instructional materials.

(b) A school district or an open-enrollment charter school may use the instructional materials allotment or other available funds to replace lost, damaged, or worn out instructional materials.

(c) Worn out or damaged instructional materials must be declared by the district or charter as unsuitable for student use and the district or charter must document the method of disposal.

(d) A school district or an open-enrollment charter school declaring worn out instructional materials must follow the commissioner of education-approved standards for worn out instructional materials.

(e) Recycling funds received from the disposal of worn out instructional materials must be:

   (1) reported to the Texas Education Agency through procedures established by the commissioner; and

   (2) used to purchase instructional materials and technological equipment allowed under the Texas Education Code, §31.0211.

(f) A school district or an open-enrollment charter school must adjust its inventory for lost, damaged, or worn out instructional materials and replacements through the EMAT system and document all transactions in the district or charter annual inventory.


Source: The provisions of this §66.1321 adopted to be effective July 23, 2012, 37 TexReg 5413.


(a) A juvenile justice alternative education program (JJAEP) established under the Texas Education Code, §37.011, is entitled to an instructional materials allotment to serve students who have been removed from their regular instructional setting for disciplinary purposes.

(b) A JJAEP may use the instructional materials allotment to provide:

   (1) instructional materials to students who are served on a temporary basis; and

   (2) technology services and technological equipment that directly support student instruction.
(c) Each JJAEP must submit an instructional materials allotment requisition or request a disbursement through the EMAT system unless funding has been provided by an alternative method established by the commissioner of education.

(d) A JJAEP may not use its instructional materials allotment to support students received from a school district or an open-enrollment charter school with the identical instructional materials that the district or charter has already provided to the student.

(e) For each student assigned to a JJAEP, the JJAEP must coordinate with the student's locally assigned campus to determine the appropriate method for providing instructional materials. The student's locally assigned campus may provide district- or charter-owned instructional materials. Instructional materials owned by the district or charter must be returned to the district or charter when the student leaves the JJAEP.


Source: The provisions of this §66.1323 adopted to be effective July 23, 2012, 37 TexReg 5413.
AN ACT

relating to the foundation curriculum, the establishment of the
instructional materials allotment, and the adoption, review, and
purchase of instructional materials and technological equipment
for public schools; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 5, Education Code, is amended by adding
Section 5.002 to read as follows:

Sec. 5.002. REFERENCES TO TEXTBOOK. In this title, a
reference to a textbook means instructional material, as defined by
Section 31.002.

SECTION 2. Subdivision (28), Subsection (b), Section 7.055,
Education Code, is amended to read as follows:

(28) The commissioner shall perform duties relating to
the funding, adoption, and purchase of instructional materials
under Chapter 31.

SECTION 3. Subsection (f), Section 7.056, Education Code,
is amended to read as follows:

(f) A school district or campus that is required to develop
and implement a student achievement improvement plan under Section
39.102 or 39.103 may receive an exemption or waiver under this
section from any law or rule other than:

(1) a prohibition on conduct that constitutes a
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(2) a requirement imposed by federal law or rule;

(3) a requirement, restriction, or prohibition imposed by state law or rule relating to:

(A) public school accountability as provided by Subchapters B, C, D, E, and J, Chapter 39; or

(B) educator rights and benefits under Subchapters A, C, D, E, F, G, and I, Chapter 21, or under Subchapter A, Chapter 22; or

(4) [textbook] selection of instructional materials under Chapter 31.

SECTION 4. Subdivision (23), Subsection (c), Section 7.102, Education Code, is amended to read as follows:

(23) The board shall adopt and purchase or license instructional materials [textbooks] as provided by Chapter 31 and adopt rules required by that chapter.

SECTION 5. Subsections (a) and (c), Section 7.108, Education Code, are amended to read as follows:

(a) A person interested in selling bonds of any type or a person engaged in manufacturing, shipping, selling, or advertising instructional materials [textbooks or otherwise connected with the textbook business] commits an offense if the person makes or authorizes a political contribution to or takes part in, directly or indirectly, the campaign of any person seeking election to or serving on the board.

(c) In this section:

(1) "Instructional material" has the meaning assigned by Section 31.002.
"Political contribution" has the meaning assigned by Section 251.001, Election Code.

\[(2)\] "Textbook" has the meaning assigned by Section 31.002.

SECTION 6. The heading to Section 7.112, Education Code, is amended to read as follows:

Sec. 7.112. REPRESENTATION OF [TEXTBOOK] PUBLISHER OF INSTRUCTIONAL MATERIALS BY FORMER MEMBER OF BOARD.

SECTION 7. Subsection (a), Section 7.112, Education Code, is amended to read as follows:

(a) A former member of the State Board of Education who is employed by or otherwise receives compensation from a [textbook] publisher of instructional materials may not, before the second anniversary of the date on which the person last served as a member of the State Board of Education:

(1) confer with a member of the board of trustees of a school district concerning instructional materials [a textbook] published by that [textbook] publisher; or

(2) appear at a meeting of the board of trustees on behalf of the [textbook] publisher.

SECTION 8. Subdivision (2), Subsection (c), Section 7.112, Education Code, is amended to read as follows:

(2) "Instructional material" and "publisher" ["Publisher" and "textbook"] have the meanings assigned by Section 31.002.

SECTION 9. Subsection (b), Section 11.158, Education Code, is amended to read as follows:
(b) The board may not charge fees for:

1. instructional materials [textbooks], workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;
2. field trips required as a part of a basic education program or course;
3. any specific form of dress necessary for any required educational program or diplomas;
4. the payment of instructional costs for necessary school personnel employed in any course or educational program required for graduation;
5. library materials [books] required to be used for any educational course or program, other than fines for lost, damaged, or overdue materials [books];
6. admission to any activity the student is required to attend as a prerequisite to graduation;
7. admission to or examination in any required educational course or program; or
8. lockers.

SECTION 10. Subsection (a), Section 11.164, Education Code, is amended to read as follows:

(a) The board of trustees of each school district shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare. A classroom teacher may not be required to prepare any written information other than:

1. any report concerning the health, safety, or
welfare of a student;
(2) a report of a student's grade on an assignment or examination;
(3) a report of a student's academic progress in a class or course;
(4) a report of a student's grades at the end of each grade reporting period;
(5) a textbook report on instructional materials;
(6) a unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
(7) an attendance report;
(8) any report required for accreditation review;
(9) any information required by a school district that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or
(10) any information specifically required by law, rule, or regulation.

SECTION 11. Subsection (e), Section 19.007, Education Code, is amended to read as follows:
(e) The district may participate in the instructional materials [textbook] program under Chapter 31.

SECTION 12. Subsections (a) and (c), Section 26.006, Education Code, are amended to read as follows:
(a) A parent is entitled to:
review all teaching materials, instructional materials [textbooks], and other teaching aids used in the classroom of the parent's child; and

(2) review each test administered to the parent's child after the test is administered.

(c) A student's parent is entitled to request that the school district or open-enrollment charter school the student attends allow the student to take home any instructional materials [textbook] used by the student. Subject to the availability of the instructional materials [textbook], the district or school shall honor the request. A student who takes home instructional materials [textbook] must return the instructional materials [textbook] to school at the beginning of the next school day if requested to do so by the student's teacher. In this subsection, "instructional material" ["textbook"] has the meaning assigned by Section 31.002.

SECTION 13. Subsections (a), (c), (h), and (n), Section 28.002, Education Code, are amended to read as follows:

(a) Each school district that offers kindergarten through grade 12 shall offer, as a required curriculum:

(1) a foundation curriculum that includes:

(A) English language arts;

(B) mathematics;

(C) science; and

(D) social studies, consisting of Texas, United States, and world history, government, economics, with emphasis on the free enterprise system and its benefits, and geography; and
an enrichment curriculum that includes:

(A) to the extent possible, languages other than English;

(B) health, with emphasis on the importance of proper nutrition and exercise;

(C) physical education;

(D) fine arts;

(E) [economics, with emphasis on the free enterprise system and its benefits;]

(F) career and technology education;

(G) technology applications; and

(G) religious literature, including the Hebrew Scriptures (Old Testament) and New Testament, and its impact on history and literature.

(c) The State Board of Education, with the direct participation of educators, parents, business and industry representatives, and employers shall by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials [textbooks] under Chapter 31 and addressed on the assessment instruments required under Subchapter B, Chapter 39. As a condition of accreditation, the board shall require each district to provide instruction in the essential knowledge and skills at appropriate grade levels.

(h) The State Board of Education and each school district shall foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system in regular
subject matter and in reading courses and in the adoption of instructional materials [textbooks]. A primary purpose of the public school curriculum is to prepare thoughtful, active citizens who understand the importance of patriotism and can function productively in a free enterprise society with appreciation for the basic democratic values of our state and national heritage.

(n) The State Board of Education may by rule develop and implement a plan designed to incorporate foundation curriculum requirements into the career and technology education curriculum under Subsection (a)(2)(E) [a)(2)(F)].

SECTION 14. Subsections (a) and (d), Section 28.0022, Education Code, are amended to read as follows:

(a) Not later than November 1, 2007, the agency shall establish a panel under this section to:

(1) review and recommend revisions to the career and technical education curriculum under Section 28.002(a)(2)(E) [28.002(a)(2)(F)]; and

(2) review and recommend revisions for the program in which high schools and articulated postsecondary institutions allow high school students to take advanced technical credit courses.

(d) Not later than November 1, 2008, the panel shall:

(1) complete the review as required by this section of:

(A) the career and technical education curriculum; and

(B) the program under which high schools and
articulated postsecondary institutions allow high school students
to take advanced technical credit courses; and
(2) make recommendations to the State Board of
Education as necessary to:
(A) increase the academic rigor of the career and
technical education curriculum under Section 28.002(a)(2)(E)
[28.002(a)(2)(E)]; and
(B) improve and increase participation in the
program under which high schools and articulated postsecondary
institutions allow high school students to take advanced technical
credit courses.

SECTION 15. Subsection (b), Section 28.003, Education Code,
is amended to read as follows:
(b) In this section, "educational program" means a course or
series of courses in the required curriculum under Section 28.002,
other than a fine arts course under Section 28.002(a)(2)(D) or a
career and technology course under Section 28.002(a)(2)(E)
[28.002(a)(2)(E)].

SECTION 16. Subsection (c), Section 28.011, Education Code,
is amended to read as follows:
(c) A student may not be required to use a specific
translation as the sole text of the Hebrew Scriptures or New
Testament and may use as the basic instructional material
[textbook] a different translation of the Hebrew Scriptures or New
Testament from that chosen by the board of trustees of the student's
school district or the student's teacher.

SECTION 17. The heading to Chapter 31, Education Code, is
amended to read as follows:

CHAPTER 31. INSTRUCTIONAL MATERIALS [TEXTBOOKS]

SECTION 18. Section 31.001, Education Code, is amended to read as follows:

Sec. 31.001. FREE INSTRUCTIONAL MATERIALS [TEXTBOOKS].

Instructional materials [Textbooks] selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment.

SECTION 19. Subdivisions (1), (1-a), (2), and (4), Section 31.002, Education Code, are amended to read as follows:

(1) "Instructional material" ["Electronic textbook"] means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including [an] open-source instructional material [textbook].

(1-a) "Open-source instructional material" [textbook"] means [an] electronic instructional material [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]. The term includes [a] state-developed open-source [textbook] purchased under Subchapter B-1.

(2) "Publisher" includes an on-line service or a developer or distributor of [textbook].

(4) "Technological equipment" means hardware, a device, or equipment necessary for:

(A) instructional use in the classroom, including to gain access to or enhance the use of [textbook]; or

(B) professional use by a classroom teacher.

SECTION 20. Subchapter A, Chapter 31, Education Code, is amended by amending Sections 31.003 and 31.004 and adding Section 31.005 to read as follows:

Sec. 31.003. RULES. The State Board of Education may adopt rules, consistent with this chapter, for the adoption, requisition, distribution, care, use, and disposal of instructional materials [textbooks].

Sec. 31.004. CERTIFICATION OF PROVISION OF [textbooks, electronic textbooks, and] INSTRUCTIONAL MATERIALS. (a) Each school district and open-enrollment charter school shall annually certify to the State Board of Education and the commissioner that, for each subject in the required curriculum under Section 28.002,
other than physical education, and each grade level, the district provides each student with [textbooks, electronic textbooks, or] instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.

(b) To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), a school district or open-enrollment charter school may consider:

(1) instructional materials adopted by the State Board of Education;

(2) materials adopted or purchased by the commissioner under Section 31.0231 or Subchapter B-1;

(3) open-source instructional materials submitted by eligible institutions and adopted by the State Board of Education under Section 31.0241;

(4) open-source instructional materials made available by other public schools; and

(5) instructional materials developed or purchased by the school district or open-enrollment charter school.

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS. An open-enrollment charter school is entitled to the instructional materials allotment under this chapter and is subject to this chapter as if the school were a school district.

SECTION 21. The heading to Section 31.021, Education Code, is amended to read as follows:

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS [TEXTBOOK]
FUND.

SECTION 22. Section 31.021, Education Code, is amended by amending Subsections (a) and (d) and adding Subsection (c) to read as follows:

(a) The state instructional materials [textbook] fund consists of:

(1) an amount set aside by the State Board of Education from the available school fund, in accordance with Section 43.001(d); and

(2) [all funds accruing from the state's sale of disused textbooks; and

(3) all amounts lawfully paid into the fund from any other source.

(c) Money in the state instructional materials fund shall be used to:

(1) fund the instructional materials allotment, as provided by Section 31.0211;

(2) purchase special instructional materials for the education of blind and visually impaired students in public schools;

(3) pay the expenses associated with the instructional materials adoption and review process under this chapter;

(4) pay the expenses associated with the purchase or licensing of open-source instructional material;

(5) pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and

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shipping;

(6) fund the technology lending grant program established under Section 32.201; and

(7) provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Youth Commission.

(d) Money transferred to the state instructional materials [textbook] fund remains in the fund until spent and does not lapse to the state at the end of the fiscal year.

SECTION 23. Subchapter B, Chapter 31, Education Code, is amended by adding Sections 31.0211, 31.0212, 31.0213, and 31.0214 to read as follows:

Sec. 31.0211. INSTRUCTIONAL MATERIALS ALLOTMENT. (a) A school district is entitled to an annual allotment from the state instructional materials fund for each student enrolled in the district on a date during the preceding school year specified by the commissioner. The commissioner shall determine the amount of the allotment per student each year on the basis of the amount of money available in the state instructional materials fund to fund the allotment. An allotment under this section shall be transferred from the state instructional materials fund to the credit of the district's instructional materials account as provided by Section 31.0212.

(b) A juvenile justice alternative education program under Section 37.011 is entitled to an allotment from the state instructional materials fund in an amount determined by the commissioner. The program shall use the allotment to purchase
items listed in Subsection (c) for students enrolled in the
program. The commissioner's determination under this subsection is
final and may not be appealed.

(c) Subject to Subsection (d), funds allotted under this
section may be used to:

(1) purchase:

(A) materials on the list adopted by the
commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of
whether the instructional materials are on the list adopted under
Section 31.024;

(C) consumable instructional materials,
including workbooks;

(D) instructional materials for use in bilingual
education classes, as provided by Section 31.029;

(E) supplemental instructional materials, as
provided by Section 31.035;

(F) state-developed open-source instructional
materials, as provided by Subchapter B-1;

(G) instructional materials and technological
equipment under any continuing contracts of the district in effect
on September 1, 2011; and

(H) technological equipment necessary to support
the use of materials included on the list adopted by the
commissioner under Section 31.0231 or any instructional materials
purchased with an allotment under this section; and

(2) pay:
(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and

(B) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

(d) Each year a school district shall use the district's allotment under this section to purchase, in the following order:

(1) instructional materials necessary to permit the district to certify that the district has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level as required by Section 28.002; and

(2) any other instructional materials or technological equipment as determined by the district.

(d-1) Notwithstanding Subsection (d), for the state fiscal biennium beginning September 1, 2011, a school district shall use an allotment received under this section to purchase instructional materials that will assist the district in satisfying performance standards under Section 39.0241, as added by Chapter 895 (H.B. 3), Acts of the 81st Legislature, Regular Session, 2009, on assessment instruments adopted under Sections 39.023(a) and (c).

(d-2) Subsection (d-1) and this subsection expire August 31, 2013.

(e) Not later than May 31 of each school year, a school district may request that the commissioner adjust the number of
students for which the district is entitled to receive an allotment under Subsection (a) on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. The commissioner may also adjust the number of students for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The commissioner's determination under this subsection is final.

(f) The commissioner may adopt rules as necessary to implement this section.

Sec. 31.0212. INSTRUCTIONAL MATERIALS ACCOUNT. (a) The commissioner shall maintain an instructional materials account for each school district. Each school year, the commissioner shall deposit in the account for each district the amount of the district's instructional materials allotment under Section 31.0211.

(b) The commissioner shall pay the cost of instructional materials requisitioned by a school district under Section 31.103 using funds from the district's instructional materials account.

(c) A school district may also use funds in the district's account to purchase electronic instructional materials or technological equipment. The district shall submit to the commissioner a request for funds for this purpose from the district's account. The commissioner shall adopt rules regarding the documentation a school district must submit to receive funds
under this subsection.

(d) Money deposited in a school district's instructional materials account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused money in the district's account may carry forward any remaining balance to the next biennium.

(e) The commissioner shall adopt rules as necessary to implement this section. The rules must include a requirement that a school district provide the title and publication information for any instructional materials requisitioned or purchased by the district with the district's instructional materials allotment.

Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL MATERIALS ALLOTMENT. Each school district shall annually certify to the commissioner that the district's instructional materials allotment has been used only for expenses allowed by Section 31.0211.

Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH DISTRICTS. (a) Each year the commissioner shall adjust the instructional materials allotment of school districts experiencing high enrollment growth. The commissioner shall establish a procedure for determining high enrollment growth districts eligible to receive an adjustment under this section and the amount of the instructional materials allotment those districts will receive.

(b) The commissioner may adopt rules as necessary to implement this section.
SECTION 24. Section 31.022, Education Code, is amended to read as follows:

Sec. 31.022. INSTRUCTIONAL MATERIALS [TEXTBOOK] REVIEW AND ADOPTION. (a) The State Board of Education shall adopt a review and adoption cycle for instructional materials [textbooks] for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002. In adopting the cycle, the board:

(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) shall give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under Subchapter B, Chapter 39, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);

(B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);

(C) foundation curriculum subjects not described by Paragraph (A) or (B), including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n); and

(D) enrichment curriculum subjects.
(b) The board shall organize the cycle for subjects in the foundation curriculum so that not more than one-fourth [one-sixth] of the instructional materials [textbooks] for subjects in the foundation curriculum are reviewed each biennium [year]. The board shall adopt rules to provide for a full and complete investigation of instructional materials [textbooks] for each subject in the foundation curriculum [at least] every eight [six] years. The adoption of instructional materials [textbooks] for a subject in the foundation curriculum may be extended beyond the eight-year [six-year] period only if the content of instructional materials [textbooks] for a subject is sufficiently current.

(b-1) For purposes of the cycle described by Subsection (b), the State Board of Education is considered to have adopted instructional materials for English language arts, English as a second language, and prekindergarten, as included in Proclamation 2011, for the biennium beginning September 1, 2011. This subsection expires September 1, 2013.

(c) The board shall adopt rules to provide for a full and complete investigation of instructional materials [textbooks] for each subject in the enrichment curriculum on a cycle the board considers appropriate.

(d) At least 12 [24] months before the beginning of the school year for which instructional materials [textbooks] for a particular subject and grade level will be adopted [purchased] under the review and adoption cycle [adopted by the board], the board shall publish notice of the review and adoption cycle for those instructional materials [textbooks]. A request for
production must allow submission of open-source instructional
materials that are available for use by the state without charge on
the same basis as instructional materials offered for sale.

(d-1) A notice published under Subsection (d) must state
that a publisher of adopted instructional materials for a grade
level other than prekindergarten must submit an electronic sample
of the instructional materials as required by Sections 31.027(a)
and (b) and may not submit a print sample copy.

(e) The board shall designate a request for production of
instructional materials [textbooks] in a subject area and grade
level by the school year in which the instructional materials
[textbooks] are intended to be made available in classrooms and not
by the school year in which the board makes the request for
production.

(f) The board shall amend any request for production issued
for the purchase of instructional materials [textbooks] to conform
to the instructional materials [textbook] funding levels provided
by the General Appropriations Act for the year of implementation.

SECTION 25. Section 31.0221, Education Code, is amended to
read as follows:

Sec. 31.0221. MIDCYCLE REVIEW AND ADOPTION OF INSTRUCTIONAL
MATERIALS [TEXTBOOKS]. (a) The State Board of Education shall
adopt rules for the midcycle review and adoption of instructional
material [a textbook] for a subject for which instructional
materials [textbooks] are not currently under review by the board
under Section 31.022. The rules must require:

(1) the publisher of the instructional material
to pay a fee to the board to cover the cost of the midcycle review and adoption of the instructional material;

(2) the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for other instructional materials for the same subject and grade level; and

(3) a commitment from the publisher to provide the instructional material to school districts in the manner specified by the publisher, which may include:

(A) providing the instructional material to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(b) Sections 31.023 and 31.024 apply to instructional material adopted under this section. Section 31.027 does not apply to instructional material adopted under this section.

SECTION 26. Section 31.023, Education Code, is amended to read as follows:

Sec. 31.023. INSTRUCTIONAL MATERIAL LIST. (a) For each subject and grade level, the State Board of Education shall adopt a list of instructional materials. The [conforming] list includes each instructional
material [textbook] submitted for the subject and grade level that meets applicable physical specifications adopted by the State Board of Education and contains material covering at least half of the elements [each element] of the essential knowledge and skills of the subject and grade level in the student version of the instructional material [textbook], as well as in the teacher version of the instructional material [textbook], as determined by the State Board of Education under Section 28.002 and adopted under Section 31.024[. The nonconforming list includes each textbook submitted for the subject and grade level that:

(1) meets applicable physical specifications adopted by the State Board of Education;

(2) contains material covering at least half, but not all, of the elements of the essential knowledge and skills of the subject and grade level in the student version of the textbook, as well as in the teacher version of the textbook; and

(3) is adopted under Section 31.024].

(a-1) The State Board of Education shall determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted. The board's determination under this subsection is final.

(b) Each instructional material [textbook] on the [a conforming or nonconforming] list must be free from factual errors.

SECTION 27. Section 31.0231, Education Code, is amended to read as follows:

Sec. 31.0231. COMMISSIONER'S [ELECTRONIC TEXTBOOK AND
INSTRUCTIONAL MATERIAL] LIST. (a) The commissioner shall adopt a
list of:

(1) electronic instructional material [textbooks];

and

(2) instructional material 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:

(A) science in kindergarten through grade five;

and

(B) personal financial literacy in kindergarten
through grade eight.

(b) A school district may select [an electronic textbook or
instructional] material on the list adopted under Subsection (a) to
be funded by the district's instructional materials allotment
[state textbook fund] under Section 31.0211 [31.021].

(c) Before the commissioner places [an electronic textbook
or instructional] material on the list adopted under Subsection
(a), the State Board of Education must be given an opportunity to
comment on the [electronic textbook or instructional] material. If
the commissioner places material on the list adopted under
Subsection (a), the State Board of Education may, not later than the
90th day after the date the material is placed on the list, require
the commissioner to remove the material from the list. Material [An
electronic textbook or instructional material] placed on the list
adopted under Subsection (a):

(1) must be reviewed and recommended to the
commissioner by a panel of recognized experts in the subject area of
the [electronic textbook or instructional] material and experts in
education technology;

(2) must satisfy criteria adopted for the purpose by
commissioner rule; and

(3) must meet the National Instructional Materials
Accessibility Standard, to the extent practicable as determined by
the commissioner.

(d) The criteria adopted under Subsection (c)(2) must:

(1) include evidence of alignment with current
research in the subject for which the [electronic textbook or
instructional] material is intended to be used;

(2) include coverage of the essential knowledge and
skills identified under Section 28.002 for the subject for which
the [electronic textbook or instructional] material is intended to
be used and identify:

(A) each of the essential knowledge and skills
for the subject and grade level or levels covered by the [electronic
textbook or instructional] material; and

(B) the percentage of the essential knowledge and
skills for the subject and grade level or levels covered by the
[electronic textbook or instructional] material; and

(3) include appropriate training for teachers.

(e) The commissioner shall update, as necessary, the list
adopted under Subsection (a). Before the commissioner places [an
electronic textbook or instructional] material on the updated list,
the requirements of Subsection (c) must be met. [Before the
(f) After notice to the commissioner explaining in detail the changes, the provider of [an electronic textbook or instructional material on the list adopted under Subsection (a)] may update the navigational features or management system related to the [electronic textbook or instructional material] material.

(g) After notice to the commissioner and a review by the commissioner, the provider of [an electronic textbook or instructional material on the list adopted under Subsection (a)] may update the content of the [electronic textbook or instructional material] material if needed to accurately reflect current knowledge or information.

(h) The commissioner shall adopt rules as necessary to implement this section. The rules must:

(1) be consistent with Section 31.151 regarding the duties of publishers and manufacturers, as appropriate, and the imposition of a reasonable administrative penalty; and

(2) require public notice of an opportunity for the submission of [an electronic textbook or instructional material].

SECTION 28. Section 31.024, Education Code, is amended to read as follows:

Sec. 31.024. ADOPTION BY STATE BOARD OF EDUCATION. (a) By majority vote, the State Board of Education shall:
(1) place each submitted instructional material on the
[textbook on a conforming or nonconforming] list adopted under
Section 31.023; or
(2) reject instructional material [a textbook]
submitted for placement on that [a conforming or nonconforming]
list.
(b) Not later than December 1 of the year preceding the
school year for which the instructional materials [textbooks] for a
particular subject and grade level will be purchased under the
cycle adopted by the board under Section 31.022, the board shall
provide the list [lists] of adopted instructional materials
[textbooks] to each school district. [Each nonconforming list must
include the reasons an adopted textbook is not eligible for the
conforming list.]

SECTION 29. The heading to Section 31.0241, Education Code,
is amended to read as follows:

Sec. 31.0241. ADOPTION OF OPEN-SOURCE INSTRUCTIONAL
MATERIALS [TEXTBOOKS].

SECTION 30. Subsections (b) and (c), Section 31.0241,
Education Code, are amended to read as follows:
(b) The State Board of Education shall place [an]
open-source instructional material [textbook] for a
secondary-level course submitted for adoption by an eligible
institution on the [a conforming or nonconforming] list adopted
under Section 31.023 if:
(1) the instructional material [textbook] is written,
compiled, or edited primarily by faculty of the eligible
institution who specialize in the subject area of the instructional material [textbook];

(2) the eligible institution identifies each contributing author;

(3) the appropriate department of the eligible institution certifies the instructional material [textbook] for accuracy; and

(4) the eligible institution determines that the instructional material [textbook] qualifies for placement on the [conforming or nonconforming] list based on the extent to which the instructional material [textbook] covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material [textbook] is written and certifies that:

(A) for instructional material [a textbook] for a senior-level course, a student who successfully completes a course based on the instructional material [textbook] will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional material [a textbook] for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material [textbook] will be prepared for entry into the senior-level course.

(c) This section does not prohibit an eligible institution from submitting instructional material [a textbook] for placement on the [a conforming or nonconforming] list adopted under Section
31.023 through any other adoption process provided by this chapter.

SECTION 31. Subchapter B, Chapter 31, Education Code, is
amended by adding Section 31.0242 to read as follows:

Sec. 31.0242. REVIEW OF OPEN-SOURCE INSTRUCTIONAL
MATERIAL. Not later than the 90th day after the date open-source
instructional material is submitted as provided by Section 31.0241,
the State Board of Education may review the instructional material.
The board shall:

(1) post with the list adopted under Section 31.023
comments made by the board regarding the open-source instructional
material placed on the list; and

(2) distribute board comments to school districts.

SECTION 32. Section 31.026, Education Code, is amended to
read as follows:

Sec. 31.026. CONTRACT; PRICE. (a) The State Board of
Education shall execute a contract:

(1) for the purchase of each adopted textbook other
than an electronic textbook; and

(2) for the purchase or licensing of each adopted
instructional material [electronic textbook].

(b) A contract must require the publisher to provide the
number of instructional materials [textbooks] required by school
districts in this state for the term of the contract, which must
coincide with the board's adoption cycle.

(c) As applicable, a contract must provide for the purchase
or licensing of instructional material [a textbook] at a specific
price, which may not exceed the lowest price paid by any other state
or any school or school district. The price must be fixed for the
term of the contract.

(d) This section does not apply to an open-source
instructional material [textbook].

SECTION 33. Section 31.0261, Education Code, is amended to
read as follows:

Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE
INSTRUCTIONAL MATERIALS [TEXTBOOKS]. The State Board of Education
may execute a contract for the printing of an open-source
instructional materials placed [textbook listed] on the
[conforming or nonconforming] list adopted under Section 31.023.
The contract must allow a school district to requisition printed
copies of an open-source instructional materials [textbook] as
provided by Section 31.103.

SECTION 34. (a) If this Act takes effect immediately,
Section 31.027, Education Code, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC
SAMPLE [COPIES]. (a) A publisher shall provide each school
district and open-enrollment charter school with information that
fully describes each of the publisher's submitted instructional
materials [adopted textbooks]. On request of a school district, a
publisher shall provide an electronic [a] sample [copy] of
submitted instructional material [an adopted textbook].

(b) A publisher shall provide an electronic [at least two]
sample [copies] of each submitted instructional material [adopted
textbook] to be maintained at each regional education service
center.
This section does not apply to [an] open-source instructional material [textbook].

(b) If this Act does not take effect immediately, Section 31.027, Education Code, as effective September 1, 2011, is amended to read as follows:

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE. (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's submitted instructional materials [adopted textbooks]. On request of a school district, a publisher shall provide an electronic sample of submitted instructional material [an adopted textbook].

(b) A publisher shall provide an electronic sample of each submitted instructional material [adopted textbook] to be maintained at each regional education service center.

(c) This section does not apply to [an] open-source instructional material [textbook].

(c) If this Act takes effect immediately, Sections 2 and 3, S.B. No. 391, Acts of the 82nd Legislature, Regular Session, 2011, have no effect.

SECTION 35. Section 31.028, Education Code, is amended to read as follows:

Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS [TEXTBOOKS].

(a) The commissioner [State Board of Education] may purchase special instructional materials [textbooks] for the education of blind and visually impaired students in public schools. In addition, for a teacher who is blind or visually impaired, the
commissioner [board] shall provide a teacher's edition in Braille or large type, as requested by the teacher, for each instructional material [textbook] the teacher uses in the instruction of students. The teacher edition must be available at the same time the student instructional materials [textbooks] become available.

(b) The publisher of [an] adopted instructional material [textbook] shall provide the agency with computerized instructional material [textbook] files for the production of Braille instructional materials [textbooks] or other versions of instructional materials [textbooks] to be used by students with disabilities, on request of the commissioner [State Board of Education]. A publisher shall arrange computerized instructional material [textbook] files in one of several optional formats specified by the commissioner [State Board of Education].

(c) The commissioner [board] may also enter into agreements providing for the acceptance, requisition, and distribution of special instructional materials [textbooks] and instructional aids pursuant to 20 U.S.C. Section 101 et seq. for use by students enrolled in:

(1) public schools; or
(2) private nonprofit schools, if state funds, other than for administrative costs, are not involved.

(d) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the text [print] in [a] regularly adopted instructional material [textbook] used in the student's class.
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(2) "Special instructional material [textbook]" means instructional material [a textbook] in Braille, large type or any other medium or any apparatus that conveys information to a student or otherwise contributes to the learning process.

SECTION 36. Section 31.029, Education Code, is amended to read as follows:

Sec. 31.029. BILINGUAL INSTRUCTIONAL MATERIALS [TEXTBOOKS]. (a) A school district [The board] shall purchase with the district's instructional materials allotment or otherwise acquire instructional materials [textbooks] for use in bilingual education classes.

(b) The commissioner shall adopt rules regarding the purchase of instructional materials under this section.

SECTION 37. Section 31.030, Education Code, is amended to read as follows:

Sec. 31.030. USED INSTRUCTIONAL MATERIALS [TEXTBOOKS]. The State Board of Education shall adopt rules to ensure that used instructional materials [textbooks] sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. The rules may provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used instructional materials [textbooks] who knowingly violates this section.

SECTION 38. The heading to Section 31.035, Education Code, is amended to read as follows:

Sec. 31.035. SUPPLEMENTAL INSTRUCTIONAL MATERIALS [TEXTBOOKS].
SECTION 39. Subsections (a) through (d) and (f), Section 31.035, Education Code, are amended to read as follows:

(a) Notwithstanding any other provision of this subchapter, the State Board of Education may adopt supplemental instructional materials [textbooks] that are not on the [conforming or nonconforming] list adopted under Section 31.023. The State Board of Education may adopt [a] supplemental instructional material [textbook] under this section only if the instructional material [textbook]:

(1) contains material covering one or more primary focal points or primary topics of a subject in the required curriculum under Section 28.002, as determined by the State Board of Education;

(2) is not designed to serve as the sole instructional material [textbook] for a full course;

(3) meets applicable physical specifications adopted by the State Board of Education; and

(4) is free from factual errors.

(b) The State Board of Education shall identify the essential knowledge and skills identified under Section 28.002 that are covered by [a] supplemental instructional material [textbook] adopted by the board under this section.

(c) Supplemental instructional material [A supplemental textbook] is subject to the review and adoption cycle provisions, including the midcycle review and adoption cycle provisions, of this subchapter.

(d) A school district or open-enrollment charter school may
requisition supplemental instructional material [textbook] adopted under this section only if the district or school[

(1) uses textbook credits received under Section 31.1011 to purchase the supplemental textbook; or

(2) instead of requisitioning a textbook on the
conforming list under Section 31.023 for a course in the foundation curriculum under Section 28.002, requisitions the supplemental instructional material [textbook] along with other supplemental instructional materials [textbooks] or instructional materials [textbooks] on the [nonconforming] list adopted under Section 31.023 that in combination cover each element of the essential knowledge and skills for the course for which the district or school is requisitioning the supplemental instructional materials [textbooks].

(f) A school district or open-enrollment charter school that requisitions supplemental instructional materials [textbooks under Subsection (d)(2)] shall certify to the agency that the supplemental instructional materials [textbooks], in combination with any other instructional materials [textbooks] or supplemental instructional materials [textbooks] used by the district or school, cover the essential knowledge and skills identified under Section 28.002 by the State Board of Education for the subject and grade level for which the district or school is requisitioning the supplemental instructional materials [textbooks].

SECTION 40. The heading to Subchapter B-1, Chapter 31, Education Code, is amended to read as follows:
SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE INSTRUCTIONAL MATERIALS

SECTION 41. Section 31.071, Education Code, is amended to read as follows:

Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may purchase state-developed open-source instructional materials [textbooks] in accordance with this subchapter.

(b) The commissioner:

(1) shall purchase any state-developed open-source instructional materials [textbooks] through a competitive process; and

(2) may purchase more than one state-developed open-source instructional material [textbook] for a subject or grade level.

(c) State-developed [A state-developed] open-source instructional material [textbook] must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the instructional material [textbook] after purchase.

(d) The commissioner may issue a request for proposals for [a] state-developed open-source instructional material [textbook]:

(1) in accordance with the instructional material [textbook] review and adoption cycle under Section 31.022; or

(2) at any other time the commissioner determines that a need exists for additional instructional material [textbook] options.
The costs of administering this subchapter and purchasing state-developed open-source instructional materials shall be paid from the state instructional materials fund, as determined by the commissioner.

SECTION 42. Subsections (a) and (b), Section 31.072, Education Code, are amended to read as follows:

(a) State-developed open-source instructional material must:

(1) be evaluated by teachers or other experts, as determined by the commissioner, before purchase; and

(2) meet the requirements for inclusion on the list adopted under Section 31.023.

(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of state-developed open-source instructional material relating to that curriculum. The commissioner may, at any time, require an additional revision of state-developed open-source instructional material or contract for ongoing revisions of state-developed open-source instructional material for a period not to exceed the period under Section 31.022 for which instructional material for that subject and grade level may be adopted. The commissioner shall use a competitive process to request proposals to revise state-developed open-source instructional material under this subsection.

SECTION 43. The heading to Section 31.073, Education Code,
is amended to read as follows:

Sec. 31.073. SELECTION BY SCHOOL DISTRICT [COST].

SECTION 44. Subsections (c) and (d), Section 31.073, Education Code, are amended to read as follows:

(c) Notwithstanding Section 31.022, a school district or open-enrollment charter school may adopt [a] state-developed open-source instructional material [textbook] at any time, regardless of the instructional material [textbook] review and adoption cycle under that section.

(d) A school district or open-enrollment charter school may not be charged for selection of [a] state-developed open-source instructional material [textbook] in addition to instructional material [a textbook] adopted under Subchapter B.

SECTION 45. Section 31.074, Education Code, is amended to read as follows:

Sec. 31.074. DISTRIBUTION. (a) The commissioner shall provide for the distribution of state-developed open-source instructional materials [textbooks] in a manner consistent with distribution of instructional materials [textbooks] adopted under Subchapter B.

(b) The commissioner may use a competitive process to contract for printing or other reproduction of [a] state-developed open-source instructional material [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 instructional
SECTION 46. Section 31.075, Education Code, is amended to read as follows:

Sec. 31.075. OWNERSHIP; LICENSING. (a) A state-developed open-source instructional material is the property of the state.

(b) The commissioner shall provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or local agency educating students in any grade from prekindergarten through high school, to use and reproduce state-developed open-source instructional material.

(c) The commissioner may provide a license to use state-developed open-source instructional material 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 instructional materials.

SECTION 47. Subsection (b), Section 31.076, Education Code, is amended to read as follows:

(b) A decision by the commissioner regarding the purchase, revision, cost, or distribution of state-developed open-source instructional material is final and may not be appealed.

SECTION 48. Section 31.077, Education Code, is amended to read as follows:

Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall
develop a schedule for the adoption of state-developed open-source instructional materials [textbooks] under this subchapter. In
developing the adoption schedule under this section, the
commissioner shall consider:

(1) the availability of funds;
(2) the existing instructional material [textbook] adoption cycles under Subchapter B; and
(3) the availability of instructional materials [textbooks] for development or purchase by the state.

SECTION 49. The heading to Section 31.101, Education Code, is amended to read as follows:
Sec. 31.101. SELECTION AND PURCHASE OF INSTRUCTIONAL MATERIALS [TEXTBOOKS] BY SCHOOL DISTRICTS.

SECTION 50. Section 31.101, Education Code, is amended by amending Subsections (a), (d), and (e) and adding Subsection (f) to read as follows:

(a) Each year, during a period established by the State Board of Education, the board of trustees of each school district and the governing body of each open-enrollment charter school shall:

(1) for a subject in the foundation curriculum, notify the State Board of Education of the instructional materials [textbooks] selected by the board of trustees or governing body for the following school year from [among] the instructional materials [textbooks on the appropriate conforming or nonconforming] list, including the list adopted under Section 31.0231; or
(2) for a subject in the enrichment curriculum:
(A) notify the State Board of Education of each instructional material [textbook] selected by the board of trustees or governing body for the following school year from [among] the instructional materials [textbooks on the appropriate conforming or nonconforming] list, including the list adopted under Section 31.0231; or

(B) notify the State Board of Education that the board of trustees or governing body has selected instructional material [a textbook] that is not on the [conforming or nonconforming] list.

(d) For instructional material [a textbook] that is not on the [conforming or nonconforming] list, a school district or open-enrollment charter school must use the instructional material [textbook] for the period of the review and adoption cycle the State Board of Education has established for the subject and grade level for which the instructional material [textbook] is used.

(e) A school district or open-enrollment charter school that selects [a] subscription-based [electronic textbook or] instructional material on the [conforming] list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.023 may cancel the subscription and subscribe to [a] new [electronic textbook or] instructional material on the [conforming] list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 before the end of the state contract period under Section 31.026 if:

(1) the district or school has used the [electronic
(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.

(f) The commissioner shall maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment.

SECTION 51. Section 31.102, Education Code, is amended to read as follows:

Sec. 31.102. TITLE AND CUSTODY. (a) Each instructional material purchased as provided by this chapter for a school district or an open-enrollment charter school is the property of the district or school this state.

(b) Subsection (a) applies to an electronic instructional material only to the extent of any applicable licensing agreement.

(c) The board of trustees of a school district or the governing body of an open-enrollment charter school is the legal custodian of textbooks purchased as provided by this chapter for the district or school. The board of trustees shall distribute printed instructional material to students in the manner that the board or governing body determines is most effective and economical.

SECTION 52. The heading to Section 31.103, Education Code,
is amended to read as follows:

Sec. 31.103. INSTRUCTIONAL MATERIAL [TEXTBOOK] REQUISITIONS.

SECTION 53. Subsections (b), (c), and (d), Section 31.103, Education Code, are amended to read as follows:

(b) [A requisition for textbooks for the following school year shall be based on the maximum attendance reports under Subsection (a), plus an additional 10 percent, except as otherwise provided.] A school district or open-enrollment charter school shall make a requisition for instructional material using the online requisition program maintained by [a textbook on the conforming or nonconforming list through] the commissioner [to the state depository designated by the publisher or as provided by State Board of Education rule, as applicable,] not later than June 1 of each year. The [designated state depository or, if the publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B), the] publisher or manufacturer shall fill a requisition approved by the agency [at any other time in the case of an emergency]. [As made necessary by available funds, the commissioner shall reduce the additional percentage of attendance for which a district or school may requisition textbooks. The commissioner may, on application of a district or school that is experiencing high enrollment growth, increase the additional percentage of attendance for which the district or school may requisition textbooks.]

(c) In making a requisition under this section, a school district or open-enrollment charter school may requisition
instructional materials [textbooks] on the [conforming or nonconforming] list adopted under Section 31.023 for grades above the grade level in which a student is enrolled[, except that the total quantity of textbooks requisitioned under this section may not exceed the limit prescribed by Subsection (b)].

(d) A school district or open-enrollment charter school that selects an open-source instructional material [textbook] shall requisition a sufficient number of printed copies for use by students unable to access the instructional material [textbook] electronically unless the district or school provides to each student:

(1) electronic access to the instructional material [textbook] at no cost to the student; or

(2) printed copies of the portion of the instructional material [textbook] that will be used in the course.

SECTION 54. Section 31.104, Education Code, is amended to read as follows:

Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials [textbooks] in a manner consistent with this chapter and rules adopted under this chapter.

(b) A school district or open-enrollment charter school may order replacements for instructional materials [textbooks] that have been lost or damaged directly from[+}

[1] the textbook depository;
(2) the [textbook] publisher of the instructional materials or [manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state under Section 31.151(a)(6)(B); or
(3) any source for a printed copy of [an] open-source instructional material [textbook].

(c) [Each textbook must state that the textbook is the property of or is licensed to this state, as appropriate. Each textbook, other than an electronic textbook or a printed copy of an open-source textbook, must be covered by the student under the direction of the teacher.] Except as provided by Subsection (g), a student must return all instructional materials [textbooks] to the teacher at the end of the school year or when the student withdraws from school.

(d) Each student, or the student's parent or guardian, is responsible for all instructional materials [each textbook, including an electronic textbook] and [all] technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials [textbooks, including electronic textbooks] and technological equipment forfeits the right to free instructional materials [textbooks, including electronic textbooks] and technological equipment until all instructional materials [each textbook, including an electronic textbook] and [all] technological equipment previously issued but not returned in an acceptable condition are [is] paid for by the student, parent, or guardian. As provided by policy of the board of trustees or
governing body, a school district or open-enrollment charter school may waive or reduce the payment requirement if the student is from a low-income family. The district or school shall allow the student to use instructional materials [textbooks, including electronic textbooks,] and technological equipment at school during each school day. If instructional materials [a textbook, including an electronic textbook,] or technological equipment is not returned in an acceptable condition or paid for, the district or school may withhold the student's records. A district or school may not, under this subsection, prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma. The commissioner by rule shall adopt criteria for determining whether instructional materials [a textbook, including an electronic textbook,] and technological equipment are returned in an acceptable condition.

(e) The board of trustees of a school district may not require an employee of the district who acts in good faith to pay for instructional materials [a textbook, electronic textbook,] or technological equipment that is damaged, stolen, misplaced, or not returned. A school district employee may not waive this provision by contract or any other means, except that a district may enter into a written agreement with a school employee whereby the employee assumes financial responsibility for electronic instructional material [textbook] or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the school employee to use the electronic instructional material [textbook] or technological equipment for personal business. Such a written agreement shall be
separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to agree to such an agreement as a condition of employment.

(g) At the end of the school year for which [an] open-source instructional material [textbook] that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source instructional material [textbook] becomes the property of the student to whom it is distributed.

(h) This section does not apply to an electronic copy of [an] open-source instructional material [textbook].

SECTION 55. Section 31.105, Education Code, is amended to read as follows:

Sec. 31.105. SALE OR DISPOSAL OF INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT [TEXTBOOKS]. (a) The board of trustees of a school district or governing body of an open-enrollment charter school may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the State Board of Education or the commissioner. The board of trustees or governing body may also sell electronic instructional materials and technological equipment owned by the district or school. Any funds received by a district or school from a sale authorized by this subsection must be used to purchase instructional materials and technological equipment allowed under Section 31.0211 [textbooks, other than electronic]
textbooks, to a student or another school at the state contract
price. The district shall send money from the sale of textbooks to
the commissioner as required by the commissioner. The commissioner
shall deposit the money in the state textbook fund].

(b) The board of trustees of a school district or governing
body of an open-enrollment charter school shall determine how the
district or school will dispose of discontinued printed
instructional materials, electronic instructional materials, and
 technological equipment.

(c) The board of trustees of a school district or governing
body of an open-enrollment charter school may dispose of printed
instructional material before the date the instructional material
is discontinued for use in the public schools by the State Board of
Education if the board of trustees or governing body determines
that the instructional material is not needed by the district or
school and the board of trustees or governing body does not
reasonably expect that the instructional material will be needed.
A district or school must notify the commissioner of any
instructional material the district or school disposes of under
this subsection.

SECTION 56. Section 31.106, Education Code, is amended to
read as follows:

Sec. 31.106. USE OF LOCAL FUNDS. In addition to any
instructional material [textbook] selected under this chapter, a
school district or open-enrollment charter school school may use local
funds to purchase any instructional materials [textbooks].

SECTION 57. Section 31.151, Education Code, is amended by
amending Subsections (a) and (d) and adding Subsection (e) to read as follows:

(a) A publisher or manufacturer of instructional materials [textbooks]:

(1) shall furnish any instructional material [textbook] the publisher or manufacturer offers in this state\[7\] at a price that does not exceed the lowest price at which the publisher offers that instructional material [textbook] for adoption or sale to any state, public school, or school district in the United States;

(2) shall automatically reduce the price of instructional material [a textbook] sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;

(3) shall provide any instructional material [textbook] or ancillary item free of charge in this state to the same extent that the publisher or manufacturer provides the instructional material [textbook] or ancillary item free of charge to any state, public school, or school district in the United States;

(4) shall guarantee that each copy of instructional material [a textbook] sold in this state is at least equal in quality to copies of that instructional material [textbook] sold elsewhere in the United States and is free from factual error;

(5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials [textbooks] or enter into any
understanding or combination to control prices or restrict
competition in the sale of instructional materials [textbooks] for
use in this state;

(6) shall[+]

[(A) maintain a depository in this state or
arrange with a depository in this state to receive and fill orders
for textbooks, other than open-source textbooks, on-line
textbooks, or on-line textbook components, consistent with State
Board of Education rules; or

[(B) deliver instructional materials
[textbooks] to a school district or open-enrollment charter school
[without a delivery charge to the school district, open-enrollment
charter school, or state, if:

[(i) the publisher or manufacturer does not
maintain or arrange with a depository in this state under Paragraph
(A) and the publisher's or manufacturer's textbooks and related
products are warehoused or otherwise stored less than 300 miles
from a border of this state; or

[(ii) the textbooks are open-source
textbooks, on-line textbooks, or on-line textbook components];

(7) shall, at the time an order for instructional
materials [textbooks] is acknowledged, provide to school districts
or open-enrollment charter schools an accurate shipping date for
instructional materials [textbooks] that are back-ordered;

(8) shall guarantee delivery of instructional
materials [textbooks] at least 10 business days before the opening
day of school of the year for which the instructional materials
are ordered if the instructional materials [textbooks] are ordered by a date specified in the sales contract; and

(9) shall submit to the State Board of Education an affidavit certifying any instructional material [textbook] the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.

(d) A penalty collected under this section shall be deposited to the credit of the state instructional materials [textbook] fund.

(e) An eligible institution, as defined by Section 31.0241(a), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

SECTION 58. The heading to Section 31.152, Education Code, is amended to read as follows:

Sec. 31.152. ACCEPTING REBATE ON [textbooks, electronic textbooks,] instructional materials[.] or technological equipment.  

SECTION 59. Subsections (a), (b), and (d), Section 31.152, Education Code, are amended to read as follows:

(a) A school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any instructional materials[.] or technological equipment used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) A school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:
(1) is given to the person or the person's school;
(2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of textbook, electronic textbook, instructional material, or technological equipment; and
(3) could not be lawfully purchased with state instructional materials funds from the state textbook fund.

(d) In this section, "gift, favor, or service" does not include:
(1) staff development, in-service, or teacher training; or
(2) ancillary instructional materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

SECTION 60. The heading to Section 31.153, Education Code, is amended to read as follows:
Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS LAW.

SECTION 61. Subsection (a), Section 31.153, Education Code, is amended to read as follows:
(a) A person commits an offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials textbooks for the public schools.

SECTION 62. Chapter 32, Education Code, is amended by adding Subchapter E to read as follows:
SUBCHAPTER E. TECHNOLOGY LENDING PROGRAM GRANTS
Sec. 32.201. ESTABLISHMENT OF PROGRAM. (a) The
commissioner may establish a grant program under which grants are
awarded to school districts and open-enrollment charter schools to
implement a technology lending program to loan students equipment
necessary to access and use electronic instructional materials.

(b) A school district or an open-enrollment charter school
may apply to the commissioner to participate in the grant program.
In awarding grants under this subchapter for each school year, the
commissioner shall consider:

(1) the availability of existing equipment to students
in the district or charter school; and

(2) other funding available to the district or charter
school.

(c) The commissioner may determine the terms of a grant
awarded under this section, including limits on the grant amount
and approved uses of grant funds.

(d) The commissioner may recover funds not used in
accordance with the terms of a grant from any state funds otherwise
due to the school district or open-enrollment charter school.

Sec. 32.202. FUNDING. (a) The commissioner may use not
more than $10 million from the state instructional materials fund
under Section 31.021 each state fiscal biennium or a different
amount determined by appropriation to administer a grant program
established under this subchapter.

(b) The cost of administering a grant program under this
subchapter must be paid from funds provided under Subsection (a).

Sec. 32.203. USE OF GRANT FUNDS. (a) A school district or
open-enrollment charter school may use a grant awarded under
Section 32.201 or other local funds to purchase, maintain, and
insure equipment for a technology lending program.

(b) Equipment purchased by a school district or
open-enrollment charter school with a grant awarded under Section
32.201 is the property of the district or charter school.

Sec. 32.204. REVIEW OF PROGRAM. Not later than January 1,
2013, the commissioner shall review the grant program established
under this subchapter and submit to the governor, the lieutenant
governor, the speaker of the house of representatives, and the
presiding officer of each legislative standing committee with
primary jurisdiction over primary and secondary education a written
report regarding the grants awarded under this subchapter.

Sec. 32.205. EXPIRATION. This subchapter expires September
1, 2015.

SECTION 63. Subsection (b), Section 39.303, Education Code,
is amended to read as follows:

(b) For a student who failed to perform satisfactorily as
determined under either performance standard under Section 39.0241
on an assessment instrument administered under Section 39.023(a),
(c), or (l), the school district shall include in the notice
specific information relating to access to [online] educational
resources at the appropriate assessment instrument content level,
including [educational resources described by Section 32.252(b)(2).
and] assessment instrument questions and answers released under
Section 39.023(e).

SECTION 64. Subsection (c), Section 41.124, Education Code,
as effective September 1, 2011, is amended to read as follows:
(c) A school district that receives tuition for a student from a school district with a wealth per student that exceeds the equalized wealth level may not claim attendance for that student for purposes of Chapters 42 and 46 and the instructional materials [technology] allotment under Section 31.0211 [32.005].

SECTION 65. Subsection (b), Section 43.001, Education Code, as amended by Chapters 201 (H.B. 3459) and 328 (S.B. 206), Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

(b) The available school fund, which shall be apportioned annually to each county according to its scholastic population, consists of:

(1) the distributions to the fund from the permanent school fund as provided by Section 5(a), Article VII, Texas Constitution;
(2) one-fourth of all revenue derived from all state occupation taxes, exclusive of delinquencies and cost of collection;
(3) one-fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law; and
(4) all other appropriations to the available school fund made by the legislature for public school purposes.

SECTION 66. Section 43.001, Education Code, is amended by adding Subsections (d) through (g) to read as follows:

(d) Each year the State Board of Education shall set aside an amount equal to 50 percent of the annual distribution for that year from the permanent school fund to the available school fund as

55
provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund established under Section 31.021.

(e) Subsection (d) applies beginning with the state fiscal biennium beginning September 1, 2013. For the state fiscal biennium beginning September 1, 2011, each year the State Board of Education shall set aside an amount equal to 40 percent of the annual distribution for that year from the permanent school fund to the available school fund as provided by Section 5(a), Article VII, Texas Constitution, to be placed, subject to the General Appropriations Act, in the state instructional materials fund established under Section 31.021.

(f) In calculating the amounts to be set aside as provided by Subsection (e) for the state fiscal biennium beginning September 1, 2011, the State Board of Education shall consider only the amounts of the annual distribution of the permanent school fund for that biennium. The board shall not consider amounts distributed for the state fiscal biennium beginning September 1, 2009, regardless of the date on which those amounts were approved for distribution.

(g) Subsections (e) and (f) and this subsection expire September 1, 2013.

SECTION 67. The following provisions of the Education Code are repealed:

(1) Subdivision (3), Section 31.002;
(2) Subsections (b), (e), and (f), Section 31.021;
(3) Section 31.0222;
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1 (4) Section 31.025;
2 (5) Subsections (e) and (g), Section 31.035;
3 (6) Subsection (c), Section 31.072;
4 (7) Subsections (a) and (b), Section 31.073;
5 (8) Subsections (b), (b-1), (c), and (c-1), Section
6 31.101;
7 (9) Section 31.1011;
8 (10) Subsections (a) and (e), Section 31.103;
9 (11) Section 31.1031;
10 (12) Subchapter E, Chapter 31;
11 (13) Section 32.005;
12 (14) Sections 32.251 through 32.257;
13 (15) Sections 32.259 through 32.263; and
14 (16) Subchapter H, Chapter 32.

SECTION 68. Subsections (a-1) and (b-1), Section 2175.128,
16 Government Code, are repealed.

SECTION 69. The change in law made by this Act to Section
18 7.108, Education Code, applies only to an offense committed on or
19 after the effective date of this Act. An offense committed before
20 the effective date of this Act is governed by the law in effect when
21 the offense was committed, and the former law is continued in effect
22 for that purpose. For purposes of this section, an offense was
23 committed before the effective date of this Act if any element of
24 the offense occurred before that date.

SECTION 70. (a) If this Act takes effect immediately,
26 Subsection (a), Section 11, H.B. No. 4, Acts of the 82nd
27 Legislature, Regular Session, 2011, has no effect, and the
$184,000,000 described by that subsection is allocated to fund the instructional materials allotment in accordance with the provisions of this Act.

(b) To the extent of any conflict, this Act prevails over the provisions of Subsection (b), Section 11, H.B. No. 4, Acts of the 82nd Legislature, Regular Session, 2011.

(c) If this Act does not take effect immediately, Subsections (a) and (b) of this section have no effect.

SECTION 71. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.
President of the Senate

Speaker of the House

I hereby certify that S.B. No. 6 passed the Senate on June 3, 2011, by the following vote: Yeas 31, Nays 0; June 20, 2011, Senate refused to concur in House amendments and requested appointment of Conference Committee; June 21, 2011, House granted request of the Senate; June 27, 2011, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 6 passed the House, with amendments, on June 16, 2011, by the following vote: Yeas 138, Nays 0, one present not voting; June 21, 2011, House granted request of the Senate for appointment of Conference Committee; June 27, 2011, House adopted Conference Committee Report by the following vote: Yeas 142, Nays 1, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor
Sec. 31.001. FREE INSTRUCTIONAL MATERIALS. Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Section 31.104(d), a school district may not charge a student for instructional material or technological equipment purchased by the district with the district's instructional materials allotment.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 18, eff. July 19, 2011.

Sec. 31.002. DEFINITIONS. In this chapter:

(1) "Instructional material" means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, on-line services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material.

(1-a) "Open-source instructional material" means electronic instructional material 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 instructional material. The term includes state-developed open-source instructional material.
purchased under Subchapter B-1.

(2) "Publisher" includes an on-line service or a developer or distributor of electronic instructional materials.

(3) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(1), eff. July 19, 2011.

(4) "Technological equipment" means hardware, a device, or equipment necessary for:

(A) instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials; or

(B) professional use by a classroom teacher.


Amended by:

Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 19, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(1), eff. July 19, 2011.

Sec. 31.003. RULES. The State Board of Education may adopt rules, consistent with this chapter, for the adoption, requisition, distribution, care, use, and disposal of instructional materials.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 20, eff. July 19, 2011.

Sec. 31.004. CERTIFICATION OF PROVISION OF INSTRUCTIONAL MATERIALS. (a) Each school district and open-enrollment charter school shall annually certify to the State Board of Education and the commissioner that, for each subject in the required curriculum under Section 28.002, other than physical education, and each grade level, the district provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.
(b) To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), a school district or open-enrollment charter school may consider:

(1) instructional materials adopted by the State Board of Education;

(2) materials adopted or purchased by the commissioner under Section 31.0231 or Subchapter B-1;

(3) open-source instructional materials submitted by eligible institutions and adopted by the State Board of Education under Section 31.0241;

(4) open-source instructional materials made available by other public schools; and

(5) instructional materials developed or purchased by the school district or open-enrollment charter school.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 20, eff. July 19, 2011.

Sec. 31.005. FUNDING FOR OPEN-ENROLLMENT CHARTER SCHOOLS. An open-enrollment charter school is entitled to the instructional materials allotment under this chapter and is subject to this chapter as if the school were a school district.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 20, eff. July 19, 2011.

SUBCHAPTER B. STATE FUNDING, ADOPTION, AND PURCHASE

Sec. 31.021. STATE INSTRUCTIONAL MATERIALS FUND. (a) The state instructional materials fund consists of:

(1) an amount set aside by the State Board of Education from the available school fund, in accordance with Section 43.001(d); and

(2) all amounts lawfully paid into the fund from any other source.
(b) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(2), eff. July 19, 2011.

(c) Money in the state instructional materials fund shall be used to:

1. fund the instructional materials allotment, as provided by Section 31.0211;
2. purchase special instructional materials for the education of blind and visually impaired students in public schools;
3. pay the expenses associated with the instructional materials adoption and review process under this chapter;
4. pay the expenses associated with the purchase or licensing of open-source instructional material;
5. pay the expenses associated with the purchase of instructional material, including intrastate freight and shipping and the insurance expenses associated with intrastate freight and shipping;
6. fund the technology lending grant program established under Section 32.201; and
7. provide funding to the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, and the Texas Youth Commission.

(d) Money transferred to the state instructional materials fund remains in the fund until spent and does not lapse to the state at the end of the fiscal year.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(2), eff. July 19, 2011.

(f) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(2), eff. July 19, 2011.

Amended by Acts 1997, 75th Leg., ch. 258, Sec. 1, 2, eff. May 26, 1997; Acts 2003, 78th Leg., ch. 201, Sec. 20, eff. June 10, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1407, Sec. 2, eff. June 19, 2009.
Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 21, eff. July 19, 2011.
Sec. 31.0211. INSTRUCTIONAL MATERIALS ALLOTMENT. (a) A school district is entitled to an annual allotment from the state instructional materials fund for each student enrolled in the district on a date during the preceding school year specified by the commissioner. The commissioner shall determine the amount of the allotment per student each year on the basis of the amount of money available in the state instructional materials fund to fund the allotment. An allotment under this section shall be transferred from the state instructional materials fund to the credit of the district's instructional materials account as provided by Section 31.0212.

(b) A juvenile justice alternative education program under Section 37.011 is entitled to an allotment from the state instructional materials fund in an amount determined by the commissioner. The program shall use the allotment to purchase items listed in Subsection (c) for students enrolled in the program. The commissioner's determination under this subsection is final and may not be appealed.

(c) Subject to Subsection (d), funds allotted under this section may be used to:

(1) purchase:

(A) materials on the list adopted by the commissioner, as provided by Section 31.0231;

(B) instructional materials, regardless of whether the instructional materials are on the list adopted under Section 31.024;

(C) consumable instructional materials, including workbooks;

(D) instructional materials for use in bilingual education classes, as provided by Section 31.029;
(E) supplemental instructional materials, as provided by Section 31.035;
(F) state-developed open-source instructional materials, as provided by Subchapter B-1;
(G) instructional materials and technological equipment under any continuing contracts of the district in effect on September 1, 2011; and
(H) technological equipment necessary to support the use of materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with an allotment under this section; and
(2) pay:
(A) for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use; and
(B) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.
(d) Each year a school district shall use the district's allotment under this section to purchase, in the following order:
(1) instructional materials necessary to permit the district to certify that the district has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level as required by Section 28.002; and
(2) any other instructional materials or technological equipment as determined by the district.
(d-1) Notwithstanding Subsection (d), for the state fiscal biennium beginning September 1, 2011, a school district shall use an allotment received under this section to purchase instructional materials that will assist the district in satisfying performance standards under Section 39.0241, as added by Chapter 895 (H.B. 3), Acts of the 81st Legislature, Regular Session, 2009, on assessment instruments adopted under Sections 39.023(a) and (c).
(d-2) Subsection (d-1) and this subsection expire August 31, 2013.
(e) Not later than May 31 of each school year, a school district may request that the commissioner adjust the number of students for which the district is entitled to receive an allotment under Subsection (a) on the grounds that the number of students attending school in the district will increase or decrease during the school year for which the allotment is provided. The commissioner may also adjust the number of students for which a district is entitled to receive an allotment, without a request by the district, if the commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the district. The commissioner's determination under this subsection is final.

(f) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 23, eff. July 19, 2011.

Sec. 31.0212. INSTRUCTIONAL MATERIALS ACCOUNT. (a) The commissioner shall maintain an instructional materials account for each school district. Each school year, the commissioner shall deposit in the account for each district the amount of the district's instructional materials allotment under Section 31.0211.

(b) The commissioner shall pay the cost of instructional materials requisitioned by a school district under Section 31.103 using funds from the district's instructional materials account.

(c) A school district may also use funds in the district's account to purchase electronic instructional materials or technological equipment. The district shall submit to the commissioner a request for funds for this purpose from the district's account. The commissioner shall adopt rules regarding the documentation a school district must submit to receive funds under this subsection.

(d) Money deposited in a school district's instructional materials account during each state fiscal biennium remains in the account and available for use by the district for the entire biennium. At the end of each biennium, a district with unused
money in the district's account may carry forward any remaining balance to the next biennium.

(e) The commissioner shall adopt rules as necessary to implement this section. The rules must include a requirement that a school district provide the title and publication information for any instructional materials requisitioned or purchased by the district with the district's instructional materials allotment.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 23, eff. July 19, 2011.

Sec. 31.0213. CERTIFICATION OF USE OF INSTRUCTIONAL MATERIALS ALLOTMENT. Each school district shall annually certify to the commissioner that the district's instructional materials allotment has been used only for expenses allowed by Section 31.0211.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 23, eff. July 19, 2011.

Sec. 31.0214. ADJUSTMENT FOR HIGH ENROLLMENT GROWTH DISTRICTS. (a) Each year the commissioner shall adjust the instructional materials allotment of school districts experiencing high enrollment growth. The commissioner shall establish a procedure for determining high enrollment growth districts eligible to receive an adjustment under this section and the amount of the instructional materials allotment those districts will receive.

(b) The commissioner may adopt rules as necessary to implement this section.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 23, eff. July 19, 2011.

Sec. 31.022. INSTRUCTIONAL MATERIALS REVIEW AND ADOPTION. (a) The State Board of Education shall adopt a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002. In adopting the cycle, the board:
(1) is not required to review and adopt instructional materials for all grade levels in a single year; and

(2) shall give priority to instructional materials in the following subjects:

(A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under Subchapter B, Chapter 39, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);

(B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);

(C) foundation curriculum subjects not described by Paragraph (A) or (B), including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n); and

(D) enrichment curriculum subjects.

(b) The board shall organize the cycle for subjects in the foundation curriculum so that not more than one-fourth of the instructional materials for subjects in the foundation curriculum are reviewed each biennium. The board shall adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years. The adoption of instructional materials for a subject in the foundation curriculum may be extended beyond the eight-year period only if the content of instructional materials for a subject is sufficiently current.

(b-1) For purposes of the cycle described by Subsection (b), the State Board of Education is considered to have adopted instructional materials for English language arts, English as a second language, and prekindergarten, as included in Proclamation 2011, for the biennium beginning September 1, 2011. This subsection expires September 1, 2013.

(c) The board shall adopt rules to provide for a full and complete investigation of instructional materials for each subject
in the enrichment curriculum on a cycle the board considers appropriate.

(d) At least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle, the board shall publish notice of the review and adoption cycle for those instructional materials. A request for production must allow submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.

(d-1) A notice published under Subsection (d) must state that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by Sections 31.027(a) and (b) and may not submit a print sample copy.

(e) The board shall designate a request for production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in classrooms and not by the school year in which the board makes the request for production.

(f) The board shall amend any request for production issued for the purchase of instructional materials to conform to the instructional materials funding levels provided by the General Appropriations Act for the year of implementation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:


Acts 2009, 81st Leg., R.S., Ch. 1407, Sec. 3, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 24, eff. July 19, 2011.

Sec. 31.0221. MIDCYCLE REVIEW AND ADOPTION OF INSTRUCTIONAL MATERIALS. (a) The State Board of Education shall adopt rules for the midcycle review and adoption of instructional material for a subject for which instructional materials are not currently under
review by the board under Section 31.022. The rules must require:

(1) the publisher of the instructional material to pay a fee to the board to cover the cost of the midcycle review and adoption of the instructional material;

(2) the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for other instructional materials for the same subject and grade level; and

(3) a commitment from the publisher to provide the instructional material to school districts in the manner specified by the publisher, which may include:

(A) providing the instructional material to any district in a regional education service center area identified by the publisher; or

(B) providing a certain maximum number of instructional materials specified by the publisher.

(b) Sections 31.023 and 31.024 apply to instructional material adopted under this section. Section 31.027 does not apply to instructional material adopted under this section.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 25, eff. July 19, 2011.

Sec. 31.023. INSTRUCTIONAL MATERIAL LIST. (a) For each subject and grade level, the State Board of Education shall adopt a list of instructional materials. The list includes each instructional material submitted for the subject and grade level that meets applicable physical specifications adopted by the State Board of Education and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level in the student version of the instructional material, as well as in the teacher version of the instructional material, as determined by the State Board of Education under Section 28.002 and adopted under Section 31.024.
(a-1) The State Board of Education shall determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted. The board's determination under this subsection is final.

(b) Each instructional material on the list must be free from factual errors.

 Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 26, eff. July 19, 2011.

Sec. 31.0231. COMMISSIONER'S LIST. (a) The commissioner shall adopt a list of:

(1) electronic instructional material; and

(2) material 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:

(A) science in kindergarten through grade five; and

(B) personal financial literacy in kindergarten through grade eight.

(b) A school district may select material on the list adopted under Subsection (a) to be funded by the district's instructional materials allotment under Section 31.0211.

(c) Before the commissioner places material on the list adopted under Subsection (a), the State Board of Education must be given an opportunity to comment on the material. If the commissioner places material on the list adopted under Subsection (a), the State Board of Education may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list. Material placed on the list adopted under Subsection (a):

(1) must be reviewed and recommended to the
commissioner by a panel of recognized experts in the subject area of
the material and experts in education technology;
(2) must satisfy criteria adopted for the purpose by
commissioner rule; and
(3) must meet the National Instructional Materials
Accessibility Standard, to the extent practicable as determined by
the commissioner.
(d) The criteria adopted under Subsection (c)(2) must:
(1) include evidence of alignment with current
research in the subject for which the material is intended to be
used;
(2) include coverage of the essential knowledge and
skills identified under Section 28.002 for the subject for which
the material is intended to be used and identify:
(A) each of the essential knowledge and skills
for the subject and grade level or levels covered by the material;
and
(B) the percentage of the essential knowledge and
skills for the subject and grade level or levels covered by the
material; and
(3) include appropriate training for teachers.
(e) The commissioner shall update, as necessary, the list
adopted under Subsection (a). Before the commissioner places
material on the updated list, the requirements of Subsection (c)
must be met.
(f) After notice to the commissioner explaining in detail
the changes, the provider of material on the list adopted under
Subsection (a) may update the navigational features or management
system related to the material.
(g) After notice to the commissioner and a review by the
commissioner, the provider of material on the list adopted under
Subsection (a) may update the content of the material if needed to
accurately reflect current knowledge or information.
(h) The commissioner shall adopt rules as necessary to
implement this section. The rules must:
(1) be consistent with Section 31.151 regarding the
duties of publishers and manufacturers, as appropriate, and the
imposition of a reasonable administrative penalty; and

(2) require public notice of an opportunity for the submission of material.

Added by Acts 2009, 81st Leg., R.S., Ch. 1407, Sec. 4, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 885, Sec. 2, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 27, eff. July 19, 2011.

Sec. 31.024. ADOPTION BY STATE BOARD OF EDUCATION. (a) By majority vote, the State Board of Education shall:

(1) place each submitted instructional material on the list adopted under Section 31.023; or

(2) reject instructional material submitted for placement on that list.

(b) Not later than December 1 of the year preceding the school year for which the instructional materials for a particular subject and grade level will be purchased under the cycle adopted by the board under Section 31.022, the board shall provide the list of adopted instructional materials to each school district.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 28, eff. July 19, 2011.

Sec. 31.0241. ADOPTION OF OPEN-SOURCE INSTRUCTIONAL MATERIALS. (a) In this section, "eligible institution" means:

(1) a public institution of higher education that is designated as a research university or emerging research university under the higher education coordinating board's accountability system, or a private university located in this state that is a member of the Association of American Universities; or

(2) a public technical institute, as defined by Section 61.003.

(b) The State Board of Education shall place open-source
 instructional material for a secondary-level course submitted for adoption by an eligible institution on the list adopted under Section 31.023 if:

(1) the instructional material is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the instructional material;

(2) the eligible institution identifies each contributing author;

(3) the appropriate department of the eligible institution certifies the instructional material for accuracy; and

(4) the eligible institution determines that the instructional material qualifies for placement on the list based on the extent to which the instructional material covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material is written and certifies that:

(A) for instructional material for a senior-level course, a student who successfully completes a course based on the instructional material will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or

(B) for instructional material for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material will be prepared for entry into the senior-level course.

(c) This section does not prohibit an eligible institution from submitting instructional material for placement on the list adopted under Section 31.023 through any other adoption process provided by this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 29, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 30, eff. July 19, 2011.
Sec. 31.0242. REVIEW OF OPEN-SOURCE INSTRUCTIONAL MATERIAL. Not later than the 90th day after the date open-source instructional material is submitted as provided by Section 31.0241, the State Board of Education may review the instructional material. The board shall:

(1) post with the list adopted under Section 31.023 comments made by the board regarding the open-source instructional material placed on the list; and

(2) distribute board comments to school districts.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 31, eff. July 19, 2011.

Sec. 31.026. CONTRACT; PRICE. (a) The State Board of Education shall execute a contract for the purchase or licensing of each adopted instructional material.

(b) A contract must require the publisher to provide the number of instructional materials required by school districts in this state for the term of the contract, which must coincide with the board's adoption cycle.

(c) As applicable, a contract must provide for the purchase or licensing of instructional material at a specific price, which may not exceed the lowest price paid by any other state or any school or school district. The price must be fixed for the term of the contract.

(d) This section does not apply to open-source instructional material.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 32, eff. July 19, 2011.

Sec. 31.0261. CONTRACTS FOR PRINTING OF OPEN-SOURCE INSTRUCTIONAL MATERIALS. The State Board of Education may execute a contract for the printing of open-source instructional materials placed on the list adopted under Section 31.023. The contract must
allow a school district to requisition printed copies of open-source instructional materials as provided by Section 31.103.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 33, eff. July 19, 2011.

Sec. 31.027. INFORMATION TO SCHOOL DISTRICTS; ELECTRONIC SAMPLE. (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's submitted instructional materials. On request of a school district, a publisher shall provide an electronic sample of submitted instructional material.

(b) A publisher shall provide an electronic sample of each submitted instructional material to be maintained at each regional education service center.

(c) This section does not apply to open-source instructional material.


Amended by:

Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 6, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 34(a), eff. July 19, 2011.

Sec. 31.028. SPECIAL INSTRUCTIONAL MATERIALS. (a) The commissioner may purchase special instructional materials for the education of blind and visually impaired students in public schools. In addition, for a teacher who is blind or visually impaired, the commissioner shall provide a teacher's edition in Braille or large type, as requested by the teacher, for each instructional material the teacher uses in the instruction of students. The teacher edition must be available at the same time the student instructional materials become available.

(b) The publisher of adopted instructional material shall provide the agency with computerized instructional material files
for the production of Braille instructional materials or other versions of instructional materials to be used by students with disabilities, on request of the commissioner. A publisher shall arrange computerized instructional material files in one of several optional formats specified by the commissioner.

(c) The commissioner may also enter into agreements providing for the acceptance, requisition, and distribution of special instructional materials and instructional aids pursuant to 20 U.S.C. Section 101 et seq. for use by students enrolled in:

(1) public schools; or
(2) private nonprofit schools, if state funds, other than for administrative costs, are not involved.

(d) In this section:

(1) "Blind or visually impaired student" includes any student whose visual acuity is impaired to the extent that the student is unable to read the text in regularly adopted instructional material used in the student's class.

(2) "Special instructional material" means instructional material in Braille, large type or any other medium or any apparatus that conveys information to a student or otherwise contributes to the learning process.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 35, eff. July 19, 2011.

Sec. 31.029. BILINGUAL INSTRUCTIONAL MATERIALS. (a) A school district shall purchase with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes.

(b) The commissioner shall adopt rules regarding the purchase of instructional materials under this section.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 36, eff. July 19, 2011.
Sec. 31.030. USED INSTRUCTIONAL MATERIALS. The State Board of Education shall adopt rules to ensure that used instructional materials sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. The rules may provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used instructional materials who knowingly violates this section. 

Amended by: 
Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 37, eff. July 19, 2011.

Sec. 31.035. SUPPLEMENTAL INSTRUCTIONAL MATERIALS. 
(a) Notwithstanding any other provision of this subchapter, the State Board of Education may adopt supplemental instructional materials that are not on the list adopted under Section 31.023. The State Board of Education may adopt supplemental instructional material under this section only if the instructional material:

(1) contains material covering one or more primary focal points or primary topics of a subject in the required curriculum under Section 28.002, as determined by the State Board of Education; 

(2) is not designed to serve as the sole instructional material for a full course; 

(3) meets applicable physical specifications adopted by the State Board of Education; and 

(4) is free from factual errors. 

(b) The State Board of Education shall identify the essential knowledge and skills identified under Section 28.002 that are covered by supplemental instructional material adopted by the board under this section. 

(c) Supplemental instructional material is subject to the review and adoption cycle provisions, including the midcycle review and adoption cycle provisions, of this subchapter. 

(d) A school district or open-enrollment charter school may requisition supplemental instructional material adopted under this
section only if the district or school requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the list adopted under Section 31.023 that in combination cover each element of the essential knowledge and skills for the course for which the district or school is requisitioning the supplemental instructional materials.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(5), eff. July 19, 2011.

(f) A school district or open-enrollment charter school that requisitions supplemental instructional materials shall certify to the agency that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the district or school, cover the essential knowledge and skills identified under Section 28.002 by the State Board of Education for the subject and grade level for which the district or school is requisitioning the supplemental instructional materials.

(g) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(5), eff. July 19, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 445, Sec. 5, eff. June 16, 2007.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 38, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 39, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(5), eff. July 19, 2011.

SUBCHAPTER B-1. STATE-DEVELOPED OPEN-SOURCE INSTRUCTIONAL MATERIALS

Sec. 31.071. PURCHASE AUTHORITY. (a) The commissioner may purchase state-developed open-source instructional materials in accordance with this subchapter.

(b) The commissioner:
(1) shall purchase any state-developed open-source instructional materials through a competitive process; and

(2) may purchase more than one state-developed open-source instructional material for a subject or grade level.

(c) State-developed open-source instructional material must be irrevocably owned by or licensed to the state for use in the applicable subject or grade level. The state must have unlimited authority to modify, delete, combine, or add content to the instructional material after purchase.

(d) The commissioner may issue a request for proposals for state-developed open-source instructional material:

(1) in accordance with the instructional material review and adoption cycle under Section 31.022; or

(2) at any other time the commissioner determines that a need exists for additional instructional material options.

(e) The costs of administering this subchapter and purchasing state-developed open-source instructional materials shall be paid from the state instructional materials fund, as determined by the commissioner.

Sec. 31.072. CONTENT REQUIREMENTS. (a) State-developed open-source instructional material must:

(1) be evaluated by teachers or other experts, as determined by the commissioner, before purchase; and

(2) meet the requirements for inclusion on the instructional material list adopted under Section 31.023.

(b) Following a curriculum revision by the State Board of Education, the commissioner shall require the revision of state-developed open-source instructional material relating to that curriculum. The commissioner may, at any time, require an additional revision of state-developed open-source instructional material or contract for ongoing revisions of state-developed
open-source instructional material for a period not to exceed the period under Section 31.022 for which instructional material for that subject and grade level may be adopted. The commissioner shall use a competitive process to request proposals to revise state-developed open-source instructional material under this subsection.

(c) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(6), eff. July 19, 2011.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 42, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(6), eff. July 19, 2011.

Sec. 31.073. SELECTION BY SCHOOL DISTRICT. (a) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(7), eff. July 19, 2011.

(b) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(7), eff. July 19, 2011.

(c) Notwithstanding Section 31.022, a school district or open-enrollment charter school may adopt state-developed open-source instructional material at any time, regardless of the instructional material review and adoption cycle under that section.

(d) A school district or open-enrollment charter school may not be charged for selection of state-developed open-source instructional material in addition to instructional material adopted under Subchapter B.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 43, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 44, eff. July 19, 2011.
Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(7), eff. July 19, 2011.

Sec. 31.074. DISTRIBUTION. (a) The commissioner shall provide for the distribution of state-developed open-source instructional materials in a manner consistent with distribution of instructional materials adopted under Subchapter B.

(b) The commissioner may use a competitive process to contract for printing or other reproduction of state-developed open-source instructional material 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 state-developed open-source instructional material.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 45, eff. July 19, 2011.

Sec. 31.075. OWNERSHIP; LICENSING. (a) State-developed open-source instructional material is the property of the state.

(b) The commissioner shall provide a license to each public school in the state, including a school district, an open-enrollment charter school, and a state or local agency educating students in any grade from prekindergarten through high school, to use and reproduce state-developed open-source instructional material.

(c) The commissioner may provide a license to use state-developed open-source instructional material 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 instructional materials.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.
Sec. 31.076. RULES; FINALITY OF DECISIONS. (a) The commissioner may adopt rules necessary to implement this subchapter.

(b) A decision by the commissioner regarding the purchase, revision, cost, or distribution of state-developed open-source instructional material is final and may not be appealed.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 47, eff. July 19, 2011.

Sec. 31.077. ADOPTION SCHEDULE. The commissioner shall develop a schedule for the adoption of state-developed open-source instructional materials under this subchapter. In developing the adoption schedule under this section, the commissioner shall consider:

(1) the availability of funds;

(2) the existing instructional material adoption cycles under Subchapter B; and

(3) the availability of instructional materials for development or purchase by the state.

Added by Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 7, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 48, eff. July 19, 2011.

SUBCHAPTER C. LOCAL OPERATIONS

Sec. 31.101. SELECTION AND PURCHASE OF INSTRUCTIONAL MATERIALS BY SCHOOL DISTRICTS. (a) Each year, during a period established by the State Board of Education, the board of trustees
of each school district and the governing body of each open-enrollment charter school shall:

(1) for a subject in the foundation curriculum, notify the State Board of Education of the instructional materials selected by the board of trustees or governing body for the following school year from the instructional materials list, including the list adopted under Section 31.0231; or

(2) for a subject in the enrichment curriculum:

(A) notify the State Board of Education of each instructional material selected by the board of trustees or governing body for the following school year from the instructional materials list, including the list adopted under Section 31.0231; or

(B) notify the State Board of Education that the board of trustees or governing body has selected instructional material that is not on the list.

(b) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(8), eff. July 19, 2011.

(b-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(8), eff. July 19, 2011.

(c) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(8), eff. July 19, 2011.

(c-1) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(8), eff. July 19, 2011.

(d) For instructional material that is not on the list, a school district or open-enrollment charter school must use the instructional material for the period of the review and adoption cycle the State Board of Education has established for the subject and grade level for which the instructional material is used.

(e) A school district or open-enrollment charter school that selects subscription-based instructional material on the list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 may cancel the subscription and subscribe to new instructional material on the list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 before the end of the state contract period.
under Section 31.026 if:

(1) the district or school has used the instructional material for at least one school 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 instructional material used by the district or school.

(f) The commissioner shall maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment.


Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1407, Sec. 5, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 49, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 50, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(8), eff. July 19, 2011.

Sec. 31.102. TITLE AND CUSTODY. (a) Each instructional material purchased as provided by this chapter for a school district or an open-enrollment charter school is the property of the district or school.

(b) Subsection (a) applies to electronic instructional material only to the extent of any applicable licensing agreement.

(c) The board of trustees of a school district or the governing body of an open-enrollment charter school shall distribute printed instructional material to students in the manner that the board or governing body determines is most effective and economical.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 51, eff. July 19, 2011.
Sec. 31.103. INSTRUCTIONAL MATERIAL REQUISITIONS.

(a) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(10), eff. July 19, 2011.

(b) A school district or open-enrollment charter school shall make a requisition for instructional material using the online requisition program maintained by the commissioner not later than June 1 of each year. The publisher or manufacturer shall fill a requisition approved by the agency.

(c) In making a requisition under this section, a school district or open-enrollment charter school may requisition instructional materials on the list adopted under Section 31.023 for grades above the grade level in which a student is enrolled.

(d) A school district or open-enrollment charter school that selects open-source instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district or school provides to each student:

1. electronic access to the instructional material at no cost to the student; or

2. printed copies of the portion of the instructional material that will be used in the course.

(e) Repealed by Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(10), eff. July 19, 2011.


Amended by:

Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 8, eff. September 1, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 52, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 53, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 67(10), eff. July 19, 2011.
Sec. 31.104. DISTRIBUTION AND HANDLING. (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials in a manner consistent with this chapter and rules adopted under this chapter.

(b) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of open-source instructional material.

(c) Except as provided by Subsection (g), a student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school.

(d) Each student, or the student's parent or guardian, is responsible for all instructional materials and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian. As provided by policy of the board of trustees or governing body, a school district or open-enrollment charter school may waive or reduce the payment requirement if the student is from a low-income family. The district or school shall allow the student to use instructional materials and technological equipment at school during each school day. If instructional materials or technological equipment is not returned in an acceptable condition or paid for, the district or school may withhold the student's records. A district or school may not, under this subsection, prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma. The commissioner by rule shall adopt criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.
(e) The board of trustees of a school district may not require an employee of the district who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. A school district employee may not waive this provision by contract or any other means, except that a district may enter into a written agreement with a school employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the school employee to use the electronic instructional material or technological equipment for personal business. Such a written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to agree to such an agreement as a condition of employment.

(g) At the end of the school year for which open-source instructional material that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source instructional material becomes the property of the student to whom it is distributed.

(h) This section does not apply to an electronic copy of open-source instructional material.


Acts 2009, 81st Leg., R.S., Ch. 679, Sec. 9, eff. September 1, 2009.
Sec. 31.105. SALE OR DISPOSAL OF INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT. (a) The board of trustees of a school district or governing body of an open-enrollment charter school may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the State Board of Education or the commissioner. The board of trustees or governing body may also sell electronic instructional materials and technological equipment owned by the district or school. Any funds received by a district or school from a sale authorized by this subsection must be used to purchase instructional materials and technological equipment allowed under Section 31.0211.

(b) The board of trustees of a school district or governing body of an open-enrollment charter school shall determine how the district or school will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment.

(c) The board of trustees of a school district or governing body of an open-enrollment charter school may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the State Board of Education if the board of trustees or governing body determines that the instructional material is not needed by the district or school and the board of trustees or governing body does not reasonably expect that the instructional material will be needed. A district or school must notify the commissioner of any instructional material the district or school disposes of under this subsection.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995. Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 55, eff. July 19, 2011.
instructional material selected under this chapter, a school district or open-enrollment charter school may use local funds to purchase any instructional materials.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 56, eff. July 19, 2011.

SUBCHAPTER D. ADMINISTRATIVE PENALTIES AND PENAL PROVISIONS

Sec. 31.151. DUTIES OF PUBLISHERS AND MANUFACTURERS.

(a) A publisher or manufacturer of instructional materials:

(1) shall furnish any instructional material the publisher or manufacturer offers in this state at a price that does not exceed the lowest price at which the publisher offers that instructional material for adoption or sale to any state, public school, or school district in the United States;

(2) shall automatically reduce the price of instructional material sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;

(3) shall provide any instructional material or ancillary item free of charge in this state to the same extent that the publisher or manufacturer provides the instructional material or ancillary item free of charge to any state, public school, or school district in the United States;

(4) shall guarantee that each copy of instructional material sold in this state is at least equal in quality to copies of that instructional material sold elsewhere in the United States and is free from factual error;

(5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials or enter into any understanding or combination to control prices or restrict competition in the sale of instructional materials for use in this state;

(6) shall deliver instructional materials to a school district or open-enrollment charter school;
(7) shall, at the time an order for instructional materials is acknowledged, provide to school districts or open-enrollment charter schools an accurate shipping date for instructional materials that are back-ordered;

(8) shall guarantee delivery of instructional materials at least 10 business days before the opening day of school of the year for which the instructional materials are ordered if the instructional materials are ordered by a date specified in the sales contract; and

(9) shall submit to the State Board of Education an affidavit certifying any instructional material the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.

(b) The State Board of Education may impose a reasonable administrative penalty against a publisher or manufacturer who knowingly violates Subsection (a). The board shall provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty. The board shall base the amount of the penalty on:

(1) the seriousness of the violation;
(2) any history of a previous violation;
(3) the amount necessary to deter a future violation;
(4) any effort to correct the violation; and
(5) any other matter justice requires.

(c) A hearing under Subsection (b) shall be held according to rules adopted by the State Board of Education.

(d) A penalty collected under this section shall be deposited to the credit of the state instructional materials fund.

(e) An eligible institution, as defined by Section 31.0241(a), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.

Sec. 31.152. ACCEPTING REBATE ON INSTRUCTIONAL MATERIALS OR TECHNOLOGICAL EQUIPMENT. (a) A school trustee, administrator, or teacher commits an offense if that person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated as a trustee, administrator, or teacher.

(b) A school trustee, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

(1) is given to the person or the person's school;

(2) might reasonably tend to influence a trustee, administrator, or teacher in the selection of instructional material or technological equipment; and

(3) could not be lawfully purchased with state instructional materials funds.

(c) An offense under this section is a Class B misdemeanor.

(d) In this section, "gift, favor, or service" does not include:

(1) staff development, in-service, or teacher training; or

(2) ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.


Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1407, Sec. 8, eff. June 19, 2009.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 58, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 59, eff. July 19,
Sec. 31.153. VIOLATION OF FREE INSTRUCTIONAL MATERIALS LAW.

(a) A person commits an offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools.

(b) An offense under this section is a Class C misdemeanor.


Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 60, eff. July 19, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 6, Sec. 61, eff. July 19, 2011.
February 28, 2013

TO THE ADMINISTRATOR ADDRESSED:

SUBJECT: TEKS Certification for the 2013-2014 Instructional Materials Allotment

Districts and open-enrollment charter schools are required to certify annually to the State Board of Education and the Commissioner that for each subject in the required curriculum students have access to the instructional materials that cover all of the Texas Essential Knowledge and Skills (TEKS).

The certification form for the 2013-2014 school year is available through the Educational Materials (EMAT) system. Instructions for completing the certification are located at http://www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147512338. The EMAT system will open for the 2013-2014 school year on June 12, 2013. The certification form must be received before we can process any requisitions or disbursement requests from districts and open-enrollment charter schools for the 2013-2014 school year.

For EMAT access, the superintendent of each district or open-enrollment charter school verifies the roles of personnel for the EMAT system. The EMAT system allows for two different roles – ‘ordering’ access and ‘view only’ access. The superintendent of each district or open-enrollment charter school will be able to assign these roles through their TEASE account. Instructions for assigning staff for EMAT ‘ordering’ or ‘view only’ access are located at http://www.tea.state.tx.us/WorkArea/DownloadAsset.aspx?id=2147512339.

The Instructional Materials Allotment and TEKS Certification form must be presented before the local board of trustees or governing body. The superintendent, local board president, and the board secretary are required to sign the form before it can be accepted by the Texas Education Agency (Agency). The certification form can be mailed, faxed, or emailed to the Agency.

Mail form:
Texas Education Agency
Instructional Materials and Educational Technology
1701 North Congress Avenue
Austin, TX 78701

or Fax form: 512-475-3612 or Email form: instructional.materials@tea.state.tx.us

For further assistance with your IMA TEKS Certification or access to EMAT, please contact the Instructional Materials and Educational Technology division at 512-463-9601 or email at instructional.materials@tea.state.tx.us.

Sincerely,

Anita Givens
Associate Commissioner
Standards and Programs

AG/kg
Adopted Instructional Materials

1. **Where can I find a list of currently adopted instructional materials?**

2. **What is the advantage to ordering those materials approved for adoption?**
   Adopted materials have been reviewed by the state for alignment with the Texas Essential Knowledge and Skills. These instructional materials are available and processed in EMAT. Non-adopted instructional materials are processed through a disbursement. The district will receive the funds and works directly with the vendor to acquire the non-adopted instructional materials.

3. **Where is the list of mid-cycle materials adopted by the SBOE?**
   A link for mid cycle instructional materials as well as all of the SBOE adopted instructional materials can be located at [http://www.tea.state.tx.us/index2.aspx?id=2147486662](http://www.tea.state.tx.us/index2.aspx?id=2147486662).

4. **Where is the list of the Commissioner’s List of Electronic Materials?**

5. **Where is the list of the Commissioner’s List of Technological Equipment?**
   A link to the Commissioner’s List of Technological Equipment can be located at [http://www.tea.state.tx.us/index2.aspx?id=2147488590](http://www.tea.state.tx.us/index2.aspx?id=2147488590).
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<th>Technology Applications</th>
<th>Math</th>
<th>Fine Arts</th>
<th>ELA Electives</th>
<th>CTE</th>
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Allowable Disbursement Expenditures *(New)*

1. **Can the IMA be used to cover costs of learning management systems?**
   The district may use their Instructional Materials Allotment to purchase learning management systems that are directly involved with student learning.

2. **Are network wireless systems allowable IMA purchases?**
   Network wireless systems that support access to student content and resources are allowable expenditures.

3. **Teachers in my district want to attend conferences to attend professional development sessions. Can the district send the teachers to these types of conferences?**
   Professional development is an allowable IMA expenditure including conference registration fees; however, the IMA may **not** be used to reimburse teachers for travel expenses, lodging or food.

4. **Senate Bill 6 states that the IMA can be used to purchase technological equipment used to support the use of instructional materials. Does this also include web filtering and access points?**
   Web filter and access points that provide access to content are considered an allowable IMA expenditure.

5. **Our district is considering the purchase of a software license to support our computer labs. What type of software can I purchase with the IMA funds?**
   Software that directly supports student learning can be purchased with IMA funds.

6. **Our district used the IMA funds to purchase laptops and projectors for students. The vendor has included installation costs as part of the package. Can I pay for installation with IMA funds?**
   Installation services are not an allowable IMA expenditure.

7. **What kind of hardware can be purchased through the IMA?**
   Senate Bill 6, Section 31.0211(c)(1)(h), states that IMA funds can be used to purchase technological equipment necessary to support the use of the materials included on the list adopted by the commissioner under Section 31.0231 or any instructional materials purchased with the allotment. Equipment purchased with IMA funds should be used to directly support classroom instruction.

8. **Are teacher stipends an allowable Instructional Materials Allotment expenditure?**
   Teacher stipends are not an allowable IMA expenditure.

9. **Our district is considering selling our out-of-adoption textbooks. What is the process for this?**
The district local board or governing body must notify the commissioner of their intent to sell instructional materials currently in adoption and provide the rationale for that decision. We are currently working on an electronic process within EMAT to implement this provision.

10. Can we use the IMA for salaries?
The IMA can be used for the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

11. Can I use IMA funds to purchase videoconferencing equipment to provide instruction to students?
The IMA funds can be used to purchase videoconferencing equipment for the sole purpose of providing instruction to students; however, installation costs are not an allowable IMA expenditure.
Instructional Materials Allotment
Frequently Asked Questions

New Allotment Funding

1. **What is the Instructional Materials Allotment (IMA)?**
   Each district is entitled to an annual IMA from the state for each year of the biennium. The Instructional Materials Fund (IMF) allotment calculations are proportionate to the PEIMS student enrollment data for each district and open-enrollment charter school. The funds will be available through the EMAT system.

2. **How will a district certify that it understands the IMA and will use the funds it requests for instructional materials?**
   EMAT will be programmed to require districts/charter schools to certify that they understand and will use the instructional materials allotment based on the Senate Bill 6 guidelines which requires districts to annually certify that all materials purchased through the IMA meet 100% of the Texas Essential Knowledge and Skills.

3. **What can our district purchase using the instructional materials allotment?**
   The Instructional Materials Allotment (IMA) can be used to purchase instructional materials adopted by the State Board of Education or the Commissioner of Education. The IMA can also be used to purchase instructional materials that are not on the adopted lists as well as technology services and technological equipment. Districts should prioritize their selections of instructional materials as they relate to the new STAAR assessment and End of Course exams.

4. **Will districts have to cover shipping costs for instructional materials? (Sec.31.021 (5))**
   There is a set aside fund for the cost of intrastate freight and shipping, including the insurance expenses associated with shipping for adopted instructional materials. For non adopted instructional materials, the district is responsible for shipping costs. Districts may use funds from their instructional materials allotment or local funds to pay for shipping.

5. **What is the enrollment date that the IMA is based upon for the 2011-2012 school year?**
   The IMA is based on 2010-2011 PEIMS enrollment data. Districts that have generated textbook credits will have the credit amount included with their instructional materials allotment.

6. **Will the Braille and Large Type materials be purchased as part of the IMA funds or will the funds for these materials be separate?**
   Funds for Braille and Large Type materials are not deducted from a district’s IMA. These materials remain the property of the state and are to be returned to the redistribution center when no longer needed by the student.

7. **Is a district's IMA available on your website? If so, where is it located?**
   The district’s Instructional Materials Allotment is available in EMAT. For detailed information you can view the allocations linked from the letter to the Administrator Addressed at [http://ritter.tea.state.tx.us/taa/imet080311.html](http://ritter.tea.state.tx.us/taa/imet080311.html).
8. **Will the LEA district office receive the calculated instructional materials allotment funds?**
   Funds from the Instructional Materials Allotment will only be provided to districts through the EMAT system. Requisitions for state adopted instructional materials will be deducted from the districts IMA and paid to publishers through the EMAT system. Funding for approved allotment disbursements will be sent directly to the district business office.

9. **Does the IMA funding cover a two year period? Will a portion be distributed in a one year sum in the first year, or will it be distributed over a two year period?**
   The Commissioner has determined to release 70% of the district’s calculated IMA for the 2011-2012 school year. The remaining 30% of the IMA will be made available for the 2012-2013 school year. Remaining funds can be carried forward to the next school year as well as the next biennium.

10. **Are costs for Supplemental Science and Pre-K systems deducted from the Instructional Materials Fund into a separate set aside fund, or does that cost come out of individual district’s IMA?**
    That cost is not covered through a separate set aside fund. Instead, costs for Supplemental Science and Pre-Kindergarten systems will be covered by individual districts through their Instructional Materials Allotment.

11. **What is covered in the continuing contracts? Are the consumables from past adoptions covered through continuing contracts, specifically the grades K-2 materials?**
    Consumable materials, including workbooks from previous proclamations are now to be purchased with the district’s IMA and may be ordered through EMAT. In some cases, consumable materials are provided by publishers free of charge.

12. **Can the IMA cover hardware purchases and/or infrastructure purchases that would be required for the delivery of web based curriculum (such as network bandwidth and/or wireless)?**
    Leased or purchased hardware must be used to access to content and provide direct instruction to students and teachers.

13. **Are fund disbursements retroactive? Can the instructional materials allotment be used to reimburse districts for expenditures already made related to allowable expenses for 2011-2012?**
    Districts may request a disbursement of funds as a reimbursement for instructional materials that were purchased by districts for the 2011 – 2012 school year.

14. **Because districts must plan for the biennium with the IMA, what are the anticipated expenses for adoption cycles for the 2012-2013?**
    Districts should prioritize their selections with instructional materials within Proclamation 2011, Supplemental Science and continuing contracts as they relate to the new STAAR assessment and End of Course exams. The SBOE will determine the new adoption cycle for future proclamations.

15. **Will TEA replace instructional materials that were lost or destroyed?**
    Senate Bill 6 provides the district with ownership of their instructional materials. Districts will be responsible for replacing lost or destroyed instructional materials.
16. Can the IMA be used for enrichment materials after the foundation materials have been ordered?
Yes, the Instructional Materials Allotment can be used to purchase enrichment instructional materials that are aligned to the Texas Essential Knowledge and Skills.

17. What happens if there is money left at the end of the biennium?
Instructional Materials Allotments that are left unexpended at the end of the biennium will be carried forward in the district’s IMA account for the next biennium.
Instructional Materials Allotment
Frequently Asked Questions

Ordering Instructional Materials

1. How is ordering different from before?
The Instructional Materials Allotment (IMA) has been created for each district and open-enrollment charter schools. EMAT has been re-programmed to create local education agency instructional materials allotments. For adopted instructional materials from the State Board of Education or the Commissioner of Education, districts will requisition through EMAT and the funds used to acquire the materials will be deducted from their district IMA.

2. Does our district need to enter our enrollment numbers to allow the EMAT system to calculate eligibility?
District enrollment will no longer be used to calculate eligibility. Districts will submit requisitions based on the dollar amount provided in their Instructional Materials Allotment.

3. Is our district required to order a classroom set of SBOE adopted materials in a given subject area before being allowed to order from the Commissioner's List of Electronic Materials in that subject area?
Senate Bill 6 repealed the requirement for a classroom set; however, districts have the option to utilize classroom sets.

4. Can a district change publishers for technology applications subscriptions for the new school year 2011-2012?
A school district or open-enrollment charter school may select any adopted technology applications instructional products for the 2011 – 2012 school year.

5. How do districts report a shipment error for newly ordered materials (shortage, overage, damaged in transit, defective)?
This process has not changed in EMAT. Districts will need to fill out a shipment error report, TEX-013, and then mail or send to the appropriate depository.

6. If the district’s teachers are satisfied with the English Language Arts (ELA) instructional materials that they’ve been using, will the district have to order new instructional materials? If it needs extras, would those have to be ordered through the publisher?
If teachers are satisfied with their current ELA instructional materials, a district does not have to order new instructional materials. When districts need additional instructional materials, they can requisition through EMAT. However, out of adoption materials will not be available via EMAT. ELA materials adopted under Proclamation 2011 will be available via EMAT.

7. When districts order teacher editions does the cost of those come off district IMA, or do they get a certain amount of teacher’s edition per student counts free?
The quota of students per free teacher edition varies by publisher. If a district needs more teacher editions than its publisher’s pupil/teacher quota, the district can use its IMA to requisition additional teacher editions.

Updated 11/2011
8. **Are there guidelines concerning ordering instructional materials (hard copies) as opposed to technological equipment that will allow students to access online instructional materials?**

   Districts should prioritize their primary selections with instructional materials as they relate to the new STAAR assessment and End of Course exams. Continuing contract requisitions should also be considered as districts determine their primary needs. Technology services and technological equipment should be considered when districts complete their priority requisitions.

9. **When EMAT opens, is there any priority for year round schools to get their instructional materials first?**

   Requisitions will be processed as soon as they are entered into EMAT.

10. **What happens if a district’s instructional materials allotment is exceeded?**

    EMAT is programmed so that if a district tries to requisition an amount that exceeds its IMA, the district will receive a prompt that the IMA has exceeded and will not be able to process the requisition. The same is true for requested disbursements.

11. **Can districts purchase supplemental resources through the IMA?**

    The IMA funds may be used to purchase supplemental instructional materials as provided by TEC Section 31.035.

12. **Will publishers require districts to purchase a print book when they order electronic instructional materials?**

    For Proclamation 2011, materials cannot be bundled so that districts have to purchase a print book if they order electronic instructional materials. Districts have the flexibility of ordering only electronic or a combination of electronic and print materials to meet student needs.

13. **Are districts required to purchase instructional materials for all content areas for each student, or is this a district decision?**

    Districts must ensure that all students have access to instructional materials that cover the Texas Essential Knowledge and Skills. However, districts do not have to order materials for all content areas for each student via EMAT. Districts should consider the long-term impact on student achievement.

14. **Can out of adoption books be used to cover TEKS and be supplemented with other resources?**

    Yes.

15. **Can districts order separate components from Pre-K systems?**

    Pre-K Systems in EMAT have been adopted by the State Board of Education. Technically, districts can request a disbursement of funds if districts select components instead of the entire program. These partial components would be ordered directly from the publisher. The Agency highly recommends consulting with the district Curriculum Director and other critical members of the instructional materials selection team before a final decision is made.

16. **We need to order new Spanish textbooks and due to our Spanish program we use a program out of state. Can we pay for these textbooks out of our IMA?**

   Updated 11/2011
Districts can request a disbursement of funds for non adopted instructional materials. Districts must certify that all of the instructional materials that are acquired with IMA funds must meet the Texas Essential Knowledge and Skills.

17. Will the local district be able to supplement instructional materials with local funds if our Instructional Materials Allotment does not support all of the textbooks we want to purchase?
Yes. Districts can use local funds to supplement instructional materials. Districts will need to order the instructional materials directly from the publisher.

18. Can a district just order the teacher edition and not student editions?
Districts may choose to just order the teacher editions; however, the Agency recommends consulting with the district Curriculum Director and other members of the instructional materials selection team before final decisions are made.

19. If our reading books cover the Language Arts and Spelling, do we need to purchase new Language Arts materials?
Districts may utilize existing resources and/or new instructional materials to certify alignment of materials to the Texas Essential Knowledge and Skills.

20. I plan to order Pre-K and Elementary Math immediately, but will not order Supplemental Science or ELA until September. Will I be allowed to place orders in the months ahead?
Yes. EMAT will remain open throughout the school year to requisition instructional materials. Districts are encouraged to stage their orders by prioritizing their immediate needs.
Instructional Materials Allotment
Frequently Asked Questions

Supplemental Science

1. Will the currently adopted Science instructional materials go out of adoption when districts order the new Supplemental Science materials?
No, the Supplemental Science materials are to be used in conjunction with existing SBOE adopted Science instructional materials. The Supplemental Science materials address the new and expanded Texas Essential Knowledge and Skills for 5th, 6th, 7th, & 8th grade science as well as High School biology, chemistry, Integrated Physics and Chemistry (IPC), and physics.

2. Where is the list of Supplemental Science materials that will be available for districts to order?
The State Board of Education adopted the Supplemental Science materials during the July board meeting. A list of the adopted materials is available at http://www.tea.state.tx.us/index2.aspx?id=2147501653. These materials are also available in EMAT for requisitions.

3. If the district’s Supplemental Science adoption team likes two different science supplemental adoption options. Does each campus order only one vendor per campus, or can a district order a different vendor for each grade on the campus?
Districts have options to requisition from different vendors; however, consulting the district Curriculum and Technology Directors and other members of the instructional materials selection team is recommended.

4. Will district IMA for supplemental materials be limited to specific dollar amounts for Science, Pre-Kindergarten systems, and continuing contracts or will it be all rolled into a single allocation amount?
The district Instructional Materials Allotment is a single allocation amount. The district determines the quantity and dollar amount for every requisition.

5. Can a district adopt some of the Science Supplemental materials this year and some next year, or does it need to be adopted all this year?
Districts have the option to requisition Supplemental Science instructional materials at any time. The price is for a two year period. Materials ordered for the 11-12 school year will be available for two years, extending through the 12-13 school year.
Instructional Materials Allotment
Frequently Asked Questions

Technology Allotment

1. **What happened to the Technology Allotment?**
   The Technology Allotment was repealed during the First Called Session of the 82\textsuperscript{nd} Texas Legislature. Under Senate Bill 6, districts have options to acquire training for staff directly involved with student learning, training for providing access to technological equipment for instruction and/or salaries for technical support for the use of technological equipment.

2. **How do districts request funds to pay for technological equipment and services that were part of the Technology Allotment?**
   For technological equipment or technology services that are eligible under the IMA, districts request an IMA disbursement through EMAT. When requesting funds for a disbursement, districts will be required to provide specific information on how the equipment or services will support the use of instructional materials.

3. **Will there be a separate designation for technological equipment?**
   There will not be a separate funding designator for technological equipment since equipment will not be purchased through EMAT. Districts are responsible for ordering technological equipment directly from the vendor. The district pays the vendor directly using funds received from the IMA disbursement.

4. **Does the salary (technology support) mean: salaries to train/support staff on technology use and integration and/or salaries for hardware/software technical support?**
   Yes. The IMA can be used for either or both purposes to support direct instruction to teachers and students.

5. **Since the technology allotment has been incorporated into the new IMA, is there a distribution formula? For instance, 30% must be spent for technology integration professional development or library database purchases?**
   The Technology Allotment was repealed during the First Called Session of the 82\textsuperscript{nd} Texas Legislature. Under Senate Bill 6, districts have options to acquire training for staff directly involved with student learning, training for providing access to technological equipment for instruction and/or salaries for technical support for the use of technological equipment. There is not a percentage requirement for districts for these purchases.
Instructions for the Sale or Disposal of Instructional Materials or Technological Equipment

Prior to the sale or disposal of instructional materials, the local board of governing body must first notify and acquire the Commissioner’s approval. Districts and open-enrollment charter schools must first consider the implications for selling or disposing of their instructional materials. Inventory adjustments for each transaction must be entered into EMAT for instructional materials that have been sold, disposed of or acquired through the sale of instructional materials.

Upon completion of the information below, the local board or governing body president and secretary must sign the request form(s). This information must be faxed to (512) 475-3612 or emailed with an electronic signature to instructional.materials@tea.state.tx.us.

Districts must consider the following before selling or disposing of instructional materials:

- Instructional materials used by this district should collectively cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each subject and grade level.

- All worn-out materials may be sold for recycling when the district declares them unsuitable for student use; however, they may also be sold to a reseller that will re-bind the worn-out materials and make them suitable for classroom use.

- The Local Board of Trustees or governing body reasonably expects that these materials will not be needed for several years to come. Some of the elective subjects may qualify as materials your district will not need for several years if the electives will not be offered.

- Any funds received by the district or school from the sale of instructional materials must be used to purchase instructional materials and technological equipment allowed under Texas Education Code Section 31.0211.

Please fill in the information below.

Seller District or Open Enrollment Charter School Name: ______________________________________

Seller County District ID: __________________________

Company Name Sold/Recycled/Disposed to: ________________________________________________

*Estimated Total Dollar Amount collected from the sale: $__________

*Estimated Total Dollar Amount collected from the recycle: $__________

*Estimated Total Dollar Amount collected from the disposal: $__________

*Actual amounts can be reported to TEA after the transaction has been completed

Indicate which category the funding from this transaction will be used.

☐ Instructional Materials ☐ Technology Services ☐ Technological Equipment

District or Open-Enrollment Charter School contact information:

Name: ______________________ Email: _______________________ Phone: ____________________

Updated - November 2012
Instructional Materials or Technological Equipment
Sale or Disposal Request Form

Provide all of the information below for all instructional materials that the Local Board of Trustees or governing body is requesting permission from the Commissioner of Education to sell or dispose of. Districts are not required to report any items that were purchased with local funds or report free materials (ancillaries) sent by publishers directly to the district or charter school. For technological equipment, districts are only required to report equipment purchased through their IMA.

In-Adoption Materials or Technological Equipment
*Attachments may be submitted to provide the information below.

Check one:  ☐ Sell  ☐ Recycling  ☐ Disposal

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Out of Adoption Materials

Check one:  ☐ Sell  ☐ Recycling  ☐ Disposal

Subject Areas: ___________________________  Estimated Quantity: ________

Local Board President (print name)  Secretary (print name)

Local Board President (signature)  Secretary (signature)

Updated - November 2012
“Public servant” shall mean a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed his or her duties:

1. An officer, employee, or agent of government; or
2. A candidate for nomination or election to public office.

*Penal Code 1.07(a)(41)(A), (E)*

Prohibited activities are covered by, but are not limited to, the following:

**BRIBERY**

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
   a. As consideration for the public servant’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
   b. As consideration for a violation of a duty imposed on the public servant by law.
   c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

   “Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

   *Penal Code 36.01(3), .02*

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of the District. *Penal Code 1.07(41)(A), (E), 36.08(d)*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section
may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

### EXCEPTIONS

"Illegal gifts to public servants" does not apply to:

a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;

b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

   (1) The benefit and the source of any benefit in excess of $50 is reported in the statement; and

   (2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

d. A political contribution as defined by Title 15, Election Code;

e. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

g. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

*Penal Code 36.10*

### HONORARIA AND EXPENSES

3. A public servant commits a class A misdemeanor offense if he or she solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not
have been requested to provide but for his or her official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which he or she renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

**ABUSE OF OFFICE**

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the office or misuse District property, services, personnel, or any other thing of value, belonging to the District, that has come into his or her custody by virtue of his or her office or employment. *Penal Code 39.02(a)*

“Law relating to the office” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

“Misuse” means to deal with property contrary to:

a. An agreement under which the public servant holds the property;

b. A contract of employment or oath of office of a public servant;

c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

d. A limited purpose for which the property is delivered or received.

*Penal Code 39.01(2)*

**NEPOTISM**

5. Except as provided by law, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:

a. The person is related to the public official by blood (consanguinity) within the third degree or by marriage (affinity) within the second degree; or

b. The public official holds the appointment or confirmation authority as a member of a local board and the person is
related to another member of the board by blood or marriage within a prohibited degree.


“Public official” shall mean:

a. An officer of this state or of a district, county, municipality, precinct, school district, or other political subdivision of this state; or

b. An officer or member of a board of this state or of a district, county, municipality, school district, or other political subdivision of this state.

Gov't Code 573.001(3)

The nepotism law governs the hiring of an individual, whether the individual is hired as an employee or an independent contractor. Atty. Gen. Op. DM-76 (1992)

A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible individual if the official knows the individual is ineligible. Gov't Code 573.083

In a district located wholly in, or whose largest part is located in, a county with a population of 35,000 or more, if, under the District's employment policy [see DC], the Board delegates to the Superintendent the final authority to select District personnel:

a. The Superintendent is a public official for the purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and

b. Each member of the Board remains subject to the nepotism prohibitions with respect to all District employees.

For purposes of this provision, a person hired by the District before September 1, 2007, is considered to have been in continuous employment [see DBE] and is not prohibited from continuing employment with the District subject to the abstention requirements.

Education Code 11.1513(f)–(h)
In a district located wholly in, or whose largest part is located in, a county with a population of less than 35,000:

a. A member of a board that has delegated to the Superintendent final authority for personnel selection is not subject to the nepotism provisions to the extent of such delegation. *Attorney General Op. GA-123 (2003)*

b. Nevertheless, a Board member may remain the relevant public official for nepotism purposes concerning some employment decisions, such as renewal. *Attorney General Op. GA-177 (2004)*

6. A Board member of the District may not accept employment with the District until the first anniversary of the date the Board member’s membership on the Board ends. *Education Code 11.063*


8. A Board member who is a stockholder, officer, director, or employee of a bank that has bid or submitted a proposal to become a depository for the District shall not vote on the awarding of a depository contract to said bank. *Education Code 45.204(b)*

9. A Board member commits a class B misdemeanor offense if the Board member receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the Board member is associated. *Education Code 31.152(a)*

10. A Board member commits a class B misdemeanor offense if the Board member accepts a gift, favor, or service that:

a. Is given to the Board member or the Board member’s school;
b. Might reasonably tend to influence the Board member in the selection of instructional materials or technological equipment; and

c. Could not be lawfully purchased with state instructional materials funds.

“Gift, favor, or service” does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

*Education Code 31.152(b)–(d)*

11. A Board member commits a Class C misdemeanor offense if the Board member knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. *Education Code 31.153*
All rights and titles to District property, whether real or personal, shall be vested in the Board and its successors in office.

The Board may, in an appropriate manner, dispose of property that is no longer necessary for District operations.

*Education Code 11.151(c)* [See also CDB(LEGAL)]

INSTRUCTIONAL MATERIAL AND TECHNOLOGICAL EQUIPMENT

The Board must dispose of instructional material and technological equipment in accordance with Education Code 31.105. *Education Code 31.105* [See CMD]
The Superintendent or designee is authorized to declare District materials, equipment, and supplies to be unnecessary and shall dispose of unnecessary materials, equipment, and supplies for fair market value. Materials with academic value may be donated to students, parents, adult literacy programs, or other nonprofit organizations involved in educational activities. If the unnecessary property has no value, the Superintendent or designee may dispose of such property according to administrative discretion.

Items obtained as federal surplus shall be managed according to federal regulations.
# Instructional Materials Care and Accounting

## Note:
For provisions regarding selection and adoption of instructional materials, see EFAA.

### INSTRUCTIONAL MATERIALS
Instructional materials selected for use in the public schools shall be furnished without cost to the students attending those schools. Except as provided by Education Code 31.104(d), the District may not charge a student for instructional material or technological equipment purchased by the District with the District’s instructional materials allotment. All instructional materials, including electronic instructional material to the extent of any applicable licensing agreement, purchased in accordance with Education Code Chapter 31 for the District are the property of the District. *Education Code 31.001, .102(a)–(b)*

### DELEGATION OF POWER
The Board may delegate to an employee the power to requisition, distribute, and manage the inventory of instructional materials, consistent with Education Code Chapter 31. *Education Code 31.104(a)*

### FUNDING
The District is entitled to an annual allotment from the state instructional materials fund for each student enrolled in the District on a date during the preceding school year specified by the Commissioner. The Commissioner shall determine the amount of the allotment per student each year on the basis of the amount of money available in the state instructional materials fund to fund the allotment. The allotment shall be transferred from the state instructional materials fund to the credit of the District’s instructional materials account as provided by Education Code 31.0212. *Education Code 31.0211(a)*

### ALLOTMENT ADJUSTMENT
Not later than May 31 of each school year, the District may request that the Commissioner adjust the number of students for which the District is entitled to receive an allotment on the grounds that the number of students attending school in the District will increase or decrease during the school year for which the allotment is provided. The Commissioner may also adjust the number of students for which the District is entitled to receive an allotment, without a request by the District, if the Commissioner determines a different number of students is a more accurate reflection of students who will be attending school in the District. The Commissioner’s determination is final. *Education Code 31.0211(e)*

### CHANGE IN ENROLLMENT
Each year the Commissioner shall adjust the instructional materials allotment of districts experiencing high enrollment growth. *Education Code 31.0214*
Funds allotted under this section may be used to purchase:

1. Materials on the list adopted by the Commissioner;
2. Instructional materials, regardless of whether the instructional materials are on the list adopted by the State Board of Education (SBOE) under Education Code 31.024;
3. Consumable instructional materials, including workbooks;
4. Instructional materials for use in bilingual education classes, as provided by Education Code 31.029;
5. Supplemental instructional materials, as provided by Education Code 31.035;
6. State-developed open-source instructional materials, as provided by Education Code Chapter 31, Subchapter B-1;
7. Instructional materials and technological equipment under any continuing contracts of the District in effect on September 1, 2011; and
8. Technological equipment necessary to support the use of materials included on the list adopted by the Commissioner or any instructional materials purchased with an allotment.

The funds can also be used to pay for training educational personnel directly involved in student learning in the appropriate use of instructional materials and for providing for access to technological equipment for instructional use, and the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning.

*Education Code 31.0211(c)*

Each year the District shall use the District’s allotment to purchase, in the following order:

1. Instructional materials necessary to permit the District to certify that the District has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level.
2. Any other instructional materials or technological equipment as determined by the District.

Notwithstanding the order of purchase requirement, for the state fiscal biennium beginning September 1, 2011, the District shall use an instructional materials allotment to purchase instructional materials that will assist the District in satisfying performance standards.
under Education Code 39.0241, as added by Chapter 895 (House Bill 3), Acts of the 81st Legislature, Regular Session, 2009, on assessment instruments adopted under Education Code 39.023(a) and (c) [grade advancement testing and end-of-course exams, see EKB]. This exception to the order of purchase requirement expires August 31, 2013.

*Education Code 31.0211(d)–(d-2)*

**CERTIFICATION OF ALLOTMENT USE**

The District shall annually certify to the Commissioner that the District's instructional materials allotment has been used only for permitted expenses. *Education Code 31.0213*

**INSTRUCTIONAL MATERIALS ACCOUNT**

The Commissioner shall maintain an instructional materials account for the District, in which the Commissioner shall annually deposit the District's instructional materials allotment. The Commissioner shall pay the cost of instructional materials requisitioned by the District under Education Code 31.103 using funds from the District's instructional materials account.

The District may also use funds in the District's account to purchase electronic instructional materials or technological equipment. The District shall submit to the Commissioner a request for funds for this purpose from the District's account in accordance with the Commissioner's rules.

Money deposited in the District's instructional materials account during each state fiscal biennium remains in the account and available for use by the District for the entire biennium. At the end of each biennium, if there is unused money in the District's account, the District may carry forward any remaining balance to the next biennium.

*Education Code 31.0212*

**ONLINE REQUISITION SYSTEM**

The Commissioner shall maintain an online requisition system for the District to requisition instructional materials to be purchased with the District's instructional materials allotment. *Education Code 31.101(f)*

**LOCAL FUNDS**

The District may use local funds to purchase any instructional materials in addition to those selected under Education Code Chapter 31. *Education Code 31.106*

**REQUISITIONS, USE, AND DISTRIBUTION**

The District shall make a requisition for instructional material using the online requisition program maintained by the Commissioner not later than June 1 of each year. The District may requisition instructional materials on the SBOE instructional materials list for grades above the grade level in which a student is enrolled. *Education Code 31.103(b)–(c)*
Once instructional materials have been selected, the District must use the material for the length of time described by Education Code 31.101. *Education Code 31.101* [See EFAA]

The Board shall distribute printed instructional materials to students as it may deem most effective and economical. *Education Code 31.102(c)*

At the time an order for instructional materials is acknowledged, a publisher or manufacturer shall provide to the District an accurate shipping date for instructional materials that are back-ordered, and shall guarantee delivery of instructional materials at least ten business days before the opening day of the school year for which the instructional materials are ordered if they are ordered by a date specified in the sales contract. *Education Code 31.151(a)(7)–(8)*

The District may requisition supplemental instructional material only if the District requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the SBOE instructional materials list that in combination cover each element of the essential knowledge and skills for the course for which the District is requisitioning the supplemental instructional materials. *Education Code 31.035(d)*

If the District selects open-source instructional material, the District shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the District or school provides to each student:

1. Electronic access to the instructional material at no cost to the student; or
2. Printed copies of the portion of the instructional material that will be used in the course.

*Education Code 31.103(d)*

The District shall purchase with the District’s instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes, in accordance with the Commissioner’s rules. *Education Code 31.029*

The District shall annually certify to the SBOE and the Commissioner that, for each subject in the foundation and enrichment curriculum other than physical education, and each grade level, the District provides each student instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level. To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills, the District may consider:

<table>
<thead>
<tr>
<th>DURATION OF SELECTION</th>
<th>Once instructional materials have been selected, the District must use the material for the length of time described by Education Code 31.101. <em>Education Code 31.101</em> [See EFAA]</th>
</tr>
</thead>
<tbody>
<tr>
<td>DISTRIBUTION</td>
<td>The Board shall distribute printed instructional materials to students as it may deem most effective and economical. <em>Education Code 31.102(c)</em></td>
</tr>
<tr>
<td>TIME FOR DELIVERY</td>
<td>At the time an order for instructional materials is acknowledged, a publisher or manufacturer shall provide to the District an accurate shipping date for instructional materials that are back-ordered, and shall guarantee delivery of instructional materials at least ten business days before the opening day of the school year for which the instructional materials are ordered if they are ordered by a date specified in the sales contract. <em>Education Code 31.151(a)(7)–(8)</em></td>
</tr>
<tr>
<td>SUPPLEMENTAL MATERIALS</td>
<td>The District may requisition supplemental instructional material only if the District requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the SBOE instructional materials list that in combination cover each element of the essential knowledge and skills for the course for which the District is requisitioning the supplemental instructional materials. <em>Education Code 31.035(d)</em></td>
</tr>
<tr>
<td>AVAILABILITY OF OPEN-SOURCE MATERIALS</td>
<td>If the District selects open-source instructional material, the District shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the District or school provides to each student: 1. Electronic access to the instructional material at no cost to the student; or 2. Printed copies of the portion of the instructional material that will be used in the course. <em>Education Code 31.103(d)</em></td>
</tr>
<tr>
<td>BILINGUAL MATERIALS</td>
<td>The District shall purchase with the District’s instructional materials allotment or otherwise acquire instructional materials for use in bilingual education classes, in accordance with the Commissioner’s rules. <em>Education Code 31.029</em></td>
</tr>
<tr>
<td>CERTIFICATION</td>
<td>The District shall annually certify to the SBOE and the Commissioner that, for each subject in the foundation and enrichment curriculum other than physical education, and each grade level, the District provides each student instructional materials that cover all elements of the essential knowledge and skills adopted by the SBOE for that subject and grade level. To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills, the District may consider:</td>
</tr>
</tbody>
</table>
1. Instructional materials adopted by the SBOE;
2. Materials adopted or purchased by the Commissioner under Education Code 31.0231 or Education Code Chapter 31, Subchapter B-1;
3. Open-source instructional materials submitted by eligible institutions and adopted by the SBOE;
4. Open-source instructional materials made available by other public schools; and
5. Instructional materials developed or purchased by the District.

**Education Code 31.004**

A student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school, unless the instructional material is open-source instructional material that the District does not intend to use for another student. The printed copy of the open-source instructional material becomes the property of the student to whom it is distributed.

This section does not apply to an electronic copy of open-source instructional material.

**Education Code 31.104(c), (g)–(h)**

Each student or his or her parent or guardian shall be responsible for all instructional material and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment shall forfeit the right to free instructional materials and technological equipment until the instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian.

Under circumstances determined by the Board, the District may waive or reduce the payment required if the student is from a low-income family. The District shall allow students to use instructional materials and technological equipment at school during each school day.

If instructional materials or technological equipment is not returned in an acceptable condition and payment is not made, the District may withhold the student’s records, but shall not prevent the student from graduating, participating in a graduation ceremony, or receiving a diploma. However, in accordance with policies FL and GBA, students have a right to copies of any and all District records that pertain to them.
This section does not apply to an electronic copy of open-source instructional material. *Education Code 31.104(d), (h); 20 U.S.C. 1232g; Gov't Code 552.114(b)(2)* [See also EF]

**ACCEPTABLE CONDITION**

A printed textbook is considered to be in acceptable condition if:

1. The cover, binding, pages, spine, and all integral components of the textbook are wholly intact and the textbook is fully usable by other students; and

2. All components of the textbook are not soiled, torn, or damaged—whether intentionally or by lack of appropriate care—such that any portion of the content is too disfigured or obscured to be fully accessible to other students.

19 TAC 66.1201

An electronic textbook is considered to be in acceptable condition if:

1. All components or applications that are a part of the electronic textbook are returned;

2. The electronic textbook does not contain computer code (bug, virus, worm, or similar malicious software) that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer’s memory, file system, or software; and

3. The electronic textbook has not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the District.

19 TAC 66.1203

Technological equipment is considered to be in acceptable condition if:

1. The equipment is returned with the software and hardware in their original condition unless the District authorized changes; and

2. The physical condition of the equipment has been cared for appropriately such that the equipment is not broken or damaged beyond cost-effective replacement or repair.

19 TAC 66.1205

**SALE OR DISPOSAL**

The Board may sell printed instructional materials on the date the instructional material is discontinued for use in the public schools by the SBOE or the Commissioner. The Board may also sell electronic instructional materials and technological equipment owned by the District. Any funds received by the District from the autho-
rized sale must be used to purchase instructional materials and technological equipment allowed under Education Code 31.0211.

The Board shall determine how the District will dispose of discontinued printed instructional materials, electronic instructional materials, and technological equipment. The Board may dispose of printed instructional material before the date the instructional material is discontinued for use in the public schools by the SBOE if the Board determines that the instructional material is not needed by the District and the Board does not reasonably expect that the instructional material will be needed. The District must notify the Commissioner if the District disposes of any instructional material.

*Education Code 31.105*

**ANNUAL INVENTORY**

The District shall conduct an annual physical inventory of all currently adopted instructional materials that have been requisitioned by and delivered to the District. The results of the inventory shall be recorded in the District’s files. Reimbursement and/or replacement shall be made for all instructional materials determined to be lost. *19 TAC 66.107(a)*

**LOCAL HANDLING EXPENSES**

The District shall not be reimbursed from state funds for expenses incurred in local handling of textbooks. *19 TAC 66.104(o)*

**OUT-OF-ADOPTION INSTRUCTIONAL MATERIALS**

The District may retain out-of-adoption instructional materials.

The District shall make out-of-adoption instructional materials (other than electronic instructional materials) available to libraries maintained by city and county jails, institutions within the Department of Corrections, and other state agency institutions. District officials may donate out-of-adoption instructional materials (other than electronic instructional materials) to students, adult education programs, and nonprofit organizations. Individuals and organizations making such requests shall be responsible for transporting the materials.

After all efforts to donate out-of-adoption instructional materials (other than electronic instructional materials) to organizations listed above have been exhausted, the District may donate those materials for recycling locally. Recycling means removing the bindings and shredding the textbooks for the purpose of producing new products from the processed materials.

Under no circumstances shall the District sell out-of-adoption instructional materials.

*19 TAC 66.131*
See the following pages for forms to be used by employees for disclosing potential conflicts of interest:

Exhibit A: Affidavit Disclosing Substantial Interest in a Business Entity or in Real Property, as defined in Local Government Code 171.002 — 2 pages

Exhibit B: Affidavit Disclosing Interest in Property, under Government Code Chapter 553, Subchapter A — 1 page

ADDITIONAL DISCLOSURE: The Superintendent and any other employees identified by Board policy as being required to file the conflicts disclosure statement, in accordance with Local Government Code 176.003–.004, may access that form on the Texas Ethics Commission Web site at http://www.ethics.state.tx.us.
STATE OF TEXAS
COUNTY OF HARRIS

I, ______________________________ (name), as an employee of Alief Independent School District, make this affidavit and on my oath state the following:

1. I have a substantial interest in:
   - [ ] a business entity, as those terms are defined in Local Government Code Sections 171.001–.002, that would experience a special economic effect distinguishable from its effect on the public by an action of the Board or the District. [See BBFA]
   - [ ] real property for which it is reasonably foreseeable that an action of the Board or District will have a special economic effect on the value of the property distinguishable from its effect on the public.

2. The business entity or real property is ______________________________

   (name/address of business or description of property).

   I ______________________________ have a substantial interest in this business entity or real property as follows: (check all that apply)

   - [ ] Ownership of ten percent or more of the voting stock or shares of the business entity.
   - [ ] Ownership of ten percent or more of the fair market value of the business entity.
   - [ ] Ownership of $15,000 or more of the fair market value of the business entity.
   - [ ] Funds received from the business entity exceed ten percent of my gross income for the previous year.
   - [ ] Real property is involved and I have an equitable or legal ownership with a fair market value of at least $2,500.

3. The statements in this affidavit are based on my personal knowledge and are true and correct.

DATE ISSUED: 9/12/2012
UPDATE 95
DBD(EXHIBIT)-A
Signed __________________ (date)

Signature of employee ________________________________

Title ________________________________

STATE OF TEXAS
COUNTY OF HARRIS

Sworn to and subscribed before me on this _____ day of ___________________ (month),
_________ (year).

___________________________________, Notary Public, State of Texas

NOTE: This affidavit should be filed with the Superintendent, Board President, or a designee
before the Board takes action concerning the business entity or real property.
EXHIBIT B

AFFIDAVIT DISCLOSING INTEREST IN PROPERTY

STATE OF TEXAS
COUNTY OF HARRIS

I, _____________________________________________ (name), as Superintendent of Alief Independent School District, make this affidavit and on my oath state the following:

1. I have a legal or equitable interest in property to be acquired with public funds, either by purchase or condemnation. The property is described as follows:

_____________________________________________________________________.

2. The nature, type, and amount of interest, including percentage of ownership, I have in the property is:

_____________________________________________________________________.

3. I acquired my interest in the property on ___________________________ (date).

4. The information stated in this affidavit is personally known by me to be correct and contains the information required by Section 553.002, Government Code.

Signed ____________________ (date)

Signature of Superintendent ________________________________________

STATE OF TEXAS
COUNTY OF HARRIS

Sworn to and subscribed before me on this ______ day of ____________________ (month), _________ (year).

_____________________________________, Notary Public, State of Texas

NOTE: This affidavit must be filed with the county clerk(s) of the county or counties in which the property is located and of the county in which the Superintendent resides within ten days before the date on which the property is to be acquired by purchase or condemnation.
“Public servant,” for purposes of the following Penal Code provisions, includes a person elected, selected, appointed, employed, or otherwise designated as an officer, employee, or agent of government, even if the person has not yet qualified for office or assumed his or her duties. Penal Code 1.07(a)(41)(A), (E)

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
   a. As consideration for the public servant’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
   b. As consideration for a violation of a duty imposed on the public servant by law.
   c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Penal Code 36.01(3), 36.02

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of the District. Penal Code 36.08(d)

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. Penal Code 36.08(i)

“Illegal Gifts to Public Servants” does not apply to:
a. A fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a public servant;

b. A gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

c. A benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(1) The benefit and the source of any benefit in excess of $50 is reported in the statement; and

(2) The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

d. A political contribution as defined by Title 15, Election Code;

e. An item with a value of less than $50, excluding cash or a negotiable instrument as described by Business and Commerce Code 3.104;

f. An item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity; or

g. Food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

Penal Code 36.10

3. A public servant commits a Class A misdemeanor offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to
ABUSE OF PUBLIC EMPLOYMENT

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the public servant’s office or employment, or misuse District property, services, personnel, or any other thing of value, that has come into his or her custody or possession by virtue of his or her office or employment. *Penal Code 39.02(a)*

“Law relating to the public servant’s office or employment” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

“Misuse” means to deal with property contrary to:

a. An agreement under which the public servant holds the property;

b. A contract of employment or oath of office of a public servant;

c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or

d. A limited purpose for which the property is delivered or received.

*Penal Code 39.01(2)*

INSTRUCTIONAL MATERIALS VIOLATIONS — COMMISSIONS

An administrator or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated. *Education Code 31.152(a)*

INSTRUCTIONAL MATERIALS VIOLATIONS — CONFLICT

An administrator or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person’s school;

2. Might reasonably tend to influence the person in the selection of instructional materials or technological equipment; and

3. Could not be lawfully purchased with state instructional material funds.
“Gift, favor, or service” does not include staff development, in-service, or teacher training; or ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152(b)–(d)

INSTRUCTIONAL MATERIALS VIOLATIONS — PURCHASE AND DISTRIBUTION

A person commits a Class C misdemeanor offense if the person knowingly violates any law providing for the purchase or distribution of free instructional materials for the public schools. Education Code 31.153

HOLDING CIVIL OFFICE

No person shall hold or exercise at the same time more than one civil office of emolument, except for offices listed in the constitutional provision, unless otherwise specifically provided. Tex. Const., Art. XVI, Sec. 40(a); State v. Pirtle, 887 S.W.2d 291 (Tex. Ct. Crim. App. 1994); Atty. Gen. Op. DM-212 (1993)

Individuals who receive all or part of their compensation either directly or indirectly from funds of the state of Texas and who are not state officers shall not be barred from serving as members of the governing bodies of school districts (other than those in which they are employed), cities, towns, or other local governmental districts. Such individuals may not receive a salary for serving as members of such governing bodies. Tex. Const., Art. XVI, Sec. 40(b); Atty. Gen. Op. DM-55 (1991)

CONFLICT DISCLOSURE STATEMENT

The District may extend the requirements of Local Government Code 176.003 and 176.004 [see BBFA] to any employee of the District who has the authority to approve contracts on behalf of the District, including a person designated as the representative of the District for purposes of Local Government Code Chapter 271. The District shall identify each employee made subject to Sections 176.003 and 176.004 and shall provide a list of the identified employees on request to any person. The District may reprimand, suspend, or terminate the employment of an employee who knowingly fails to comply with such requirements.

An employee commits a Class C misdemeanor if the employee knowingly violates the requirements. It is an exception to the application of the above penalty, however, that the employee filed the disclosure statement not later than the seventh business day after the person received notice from the District of the alleged violation.

Local Gov’t Code 176.005

DEFINITION OF “CONTRACT”

“Contract” means a written agreement for the sale or purchase of real property, goods, or services. Local Gov’t Code 176.001(1-d)
The Superintendent may not receive any financial benefit for personal services performed by the Superintendent for any business entity that conducts or solicits business with the District. Any financial benefit received by the Superintendent for performing personal services for any other entity, including a school district, open-enrollment charter school, regional education service center, or public or private institution of higher education, must be approved by the Board on a case-by-case basis in an open meeting. The receipt of reimbursement for a reasonable expense is not considered a financial benefit. *Education Code 11.201(e)*

**Note:** See also CBB for requirements when federal funds are involved.
An employee shall disclose to his or her immediate supervisor a personal financial interest, a business interest, or any other obligation or relationship that in any way creates a potential conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

The Superintendent shall file an affidavit with the Board President disclosing a substantial interest, as defined by Local Government Code 171.002, in any business or real property that the Superintendent or any of his or her relatives in the first degree may have.

Any other employee who is in a position to affect a financial decision involving any business entity or real property in which the employee has a substantial interest, as defined by Local Government Code 171.002, shall file an affidavit with the Superintendent; however, the employee shall not be required to file an affidavit for the substantial interest of a relative.

The Superintendent shall be required to file an affidavit disclosing interest in property in accordance with Government Code 553.002.

No employee other than the Superintendent shall be required to file the conflicts disclosure statement, as promulgated by the Texas Ethics Commission and as specified by Local Government Code 176.003–.004.

The Superintendent, as the executive officer of the District, shall provide to the District in a timely manner information necessary for the District’s annual financial management report.

An employee shall not accept or solicit any gift, favor, service, or other benefit that could reasonably be construed to influence the employee’s discharge of assigned duties and responsibilities. [See CAA]

An employee shall not recommend, endorse, or require students to purchase any product, material, or service in which the employee has a financial interest or that is sold by a company that employs or retains the District employee during nonschool hours. No employee shall require students to purchase a specific brand of school supplies if other brands are equal and suitable for the intended instructional purpose.

An employee shall not use his or her position with the District to attempt to sell products or services.

An employee shall disclose in writing to his or her immediate supervisor any outside employment that in any way creates a poten-
tial conflict of interest with the proper discharge of assigned duties and responsibilities or with the best interest of the District.

PRIVATE TUTORING  An employee shall disclose in writing to his or her immediate supervisor any private tutoring of District students for pay.
EMPLOYEE FREE SPEECH

District employees do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

However, neither an employee nor anyone else has an absolute constitutional right to use all parts of a school building or its immediate environs for unlimited expressive purposes. When a public employee makes statements pursuant to his or her official duties, the employee is not speaking as a citizen for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.


WHISTLEBLOWER PROTECTION

The Board or its agents shall not suspend or terminate the employment of, or take other adverse personnel action against, an employee who in good faith reports a violation of law by the District or another public employee to an appropriate law enforcement authority.

A "report" is made to an “appropriate law enforcement authority” if the authority is a part of a state or local governmental entity or the federal government that the employee in good faith believes is authorized to:

1. Regulate under or enforce the law alleged to be violated in the report; or
2. Investigate or prosecute a violation of criminal law.

_Gov’t Code 554.002_

A supervisor who suspends or terminates the employment of or takes an adverse personnel action against an employee for reporting a violation of law shall be subject to civil penalties. _Gov’t Code 554.008_

DEFINITIONS

“Employee” means an employee or appointed officer who is paid to perform services for the District. It does not include independent contractors. _Gov’t Code 554.001(4)_

“Law” means a state or federal statute, an ordinance of a local governmental entity, or a rule adopted under a statute or ordinance. _Gov’t Code 554.001(1)_

A “good faith” belief that a violation of the law occurred means that:

1. The employee believed that the conduct reported was a violation of law; and
2. The employee’s belief was reasonable in light of the employee’s training and experience.
**EMPLOYEE RIGHTS AND PRIVILEGES**

**WHISTLEBLOWER COMPLAINTS**

*Wichita County v. Hart, 917 S.W.2d 779 (Tex. 1996)*

A “good faith” belief that a law enforcement authority is an appropriate one means:

1. The employee believed the governmental entity was authorized to:
   a. Regulate under or enforce the law alleged to be violated in the report, or
   b. Investigate or prosecute a violation of criminal law; and

2. The employee’s belief was reasonable in light of the employee’s training and experience.

*Tex. Dep’t of Transp. v. Needham, 82 S.W.3d 314 (Tex. 2002)*

An employee who alleges a violation of whistleblower protection may sue the District for injunctive relief, actual damages, court costs, and attorney’s fees, as well as other relief specified in Government Code 554.003. *Gov’t Code 554.003*

**INITIATE GRIEVANCE**

Before suing, an employee must initiate action under the District’s grievance policy or other applicable policies concerning suspension or termination of employment or adverse personnel action.

The employee must invoke the District’s grievance procedure not later than the 90th day after the date on which the alleged suspension, termination, or other adverse employment action occurred or was discovered by the employee through reasonable diligence.

**LEGAL ACTION**

If the Board does not render a final decision before the 61st day after grievance procedures are initiated, the employee may elect to:

1. Exhaust the District’s grievance procedures, in which case the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under Government Code Chapter 554; or

2. Terminate District grievance procedures and sue within the time lines established by Government Code 554.005 and 554.006.

*Gov’t Code 554.005, .006 [See DGBA regarding grievance procedures]*

**BURDEN OF PROOF**

If the employee brings a lawsuit, the employee has the burden of proof unless the suspension, termination, or adverse personnel action occurred within 90 days after the employee reported a violation of law, in which case the suspension, termination, or adverse
personnel action is presumed, subject to rebuttal, to be because the employee made the report.

**AFFIRMATIVE DEFENSE**

It is an affirmative defense to a whistleblower suit that the District would have taken the action against the employee that forms the basis of the suit based solely on information, observation, or evidence that is not related to the fact that the employee made a report protected under the whistleblower law.

Gov't Code 554.004

**NOTICE OF RIGHTS**

The Board shall inform its employees of their rights regarding whistleblower protection by posting a sign in a prominent location in the workplace. The design and content of the sign shall be as prescribed by the attorney general. Gov't Code 554.009

**PROTECTION FOR REPORTING CHILD ABUSE**

The Board or its agents may not suspend or terminate the employment of, or otherwise discriminate against, a professional employee who in good faith:

1. Reports child abuse or neglect to:
   a. The person's supervisor,
   b. An administrator of the facility where the person is employed,
   c. A state regulatory agency, or
   d. A law enforcement agency; or

2. Initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of child abuse or neglect.

A person whose employment is suspended or terminated or who is otherwise discriminated against in violation of the foregoing may sue for injunctive relief, damages, or both. A District employee who has a cause of action under WHISTLEBLOWER PROTECTION may not bring an action under PROTECTION FOR REPORTING CHILD ABUSE.

Family Code 261.110

**PROTECTION FROM DISCIPLINARY PROCEEDINGS**

For purposes of the following provisions, “disciplinary proceeding” means discharge or suspension of a professional employee, or termination or nonrenewal of a professional employee's term contract. [See DGC regarding immunity] Education Code 22.0512(b)

**REPORTING CHILD ABUSE OR MALTREATMENT**

A District employee may not be subject to any disciplinary proceeding resulting from an action taken in compliance with Education
USE OF PHYSICAL FORCE

A professional employee may not be subject to disciplinary proceedings for the employee’s use of physical force against a student to the extent justified under Penal Code 9.62. This provision does not prohibit the District from enforcing a policy relating to corporal punishment or bringing a disciplinary proceeding against a professional employee of the District who violates the District policy relating to corporal punishment. *Education Code 22.0512(a)*; *Tex. Att’y Gen. Op. GA-0202* (2004)

Penal Code 9.62 provides that the use of force, other than deadly force, against a person is justified:

1. If the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and
2. When and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

INSTRUCTIONAL MATERIALS AND TECHNOLOGICAL EQUIPMENT

The Board may not require an employee who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. An employee may not waive this provision by contract or any other means.

The District may enter into a written agreement with an employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the employee to use the electronic instructional material or technological equipment for personal business.

The written agreement shall be separate from the employee’s contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to enter into such an agreement as a condition of employment.

*Education Code 31.104(e)*

CHARITABLE CONTRIBUTIONS

A Board or District employee may not directly or indirectly require or coerce any District employee to:

1. Make a contribution to a charitable organization or in response to a fund-raiser; or
2. Attend a meeting called for the purpose of soliciting charitable contributions.
The Board or a District employee may not directly or indirectly require or coerce any District employee to refrain from the same acts.

*Education Code 22.011*

The District may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to engage in an act or omission relating to patient care that:

1. Would constitute grounds for reporting the nurse to the Board of Nurse Examiners under Occupations Code Chapter 301, Subchapter I;
2. Constitutes a minor incident, as defined at Occupations Code 301.419; or
3. Would violate Occupations Code Chapter 301 or a rule of the Board of Nurse Examiners, if the nurse notifies the District at the time of the refusal that this is the reason for refusing to engage in the act or omission.

*Occupations Code 301.352(a)*
The Board shall limit redundant requests for information and the number and length of written reports that a classroom teacher is required to prepare.

A classroom teacher may not be required to prepare any written information other than:

1. Any report concerning the health, safety, or welfare of a student;
2. A report of a student's grade on an assignment or examination;
3. A report of a student's academic progress in a class or course;
4. A report of a student's grades at the end of each grade reporting period;
5. A report on instructional materials;
6. A unit or weekly lesson plan that outlines, in a brief and general manner, the information to be presented during each period at the secondary level or in each subject or topic at the elementary level;
7. An attendance report;
8. Any report required for accreditation review;
9. Any information required by the District that relates to a complaint, grievance, or actual or potential litigation and that requires the classroom teacher's involvement; or
10. Any information specifically required by law, rule, or regulation.

The District may collect essential information, in addition to the information specified above, from a classroom teacher on agreement between the classroom teacher and the District.

The Board shall review paperwork requirements imposed on classroom teachers and transfer to existing noninstructional staff a reporting task that can reasonably be accomplished by that staff.

[See BAA]

*Education Code 11.164*

The Commissioner of Education may authorize special accreditation investigations in response to repeated complaints concerning imposition of excessive paperwork requirements on classroom teachers. *Education Code 39.075(b-1)*
Upon the Board’s request, the Superintendent shall report to the Board on efforts to minimize teacher paperwork and on the number and length of written reports that teachers are required to prepare.
Instructional materials selected for use in the public schools shall be furnished without cost to students attending those schools. Except as provided by Education Code 31.104(d), the District may not charge a student for instructional material or technological equipment purchased by the District with the District's instructional materials allotment [see CMD]. *Education Code 31.001*

**PARENTAL ACCESS**

A parent is entitled to review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent's child and to review each test administered to the child after the test is administered. The District shall make teaching materials and tests readily available for parental review and may specify reasonable hours for such review.

A student's parent is entitled to request that the District allow the student to take home any instructional materials used by the student. Subject to the availability of the instructional materials, the District or school shall honor the request. A student who takes home instructional materials must return the instructional materials to school at the beginning of the next school day if requested to do so by the student's teacher.

*Education Code 26.006*

No student shall be required, as part of any program funded in whole or in part by the U.S. Department of Education (DOE), to submit to a survey, analysis, or evaluation that reveals information concerning the topics listed at PROTECTED INFORMATION, below, without the prior consent of the student (if the student is an adult or emancipated minor), or, in the case of an unemancipated minor, without the prior written consent of the parent. *20 U.S.C. 1232h(b)*

All instructional materials, including teacher's manuals, films, tapes, or other supplementary material, that will be used in connection with any survey, analysis, or evaluation as part of any program funded in whole or in part by the U.S. DOE shall be available for inspection by the parents or guardians of the children. *20 U.S.C. 1232h(a)*

Except as provided by 20 U.S.C. 1232h(a) or (b) [see U.S. DOE FUNDED SURVEYS, above], as a condition of receiving funds for a program funded in whole or in part by the U.S. DOE, the District shall develop and adopt policies, in consultation with parents, pursuant to 20 U.S.C. 1232h(c)(1), regarding the following:

1. The parent's right to inspect a survey created by a third party before the survey is administered or distributed by a school to the student and any applicable procedures for granting a re-
quest by a parent for reasonable access to such survey within a reasonable period of time after the request is received.

2. The District’s arrangements to protect student privacy in the event a survey containing one or more of the items listed under PROTECTED INFORMATION, below, is administered or distributed to a student.

3. The parent’s right to inspect any instructional material used in the educational curriculum for the student and any applicable procedures for granting a request by a parent for reasonable access to instructional material within a reasonable period of time after the request is received.

4. The administration of physical examinations or screenings that the District may administer to the student;

5. The collection, disclosure, or use of personal information collected from students for the purpose of marketing or selling that information. This provision does not apply to use of personal information collected from students for the exclusive purpose of developing, evaluating, or providing educational products or services for or to students or educational institutions, such as recruiters, book clubs, curriculum and instructional materials used by schools, sale by students of products or services to raise funds for school-related or education-related activities, or student recognition programs.

6. The parent’s right to inspect any instrument used in collection of personal information in item 5 above, before the instrument is administered and any applicable procedures for granting a request by a parent for reasonable access to such instrument within a reasonable period of time after the request is received.

The District need not develop and adopt new policies if TEA or the District had in place, on January 8, 2002, policies covering the requirements of 20 U.S.C. 1232h(c)(1). [See CRD, FFAA, FL, and FNG]

The District shall provide for reasonable notice of the adoption or continued use of such policies directly to the parents of the students enrolled in schools served by the District. At a minimum, the District shall:

1. Provide notice at least annually, at the beginning of the school year and within a reasonable time after any substantive change in the policies; and
2. Offer an opportunity for the parent to opt the student out of participation in an activity described below.

The District shall directly notify the parent of a student, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when activities, described below, are scheduled or expected to be scheduled. The following activities require notification under this section:

1. Activities involving the collection, disclosure, or use of personal information collected from students for the purpose of marketing or for selling that information.

2. The administration of any survey containing one or more items described at PROTECTED INFORMATION, below.

3. Any nonemergency, invasive physical examination or screening that is required as a condition of attendance, administered and scheduled by the school in advance, and not necessary to protect the immediate health and safety of the student or of other students.

20 U.S.C. 1232h(c)(1)–(4) [See FFAA]

Protected information addressed by 20 U.S.C. 1232h includes:

1. Political affiliations or beliefs of the student or the student’s parents.

2. Mental and psychological problems of the student or the student’s family.

3. Sex behavior and attitudes.

4. Illegal, anti-social, self-incriminating, and demeaning behavior.

5. Critical appraisals of other individuals with whom respondents have close family relationships.

6. Legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers.

7. Religious practices, affiliations, or beliefs of the student or student’s parent.

8. Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program).

20 U.S.C. 1232h(b), (c)(1)(B)
The term "personal information" means individually identifiable information, including a student's:

1. First and last name;
2. Home or physical address, including street name and city or town;
3. Telephone number; or
4. Social security identification number.

20 U.S.C. 1232h(c)(6)(E)
The Superintendent shall establish standards, criteria, and procedures whereby instructional materials and supplies shall be provided the professional staff. Provisions shall be made for the requisition and purchase of such materials within the annual District budget, as needed. Programs and services appropriate to the instructional program shall be available to each student within limits of the adopted budget.

Any research, study, questionnaire, or survey (written or verbal originating at a campus for distribution to that campus staff, students, parents, and/or community members of the campus attendance zone) must have prior approval by the campus administrator.

Any other research, study, questionnaire, or survey must be submitted to the coordinator of accountability and data assessment for approval by the appropriate associate superintendent.
See the following pages for forms relating to reconsideration of instructional resources:

Exhibit A: Request for Reconsideration of Instructional Materials — 1 page
Exhibit B: Checklist for Reconsideration of Instructional Materials — 2 pages
REQUEST FOR RECONSIDERATION OF INSTRUCTIONAL MATERIALS

Name ___________________________________________ Date ____________________
Address ___________________________________________________________________
City ____________________________ State _______ Zip _______________
Phone ____________________________________________________________________

Do you represent yourself? _____ an organization? _____ (If an organization, please identify: _________________________________________________________________)

Resource on which you are commenting:

____ Book          ____ Magazine          ____ Audio Recording
____ Textbook       ____ Library Program   ____ Newspaper
____ Video/DVD      ____ Electronic information/network (please specify)
____ Display        ____ Other ______________________________

Title _____________________________________________________________________

Author/Producer _________________________________________________________

1. Have you reviewed the materials in their entirety?  If not, please do so before completing and submitting this form.

2. To what in the material do you object?  (Please be specific: cite pages, and the like)

____________________________________

3. What do you believe might be the result of using this material?

_____________________________________________________________________

4. For what age group would you recommend this material?

_____________________________________________________________________

5. In its place, what material of equal quality would you recommend that could be used to teach similar subject matter?

_____________________________________________________________________

6. What do you believe should be done with the material in question?
   □ Remove it from the curriculum.
   □ Do not allow my child to use this material.
   □ Use it as resource material or a choice selection.

Complainant signature___________________________________ Date _______________

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EFA(EXHIBIT)-A
EXHIBIT B

CHECKLIST FOR RECONSIDERATION OF INSTRUCTIONAL MATERIALS

Type of resource ____________________________________________________________

Title ______________________________________________________________________

Author/Producer ______________________________________________________________________

1. Purpose
   a. What is the overall purpose of the material or resource?
   b. Is the purpose accomplished? □ Yes □ No

2. Authenticity
   a. Is the author or presenter competent and qualified in the field?
      □ Yes □ No
   b. What is the reputation and significance of the author or publisher/producer in the field?
      _____________________________________________________________
   c. Is the material or resource up-to-date? □ Yes □ No
   d. Are information sources well documented either in the resource or in guides?
      □ Yes □ No
   e. Are translations and interpretations faithful to the original?
      □ Yes □ No

3. Appropriateness
   a. Does the resource promote the educational goals and objectives of the curriculum of District schools? □ Yes □ No
   b. Is it appropriate for the level of instruction intended? □ Yes □ No
   c. Are the illustrations appropriate for the subjects and age levels?
      □ Yes □ No

4. Content
   a. Is the content of this material or resource well presented by providing adequate scope, range, depth, and continuity? □ Yes □ No
   b. Does it present information not otherwise available? □ Yes □ No
   c. Does it give a dimension or direction that is new or different from others available for the subject? □ Yes □ No
5. Review/Evaluations
   a. Source of review/evaluation ___________________________________________
      □ Favorably reviewed
      □ Unfavorably reviewed
   b. Does this title or resource appear in one or more reputable selection aids?
      □ Yes  □ No
      If answer is “yes,” please list titles of selection aids.

Additional Comments:
________________________________________________________________________
________________________________________________________________________

Recommendations by review committee for treatment of questioned resource
________________________________________________________________________
________________________________________________________________________

Signatures of review committee:
_________________________________      _________________________________
_________________________________      _________________________________
Chairperson _________________________________
Date _______________________________________

The District possesses significant discretion to determine the content of its school libraries. The District must, however, exercise its discretion in a manner consistent with the First Amendment.

Students' First Amendment rights are implicated by the removal of books from the shelves of a school library. The District shall not remove materials from a library for the purpose of denying students access to ideas with which the District disagrees. The District may remove materials because they are pervasively vulgar or based solely upon the educational suitability of the books in question.

The District shall provide a wide range of instructional resources for students and faculty that present varying levels of difficulty, diversity of appeal, and a variety of points of view. Although trained professional staff members are afforded the freedom to select instructional resources for their use in accordance with this policy and the state-mandated curriculum, the ultimate authority for determining and approving the curriculum and instructional program of the District lies with the Board.

**OBJECTIVES**

In this policy, “instructional resources” refers to textbooks, library acquisitions, supplemental materials for classroom use, and any other instructional materials, including electronic resources, used for formal or informal teaching and learning purposes. The primary objectives of instructional resources are to deliver, support, enrich, and assist in implementing the District’s educational program. [See EFAA for the selection and adoption process of state-adopted instructional materials.]

The Board shall rely on District professional staff to select and acquire instructional resources that:

1. Enrich and support the curriculum, taking into consideration students’ varied interests, abilities, learning styles, and maturity levels.
2. Stimulate growth in factual knowledge, enjoyment of reading, literary appreciation, aesthetic values, and societal standards.
3. Present various sides of controversial issues so that students have an opportunity to develop, under guidance, skills in critical analysis and in making informed judgments in their daily lives.
4. Represent many ethnic, religious, and cultural groups and their contributions to the national heritage and world community.
5. Provide a wide range of background information that will enable students to make intelligent judgments in their daily lives.

**SELECTION CRITERIA**

In the selection of instructional resources, especially library acquisitions and supplemental materials for classroom use, professional staff shall ensure that materials:

1. Support and are consistent with the general educational goals of the state and District and the aims and objectives of individual schools and specific courses consistent with the District and campus improvement plans.
2. Meet high standards in presentation, format, readability, content, accuracy, artistic or literary quality, and educational significance.

3. Are appropriate for the subject and for the age, ability level, learning styles, and social and emotional development of the students for whom they are selected.

4. Are designed to provide information that will motivate students to examine their own attitudes and behavior, to understand their rights, duties, and responsibilities as citizens, and to make informed judgments in their daily lives.

Recommendations for library acquisitions shall involve administrators, teachers, other District personnel, and community representatives, as appropriate. Gifts of instructional resources shall be evaluated according to these criteria and accepted or rejected accordingly.

Selection of materials is an ongoing process that includes the removal of resources no longer appropriate and the periodic replacement or repair of materials still of educational value.

CONTROVERSIAL ISSUES

The selection of library acquisitions on controversial issues shall endeavor to maintain a balanced collection representing various views. Library materials shall be chosen to clarify historical and contemporary forces by presenting and analyzing intergroup tension and conflict objectively, placing emphasis on recognizing and understanding social and economic problems. [See also EMB regarding instruction about controversial issues and EHAA regarding human sexuality instruction.]

CHALLENGED MATERIALS

A parent of a District student, any employee, or any District resident may formally challenge an instructional resource used in the District’s educational program on the basis of appropriateness.

INFORMAL RECONSIDERATION

The school receiving a complaint about the appropriateness of an instructional resource shall try to resolve the matter informally using the following procedure:

1. The principal or designee shall explain the school’s selection process, the criteria for selection, and the qualifications of the professional staff who selected the questioned material.

2. The principal or designee shall explain the role the questioned material plays in the educational program, its intended educational usefulness, and any additional information regarding its use.
3. If appropriate, the principal or designee may offer a concerned parent other instructional material to be used by that parent’s child in place of the challenged material.

4. If the complainant wishes to make a formal challenge, the principal or designee shall provide the complainant a copy of this policy and a Request for Reconsideration of Instructional Materials form [see EFA(EXHIBIT)].

FORMAL RECONSIDERATION

All formal objections to instructional resources shall be made on the Request for Reconsideration of Instructional Materials form. The form shall be completed and signed by the complainant and submitted to the principal or designee. Upon receipt of the request, the principal shall appoint a reconsideration committee.

The reconsideration committee shall include at least one member of the instructional staff who either has experience teaching the challenged material or is familiar with the challenged material. Other members of the committee may include District-level staff, library staff, secondary-level students, parents, and others deemed appropriate by the principal.

All members of the committee shall review the challenged material in its entirety. As soon as reasonably possible, the committee shall meet and determine whether the challenged material conforms to the principles of selection set out in this policy. The committee shall then prepare a written report. Copies of the report shall be provided to the principal, the Superintendent or designee, and the complainant.

APPEAL

The complainant may appeal the decision of the reconsideration committee in accordance with appropriate complaint policies, starting with the appropriate administrator. [See DGBA, FNG, and GF] The appeal shall contain documentation of the informal reconsideration process, if any, the Request for Reconsideration of Instructional Materials form, the reconsideration committee’s report, and dates of conferences with the principal or designee.

GUIDING PRINCIPLES

The following principles shall guide the Board and staff in responding to challenges of instructional resources:

1. A complainant may raise an objection to an instructional resource used in a school’s educational program, despite the fact that the professional staff selecting the resources were qualified to make the selection, followed the proper procedure, and adhered to the objectives and criteria for instructional resources set out in this policy.

2. A parent’s ability to exercise control over reading, listening, or viewing matter extends only to his or her own children.
3. When instructional resources are challenged, the principles of the freedom to read, listen, and view must be defended as well.

4. Access to challenged material shall not be restricted during the reconsideration process.

The major criterion for the final decision on challenged materials is the appropriateness of the material for its intended educational use. No challenged library material shall be removed solely because of the ideas expressed therein.
The school library bill of rights for school library media center programs sets forth a philosophy of materials selection, and this bill of rights is endorsed by the District.

The American Association of School Librarians reaffirms its belief in the Library Bill of Rights of the American Library Association. Media personnel are concerned with generating understanding of American freedoms through the development of informed and responsible citizens. To this end the American Association of School Librarians asserts that the responsibility of the school library media center is to:

1. Provide a comprehensive collection of instructional materials selected in compliance with basic written selection principles, and to provide maximum accessibility to these materials.

2. Provide materials that will support the curriculum, taking into consideration the individual’s needs and the varied interests, abilities, socioeconomic backgrounds, and maturity levels of the students served.

3. Provide materials for teachers and students that will encourage growth in knowledge, and that will develop literary, cultural, and aesthetic appreciation, and ethical standards.

4. Provide materials that reflect the ideas and beliefs of religious, social, political, historical, and ethnic groups and their contribution to the American and world heritage and culture, thereby enabling students to develop an intellectual integrity in forming judgments.

5. Provide a written statement, approved by the local Board, of the procedures for meeting the challenge of censorship of materials in school library media centers.

6. Provide qualified professional personnel to serve teachers and students.
DEFINITIONS

“Instructional material” is defined as content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to a student. The term includes a book, supplementary materials, a combination of a book, workbook, and supplementary materials, computer software, magnetic media, DVD, CD-ROM, computer courseware, online services, or an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means, including open-source instructional material. *Education Code 31.002(1)*

“Open-source instructional material” is electronic instructional material 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 instructional material. *Education Code 31.002(1-a)*

“Technological equipment” is hardware, a device, or equipment necessary for instructional use in the classroom, including to gain access to or enhance the use of electronic instructional materials; or professional use by a classroom teacher. *Education Code 31.002(4)*

SBOE INSTRUCTIONAL MATERIALS LIST

For each subject and grade level, the State Board of Education (SBOE) shall adopt a list of instructional materials. The list includes each instructional material that meets applicable physical specifications and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level. *Education Code 31.023(a)*

OPEN-SOURCE INSTRUCTIONAL MATERIAL

The SBOE shall place open-source instructional material for a secondary-level course submitted for adoption by an eligible institution on the list if it satisfies the requirements described in Education Code 31.0241. *Education Code 31.0241(b)*

COMMISSIONER INSTRUCTIONAL MATERIALS LIST

The Commissioner, with input from the SBOE, shall adopt a list of:

1. Electronic instructional material; and
2. Material 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 5 and personal financial literacy in kindergarten through
grade 8.

Education Code 31.0231(a)

SUPPLEMENTAL
INSTRUCTIONAL
MATERIALS LIST

The SBOE may adopt supplemental instructional materials that are
not on the SBOE instructional materials list. Supplemental instruc-
tional material contains material covering one or more primary focal
points or primary topics of a subject in the required curriculum but
is not designed to serve as the sole textbook for a full course.
Education Code 31.035(a)

LOCAL SELECTION

Each year, during a period established by the SBOE, the Board
shall select instructional materials for subjects in the foundation
and enrichment curricula and notify the SBOE in accordance with

POLICY

The Board shall adopt a policy for selecting instructional materials.
Final selections must be recorded in Board minutes. 19 TAC
66.104(a)

FOUNDATION
CURRICULUM

The Board shall select instructional materials for a subject in the
foundation curriculum from the instructional materials list, including
the Commissioner’s instructional materials list. Education Code
31.101(a)(1)

ENRICHMENT
CURRICULUM

The Board may select instructional materials for a subject in the
enrichment curriculum from the instructional materials list, including
the Commissioner’s instructional materials list, or it may select in-
structional materials that do not appear on the list. Education
Code 31.101(a)(2)

SUPPLEMENTAL
MATERIALS

The Board may select supplemental instructional materials adopted
by the SBOE, as set forth at Education Code 31.035 [see CMD]. If
the Board selects supplemental instructional materials, the District
shall certify to TEA that the supplemental instructional materials, in
combination with any other instructional materials or supplemental
instructional materials used by the District, cover the essential
knowledge and skills for the course. Education Code 31.035(d). (f)

OPEN-SOURCE
MATERIAL

The District may adopt state-developed open-source instructional
material at any time, regardless of the instructional material review
and adoption cycle. Education Code 31.073(c)

SPECIAL
EDUCATION

Adopted instructional materials shall be supplied to a student in
special education classes as appropriate to the level of the stu-
dent’s ability and without regard to the grade for which the instruc-
tional material is adopted or the grade in which the student is
enrolled. 19 TAC 66.104(m)
If the District selects subscription-based instructional material on the SBOE instructional materials list or electronic instructional material on the Commissioner’s instructional materials list, the District may cancel the subscription and subscribe to new instructional material on the SBOE list or electronic instructional material on the Commissioner’s list before the end of the state contract period if:

1. The District has used the instructional material for at least one school year; and

2. TEA approves the change based on a written request to TEA by the District that specifies the reasons for changing the instructional material used by the District.

_Education Code 31.101(e)_

For instructional material that is not on the instructional materials list, the District must use the instructional material for the period of the review and adoption cycle the SBOE has established for the subject and grade level for which the instructional material is used. _Education Code 31.101(d)_

A Board member, administrator, or teacher commits an offense if the person receives any commission or rebate on any instructional materials or technological equipment used in the schools with which the person is associated.

A Board member, administrator, or teacher commits an offense if the person accepts a gift, favor, or service that:

1. Is given to the person or the person’s school;

2. Might reasonably tend to influence the person in the selection of instructional material or technological equipment; and

3. Could not be lawfully purchased with state instructional materials funds.

“Gift, favor, or service” does not include:

1. Staff development, in-service, or teacher training; or

2. Ancillary materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

_Education Code 31.152_

Selection and use of ancillary materials is at the discretion of the Board. _19 TAC 66.104(p)_
HUMAN SEXUALITY MATERIALS

Course materials relating to human sexuality, sexually transmitted diseases, or human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) shall be selected by the Board with the advice of the local school health advisory council. *Education Code 28.004(e)* [See EHAA]
The Superintendent or designee shall appoint an instructional materials selection committee.

A majority of the committee members shall be classroom teachers.

After examining all instructional materials reflected on the state lists, the instructional materials committee shall select items for use in the District and recommend the selections to the Board for ratification. In the event the Board does not ratify all of the selections, the reasons shall be recorded in Board minutes. The committee shall make other recommendations for selection until the Board has ratified all selections.
The District may offer innovative courses to enable students to master knowledge, skills, and competencies not included in the essential knowledge and skills of the required curriculum.

To request approval for an innovative course from the SBOE or the Commissioner, the District must submit a request for approval at least six months before planned implementation. The request must address the elements listed at 19 Administrative Code 74.27(3).

With the approval of the Board, the District may offer, without modifications, any state-approved innovative course.

19 TAC 74.27

The District may operate a magnet program, academy, or other innovative program to serve student populations with specialized interests and aptitudes. 19 TAC 74.22(b)
AUTHORIZED FEES

The Board may require payment of:

1. Fees for materials used in any program in which the resultant product is in excess of minimum requirements and, at the student’s option, becomes the personal property of the student. Fees may not exceed the cost of materials.

2. Membership dues in student organizations or clubs, and admission fees or charges for attending extracurricular activities when membership or attendance is voluntary.

3. Security deposits for the return of materials, supplies, or equipment.

4. Fees for personal physical education and athletic equipment and apparel. However, any student may provide his or her own equipment or apparel if it meets reasonable requirements and standards relating to health and safety established by the Board.

5. Fees for items of personal use or products that a student may purchase at the student’s option, such as student publications, class rings, annuals, and graduation announcements.

6. Fees specifically permitted by any other statute.

7. Fees for an authorized, voluntary student health and accident benefit plan.

8. A reasonable fee, not to exceed the actual annual maintenance cost, for the use of musical instruments and uniforms owned or rented by the District.

9. Fees for personal apparel that become the property of the student and that are used in extracurricular activities.

10. Parking fees [see CLC] and fees for identification cards.

11. Fees for driver training courses, provided that such fees shall not exceed the actual District cost per student in such programs for the current school year.

12. Fees for courses offered for credit that require the use of facilities not available on the school premises or the employment of an educator who is not part of the school’s regular staff, if participation in the course is at the student’s option. Payment may not be required if the course is one requested by parents according to Education Code 28.003 [see EHA].

13. Fees for courses offered during summer school, except that the Board may not charge a fee for a course required for
graduation unless the course is also offered without a fee during the regular school term.

14. A reasonable fee for transportation of a student who lives within two miles of the school the student attends to and from that school, except that the Board may not charge a fee for transportation for which the District receives funds under Education Code 42.155(d).

15. A reasonable fee, not to exceed $50, for costs associated with an educational program offered outside of regular school hours through which a student who was absent from class receives instruction voluntarily for the purpose of making up the missed instruction and meeting the level of attendance required under Education Code 25.092. [See FEC] The District shall provide a written form to be signed by the student’s legal guardian stating that this fee would not create a financial hardship or discourage the student from attending the program. The District may assess the fee only if the student returns the signed form.

16. If the District does not receive any funds under Education Code 42.155 and does not participate in a county transportation system for which an allotment is provided under Education Code 42.155(i), a reasonable fee for the transportation of a student to and from the school the student attends.

Education Code 11.158(a), (d), (h)

17. A fee for enrollment in an electronic course provided through the Texas virtual school network (TxVSN) in accordance with Education Code 30A.155. Education Code 30A.155 [See EHDE]

PROHIBITED FEES

The Board may not charge fees for:

1. Instructional materials, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course, except as authorized under this code.

2. Field trips required as part of a basic educational program or course.

3. Any specific form of dress necessary for any required educational program or diplomas.

4. Instructional costs for necessary school personnel employed in any course or educational program required for graduation.
5. Library materials required to be used for any educational course or program. However, fines may be assessed for lost, damaged, or overdue materials.

6. Admission to any activity the student is required to attend as a prerequisite to graduation.

7. Admission or examination in any required educational course or program.

8. Lockers.

PERSONAL SUPPLIES

Students may be required to furnish personal or consumable items, including pencils, paper, pens, erasers, and notebooks. Students may be required to furnish school uniforms, subject to the provisions of Education Code 11.162 regarding educationally disadvantaged students. [See FNCA]

SCHOOL STORE

The District may operate a school store where students may purchase school supplies and materials.

WAIVER OF FEES

The District shall adopt reasonable procedures for waiving a deposit or fee if a student or the student's parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

POSTSECONDARY INSTRUCTIONAL PROGRAMS

The Board may charge reasonable fees for goods and services provided in connection with any postsecondary instructional program, including career and technology, adult, veterans, or continuing education, community service, evening school, and high school equivalency programs.

*Education Code 11.158(b)–(c), (e)–(g)*
STUDENT FEES, FINES, AND CHARGES

WAIVER OF FEES

Upon receipt by the District of reliable proof that a student and his or her parent or guardian are unable to pay a fee or deposit required by the school, such fee or deposit shall be waived. Such student and his or her parent or guardian must present evidence of their inability to pay to the appropriate principal who shall determine eligibility for a fee waiver.

STUDENT CLUB AND CLASS DUES

School club and class dues are prohibited. Membership dues in student organizations or clubs associated with state and national organizations may be charged when membership or attendance is voluntary.

Contributions to or charges for club activities, projects, social events, etc., must be voluntary.

Any other rental fees or charges to students not mentioned in FP must have the approval of the appropriate area superintendent.
SALE OF SCHOOL SUPPLIES

The sale of supplies in the schools will be restricted to general classroom supplies and such other items as pertain to the school program. Any program designed to provide the opportunity for students to purchase general school supplies must be under the supervision of a faculty member and must have the approval of the principal of the school.

Profit on school supplies sold in school bookstores, distributive education stores, or in other similar centers shall not exceed 20% of cost of the supplies. Such profits may be used by the school principal and/or faculty member for purposes listed under “approval of expenditures.”

SALE OF MEMENTOS / INCIDENTALS

Mementos are defined as those items which identify the school or club. Examples include decals, pennants, shirts, jackets, caps, mugs, and mascots.

Incidentals are defined as those items which are not school-related. Examples include candies, records and tapes, jewelry, belts, paperbacks, and greeting cards.

Selection of mementos and incidentals to be sold through school stores are to be approved by the principal and faculty sponsor, and the sale of such items must be under the supervision of the faculty sponsor. A list of all mementos and incidentals and their respective sale prices shall be submitted to the appropriate assistant superintendent.

Prices for mementos and incidentals shall be comparable with the prices found in area retail stores for the same or similar items. Profits from the sale of such items may be used by the school principal and/or faculty member for purposes listed under “approval of expenditures.”

SCHOOL PHOTOGRAPHS

The following procedure shall apply to the selection of photographers and for the sale of student pictures:

1. Each principal shall select a committee consisting of administrators, teachers, parents, and students to select a photographic package most appropriate for their school's needs.

2. Known photographers of student pictures will be invited to submit displays and prices to the committee for review and selection. Special attention will be given to quality of pictures, publication deadline requirements, service of the photographer, and price.

3. Photographers will be invited to display their photographic packages at a Districtwide exhibit during the month of April. Each package will show the photographer’s price. Also the
photographer will show any discounts available in proportion to the number of sales. Each principal and appropriate assistant superintendent will enter into an agreement with a photographer for one school year for a selected photographic package at a specified price.

4. The purchase price for a photographic package may include an amount not to exceed 20% of the photographer’s price, which shall be given to the school to be spent through the activity fund for purposes listed under “approval of expenditures.”

**COMMEMORATIVE ITEMS**

Commemorative items may include, but not be limited to the following: class rings, graduation announcements and name cards, school yearbooks, senior pictures, and caps and gowns. These items will be provided for students to purchase at the lowest possible price after consideration of quality of product, convenience of delivery, reputation of the suppliers, and service.

Selection of the commemorative items shall be under the supervision of the principal, but shall involve a committee of students, teachers, and parents. Known suppliers of such items will be invited to submit samples of their products to the principal and committee for review and selection. Prices to be charged to the students and services to be rendered to the school must be submitted in writing by the suppliers to the principal.

Agreements for student commemorative items shall not exceed two years in length, and shall be signed by the principal of the school and the appropriate assistant superintendent.

The purchase price of the senior pictures may include an amount up to $3, which the photographer will give to the school by October 1 of the current school year. This money will be used to meet the expenses of publishing the school yearbook. Any funds remaining, however, from senior picture sales not used for yearbook expenses will be credited to the senior class activity account to be used for meeting the expenses of the prom, picnic, and commencement ceremony.

Students shall not be charged a cost for any other commemorative item above the price specified by the supplier at the time the samples and prices are submitted for review and selection.