Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter C. Local Operations

§66.101. Sample Copies of Instructional Materials for School Districts.

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

(b) Upon request by the textbook coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete sample of adopted instructional materials. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstration or representative format, provided that identical samples are provided to each school district or open-enrollment charter school. 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.

§66.102. Textbook Credits.

(a) A school district or an open-enrollment charter school is entitled to receive credit for textbooks purchased at a cost below the cost limit established under the Texas Education Code (TEC), §31.025(a).

(b) The credit is an amount equal to the difference between the price paid for a textbook and the cost limit established under the TEC, §31.025(a), for that textbook multiplied by the number of copies of that textbook the school district or open-enrollment charter school selects.

(c) A school district or an open-enrollment charter school that selects a state-developed open-source textbook or a State Board of Education (SBOE) open-source textbook placed on the list pursuant to the TEC, §31.0241, instead of another textbook adopted under TEC, §31.023, is entitled to the difference between the cost determined by the commissioner of education under the TEC, §31.073, and the maximum price for a textbook in the same subject area, as determined by the SBOE under the TEC, §31.023.

(d) Fifty percent of the total textbook credit of a school district or an open-enrollment charter school shall be credited to the state textbook fund, and 50% of the credit shall be credited to the school district or open-enrollment charter school. A school district or an open-enrollment charter school may apply textbook credits toward the purchase of:

(1) additional textbooks or electronic textbooks that are on the conforming or nonconforming list under the TEC, §31.023;

(2) components of such textbooks, including any electronic components;

(3) supplemental textbooks as provided by the TEC, §31.035; and

(4) technological equipment necessary to support the instruction of electronic textbooks or instructional materials included on the list adopted under the TEC, §31.0231, or any textbook or instructional materials included on the conforming or nonconforming list adopted by the SBOE.

(e) A school district or an open-enrollment charter school is entitled to receive credit for textbooks purchased at a cost below the cost limit established under the TEC, §31.025(a), only in the first year of implementation.

(f) A school district or an open-enrollment charter school must notify the Texas Education Agency (TEA) for the use of funds generated by textbook credits.

(g) A school district or an open-enrollment charter school must submit an itemized expenditure report to the TEA.

Source: The provisions of this §66.102 adopted to be effective February 22, 2010, 35 TexReg 1454.

§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) If instructional materials priced above the maximum cost to the state established in the proclamation are selected by a school district or open-enrollment charter school, the school district or open-enrollment charter school is responsible for paying to the publisher the portion of the cost above the state maximum.

(c) If instructional materials for subjects in the enrichment curriculum that are not on the conforming or nonconforming lists adopted by the State Board of Education (SBOE) are selected by a school district or open-enrollment charter school, the state shall be responsible for paying the district an amount equal to the lesser of:

(1) 70% of the cost to the district of the instructional materials. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district; or

(2) 70% of the maximum cost to the state established for the subject. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district.

(d) A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects is responsible for the portion of the cost of the materials not eligible for payment by the state under subsection (c) of this section. The minutes of the board of trustees or governing body meeting at which such a selection is ratified shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for the portion of the cost not eligible for payment by the state. A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects also bears responsibility for providing braille and/or large type versions of the non-adopted instructional materials.

(e) Funds paid by the state under subsection (c) of this section shall be used only for purchasing the non-adopted instructional materials selected and ratified by the board of trustees or governing body.

(f) Non-adopted instructional materials selected and purchased under subsection (c) of this section shall be used by the school district or open-enrollment charter school during the contract period for conforming and nonconforming instructional materials adopted by the SBOE in the subject area.

(g) 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.

(h) Only instructional materials ratified by the board of trustees or governing body shall be furnished by the state for use in any school district or open-enrollment charter school. Selections certified to the TEA shall be final and, therefore, shall not be subject to reconsideration during the original contract period or readoption contract periods covering the instructional materials selected.

(i) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected in a subject, requisitions may be made for a combined total of the selected titles.

(j) Instructional materials requisitioned by, and delivered to, a school district or an open-enrollment charter school shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title in the same subject.

(k) If a school district or open-enrollment charter school does not have a sufficient number of copies of a textbook used by the district or school for use during the following school year, and a sufficient number of additional copies will not be available from the publisher's depository or the publisher within ten business days prior to the opening day of school, the school district or school is entitled to be reimbursed from the state textbook fund at a rate not to exceed the actual cost of the used textbook, or the state maximum cost, whichever is less, for the purchase of a sufficient number of used adopted textbooks.

(l) In making a requisition, a school district or open-enrollment charter school may requisition textbooks on the conforming and nonconforming list for grades above the grade level in which the student is enrolled, except that the total quantity of textbooks requisitioned may not exceed a school district's eligibility quota for that subject.

(m) 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.

(n) A school district or open-enrollment charter school may order replacements for textbooks that have been lost or damaged directly from the textbook depository or the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state, in accordance with §66.78(a) of this title (relating to Delivery of Adopted Instructional Materials).

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

(p) 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.

(q) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material according to §66.51(a)(11) of this title (relating to Instructional Materials Purchased by the State). For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district or open-enrollment charter school ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(r) A school district or open-enrollment charter school that selects from the commissioner's list as specified in the TEC, §31.0231, must purchase a classroom set of textbooks adopted by the SBOE under the TEC, §31.023 or §31.035, for each subject and grade level in the foundation and enrichment curriculum.

(s) A classroom set shall be defined as the total count of SBOE-adopted textbooks on the conforming or nonconforming list necessary to provide one copy to each student during the class period. A classroom kit that includes materials for every student in the classroom is considered to be a classroom set.

(t) The classroom set requirement shall be implemented as new textbook adoptions become available and are funded. The classroom set requirement will begin with Proclamation 2010.

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.

§66.105. Certification by School Districts.

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 foundation and enrichment curriculum and each grade level, the district or charter school provides each student with textbooks, electronic textbooks, or 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.

Source: The provisions of this §66.105 adopted to be effective February 22, 2010, 35 TexReg 1454.

§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) Each textbook, other than an electronic textbook, must be covered by the student under the direction of the teacher.

(c) After the beginning of every school year, each school district or open-enrollment charter school shall determine if it has surplus instructional materials for any subject area/grade level, based on its current enrollment for the subject area/grade level. In accordance with the Educational Materials and Textbooks (EMAT) online ordering system, surplus is defined as follows. For courses that use textbooks that are in the first year of adoption, any textbook in excess of 110% of enrollment shall be considered surplus. For courses that use textbooks that are in the second or later years of adoption, any textbook in excess of 120% of enrollment shall be considered surplus. Overages that exceed these definitions should be entered into the EMAT Online Adjust Surplus Screen, except that instructional materials that are needed for the following school year are not considered surplus and should not be entered into the Adjust Surplus Screen. Instructional materials determined by the school district or open-enrollment charter school to be surplus-to-quota shall be reported to the Texas Education Agency (TEA) by October 1 of each year in accordance with instructions provided by the TEA. A school district or open-enrollment charter school is entitled to retain surplus-to-quota instructional materials only when data approved by the TEA indicate that students will be enrolled in the subject and a need for the surplus-to-quota instructional materials exists.

(d) When placing orders for instructional materials, school districts and open-enrollment charter schools shall report enrollments as follows:

(1) Annual orders for instructional materials. Enrollments shall be reported based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year; and

(2) Supplemental orders for instructional materials. Enrollments shall be reported based on the actual number of students enrolled in the district when the order is submitted, adjusted for students reported as working above or below grade level.

(e) A school district's enrollment growth or decline for the prior three years shall be used by the TEA as the basis for determining any additional percentage of attendance for which a school district may requisition instructional materials.

(f) The TEA assumes that enrollments reported by a school district or open-enrollment charter school at the time an order for instructional materials is placed are accurate.

(g) A school district or open-enrollment charter school that orders instructional materials in excess of its eligibility by reporting enrollments above enrollments described in subsection (d)(1) and (2) of this section enters into a contract with the state to purchase the instructional materials supplied that exceed the school district or open-enrollment charter school's eligibility for the subject area/grade level. A school district or open-enrollment charter school may cancel the contract to purchase instructional materials supplied in excess of its eligibility by immediately notifying the TEA of the surplus and posting the surplus in accordance with instructions provided by the TEA. If prior approval is received, surplus instructional materials may be returned to the publisher's approved depository or placed into statewide surplus inventory in accordance with instructions from the TEA. A school district or open-enrollment charter school that fails to notify the TEA of surplus instructional materials for more than six months after the beginning of the school year shall reimburse the state at the full price for the surplus instructional materials.

(h) All textbooks must be turned in at the end of the school year or when the student withdraws from school.

(i) The board of trustees of a school district may not require an employee of the district to pay for a textbook 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.