

ATTACHMENT V

Summary of Public Comments and Agency Responses Related to Proposed New 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter AA, Commissioner's Rules Concerning the Commissioner's List of Electronic Textbooks and Instructional Materials, Subchapter BB, Commissioner's Rules Concerning State-Developed Open-Source Textbooks, and Subchapter CC, Commissioner's Rules Concerning Acceptable Condition of Public School Textbooks, Electronic Textbooks, and Technological Equipment

Comment. The senior director of education policy for the Software and Information Industry Association commented that the 508 compliance requirement for electronic textbooks in §66.1007(c) does not address compliance if there was a post-approval change to the electronic textbook that took it out of compliance.

Agency Response. The agency agrees. Language was modified in §66.1007(c) to clarify Rehabilitation Act, §508, accessibility requirements and compliance if there was a post-approval change to the electronic textbook.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the replacement requirements in §66.1009(i) for electronic, web-based, or online instructional materials should be reflected within the terms of the contract and include language that applies more to the print industry.

Agency Response. The agency agrees. Language was modified in §66.1009(i), relettered as §66.1009(h), to make it more applicable to online content as outlined under terms of the contract.

Comment. The senior director of education policy for the Software and Information Industry Association commented that in §66.1009(j), an electronic content update request should require a response to the request within 45 days to reflect the timeliness of the electronic content. The commenter suggested that absent a response within 45 days, the content provider would make the requested content update(s). The commenter further stated that factual and software coding errors should not require the commissioner's approval.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees that an electronic content update request should require a response within a specified time period. Language was modified in §66.1009(j), relettered as §66.1009(i), to require a response within 30 business days of the request. The language was also modified to specify that required factual or software coding errors will not require commissioner's approval. The agency disagrees with the comment to allow the content provider to update their content if the commissioner does not respond within a specified time period. Content updates require commissioner approval to ensure Texas Essential Knowledge and Skills (TEKS) alignment and error-free materials.

Comment. The senior director of education policy for the Software and Information Industry Association commented that in §66.1009(k), a request for content removal should require a response to the request within 45 days to reflect the timeliness of the electronic content. The commenter suggested that absent a response within 45 days, the content provider would remove the content. The commenter also suggested deleting language relating to changes in the content.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees that requests for removal of content should require a response within a specified time period. Language was modified in §66.1009(k), relettered as §66.1009(j), to require a response within 30 business days of the request. The agency disagrees with the comment that allows the content provider to remove their content if the commissioner does not respond within a specified time period. Content updates, including removal of content, require commissioner approval to ensure TEKS alignment and error-free materials.

Comment. The senior director of education policy for the Software and Information Industry Association commented that in §66.1009(l), the online requirements should be addressed separately from Internet links because of the complexity of the issues such as broken links or coding errors. The commenter further suggested that the content provider be given the latitude to correct bad links, as well as provide additional instances of TEKS coverage, without the approval from the commissioner.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees with the comment to separate online requirements and links. Language was modified in §66.1009(l), relettered as §66.1009(k), to address only online requirements, and language was added as new §66.1009(l) to address the Internet links separately. The agency also agrees with the comment to allow the content provider to correct bad links without the approval of the commissioner and included language in new §66.1009(l) to address correction of Internet links. The agency disagrees, however, that the publisher should be allowed to add content without the approval of the commissioner. Content changes require commissioner approval to ensure TEKS alignment and error-free materials.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the online requirements in §66.1009(l) should include the collection of information necessary for legitimate operational tasks. The commenter stated that use of such information will follow the federal Family Educational Rights and Privacy Acts (FERPA).

Agency Response. The agency agrees. Language was modified in §66.1009(l), relettered as §66.1009(k), to give the publisher permission to collect information necessary for legitimate operational tasks and to follow FERPA guidelines.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the adoption cycle cited in §66.1011(a) and (b) should be continuous and ongoing on a yearly basis.

Agency Response. The agency disagrees and maintained language as published as proposed. The language in §66.1011 gives the commissioner the flexibility to determine the timeline for the adoption cycle and the subject areas for acquiring electronic textbooks.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the language in §66.1013(a) for the request, public notice, and schedule for adopting electronic textbooks and instructional materials should be modified to be consistent with language proposed by the commenter on the adoption cycle.

Agency Response. The agency disagrees and maintained language as published as proposed. The language in §66.1013(a) is consistent with language on the adoption cycle in §66.1011.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the language in §66.1027(c), relating to training provided to teachers, should be focused on using the electronic textbook in the classroom.

Agency Response. The agency agrees. Language was modified in §66.1027(c) to clarify that the definition of appropriate training for teachers includes acquiring knowledge and skills necessary to effectively use electronic textbooks in the classroom.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the language in §66.1027(d), relating to the price for electronic textbooks, should be clarified regarding price discounts.

Agency Response. The agency disagrees and maintained language as published as proposed. The agency has determined that price information in §66.1027(d) does not require additional clarification.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the correlation instrument provided by the publisher in §66.1027(g) should include the option of an electronic format.

Agency Response. The agency agrees. Language was modified in §66.1027(g) to include an option of the electronic format.

Comment. The senior director of education policy for the Software and Information Industry Association commented that the evaluation of electronic textbooks and instructional materials in §66.1031(a) should not include pricing as criteria.

Agency Response. The agency disagrees and maintained language as published as proposed. The commissioner will consider pricing for the purposes of cost savings to the state.

Comment. The senior director of education policy for the Software and Information Industry Association commented on §66.1031(b), recommending that a publisher be provided adequate time to address the reasons the commissioner would reject an electronic textbook submission.

Agency Response. The agency agrees. Language was modified in §66.1031(b) to specify that the commissioner will establish a time period for a publisher to address the reasons an electronic textbook submission was rejected.

Comment. The senior director of education policy for the Software and Information Industry Association requested clarification on §66.1033, relating to statewide licenses. In addition, the commenter recommended that, at a minimum, language be deleted in §66.1033(c) in order to allow per-pupil pricing for a statewide license. The commenter also recommended that language be added to §66.1033(e) to explicitly state that publishers are not required to submit a statewide license.

Agency Response. The agency disagrees and maintained language as published as proposed. The agency provides the following clarification. To take advantage of the economies of scale, the statewide price should not be based on a unit price. The districts and open-enrollment charter schools will have the option to consider a statewide license submission or select from other content providers with unit-priced materials approved by the commissioner. Statewide licensing does not prohibit submission of a bid based on unit price.

Comment. The senior director of education policy for the Software and Information Industry Association commented that publisher requests for navigational and management feature updates should be removed from §66.1035(a) since it is addressed in §66.1035(f).

Agency Response. The agency agrees. Language was modified in §66.1035(a) to remove requests for navigational and management feature updates since it is addressed in §66.1035(f).

Comment. The senior director of education policy for the Software and Information Industry Association commented that a publisher request for updates in §66.1035(a) should require a response within 45 days. The commenter suggested that if the commissioner does not respond to a request to update the content within 45 days, the publisher should be allowed to update the content.

Agency Response. The agency agrees in part and disagrees in part. The agency agrees that an update request should require a response within a specified time period. Language was added in §66.1035(e) to require a response within 30 business days of the request. The agency disagrees with the comment to allow the content provider to update their content if the commissioner does not respond within a specified time period. Content updates require commissioner approval to ensure TEKS alignment and error-free materials.

Comment. The senior director of education policy for the Software and Information Industry Association commented that §66.1035(e) should be modified to specify that changes requested by the commissioner should be restricted to terms of the contract and that the frequency of such requests should be limited.

Agency Response. The agency disagrees and maintained language as published as proposed. The purpose of requests for changes would be to ensure that content remains current.

Comment. The senior director of education policy for the Software and Information Industry Association commented that §66.1037(b) and (c) should be combined and modified to clarify the expectations for publishers to make their electronic textbook available by a certain date.

Agency Response. The agency agrees. Language was modified to combine §66.1037(b) and (c) to specify that a publisher will notify affected school districts and open-enrollment charter schools of the expected availability date of each title that is not available by the date specified in the sales contract.

Comment. The senior director of education policy for the Software and Information Industry Association commented that §66.1039(b) should be modified to address management of software and online content. The commenter also recommended that §66.1039(b) be modified to ensure that samples are not copied prior to an agreement with the publisher.

Agency Response. The agency agrees. Language was added in §66.1039(b) to specify that samples may be delivered as web-based or online materials as determined by the publisher. Language was also added to specify that samples are not to be copied prior to an agreement with the publisher.

Comment. The senior director of education policy for the Software and Information Industry Association commented that §66.1039(c) should be revised to specify that the sample copy will be supplied contingent upon an agreement to allow retrieval of the sample.

Agency Response. The agency disagrees; however, language was added in §66.1039(c) to require a publisher to set a reasonable period of time for district review of a sample.

Comment. The senior director of education policy for the Software and Information Industry Association commented that §66.1111(a) and (b) should be modified to focus limited state resources on open-source textbooks in those subjects and/or grade levels where there is otherwise a lack of materials available from either the commissioner's list or the State Board of Education (SBOE) adoption list.

Agency Response. The agency disagrees and maintained language as published as proposed. The language in the rule establishes that the commissioner will determine the need for state-developed open-source textbooks.

Comment. The senior director of education policy for the Software and Information Industry Association inquired if in §66.1115 Texas law includes state-developed open-source textbooks under the definition of the set of SBOE adopted textbooks required in each classroom.

Agency Response. The agency provides the following clarification. House Bill (HB) 2488 authorizes the commissioner to request state-developed open-source electronic textbooks, which is separate and apart from the SBOE university-developed open-source electronic textbooks. Currently, the agency has requested an Attorney General's opinion on whether the university-developed open-source textbook satisfies the SBOE classroom set requirement.

Comment. The senior director of education policy for the Software and Information Industry Association requested clarification on the intent of §66.1203, which defines the "acceptable condition" of an electronic textbook.

Agency Response. The agency provides the following clarification. Through new 19 TAC Chapter 66, Subchapter CC, the agency has incorporated the requirements of HB 1332, which requires the commissioner to by rule adopt the criteria for determining whether a textbook, including an electronic textbook, and technological equipment are returned in an acceptable condition.

Comment. The executive director of the American Association of Publishers commented on §66.1009(b) regarding penalties for failure to correct factual errors. The commenter stated that the intent of these rules is specific to printed textbooks and recommended that these penalties not apply to the commissioner's adoption of electronic textbooks.

Agency Response. The agency disagrees and maintained language as published as proposed in §66.1009(b). However, language was modified in §66.1009(a) to establish that the commissioner will determine the length of time needed to correct a factual error and assess a penalty if the publisher does not correct the error within the time period provided. Commissioner discretion regarding penalties is also addressed in §66.1009(m).

Comment. The executive director of the American Association of Publishers commented on language in §66.1009(l) regarding the online requirements prohibiting publishers from adding Internet links to the electronic materials without the commissioner's approval. The commenter further stated that the proposed text prohibits the collection of user information by the publisher that includes email addresses. The commenter recommended allowing publishers to make the changes and submit a list of the changes to the commissioner. The commenter also stated that

publishers should be prohibited from using email addresses for purposes other than validation of the legitimate use of the program.

Agency Response. The agency agrees. Language was modified in §66.1009(l), relettered as §66.1009(k), to remove provisions relating to Internet links and place them in new §66.1009(l), allowing the addition of Internet links to the electronic materials as long as the content remains intact. However, publishers that make the changes must submit a list of the changes to the commissioner. In addition, language was modified in §66.1009(l), relettered as §66.1009(k), to give the publisher permission to collect information necessary for legitimate operational tasks and to follow FERPA guidelines.

Comment. The executive director of the American Association of Publishers commented on §66.1013(c) regarding coverage of the TEKS. The commenter stated that publishers require adequate time for content developers to ensure the minimum percentage of TEKS coverage for submissions in order for their products to be approved.

Agency Response. The agency agrees. Language was added as new §66.1013(d) to provide a minimum of 90 calendar days for content development upon the release of the request for materials.

Comment. The executive director of the American Association of Publishers commented on §66.1019(a)(1)(D) and (E), as published as proposed, which specifies that electronic textbooks and instructional materials must address the TEKS at least three times. The commenter noted, however, that §66.1013(c) states that the request for electronic textbooks and instructional materials will specify the number of times that the TEKS must be met.

Agency Response. The agency agrees. Language in §66.1013(c) was not in alignment with language in §66.1019(a)(1)(D) and (E). Therefore, language in §66.1019(a)(1)(C) was modified to align with §66.1013(c) and address the specific number of opportunities that the TEKS are addressed for students to demonstrate knowledge. Language in §66.1019(a)(1)(D) and (E), as published as proposed, was deleted.

Comment. The executive director of the American Association of Publishers commented that a process should be included in commissioner's rule comparable to the SBOE process that allows publishers a limited opportunity to add new content to address missing TEKS. The commenter stated that the process should also include an opportunity to request a meeting with publishers to obtain responses to questions regarding instructional materials being evaluated by the content experts.

Agency Response. The agency disagrees and maintained language as published as proposed. The inclusion of such language in rule would limit the commissioner's discretion with the review process. Depending on the request for electronic textbooks and instructional materials, the commissioner has the flexibility to include a process within the request to allow publishers an opportunity to add new content similar to the SBOE process.

Comment. The executive director of the American Association of Publishers commented on §66.1031(b)(1), which states that publishers may have their materials rejected if they fail to meet the essential knowledge and skills specified in the request for electronic textbooks and instructional materials. The commenter stated that this language implies that publishers must address 100% of the TEKS included in the request for electronic materials.

Agency Response. The agency agrees. Language was modified in §66.1031(b)(1) to clarify that a publisher's material would be rejected if it fails to meet the minimum number of TEKS specified in the request for electronic textbooks and instructional materials.

Comment. The executive director of the American Association of Publishers commented on §66.1033(a), which states that the commissioner will accept one or more statewide license(s) submitted by a publisher. The commenter stated that this language implies that the commissioner will accept one or more statewide license(s) and does not provide the flexibility for the commissioner to consider a per-student price.

Agency Response. The agency agrees. Language was modified in §66.1033(a) to clarify that the commissioner may consider a per-student-price proposal as well as submissions of statewide licenses.

Comment. The executive director of the American Association of Publishers commented on §66.1035(a), which requires publishers to request approval to update the navigational features or management system related to the electronic textbooks or instructional materials. The commenter noted, however, that §66.1035(f) states that publishers shall notify the commissioner before making electronic design changes, including updates to the navigational features or management system updates. The commenter recommended that these sections be reconciled to clarify approval.

Agency Response. The agency agrees. Language was modified in §66.1035(a) to remove requests for navigational and management feature updates since it is addressed in §66.1035(f).

Comment. The executive director of the American Association of Publishers commented on §66.1035, which requires the publishers to request approval to update electronic textbooks or instructional materials. The commenter requested assurances that a timely response for approval to update electronic textbooks is provided by the commissioner.

Agency Response. The agency agrees. Language was added in §66.1035(e) to state that the commissioner will respond to update requests within 30 business days after receipt of the request.

Comment. The executive director of the American Association of Publishers commented on §66.1107(c), which requires publishers to bear the responsibility and cost for compliance with 508 accessibility standards throughout the contract period. The commenter requested that this section apply only if the electronic textbooks do not meet the requirements in effect at the time of the contract and that the section not apply if the 508 accessibility standards change.

Agency Response. The agency agrees. Language was modified in §66.1107(c) to clarify Rehabilitation Act, §508, accessibility requirements and compliance if there was a post-approval change to the electronic textbook.

Comment. The regional director of the Scientific Learning Corporation commented that the §66.1001 definition of an electronic textbook discourages innovation and new approaches in the field of electronic instructional media.

Agency Response. The agency disagrees and maintained language as published as proposed. The definition of electronic textbooks is in statute and cannot be changed or modified.

Comment. The regional director of the Scientific Learning Corporation commented on the §66.1009(b)(3) requirement to correct errors in electronic textbooks within 30 days of notification. The commenter stated that the timeline requirement is not sufficient because it may involve complex programming code changes.

Agency Response. The agency disagrees; however, language was modified to clarify that publishers must correct errors within 30 business days of notification rather than 30 calendar days. It is not anticipated that factual errors could result in complex programming code changes.

Comment. The regional director of the Scientific Learning Corporation commented that the §66.1009(f) requirement that electronic materials be accessible 24 hours a day and 7 days a week may not be appropriate for consumption by students 24/7.

Agency Response. The agency disagrees and maintained language as published as proposed. The electronic materials should be made accessible 24 hours a day and 7 days a week as indicated in §66.1009(f), relettered as §66.1009(e). Teacher oversight will determine the availability of electronic materials to the students.

Comment. The regional director of the Scientific Learning Corporation commented on the §66.1009(l) requirement that there be no collection of information about the user that would allow determination of personal information. The commenter stated that this action may hamper the ability of the electronic program to provide information for operational tasks such as monitoring progress.

Agency Response. The agency agrees. Language was modified in §66.1009(l), relettered as §66.1009(k), to give the publisher permission to collect information necessary for legitimate operational tasks and to follow FERPA guidelines.

Comment. The regional director of the Scientific Learning Corporation commented that the adoption cycle set forth in §66.1011 should be flexible enough to respond to instructional needs/issues that may arise in schools.

Agency Response. The agency disagrees and maintained language as published as proposed. The language in §66.1011 gives the commissioner the flexibility to determine the timeline for the adoption cycle and the subject areas for acquiring electronic textbooks.

Comment. The regional director of the Scientific Learning Corporation commented that §66.1013(c), which requires coverage of specific essential knowledge and skills a designated number of times, should be reconsidered because electronic media are not linear in nature.

Agency Response. The agency disagrees and maintained language as published as proposed. Coverage for the TEKS is a requirement in statute. Electronic media are not linear in nature; however, the TEKS must be covered sufficiently.

Comment. The regional director of the Scientific Learning Corporation commented on §66.1017(c), which requires subject area and technology experts on the review panel. The commenter recommended that more than one technology expert be included on the review panel.

Agency Response. The agency agrees; however, language in §66.1017(c) does not need to be modified. The rule specifies that at least one technology expert is to be appointed on the review

panel for every program submitted. This allows the flexibility for additional technology experts to be appointed.

Comment. The regional director of the Scientific Learning Corporation commented on proposed §66.1019(a)(1)(C), (D), and (E) regarding TEKS coverage and stated that the language was too specific. The commenter further stated that this may limit the content that is submitted for review.

Agency Response. The agency agrees. Language in §66.1019(a)(1)(C) was modified to address the number of opportunities that TEKS must be covered for students to demonstrate knowledge. Language in §66.1019(a)(1)(D) and (E), as published as proposed, was deleted.

Comment. The regional director of the Scientific Learning Corporation commented on §66.1025 regarding the response to the request for electronic textbooks and instructional materials. The commenter stated that this section does not address how reviewers review the electronic materials.

Agency Response. The agency provides the following clarification. Section 66.1025 does not address the review of electronic materials. This section addresses how publishers respond to a request for electronic textbooks and instructional materials.

Comment. The regional director of the Scientific Learning Corporation commented on §66.1027(f) regarding the affidavit certifying that each individual author or contributor of an electronic textbook or instructional material contributed to the content development. The commenter stated that this rule is too extreme because many contributors are involved with the content.

Agency Response. The agency disagrees and maintained language as published as proposed. Affidavits are required to ensure that authors and contributors of electronic textbooks and instructional materials are authentic and to protect the state from liability.