**ATTACHMENT II**
**Text of Adopted 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

### §66.1001. Definitions.

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

(1) Electronic textbook--Computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, online services, an electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means.

(2) Instructional materials--Any material or resource that conveys information to the student or otherwise contributes to the learning process, including tools, models, and investigative materials designed for use as part of the foundation curriculum for science in Kindergarten-Grade 5. With the exception of tools, models, and investigative materials designed for use as part of the foundation curriculum for science in Kindergarten-Grade 5, instructional materials in this subchapter are limited to materials that are delivered electronically.

(3) Publisher--Any developer or distributor of electronic textbooks and instructional materials.

### §66.1003. Scope of Rules.

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

### §66.1005. Requirement for Registers.

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 textbooks and instructional materials submitted and being considered for commissioner approval.

### §66.1007. Manufacturing Standards and Specifications.

(a) Electronic textbooks and instructional materials included on the Commissioner's List of Electronic Textbooks and 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 electronic textbooks and 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, [~~the commissioner determines that~~] any adopted electronic textbooks and instructional materials are revised and the commissioner determines they no longer [~~do not~~] meet the requirements of the technical standards of the Rehabilitation Act, §508, the materials shall be made compliant [~~replaced~~] 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 textbooks 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.

**§66.1009. Procedures Governing Violations of Statutes--Administrative Penalties.**

(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 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 adopted electronic textbooks and instructional materials shall be counted once for the purpose of determining penalties.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher or for failure to correct a factual error identified by the electronic textbooks and instructional materials review panel under §66.1031 of this title (relating to Consideration and Adoption of Electronic Textbooks and 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 deadline established in the request for electronic textbooks and instructional materials by which publishers must have submitted corrected versions of adopted electronic textbooks and instructional materials.

(c) Categories of factual errors.

(1) Category 1. A factual error in a student component that interferes with student learning.

(2) Category 2. A factual error in a teacher component only.

(3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.

(d) Base and per-license penalties. [~~First-year penalties.~~] The base and per-license penalties shall be assessed as follows for failure to correct factual errors described in subsections (b) and (c) of this section.

(1) Category 1 error. $25,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.

(2) Category 2 error. $15,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.

(3) Category 3 error. $5,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.

[~~(e) Second-year penalties. The base and per-license penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (b)-(d) of this section, repeats the violation in the subsequent adoption.~~]

[~~(1) Category 1 error. $30,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.~~]

[~~(2) Category 2 error. $20,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.~~]

[~~(3) Category 3 error. $10,000 base plus 1.0% of sales for electronic textbooks and instructional materials on the Commissioner's List of Electronic Textbooks and Instructional Materials.~~]

(e) [~~(f)~~] Penalties for failure to make adopted electronic textbooks and 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 textbooks and instructional materials, including teacher components specified by §66.1027 [~~§66.1027(b)~~] of this title (relating to Electronic Textbooks and Instructional Materials Offered for Adoption by the Commissioner), in accordance with provisions in the contracts.

(f) [~~(g)~~] Penalties for selling adopted electronic textbooks and instructional materials with factual errors. The commissioner may assess administrative penalties in accordance with the TEC, §31.151, against a seller of adopted electronic textbooks and instructional materials.

(g) [~~(h)~~] Penalties for failure to maintain websites in state-adopted products. The commissioner may assess administrative penalties against a publisher who:

(1) fails to maintain a website or provide a suitable alternative for conveying the information in the website or who otherwise fails to meet the requirements of this subsection; 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 textbooks and instructional materials specified in the contract for the period determined by the commissioner for adopted electronic textbooks and instructional materials.

(h) [~~(i)~~] 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 [~~faulty manufacturing characteristics or display dated or inferior~~] information during the contract period, the online instructional materials or information shall be updated [~~replaced with complying materials or information~~] by the publisher without cost to the state.

(i) [~~(j)~~] 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 Textbooks and 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 .

(j) [~~(k)~~] 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.

(k) [~~(l)~~] Online requirements. 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, 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. 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).

(l) 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.

(m) 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.

(n) 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 textbooks and 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 textbooks and instructional materials in a timely manner.

**§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 textbooks and instructional materials.

(b) In determining an adoption cycle, the commissioner shall consider the adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the State Board of Education (SBOE). The commissioner may issue requests for content outside of the normal SBOE adoption cycle.

**§66.1013. Request, Public Notice, and Schedule for Adopting Electronic Textbooks and Instructional Materials.**

(a) The commissioner of education shall issue a request calling for electronic textbooks and instructional materials according to a cycle for foundation and enrichment subjects as determined by the commissioner or according to the review and adoption 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 textbooks and instructional materials to the state are being invited.

(b) At a minimum, the request for electronic textbooks and 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 textbooks and instructional materials.

(c) The request for electronic textbooks and 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 textbooks and instructional materials.

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

**§66.1015. Electronic Textbooks and Instructional Materials Review Panels: Eligibility.**

A person is not eligible to serve on an electronic textbooks and 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 textbooks and 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.

**§66.1017. Electronic Textbook and Instructional Materials Review Panels: Appointment.**

(a) The commissioner of education shall:

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

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

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

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

(d) The term recognized expert includes 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 textbooks and 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, depositories, 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 textbooks and instructional materials review panel may be removed at the discretion of the commissioner.

**§66.1019. Electronic Textbooks and Instructional Materials Review Panels: Duties and Conduct.**

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

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

(A) Electronic textbooks and 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 textbooks and instructional materials.

(B) Electronic textbooks and 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 textbooks and instructional materials.

(C) Electronic textbooks and 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; [~~.~~]

[~~(D) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the electronic textbooks and instructional materials to ensure sufficient coverage.~~]

[~~(E) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the electronic textbooks and instructional materials to ensure sufficient coverage;~~]

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

(3) submit to the commissioner a list of any factual errors in electronic textbooks and instructional materials assigned to be evaluated by the electronic textbooks and instructional materials review panel; and

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

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

**§66.1021. Electronic Textbooks and Instructional Materials Review Panels: Orientation.**

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

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

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

(3) essential knowledge and skills specified for subjects included in the request for electronic textbooks and 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 textbooks and instructional materials review panel member.

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

(a) Electronic textbooks and instructional materials review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to an electronic textbooks and instructional materials review panel and end after all final recommendations have been made to the commissioner of education. During this period, electronic textbooks and 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 textbooks and instructional materials under evaluation by the panel.

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

**§66.1025. Response to Request for Electronic Textbooks and Instructional Materials.**

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

(c) If a student or teacher component of a submission consists of more than one electronic content 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 textbooks and instructional materials submission.

(e) Additions to a publisher's submission shall not be accepted after the deadline for responses except as allowed in the request for electronic textbooks and instructional materials. A publisher who wishes to withdraw an electronic textbooks and 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 Textbooks and Instructional Materials Offered for Adoption by the Commissioner.**

(a) Publishers may not submit electronic textbooks or 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 textbooks and instructional materials under consideration for adoption shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school.

(c) Electronic textbooks and instructional materials adopted by the commissioner of education shall include appropriate training for teachers at no additional cost to districts or open-enrollment charter schools. Appropriate training for teachers is defined as acquiring knowledge and skills [~~that are~~] necessary to effectively use [~~provide instruction in the classroom using~~] the adopted electronic textbooks and instructional materials in the classroom .

(d) Any discounts offered for numbers of users of adopted electronic textbooks and 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 textbook or instructional material contributed to the development of the electronic textbook or instructional material. The affidavit shall also state in general terms each author's involvement in the development of the electronic textbook or instructional material.

(g) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of electronic textbooks and instructional materials submitted for adoption with required essential knowledge and skills. These correlations shall include essential knowledge and skills covered a certain number of times. Correlations shall be submitted in a format approved by the commissioner , which shall include an option of an electronic format .

**§66.1029. Public Comment on Electronic Textbooks and Instructional Materials.**

(a) Written comments.

(1) Any resident of Texas may submit written comments for, against, or about any electronic textbooks or instructional materials submitted for adoption.

(2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the 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 Textbooks and 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 Textbooks and Instructional Materials, the SBOE must be given an opportunity to comment on the electronic textbook and instructional materials.

**§66.1031. Consideration and Adoption of Electronic Textbooks and Instructional Materials.**

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

(1) evaluations of electronic textbooks and instructional materials prepared by electronic textbooks and 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 textbooks and instructional materials review panels; and

(4) prices of electronic textbooks and instructional materials submitted for adoption.

(b) Based on the review specified in subsection (a) of this section, the commissioner shall make a final decision regarding the electronic textbooks and 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 textbooks and/or instructional materials were rejected. Electronic textbooks and/or 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 textbooks and 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 textbooks and 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 textbooks or instructional materials submitted for inclusion on the commissioner's adopted list is final and may not be appealed.

**§66.1033. Statewide License.**

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

(b) A statewide license grants the right to use and makes a program placed on the Commissioner's List of Electronic Textbooks and 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 materials 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.

**§66.1035. Updates to Electronic Textbooks and Instructional Materials.**

(a) A publisher may submit a request to the commissioner of education for approval to update the content of state-adopted electronic textbooks and instructional materials. [~~A publisher may submit a request to the commissioner to update the navigational features or management system related to the electronic textbooks or 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 textbooks and instructional materials along with access to both the updated electronic textbooks and 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 textbooks and 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.

(g) A publisher of adopted electronic textbooks and 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 textbook or instructional material from the list of available products. Before the commissioner removes an adopted electronic textbook or 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 textbook or instructional material and experts in education technology.

**§66.1037. Delivery of Adopted Electronic Textbooks and Instructional Materials.**

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

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

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

**§66.1039. Sample Copies of Electronic Textbooks and Instructional Materials for School Districts.**

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

(b) Upon request by the textbook coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete sample of adopted electronic textbooks and instructional materials. 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 [~~, but the state does not guarantee return of sample electronic textbooks or instructional materials~~] . Publishers shall set a reasonable time period for school district or open-enrollment charter school review of the sample.

**§66.1041. Selection of Electronic Textbooks and Instructional Materials by School Districts.**

(a) If a school district or open-enrollment charter school selects for a particular subject or grade level an electronic textbook or instructional material on the list adopted under the Texas Education Code (TEC), §31.0231, the state shall pay the district or school an amount equal to the cost of the electronic textbook or instructional material plus textbook credits under the TEC, §31.1011, equal to 50% of the difference between that cost and the limitation established under the TEC, §31.025, for a textbook for that subject or grade level, multiplied by the number of electronic textbooks or instructional materials the district or school needs for that subject or grade level.

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

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

(2) the Texas Education Agency (TEA) approves the change based on a written request to the TEA by the district or school that specifies the reasons for changing the electronic textbook or instructional material used by the district or school.