ATTACHMENT II
Text of Current 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

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 lists of conforming and nonconforming 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.

§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.

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

(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.

(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(h) 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 provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.

(4) A penalty not to exceed $5,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.

(d) 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.

(e) First-year penalties. The base and per-book penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.

(1) Category 1 error. $25,000 base plus 1% of sales.

(2) Category 2 error. $15,000 base plus 1% of sales.

(3) Category 3 error. $5,000 base plus 1% of sales.

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

(1) Category 1 error. $30,000 base plus 1% of sales.

(2) Category 2 error. $20,000 base plus 1% of sales.

(3) Category 3 error. $10,000 base plus 1% of sales.

(g) 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 specified by §66.51(a)(3) of this title (relating to Instructional Materials Purchased by the State), in accordance with provisions in the contracts.

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

(i) 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, 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.

(j) 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.

(k) 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.

Subchapter B. State Adoption of Instructional Materials

§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-sixth of the subjects in the foundation curriculum may be reviewed each year. 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.

(b) 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.

§66.22. Midcycle Review and Adoption.

(a) The State Board of Education (SBOE) shall adopt a midcycle review and adoption for textbooks for a subject for which textbooks 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 textbook 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 textbooks to school districts in the manner specified by the publisher, which may include:

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

(2) providing a certain maximum number of textbooks specified by the publisher.

(d) Instructional materials submitted for midcycle review shall be placed on the conforming list, non-conforming list, or rejected as specified in the TEC, §31.023 and §31.024.

(e) The publisher of a textbook 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 another textbook for the same subject and grade level.

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

(g) The publisher of a textbook submitted for midcycle review shall make available up to three examination copies of each submitted textbook, 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.

(h) 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.

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

(j) 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.

§66.24. Review and Renewal of Contracts.

(a) 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.

(b) 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.

(c) 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 the commissioner of education approves. 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.

(d) 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.

§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.

(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 24 months before the scheduled adoption of the new instructional materials by the SBOE. The SBOE shall designate a request for the production of textbooks in a subject area and grade level by the school year in which the textbooks are intended to be made available in classrooms and not by the school year in which the SBOE makes the request for production. The SBOE shall amend a proclamation, as necessary, to conform to the textbook funding levels provided by the General Appropriations Act for the year of implementation.

(b) The proclamation shall contain the following:

(1) specifications for essential knowledge and skills in each subject for which bids are being invited;

(2) a maximum cost to the state for adopted instructional materials in each subject for which bids are being invited;

(3) an estimated number of units to be purchased during the first contract year for each subject in the proclamation;

(4) specifications for providing computerized files to produce braille versions of adopted instructional materials; and

(5) a schedule of adoption procedures.

(c) The proclamation shall require instructional materials to cover specific essential knowledge and skills a certain number of times in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.

(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, including maximum costs, 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 textbooks 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, textbook, 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 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.

§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 2011of 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.

§66.30. State Review Panels: Eligibility.

(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.

§66.33. State Review Panels: Appointment.

(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 textbook 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.

§66.36. State Review Panels: Duties and Conduct.

(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 textbook, as well as in the teacher version of the textbook. 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 textbooks. Panel members

will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. 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) One reference to a TEKS statement is not considered sufficient coverage. At least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

(E) If a TEKS statement has multiple student expectations, at least three examples of each student expectation must be evident in the instructional materials to ensure sufficient coverage.

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

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

(3) submit to the commissioner of education a list of any factual errors in instructional materials assigned to be evaluated 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 textbook 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 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) 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.

§66.39. State Review Panels: Expenses.

(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.

§66.42. State Review Panels: Orientation.

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 conforming list, nonconforming 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 (SBOE).

(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.

§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 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 designate instructional materials submitted as appropriate for placement on the conforming list or nonconforming list.

(c) If a student or teacher component of a submission consists of more than one item, a publisher shall provide complete and correct titles of each item included in the student and/or teacher component at the time the statement of intent is filed.

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

(e) 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.

(f) 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 textbooks 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 textbooks 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.

§66.51. Instructional Materials Purchased by the State.

(a) Instructional materials offered for adoption by the State Board of Education (SBOE).

(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) A teacher's component submitted to accompany student instructional materials under consideration for adoption shall be part of the publisher's official bid and 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 as specified in the publisher's bid.

(4) Under the Texas Education Code, §31.025, the official bid price for an instructional material submission may exceed the maximum cost to the state that is established in the proclamation. The state shall only be responsible for payment to the publisher in an amount equal to the maximum cost. A school district ordering instructional materials is responsible for the portion of the cost that exceeds the state maximum.

(5) 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.

(6) 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.)

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

(8) Instructional materials submitted for adoption shall be self-sufficient for the period of adoption. Nonconsumable components shall be replaced by the publisher during the warranty period. Consumable materials included in a student or teacher component of a submission shall be clearly marked as consumable. An item not marked as "consumable" is deemed to be "nonconsumable." The cost of such consumables to the state for the entire contract period may exceed the maximum cost established in the proclamation. School districts may be required to pay the difference between the state maximum cost and the actual cost of the materials.

(9) 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 nine 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.

(10) 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 in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests as required in the proclamation. Correlations shall be submitted in a format approved by the commissioner of education.

(11) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material. The reduced maximum cost for each adopted nonconforming instructional material shall be equal to the original maximum cost for that instructional material times a certain percentage. This percentage shall be the same as the percentage of elements of the essential knowledge and skills covered by the instructional material and that was used by the SBOE to determine whether the instructional material should be designated as conforming, nonconforming, or rejected per the Texas Education Code. Each performance description shall count as an independent element of the essential knowledge and skills of the subject. For those courses where a student expectation is not identified, the knowledge and skill will replace the student expectation to determine the percentage of student expectations addressed. The reduced maximum cost for nonconforming instructional materials will apply to both foundation and enrichment courses. 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 ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(b) Non-adopted instructional materials. A publisher of non-adopted instructional materials selected and purchased by school districts or open-enrollment charter schools under §66.104(c)-(f) of this title (relating to Selection of Instructional Materials by School Districts) shall meet all applicable requirements of the Texas Education Code, §31.151.

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.

§66.54. Samples.

(a) Samples of student and teacher components of instructional materials submitted for adoption shall be complete as to content and representative of finished format. Electronic textbooks submitted for adoption, including Internet-based products, must be representative of the final product and completely functional.

(b) The publisher of instructional materials submitted for adoption shall make available up to three examination copies 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). SBOE members may request publishers through the TEA to ship these items directly to interested citizens. Publishers participating in the adoption process are responsible for all expenses incurred by their participation. The state does not guarantee return of these SBOE-requested materials.

(c) Two sample copies 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 or specify a lesser number of samples a publisher must provide. 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 official sample copy 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) 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. 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(3), defines a textbook as a book, a system of instructional materials, a combination of a book and supplementary instructional materials that conveys information to the student or otherwise contributes to the learning process, or an electronic textbook.

(g) 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.

(h) 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.

(i) One complete sample copy 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. 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. Corrected samples shall be identical to materials that will be provided to school districts after purchase.

(j) 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.

§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.

(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 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. Any additional samples shall be made available to be checked out according to rules established by each ESC based on demand. 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.

§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.

§66.63. Report of the Commissioner of Education.

(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 conforming list, placed on the nonconforming list, or rejected (To be conforming, instructional materials must cover all essential knowledge and skills as required by the proclamation in the student text narrative in addition to end-of-section review exercises, end-of-chapter activities, or unit tests.);

(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 conforming list, placed on the nonconforming 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 conforming list, placed on the nonconforming 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 braillists, 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.

§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.

(c) The SBOE shall adopt both a list of conforming and nonconforming instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

(1) meet the requisite percentage of Texas Essential Knowledge and Skills (TEKS) required under the TEC, §31.023. 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; 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).

(d) Instructional materials submitted for placement on a conforming or nonconforming list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

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

(f) The SBOE may allow a publisher to withdraw from the adoption process after the date specified in the proclamation due to recommended placement on a conforming or nonconforming list, manufacturing specifications required as a condition of adoption by the SBOE that the publisher states cannot be met, or failure to agree to make corrections required by the SBOE.

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.

§66.67. Adoption of Open-Source Instructional Materials.

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

(b) The State Board of Education (SBOE) shall place an open-source textbook submitted for a secondary-level course on a conforming or nonconforming list if the textbook meets the criteria outlined in subsections (c) and (d) of this section.

(c) An open-source textbook 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 textbook.

(d) To submit an open-source textbook, an eligible institution must:

(1) certify by the board of regents or president of the university, or by an individual authorized by one of these entities, that the textbook qualifies for placement on a conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under the TEC, §28.002;

(2) identify each contributing author;

(3) certify by the appropriate academic department of the submitting institution that the textbook is accurate; and

(4) certify that:

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

(B) for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook 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 textbooks shall be required to comply with the technical standards in the Rehabilitation Act, §508, as applicable.

(g) All university-developed open-source textbook 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 conforming or nonconforming list based on the extent to which the textbook covers 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 an open-source textbook submitted under subsection (b) of this section on the conforming or nonconforming 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 textbooks.

(i) With the exception of 1% of sales, all university-developed open-source textbook submissions shall be assessed fines as defined in §66.10(d)-(f) of this title (relating to Procedures Governing Violations of Statutes--Administrative Penalties).

(j) For purposes of this chapter, an entity producing an open-source material shall comply with all duties of publishers in this chapter or in the TEC, Chapter 31, from which such entity is not explicitly exempted.

(k) An open-source textbook defined in the TEC, §31.0241 and §31.071, shall not fulfill the requirement of a classroom set.

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.

§66.69. Ancillary Materials.

(a) "Ancillary materials" are defined by the Texas Education Agency (TEA) as materials that are not listed on the publisher's intent to bid statement but which the publisher plans to provide to districts and open-enrollment charter schools free with their order. A publisher of adopted instructional materials shall provide any ancillary item free of charge or at the same price discount to the same extent that the publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all school districts and open-enrollment charter schools regardless of size. The title of each ancillary item that a publisher will make available to school districts and open-enrollment charter schools at no charge and the ratio at which each item shall be supplied shall be filed with the TEA according to the schedule contained in the proclamation. A publisher must notify TEA of any ancillaries provided to school districts and open-enrollment charter schools that are not listed with TEA. All packages of ancillary materials shipped to school districts and open-enrollment charter schools shall be labeled, "Ancillary Materials -- Not Reviewed by the State Board of Education."

(b) Three-dimensional ancillary materials designed for use as manipulatives in prekindergarten systems that cannot be produced in a digital or web-based format shall not be required to be provided electronically. This subsection shall be implemented beginning with Proclamation 2011.

(c) Designated ancillaries shall be made available to the State Board of Education (SBOE) upon request. Individual SBOE members are not authorized to act on behalf of the SBOE in requesting and making changes to supplemental or ancillary materials.

Statutory Authority: The provisions of this §66.69 issued under the Texas Education Code, §7.102(c) and §31.003.

Source: The provisions of this §66.69 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 April 27, 2010, 35 TexReg 3258.

§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 a textbook 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 another textbook for the same subject and grade level; and

(2) commit to provide the textbook in the manner specified by the publisher in the statement of intent to bid midcycle materials in §66.48(f) of this title (relating to Statement of Intent to Bid Instructional Materials).

Source: The provisions of this §66.72 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective December 25, 2007, 32 TexReg 9611.

§66.73. Contracts for Printing of Open-Source Textbooks.

(a) The State Board of Education (SBOE) may execute a contract for the printing of an open-source textbook listed on the conforming or nonconforming list.

(b) The contract shall allow a school district or an open-enrollment charter school to requisition printed copies of an open-source textbook 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.

§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 copies of the updated edition, and one copy of the corresponding state-adopted instructional material. This section includes electronic textbooks 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.

(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.

(g) Publishers shall request approval from the commissioner of education for electronic design changes and/or updates that improve performance, design, and technology capabilities that enhance the operation and usage for students and teachers but do not include changes to Texas essential knowledge and skills coverage or new content.

(h) Publishers must agree to supply the previous version of state-adopted textbooks 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.

(i) 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.

(j) 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.

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

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

(m) 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 8354; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.78. Delivery of Adopted Instructional Materials.

(a) Under the Texas Education Code (TEC), §31.151, each publisher of adopted instructional materials is required to maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks. Publishers whose products are delivered on-line or are warehoused and shipped from a facility less than 300 miles from the Texas border are not required to maintain a depository in Texas. Publishers who do not maintain a depository in Texas in accordance with TEC, §31.151, must deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state.

(b) 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).

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

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

(e) 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.

(f) 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.

(g) Any request to establish a new depository shall be submitted to the commissioner of education by September 1. The effective date for any new depository shall be April 1 of the year following approval. Each party requesting authority to establish a new depository shall:

(1) present evidence of financial viability adequate to ensure performance of obligations under all contracts on an annual basis;

(2) provide specifications for the warehouse; equipment; as appropriate, evidence of a climate-controlled environment for storage of electronic media; plans for staffing of the proposed depository; and computer capability to receive and process orders and communicate in the automated format specified by the TEA;

(3) submit assurances that a proper stock of instructional materials is available; and

(4) submit a list of publishers under contract with the request.

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.

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.

Subchapter D. Special Instructional Materials

§66.121. Special Instructional Materials.

(a) All laws and rules applying to instructional materials provided to sighted pupils 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 need.

(2) 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.

(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 instructional materials shall provide computerized files 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 disabilities 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 of education may enter into contracts for producing large type 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 State Board of Education and shall become state property and subject to the same regulations as similar items purchased with state funds. Gift materials may be shipped by Free Matter for the Blind and Visually Handicapped to the Special Textbook Redistribution Center or other location designated by the Texas Education Agency (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 a textbook coordinator after the superintendent of schools has certified to the commissioner of education:

(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 specifications in §66.7 of this title (relating to Manufacturing Standards and Specifications) and any additional specifications that may be prescribed.

(i) Copies of adopted instructional materials in braille, large type, or in 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 a textbook 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 textbooks 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 §66.121 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective October 12, 2006, 31 TexReg 8360; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.124. Authorizing State Funds.

Money from the state textbook fund may be used to purchase braille and large type state-adopted instructional materials listed in the General Catalog of Braille and Large Type Publications issued by the American Printing House for the Blind and supplements and/or revisions of this publication.

Source: The provisions of this §66.124 adopted to be effective September 1, 1996, 21 TexReg 7236.

Subchapter E. Disposition of Instructional Materials

§66.131. Out-of-Adoption Instructional Materials.

(a) School districts or open-enrollment charter schools may retain out-of-adoption instructional materials.

(b) Each school district or open-enrollment charter school shall make out-of-adoption instructional materials (other than electronic instructional materials) available to libraries maintained by city and county jails, institutions within the Texas Department of Criminal Justice, and other state agency institutions.

(c) School officials may donate out-of-adoption instructional materials (other than electronic instructional materials) to students, adult education programs, and nonprofit organizations. Individuals and officials making requests for out-of-adoption instructional materials shall be responsible for transporting the materials.

(d) After all efforts to donate out-of-adoption instructional materials (other than electronic instructional materials) to organizations listed under subsection (c) of this section have been exhausted, a school district or open-enrollment charter school may donate these materials for recycling locally. Recycling is defined as removing the bindings and shredding the textbooks for the purpose of producing new products from the processed materials.

(e) Under no circumstances shall out-of-adoption instructional materials be sold by a school district or open-enrollment charter school.

Source: The provisions of this §66.131 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.