ATTACHMENT V
Text of Adopted New 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter DD. Commissioner's Rules Concerning Instructional Materials Allotment

§66.1301. Definitions.

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

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

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

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

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

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

(6) Open-source instructional materials--Electronic instructional materials that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the instructional materials.

(7) Publisher--Any developer or distributor of [~~electronic~~] instructional materials or online service.

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

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

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

§66.1303. Scope of Rules.

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

§66.1305. Certification of Instructional Materials.

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

[~~(a) Each school district and open-enrollment charter school shall certify annually to the commissioner of education that, for each subject in the required curriculum under the Texas Education Code, §28.002, other than physical education, and each grade level, the district or charter provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.~~]

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

[~~(b) Each school district and open-enrollment charter school must submit the certification of instructional materials to the commissioner on an annual basis.~~]

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

[~~(c) The annual certification of instructional materials must be submitted on a form approved by the commissioner and signed by the local board of trustees and superintendent or the governing body and chief executive officer.~~]

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

§66.1307. Instructional Materials Allotment.

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

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

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

(1) purchase:

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

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

(C) non-adopted instructional materials;

(D) consumable instructional materials;

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

(F) supplemental instructional materials, as provided by the TEC, §31.035;

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

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

(I) technological equipment that contributes to student learning, including equipment that supports the use of instructional materials [~~necessary to support the use of materials included on the list adopted by the commissioner under the TEC, §31.0231, or any instructional materials purchased with an allotment under this section~~] ; and

(2) pay:

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

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

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

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

(1) purchase:

(A) services for installation;

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

[~~(B) infrastructure equipment consisting of wiring and components to expand or transmit data; or~~]

(C) office and school supplies; or

(2) pay for travel expenses.

§66.1309. High-Enrollment Growth Adjustment.

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

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

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

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

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

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

§66.1311. Special Instructional Materials.

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

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

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

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

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

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

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

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

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

(1) the name of the teacher;

(2) the grade or subject taught; and

(3) the fact of the teacher's visual impairment.

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

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

§66.1313. Bilingual Instructional Materials.

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

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

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

§66.1315. Title and Custody.

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

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

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

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

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

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

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

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

(1) Sale of instructional materials and technological equipment.

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

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

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

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

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

(F) [~~(E)~~] The board of trustees or governing body must certify to the commissioner that the new instructional materials acquired from the sale of discontinued instructional materials will

cover the Texas essential knowledge and skills and be made available to students and/or teachers.

(2) Disposal of instructional materials and technological equipment.

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

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

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

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

§66.1319. Local Accountability.

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

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

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

(3) all technological equipment purchased with funds from the instructional materials allotment.

(b) The results of the annual inventory shall be recorded in the district's or charter's files and in the EMAT system.

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

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

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

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

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

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

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

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

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

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

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

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

§66.1323. Juvenile Justice Alternative Education Programs.

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

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

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

(2) technology services and technological equipment that directly support student instruction.

(c) Each JJAEP must submit an instructional materials allotment requisition or request a disbursement through the EMAT system unless funding has been provided by an alternative method established by the commissioner of education.

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

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