Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter AA. Commissioner's Rules Concerning the Commissioner's List of Electronic Instructional Materials

§66.1001. Definitions.

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

(1) 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.

(2) Publisher--Any developer or distributor of instructional materials or online service.

Statutory Authority: The provisions of this §66.1001 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1001 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1003. Scope of Rules.

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

Statutory Authority: The provisions of this §66.1003 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1003 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1005. Requirement for Registers.

The commissioner of education shall require Texas Education Agency staff to keep a register to record:

(1) all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, hardware or software providers, or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or

(2) contact regarding any electronic instructional materials submitted and being considered for commissioner approval.

Statutory Authority: The provisions of this §66.1005 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1005 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1007. Manufacturing Standards and Specifications.

(a) Electronic instructional materials included on the Commissioner's List of Electronic Instructional Materials shall comply with the requirements of the technical standards of the Rehabilitation Act, §508. If it is determined that good cause exists, the commissioner of education may grant an exception to this requirement.

(b) A publisher shall file a statement certifying that electronic instructional materials submitted for consideration will meet the requirements of the technical standards of the Rehabilitation Act, §508. Each statement must be made on a form provided by the commissioner, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures.

(c) If, during the contract period, any adopted electronic instructional materials are revised and the commissioner determines they no longer meet the requirements of the technical standards of the Rehabilitation Act, §508, the materials shall be made compliant by the publisher without cost to the state. If it is determined that good cause exists, the commissioner may grant an exception to this requirement. This subsection applies only if the instructional materials do not meet the requirements in effect at the time of the contract and does not apply if the Rehabilitation Act, §508, accessibility standards change subsequently.

Statutory Authority: The provisions of this §66.1007 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1007 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

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

(a) Administrative penalties. The commissioner of education may impose a reasonable administrative penalty against a publisher found in violation of a provision of the Texas Education Code (TEC), §31.151(a), if the publisher fails to correct the errors within the time period provided by the commissioner. An administrative penalty shall be assessed only after the commissioner has granted the publisher a hearing in accordance with the TEC, §31.151, and the Administrative Procedure Act.

(b) Penalties for failure to correct factual errors.

(1) A factual error shall be defined as a verified error of fact that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.

(2) A factual error repeated in a single item or contained in both the student and teacher components of adopted electronic instructional materials shall be counted once for the purpose of determining penalties.

(3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher or for failure to correct a factual error identified by the electronic instructional materials review panel under §66.1031 of this title (relating to Consideration and Adoption of Electronic Instructional Materials) and required by the commissioner. The publisher shall correct any errors within 30 business days after receipt of notice from the commissioner.

(4) A penalty not to exceed $5,000 may be assessed for each factual error identified after the electronic instructional materials have been delivered to public schools.

(5) The amount of the penalty will be determined by the commissioner based on the severity of the factual error.

(6) The penalty may be reduced or waived if the publisher corrects the factual error within three business days of notification.

(c) Penalties may be assessed for failure to make adopted electronic instructional materials readily available, including teacher components, in a timely manner and with consistent access 24 hours a day and 7 days a week. The commissioner may assess penalties as allowed by law against publishers who fail to deliver adopted electronic instructional materials, including teacher components specified by §66.1027 of this title (relating to Electronic Instructional Materials Offered for Adoption by the Commissioner), in accordance with provisions in the contracts.

(d) Penalties may be assessed for selling adopted electronic instructional materials with factual errors. The commissioner may assess administrative penalties in accordance with the TEC, §31.151, against a seller of adopted electronic instructional materials.

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

(1) fails to maintain a website or provide a suitable alternative for conveying the information in the website or who otherwise fails to meet the requirements of this subsection; or

(2) fails to monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the adopted electronic instructional materials specified in the contract for the period determined by the commissioner for adopted electronic instructional materials.

(f) Replacement requirements. If the commissioner determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have outdated information during the contract period, the online instructional materials or information shall be updated by the publisher without cost to the state.

(g) Content update requests. The publisher must submit a request to the commissioner as specified in §66.1035 of this title (relating to Updates to Electronic Instructional Materials) for approval to substitute updated content or add content. The publisher shall not update or add content without prior commissioner approval. The commissioner shall respond to such a request within 30 business days after receipt of the request. Factual or software coding errors that require updates or changes shall not require commissioner approval.

(h) Content removal. The publisher agrees that electronic, web-based, or online instructional materials listed in the contract will not be altered in any way that would remove content from the curriculum or that would change content in the curriculum without prior commissioner approval. The commissioner shall respond to such a request within 30 business days after receipt of the request.

(i) Online requirements. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. The publisher will be allowed to collect information necessary for legitimate operational tasks, including authenticating and managing student access and detecting and preventing security vulnerabilities. The result of the information will be used to deliver the material and provide an educational value per the intended design. Use of such information will follow the federal Family Educational Rights and Privacy Act (FERPA).

(j) Internet links. The publisher may only add Internet links or redirect to other Internet or electronic sites as needed to correct an error or correct a broken link to the materials without the approval of the commissioner. The publisher will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites unless a resource is no longer available or appropriate. The publishers shall provide such new or corrected Internet links to the commissioner at the time the addition or correction is made, and the commissioner shall have up to 30 business days to retroactively reject such changes.

(k) Commissioner discretion regarding penalties. The commissioner may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.

(l) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, the commissioner is authorized to require payment of penalties in cash within ten business days. Each affected publisher who pays a fine for failure to deliver adopted electronic instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted electronic instructional materials in a timely manner.

Statutory Authority: The provisions of this §66.1009 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1009 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1011. Review and Adoption Cycles.

(a) The commissioner of education may adopt a review and adoption cycle for subjects in the foundation and enrichment curriculum for electronic instructional materials.

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

Statutory Authority: The provisions of this §66.1011 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1011 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

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

(a) The commissioner of education shall issue a request calling for electronic instructional materials according to a cycle for foundation and enrichment subjects as determined by the commissioner or according to the review and adoption cycle for subjects in the foundation curriculum and enrichment curriculum adopted by the State Board of Education. The request shall serve as notice to all publishers and to the public that bids to furnish new electronic instructional materials to the state are being invited.

(b) At a minimum, the request for electronic instructional materials shall contain the following:

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

(2) information regarding the technical standards of the Rehabilitation Act, §508; and

(3) a schedule of adoption procedures for electronic instructional materials.

(c) The request for electronic instructional materials shall require coverage of specific essential knowledge and skills a designated number of times.

(d) The commissioner will provide a minimum of 90 calendar days for content development upon the release of the request for electronic instructional materials.

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

Statutory Authority: The provisions of this §66.1013 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1013 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1015. Electronic Instructional Materials Review Panels: Eligibility.

A person is not eligible to serve on an electronic instructional materials review panel if, during the three years immediately preceding the appointment, the person:

(1) was employed by or received funds from any individual or entity in any way affiliated with a publishing or software company participating in an adoption under which the electronic instructional materials review panel will evaluate instructional content; or

(2) owned or controlled, directly or indirectly, any interest in a publishing or software company or an entity receiving funds from a publishing or software company.

Statutory Authority: The provisions of this §66.1015 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1015 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1017. Electronic Instructional Materials Review Panels: Appointment.

(a) The commissioner of education shall:

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

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

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

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

(d) The term recognized expert includes university professors, public school teachers, members of the business community, and citizens of Texas with a strong background in a particular discipline.

(e) The commissioner of education shall solicit recommendations for possible appointees to electronic instructional materials review panels from:

(1) school districts, open-enrollment charter schools, and educational organizations in the state; and

(2) members of the State Board of Education.

(f) Recommendations may be accepted from any Texas resident.

(g) Nominations shall not be made by or accepted from any publishers, authors, depositories, or hardware or software providers or any person who holds any official position with a publisher, author, depository, hardware or software provider, or agent.

(h) Members of an electronic instructional materials review panel may be removed at the discretion of the commissioner.

Statutory Authority: The provisions of this §66.1017 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1017 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

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

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

(1) evaluate all electronic 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 electronic instructional materials, as well as in the teacher version of the electronic instructional materials. Panel members will use commissioner of education-approved procedures for evaluating coverage of the essential knowledge and skills. The approved procedures include the following.

(A) Electronic instructional materials review panel members must participate in online training to ensure clear and consistent guidelines for determining full Texas Essential Knowledge and Skills (TEKS) coverage within the electronic instructional materials.

(B) Electronic instructional materials review panel members must participate in a team during the review and reach a consensus to determine if the TEKS have been covered sufficiently in the electronic instructional materials.

(C) Electronic instructional materials shall be evaluated for TEKS coverage at each grade level, including the number of opportunities that TEKS are addressed for students to demonstrate knowledge;

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

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

(4) as appropriate to a subject area and/or grade level, ascertain that electronic instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(b) Electronic instructional materials review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, hardware or software providers, or depositories; agents for publishers, authors, hardware or software providers, or depositories; any person who holds any official position with publishers, authors, hardware or software providers, depositories, or agents; or any person or organization interested in influencing the selection of electronic instructional materials.

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

Statutory Authority: The provisions of this §66.1019 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1019 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1021. Electronic Instructional Materials Review Panels: Orientation.

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

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

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

(3) essential knowledge and skills specified for subjects included in the request for electronic instructional materials;

(4) identification of factual errors;

(5) the schedule of adoption procedures;

(6) training in technology appropriate to media submitted for adoption; and

(7) regulatory requirements, including the Government Code, §572.051 (relating to Standards of Conduct), and the Texas Penal Code, §36.02 (relating to Bribery). Copies of the statutes mentioned in this section shall be supplied to each electronic instructional materials review panel member.

Statutory Authority: The provisions of this §66.1021 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1021 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

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

(a) Electronic instructional materials review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to an electronic instructional materials review panel and end after all final recommendations have been made to the commissioner of education. During this period, electronic instructional materials review panel members shall not be contacted either directly or indirectly by any person having an interest in the adoption process regarding content of electronic instructional materials under evaluation by the panel.

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

Statutory Authority: The provisions of this §66.1023 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1023 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1025. Response to Request for Electronic Instructional Materials.

(a) Each publisher who intends to offer electronic instructional materials for adoption shall respond to the request for electronic instructional materials and include title, description, and price information on or before the date specified in the request. The response shall be accompanied by publisher's data submitted in a form approved by the commissioner of education.

(b) A publisher shall indicate the percentage of Texas Essential Knowledge and Skills (TEKS) that electronic instructional materials are intended to cover.

(c) If a student or teacher component of a submission consists of more than one electronic content item, a publisher shall provide a complete and correct title and description of each item included in the student and/or teacher component at the time the response is due.

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

(e) Additions to a publisher's submission shall not be accepted after the deadline for responses except as allowed in the request for electronic instructional materials. A publisher who wishes to withdraw an electronic instructional materials submission after submitting a response shall notify the commissioner in writing on or before the date specified in the schedule of adoption procedures.

Statutory Authority: The provisions of this §66.1025 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1025 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1027. Electronic Instructional Materials Offered for Adoption by the Commissioner.

(a) Publishers may not submit electronic instructional materials that have been authored by an employee of the Texas Education Agency (TEA).

(b) A teacher's component submitted to accompany student electronic instructional materials under consideration for adoption shall be provided for the duration of the original contract and any contract extensions at no cost to the school district or open-enrollment charter school.

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

(d) Any discounts offered for numbers of users of adopted electronic instructional materials shall be included in price information submitted with the publisher's response.

(e) The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for the entire contract period at the same price. Individual component prices may be listed to show school districts and open-enrollment charter schools the replacement costs of components.

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

(g) Publishers shall incorporate hyperlinked correlations of the required essential knowledge and skills to the electronic instructional materials submitted for adoption.

Statutory Authority: The provisions of this §66.1027 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1027 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1029. Public Comment on Electronic Instructional Materials.

(a) Written comments.

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

(2) Written comments and lists of factual errors shall be submitted to the commissioner of education on or before the deadlines specified in the schedule of adoption procedures.

(3) Copies of written comments and lists of factual errors shall be provided to the participating publishers, regional education service centers, and persons who have filed written requests.

(b) Public testimony. Before placing materials on the Commissioner's List of Electronic Instructional Materials, a discussion item will be included on the State Board of Education (SBOE) agenda for the Committee of the Full Board and public testimony will be taken at that time.

(c) SBOE comment. Before placing materials on the Commissioner's List of Electronic Instructional Materials, the SBOE must be given an opportunity to comment on the electronic instructional materials. If the commissioner places electronic instructional materials on the Commissioner's List of Electronic Instructional Materials, the SBOE may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list.

Statutory Authority: The provisions of this §66.1029 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1029 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1031. Consideration and Adoption of Electronic Instructional Materials.

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

(1) evaluations of electronic instructional materials prepared by electronic instructional materials review panel members, including the extent to which the materials align to the required Texas Essential Knowledge and Skills (TEKS);

(2) compliance with applicable manufacturing standards and specifications and, if applicable, technical requirements of the Rehabilitation Act, §508;

(3) recommended corrections of factual errors identified by electronic instructional materials review panels; and

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

(b) Based on the review specified in subsection (a) of this section, the commissioner shall make a final decision regarding the electronic instructional materials that will be placed on the adopted list and made available for schools. The commissioner will establish a period of time for a publisher to respond to the reasons its electronic instructional materials were rejected. Electronic instructional materials may be rejected for several reasons. The reasons for rejection include, but are not limited to:

(1) failure to meet the minimum essential knowledge and skills specified in the request for electronic instructional materials;

(2) failure to meet applicable manufacturing standards and specifications or, if applicable, the technical requirements of the Rehabilitation Act, §508;

(3) failure to correct errors of fact; or

(4) content that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).

(c) The commissioner may allow a publisher to withdraw from the adoption process after the date specified in the request for electronic instructional materials due to recommended placement as conforming or nonconforming, manufacturing specifications required as a condition of adoption that the publisher states cannot be met, or failure to agree to make corrections required by the commissioner.

(d) The decision by the commissioner regarding the final disposition of electronic instructional materials submitted for inclusion on the commissioner's adopted list is final and may not be appealed.

Statutory Authority: The provisions of this §66.1031 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1031 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1033. Statewide License.

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

(b) A statewide license grants the right to use and makes a program placed on the Commissioner's List of Electronic Instructional Materials available to every student in the state enrolled in the subject and/or in the grade level for which the material is intended and every teacher in the state teaching the subject and/or grade level for which the material is intended.

(c) The statewide license price should be the total amount for providing the materials as described in subsection (b) of this section. The statewide license price should not be a per-pupil price.

(d) School districts and open-enrollment charter schools will have an option to consider a statewide license submission or select from other content providers.

(e) Submission of a statewide license will not prohibit the submission of a bid based on unit price.

Statutory Authority: The provisions of this §66.1033 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1033 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1035. Updates to Electronic Instructional Materials.

(a) A publisher may submit a request to the commissioner of education for approval to update the content of state-adopted electronic instructional materials. A publisher requesting an update shall provide the request in writing, providing a comparison that includes the changes made in the update with the corresponding sections of the state-adopted electronic instructional materials along with access to both the updated electronic instructional materials and the adopted version.

(b) Requests for approval of updates shall provide that there will be no additional cost to the state.

(c) Requests for approval of updates shall not be approved during the first year of the original contract unless the commissioner determines that changes in technology, curriculum, or other reasons warrant the updates.

(d) Publishers submitting requests for approval of updates must certify in writing that the new material meets the applicable essential knowledge and skills and is free from factual errors.

(e) The commissioner may request publishers to update electronic instructional materials at a minimum to accurately reflect current knowledge or information. Publishers shall provide details of the changes at least 30 business days before the changes are implemented. The commissioner must review the new content before it is included in the materials. The commissioner shall respond to such a request within 30 business days after receipt of the request.

(f) Publishers shall notify the commissioner before making electronic design changes and/or updates that improve performance, design, and technology capabilities, including updates to the navigational features or management system, that enhance the operation and usage for students and teachers but do not include changes to the applicable essential knowledge and skills coverage or new content. Publishers shall provide details of the changes at least 30 business days before the changes are implemented.

(g) A publisher of adopted electronic instructional materials may provide alternative formats for use by school districts and open-enrollment charter schools if the cost to the state and schools is equal to or less than the cost of the original product.

(h) Alternative formats may be developed and introduced at a time when the subject or grade level is not scheduled in the cycle to be considered for at least two years, in conformance with the procedures for adoption of other state-adopted materials.

(i) Publishers must notify the commissioner in writing if they are providing commissioner-approved products in alternative formats.

(j) Publishers are responsible for informing districts and open-enrollment charter schools of the availability of the alternative formats and for accurate fulfillment of these orders.

(k) The commissioner may add alternative formats of commissioner-adopted products to the list of available products disseminated to school districts and open-enrollment charter schools.

(l) The commissioner may remove an adopted electronic instructional material from the list of available products. Before the commissioner removes an adopted electronic instructional material from the list of available products, the removal must be recommended by a panel of recognized experts in the subject area of the electronic instructional material and experts in education technology.

Statutory Authority: The provisions of this §66.1035 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1035 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1037. Delivery of Adopted Electronic Instructional Materials.

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

(b) Each publisher shall guarantee access to adopted electronic instructional materials at least ten business days before the opening day of school of the year for which the electronic instructional materials are ordered if the materials have been ordered by a date specified in the sales contract. If the publisher cannot meet this deadline, the publisher shall notify affected school districts and open-enrollment charter schools of the date on which each title will be available.

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

Statutory Authority: The provisions of this §66.1037 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1037 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

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

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

(b) Upon request by the instructional materials coordinator of a school district or open-enrollment charter school, a publisher shall provide one complete sample of adopted electronic instructional materials. The sample may be delivered as a web-based or online material as determined by the publisher. Samples of learning systems and electronic, visual, or auditory media may be provided in demonstrations or representative format, provided that identical samples are provided to each school district or open-enrollment charter school. A school district or open-enrollment charter school receiving a sample shall not make a copy of that sample without the explicit permission of the publisher.

(c) Samples supplied to school districts or open-enrollment charter schools shall be provided and distributed at the expense of the publisher. No state or local funds shall be expended to purchase, distribute, or ship sample materials. Publishers may make arrangements with school districts or open-enrollment charter schools to retrieve samples after local selections are completed. Publishers shall set a reasonable time period for school district or open-enrollment charter school review of the sample.

Statutory Authority: The provisions of this §66.1039 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1039 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.

§66.1041. Selection of Electronic Instructional Materials by School Districts.

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

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

(2) the Texas Education Agency (TEA) processes the change based on a written request to the TEA by the district or school via the educational materials (EMAT) system to change to another adopted product or request a disbursement for purchase of a non-adopted product.

Statutory Authority: The provisions of this §66.1041 issued under the Texas Education Code, §31.0231.

Source: The provisions of this §66.1041 adopted to be effective November 21, 2010, 35 TexReg 10220; amended to be effective July 23, 2012, 37 TexReg 5413.