

Chapter 66. State Adoption and Distribution of Instructional Materials

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

§66.1013. Public Notice and Process for Commissioner-Adopted Instructional Materials.

- (a) Upon determining a need, the commissioner of education shall issue a public notice informing publishers of the opportunity to submit instructional materials to be considered for adoption.
- (b) At a minimum, the public notice shall contain the following:
 - (1) specifications for essential knowledge and skills in each subject for which materials may be submitted;
 - (2) instructions regarding the process publishers must follow to submit materials for consideration;
 - (3) information regarding the technical standards of the Rehabilitation Act, §508; and
 - (4) a schedule of adoption procedures.
- (c) The request for instructional materials shall require coverage of specific essential knowledge and skills a designated number of times.

Statutory Authority: The provisions of this §66.1013 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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; amended to be effective May 8, 2017, 42 TexReg 2405.

§66.1014. Requirements for Publisher Participation.

- (a) A publisher that intends to offer instructional materials for review shall comply with product standards and specifications.
 - (1) Hard copy instructional materials adopted by the commissioner of education 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, as applicable. If the commissioner determines that good cause exists, the commissioner may approve an exception for a specific portion or portions of this requirement.
 - (2) Materials delivered online shall meet minimum web-based standards.
 - (3) A publisher that offers electronic instructional materials must provide a report for each electronic component that verifies that the component follows Web Content Accessibility (WCAG) 2.0, Level AA, standards and technical standards required by the Rehabilitation Act, §508. The report must be prepared by an independent third party and be based on an audit testing the accessibility of a random sampling of pages as outlined in each public notice of invitation. The number of pages to be audited to meet the requirements shall be determined by the publisher.
 - (4) A publisher that provides access to materials to students with disabilities through an alternate format shall include a link to that material on the entrance page of the main product.
 - (5) A publisher shall file a statement certifying instructional materials submitted for consideration will meet applicable product standards and specifications if adopted. Each statement must be made in a format designated by the commissioner, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures in each public notice of invitation.
 - (6) If, during the contract period, the commissioner 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.

- (b) A publisher that intends to offer instructional materials for adoption shall comply with requirements detailed in the related public notice of invitation.
- (c) A publisher may not submit instructional materials for review that have been authored or contributed to by a current employee of the Texas Education Agency.

Statutory Authority: The provisions of this §66.1014 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1014 adopted to be effective May 8, 2017, 42 TexReg 2405.

§66.1017. Commissioner-Adopted Instructional Materials Review Panels: Eligibility and Appointment.

- (a) The commissioner of education shall determine:
 - (1) the number of review panels needed to review instructional materials under consideration for adoption; and
 - (2) the number of persons to serve on each panel.
- (b) A person is not eligible to serve on an instructional materials review panel if, during the 36 months immediately preceding the appointment, the person:
 - (1) was employed by or received funds from any individual or entity affiliated with a publishing company involved in or connected to the adoption of instructional materials;
 - (2) owned or controlled any interest valued at more than \$5,000 in a privately owned publishing company or an entity receiving funds from a publishing company involved in or connected to the adoption of instructional materials or had direct ownership of stock of a publicly traded company involved in or connected to the adoption of instructional materials; or
 - (3) was employed by an institution of higher education that has submitted open-source instructional materials or is a publisher of instructional materials.
- (c) The commissioner shall make appointments to instructional materials review panels that ensure that each panel consists of at least two recognized academic experts in the subject area of the materials and at least one expert in the field of educational technology.
- (d) The term recognized academic 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) If funding is available, the commissioner may execute a contract with a university, education service center, or other qualified entity to supply review panelists.

Statutory Authority: The provisions of this §66.1017 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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; amended to be effective May 8, 2017, 42 TexReg 2405.

§66.1019. Instructional Materials Review Panels: Training, Duties, and Conduct.

- (a) Instructional materials review panel members shall participate in training that includes at least the following:
 - (1) the responsibilities of a review panel member;
 - (2) clear and consistent guidelines for determining Texas essential knowledge and skills (TEKS) coverage within the instructional materials;
 - (3) the criteria the materials must meet;
 - (4) identifying factual errors; and
 - (5) the evaluation instruments to be used for the review.

- (b) The duties of an instructional materials review panel are to:
 - (1) evaluate all instructional materials submitted for consideration in each subject assigned to the panel to determine if essential knowledge and skills are covered as was specified in the public notice;
 - (2) evaluate the educational technology design of the instructional materials;
 - (3) evaluate the extent to which the instructional material is in alignment with current research in the subject for which the material is intended to be used;
 - (4) determine whether the material includes appropriate training for teachers; and
 - (5) submit to the commissioner a report to include:
 - (A) the percentage of required TEKS that each submission assigned to be evaluated by the review panel covers;
 - (B) a score, based on rubrics to be provided by the commissioner, for the qualities described in paragraphs (1)-(4) of this subsection;
 - (C) a list of all factual errors discovered in the instructional materials assigned to be evaluated by the review panel; and
 - (D) as appropriate to a subject area and/or grade level, verification that the panel did not find content in the materials that clearly conflicts with the stated purpose of the Texas Education Code, §28.002(h).
- (c) 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 instructional materials.
- (d) Instructional materials review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a review panel and end when the final report showing the findings of the review panels is posted on the Texas Education Agency website. During this period, review panel members shall not have direct or indirect communication with any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel.

Statutory Authority: The provisions of this §66.1019 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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, amended to be effective May 8, 2017, 42 TexReg 2405.

§66.1029. Public and State Board of Education Roles Regarding Commissioner-Adopted Instructional Materials.

- (a) The commissioner of education shall provide access to electronic instructional materials being considered for adoption and the results of the panel review through the Texas Education Agency (TEA) website for a minimum of 60 days prior to adoption.
- (b) The commissioner shall provide access to non-electronic instructional materials being considered for adoption and the results of the panel review at TEA and each regional education service center for a minimum of 60 days prior to adoption.
- (c) Any resident of Texas may submit written comments for, against, or about any instructional materials submitted for adoption.
 - (1) Written comments and lists of factual errors shall be submitted to the commissioner on or before the deadlines specified in the schedule of adoption procedures.

- (2) Written comments and lists of factual errors shall be submitted to the commissioner on a form provided by the TEA.
- (3) Copies of written comments and lists of factual errors shall be posted on the TEA website.
- (d) Before placing materials on the Commissioner's List of Adopted 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.
- (e) Before materials are adopted for the Commissioner's List of Adopted Instructional Materials, the SBOE shall be given an opportunity to comment on the materials.
- (f) The SBOE may, not later than the 90th day after the date material is adopted, require the commissioner to remove the material from the adopted list.
- (g) Notwithstanding Subchapter A of this chapter (relating to General Provisions), the SBOE may assess an administrative penalty under the Texas Education Code, §31.151, for a violation based upon an instructional material adopted by the commissioner under this subchapter.
- (h) A publisher of instructional materials under this subchapter shall file a register of contacts in the same manner provided under §66.4 of this title (relating to Requirement for Registers) for a publisher of instructional materials adopted through a proclamation.

Statutory Authority: The provisions of this §66.1029 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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; amended to be effective May 8, 2017, 42 TexReg 2405.

§66.1031. Consideration and Adoption of Instructional Materials.

- (a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:
 - (1) all information provided in the review panel's report required by §66.1019(b)(5) of this title (relating to Instructional Materials Review Panels: Training, Duties, and Conduct);
 - (2) compliance with applicable manufacturing standards and specifications and, if applicable, technical requirements of the Rehabilitation Act, §508;
 - (3) the results of the audit required by §66.1014(a)(3) of this title (relating to Requirements for Publisher Participation); and
 - (4) prices of 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 instructional materials that will be placed on the adopted list and made available for schools. The commissioner shall establish a schedule and procedure for one opportunity for a publisher to appeal the decision.
- (c) The commissioner may allow a publisher to withdraw from the adoption process at any time prior to the adoption date specified in the schedule of adoption procedures.
- (d) The decision by the commissioner regarding the adoption or non-adoption of 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, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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; amended to be effective May 8, 2017, 42 TexReg 2405.

§66.1035. Updates to Commissioner-Adopted Instructional Materials.

- (a) A publisher may submit a request to the commissioner of education for approval to update the content of commissioner-adopted instructional materials. A publisher requesting an update shall do so in a manner and on a form to be determined by the commissioner.
- (b) Requests for approval of updates shall provide that there will be no additional cost to local school districts or open-enrollment charter schools.
- (c) The commissioner may request that publishers update instructional materials to accurately reflect current knowledge or information. If the publisher chooses not to comply, the commissioner has the discretion to remove the material from the adopted list.
- (d) 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.
- (e) A publisher of commissioner-adopted instructional materials may provide alternative formats for use by school districts and open-enrollment charter schools if the cost to schools is equal to or less than the cost of the original product.
- (f) Publishers must notify the commissioner in writing if they are providing commissioner-approved products in alternative formats.
- (g) Publishers are responsible for informing districts and open-enrollment charter schools of the availability of the alternative formats.
- (h) 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.
- (i) The commissioner may remove an adopted instructional material from the list of available products at any time.

Statutory Authority: The provisions of this §66.1035 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

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; amended to be effective May 8, 2017, 42 TexReg 2405.