

Text of Proposed Revisions to 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter A. General Provisions

[§66.1. Scope of Rules.]

~~[The State Board of Education (SBOE) shall adopt a list of 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.]~~

§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 in each proclamation , a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

[§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.]~~

§66.10. Procedures Governing Violations of Statutes--Official Complaints.

- ~~(a) An official complaint alleging a violation of the Texas Education Code (TEC), §31.151, or a rule implementing that section, shall be filed with the commissioner of education. An official complaint shall be made on a form prescribed by the commissioner of education.~~
- ~~(b) The complaint form shall require:~~
 - ~~(1) a citation to the specific provision under the TEC, §31.151, or rule for which a violation is alleged;~~
 - ~~(2) identification of the publisher or manufacturer responsible for the alleged violation;~~
 - ~~(3) facts showing that a likely violation has occurred such as identification of the particular instructional material and page number where each alleged error occurs; and~~
 - ~~(4) signature and contact information of the person complaining of the alleged violation.~~

- (c) If a complainant fails to submit a properly completed complaint form after being given an opportunity to make corrections, the allegations will not be reviewed by the commissioner of education and will not be submitted to the State Board of Education (SBOE).
- (d) An allegation of a factual error in instructional materials currently under consideration by the SBOE for adoption may not be submitted as an official complaint but must be submitted to the SBOE in accordance with relevant provisions in this chapter.
- (e) After investigating an official complaint or an allegation brought forward by the Texas Education Agency (TEA) staff, the commissioner of education shall recommend to the SBOE in writing whether to hold a hearing concerning an administrative penalty under the TEC, §31.151.
- (f) The commissioner of education shall provide the recommendation to the complainant, if any; the publisher or manufacturer accused of the alleged violation; and members of the SBOE.
- (g) If the SBOE receives a recommendation under subsection (f) of this section, the SBOE chair may include the item for consideration on a future SBOE agenda. If the item is placed on the agenda, TEA staff will present the recommendation.
- (h) Upon a vote by the SBOE that a hearing shall be held to determine whether a penalty should be assessed, a hearing will be heard before the State Office of Administrative Hearing in accordance with Chapter 157 of this title (relating to Hearings and Appeals). The SBOE shall request either the commissioner of education or the Attorney General to present the case before the State Office of Administrative Hearings.
- (i) If the parties before the State Office of Administrative Hearings come to an agreement for settling the case, the issue of whether the agreement should be accepted will be placed on a future SBOE agenda.

§66.15. Administrative Penalty.

- (a) Under the Texas Education Code (TEC), §31.151(b), the State Board of Education (SBOE) may assess a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of the TEC, §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 TEC, §31.151; the Administrative Procedure Act; Chapter 157, Subchapter A, of this title (relating to General Provisions for Hearings Before the State Board of Education); and this chapter.
- (b) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(1), or a rule implementing that provision, including assessing an administrative penalty against a publisher or manufacturer who offers an instructional material in this state at a higher price than that offered to any other state, public school, or school district in the United States. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a higher price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the purchase price to all Texas public schools that previously purchased the same instructional material at a higher price and enters into a written agreement with the Texas Education Agency (TEA) to offer the instructional material at the lower price to any Texas public school. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.
- (c) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(2), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of the sale at a lower price, the publisher or manufacturer provides a refund in the incremental amount of the lower price compared to the original purchase price to all Texas public schools that previously purchased the same instructional material. An action under this subsection may only be taken for differential pricing that occurs between the time when a public school may start entering orders for a particular school year until the time when a public school may start entering orders for the subsequent school year.
- (d) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(3), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials or ancillary items free of charge, the publisher or manufacturer provides a refund of the purchase to all Texas public schools that previously

purchased the same instructional material and enters into a written agreement with the TEA that the ancillary items will be provided free of charge if any Texas public school buys the instructional material at issue.

- (e) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4), or a rule implementing that provision. A publisher or manufacturer does not violate this provision if within 60 days of dissemination of instructional materials of higher quality, the publisher or manufacturer provides new copies of the higher quality instructional material at no charge or, with the public school consent, a refund equivalent to the price of the lower quality material to all Texas public schools that previously purchased the same instructional material.
- (f) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(4) or (9), or a rule implementing those provisions, including:

 - (1) an administrative penalty for selling instructional materials with factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer of instructional materials who sells instructional materials with factual errors; or
 - (2) an administrative penalty for failure to correct factual errors. The SBOE may assess an administrative penalty against a publisher or manufacturer who fails to correct a factual error, including:

 - (A) failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title (relating to Requirements for Publisher Participation);
 - (B) failure to correct a factual error identified in the report of the commissioner of education under §66.63(e) of this title (relating to Report of the Commissioner of Education) and required by the SBOE; or
 - (C) failure to correct a factual error identified and required by the SBOE prior to the adoption of the instructional material.
- (g) For purposes of this section:

 - (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. An identical error in materials with multiple components and formats shall be counted as one error; and
 - (3) a penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.28(c)(11) of this title or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(a) of this title and required by the SBOE. The publisher shall identify errata in an appropriate manner.
- (h) For purposes of subsection (f)(2) of this section, a penalty of \$5,000 shall be assessed for each failure to correct a factual error:

 - (1) after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials for violations of subsection (f)(2)(A) of this section; or
 - (2) prior to distribution to public schools after the SBOE has identified the factual error for violations of subsection (f)(2)(B) and (C) of this section.
- (i) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(5), or a rule implementing those provisions.
- (j) The SBOE may assess an administrative penalty against a publisher or manufacturer who violates the TEC, §31.151(a)(6), (7), or (8), or a rule implementing those provisions, including:

- (1) a penalty 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; and
- (2) a penalty for failure to deliver adopted instructional materials, including teacher components, in accordance with provisions in the contracts; and
- (3) no publisher shall be subject to a fine if the publisher delivers the adopted instructional materials within 45 days of the date of order, or if the order was placed by the school district or open-enrollment charter school less than 45 days prior to the date of expected delivery.
- (k) The SBOE may assess an administrative penalty against a publisher or manufacturer 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 §66.29 of this title (relating to Websites in State-Adopted Instructional Materials).
- (l) 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.
- (m) Each affected publisher shall issue credit to the TEA in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, the 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.
- (n) All administrative penalties shall be credited to the public schools instructional materials allotment funds under the TEC, §31.0212.

[§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. An identical error in materials with multiple components and formats shall be counted as one error.]~~
 - ~~[(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(i) 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 identify errata in an appropriate manner.]~~
- ~~[(d) — Penalties. A penalty of \$5,000 shall be assessed for each failure to correct a factual error after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.]~~

- ~~[(e) — 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, in accordance with provisions in the contracts.]~~
- ~~[(f) — Penalties for selling instructional materials with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of instructional materials who sells instructional materials with factual errors.]~~
- ~~[(g) — 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 that is not in alignment with the Texas essential knowledge and skills that were in place at the time of the materials' original adoption, 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.]~~
- ~~[(h) — 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.]~~
- ~~[(i) — 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.]~~