

The State Board of Education (SBOE) adopts new §§67.21, 67.23, 67.25, 67.81, and 67.83, concerning state review and approval of instructional materials. Sections 67.21, 67.23, 67.25, and 67.83 are adopted with changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8095) and will be republished. Section 67.81 is adopted without changes to the proposed text as published in the December 29, 2023 issue of the *Texas Register* (48 TexReg 8095) and will not be republished. The adopted new rules implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by defining the criteria to be used in the review and approval of instructional materials by the SBOE and the Texas Education Agency (TEA); defining requirements for publisher participation in the instructional materials review and approval (IMRA) process; and establishing rules for the annual request for instructional materials for review and future proclamations, contracts for instructional materials, and criteria for publishers required to host parent portals.

REASONED JUSTIFICATION: Texas Education Code (TEC), Chapter 31, addresses instructional materials in public education and permits the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials. HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised TEC, Chapter 31, including several provisions under SBOE authority. HB 1605 also added a new provision to TEC, Chapter 48, to provide additional funding to school districts and charter schools that adopt and implement SBOE-approved materials. In addition, the bill added requirements related to adoption of essential knowledge and skills in TEC, Chapter 28.

At the June 2023 SBOE meeting, the Committee of the Full Board held a work session to receive an overview presentation on HB 1605 from the commissioner of education and begin discussing preliminary decisions and next steps. The June 2023 SBOE HB 1605 Work Session Presentation shared during the work session is available on the TEA website at <https://tea.texas.gov/about-tea/leadership/state-board-of-education/sboe-2023/sboe-2023-june/sboe-hb1605-working-session-slidedeck-062223.pdf>.

At the August-September 2023 meeting, the Committee of the Full Board discussed the IMRA process and discussed the approach to developing the quality rubric criteria and process.

At the November 2023 SBOE meeting, the Committee of the Full Board discussed proposed new 19 TAC Chapter 67.

The adopted new sections implement HB 1605 and incorporate the feedback provided by the board.

The following changes were made to the rules since approved for first reading and filing authorization.

Section 67.21(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the English Language Proficiency Standards (ELPS).

Section 67.23(d)(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS .

Section 67.25(1) was modified at adoption to include the Texas Prekindergarten Guidelines and the ELPS .

Section 67.83(c) was modified at adoption to clarify that a publisher must host an instructional materials parent portal.

In response to public comment, §67.83(c)(1) was modified at adoption to include a reference to the materials not allowed to be posted to the publisher parent portal outlined in TEC, §31.154(c).

In response to public comment, §67.83(c)(2) was modified at adoption to refer to a single-sign-on capability instead of using the term, "interoperable." Language was also added to include a 60-day period for publishers to come into compliance with the rule.

Section 67.83(c)(1)-(6) was modified at adoption to make non-substantive technical edits.

In response to public comment, new §67.83(e) was added at adoption to clarify the consequences of being out of compliance with the 60-day requirement in §67.83(c)(2).

The SBOE approved the new sections for first reading and filing authorization at its December 13, 2023 meeting and for second reading and final adoption at its February 2, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date would allow for the implementation of the IMRA process to occur in the summer of 2024 as planned by the SBOE. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 29, 2023, and ended at 5:00 p.m. on January 29, 2024. The SBOE also provided an opportunity for registered oral and written comments at its January-February 2024 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of public comments received and corresponding responses.

#### *General Comments*

**Comment.** The National Parents Union commented that Texas has served as a "beacon for other states" in terms of setting high standards for quality education. The commenter expressed concern, however, regarding the suitability rubric, stating that it "may contribute to culture wars and distractions in our classrooms."

**Response.** The SBOE agrees that the new rules will support the board in setting high standards for quality educational materials. The comment related to the suitability rubric is outside the scope of the proposed rulemaking as the rubric is not adopted in rule.

**Comment.** A Texas parent expressed excitement at seeing the use of evidence-based strategies for teaching students. The parent also expressed a hope that the evaluation tools do not become an avenue for injecting politics and culture wars in the classroom.

**Response.** The SBOE agrees. The new rules will establish the use of rubrics to measure instructional materials using evidence-based strategies for teaching.

**Comment:** The Network of Concerned Citizens provided comments concerning content in science instructional materials.

**Response.** This comment is outside the scope of the proposed rulemaking.

#### *§67.81. Instructional Materials Contract*

**Comment.** Concerning §67.81(c)(1), The Commit Partnership requested that the rules clarify the provisions related to the standardization of contract term lengths and maintain a standard contract duration for all SBOE-approved instructional materials unless the SBOE anticipates making substantive changes to the Texas Essential Knowledge and Skills (TEKS) in a specified subject area/grade level. The commenter suggested that the contract term not exceed the IMRA cycle review for the applicable subject and grade to maintain district flexibility.

**Response.** The SBOE disagrees with the recommendation to change the standard term for an instructional materials contract. The review of materials will happen annually; therefore, the suggested language would limit instructional materials contracts executed by TEA on behalf of the SBOE and publishers to one year. There is still a cycle for instructional materials, but this cycle will now be determined by the TEKS revision schedule and approval of aligned rubrics for IMRA by the SBOE.

To address the commenter's concern for school district flexibility in setting an initial term for instructional materials procurement contracts, the proposed contract term would be standard for all approved materials and become the default maximum length of time a district could purchase materials on EMAT under the contract. School districts, under the new rule, are not obligated to execute a contract for the full initial term, but rather are able to set their own initial term within the bounds of the SBOE-determined contract.

Comment. Texas American Federation of Teachers stated the organization is opposed to any potential amendments to the rules requiring evidence of effectiveness of instructional materials to be considered for contract renewal.

Response. The SBOE agrees that the ability for TEA to consider implementation effectiveness would be difficult given the many factors that influence the effectiveness of instructional materials.

#### *§67.83. Publisher Parent Portal*

Comment. Concerning proposed new §67.83(d), Texas Classroom Teachers Association (TCTA) stated there are specific prohibitions missing that are mentioned in TEC, §31.154. TCTA also requested that proposed new §67.83(d) add language quoting TEC, §31.154(c), to provide clarity regarding the specific types of instructional materials that are explicitly prohibited from being included in the portal.

Response. The SBOE disagrees with replicating statute in administrative code rule since rules are meant to clarify where statute is not clear. However, the SBOE agrees that the rule could clarify the prohibition in statute and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

Comment. Concerning proposed new §67.83(c)(1), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that online access to exams in teaching materials in the parent portal would compromise the validity of those exams.

Response. The SBOE agrees that assessments should be excluded from the requirement and took action to amend §67.83(c)(1) at adoption to add, "excluding materials outlined in TEC, §31.154(c)."

Comment. Concerning proposed new §67.83(c)(2), Savvas Learning Company, Accelerate Learning, and Houghton Mifflin Harcourt expressed concerns that the interoperability requirements for publishers' materials in a parent portal are too broad. In addition, the commenters stated that, as publishers, they will not know if their materials are interoperable until a school district purchases their instructional materials. The commenters suggested specific rule text changes.

Response. The SBOE agrees that the use of the term "interoperable" could be open to interpretation. However, the SBOE disagrees that the recommended language from the commenters is the appropriate manner to address the concern. Instead, the SBOE has modified the rule at adoption to focus on the desired functionality over the method of implementation. Specifically, the rule was modified to clarify that the parent portal must be "capable of single-sign-on" with a school district's learning management system (LMS).

In addition, new language in §67.83(c)(2) was added at adoption to address the comment related to publishers knowing whether their materials are interoperable. Section 67.83(c)(2) will allow a period for a publisher to come into compliance with the single-sign-on feature within 60 days of a school district purchase of materials. Section 67.83(e) was added at adoption to allow TEA to recommend to the SBOE the removal of a publisher's materials from the approved list of instructional materials if the publisher does not make their portal capable of single-sign-on with a school district's LMS unless the delay is due to a delay by the district or its LMS vendor.

Comment. Concerning §67.83(c)(2), Instructional Material Coordinators' Association of Texas (IMCAT) expressed concerns regarding the LMS interoperability and the possibility that an LMS vendor may refuse to comply or charge a school district an additional cost to comply.

Response. This comment is outside of the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the

board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

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**§67.21. Proclamations, Public Notice, and Requests for Instructional Materials for Review.**

- (a) Upon the adoption of revised Texas Essential Knowledge and Skills (TEKS) or Texas Prekindergarten Guidelines (TPG), the State Board of Education (SBOE) shall determine if the extent of the revisions have created a need to remove instructional materials from the list approved under Texas Education Code, §31.022.
- (b) The SBOE shall issue a proclamation calling for instructional materials if the determination in subsection (a) of this section results in a decision that a proclamation is necessary. The proclamation shall serve as notice to:
  - (1) all publishers to submit instructional material for review for the subject and grade level or course(s); and
  - (2) all publishers with approved instructional materials for the subject and grade level or course(s) that to remain on the list of approved materials, the publisher must submit new or revised materials or new information demonstrating alignment of current instructional materials to the revised TEKS or TPG.
- (c) The Texas Education Agency shall issue an annual request for instructional materials to notify all publishers and the public that submissions of instructional materials aligned to quality rubrics and the suitability rubric approved by the SBOE are being invited for review.
- (d) Each proclamation and annual request for instructional materials for review shall contain the following:
  - (1) information about and reference to applicable TEKS, TPG, and English Language Proficiency Standards in each subject for which submissions are being invited;
  - (2) the student enrollment of the courses or grade levels called for, to the extent that it is available, for the school year prior to the year in which the proclamation or annual request for instructional materials is issued;
  - (3) the requirement that a publisher grant electronic access to the instructional materials being submitted that complies to the specifications in the proclamation or annual request for instructional materials for review and may not submit a print copy;
  - (4) specifications for providing computerized files to produce accessible formats of approved instructional materials;
  - (5) specifications for ensuring that electronic instructional materials are fully accessible to students with disabilities; and
  - (6) a schedule of instructional materials review and approval procedures.

**§67.23. Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA).**

- (a) A publisher with approved materials shall comply with product standards and specifications.
- (b) Publishers participating in the adoption process are responsible for all expenses incurred by their participation.
- (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 (TEA). This does not apply to open education resource instructional materials as developed by TEA in accordance with Texas Education Code, Chapter 31, Subchapter B-1.
- (d) On or before the deadline established in the schedule of approval procedures, publishers shall submit correlations of instructional materials submitted for review in a format designated by the commissioner of education. Correlations shall be provided for materials designed for student use and materials designed for teacher use and include:
  - (1) evidence of coverage of each student expectation, in the context of the lesson, of the Texas Essential Knowledge and Skills or Texas Prekindergarten Guidelines and applicable English Language Proficiency Standards required by the proclamation or the request for instructional materials for review; and
  - (2) evidence of alignment to the quality rubric indicators.
- (e) On or before the deadline established in the schedule of approval procedures, publishers shall certify that after exercising reasonable efforts, the submitted material complies with suitability standards and all applicable state laws.
- (f) A publisher that intends to offer instructional materials for review and approval shall comply with additional requirements included in a proclamation or the annual request for instructional materials for review.

**§67.25. Consideration and Approval of Instructional Materials by the State Board of Education.**

The State Board of Education (SBOE) shall review the results of the instructional materials reviews completed by a review panel and submitted by the commissioner of education in accordance with Texas Education Code (TEC), §31.022 and §31.023. Instructional materials may be placed on the list of approved instructional materials only if they meet the following criteria:

- (1) for full-subject and partial-subject tier one instructional materials for foundation subjects as defined by TEC, §28.002(a)(1), the product components cover 100% of the Texas Essential Knowledge and Skills (TEKS) and applicable English Language Proficiency Standards (ELPS) for the specific grade level and subject area when the proclamation or request for instructional materials was issued. In determining the percentage of the TEKS and ELPS covered by instructional materials, each student expectation shall count as an independent element of the standards;
- (2) materials have been reviewed through the process required by TEC, §31.023;
- (3) materials are free from factual error, defined as a verified error of fact or any error that would interfere with student learning, including significant grammatical or punctuation errors;
- (4) materials meet the Web Content Accessibility Guidelines (WCAG) and meet the technical specifications of the Federal Rehabilitation Act, Section 508, as specified when a request for instructional materials or proclamation was issued;
- (5) materials conform to or exceed in every instance the latest edition of the Manufacturing Standards and Specifications for Textbooks (MSST), developed by the State Instructional Materials Review Association, when the proclamation or request for instructional materials was issued;
- (6) materials are compliant with the suitability standards adopted by the SBOE and are compliant with all applicable state laws; and

- (7) materials provide access to a parent portal as required by TEC, §31.154.

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STATUTORY AUTHORITY. The new sections are adopted under Texas Education Code (TEC), §26.006, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts and open-enrollment charter schools to make available access to instructional materials for parents via a parent portal if applicable; TEC, §31.003(a), as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the State Board of Education (SBOE) to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials; TEC, §31.022, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to review instructional materials that have been provided to the board by the Texas Education Agency (TEA) under TEC, §31.023; TEC, §31.023, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to establish, in consultation with and with the approval of the SBOE, a process for the annual review of instructional materials by TEA. In conducting a review under this section, TEA must use a rubric developed by TEA in consultation with and approved by the SBOE; TEC, §31.151, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the SBOE to determine the standard terms and conditions of instructional materials contracts; and TEC, §31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires the SBOE to adopt standards for entities that supply instructional materials reviewed by TEA to make instructional materials supplied by the entity available on a parent portal hosted by the entity.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code, §§26.006, 31.003(a), 31.022, 31.023, and 31.151, as amended by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, and 31.154, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023.

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#### **§67.81. Instructional Materials Contracts.**

- (a) The state contract for materials placed on the list of approved materials shall not be changed or modified without the approval of Texas Education Agency (TEA) legal counsel.
- (b) Contracts shall be sent to publishers for signature. Signed contracts returned by publishers shall be signed by the chair of the State Board of Education (SBOE) and attested to by the commissioner of education. Properly signed and attested contracts shall be filed with TEA.
- (c) The publisher of instructional materials approved by the SBOE shall:
  - (1) enter into a contract with the SBOE for a term not to exceed an initial term of eight years; and
  - (2) commit to provide the instructional materials in the manner specified by the publisher in the official bid specified in §67.23 of this title (relating to Requirements for Publisher Participation in Instructional Materials Review and Approval (IMRA)).
- (d) The commissioner shall annually review contracts for instructional materials and present to the SBOE those contracts that are eligible for renewal.
- (e) The SBOE shall renew existing contracts upon determining that the renewal would be in the best interest of the state and after considering the following factors:
  - (1) placement of subject areas in the Texas Essential Knowledge and Skills review schedule;
  - (2) willingness of publishers to renew contracts; and
  - (3) cost of instructional materials under a renewal contract.
- (f) Publishers awarded new contracts shall be prepared to make the approved instructional materials available for at least one contract renewal period of not more than four years at prices that are mutually agreeable to publishers and to the commissioner. The SBOE may consider refusing to award future contracts to a publisher that, after receiving written notice to do so, refuses to rebid instructional materials at least once. Failure of a publisher to negotiate an acceptable price for an extended contract shall not be considered failure to rebid instructional materials.
- (g) Contracts with publishers are subject to all provisions of Texas Education Code (TEC), Chapter 31.

- (h) This section does not apply to open education resource instructional material.

**§67.83. Publisher Parent Portal.**

- (a) Standards under this section apply to any publisher that supplies instructional materials that are reviewed by a review panel under Texas Education Code (TEC), §31.022 and §31.023, and placed on the list of approved instructional materials by the State Board of Education (SBOE) as outlined in TEC, §31.022.
- (b) Standards under this section apply to any instructional materials, including:
  - (1) full-subject tier one instructional material;
  - (2) open education resource instructional material;
  - (3) partial-subject tier one instructional material; and
  - (4) supplemental instructional material.
- (c) A publisher must host an instructional materials parent portal that:
  - (1) includes in the portal all components placed on the list of instructional materials approved by the SBOE, including teacher- and student-facing materials, excluding materials outlined in TEC, §31.154(c);
  - (2) for each school district or open-enrollment charter school that purchases the instructional materials, makes the parent portal capable of single-sign-on with the learning management system or online learning portal used by the district or charter school to assign, distribute, present, or make available instructional materials as defined by TEC, §31.002, to students. If a publisher is unable to make instructional materials operational at the time of purchase by a school district or open-enrollment charter school, the publisher has 60 days from the date of purchase to make its portal operational with the learning management system of the school district or charter school that purchased the materials;
  - (3) for instructional materials not available in a digital format, contains the instructional materials component International Standard Book Number (ISBN) or part number, title, edition, and author to allow a parent to locate a physical copy of the material;
  - (4) allows access beginning not later than 30 days before the school year begins and concluding not earlier than 30 days after the school year ends;
  - (5) optimizes the portal for viewing on large monitors, laptops, tablets, and smartphone devices; and
  - (6) meets Web Content Accessibility Guidelines (WCAG) identified in the associated proclamation or annual request for instructional materials for review and any technical standards required by the Federal Rehabilitation Act, Section 508.
- (d) A publisher hosting an instructional materials parent portal may not:
  - (1) include any instructional materials as defined by TEC, §31.002, that were not reviewed and placed on the approved materials list; or
  - (2) include any instructional materials on the portal that would undermine, subvert, or impede any local education agency or open-enrollment charter school from complying with TEC, §31.1011.
- (e) For instructional materials that do not meet the single-sign-on capability requirements within the time period established under subsection (c)(2) of this section, the Texas Education Agency shall recommend to the SBOE the removal of the publisher's instructional materials from the list of approved materials unless the failure to meet the functionality is due to inaction by the school district or charter school or the district's or school's learning management system provider. The SBOE may remove the publisher's material from the approved list.