

**ATTACHMENT II**  
**Text of Proposed Revisions to 19 TAC**

**Chapter 66. State Adoption and Distribution of Instructional Materials**

**Subchapter B. State Adoption of Instructional Materials**

**§66.28. Adoption by Reference.**

- (a) The sections titled "Content Requirements" in the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2004. A copy of the *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2004 of the State Board of Education Advertising for Bids on Instructional Materials* can be accessed from the Texas Education Agency official website.
- (b) The sections titled "Content Requirements" in the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2005. A copy of the *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2005 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (c) The sections titled "Content Requirements" in the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2010. A copy of the *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2010 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (d) The sections titled "Content Requirements" in the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2011. A copy of the *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2011 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.
- (e) The sections titled "Texas Essential Knowledge and Skills" in the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8*, are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration for supplemental science materials. Copies of the *Request for Supplemental High School Science Materials* and the *Request for Supplemental Science Materials, Grades 5, 6, 7, and 8*, are available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency,

1701 North Congress Avenue, Austin, Texas 78701. The requests for supplemental science materials may be accessed from the Texas Education Agency official website.

- (f) The sections titled "Texas Essential Knowledge and Skills" and "English Language Proficiency Standards" in the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* are adopted by this reference as the State Board of Education's official rule governing essential knowledge and skills that shall be used to evaluate instructional materials submitted for consideration under Proclamation 2014. A copy of the *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. *Proclamation 2014 of the State Board of Education Advertising for Bids on Instructional Materials* may be accessed from the Texas Education Agency official website.

### **§66.33. State Review Panels: Appointment.**

- (a) The commissioner of education shall determine the number of review panels needed to review instructional materials under consideration for adoption, determine the number of persons to serve on each panel, and determine the process [criteria] for selecting panel members. Each appointment to a state review panel shall be made by the commissioner of education with priority given to qualified individuals who are nominated by State Board of Education (SBOE) members. Any SBOE member may veto the placement of a review panel member from his or her district upon the written objection of said SBOE member. [the advice and consent of the State Board of Education (SBOE) member whose district is to be represented.] The commissioner of education shall make appointments to state review panels that achieve diversity to the extent possible; ensure that each team has members with sufficient content expertise and experience; and ensure participation by academic experts in each subject area for which instructional materials are being considered, giving priority to content-relevant educators and professors. The appointments shall include educators, parents, business and industry representatives, and employers. The role of each appointee shall be designated and disclosed to all appointees on each panel.
- (b) The commissioner of education shall solicit nominations for possible appointees to state review panels from the SBOE, school districts, open-enrollment charter schools, and educational organizations in the state. Nominations may be accepted from any Texas resident. Nominations shall not be made by or accepted from any publishers; hardware or software providers; authors; depositories; agents for publishers, hardware or software providers, authors, or depositories; or any person who holds any official position with a publisher, hardware or software providers, author, depository, or agent.
- (c) The SBOE shall be notified of appointments made by the commissioner of education to state review panels.
- (d) Members of a state review panel may be removed at the discretion of the commissioner of education.

### **§66.36. State Review Panels: Duties and Conduct.**

- (a) The duties of each member of a state review panel are to:
- (1) evaluate all 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 instructional materials as well as in the teacher version of the instructional materials. Nothing in this rule shall be construed to contravene the Texas Education Code (TEC), §28.004(e)(5), which makes coverage of contraception and condom use optional in both the student and teacher editions of health instructional materials. Panel members will use State Board of Education-approved procedures for evaluating coverage of the essential knowledge and skills. Coverage must be identified at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents. The approved procedures include the following.
- (A) State review panel members must participate in training to ensure clear and consistent guidelines for determining full Texas essential knowledge and skills (TEKS) coverage within the instructional materials.

- (B) State review panel members must participate in a team during the review and reach a consensus , or a simple majority if the panel members are unable to reach consensus, to determine whether ~~[if]~~ the TEKS have been covered sufficiently in the instructional materials.
- (C) A member of the panel shall be designated as recording secretary who shall keep minutes of all panel deliberations in a format determined by the commissioner of education. Consensus and minority concerns shall be reflected in the minutes with the objectors identified by team role only.
- ~~(D) [(C)]~~ Instructional materials shall be evaluated for TEKS coverage at each grade level.
- (E) ~~[(D)]~~ A student expectation may be ~~[TEKS standard is]~~ considered sufficiently covered only if the instructional materials provide one of the following:
  - (i) an opportunity for the teacher to teach each component of the knowledge or skill in the teacher material ;
  - (ii) an opportunity for the student to learn each component of the knowledge or skill in the student material or the teacher material ; or
  - (iii) an opportunity for the student to demonstrate each component of the knowledge or practice each component of the skill in the student material or the teacher material .
- ~~[(E)]~~ If a TEKS standard has multiple student expectations, the requirements of subparagraph (D) of this paragraph will be applied to each student expectation to ensure sufficient coverage.]
- (F) Student expectations ~~[TEKS standards]~~ are not considered covered if only included in side bars, captions, or questions at the end of a section or chapter.
- (G) Each student expectation must be clearly evident in the instructional materials to ensure sufficient coverage.
- (H) Student expectations that contain the word "including" reference content that must be covered in instructional materials, while those containing the phrase "such as" are intended as possible illustrative examples and are not required to be covered in instructional materials.
- (2) make recommendations to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected;
- (3) submit to the commissioner of education a list of any factual errors in instructional materials discovered during the review conducted by the state review panel; and
- (4) as appropriate to a subject area and/or grade level, ascertain that instructional materials submitted for adoption do not contain content that clearly conflicts with the stated purpose of the TEC, §28.002(h).
- (b) State review panel members shall not accept meals, entertainment, gifts, or gratuities in any form from publishers, authors, or depositories; agents for publishers, authors, or depositories; any person who holds any official position with publishers, authors, depositories, or agents; or any person or organization interested in influencing the selection of instructional materials.
- (c) Before presenting recommendations to the commissioner of education, state review panel members shall be given an opportunity to request a meeting with a publisher to obtain responses to questions regarding instructional materials being evaluated by the state review panel. Questions shall be provided to publishers in advance of the meeting.
- (d) State review panel members shall be afforded the opportunity to collaborate with other panel members during the official virtual and face-to-face reviews ~~[meetings]~~ to discuss coverage of TEKS, errors,

manufacturing specifications, or any other aspect of instructional materials being evaluated. A member of a state review panel shall have no contact with other members of the panel regarding the instructional materials being reviewed, except during official virtual and face-to-face reviews ~~[meetings]~~. State review panel members shall not discuss instructional materials being evaluated with any party having a direct or indirect interest in adoption of instructional materials.

- (e) State review panel members participating in the face-to-face review shall affix their signatures to all recommendations to the commissioner of education. State review panel members participating in the virtual review shall submit their recommendations electronically through email, which will serve as their electronic signatures.
- (f) Members of each state review panel may be required to be present at the State Board of Education meeting at which instructional materials are adopted.

#### **§66.45. State Review Panels: No-Contact Periods.**

- (a) State review panel members shall observe a no-contact period that shall begin with the initial communication regarding possible appointment to a state review panel and end after recommendations have been made to the commissioner of education that each submission assigned to be evaluated by the state review panel be placed on the adopted list or rejected. During this period, state review panel members shall not have direct or indirect communication with ~~[be contacted either directly or indirectly by]~~ any person having an interest in the adoption process regarding content of instructional materials under evaluation by the panel. This restriction is not intended to prohibit members of the state review panels from seeking advice regarding materials under consideration from the State Board of Education.
- (b) State review panel members shall report immediately to the commissioner of education any communication or attempted communication by any person regarding instructional materials being evaluated by the panel.
- (c) State review panel members may request information or clarification regarding ~~[shall not discuss]~~ content of instructional materials under consideration from Texas Education Agency (TEA) [with any subject area] staff members with knowledge of the Texas essential knowledge and skills ~~[member of the Texas Education Agency (TEA), except]~~ during the virtual or face-to-face reviews. Answers to relevant [official orientation meeting. Additional requests for information or clarification shall be directed to the commissioner of education or his designee. Copies of all] questions asked by [from] individual members shall be shared [distributed] with [responses to] all members of the appropriate state review panel. ~~[This restriction is not intended to prohibit members of the state review panels from contacting designated staff of the TEA regarding adoption procedures.]~~

#### **§66.48. Statement of Intent to Bid Instructional Materials.**

- (a) Each publisher who intends to offer instructional materials for adoption shall submit a statement of intent to bid and preliminary price information on or before the date specified in the schedule of adoption procedures. The statement of intent with preliminary price information 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 that it believes are sufficiently covered in the instructional materials.
- (c) A publisher shall specify hardware or special equipment needed to review any item included in an instructional materials submission.
- (d) Additions to a publisher's submission shall not be accepted after the deadline for filing statements of intent, except as allowed in the schedule of adoption procedures included in the proclamation. [A publisher who wishes to withdraw an instructional materials submission after having filed a statement of intent to bid shall notify the commissioner of education in writing on or before the date specified in the schedule of adoption procedures.]

- (e) A publisher who intends to offer instructional materials for midcycle review shall submit a statement of intent to bid and price information on or before the date specified in the schedule of adoption procedures under midcycle review. The statement of intent to bid must:
- (1) specify the manner in which instructional materials will be provided to school districts, including:
    - (A) the regional education service center area(s) to be served; or
    - (B) the certain maximum number of copies of instructional materials to be provided under the contract; and
  - (2) include payment of the fee for review of instructional materials submitted for midcycle review.

**§66.51. Instructional Materials Ordered Through the State.**

Instructional materials offered for adoption by the State Board of Education.

- (1) Publishers may not submit instructional materials for adoption that have been authored by an employee of the Texas Education Agency (TEA).
- (2) The official bid price of an instructional material submission may exceed the price included with the statement of intent to bid filed under §66.48 of this title (relating to Statement of Intent to Bid Instructional Materials).
- (3) Any discounts offered for volume purchases of adopted instructional materials shall be included in price information submitted with statement of intent to bid and in the official bid.
- (4) The official bid filed by a publisher shall include separate prices for each item included in an instructional material submission. The publisher shall guarantee that individual items included in the student and/or teacher component shall be available for local purchase at the individual prices listed for the entire contract period. (Individual component prices are listed to show school districts the replacement costs of components and not to reflect publisher's bid prices for these components.)
- (5) Publishers shall submit to the TEA a signed affidavit certifying that each individual whose name is listed as an author or contributor of the instructional materials contributed to the development of the instructional materials. The affidavit shall also state in general terms each author's involvement in the development of the instructional materials.
- (6) Student materials offered for adoption may include consumable components in subjects and grade levels in which consumable materials are not specifically called for in the proclamation. In such cases, publishers must meet the following conditions.
  - (A) The per student price of the materials must include the cost of replacement copies of consumable student components for the full term of the adoption and contract, including any extensions of the contract terms, but for no more than 12 years. The offer must be set forth in the publisher's official bid.
  - (B) The publisher's official bid shall contain a clear explanation of the terms of the sale, including the publisher's agreement to supply consumable student materials for the duration of the contract and extensions as noted in subparagraph (A) of this paragraph.
  - (C) The publisher and the school district shall determine the manner in which consumable student materials are supplied beyond the initial order year.
- (7) On or before the deadline established in the schedule of adoption procedures, publishers shall submit correlations of instructional materials submitted for adoption with essential knowledge and skills required by the proclamation. These correlations shall identify evidence of each student expectation addressed ~~[include essential knowledge and skills covered]~~ at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents as well as student expectations

addressed in the teacher version of the instructional materials . Correlations shall be submitted in a format approved by the commissioner of education.

**§66.63. Report of the Commissioner of Education.**

- (a) The commissioner of education shall review all instructional materials submitted for consideration for adoption. The commissioner's review shall include the following:
  - (1) evaluations of instructional materials prepared by state review panel members, including recommendations that instructional materials be placed on the adopted list or rejected. To be adopted, instructional materials must cover at least 50% of the essential knowledge and skills as required by the proclamation at least once in the student text narrative or its electronic equivalent and once in either an end-of-section review exercise, an end-of-chapter activity, or a unit test or their electronic equivalents;
  - (2) compliance with established manufacturing standards and specifications;
  - (3) recommended corrections of factual errors identified by state review panels;
  - (4) prices of instructional materials submitted for adoption; and
  - (5) whether instructional materials are offered by a publisher who refuses to rebid instructional materials according to §66.24 of this title (relating to Review and Renewal of Contracts).
- (b) Based on the review specified in subsection (a) of this section, the commissioner of education shall prepare a preliminary report on ~~recommendations that~~ instructional materials under consideration for adoption ~~be placed on the adopted list or rejected~~ . The preliminary report will be provided to publishers participating in the review process. According to the schedule of adoption procedures, a publisher whose product meets one of the criteria in subsection (d) of this section shall be given an opportunity for a show-cause hearing if the publisher elects to protest the commissioner's preliminary recommendation.
- ~~(c) The show-cause hearing is a formal opportunity for a publisher to present evidence that the preliminary report does not accurately reflect the extent to which the content provided to the state review panels addresses the required Texas essential knowledge and skills (TEKS) and/or designated English language proficiency standards (ELPS). The show-cause hearing is not a forum to address complaints alleging procedural irregularities or violations of statutes or rules.~~
- ~~(d) To be eligible for a show-cause hearing, a product must meet the requirements of §66.79(b) of this title (relating to Adding Content During the Review and Adoption Process) regarding eligibility to provide new content and, upon completion of the final review, be identified as meeting:~~
  - ~~(1) at least 95% of the TEKS coverage percentage indicated by the publisher on the complete program description form for that product; or~~
  - ~~(2) less than 50% of the TEKS for the subject and grade for which the product is intended and/or less than 100% of the ELPS designated for the subject and grade for which the product is intended.~~
- ~~(e) [(e)]~~ The commissioner of education shall submit to the State Board of Education (SBOE) final recommendations that instructional materials under consideration be placed on the adopted list or rejected.
- ~~(f) [(d)]~~ The commissioner of education shall submit for SBOE approval a report on corrections of factual errors that should be required in instructional materials submitted for consideration. The report on recommended corrections shall be sent to the SBOE, affected publishers, regional education service centers (ESCs), and other persons, such as braillists, needing immediate access to the information. The commissioner shall obtain written confirmation from publishers that they would be willing to make all identified corrections should they be required by the SBOE.

**§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.**

- (a) Publishers shall file three copies of the official bid form with the commissioner of education according to the schedule of adoption procedures.

~~[(b)] A committee of the State Board of Education (SBOE) shall be designated by the SBOE chair to review the commissioner's report concerning instructional materials recommended for state adoption. The committee shall report the results of its review to the SBOE.]~~

(b) ~~[(e)]~~ The State Board of Education (SBOE) ~~[SBOE]~~ shall adopt a list of adopted instructional materials in accordance with the Texas Education Code (TEC), §31.023. Instructional materials may be adopted only if they:

- (1) meet at least 50% of the Texas essential knowledge and skills (TEKS) for the subject and grade level in the student version of the instructional materials as well as in the teacher version of the instructional materials. In determining the percentage of elements of the TEKS covered by instructional materials, each student expectation shall count as an independent element of the TEKS of the subject;
- (2) meet the established physical specifications adopted by the SBOE;
- (3) are free from factual errors, including significant grammatical or punctuation errors, or the publisher has agreed to correct any identified factual errors prior to execution of a contract pursuant to §66.72 of this title (relating to Preparing and Completing Contracts); and
- (4) receive majority vote of the SBOE. However, no instructional material may be adopted that contains content that clearly conflicts with the stated purpose of the TEC, §28.002(h).

(c) ~~[(d)]~~ Instructional materials submitted for placement on the adopted list may be rejected by majority vote of the SBOE in accordance with the TEC, §31.024.

(d) ~~[(e)]~~ The SBOE shall either adopt or reject each submitted instructional material in accordance with the TEC, §31.024.

(e) ~~[(f)]~~ A publisher may withdraw from the adoption process at any time prior to final adoption for any reason by providing notification in writing to the commissioner of education. Notification of withdrawal is final and irrevocable.

#### **§66.79. Adding Content During the Review and Adoption Process.**

(a) A publisher may add content to ~~[an]~~ instructional ~~materials~~ ~~[material]~~ during the review and adoption process only to allow the materials ~~[material]~~ to : ~~[meet the percentage of Texas essential knowledge and skills the publisher had specified the material covered.]~~

- ~~(1) meet the Texas essential knowledge and skills (TEKS) coverage percentage the publisher had specified on the complete program description form submitted for that instructional product; and~~
- ~~(2) meet 100% of the English language proficiency standards (ELPS) designated for the subject and grade for which the instructional product is intended.~~

~~(b) To be eligible to have content added as described in subsection (a) of this section, an instructional product must, upon its initial review, be identified as meeting:~~

- ~~(1) at least 75% of the TEKS coverage percentage indicated by the publisher on the complete program description form submitted for that instructional product; and~~
- ~~(2) at least 75% of the ELPS designated for the subject and grade for which the instructional product is intended.~~

~~(c) A publisher shall have one opportunity to provide a written request for the Texas Education Agency (TEA) to further review an instructional product that is not eligible to have new content added according to subsection (b) of this section.~~

~~(d) New content submitted for review shall be submitted in a format approved by the commissioner of education and shall be made available for public review at the TEA and at each education service center (ESC) prior to the adoption of instructional materials. New content submitted under this subsection must be submitted by the deadline determined by the TEA.~~

**§66.81. Ancillary Materials.**

- (a) Ancillary materials are defined as materials that are not listed on the official bid form, but which a publisher plans to provide to school districts and open-enrollment charter schools free with their order of instructional materials from the list of adopted materials. A publisher of adopted instructional materials shall provide any ancillary item free of charge to the same extent that the publisher provides the item free of charge to any state, public school, or school district in the United States.
- (b) The State Board of Education may impose a reasonable administrative penalty not to exceed \$5,000 against a publisher or manufacturer who knowingly violates subsection (a) of this section.