

The Texas Education Agency (TEA) adopts new §67.1315, concerning open education resource (OER) instructional materials. The new section is adopted with changes to the proposed text as published in the September 6, 2024 issue of the *Texas Register* (49 TexReg 6950) and will be republished. The adopted new rule implements House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by providing clarification on the requirements for a school district's OER transition plan.

REASONED JUSTIFICATION: HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised Texas Education Code (TEC), Chapter 31, which addresses instructional materials in public education. Specifically, the bill added TEC, §31.0751, to require school districts to adopt an OER instructional materials transition plan to qualify for additional state aid under TEC, §48.308. School districts participating in an OER instructional material support program are not required to adopt a transition plan.

New §67.1315 provides clarification on the requirements for a school district's OER transition plan, including when a plan must be submitted and what it must contain. The new rule also specifies that the commissioner may request and review OER instructional material transition plans and reject a plan subsequent to review.

At adoption, a change was made to subsection (e) to limit the timeframe for rejection of a transition plan by the commissioner from "at any time" to "before funding is released."

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began September 6, 2024, and ended October 7, 2024. Following is a summary of public comments received and agency responses.

Comment: A publisher commented that the proposed rule could create a barrier to OER implementation as only districts implementing OER materials would have to create a transition plan and those implementing non-OER instructional materials would not.

Response: The agency disagrees that the rule will create a barrier to OER implementation as the requirements of the transition plan are enabling systems necessary to successful instructional materials implementation. Additionally, the OER transition plan is statutorily required in TEC, §31.0751.

Comment: A publisher commented that it is unclear which districts would need to create an OER transition plan as a definition is not provided for "an OER instructional material support program."

Response: The agency provides the following clarification. TEC, §31.0752, defines "Open Education Resource Instructional Material Support Program" as a program developed and maintained by the agency "to assist school districts and open-enrollment charter schools in adopting and using open education resource instructional material." Since the definition is provided in statute, it is not replicated in the rule.

Comment: A publisher commented that the rule does not specify when it would be in effect.

Response: The agency provides the following clarification. According to TEC, §31.0751(a), the OER instructional material transition plan is required to qualify for additional state aid under TEC, §48.308. TEC, §48.308(a), states that "a school district is entitled to additional state aid for each school year...for the costs incurred or for which the district is obligated to pay during the school year in which the aid is provided for the printing and shipping of open education resource instructional materials...." Since an OER instructional material transition plan is required to qualify for this additional state aid, this rule would take effect in the first year this aid is available.

Comment: Texas Classroom Teachers Association (TCTA) opposed the use of the term "internalization" in proposed §67.1315(d)(4), stating it is undefined and not found in HB 1605. TCTA believes this term shifts teacher responsibilities away from lesson design and is premature given the current lack of high-quality instructional materials and OER materials. TCTA recommended removing "internalization" from subsection (d)(4) or revising subsection (d)(4)(B) to read, "lesson design, internalization, when appropriate, and student work analysis protocols."

Response: The agency disagrees. Subsection (d)(4)(B) indicates that the plan should ensure clear expectations for the implementation of internalization protocols. The commenter's recommended revision would require that the plan also ensure clear expectations for the implementation of lesson design protocols. A lesson design protocol is not included in OER materials, so this requirement is not necessary.

Comment: TCTA opposed the inclusion of the term "acceptable" in proposed §67.1315(d)(6), stating it implies district control over teacher flexibility, which, in TCTA's view, contradicts TEC, §31.0751(b). TCTA further commented that the statute mandates that OER transition plans preserve teachers' ability to address their students' needs.

Response: The agency disagrees. The use of the term "acceptable" in subsection (d)(6) does not imply that the district has control over the instructional flexibility provided by TEC, §31.0751(b), as the term is used in conjunction with the term "guidance."

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §31.003(b), as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the commissioner of education to adopt rules consistent with TEC, Chapter 31, as necessary to implement a provision of the chapter that the commissioner or the agency is responsible for implementing; and TEC, §31.0751, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts to adopt an open education resource instructional material transition plan, unless otherwise exempt.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(b) and §31.0751, as added by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

<rule>

#### **§67.1315. Open Education Resource Instructional Material Transition Plan.**

- (a) The open education resource (OER) instructional material transition plan shall be submitted, when required by this section, in a format determined by the commissioner of education.
- (b) A school district or an open-enrollment charter school is required to have a locally maintained OER transition plan that complies with this section to access funding allotted under Texas Education Code (TEC), §48.308.
- (c) A school district or an open-enrollment charter school is required to submit an OER instructional material transition plan only when:
  - (1) first adopting a State Board of Education (SBOE)-approved OER product for a grade level or subject/course; or
  - (2) expanding implementation of an SBOE-approved OER product to additional campuses and/or grade levels.
- (d) The OER instructional material transition plan adopted by the local board of trustees or the governing body of an open-enrollment charter school shall include the plan of the district or charter school to ensure the following:
  - (1) clear communication and stakeholder change management plans and timelines;
  - (2) timely access to print materials and related manipulatives through OER procurement and distribution;
  - (3) sufficient planning and instructional time evidenced by instructional calendars and master schedules aligned to the requirements of the materials;
  - (4) clear expectations for the implementation of:
    - (A) instructional materials;
    - (B) internalization and student work analysis protocols; and

- (C) curriculum-embedded assessments;
- (5) processes for stakeholder communication and public posting, as outlined in TEC, §26.006, if materials have been modified by the school district or open-enrollment charter school;
- (6) the maintenance of instructional flexibility through clear guidance for acceptable teacher modifications to instructional pacing, sequencing, and lesson content to address the needs of each student; and
- (7) sufficient professional learning and development for school leaders, instructional coaches, and teachers, including:
  - (A) pre-service product onboarding and orientation; and
  - (B) ongoing, job-embedded, curriculum-based professional learning, including cycles of observation and feedback.
- (e) The commissioner may request and review OER instructional material transition plans before funding is released and reject a plan subsequent to review.