

The Texas Education Agency (TEA) proposes new §§67.1001, 67.1003, and 67.1004, concerning the Instructional Materials and Technology Allotment. The proposed new sections would establish the requirements for the Instructional Materials and Technology Allotment and establish guidance regarding the use of the additional state aid for state-approved instructional materials and open education resource instructional materials.

BACKGROUND INFORMATION AND JUSTIFICATION: Proposed new §67.1001, Instructional Materials and Technology Allotment, would clarify the allowable uses of funds for the Instructional Materials and Technology Allotment that previously existed in 19 TAC §66.1307. This section would also clarify the commissioner's authority to set the allotment amounts for each school district and open-enrollment charter school and special school districts.

House Bill 1605, 88th Texas Legislature, Regular Session, 2023, established two new entitlements from the Foundation School Program. The bill also established requirements in Texas Education Code (TEC), Chapter 48, for the access to the funding.

Proposed new §67.1003, Additional State Aid for State-Approved Instructional Materials, would clarify the allowable uses of funds for the entitlement in TEC, §48.307, pertaining to additional state aid for state-approved instructional materials.

Proposed new §67.1004, Additional State Aid for Open Education Resource Instructional Materials, would clarify the allowable uses of funds for the entitlement in TEC, §48.308, pertaining to additional state aid for open education resource instructional materials.

FISCAL IMPACT: Todd Davis, associate commissioner of instructional strategy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create new regulations regarding the requirements for the Instructional Materials and Technology Allotment and establish guidance regarding the use of the additional state aid for state-approved instructional materials and open education resource printing entitlements by implementing HB 1605, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to clarify the allowable uses of funding for instructional materials purchases and eligibility for new funding from the Foundation School Program. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 7, 2025, and ends April 7, 2025. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on March 7, 2025. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new sections are proposed 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; TEC, §31.0211, as amended by HB 1605 and HB 4595, 88th Texas Legislature, Regular Session, 2023, which permits the commissioner to adopt rules regarding the instructional materials and technology allotment, including the amount of the per-student allotment, the authorization of juvenile justice alternative education program allotments, allowed expenditures, required priorities, and adjustments to the number of students for which a district's allotment is calculated; TEC, §31.0212, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which addresses the documentation required for requisitions and disbursements to be approved, districts' online instructional materials ordering system accounts, and school district submissions to the commissioner of the title and publication information for any materials the districts purchase with their allotments; TEC, §31.0215, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which addresses allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.029, which requires the commissioner to adopt rules regarding instructional materials for use in bilingual education classes; TEC, §31.031, which requires the commissioner to adopt rules regarding the purchase of college preparatory instructional materials with the allotment; TEC, §31.071, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which addresses state-developed open-source instructional materials; TEC, §31.076, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023, which permits the commissioner to adopt rules necessary to implement TEC, Chapter 31, Subchapter B-1, and states that a decision made by the commissioner under the subchapter is final and may not be appealed; TEC, §31.104, which requires the commissioner to adopt rules that include criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition; and TEC, §48.004, which requires the commissioner to adopt rules, act, and require reports consistent with Chapter 48 as necessary to implement and administer the Foundation School Program.

CROSS REFERENCE TO STATUTE. The new sections implement Texas Education Code (TEC), §31.003(b), as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023; §31.0211, as amended by HB 1605 and HB 4595, 88th Texas Legislature, Regular Session, 2023; §31.0212, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023; §31.0215, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023; §31.029; §31.031; §31.071, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023; §31.076, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023; §31.104, as amended by HB 1605, 88th Texas Legislature, Regular Session, 2023; and §48.004.

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§67.1001. Instructional Materials and Technology Allotment.

- (a) The commissioner of education shall determine the amount of the Instructional Materials and Technology Allotment for a school district or an open-enrollment charter school based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) student enrollment data from the fall snapshot collection of the school year preceding the first year of each biennium.

- (b) The commissioner shall determine the amount of the allotment for Texas Juvenile Justice Department facilities.
- (c) The commissioner shall determine the amount of the allotment for bilingual education based on TSDS PEIMS bilingual enrollment data from the fall collection of the school year preceding the first year of each biennium.
- (d) The amount of the allotments determined by the commissioner in this section is final and may not be appealed.
- (e) Allotment funds may be used to pay for:
 - (1) any approved uses outlined in Texas Education Code (TEC), §31.0211(c);
 - (2) formats of instructional materials that are fully accessible to students with disabilities;
 - (3) activities related to the local review and adoption of instructional materials; and
 - (4) software for analyzing the use and effectiveness of instructional materials.
- (f) Allotment funds may not be used to pay for:
 - (1) services for installation;
 - (2) the physical conduit that transmits data, such as cabling and wiring, or electricity;
 - (3) office and school supplies;
 - (4) items that are not directly related to student instruction, such as furniture, athletic equipment, extension cords, temporary contractors, or video surveillance equipment;
 - (5) travel expenses;
 - (6) equipment used for moving or storing instructional materials;
 - (7) instructional material that contains obscene or harmful content or would otherwise cause the school district to which the funds were allotted to be unable to submit the certification required under TEC, §31.11011(a)(1)(B); or
 - (8) instructional material that incorporates three-cueing in the phonics curriculum required under TEC, Chapter 28.
- (g) The allotments for each biennium will be made available for school district and open-enrollment charter school use through the state's online instructional materials ordering system as early as possible in the fiscal year preceding the beginning of the biennium for which the funds have been appropriated.
- (h) A school district or an open-enrollment charter school may access its allotment funds for an upcoming school year after submitting to the commissioner:
 - (1) certification that the school district or open-enrollment charter school has instructional materials that cover all the required Texas Essential Knowledge and Skills (TEKS), except those for physical education, as required by TEC, §31.1011;
 - (2) certification that the school district or open-enrollment charter school has used its allotment for only the allowable expenditures provided in subsection (e) of this section; and
 - (3) information regarding the instructional materials used by the district during the previous school year, including the cost of each material as required by TEC, §31.1012.
- (i) Upon completion of the requirements listed in subsection (h) of this section, school districts and open-enrollment charter schools may access their allotment funds by correctly providing all the information required in the state ordering system.
- (j) Information required in the state ordering system may include verification of TEKS coverage for certain disbursement requests.

§67.1003. Additional State Aid for State-Approved Instructional Materials.

- (a) The commissioner of education shall determine annually the amount of additional state aid for State Board of Education (SBOE)-approved instructional materials, as outlined in Texas Education Code (TEC), §48.307, for a school district or an open-enrollment charter school based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) student enrollment data from the fall snapshot collection of the current school year.
- (b) Before TSDS PEIMS student enrollment data from the fall snapshot collection of the current school year is available, a school district or an open-enrollment charter school will have an expected allotment amount that is based on 90% of the TSDS PEIMS student enrollment data from the fall snapshot collection of the previous school year.
- (c) The Texas School for the Blind and Visually Impaired and the Texas School for the Deaf qualify for this funding under TEC, §30.025 and §30.056, respectively, for funding purposes under TEC, §48.307.
- (d) Special purpose school districts authorized by the SBOE qualify for this funding. Texas Tech University K-12 and The University of Texas at Austin High School qualify for this funding under TEC, §48.307, for all free public education students. The University of Texas at Rio Grande Valley qualifies under TEC, §79.10(f). Texas A&M International University qualifies for this funding under TEC, §87.505(g). Lamar University qualifies for this funding under TEC, §96.707(k). The University of North Texas qualifies for this funding under TEC, §101.301(e)(3).
- (e) Windham School District qualifies for this funding under TEC, §19.007(b) and (e), for funding purposes under TEC, §48.307.
- (f) The Texas Juvenile Justice Department (TJJJ) and juvenile justice alternative education programs operated by TJJJ do not qualify for this funding under TEC, §48.307.
- (g) Funds from TEC, §48.307, will be made available for school district and open-enrollment charter school use through the state's online instructional materials ordering system as early as possible each year in the fiscal year for which the funds have been appropriated.
- (h) The Texas Education Agency (TEA) will make payment for any remaining balance for a school district's or an open-enrollment charter school's order under this section as the TEC, §48.307, funds become available.
- (i) A school district is entitled to the amount of state aid provided by subsection (a) of this section each school year, regardless of whether the district uses the amount during the school year for which the amount was provided.
- (j) Texas Government Code, Chapter 2251, does not apply to requisitions placed under this section, per TEC, §31.0215(e).
- (k) The additional state aid for SBOE-approved instructional materials outlined in TEC, §48.307, may be used to purchase:
 - (1) instructional material products placed on the list of approved materials outlined in TEC, §31.022, including any non-text components of the approved product, such as manipulative kits or digital licenses; or
 - (2) instructional material components from a product on the list of approved materials outlined in TEC, §31.022, only after an initial purchase of all components of the product.
- (l) SBOE-Approved Instructional Materials Allotment funds may not be used to purchase:
 - (1) instructional material or material components not on the list of approved instructional materials as outlined in TEC, §31.022;
 - (2) instructional material placed on the rejected list of instructional materials; or
 - (3) instructional material that promotes three-cueing as defined in TEC, §28.0062(a-1).
- (m) Subject to TEA approval, the commissioner may exempt, under TEC, §7.056, a school district or an open-enrollment charter school from an initial purchase of each component of an approved product outlined in

subsection (k)(2) of this section if the district or charter school can demonstrate that it already possesses an identical or nearly identical component for each student and/or teacher as indicated by the product design.

§67.1004. Additional State Aid for Open Education Resource Instructional Materials.

- (a) The commissioner of education shall determine the amount of the additional state aid for open education resource (OER) instructional materials for a school district or an open-enrollment charter school based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) student enrollment data from the fall snapshot collection of the current school year.
- (b) Before TSDS PEIMS student enrollment data from the fall snapshot collection of the current school year is available, a school district or an open-enrollment charter school will have an expected allotment amount that is based on 90% of the TSDS PEIMS student enrollment data from the fall snapshot collection of the previous school year.
- (c) The Texas School for the Blind and Visually Impaired and the Texas School for the Deaf qualify for this funding under TEC, §30.025 and §30.056, respectively, for funding purposes under TEC, §48.308.
- (d) Special purpose school districts authorized by the State Board of Education (SBOE) qualify for this funding. Texas Tech University K-12 and The University of Texas at Austin High School qualify for this funding under TEC, §48.308, for all free public education students. The University of Texas at Rio Grande Valley qualifies under TEC, §79.10(f). Texas A&M International University qualifies for this funding under TEC, §87.505(g). Lamar University qualifies for this funding under TEC, §96.707(k). The University of North Texas qualifies for this funding under TEC, §101.301(e)(3).
- (e) Windham School District qualifies for this funding under TEC, §19.007(b) and (e), for funding purposes under TEC, §48.308.
- (f) The Texas Juvenile Justice Department (TJJJ) and juvenile justice alternative education programs operated by TJJJ do not qualify for this funding under TEC, §48.308.
- (g) Funds may only be used for the costs incurred or for which the district is obligated to pay during the school year in which the aid is provided.
- (h) Requisitions for funding must be submitted in the online requisition and disbursement system required in TEC, §31.0212(e), before August 31 of the fiscal year in which the aid is provided.
- (i) The entitlements for each year will be made available for school district and open-enrollment charter school use through the state's online instructional materials ordering system as early as possible in the fiscal year for which the funds have been appropriated.
- (j) Texas Government Code, Chapter 2251, does not apply to requisitions placed under this section per TEC, §31.0125(e).
- (k) The additional state aid for OER instructional materials outlined in TEC, §48.308, may be used to purchase:
 - (1) OER instructional material made available under TEC, Chapter 31, Subchapter B-1, and placed on the list of approved materials outlined in TEC, §31.022, including any non-text components of the approved product, such as manipulative kits; and
 - (2) OER instructional material components made available under TEC, Chapter 31, Subchapter B-1, and placed on the list of approved materials outlined in TEC, §31.022, only after an initial purchase of all components of the product.
- (l) The additional state aid for OER instructional materials outlined in TEC, §48.308, may not be used to purchase or reimburse for:
 - (1) instructional material or material components not on the list of approved instructional materials as outlined in TEC, §31.022;
 - (2) instructional material placed on the rejected list of instructional materials;
 - (3) instructional material that promotes three-cueing as defined in TEC, §28.0062(a-1); or

- (4) printing of SBOE-approved OER material, which may be otherwise procured through a requisition in EMAT.
- (m) The commissioner may grant a waiver under TEC, §7.056, to exempt a school district or an open-enrollment charter school from an initial purchase of each component of an approved product outlined in subsection (k)(2) of this section if the district or charter school can demonstrate that it already possesses an identical or near-identical component for each student and/or teacher as indicated by the product design.