

The Texas Education Agency (TEA) proposes amendments to §§66.1309, 66.1311, and 66.1312, concerning the technology and instructional materials allotment. The proposed amendments would update terminology, provide clarifications, make technical edits, and remove outdated information.

BACKGROUND INFORMATION AND JUSTIFICATION: The rules in Chapter 66, Subchapter CC, implement Texas Education Code, §31.0211, which establishes the instructional materials and technology allotment and gives the commissioner rulemaking authority over the allotment. The proposed amendments would update the subchapter as follows.

The title of Chapter 66, Subchapter CC, would be updated to "Commissioner's Rules Concerning Instructional Materials and Technology Allotment" to align with the name of the allotment used in statute.

The proposed amendment to §66.1309, High Enrollment Growth Adjustment, would update references to the instructional materials and technology allotment.

The proposed amendment to §66.1311, Special Instructional Materials, would update language to refer to the federal Web Content Accessibility Guidelines (WCAG) generally. As the federal WCAG standards are updated, the amended rule language would refer to the WCAG standards applicable according to each instructional materials proclamation and not become outdated. In addition, the specific reference to the EMAT system would be replaced with a more general reference to the state ordering system.

The proposed amendment to §66.1312, Delayed Publisher Payment Option, would update references to the instructional materials and technology allotment for consistency.

FISCAL IMPACT: Kristen Hole, associate commissioner for 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. 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 create a new regulation; 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: Ms. Hole 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 updating the rules to add clarity to expectations related to WCAG compliance for adopted instructional materials. 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 August 20, 2021, and ends September 20, 2021. 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 August 20, 2021. 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 amendments are proposed under Texas Education Code (TEC), §31.0211, as amended by House Bill (HB) 1525 and HB 3261, 87th Texas Legislature, Regular Session, 2021, which authorizes the commissioner to adopt rules regarding the instructional materials allotment (IMA), 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 IMA is calculated; TEC, §31.0212, which requires the commissioner to adopt rules regarding the documentation required for requisitions and disbursement to be approved, rules regarding districts' online instructional materials ordering system accounts, and rules requiring school districts to submit to the commissioner the title and publication information for any materials the district purchases with its IMA; TEC, §31.0214, which authorizes the commissioner to adopt rules regarding high enrollment growth; TEC, §31.0215, which authorizes the commissioner to adopt rules regarding allotment purchases, including announcing to districts the amount of their allotments and delayed payment options; TEC, §31.0231, which requires the commissioner to adopt rules regarding the Commissioner's List of Instructional Materials, including electronic or other tools, models, and investigative materials for Kindergarten-Grade 5 science and Kindergarten-Grade 8 personal financial literacy, various requirements for the adoption, the criteria the materials must meet, coverage of the Texas Essential Knowledge and Skills, teacher training, accessibility standards, and allowed changes; 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 IMA; TEC, §31.076, which authorizes the commissioner to adopt rules regarding state-developed open-source instructional materials; and 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.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code (TEC), §§31.0211; 31.0212; 31.0214; 31.0215; 31.0231; 31.029; 31.031; 31.076; and 31.104.

<rule>

§66.1309. High Enrollment Growth Adjustment.

- (a) From the biennial instructional materials fund, the commissioner of education shall set aside an amount not to exceed \$10 million for each year of the biennium to make high-enrollment-growth adjustments for school districts and open-enrollment charter schools that experience the highest enrollment growth from the previous year.
- (b) High-enrollment-growth adjustments will be based on the difference between the school district's or open-enrollment charter school's percentage of enrollment growth and that of the state. Enrollment growth calculations will be determined each fiscal year based on fall Texas Student Data System Public Education Information Management System enrollment data.
- (c) The amount of the adjustment determined by the commissioner is final and may not be appealed.
- (d) If sufficient instructional materials funds are available, high-enrollment-growth adjustments will be granted once each fiscal year.

- (e) The per-student high-enrollment-growth adjustment granted in the second year of a biennium shall not exceed one-half of the per-student amount established as the biennial instructional materials and technology allotment.
- (f) Notwithstanding subsection (d) of this section, a school district or an open-enrollment charter school that experiences an unexpected growth of at least two percent due to a natural or man-made disaster or catastrophic event may apply to the commissioner for additional [~~instructional material~~] allotment [(IMA)] funding at any time during a fiscal year. Any additional funding will be dependent on the availability of funds.
- (g) Notwithstanding subsection (d) of this section, a school district or an open-enrollment charter school that experiences an unexpected growth in its bilingual population of at least 10 percent in any school year may apply to the commissioner for additional bilingual allotment [IMA] funding at any time during a fiscal year. Any additional funding will be dependent on the availability of funds.

§66.1311. Special Instructional Materials.

- (a) All laws and rules applying to instructional materials provided to students with no disabilities that are not in conflict with the Texas Education Code, §31.028, or this section shall apply to the distribution and control of special instructional materials.
- (b) Special instructional materials include braille, large-print, and audio books and any other formats designed specifically to provide equal access to students with disabilities.
- (c) Requisitions for special instructional materials shall be based on actual student enrollment but may include up to two copies per student if necessary to meet individual needs.
- (d) Special instructional materials are the property of the state. School districts and open-enrollment charter schools are responsible for replacing or reimbursing the state for lost, stolen, or damaged special instructional materials.
- (e) Publishers shall grant permission to the state to have adopted instructional materials converted into special instructional materials without penalty or royalty.
- (f) On or before the deadline specified in the schedule of adoption procedures, each publisher of newly adopted print instructional materials shall provide computerized files to the state as specified in the proclamation to be used for producing special instructional materials. All information contained in adopted instructional materials shall be included on the computerized files. Computerized files may be copied and distributed to school districts, upon request, for use with a student who requires the use of computerized instructional materials, pursuant to an individualized plan developed for the student under the Rehabilitation Act, §504, the Americans with Disabilities Act, or the Individuals with Disabilities Education Act.
- (g) Gifts of special instructional materials may be accepted by the commissioner of education and shall become state property. Gift materials may be shipped by Free Matter for the Blind and Other Physically Handicapped Persons to the Special Textbook Redistribution Center or other location designated by the TEA.
- (h) Adopted instructional materials needed by a Texas public school teacher with a print disability to carry out his or her instructional duties shall be furnished in the required format without cost. The materials are to be loaned to the public school districts as long as needed and are to be returned to the state when they are no longer needed.
- (i) Large-print instructional materials intended for student use must comply with the standards in the latest edition of the Manufacturing Standards and Specifications for Textbooks.
- (j) Adopted instructional materials in a specialized format that are requested by a parent with a print disability shall be furnished without cost by the state. Requests for electronic files will be filled by the TEA after the parent signs and the TEA receives a statement, through the appropriate school district, promising that the parent will safeguard the security of the files and observe all current copyright laws, including those that forbid reproduction of the files and their transfer to other parties. All special instructional materials and

electronic files that have been provided must be returned to the local school district at the end of the school year.

- (k) Adopted instructional materials that are not compliant with the technical standards of the Federal Rehabilitation Act, Section 508, or do not conform to the Web Content Accessibility Guidelines required in the proclamation [2.0, Level AA] will be removed from the state ordering [EMAT] system and will not be available for order through the TEA.
- (l) Producers that enter into a contract with the TEA for the production and distribution of special instructional materials shall provide them to students with disabilities at the same time other students in the same school district receive print instructional materials.

§66.1312. Delayed Publisher Payment Option.

- (a) A school district or an open-enrollment charter school may requisition and receive state-adopted instructional materials before instructional materials and technology allotment [~~IMA~~] funds for those materials are available.
- (b) The total cost of delayed-payment-option materials requisitioned by a school district or an open-enrollment charter school may not exceed 80% of the district's or charter school's expected allotment [IMA] for the subsequent biennium.
- (c) When a school district or an open-enrollment charter school submits a requisition for instructional materials under this section, the Texas Education Agency (TEA) will expend a district's or charter school's existing allotment [IMA] balance before applying the delayed payment option.
- (d) The 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 allotment [IMA] funds become available.
- (e) The TEA will prioritize payment for requisitions under this section over reimbursement of purchases made directly by a school district or an open-enrollment charter school.
- (f) Publishers may decline orders for which payments could be delayed. A publisher's decision to decline an order under this section shall affect all of that publisher's orders for which payments could be delayed. Publishers may not selectively decline individual orders or orders from individual school districts or open-enrollment charter schools.
- (g) Texas Government Code, Chapter 2251, does not apply to requisitions placed under this section.
- (h) Texas Education Code, §31.151, does apply to orders placed under this section.