

Chapter 66. State Adoption and Distribution of Instructional Materials

Statutory Authority: The provisions of this Chapter 66 issued under the Texas Education Code, §7.102(c) and Chapter 31, unless otherwise noted.

Subchapter A. General Provisions

§66.1. Scope of Rules.

The State Board of Education (SBOE) shall adopt lists of conforming and nonconforming instructional materials for use in the public schools of Texas according to the Texas Education Code, Chapter 31, and the requirements in this chapter. Instructional materials recommended as suitable for use in special populations, including bilingual education programs, shall be adopted according to the rules in this chapter for adopting regular instructional materials.

Source: The provisions of this §66.1 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706.

§66.4. Requirement for Registers.

- (a) A register shall be kept by the commissioner of education and appropriate staff of the Texas Education Agency (TEA) to record all personal contacts with publishers, their representatives, agents, authors, consultants, editors, depositories, or any other person who has received or expects to receive any money, thing of value, or financial benefit for an appearance; or contact regarding any instructional materials submitted and being considered for State Board of Education (SBOE) approval.
- (b) Publishers shall file with the commissioner of education, on or before a date specified in the schedule of adoption procedures, a register indicating all visits, meetings, or contacts with SBOE members, including the date, time, location, and purpose of the communication.

Source: The provisions of this §66.4 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.7. Manufacturing Standards and Specifications.

- (a) Instructional materials adopted by the State Board of Education (SBOE) shall comply with the standards in the latest edition of Manufacturing Standards and Specifications for Textbooks approved by the national Advisory Commission on Textbook Specifications. If it is determined that good cause exists, the commissioner of education may recommend that the SBOE grant an exception to this requirement.
- (b) If no standards exist for a particular media submitted for adoption, the instructional material is eligible for adoption.
- (c) A publisher shall file a statement certifying instructional materials submitted for consideration will meet minimum manufacturing standards if adopted. Each statement must be made on a form provided by the commissioner of education, signed by a company official, and filed on or before the deadline specified in the schedule of adoption procedures.
- (d) If, during the contract period, the commissioner of education determines that any adopted instructional materials have faulty manufacturing characteristics or are made of inferior materials, the materials shall be replaced by the publisher without cost to the state.

Source: The provisions of this §66.7 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 22, 2010, 35 TexReg 1454.

§66.10. Procedures Governing Violations of Statutes -- Administrative Penalties.

- (a) Complaints. An official complaint alleging a violation of the Texas Education Code, §31.151, must be filed with the commissioner of education. The commissioner may hold a formal or informal hearing in the case of an apparent violation of statute. Upon determining that a violation has occurred, the commissioner shall report his or her findings to the State Board of Education (SBOE).
- (b) Administrative penalties. Under the Texas Education Code, §31.151(b), the SBOE may impose a reasonable administrative penalty against a publisher or manufacturer found in violation of a provision of §31.151(a). An administrative penalty shall be assessed only after the SBOE has granted the publisher or manufacturer a hearing in accordance with the Texas Education Code, §31.151, and the Administrative Procedure Act.
- (c) Penalties for failure to correct factual errors.
 - (1) A factual error shall be defined as a verified error of fact or any error that would interfere with student learning. The context, including the intended student audience and grade level appropriateness, shall be considered.
 - (2) A factual error repeated in a single item or contained in both the student and teacher components of instructional material shall be counted once for the purpose of determining penalties.
 - (3) A penalty may be assessed for failure to correct a factual error identified in the list of corrections submitted by a publisher under §66.54(h) of this title (relating to Samples) or for failure to correct a factual error identified in the report of the commissioner of education under §66.63(d) of this title (relating to Report of the Commissioner of Education) and required by the SBOE. The publisher shall provide an errata sheet approved by the commissioner of education with each teacher component of an adopted title.
 - (4) A penalty not to exceed \$5,000 may be assessed for each factual error identified after the deadline established in the proclamation by which publishers must have submitted corrected samples of adopted instructional materials.
- (d) Categories of factual errors.
 - (1) Category 1. A factual error in a student component that interferes with student learning.
 - (2) Category 2. A factual error in a teacher component only.
 - (3) Category 3. A factual error in either a student or teacher component that reviewers do not consider serious.
- (e) First-year penalties. The base and per-book penalties shall be assessed as follows for failure to correct factual errors described in subsections (c) and (d) of this section.
 - (1) Category 1 error. \$25,000 base plus 1% of sales.
 - (2) Category 2 error. \$15,000 base plus 1% of sales.
 - (3) Category 3 error. \$5,000 base plus 1% of sales.
- (f) Second-year penalties. The base and per-book penalties shall be assessed as follows if a publisher, after being penalized for failure to correct factual errors described in subsections (c)-(e) of this section, repeats the violation in the subsequent adoption.
 - (1) Category 1 error. \$30,000 base plus 1% of sales.
 - (2) Category 2 error. \$20,000 base plus 1% of sales.
 - (3) Category 3 error. \$10,000 base plus 1% of sales.
- (g) Penalties for failure to deliver adopted instructional materials, including teacher components, in a timely manner or in the quantities the school district or open-enrollment charter school is eligible to receive as specified in the publisher's bid. The SBOE may assess penalties as allowed by law against publishers who

fail to deliver adopted instructional materials, including teacher components specified by §66.51(a)(3) of this title (relating to Instructional Materials Purchased by the State), in accordance with provisions in the contracts.

- (h) Penalties for selling textbooks with factual errors. The SBOE may assess administrative penalties in accordance with the Texas Education Code, §31.151, against a seller of textbooks who sells textbooks with factual errors.
- (i) Penalties for failure to maintain websites in state-adopted products. The SBOE may assess administrative penalties against a publisher who fails to maintain a website or provide a suitable alternative for conveying the information in the website, or who otherwise fails to meet the requirements of this subsection. Where applicable, the publisher shall monitor, update, and maintain any in-house and third party electronic, web-based, or online products furnished as part of the instructional materials specified in State of Texas Official Publisher Contract for the period determined by the SBOE. If, at any time during the contract period, the commissioner of education determines in a hearing that electronic, web-based, or online instructional materials furnished and supplied under the terms of a contract have faulty manufacturing characteristics or display dated or inferior information, the instructional materials or information shall be replaced with complying materials or information by the publishers without cost to the state. The publisher further agrees that electronic, web-based or online instructional materials listed in a State of Texas Official Publishers Contract will not be altered in any way that would remove content from the curriculum, or that would change content in the curriculum without prior SBOE approval. The publisher will not allow advertising of any type to be placed in or associated with the materials. The publisher will not add any Internet links to the materials without the approval of the commissioner of education, will not redirect any user accessing the web-based or online instructional materials to other Internet or electronic sites, and will not collect any information about the user or computer accessing the materials that would allow determination of personal information, including email addresses. This section applies only to a website that is a component used to address Texas Essential Knowledge and Skills as part of a state-adopted product.
- (j) State Board of Education discretion regarding penalties. The SBOE may, if circumstances warrant, waive or vary penalties contained in this section for first or subsequent violations based on the seriousness of the violation, any history of a previous violation or violations, the amount necessary to deter a future violation, any effort to correct the violation, and any other matter justice requires.
- (k) Payment of fines. Each affected publisher shall issue credit to the Texas Education Agency (TEA) in the amount of any penalty imposed under the provisions of this section. When circumstances warrant it, TEA is authorized to require payment of penalties in cash within ten days. Each affected publisher who pays a fine for failure to deliver adopted instructional materials in a timely manner will not be subject to the liquidated damages provision in the publisher's contract for the same failure to deliver adopted instructional materials in a timely manner.

Statutory Authority: The provisions of this §66.10 issued under the Texas Education Code, §§7.102(c), 31.003, and 31.151.

Source: The provisions of this §66.10 adopted to be effective September 1, 1996, 21 TexReg 7236; amended to be effective August 15, 1999, 24 TexReg 5699; amended to be effective March 4, 2001, 26 TexReg 1706; amended to be effective February 7, 2002, 27 TexReg 746; amended to be effective October 12, 2006, 31 TexReg 8352; amended to be effective December 25, 2007, 32 TexReg 9611; amended to be effective February 22, 2010, 35 TexReg 1454.