

ATTACHMENT I

Statutory Citations Relating to Proposed Revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials Subchapter A, General Provisions, Subchapter B, State Adoption of Instructional Materials, and Subchapter C, Local Operations

Texas Education Code, §7.102, State Board of Education Powers and Duties (excerpt):

- (c)(23) The board shall adopt and purchase or license instructional materials as provided by Chapter 31 and adopt rules required by that chapter.

Texas Education Code, §31.003, Rules:

The State Board of Education may adopt rules, consistent with this chapter, for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

Texas Education Code, §31.004, Certification of Provision of Instructional Materials:

- (a) Each school district and open-enrollment charter school shall annually certify to the State Board of Education and the commissioner that, for each subject in the required curriculum under Section 28.002, other than physical education, and each grade level, the district provides each student with instructional materials that cover all elements of the essential knowledge and skills adopted by the State Board of Education for that subject and grade level.
- (b) To determine whether each student has instructional materials that cover all elements of the essential knowledge and skills as required by Subsection (a), a school district or open-enrollment charter school may consider:
 - (1) instructional materials adopted by the State Board of Education;
 - (2) materials adopted or purchased by the commissioner under Section 31.0231 or Subchapter B-1;
 - (3) open-source instructional materials submitted by eligible institutions and adopted by the State Board of Education under Section 31.0241;
 - (4) open-source instructional materials made available by other public schools; and
 - (5) instructional materials developed or purchased by the school district or open-enrollment charter school.

Texas Education Code, §31.005, Funding for Open-Enrollment Charter Schools:

An open-enrollment charter school is entitled to the instructional materials allotment under this chapter and is subject to this chapter as if the school were a school district.

Texas Education Code, §31.022, Instructional Materials Review and Adoption:

- (a) The State Board of Education shall adopt a review and adoption cycle for instructional materials for elementary grade levels, including prekindergarten, and secondary grade levels, for each subject in the required curriculum under Section 28.002. In adopting the cycle, the board:
 - (1) is not required to review and adopt instructional materials for all grade levels in a single year; and
 - (2) shall give priority to instructional materials in the following subjects:

- (A) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised and for which assessment instruments are required under Subchapter B, Chapter 39, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);
 - (B) foundation curriculum subjects for which the essential knowledge and skills have been substantially revised, including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n);
 - (C) foundation curriculum subjects not described by Paragraph (A) or (B), including career and technology courses that satisfy foundation curriculum requirements as provided by Section 28.002(n); and
 - (D) enrichment curriculum subjects.
- (b) The board shall organize the cycle for subjects in the foundation curriculum so that not more than one-fourth of the instructional materials for subjects in the foundation curriculum are reviewed each biennium. The board shall adopt rules to provide for a full and complete investigation of instructional materials for each subject in the foundation curriculum every eight years. The adoption of instructional materials for a subject in the foundation curriculum may be extended beyond the eight-year period only if the content of instructional materials for a subject is sufficiently current.
- (b-1) [Expired.]
- (c) The board shall adopt rules to provide for a full and complete investigation of instructional materials for each subject in the enrichment curriculum on a cycle the board considers appropriate.
- (d) At least 12 months before the beginning of the school year for which instructional materials for a particular subject and grade level will be adopted under the review and adoption cycle, the board shall publish notice of the review and adoption cycle for those instructional materials. A request for production must allow submission of open-source instructional materials that are available for use by the state without charge on the same basis as instructional materials offered for sale.
- (d-1) **[2 Versions: As added by Acts 2011, 82nd Leg., ch. 1210]** A notice published under Subsection (d) must state that a publisher of an adopted textbook for a grade level other than prekindergarten must submit an electronic sample of the textbook as required by Sections 31.027(a) and (b) and may not submit a print sample copy.
- (d-1) **[2 Versions: As added by Acts 2011, 82nd Leg., 1st C.S., ch.6]** A notice published under Subsection (d) must state that a publisher of adopted instructional materials for a grade level other than prekindergarten must submit an electronic sample of the instructional materials as required by Sections 31.027(a) and (b) and may not submit a print sample copy.
- (e) The board shall designate a request for production of instructional materials in a subject area and grade level by the school year in which the instructional materials are intended to be made available in classrooms and not by the school year in which the board makes the request for production.
- (f) The board shall amend any request for production issued for the purchase of instructional materials to conform to the instructional materials funding levels provided by the General Appropriations Act for the year of implementation.

Texas Education Code, §31.0221, Midcycle Review and Adoption of Instructional Materials:

- (a) The State Board of Education shall adopt rules for the midcycle review and adoption of instructional material for a subject for which instructional materials are not currently under review by the board under Section 31.022. The rules must require:
 - (1) the publisher of the instructional material to pay a fee to the board to cover the cost of the midcycle review and adoption of the instructional material;
 - (2) the publisher of the instructional material to enter into a contract with the board concerning the instructional material for a term that ends at the same time as any contract entered into by the board for other instructional materials for the same subject and grade level; and
 - (3) a commitment from the publisher to provide the instructional material to school districts in the manner specified by the publisher, which may include:
 - (A) providing the instructional material to any district in a regional education service center area identified by the publisher; or
 - (B) providing a certain maximum number of instructional materials specified by the publisher.
- (b) Sections 31.023 and 31.024 apply to instructional material adopted under this section. Section 31.027 does not apply to instructional material adopted under this section.

Texas Education Code, §31.023, Instructional Material List:

- (a) For each subject and grade level, the State Board of Education shall adopt a list of instructional materials. The list includes each instructional material submitted for the subject and grade level that meets applicable physical specifications adopted by the State Board of Education and contains material covering at least half of the elements of the essential knowledge and skills of the subject and grade level in the student version of the instructional material, as well as in the teacher version of the instructional material, as determined by the State Board of Education under Section 28.002 and adopted under Section 31.024.
- (a-1) The State Board of Education shall determine the percentage of the elements of the essential knowledge and skills of the subject and grade level covered by each instructional material submitted. The board's determination under this subsection is final.
- (b) Each instructional material on the list must be free from factual errors.

Texas Education Code, §31.024, Adoption by State Board of Education:

- (a) By majority vote, the State Board of Education shall:
 - (1) place each submitted instructional material on the list adopted under Section 31.023; or
 - (2) reject instructional material submitted for placement on that list.
- (b) Not later than December 1 of the year preceding the school year for which the instructional materials for a particular subject and grade level will be purchased under the cycle adopted by the board under Section 31.022, the board shall provide the list of adopted instructional materials to each school district.

Texas Education Code, §31.0241, Adoption of Open-Source Instructional Materials:

- (a) In this section, "eligible institution" means:
 - (1) a public institution of higher education that is designated as a research university or emerging research university under the higher education coordinating board's accountability system, or a private university located in this state that is a member of the Association of American Universities; or
 - (2) a public technical institute, as defined by Section 61.003.
- (b) The State Board of Education shall place open-source instructional material for a secondary-level course submitted for adoption by an eligible institution on the list adopted under Section 31.023 if:
 - (1) the instructional material is written, compiled, or edited primarily by faculty of the eligible institution who specialize in the subject area of the instructional material;
 - (2) the eligible institution identifies each contributing author;
 - (3) the appropriate department of the eligible institution certifies the instructional material for accuracy; and
 - (4) the eligible institution determines that the instructional material qualifies for placement on the list based on the extent to which the instructional material covers the essential knowledge and skills identified under Section 28.002 for the subject for which the instructional material is written and certifies that:
 - (A) for instructional material for a senior-level course, a student who successfully completes a course based on the instructional material will be prepared, without remediation, for entry into the eligible institution's freshman-level course in that subject; or
 - (B) for instructional material for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the instructional material will be prepared for entry into the senior-level course.
- (c) This section does not prohibit an eligible institution from submitting instructional material for placement on the list adopted under Section 31.023 through any other adoption process provided by this chapter.

Texas Education Code, §31.0242, Review of Open-Source Instructional Material:

Not later than the 90th day after the date open-source instructional material is submitted as provided by Section 31.0241, the State Board of Education may review the instructional material. The board shall:

- (1) post with the list adopted under Section 31.023 comments made by the board regarding the open-source instructional material placed on the list; and
- (2) distribute board comments to school districts.

Texas Education Code, §31.026, Contract; Price:

- (a) The State Board of Education shall execute a contract for the purchase or licensing of each adopted instructional material.

- (b) A contract must require the publisher to provide the number of instructional materials required by school districts in this state for the term of the contract, which must coincide with the board's adoption cycle.
- (c) As applicable, a contract must provide for the purchase or licensing of instructional material at a specific price, which may not exceed the lowest price paid by any other state or any school or school district. The price must be fixed for the term of the contract.
- (d) This section does not apply to open-source instructional material.

Texas Education Code, §31.0261, Contracts for Printing of Open-Source Instructional Materials:

The State Board of Education may execute a contract for the printing of open-source instructional materials placed on the list adopted under Section 31.023. The contract must allow a school district to requisition printed copies of open-source instructional materials as provided by Section 31.103.

Texas Education Code, §31.027, Information to School Districts; Electronic Sample:

- (a) A publisher shall provide each school district and open-enrollment charter school with information that fully describes each of the publisher's submitted instructional materials. On request of a school district, a publisher shall provide an electronic sample of submitted instructional material.
- (b) A publisher shall provide an electronic sample of each submitted instructional material to be maintained at each regional education service center.
- (c) This section does not apply to open-source instructional material.

Texas Education Code, §31.030, Used Instructional Materials:

The State Board of Education shall adopt rules to ensure that used instructional materials sold to school districts and open-enrollment charter schools are not sample copies that contain factual errors. The rules may provide for the imposition of an administrative penalty in accordance with Section 31.151 against a seller of used instructional materials who knowingly violates this section.

Texas Education Code, §31.035, Supplemental Instructional Materials:

- (a) Notwithstanding any other provision of this subchapter, the State Board of Education may adopt supplemental instructional materials that are not on the list adopted under Section 31.023. The State Board of Education may adopt supplemental instructional material under this section only if the instructional material:
 - (1) contains material covering one or more primary focal points or primary topics of a subject in the required curriculum under Section 28.002, as determined by the State Board of Education;
 - (2) is not designed to serve as the sole instructional material for a full course;
 - (3) meets applicable physical specifications adopted by the State Board of Education; and
 - (4) is free from factual errors.
- (b) The State Board of Education shall identify the essential knowledge and skills identified under Section 28.002 that are covered by supplemental instructional material adopted by the board under this section.

- (c) Supplemental instructional material is subject to the review and adoption cycle provisions, including the midcycle review and adoption cycle provisions, of this subchapter.
- (d) A school district or open-enrollment charter school may requisition supplemental instructional material adopted under this section only if the district or school requisitions the supplemental instructional material along with other supplemental instructional materials or instructional materials on the list adopted under Section 31.023 that in combination cover each element of the essential knowledge and skills for the course for which the district or school is requisitioning the supplemental instructional materials.
- (e) [Repealed.]
- (f) A school district or open-enrollment charter school that requisitions supplemental instructional materials shall certify to the agency that the supplemental instructional materials, in combination with any other instructional materials or supplemental instructional materials used by the district or school, cover the essential knowledge and skills identified under Section 28.002 by the State Board of Education for the subject and grade level for which the district or school is requisitioning the supplemental instructional materials.
- (g) [Repealed.]

Texas Education Code, §31.101, Selection and Purchase of Instructional Materials by School Districts:

- (a) Each year, during a period established by the State Board of Education, the board of trustees of each school district and the governing body of each open-enrollment charter school shall:
 - (1) for a subject in the foundation curriculum, notify the State Board of Education of the instructional materials selected by the board of trustees or governing body for the following school year from the instructional materials list, including the list adopted under Section 31.0231; or
 - (2) for a subject in the enrichment curriculum:
 - (A) notify the State Board of Education of each instructional material selected by the board of trustees or governing body for the following school year from the instructional materials list, including the list adopted under Section 31.0231; or
 - (B) notify the State Board of Education that the board of trustees or governing body has selected instructional material that is not on the list.
- (b) [Repealed.]
- (b-1) [Repealed.]
- (c) [Repealed.]
- (c-1) [Repealed.]
- (d) For instructional material that is not on the list, a school district or open-enrollment charter school must use the instructional material for the period of the review and adoption cycle the State Board of Education has established for the subject and grade level for which the instructional material is used.
- (e) A school district or open-enrollment charter school that selects subscription-based instructional material on the list adopted under Section 31.023 or electronic instructional material on the list adopted by the commissioner under Section 31.0231 may cancel the subscription and subscribe to new instructional material on the list adopted under Section 31.023 or electronic instructional

material on the list adopted by the commissioner under Section 31.0231 before the end of the state contract period under Section 31.026 if:

- (1) the district or school has used the instructional material for at least one school year; and
 - (2) the agency approves the change based on a written request to the agency by the district or school that specifies the reasons for changing the instructional material used by the district or school.
- (f) The commissioner shall maintain an online requisition system for school districts to requisition instructional materials to be purchased with the district's instructional materials allotment.

Texas Education Code, §31.103, Instructional Material Requisitions:

- (a) [Repealed.]
- (b) A school district or open-enrollment charter school shall make a requisition for instructional material using the online requisition program maintained by the commissioner not later than June 1 of each year. The publisher or manufacturer shall fill a requisition approved by the agency.
- (c) In making a requisition under this section, a school district or open-enrollment charter school may requisition instructional materials on the list adopted under Section 31.023 for grades above the grade level in which a student is enrolled.
- (d) A school district or open-enrollment charter school that selects open-source instructional material shall requisition a sufficient number of printed copies for use by students unable to access the instructional material electronically unless the district or school provides to each student:
 - (1) electronic access to the instructional material at no cost to the student; or
 - (2) printed copies of the portion of the instructional material that will be used in the course.
- (e) [Repealed.]

Texas Education Code, §31.104, Distribution and Handling:

- (a) The board of trustees of a school district or the governing body of an open-enrollment charter school may delegate to an employee the authority to requisition, distribute, and manage the inventory of instructional materials in a manner consistent with this chapter and rules adopted under this chapter.
- (b) A school district or open-enrollment charter school may order replacements for instructional materials that have been lost or damaged directly from the publisher of the instructional materials or any source for a printed copy of open-source instructional material.
- (c) Except as provided by Subsection (g), a student must return all instructional materials to the teacher at the end of the school year or when the student withdraws from school.
- (d) Each student, or the student's parent or guardian, is responsible for all instructional materials and technological equipment not returned in an acceptable condition by the student. A student who fails to return in an acceptable condition all instructional materials and technological equipment forfeits the right to free instructional materials and technological equipment until all instructional materials and technological equipment previously issued but not returned in an acceptable condition are paid for by the student, parent, or guardian. As provided by policy of the board of trustees or governing body, a school district or open-enrollment charter school may waive or reduce the payment requirement if the student is from a low-income family. The district or school shall allow the student to use instructional materials and technological equipment at school during each school day. If instructional materials or technological equipment is not returned in an

acceptable condition or paid for, the district or school may withhold the student's records. A district or school may not, under this subsection, prevent a student from graduating, participating in a graduation ceremony, or receiving a diploma. The commissioner by rule shall adopt criteria for determining whether instructional materials and technological equipment are returned in an acceptable condition.

- (e) The board of trustees of a school district may not require an employee of the district who acts in good faith to pay for instructional materials or technological equipment that is damaged, stolen, misplaced, or not returned. A school district employee may not waive this provision by contract or any other means, except that a district may enter into a written agreement with a school employee whereby the employee assumes financial responsibility for electronic instructional material or technological equipment usage off school property or outside of a school-sponsored event in consideration for the ability of the school employee to use the electronic instructional material or technological equipment for personal business. Such a written agreement shall be separate from the employee's contract of employment, if applicable, and shall clearly inform the employee of the amount of the financial responsibility and advise the employee to consider obtaining appropriate insurance. An employee may not be required to agree to such an agreement as a condition of employment.
- (f) [Blank.]
- (g) At the end of the school year for which open-source instructional material that a school district or open-enrollment charter school does not intend to use for another student is distributed, the printed copy of the open-source instructional material becomes the property of the student to whom it is distributed.
- (h) This section does not apply to an electronic copy of open-source instructional material.

Texas Education Code, §31.151, Duties of Publishers and Manufacturers:

- (a) A publisher or manufacturer of instructional materials:
 - (1) shall furnish any instructional material the publisher or manufacturer offers in this state at a price that does not exceed the lowest price at which the publisher offers that instructional material for adoption or sale to any state, public school, or school district in the United States;
 - (2) shall automatically reduce the price of instructional material sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;
 - (3) shall provide any instructional material or ancillary item free of charge in this state to the same extent that the publisher or manufacturer provides the instructional material or ancillary item free of charge to any state, public school, or school district in the United States;
 - (4) shall guarantee that each copy of instructional material sold in this state is at least equal in quality to copies of that instructional material sold elsewhere in the United States and is free from factual error;
 - (5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in instructional materials or enter into any understanding or combination to control prices or restrict competition in the sale of instructional materials for use in this state;
 - (6) shall deliver instructional materials to a school district or open-enrollment charter school;

- (7) shall, at the time an order for instructional materials is acknowledged, provide to school districts or open-enrollment charter schools an accurate shipping date for instructional materials that are back-ordered;
 - (8) shall guarantee delivery of instructional materials at least 10 business days before the opening day of school of the year for which the instructional materials are ordered if the instructional materials are ordered by a date specified in the sales contract; and
 - (9) shall submit to the State Board of Education an affidavit certifying any instructional material the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.
- (b) The State Board of Education may impose a reasonable administrative penalty against a publisher or manufacturer who knowingly violates Subsection (a). The board shall provide for a hearing to be held to determine whether a penalty is to be imposed and, if so, the amount of the penalty. The board shall base the amount of the penalty on:
- (1) the seriousness of the violation;
 - (2) any history of a previous violation;
 - (3) the amount necessary to deter a future violation;
 - (4) any effort to correct the violation; and
 - (5) any other matter justice requires.
- (c) A hearing under Subsection (b) shall be held according to rules adopted by the State Board of Education.
- (d) A penalty collected under this section shall be deposited to the credit of the state instructional materials fund.
- (e) An eligible institution, as defined by Section 31.0241(a), that offers open-source instructional materials under Section 31.0241 is not a publisher or manufacturer for purposes of this section.