

Chapter 66. State Adoption and Distribution of Instructional Materials
**Subchapter CC. Commissioner's Rules Concerning Instructional Materials and
Technology Allotment**

§66.1307. Technology and Instructional Materials Allotment.

- (a) The commissioner of education shall determine the amount of the technology and instructional materials 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 allotment determined by the commissioner is final and may not be appealed.
- (e) Each school district's or open-enrollment charter school's allotment funds must be expended according to the following priorities established in the Texas Education Code (TEC), §31.0211:
 - (1) first, instructional materials necessary to permit the school district or open-enrollment charter school to certify that the school district or open-enrollment charter school has instructional materials that cover all elements of the essential knowledge and skills of the required curriculum, other than physical education, for each grade level as required by the TEC, §28.002; and
 - (2) then, any other instructional materials or allowed technological equipment.
- (f) Maintaining the priorities provided in subsection (e) of this section, the allotment funds may be used to pay for:
 - (1) instructional materials on the list adopted by the commissioner under the TEC, §31.0231;
 - (2) instructional materials on the list adopted by the State Board of Education under the TEC, §31.024;
 - (3) non-adopted instructional materials;
 - (4) consumable instructional materials;
 - (5) instructional materials for use in bilingual education classes, as provided by the TEC, §31.029;
 - (6) versions of non-adopted instructional materials that are fully accessible to students with disabilities;
 - (7) instructional materials for use in college preparatory courses under the TEC, §28.014, as provided by the TEC, §31.031;
 - (8) supplemental instructional materials, as provided by the TEC, §31.035;
 - (9) state-developed open-source instructional materials, as provided by the TEC, Chapter 31, Subchapter B-1;
 - (10) instructional materials and technological equipment under any continuing contracts of the school district or open-enrollment charter school in effect on September 1, 2011;
 - (11) activities related to the local review and adoption of instructional materials;
 - (12) technological equipment that contributes to student learning, including equipment that supports the use of instructional materials;

- (13) training educational personnel directly involved in student learning in the appropriate use of instructional materials;
 - (14) providing access to technological equipment for instructional use;
 - (15) the salary and other expenses of an employee who provides technical support for the use of technological equipment directly involved in student learning;
 - (16) inventory software or systems for storing, managing, and accessing instructional materials; and
 - (17) software for analyzing the use and effectiveness of instructional materials.
- (g) The 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; or
 - (6) equipment used for moving or storing instructional materials.
- (h) 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 (EMAT) as early as possible in the fiscal year preceding the beginning of the biennium for which the funds have been appropriated.
- (i) A school district or an open-enrollment charter school may access its allotment funds for any upcoming school year upon completion of all of the following:
- (1) submission to the commissioner certification that:
 - (A) 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 the TEC, §31.004; and
 - (B) the school district or open-enrollment charter school has used its allotment for only the allowable expenditures provided in subsection (f) of this section; and
 - (2) preparation by the agency of EMAT for the new school year with the new allotment amounts.
- (j) Upon completion of the requirements listed in subsection (i) of this section, school districts and open-enrollment charter schools may access their allotment funds by correctly providing all the information required in EMAT.
- (k) Information required in EMAT may include verification of TEKS coverage for certain disbursement requests.

Statutory Authority: The provisions of this §66.1307 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1307 adopted to be effective July 23, 2012, 37 TexReg 5413; amended to be effective May 12, 2014, 39 TexReg 3704; amended to be effective May 8, 2017, 42 TexReg 2405; amended to be effective February 6, 2020, 45 TexReg 892.

§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 allotment 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 funding at any time during a fiscal year. Any additional funding will be dependent on the availability of funds.

Statutory Authority: The provisions of this §66.1309 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1309 adopted to be effective May 8, 2017, 42 TexReg 2405; amended to be effective November 2, 2021, 46 TexReg .

§66.1310. Acceptable Condition of Instructional Materials and Technological Equipment.

- (a) Printed instructional materials are considered to be in acceptable condition if:
 - (1) the cover, binding, pages, spine, and all integral components of the instructional materials are wholly intact and the instructional materials are fully usable by students; and
 - (2) no component of the instructional materials is soiled, torn, or damaged (whether intentionally or by lack of appropriate care) to the extent that any portion of the content is too disfigured or obscured to be fully accessible to students.
- (b) Electronic instructional materials are considered to be in acceptable condition if:
 - (1) all components or applications that are a part of the electronic instructional materials are returned;
 - (2) the electronic instructional materials perform as they did when they were new;
 - (3) the electronic instructional materials do not contain computer code (e.g., bug, virus, worm, or similar malicious software) that has been designed to self-replicate, damage, change, or otherwise hinder the performance of any computer's memory, file system, or software; and
 - (4) the electronic instructional materials have not been installed with plug-ins, snap-ins, or add-ins without the prior approval of the school district or open-enrollment charter school.
- (c) Technological equipment is considered to be in acceptable condition if:
 - (1) the equipment is returned with the software and hardware in their original condition unless the school district or open-enrollment charter school authorized changes; and
 - (2) the physical condition of the equipment is fully usable as it was originally intended to be used.

Statutory Authority: The provisions of this §66.1310 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1310 adopted to be effective May 8, 2017, 42 TexReg 2405.

§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 will be removed from the state ordering 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.

Statutory Authority: The provisions of this §66.1311 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1311 adopted to be effective July 23, 2012, 37 TexReg 5413; amended to be effective May 12, 2014, 39 TexReg 3704; amended to be effective May 8, 2017, 42 TexReg 2405; amended to be effective November 2, 2021, 46 TexReg 7404.

§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 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 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 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 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.

Statutory Authority: The provisions of this §66.1312 issued under the Texas Education Code, §§31.0211, 31.0212, 31.0214, 31.0215, 31.0231, 31.029, 31.031, 31.076, and 31.104.

Source: The provisions of this §66.1312 adopted to be effective May 8, 2017, 42 TexReg 2405; amended to be effective November 2, 2021, 46 TexReg 7404.