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Members of the State Board of Education
W. B. Travis State Office Building
1701 N. Congress Avenue
Austin, Texas 78701

Dear Members:

The Association of American Publishers (AAP) appreciates the opportunity to provide input to proposed rule changes to 19 TAC, Chapter 66, Adoption and Distribution of Instructional Materials. It is our goal to assist in developing rules that are more consistent with the changes envisioned by the passage of Senate Bill 6 (SB 6).

The current rules are reflective of the highly regulated textbook review and adoption system, written when school districts had fewer choices than they now have. The rules were developed as an assurance that instructional materials covered the curriculum standards.

SB 6, however, created a *deregulated* environment by changing the economic foundation of the state adoption system. The Proposed Revisions to 19 TAC Chapter 66 are intended to conform to the State Board of Education's rules governing the state adoption of instructional materials to SB 6. While the Proposed Revisions appear to accomplish the limited goal of bringing the Chapter 66 rules into technical conformity with the new law, they do not adequately address the far-reaching implications of SB 6, which we believe demands a more comprehensive and strategic review.

SB 6, which became law in 2011, fundamentally alters the way instructional materials are funded and purchased in Texas. State funds that had formerly been appropriated to TEA for purchase of state-adopted instructional materials on behalf of school districts are now allotted to the districts in the form of an Instructional Materials Allotment (IMA), and districts are free to use those funds for, among other things, the purchase of non-state-adopted as well as state-adopted instructional materials.

SB 6 transforms the dynamics of the Texas state adoption market, for school districts and publishers alike, in profound ways. For example:

- As districts inevitably elect to use at least a portion of IMA funds for things other than state-adopted instructional materials, the market for state-adopted materials will shrink; this in turn will influence publishers' decisions about whether to participate in adoptions and how much to invest in development of Texas-specific products.

- Greater flexibility with respect to such things as pricing and payment models, opportunities for product customization, the ability to bundle services and technology, etc. will sometimes make it more attractive, for districts as well as for publishers, to do business outside the confines of the state-adoption process.
- To the extent costly adoption requirements are not streamlined or eliminated, going “off list” could in many cases be more profitable for publishers and provide superior value for districts.
- School districts may be reluctant to purchase materials for which they have not seen print samples, which under SB 6 are strictly prohibited for state-adopted materials. No such prohibition applies to non-state-adopted materials purchased with IMA funds.

The Texas state instructional materials review and adoption process affords many benefits to school districts. Historically, it has provided an economic incentive for publishers to invest in development of the highest quality programs for Texas and to time the introduction of product innovations to coincide with Texas adoptions. Districts can be confident that state-adopted instructional materials have been thoroughly vetted for accuracy and alignment to the Texas Essential Knowledge and Skills (TEKS) and thus support students’ performance on state assessments and progress towards academic goals. Contracts entered with the state guarantee the availability of adopted materials and pricing stability for the life of the adoption and ensure that the smallest district receives identical value to the largest.

At the same time, the adoption process imposes requirements and restrictions that unnecessarily drive up costs, raise barriers to entry, contribute to investment risk, and limit the ability of publishers to respond creatively and flexibly to the needs of school districts. These requirements and restrictions hamstringing all participants in the adoption to some degree and, in the post-SB 6 era, will present considerable incentives for districts and publishers to do business “off list” and outside the confines of the adoption. Without significant easing of requirements and greater flexibility, the state adoption in Texas will become an increasingly unappealing alternative, for all concerned, among the various options now available under SB 6.

The Chapter 66 rules were crafted in a different era, under an entirely different legislative construct. They are obsolete. For the Texas state adoption to remain viable and relevant, the rules will require far more than technical cleanup. The rules governing the adoption need to undergo a thorough rethinking and overhaul, reflecting the new reality of SB 6. Some of the areas we recommend for consideration include the following:

1. Relaxation of requirements regarding coverage of TEKS, including elimination of arbitrary requirement that each student expectation be addressed at least three times.
2. Unlimited flexibility with respect to ancillary offerings and bundling of hardware, services, etc.
3. Unlimited flexibility with respect to product formats and configuration and pricing models, including subscriptions, leasing, and similar arrangements.
4. Allowing sufficient time to develop new products for submission, even if it means compressing the adoption review timeline. As a non-Common Core state, Texas will require highly differentiated materials in key subjects, and this will contribute to the time and investment needed to respond to Texas adoptions.

5. Streamlining of the “errors” and editorial corrections process, which currently requires reporting of every editorial change, no matter how minor, in every component where that change occurs, a costly and time-consuming exercise for both publishers and TEA staff. Routine editorial changes and corrections, which typically are voluminous, should be treated differently from identified factual errors that affect student learning.
6. Reconsideration of the penalties for factual errors, which can result in very large fines for inconsequential errors. Competitive market forces and media scrutiny provide strong incentives to detect and correct factual inaccuracies.
7. Conditioning delivery deadlines and penalties on timely ordering by districts. Inventory forecasting will be extremely difficult given the options available to districts under SB 6, and, since there is no market for Texas-specific materials outside of Texas, a miscalculation of demand can be devastatingly costly.
8. Clarifying adoption review procedures to ensure objectivity and consistency. Program evaluations should not hinge on the makeup of a particular review panel or the idiosyncrasies of an individual reviewer.

In addition to streamlining the state adoption process, it is also important that the protections afforded to school districts under Chapter 66 be extended, to the full extent possible, to all purchases of goods and services made with IMA funds. Providers who elect to bypass the state adoption process should be subject to the same requirements with respect to accuracy and timely delivery, for example, and to the same penalties associated with those requirements. This will extend valuable protections to districts while helping to level the playing field among providers and removing what for some could be an incentive not to participate in the state adoption.

Finally, we urge the incorporation in the Chapter 66 rules of measures to ensure that the IMA spending priorities set forth in SB 6, which require districts to certify that all students have been furnished with TEKS-aligned instructional materials in the required curriculum before IMA funds can be used for other purposes, are honored in practice. The rules should spell out specific assurances to be included in the district certifications and require that they be ratified by local school boards in public, noticed meetings and supported by documentation describing the instructional materials on which the certification is based, including, for non-state-adopted materials, correlations demonstrating alignment to relevant TEKS. The rules should also specify documentation required in order to receive a disbursement of IMA funds for uses other than the purchase of materials via EMAT, impose administrative sanctions for misuse of IMA funds, and authorize TEA to conduct spot audits.

While we would prefer to see a total rewrite of the Chapter 66 rules to reflect the fundamental changes brought about by SB 6, we respectfully submit the attached section-by-section recommendations in response to the Proposed Revisions.

Thank you for your leadership and your consideration. We would appreciate the opportunity to work with you and TEA as you consider potential modifications to the rule. Should you have any questions, please feel free to contact Louann Martinez, 512/656-5555 or Marty DeLeon, 512/415-9610 – both with AAP and in Austin, or me, 202/220-4549 or jdiskey@publishers.org.

Respectfully,

Jay Diskey

Jay Diskey
Executive Director, AAP School Division

cc. Commissioner Robert Scott
Deputy Commissioner Lizzette Gonzalez Reynolds
Associate Commissioner Anita Givens

AAP Proposed Amendments to Chapter 66

RULE	PROPOSED AMENDMENTS
§66.7. Manufacturing Standards and Specifications.	Delete. Districts, publishers and manufacturers should be afforded flexibility with respect to format and physical specifications.
§66.10. Procedures Governing Violations of Statutes—Administrative Penalties.	<p>Amend (b) to provide explicitly that administrative penalties described in this section apply to publishers, manufacturers, and sellers of any and all products and services purchased with instructional materials allotment funds, including non-adopted instructional materials and technological equipment.</p> <p>Amend (c)(1) by striking the words “or any error” to clarify that penalties do not apply to errors that do not interfere with student learning, which are inherently immaterial.</p> <p>Amend (c)(2) to clarify that an error repeated in multiple components and formats of the same instructional material is counted as a single error.</p> <p>Delete (c)(4). There should be no penalty for errors identified after the deadline for corrections if corrected before materials are delivered to schools. §66.10(h) authorizes the assessment of penalties for errors in materials actually shipped to schools.</p> <p>Delete (d) to eliminate multiple categories of errors.</p> <p>Delete (e)(1) and (2) and amend (e) (3) by striking “the words “base plus 1% of sales,” to provide for a uniform penalty of \$5,000 for each failure to correct a factual error described in subsection (c).</p> <p>Delete (f).</p> <p>Add language to make the requirements of subsections (g) and (h) expressly applicable to all providers of products and services paid for with instructional materials allotment funds, including non-adopted instructional materials and technological equipment.</p> <p>Delete (i) altogether. Web-based materials are covered by the general provisions of these Rules, which are not specific as to particular formats. A provision dealing specifically with websites imbedded in instructional materials is not necessary. If this subsection is to remain, it should</p>

	be amended to apply to all materials and products paid for with instructional materials allotment funds.
§66.24. Review and Renewal of Contracts	Amend (c) to provide that contract renewal prices are as mutually agreed between the publisher and the Commissioner.
§66.27. Proclamation, Public Notice, and Schedule for Adopting Instructional Materials.	Delete (c). See comments on §66.36.
§.66.36. State Review Panels: Duties and Conduct.	Delete (a)(1)(D), (E), and (F), which require at least three examples of each student expectation in each TEKS statement and limit ways of addressing TEKS. These requirements often force the inclusion of content that serves no real instructional purpose and unnecessarily drives up page count and cost.
§66.51. Instructional Materials Purchased by the State	<p>Amend section title to read, “Instructional Materials Purchased with Instructional Allotment Funds”</p> <p>Delete (a)(3), (7), and (8). To best meet the needs of school districts at the lowest cost, there should be broad flexibility with respect to instructional materials format, configuration, and pricing models. Under SB 6, sellers of non-state-adopted products will have virtually unlimited flexibility in this respect, and publishers and districts that chose to participate in the state adoption process should not be disadvantaged.</p> <p>Applicable requirements, including subsections (a)(1) and (6), should be made explicitly applicable to all providers of instructional materials paid for with instructional materials allotment funds, including non-adopted instructional materials.</p> <p>Amend (b) to provide that publishers, manufacturers, and sellers of any and all products and services paid for with instructional materials allotment funds, including non-adopted instructional materials and technological equipment, shall meet the applicable requirements of TEC §31.151, and be subject to all corresponding administrative penalties, including those set forth in §66.10 of these Rules.</p>

<p>§66.54 Samples.</p>	<p>Amend (g) to allow publishers to file galley proofs or electronic versions of state review panel samples instead of final print versions.</p> <p>Amend (i) to require the listing of corrections of factual errors only, as defined in §66.10(c).</p> <p>Amend (j) to allow submission of corrected copies any time prior to shipment of copies to schools.</p> <p>Add language allowing minor editorial changes that do not affect TEKS coverage to be made at any time. The current requirement that editorial changes be reported to TEA within a specified window imposes a costly, unnecessary burden on publishers and TEA staff and interferes with getting the highest quality and most up-to-date materials into students' hands.</p>
<p>§66.66. Consideration and Adoption of Instructional Materials by the State Board of Education.</p>	<p>Amend (c)(3) by adding at the end, "or the publisher has agreed to correct any identified factual errors prior to execution of a contract pursuant to §66.72 of these Rules." This conforms the rule to TEC 31.151(a)(9), which requires a publisher or manufacturer to submit an affidavit certifying that instructional materials to be free of factual errors "at the time the publisher executes the contract . . ."</p> <p>Amend (f) to allow withdrawal from the adoption process for any reason.</p>
<p>§66.69. Ancillary Materials.</p>	<p>Delete subsection (a). Publishers can best meet the needs of school districts if there is broad flexibility with respect to product configuration and bundling of goods and services. Under SB 6, sellers of non-state-adopted products will have virtually unlimited flexibility in this respect, and publishers and districts that chose to participate in the state adoption process should not be disadvantaged.</p>
<p>§66.75. Updates.</p>	<p>Amend (g) to provide that no approval is needed for electronic design changes that do not affect coverage of TEKS or add new content.</p>
<p>§66.78. Delivery of Instructional Materials</p>	<p>Amend section title and subsections (a), (b), and (c) to apply explicitly to any and all products paid for with instructional materials allotment funds, including non-adopted instructional materials and technology equipment.</p>
<p>§66.105. Certification by School Districts</p>	<p>Amend this section to spell out specific assurances to be included in the district certifications and require that certifications be ratified by local</p>

	<p>school boards in public, noticed meetings. Require submission of supporting documentation describing the instructional materials on which the certification is based, including, for non-state-adopted materials, correlations demonstrating alignment to relevant TEKS.</p>
<p>§66.108 (Proposed new section). Requests for Instructional materials Allotment Disbursements</p>	<p>The Chapter 66 rules should set forth procedures and requirements in connection with school district requests for disbursement of IMA funds for uses other than the purchase of instructional materials through the state EMAT system. SB 6 requires that districts submit documentation to verify that disbursements will be used for purposes permitted under statute, and the rules should reflect that requirement and set forth what documentation is required. In addition, the rules should provide consequences, for example in the form of administrative sanctions, for misuse of IMA funds, and authorize or direct TEA to conduct audits to verify appropriate use of funds.</p>