

May 29, 2012

Submitted: rules@tea.state.tx.us

Robert Scott
Commissioner of Education
Texas Education Agency, William B. Travis Building
1701 N. Congress Avenue
Austin, Texas, 78701

Dear Commissioner Scott:

On behalf of the Software & Information Industry Association (SIIA), I write to provide public comment on the Commissioner's Proposed Amendments to 19 TAC Chapter 66, Subchapters AA-CC, and Proposed New 19 TAC Chapter 66, Subchapter DD, which would implement the changes to statute brought about by SB 6 and HB 4294.

SIIA generally supports the steps taken by the new laws and Commissioner's rules toward modernizing the Texas adoption system to better meet educational needs in this digital age, including by removing unintended legacy barriers to adoption of electronic and online materials, providing for a more timely review and selection process, and providing local school districts and schools with the flexibility to acquire materials that best meet their unique needs.

We provide comments and recommended changes in the attached document to help ensure the proposed rules better address the legislative intent to provide Texas students and educators with access to a full range of quality electronic and other instructional materials.

While beyond the scope of this rulemaking, SIIA also recommends the Commissioner examines all rules under Chapter 66, Subchapters AA-DD related to changes from implementation of SB.6 and HB.4294. Such a rulemaking would help ensure consistency between the Subchapters, and enable modification of several unclear provisions that may have unintended consequences. Most significantly, in Subchapter AA, Commissioner's List of Electronic Instructional Materials, SIIA encourages further consideration of changes to ensure, for example:

- the timeliness of review and adoption cycles to provide for ongoing adoption, rather than less timely cycles that are connected to the lengthy SBOE adoption or an annual Commissioner List;
- the timeliness and appropriateness of processes for changes to content and technology to recognize the dynamic nature of electronic materials, including at a minimum that approval for content changes be required only when there is removal of content that affect TEKS coverage; and
- the standardization of maximum penalties for factual errors to \$5,000.

SIIA represents more than 500 leading software and digital content companies, including some based in Texas. Many SIIA members publish electronic and online instructional materials and related technologies for use in education in Texas and nationwide. SIIA and our member companies have long advocated for reform of the adoption system in Texas and in other states to better support adoption of electronic and online instructional materials that meet the needs of today's digital age students and educators.

On behalf of the Software & Information Industry Association and our member companies, we thank you for considering our views on the proposed new Commissioner's rules, and we look forward to working with you moving forward to ensure students can take advantage of the full array of instructional materials to meet state

standards and educational needs. Meanwhile, if we can be of further assistance, please contact me at (202) 789-4444 or marks@siia.net.

Sincerely,

A handwritten signature in black ink that reads "Mark Schneiderman". The signature is written in a cursive, flowing style.

Mark Schneiderman
Senior Director of Education Policy
Software & Information Industry Association

cc: Anita Givens, Associate Commissioner, Standards and Programs
John Lopez, Managing Director, Instructional Materials and Educational Technology

Attachment

[NOTE: TEA proposed changes are included in Blue font. SIIA proposed changes are included in Red font, with additions tracked in brackets and deletions tracked with strikethrough.]

ATTACHMENT II - Text of Proposed Amendments to 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter AA. Commissioner's Rules Concerning the Commissioner's List of Electronic Instructional Materials

§66.1027. Electronic Instructional Materials Offered for Adoption by the Commissioner.

Recommended Change:

(g) Publishers shall incorporate hyperlinked ~~[or other electronic]~~ correlations of the required essential knowledge and skills to the electronic instructional materials submitted for adoption.

Explanation: SIIA encourages the use of technology to demonstrate correlation of electronic instructional materials. SIIA suggests a slight modification to provide flexibility for emerging technologies by requiring not only “hyperlinked” correlations but also allowing other methods. While hyperlinked is itself a generally broad term, over time, other alternatives may emerge that may not fit within that method.

§66.1029. Public Comment on Electronic Instructional Materials.

Recommended Change:

(c) SBOE comment. Before placing materials on the Commissioner's List of Electronic ~~[Textbooks and]~~ Instructional Materials, the SBOE must be given an opportunity ~~[of 30 days]~~ to comment on the electronic ~~[textbook and]~~ instructional materials. ~~If the commissioner places electronic instructional materials on the Commissioner's List of Electronic Instructional Materials, the SBOE may, not later than the 90th day after the date the material is placed on the list, require the commissioner to remove the material from the list.~~

Explanation: SIIA makes two comments. First, SIIA suggests that the SBOE role be limited to the opportunity to comment during the review process to the Commissioner on the electronic instructional materials to be placed on the Commissioner’s List of Electronic Instructional Materials, and not be provided the opportunity to remove such materials after the fact. The Commissioner’s List was set up as a separate process from the SBOE process, and mixing them in this way would undermine that intention. Secondly, if the SBOE opportunity to remove an electronic instructional material is retained, SIIA recommends that the time frame be reduced from 90 days to 30 days. SIIA is concerned that a 90 day window would slow a process intended to be more timely than the SBOE review process. SIIA is also concerned a 90 day window following placement on the Commissioner’s list may create circumstances whereby a school district has already adopted and implemented an electronic material, and removal would disrupt the curriculum by forcing students and teachers to stop using a material they were already using.

§66.1041. Selection of Electronic Instructional Materials by School Districts.

A school district or open-enrollment charter school that selects a subscription-based electronic ~~[textbook or]~~ instructional material from either the State Board of Education's adopted ~~[conforming or nonconforming]~~

list or the Commissioner's List of Electronic [~~Textbooks and~~] Instructional Materials may cancel the subscription and subscribe to a new electronic [~~textbook or~~] instructional material if:

Recommended Change:

(2) the Texas Education Agency (TEA) [~~is notified about~~] ~~approves~~ the change based on a written request to the TEA by the district or school via the educational materials (EMAT) system to change to another adopted product or request a disbursement for purchase of a non-adopted product [that specifies the reasons for changing the electronic textbook or instructional material used by the district or school].

Explanation: SIIA notes that TEA does not approve a district's or school's initial subscription of materials included on the Commissioner's List, and so SIIA recommends that it is not necessary for their approval of a cancellation and change. While subject to specific license terms, subscriptions are generally defined by a limited time period, and so it is assumed that districts and schools will have opportunity to renew or change that subscription at the end of that time period. So long as districts and schools are following the license terms and are changing from one material on the Commissioner's list to another, SIIA recommends that TEA approval not be required, but instead that TEA notification be considered sufficient.

ATTACHMENT V - Text of Proposed New 19 TAC

Chapter 66. State Adoption and Distribution of Instructional Materials

Subchapter DD. Commissioner's Rules Concerning Instructional Materials Allotment

§66.1301. Definitions.

Recommended Change:

(7) Publisher--Any developer or distributor of ~~electronic~~ instructional materials or online service.

Explanation: The instructional materials allotment permits the use of funds for materials in any medium, including print and electronic. The specification of "electronic" only appears to be an error. The SB6 statute defines publisher to "includes an on-line service or a developer or distributor of electronic instructional materials" but does not limit it to "electronic."

§66.1311. Special Instructional Materials.

Recommended Change:

(d) 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 Braille or other versions of materials to be used by students with disabilities. All information contained in adopted instructional materials shall be included on the computerized files. Computerized files may be copied and distributed to a school district, upon request, for instructional use with a student with a disability 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.

Explanation: SIIA recommends that the requirement that publishers provide "computerized files" be limited to print materials only, and that such files be provided specifically to the state. SIIA supports efforts to ensure that students with disabilities have access to instructional materials. SIIA notes, however, that

electronic instructional materials are themselves a “computerized file” and that providing such materials in an alternative format may be neither possible nor practical, including for many materials that are adaptive or interactive, include significant use of graphics or simulations, and are fundamentally software code-based rather than more simple digital rendering of a primarily text-based material. SIIA notes that Section 508 requirements are the appropriate alternative to address the goal of access to electronic instructional materials for students with disabilities.

§66.1317. Sale or Disposal of Instructional Materials and Technological Equipment.

Recommendation:

Insert the following at the end of this section:

[(3) The ability of the board of trustees or governing board to sell or dispose of print or electronic instructional materials is conditioned on the terms of any applicable licensing agreement.]

Explanation: It is clear elsewhere in the proposed rules in §66.1315 (b) that “Ownership of electronic or online instructional materials applies only to the extent of any applicable licensing agreement.” SIIA recommends this additional provision to explicitly reinforce this point when it comes to this section §66.1317 dealing with the sale and disposal of instructional materials, where licensing agreements often do not allow resale or other transfer of software, for example. SIIA recommends this include all electronic and print materials.

§66.1319. Local Accountability.

(c) All instructional materials owned by the district or charter [and in physical possession by a student] must be returned by the student to the district or charter at the end of the school year or when the student withdraws from school [, except in cases where the licensing agreement and educational intent is for students to maintain such possession such as may be the case with some electronic instructional materials].

Explanation: There are two issues of concern. First, for electronic instructional materials accessed online, for example, the notion of “returned” may be confusing and is not relevant. SIIA therefore suggests adding the clarification that this applies only to instructional materials “in physical possession by a student.” Secondly, for some instructional materials, the educational intent and/or licensing agreement may allow for students to maintain possession after the school year. This might include online resources where access is provided in twelve month periods, access for students in summer school or other extended year programs, and digital resources where the district or charter purchase provides ownership to the student beyond the school year.