

**ARKANSAS DEPARTMENT OF EDUCATION
RULES GOVERNING INSTRUCTIONAL MATERIALS
~~March 1, 2012~~ _____, 2013**

1.00 REGULATORY AUTHORITY

- 1.01 These rules shall be known as the Arkansas Department of Education Rules Governing Instructional Materials.
- 1.02 These rules are enacted pursuant to the Arkansas State Board of Education's authority under Ark. Code Ann. §§ 6-11-105, 6-21-401 et seq., and 25-15-201 et seq.

2.00 PURPOSE

The purpose of these rules is to set forth requirements related to the purchase, distribution and use of instructional materials.

3.00 DEFINITIONS

~~3.01 "Basal textbook" means the textbook that contains the core curriculum for the subject area to be taught.~~

~~3.02~~3.01 "Commissioner" means the Commissioner of Education.

~~3.03~~3.02 "Instructional materials" means:

~~3.03.1~~3.02.1 Traditional books, textbooks, and trade books in printed and bound form;

~~3.03.2~~3.02.2 Activity-oriented programs that may include:

~~3.03.2.1~~3.02.1 Manipulatives;

~~3.03.2.2~~3.02.2 Hand-held calculators; or

~~3.03.2.3~~3.02.3 Other hands-on material; and

~~3.03.3~~3.02.3 Technology-based materials that require the use of electronic equipment in order to be used in the learning process. ~~Technology-based~~

~~materials do not include the equipment required to make use of these materials. In accordance with Ark. Code Ann. 6-21-403, school districts may purchase digital resources and make available any equipment needed to access the digital resources.~~

~~3.043.03~~ “School” or “School District” as those terms are used in these rules, shall include open-enrollment public charter schools.

~~3.05~~ “State” means the State of Arkansas.

~~3.063.04~~ “State Board” means the Arkansas State Board of Education.

~~3.07~~ “Supplemental textbook” means textbooks that supplement the basal textbook.

~~3.08~~ “Textbook” includes textbooks in both printed form and electronic form.

4.00 GENERAL POWERS AND DUTIES OF THE STATE BOARD OF EDUCATION

4.01 Pursuant to Ark. Code Ann. § 6-21-404, the State Board of Education is authorized and empowered to may:

~~4.01.1~~ Provide for a statewide textbook selection committee as follows;

~~4.01.1.1~~ The Commissioner of Education shall select a statewide selection committee no later than June 15 of each year. Each state committee shall be composed of members representative of the subject areas and instructional levels being adopted and from the state at large. The committee shall include licensed personnel from public schools and shall include a majority of classroom teachers.

~~4.01.1.2~~ The committee shall recommend a list of instructional materials consistent with course content standards and curriculum frameworks.

~~4.01.2~~ 4.01.1 Require reports from school districts on the use and distribution of instructional materials; and

~~4.01.3~~ 4.01.2 Do whatever else may be necessary for the general welfare of the public school ~~textbook~~ and instructional materials system in order to acquire the items at the lowest possible cost.

4.02 The powers enumerated in section 4.00 of these rules and in Ark. Code Ann. § 6-21-404 are cumulative and not restrictive.

~~4.03 The State Board shall have the power to modify the bid and contract form and negotiate any additional or modified terms that the State Board deems necessary for the administration of these rules.~~

~~4.04 Publishers must sell their materials at the same price to all schools and school districts in the State of Arkansas and must guarantee that price for the life of a state adoption cycle.~~

4.05 The State Board, through the Department of Education, will include funding for instructional materials in the foundation funding amount provided to each school district pursuant to Ark. Code Ann. § 6-20-2305.

5.00 GENERAL REQUIREMENTS RELATED TO INSTRUCTIONAL MATERIALS

5.01 Each school district shall select a ~~textbook~~ an instructional materials selection committee, ~~to be composed of a majority of licensed personnel, which shall include classroom teachers.~~

5.01.2 A majority of its members shall be licensed personnel, which shall include classroom teachers.

5.02 Public school districts shall provide ~~textbooks, other~~ instructional materials, ~~or digital resources~~, including the availability of any equipment needed to access the ~~digital resources~~ instructional materials, for all pupils attending the public schools of this state in kindergarten through grade twelve (K-12), inclusive, in all subjects taught in those grades, without cost to the pupils.

5.03 School districts may select their own ~~textbooks~~, instructional materials, ~~or digital resources~~, or school districts may select from the recommended state-approved list. including the materials needed to access the instructional materials.

5.04 Any materials purchased with state funds shall be consistent with course content standards and curriculum frameworks.

5.05 The Department of Education shall monitor to ensure that all school districts in the State of Arkansas comply with Section 5.00 of these rules and with Ark. Code Ann. § 6-21-403. The primary methods of compliance shall be through a Report of Local Adoptions filed by a school districts with the Department of Education and through a school district's Statement of Assurance filed with the Department of Education pursuant to Ark. Code Ann. § 6-15-202.

5.05.1 The Department of Education shall report in the annual school performance report a school district that fails to provide textbooks, *other instructional materials, or digital resources*, including the availability of any equipment needed to access the *digital resources instructional materials* or any school district that charges any student a fee for use of or access to any instructional materials.

5.05.2 The State Board of Education shall report to the members of the House Committee on Education and Senate Committee on Education annually any school district out of compliance with Section 5.00 of these rules and with Ark. Code Ann. § 6-21-403 by November 1 of each year.

5.06 As used in this subsection, "person" means an individual, a partnership, a corporation, or an association.

5.06.1 A person who operates in this state shall not charge a school district a price for instructional materials that exceeds the lowest contracted price currently bid in another state on the same product.

5.06.2 A person shall sell instructional materials at the same price to all school districts in the state and must guarantee the price for the remainder of the school year.

~~6.00 DETERMINATION OF RECOMMENDED INSTRUCTIONAL MATERIALS~~

~~6.01 By March 15 of each year, the Department of Education shall prepare and distribute to school districts a recommended list of books, series of books, and other instructional materials for all subjects and instructional levels required by the Standards for Accreditation of Arkansas Public Schools and School Districts.~~

~~6.02 School districts may elect to purchase instructional materials from the state-recommended list, or school districts may select other instructional materials.~~

~~6.03 If a school district selects other instructional material not recommended by the Department of Education, the school district shall certify to the Department of Education by June of each year which instructional materials the school district wishes to purchase by state contract from the state recommended list.~~

~~6.04 If a school district selects other instructional materials not recommended by the Department of Education, the school district may purchase such materials outside any state contract.~~

7.006.00 CONDITIONS FOR OFFERING TEXTBOOKS FOR ADOPTION, SALE OR EXCHANGE

6.01 As used in this subsection, “person” means an individual, a partnership, a corporation, a company, or an association.

~~7.01~~ 6.01.1 Before any person, company, or corporation shall offer any school textbooks or other a person may offer instructional materials used in kindergarten through grade twelve (K-12), inclusive, for adoption, sale, or exchange in the State of Arkansas, the person, company, or corporation shall comply with the following conditions by June 30 of each year, submit to the Department of Education a certified list of:

6.01.1.1 All state contracts made during the state fiscal year just ended on all instructional materials the publisher sold in this state during the state fiscal year just ended; and

6.01.1.2 Instructional materials sold to each school district in Arkansas, including the price of each instructional material.

~~7.01.1 The person, company, or corporation shall file a bid and contract form in the office of the Commissioner of Education showing the prices at which the publisher will agree to sell to the State of Arkansas during the contract period.~~

~~7.01.2 When the State Board of Education accepts any or all of the textbooks or other instructional materials in the bid and contract form and so certifies the form, the bid and contract form shall become an official contract.~~

~~7.01.3 The State Board of Education is authorized to permit publishers to bid current wholesale prices, or the State Board may require publishers to bid~~

~~lowest existing contract prices at which the textbooks or other instructional materials are being sold elsewhere in the country.~~

~~7.01.4 The State Board of education shall certify in the call for bids whether it wants current wholesale prices or lowest contract prices.~~

~~7.01.5 In the bid and contract form, the publisher shall certify the date on which the current wholesale prices were established and submit a list of all existing adoption bids showing such items as may be requested by the State Board on an official form furnished by the State Board.~~

~~7.01.6 At the end of each fiscal year of the contract, the publisher shall submit a certified list of all state contracts made during the fiscal year just closed on all books or other instructional materials for which the publisher has a contract in the State of Arkansas.~~

~~7.01.7 The publisher shall automatically reduce prices in Arkansas whenever a contract is made at a lower price in another state after the date of the contract in Arkansas.~~

~~7.01.8 If any publisher makes a contract on a special or state edition in another state after the date of the contract in Arkansas, the State Board is authorized to require the publisher to supply the special or state edition to the schools of Arkansas at the contract price in other states.~~

~~7.01.9 The State Board may require a publisher to bid an exchange price on all basal or supplementary textbook bids, and all the price regulations in these rules applying to regular contracts shall also apply to exchange prices; and~~

~~7.01.10 The person, company, or corporation shall deposit a copy of each textbook and other instructional material in printed, digital or manuscript form in the Office of the Commissioner.~~

~~7.01.10.16.02~~ All publishers doing business in the State of Arkansas shall maintain one (1) or more book depositories at the publisher's expense in ~~Arkansas~~ this state.

~~7.01.10.2 All items offered for sale in Arkansas pursuant to these rules shall be equal in quality to those deposited in the Office of the Commissioner and shall meet the minimum standards and specifications set forth by the State Board.~~

8.00—CONTRACTS WITH PUBLISHERS

- 8.01—~~The State Board of Education shall make and execute contracts with all publishers whose books, series of books, or instructional materials have been recommended by the Department of Education.~~
- 8.02—~~The State Board shall determine the contract period, provided no contract period shall be for less than three (3) years nor more than five (5) years for courses subject to rapid knowledge base changes. For courses determined by the State Board to be free of rapid knowledge base changes, the contract period may be for a maximum of ten (10) years.~~
- 8.03—~~Contract periods for paperback books, novels, plays, and other forms of literature in a softbound cover that are part of a basal textbook program may be from one (1) to five (5) years.~~
- 8.04—~~If during the first two (2) years of any contract, the consumer price index has increased by twelve percent (12%) or more, the State Board is authorized to renegotiate with the contract holder the prices contained in the contract. The State Board may grant a price increase in the last three (3) years of the contract, provided the publisher certifies that the price is no higher than the lowest contract prices the product is currently bid in any other state.~~
- 8.05—~~The State Board is authorized to renew or extend contracts for no less than one (1) year nor more than two (2) years. This provision shall be made a part of the publisher's contract, and the State Board may exercise the provision by notifying the publisher no less than one (1) year prior to the expiration of the original contract.~~

9.00—EXCHANGE PROVISIONS

- 9.01—~~Any textbook exchange provisions approved by the State Board will guarantee the payment of exchange prices and govern the exchange on basal and supplementary textbooks.~~
- 9.02—~~The State Board may incorporate any exchange provisions it approves in the contract of the publisher, and the publisher shall be bound by such exchange provision of the contract as if it were a part of these rules.~~

10.007.00 ASSESSMENT OF DAMAGES FOR PUBLISHER'S FAILURE TO COMPLY

~~10.017.01~~ The State Board is authorized to assess any publisher any amount of damages to the State of Arkansas for failure to comply with the terms of the publisher's ~~contract~~ Ark. Code Ann. § 6-21-401 et seq. or any published regulation of the State Board, provided that the publisher has been given a hearing before the State Board regarding the assessment of damages.

~~10.027.02~~ ~~Failure~~ If a publisher fails to reimburse the State of Arkansas within six (6) months after notice of assessment has been served on the publisher, ~~shall give the State Board the right to cancel all the contracts of the publisher involved and to forbid the publisher to bid any future adoptions~~ the state board may prohibit the publisher from selling instructional materials in Arkansas for a maximum period of five (5) years from the date that damages are assessed pursuant to Section ~~10.00~~ 7.00 of these rules.

~~10.037.03~~ The following procedures shall apply to a situation involving a publisher's alleged failure to comply with the terms of the publisher's contract Ark. Code Ann. § 6-21-401 et seq. or any published regulation of the State Board:

~~10.03.17.03.1~~ The Commissioner of Education shall provide written notice, via certified mail, return receipt requested, to the publisher. The written notice shall include specific allegations of precisely how the publisher failed to comply with the terms of the publisher's ~~contract~~ Ark. Code Ann. § 6-20-401 et seq. or any published regulation of the State Board. The written notice shall also include a recommendation from the Commissioner of Education concerning the assessment of damages for the publisher's failure to comply.

~~10.03.27.03.2~~ Within thirty (30) days of receipt of the written notification from the Commissioner of Education, the publisher shall respond in writing to the Commissioner of Education, indicating one of the following:

~~10.03.2.17.03.2.1~~ The publisher concurs with the specific allegations and/or recommended assessment of damages; or

~~10.03.2.2~~10.03.2.2 The publisher disputes the specific allegations and/or recommended assessment and requests an appeal before the State Board of Education. Such a notice of appeal shall include a brief statement of the reasons why the Commissioner's specific allegations and/or recommended assessment of damages should not be adopted.

~~10.03.47.03.4~~ If the publisher concurs with the Commissioner's specific allegations and/or recommended assessment of damages, or fails to respond to the same within thirty (30) days, the Commissioner shall place his or her recommended assessment of damages on the consent agenda of the next regularly scheduled State Board of Education meeting in accordance with the State Board of Education's procedures for the submission of agenda items.

~~10.03.57.03.5~~ If the publisher disputes the Commissioner's specific allegations and/or recommended assessment of damages, the State Board of Education shall hear the publisher's appeal within sixty (60) days of receipt of the notice of appeal. Through mutual agreement, the Commissioner of Education and the publisher may extend the date of the hearing for an additional thirty (30) days.

~~10.04.7.04~~ The following procedures shall apply to a hearing before the State Board of Education:

~~10.04.17.04.1~~ Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Department of Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their opening statements.

~~10.04.27.04.2~~ Each party will be given thirty (30) minutes to present their cases, beginning with the representative of the Department of Education. The Chairperson of the State Board of Education may, only for good cause shown and upon the request of either party, allow either party additional time to present their cases.

~~10.04.37.04.3~~ Every witness giving oral testimony must be sworn under oath by the court reporter and shall be subject to direct examination, cross examination, and questioning by the State Board of Education.

~~10.04.47.04.4~~ For the purposes of the record, documents offered during the hearing by the Department of Education shall be clearly marked in sequential, numeric order (1, 2, 3).

~~10.04.57.04.5~~ For the purposes of the record, documents offered during the hearing by the publisher shall be clearly marked in sequential, alphabetic letters (A, B, C).

~~10.04.67.04.6~~ The Department of Education shall have the burden of proving, by a preponderance of the evidence, that the Commissioner's specific allegations and/or recommended assessment of damages be adopted.

~~10.04.77.04.7~~ The State Board of Education may:

~~10.04.7.17.04.7.1~~ Adopt the Commissioner's specific allegations and/or recommended assessment of damages be adopted;

~~10.04.7.27.04.7.2~~ Modify the Commissioner's recommended assessment of damages; or

~~10.04.7.37.04.7.3~~ Grant the appeal of the publisher.

~~10.04.87.04.8~~ The State Board of Education may announce its decision immediately after hearing all arguments and evidence or may take the matter under advisement. The State Board of Education shall provide a written decision to the Department of Education and the publisher within fourteen (14) days of the hearing.

~~11.008.00~~ NOTICE OF ILLEGAL ACTS INVOLVING SCHOOL OFFICIALS PURSUANT TO ARK. CODE ANN. § 6-21-410

~~11.018.01~~ It shall be illegal for the Commissioner of Education or any other employee connected with the Department of Education, any member of any selecting committee, or any member of any school board of directors to accept or receive any money, gift, property, or favor whatsoever from any person, firm, corporation, or any agent thereof offering for sale any item pursuant to Ark. Code Ann. § 6-21-401 et seq. or from any person in any way interested in such sale.

~~11.01.18.01.1~~ Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(a) shall be found guilty of a Class B misdemeanor.

~~11.01.28.01.2~~ Any fines collected under Ark. Code Ann. § 6-21-410(a) shall be deposited into the State Treasury to the credit of the Public School Fund.

~~11.028.02~~ It shall be illegal for any teacher in the public schools of Arkansas or any person connected with the public school system of Arkansas in any capacity to have any interest in the profits, proceeds, or sale of any ~~school textbooks or other~~ instructional materials used in the schools of Arkansas under his or her charge or with which he or she is connected in any official capacity. However, this provision shall not apply nor have any reference to royalties or fees received by a person from the sale of ~~school books or other~~ instructional materials of which he or she is the author.

~~11.02.18.02.1~~ Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(b) shall be guilty of a violation and subject to a fine of no less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200).

~~11.02.28.02.2~~ Any fines collected under Ark. Code Ann. Ark. Code Ann. § 6-21-410(b) shall be deposited into the State Treasury to the credit of the Public School Fund.

~~11.038.03~~ It shall be illegal for any person directly or indirectly to promise or offer to give or cause to be promised, offered, or given any money, good, bribe, present, reward, or any valuable thing whatsoever to the Commissioner of Education, his or her assistants, or any other employee of the Department of Education, the Director of the Department of Career Education, his or her assistants, or any other employee of the Department of Career Education, any school board members, teachers, or other persons with the intent of influencing their decisions on any questions, matters, causes, or proceedings in the selection of any ~~textbooks or other~~ instructional materials.

~~11.03.18.03.1~~ Any person who pleads guilty or nolo contendere to or is found guilty of violating Ark. Code Ann. § 6-21-410(c) shall be guilty of a Class B misdemeanor.

~~11.03.28.03.2~~ Any fines collected under Ark. Code Ann. § 6-21-410(c) shall be deposited into the State Treasury to the credit of the Public School Fund.