

The Texas Education Agency (TEA) proposes new §67.1315, concerning open education resource (OER) instructional materials. The proposed new rule would implement House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, by providing clarification on the requirements for a school district's OER transition plan.

BACKGROUND INFORMATION AND JUSTIFICATION: HB 1605, 88th Texas Legislature, Regular Session, 2023, significantly revised Texas Education Code (TEC), Chapter 31, which addresses instructional materials in public education. Specifically, the bill added TEC, §31.0751, to require school districts to adopt an OER instructional materials transition plan to qualify for additional state aid under TEC, §48.308. School districts participating in an OER instructional material support program are not required to adopt a transition plan.

Proposed new §67.1315 would provide clarification on the requirements for a school district's OER transition plan, including when a plan must be submitted and what it must contain. The proposed new rule would also specify that the commissioner may request and review OER instructional material transition plans at any time and reject a plan subsequent to review.

FISCAL IMPACT: Todd Davis, associate commissioner for instructional strategy, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation regarding requirements for a school district's OER transition plan to implement HB 1605, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Davis has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be providing school districts with clarifications regarding requirements for a school district's OER transition plan. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposed new rule would have a data and reporting impact. The new rule would require a school district or an open-enrollment charter school ordering OER materials to indicate, if applicable, that the district or charter school has an approved OER transition plan in the state's instructional materials ordering system, EMAT.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins September 6, 2024, and ends October 7, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the Texas Register on September 6, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

STATUTORY AUTHORITY. The new section is proposed under TEC, §31.003(b), as added by House Bill (HB) 1605, 88th Texas Legislature, Regular Session, 2023, which authorizes the commissioner of education to adopt rules consistent with TEC, Chapter 31, as necessary to implement a provision of the chapter that the commissioner or the agency is responsible for implementing; and TEC, §31.0751, as added by HB 1605, 88th Texas Legislature, Regular Session, 2023, which requires school districts to adopt an open education resource instructional material transition plan, unless otherwise exempt.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §31.003(b) and §31.0751, as added by House Bill 1605, 88th Texas Legislature, Regular Session, 2023.

<rule>

§67.1315. Open Education Resource Instructional Material Transition Plan.

- (a) The open education resource (OER) instructional material transition plan shall be submitted, when required by this section, in a format determined by the commissioner of education.
- (b) A school district or an open-enrollment charter school is required to have a locally maintained OER transition plan that complies with this section to access funding allotted under Texas Education Code (TEC), §48.308.
- (c) A school district or an open-enrollment charter school is required to submit an OER instructional material transition plan only when:
 - (1) first adopting a State Board of Education (SBOE)-approved OER product for a grade level or subject/course; or
 - (2) expanding implementation of an SBOE-approved OER product to additional campuses and/or grade levels.
- (d) The OER instructional material transition plan adopted by the local board of trustees or the governing body of an open-enrollment charter school shall include the plan of the district or charter school to ensure the following:
 - (1) clear communication and stakeholder change management plans and timelines;
 - (2) timely access to print materials and related manipulatives through OER procurement and distribution;
 - (3) sufficient planning and instructional time evidenced by instructional calendars and master schedules aligned to the requirements of the materials;
 - (4) clear expectations for the implementation of:
 - (A) instructional materials;
 - (B) internalization and student work analysis protocols; and
 - (C) curriculum-embedded assessments;
 - (5) processes for stakeholder communication and public posting, as outlined in TEC, §26.006, if materials have been modified by the school district or open-enrollment charter school;

- (6) the maintenance of instructional flexibility through clear guidance for acceptable teacher modifications to instructional pacing, sequencing, and lesson content to address the needs of each student; and
- (7) sufficient professional learning and development for school leaders, instructional coaches, and teachers, including:

 - (A) pre-service product onboarding and orientation; and
 - (B) ongoing, job-embedded, curriculum-based professional learning, including cycles of observation and feedback.
- (e) The commissioner may request and review OER instructional material transition plans at any time and reject a plan subsequent to review.