

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION
RULES GOVERNING INSTRUCTIONAL MATERIALS
May 2020

1.00 REGULATORY AUTHORITY

- 1.01 These rules shall be known as the Division of Elementary and Secondary 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. §6-21-401 et seq. and Act 757 of 2019.

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 "Commissioner" means the Commissioner of Elementary and Secondary Education.

3.02 "Instructional materials" means:

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

3.02.2 Activity-oriented programs that may include:

3.02.1 Manipulatives;

3.02.2 Hand-held calculators; or

3.02.3 Other hands-on material; and

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

3.03 "School" or "School District" as those terms are used in these rules, shall include open-enrollment public charter schools.

3.04 “State Board” means the Arkansas State Board of Education.

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 may:

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

4.01.2 Do whatever else may be necessary for the general welfare of the public school 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.

5.00 GENERAL REQUIREMENTS RELATED TO INSTRUCTIONAL MATERIALS

5.01 Each school district shall select an instructional materials selection committee.

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

5.02 Public school districts shall provide instructional materials, including the availability of any equipment needed to access the 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 instructional materials, including the equipment needed to access the instructional materials.

5.04 Materials purchased with state funds shall be consistent with the Arkansas Academic Content Standards.

5.05 The Division of Elementary and Secondary 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 method of compliance shall be through a school district’s Statement of Assurance filed with the Division of Elementary and Secondary Education pursuant to Ark. Code Ann. § 6-15-202.

5.05.1 The Division of Elementary and Secondary Education shall report in the annual school performance report a school district that fails to provide instructional materials including the availability of any equipment needed to access the instructional materials or any school district that charges any student a fee for use of or access to any instructional materials.

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 CONDITIONS FOR OFFERING TEXTBOOKS FOR ADOPTION, SALE OR EXCHANGE

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

7.00 ASSESSMENT OF DAMAGES FOR PUBLISHER’S FAILURE TO COMPLY

7.01 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 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.

7.02 If a publisher fails to reimburse the State of Arkansas within six (6) months after notice of assessment has been served on the publisher, 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 7.00 of these rules.

- 7.03 The following procedures shall apply to a situation involving a publisher's alleged failure to comply with the terms of Ark. Code Ann. § 6-21-401 et seq. or any published rule of the State Board:
- 7.03.1 The Commissioner 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 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 concerning the assessment of damages for the publisher's failure to comply.
- 7.03.2 Within thirty (30) days of receipt of the written notification from the Commissioner, the publisher shall respond in writing to the Commissioner, indicating one of the following:
- 7.03.2.1 The publisher concurs with the specific allegations and/or recommended assessment of damages; or
- 7.03.2.2 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.
- 7.03.4 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.
- 7.03.5 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.

- 7.04 The following procedures shall apply to a hearing before the State Board of Education:
- 7.04.1 Each party will have the opportunity to present an opening statement of no longer than five (5) minutes, beginning with the representative of the Division of Elementary and Secondary 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.
- 7.04.2 Each party will be given thirty (30) minutes to present their cases, beginning with the representative of the Division of Elementary and Secondary 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.
- 7.04.3 Every witness giving oral testimony must be sworn under oath by the chairperson of the Board and shall be subject to direct examination, cross examination, and questioning by the State Board of Education.
- 7.04.4 For the purposes of the record, documents offered during the hearing by the Division of Elementary and Secondary Education shall be clearly marked in sequential, numeric order (1, 2, 3).
- 7.04.5 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).
- 7.04.6 The Division of Elementary and Secondary 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.
- 7.04.7 The State Board of Education may:
- 7.04.7.1 Adopt the Commissioner's specific allegations and/or adopt the recommended assessment of damages;

7.04.7.2 Modify the Commissioner's recommended assessment of damages; or

7.04.7.3 Grant the appeal of the publisher.

7.04.8 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 Division of Elementary and Secondary Education and the publisher within fourteen (14) days of the hearing.

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

8.01 It shall be illegal for the Commissioner or any other employee connected with the Division of Elementary and Secondary 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.

8.01.1 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.

8.01.2 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.

8.02 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 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 instructional materials of which he or she is the author.

8.02.1 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).

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

8.03 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, his or her assistants, or any other employee of the Division of Elementary and Secondary Education, the Director of the Division of Career and Technical Education, his or her assistants, or any other employee of the Division of Career and Technical 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 instructional materials.

8.03.1 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.

8.03.2 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.