

Technical Amendment
November 18, 2022
DEPARTMENT OF EDUCATION
(Technical Amendment)

704 KAR 3:455. Instructional resource adoption process.

RELATES TO: KRS 156.027, 156.400-156.476, 157.100-157.190, 160.345

STATUTORY AUTHORITY: KRS 156.027, 156.410, 156.433, 156.437, 156.439, 156.474, 156.476, 157.110, 157.140, 157.150, 157.160

NECESSITY, FUNCTION, AND CONFORMITY: KRS 156.433 and 156.439 require that administrative regulations be promulgated to: define instructional resources; identify instructional resources eligible for purchase with state instructional resource funds; identify instructional resources which are subject to review before being recommended for use; establish a procedure for the review of instructional resources and a process for adding an instructional resource to the recommended list; establish a method for calculating and distributing a school district's instructional resource allocation; and design a planning instrument for each school to use in documenting its instructional resource needs during each adoption period. This administrative regulation establishes the standards and procedures which are necessary to carry out the statutory requirements dealing with instructional resources.

Section 1. Definitions.

- (1) "Alternate format" is defined by KRS 156.027.
- (2) "Instructional resource" means any print, nonprint, or electronic medium of instruction designed to assist students.
- (3) "Level One" means full compliance in that the electronic file submitted by the publisher can be converted into any needed specialized format.
- (4) "Level Three" means marginal compliance in that the electronic file submitted by the publisher has a marginal level of accessibility and can be converted into some specialized formats only with significant effort or expense, and is not useable by some students with significant sensory disabilities.
- (5) "Level Two" means provisional compliance in that the electronic file submitted by the publisher can be converted into most specialized formats without substantial effort or expense.

Section 2. The content areas included in each year of the instructional resource adoption cycle shall be:

- (1) Grouped based on the:
 - (a) Content areas in the academic expectations, which are established in 703 KAR 4:060; and
 - (b) Commonwealth Accountability Testing System (CATS) testing groups; and
- (2) Arranged into six (6) groups as follows:
 - (a) Group I - Language Arts and Reading P-12;
 - (b) Group II - Social Studies P-12;
 - (c) Group III - Science P-12;
 - (d) Group IV - Mathematics P-12;
 - (e) Group V - Vocational Studies, including Career and Technical Education, and Practical Living P-12; and
 - (f) Group VI - Arts and Humanities P-12.

Section 3.

(1) Level One. All elements of the print version shall be provided, including graphics with appropriate ALT tags, the file format shall be compatible with commonly used Braille translation and speech synthesis software, and shall be readable with both text and screen readers. The files shall be provided in XML, XHTML, or HTML format. The use of graphic image files and other non-text elements shall require:

- (a) A text equivalent for every nontext element;
- (b) Row and column headers be identified for data tables;
- (c) Markup to be used to associate data cells and header cells for data tables that have two (2) or more logical levels of row or column headers; and
- (d) Frames to be titled with text that facilitates frame identification and navigation.

(2) Level Two. All elements of the print version shall be provided including graphics, though graphic descriptions shall not be required. The file format shall be compatible with commonly used Braille translation and speech synthesis software, and shall be readable with both text and screen readers. Electronic files shall be in MS Word or Rich Text Format.

(3) Level Three. All elements of the print version shall be provided including graphics, though graphic descriptions may not be required. The file format shall be compatible with some text and screen readers, but usability is only marginal, and the format may include unlocked PDF. The file shall also have the following technical characteristics:

- (a) A single PDF file per book, that allows all front matter, chapters, and back matter pages to be merged into a single PDF that is in proper page order, from front to back;
- (b) All fonts shall be embedded using Adobe Distiller;
- (c) All pages may be consistently cropped; and
- (d) All images, line drawings, and other nontext shall be included in either Web-ready resolutions or high resolution.

Section 4.

(1) A vendor submitting a bid shall ship adequate and appropriate instructional resource samples or program specifications to the Department of Education, individual State Textbook Commission members, and to the state review site before the beginning of the review process. All other pertinent bid information shall be provided by the bid opening.

(2) When the review process has been completed and the individual commission members have no further need for samples in their possession, the samples shall be disposed of in the following manner:

- (a) Reclaimed by the publishers; or
- (b) Transferred to local school districts, institutions of higher education, or other appropriate agencies.

Section 5. The vendor shall provide information about the availability of an alternative format and the technical characteristic of the electronic file for each instructional resource. The vendor shall identify the electronic file for the resource as Level One, Level Two, or Level Three. Effective July 1, 2003, any publisher who identifies the electronic file for a resource as Level Two or Level Three shall provide the Department of Education information documenting why it is not feasible to provide files meeting Level One compliance. The Commissioner of Education shall determine whether the publisher has met the requirement of KRS 156.027.

Section 6.

(1) Each adoption year before establishing the state list, the State Textbook Commission shall conduct a hearing for the following purposes:

- (a) Interviewing publisher agents, representatives, and vendors of instructional resources; and

- (b) Hearing any person or organization that may have complaints or concerns about an instructional resource being considered for listing.
- (2) A party desiring to be heard shall file with the Secretary of the State Textbook Commission a written request two (2) weeks prior to the hearing. The request shall clearly state:
 - (a) Name and address of the person or organization requesting the hearing;
 - (b) Title, author, International Standard Book Number, and copyright date of the instructional resource in question;
 - (c) Sections of the instructional resource being questioned and nature of concern;
 - (d) Anticipated problems that would be created if the instructional resource is adopted; and
 - (e) Suggested alternatives.
- (3) One (1) spokesperson shall represent a group or organization.
- (4) The commission's position and action shall be forwarded to the concerned parties after the state list has been established.

Section 7.

- (1)
 - (a) The Kentucky State Textbook Commission may inquire into and ascertain if any vendor has:
 - 1. Violated:
 - a. Any provision of Sections 3 through 16 or 19 of this administrative regulation; or
 - b. Any provision of KRS 156.400 through 156.476 or 157.100 through 157.190; or
 - 2. Used undue influence or unethical tactics to secure bids or to assure local adoption.
 - (b) Undue influence or unethical tactics shall include:
 - 1. Unsolicited contact by vendors or their representatives with members of the State Textbook Commission; and
 - 2. The buying for or giving to State Textbook Commission members, local district personnel, or review committee members meals, gifts, trips, or entertainment to assure the listing, adoption, or purchase of their instructional resources.
 - (c) If there is sufficient evidence that a vendor may be guilty, the vendor shall be called before the State Textbook Commission to determine:
 - 1. If violations did occur; and
 - 2. What course of action shall be taken.
- (2) A vendor proposing to give local districts free-of-charge items such as reproducible masters, teachers editions, workbooks, and extra textbooks, if the districts adopt and purchase its items, shall file a list of gratis items as an official part of its bid.
- (3) In addition to textbook sampling required under KRS 156.440, a vendor may sample gratis items to local districts or schools for use in the adoption process. Gratis sampling shall not be done in a manner to assure the adoption and purchase of a vendor's instructional resources.
- (4) The State Textbook Commission may refuse to execute or may cancel a vendor contract upon discovery that the vendor:
 - (a) Has violated Sections 3 through 16 or 19 of this administrative regulation; or
 - (b) Does not have the ability to perform all the terms and conditions of the contract.
- (5) A bidder for instructional resource contracts shall file with the Department of Education the name and address of a Kentucky person, firm, or corporation upon whom process may be served.

Section 8. A school administrator, school council chair, or teacher shall not receive directly or indirectly any gift, reward, or promise of a reward for his influence in reviewing and selecting instructional resources.

Section 9.

(1) An instructional resource submitted for recommendation in Kentucky shall meet the "Manufacturing Standards and Specifications for Textbooks", developed and approved by the National Association of State Textbook Administrators, in consultation with the Association of American Publishers and the Book Manufacturer's Institute.

(2)

(a) A publisher may submit an old copyright with the official bid. A revised edition shall be submitted before the commission hearing.

(b) A publisher may submit a galley proof, incomplete book, or statement of intent with the official bid. The book shall be complete and on file with the State Textbook Commission before the date of the commission hearing.

(c) Ancillary materials, including workbooks, electronic versions, and teacher editions, shall be completed on or before the July 1 contract date.

Section 10. Inaccurate information, defective workmanship, or defective material shall be reported by school personnel to the vendor as soon as detected.

(1) A vendor shall be held responsible for all inaccurate or defective instructional resources.

(2) Instructional resources that show manufacturing defects in the first or second year of use shall be replaced by the vendor on a one-for-one basis.

(3) After the first two (2) years of use, a replacement agreement shall be negotiated between the local district and the vendors. School districts shall start the replacement process as soon as it has been determined that instructional resources are inaccurate or defective.

Section 11.

(1) A request to substitute revised editions of textbooks, updated technology, or other instructional resources under contract shall be considered at the first regular meeting of the calendar year of the State Textbook Commission to be held on or before May 1.

(2) Substitutions shall not be permitted for instructional resource to be used the last year of a contract.

(3) The vendor shall agree to supply either the listed or the substituted item in accordance with the local school district's request.

(4) The updated resources shall be at the same price at which the instructional resource was bid and the content shall be compatible for use with the previous resource.

(5) The physical materials and workmanship of the updated resource shall be of equal or better quality than the previous resource.

(6) Ancillary materials for a substituted instructional resource shall be available when the publisher submits the substitution request.

(7) Thirty (30) days prior to the date of the commission meeting publishers shall provide a sample of the substituted instructional resource and a list of the changes with page numbers of the updated material or other reference data that compares it with the instructional resource presently listed.

Section 12. The cost for instructional resources to be used in Kentucky shall not be more than twenty (20) percent in excess of the publisher or provider wholesale price.

Section 13.

(1) The State Textbook Commission shall direct the process for including instructional resources used as basal programs on the state list. The commission shall receive

assistance in the review and selection of instructional resources from professional educators and lay citizens who may serve on a contractual basis.

(2) The Commissioner of Education shall recommend to the State Textbook Commission names of instructional resource reviewers with knowledge about the area or areas being considered for recommendation.

(3) The State Textbook Commission shall:

(a) Appoint, from the list of qualified applicants prepared by the Commissioner of Education, twelve (12) instructional resource reviewers;

(b) Approve the evaluative criteria and instruments of evaluation developed by the instructional resource reviewers; and

(c) Select, approve, and publish a list of high quality instructional resources using the information submitted by the reviewers.

(4) The instructional resource reviewers shall:

(a) Be comprised of twelve (12) individuals, including classroom teachers, other educators, and parents of children currently enrolled in school who represent a balance of gender, grade levels, geographic, and ethnic diversity.

(b) Attend meetings and training sessions as requested by the Department of Education;

(c) Develop and submit to the State Textbook Commission an instrument of evaluation to be used in reviewing instructional resources;

(d) Review instructional resources except those that are ancillary to basal textbook programs to determine those of high quality; and

(e) Submit to the State Textbook Commission their recommendations for instructional resources to be placed on the state's recommended list and shall submit the instruments used in the evaluation process.

Section 14.

(1) A school may use state instructional resource funds for the purchase of recommended instructional resources in any combination based on identified pupil needs. Purchases may include the following:

(2) Instructional resources not subject to state review but eligible for purchase shall include the following:

(a) Reference books, trade books, pamphlets, periodicals, and other supplemental print material for student use;

(b) Supplementary videotapes, slides, and recordings;

(c) Graphic materials, transparencies, globes, maps, music material, math and science manipulatives, calculators, and similar material;

(d) Supplementary electronic instructional materials; and

(e) Individualized learning programs.

(3) The following materials and services shall not be eligible to be purchased with state instructional resource funds:

(a) Furniture, testing programs, supplementary supplies and workbooks, raw and blank materials with exception of materials which are integral to the success of the original approved program as adopted by a school or district but not to include ancillary and gratis materials;

(b) Audio visual equipment, major audio-visual installations such as public address systems, sound laboratories, computers, televisions (including receiving sets and related equipment), and other equipment; and

(c) Reproducible master books.

Section 15. A school with grades primary through eight (8) shall complete an annual plan identifying purchases, including necessary replacements, to be made with instructional resource funds according to the adoption cycle. The plan shall assure that an instructional

resource is available in a format designed to provide any reading accommodation required for a student with an individual education program or a student identified as needing an accommodation in a Section 504 plan. Use of an electronic version of a text shall be limited to a student who has an individual education program or Section 504 plan and the electronic version shall not be used as a substitute for purchasing a hard copy. The school shall maintain the original purchase pattern prior to access to the electronic file. The plan may be revised.

Section 16.

- (1) A pupil in grades primary through twelve (12) with impaired vision shall be considered eligible for the use of instructional resources in clear type of eighteen (18) to twenty-four (24) points upon certification by an eye specialist.
- (2) Certification of pupils' visual impairment shall be made by local school districts to the Department of Education.
- (3) Request for large print textbooks and material shall be directed to the Kentucky School for the Blind.
- (4) A local board of education shall assume responsibility for the care of large print textbooks and return them to the Kentucky School for the Blind when no longer needed.
- (5) Large print textbooks and instructional resources provided by the Kentucky School for the Blind shall not be charged to the instructional resource account of the local school.

Section 17.

- (1) The Department of Education shall prepare instructional resource budgets annually and allocate funds to local school districts, based upon the Kentucky General Assembly biennial appropriation, for the purpose of purchasing instructional resources during each adoption or funding cycle. The funds shall be used for students in primary through grade eight (8), exclusively.
- (2) If allocating funds for the purchase of instructional resources, the Department of Education shall use the pupil membership at the close of the second month of the current school year.
- (3) After receiving a statement of funds allocated, the superintendent shall notify within thirty (30) days the school council, or if none exists, the principal, of the per-pupil allotment to be expended by each school.
- (4) Money appropriated in the current fiscal year shall be spent on instructional resources in that year's adoption cycle. Money carried over to the next fiscal year may be spent by each school on instructional resources in accordance with its plan.

Section 18.

- (1) A local school district shall:
 - (a) Establish and maintain an instructional resource rental program for grades nine (9) through twelve (12); or
 - (b) Use local funds to provide a free instructional resource program.
 - (c) Instructional resource rental fees for pupils enrolled for less than a full school year shall be prorated based on the number of days of membership.
- (2) A local school district shall establish and maintain accounts for the instructional resource rental program subject to audit. The school council, or if none exists, the principal, shall be notified regarding the school's balance.

Section 19.

- (1) Instructional resources for high schools shall be labeled as property of the Commonwealth of Kentucky. For economy in administration, the uniform label shall be affixed by the publishers in accordance with the "Manufacturing Standards and Specifications for Textbooks." The purchase date and the issue date shall be recorded on the uniform label.

(2) Instructional resource uniform labels shall not be completed until an examination of the shipment shows that it agrees in detail with the purchase order. An instructional resource with label completed shall be classified as used.

(3) A complete record shall be kept by the school for all state-provided instructional resources for grades primary through eight (8) and all instructional resources purchased with pupil rental fees for grades nine (9) through twelve (12).

Section 20.

(1) Pupils or parents shall compensate schools for instructional resources lost, damaged, or destroyed while in their possession.

(2) The method and rate of compensation shall be prorated based on the number of years the instructional resources have been in use. The total compensation charged to a pupil or parent shall not exceed the lowest wholesale price of the initial purchase.

(3) Funds collected shall be credited to the school's instructional resource account.

Section 21.

(1) A local superintendent shall assume responsibility for the disposal of instructional resources no longer suitable for classroom instruction.

(2) Funds from the sale of the instructional resources shall be credited to the school's instructional resource account.

Section 22.

(1) A child shall not be denied full participation in any educational program due to an inability to purchase necessary instructional resources. A local school district shall make available free instructional resources to all children in grades nine (9) through twelve (12) who are unable to rent or purchase instructional resources, using the eligibility guidelines for the free and reduced price lunch program.

(2) A local school district shall adopt policies and procedures so that, at the beginning of the school year, pupils or their parents are given written notice of how to obtain free and reduced rental instructional resources. The policies and procedures shall also insure that any written communication regarding payment of fees for instructional resources shall include a form that parents may use to request waiver or partial waiver of instructional resource fees.

(3) A local district shall keep records that include:

(a) The numbers of pupils in grades nine (9) through twelve (12) receiving free lunches and reduced price lunches;

(b) The number of pupils in grades nine (9) through twelve (12) who request or apply for, or whose parents request or apply for, free or reduced rental instructional resources and the number of pupils receiving free or reduced rental instructional resources; and

(c) Copies of any forms, notices, or instructions used by schools in the collection of instructional resource fees or the provision of free or reduced rental instructional resources.

(4) In the provision of instructional resources to indigent children, a child shall not be discriminated against because of race, sex, color, national origin, age, or disability and there shall not be an overt identification of any indigent children.

Section 23.

(1) A public school student shall have access to necessary instructional resources which shall be furnished free of charge in grades primary through eight (8), and, except for students otherwise partially or wholly exempted from the rental fee, shall have the instructional resources available for the reasonable rental fee set forth in Section 17 of this administrative regulation for each subject studied in grades nine (9) through twelve (12).

(2) Quantities of instructional resources needed for each student and each classroom shall be determined at the school level.

Section 24. Incorporation by Reference.

(1) The "Manufacturing Standards and Specifications for Textbooks", dated August 15, 2002, is incorporated by reference.

(2) This document may be inspected, copied or obtained, subject to applicable copyright law, at the Department of Education, 300 Sower Blvd., 5th Floor, Frankfort, Kentucky 40601, Monday-Friday, 8 a.m. through 4:30 p.m.

(21 Ky.R. 785; eff. 1-9-1995; 24 Ky.R. 760; 1093; eff. 11-6-1997; 29 Ky.R. 1889; 2285; eff. 3-19-2003; Crt eff. 11-16-2018; TAm eff 11-18-2022.)

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