

(1) **Selecting instructional materials is ultimately the board’s responsibility**, though the board may delegate its responsibility to a district employee. (Texas Education Code § 31.104(a), Policy CMD(Legal))

(2) **Districts do NOT have to purchase only state-adopted materials with IMA funds.** Districts may use state IMA funds to purchase either state-adopted *or* non-state-adopted materials, as well as technology to support the use of instructional materials and certain training and salary expenses. (Texas Education Code (TEC) §31.0211(c-d); Texas Administrative Code (TAC) §66.1307(c); Policy CMD (Legal))

(3) **Instructional materials (except state-adopted materials) are subject to competitive procurement laws.** Non-state adopted and *unbundled* state-adopted materials must be competitively procured if the district plans to purchase \$50,000 or more of instructional materials in a 12-month period. Violation is a Class B or C misdemeanor. “Unbundled” means that the district has purchased state-adopted materials in a different package than the way the materials are listed on the state pricing list. (Local Govt. Code §271.054; §271.064)

(4) **Just because a material is “state-adopted” does NOT necessarily mean that it is aligned to 100% of the TEKS.** Materials may be state-adopted as long as they cover *at least 50% of the TEKS* for the grade and subject. (TEC§ 31.023). **The fact that a material is not state-adopted, does NOT mean it is inferior to state-adopted materials.** Publishers are *not required* to submit their instructional materials for state-adoption, and many choose not to for a variety of reasons. For example, some products are not developed in time for the state review process; other publishers cannot dedicate the time and resources it takes to go through the state adoption process. As the following table of four grade 8 social studies products shows, there is no connection between a material’s state-adoption status, its alignment percentage and its price. **Bottom line:** to get the best value, districts must comparison shop for their instructional materials.

Product #1	State-adopted	100% aligned	\$99.97/student
Product #2	State-adopted	100% aligned	\$69.35/student
Product #3	Non-state-adopted	94% aligned	\$650/teacher which equates to \$27/student (or less) if the teacher teaches at least 24 students.

(5) **The board has a legal obligation to ensure that the district is in compliance with the [100% Rule](#).** The superintendent and **board president** must annually certify to the State Board of Education and the commissioner that the district provides each student with instructional materials that cover 100% of the TEKS for each grade and subject in the required curriculum, except physical education.

Why? Teachers rely on instructional materials for approximately 80% of their curriculum; if their materials are not aligned to 100% of the TEKS and teachers do not know where the materials’ deficiencies are, they may not be teaching their students all the knowledge and skills the standards require. Thus, students will be less prepared to do well on state tests.

Both state-adopted *and* non-adopted materials may be considered for the certification. **The board** must ratify the certification in an open meeting before it is submitted to TEA. The commissioner of education

may require districts to [submit supporting documentation](#) about the instructional materials on which the certification is based. Therefore, the board should make sure that the district has documentation proving the alignment of each instructional material purchased, in order to show that individually or in the aggregate the materials align to 100% of the TEKS for each grade/subject. (TEC §31.004; 19 TAC §66.1305; Policy CMD (Legal))

In short, district policy should give the administration the flexibility to purchase whichever products (state-adopted or non-state-adopted) meet their students' needs and provide the best value to the district. However, the board has a legal duty to ensure that the district can show that the materials used, either individually or in the aggregate, align to 100% of the TEKS for each grade and subject in the required curriculum, except PE.

Key Questions to Ask When Selecting Instructional Materials

- (1) Does your district's local policy allow the administration to consider both state-adopted *and/or* non-state adopted materials? If not, how do you know you are getting the best value for your students?
- (2) How many materials were considered for each grade/subject being selected?
- (3) Did the district engage in a competitive procurement process to select non-adopted or unbundled state-adopted materials?
- (4) Were teachers given an opportunity to sample the products recommended for adoption? For online materials, were both tech-savvy and non-tech-savvy teachers asked to review the product?
- (5) For online materials, does the district have the per student bandwidth and other technology infrastructure in place to support simultaneous use of the recommended products?
- (6) If online materials, how will the district ensure that all students will have access to the product at home, even students who do not have internet access at home?
- (7) Does the administration have an alignment report to prove that the recommended materials, either individually or in the aggregate, align to 100% of the TEKS for each grade/subject in the required curriculum, except PE?

District Policies and Regulations Governing Instructional Materials

- EFAA (LEGAL)
- EFAA (LOCAL)
- EFAA (REGULATION)
- CMD (LEGAL)