Agency Name: Board of Education

Statutory Authority: 59-5-60(7), 59-31-210, and 59-31-360

Document Number: 4786

Proposed in State Register Volume and Issue: 41/10

House Committee: Regulations and Administrative Procedures Committee

Senate Committee: Education Committee

Status: Withdrawn

Subject: Free Textbooks

History: 4786

By Date Action Description Jt. Res. No. Expiration Date

- 10/27/2017 Proposed Reg Published in SR

- 01/09/2018 Received by Lt. Gov & Speaker 05/09/2018

H 01/09/2018 Referred to Committee

S 01/09/2018 Referred to Committee

- 03/12/2018 Agency Withdrawal

 120 Day Period Tolled

- 03/12/2018 Permanently Withdrawn

Document No. 4786

**STATE BOARD OF EDUCATION**

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60(7), 59-31-210, and 59-31-360

43-71. Free Textbooks.

**Synopsis:**

State Board of Education Regulation 43-71 establishes the procedures and provisions for providing state adopted instructional materials for grades K–12 in public schools in the state to include the procedures for the requisitioning and distributing of instructional materials; the guidelines for schools regarding inventory, damage/lost materials, return of materials, and the disposition of out-of-adoption materials; and the provisions for the most favored purchaser requirement to ensure that the State receives the lowest price offered by the publisher or vendor. Amendments to Regulation 43-71 will establish an updated process and provisions for schools, school districts, and the state and delete obsolete procedures.

 The changes to the regulation are proposed to update the process to include the SCDE’s Instructional Materials Web site and delete or replace obsolete procedures.The SCDE’s Instructional Materials Web site has made many procedures in regulation change or become obsolete. Deletions to the amended regulations will includeSections4, 7, 11, 12, 14, 15, 16, 17, 18, 21, 22, 24, and 26. The proposed deleted Sections 21, 22, and 24 remain applicable to the current process but will be addressed in the Instructional Management Procedures for Schools in accordance with this regulation.

 The proposed amendments to 43-71 will include moving Section 28 to Regulation 43-70, Section 14 with revisions. This Section pertains to Regulation 43-70 and the state adoption of instructional materials.

 The proposed changes to the regulation will update terminology for consistency throughout the document and to bring the regulation in line with other agency regulations. The terminology update will include changing pupil(s) to student(s), publisher(s) to publisher(s)/vendor(s); and adding (print/digital) after instructional materials.

 Notice of Drafting for the proposed amendments to the regulation was published in the *State Register* on July 28, 2017.

**Instructions:**

Entire regulation is to be replaced with the following text.

~~Indicates Matter Stricken~~

Indicates New Matter

**Text:**

43-71. ~~Free Textbooks~~ Distribution Process for State Adopted Instructional Materials (Print/Digital).

Section 1. Free Basal Textbook Enabling Act. Pursuant to Section 59-31-360 to provide "free basal textbooks" in ~~Grades 1~~ Kindergarten through Grade 12 (K–12), ~~S. C.~~ South Carolina State Board of Education (SBE) does hereby set forth procedures for ordering and managing state adopted instructional materials (print/digital).

Section 2. Requisition for ~~Free~~ State Adopted Instructional Materials (Print/Digital). Requisitions for ~~free~~ state adopted instructional materials (print/digital) shall be made only to the South Carolina Department of Education (SCDE), in accordance with the ~~“~~Instructional Materials Management Procedures for Schools~~”~~, ~~by completing the official current order form or on internet~~ using the ordering system on the ~~South Carolina~~ SCDE’s Instructional Materials ~~Central Depository w~~Web site.

Section 3. Provisions for Requisitioning and Distributing ~~Free~~ State Adopted Instructional Materials (Print/Digital).

 A. Acquisition of ~~Free~~ State Adopted Instructional Materials (print/digital) for K–12. ~~on Levels of Achievement.~~ Any ~~pupil~~ student ~~who is a member of any~~ in grades K–12 ~~within the free instructional materials program~~ may be assigned ~~free~~ state adopted instructional materials (print/digital) ~~on the appropriate achievement level as indicated by tests and other evaluations~~.

 B. No Deposits Charged on Instructional Materials. No school district, or authorized personnel thereof shall require a student to pay a deposit on any state adopted instructional materials (print/digital) issued by the SCDE.

 ~~B~~C. Allocation of Instructional Materials (Print/Digital) to Schools. The SCDE shall provide a schedule of instructional materials allocation formulas to the ~~State Board of Education~~ SBE for information annually. The formulas shall be based on available funding provided by the General Assembly for the Instructional Materials ~~p~~Program~~;~~, the average cost of adopted instructional materials (print/digital)~~;~~, and the prescribed percentage of total membership used in calculating materials allocations.

 ~~C. Educable Mentally Handicapped (Special Education) Reading Primary classes shall be eligible for necessary reading materials not to exceed two pre-readiness readers and/or readiness programs and one beginning reading program.~~

 D. The SBE shall have the authority to limit or postpone the acquisition of titles or series for such period of time as shall be deemed advisable.

~~Section 4. Changing to New Titles or Series. A school may change to a new title or series in a subject area only when new material on the same level is adopted by the State Board of Education and funded. Schools shall not return materials presently on the state-adopted list to be exchanged for other titles or series, except limited changes that are justified by variations in student achievements. Any books materials exchanged must be on different levels of difficulty. Provided, that the Board shall have the authority to limit or postpone the acquisition of titles or series for such period of time as maybe deemed advisable.~~

Section ~~5~~4. Property of the State. Title to all materials (print/digital) issued to schools ~~and depositories~~ under the Free Basal Textbook Enabling Act shall be vested in the ~~S~~state. (Legislative Provision)~~.~~

Section ~~6~~5. Responsible Parties. The school districts ~~board of trustees~~ shall be responsible for the proper custody of all materials in its schools ~~and depositories~~ and shall be responsible for the administration of the Instructional Materials Management Procedures for Schools ~~in those schools and depositories~~.

~~Section 7. Distribution to Schools. The county or district board of trustees shall elect from the procedures listed below the system of distribution to be used.~~

 ~~A.~~  ~~County Depository: A county depository may be established through which all materials in the county will be distributed.~~

 ~~B. District Depository: A district depository may be established through which all materials in the district will be distributed.~~

 ~~C. School Depository: A school depository may be established through which all materials in the school will be distributed. The board of trustees may designate an agent to operate the depository, maintain adequate records and make necessary reports and remittances to the responsible office at the SCDE; however, such designation does not relieve the board of its responsibilities.~~

Section ~~8~~6. ~~Shipping of~~ Receiving Instructional Materials. ~~Each~~ ~~s~~Schools ~~or depository~~ will ~~be sent a Shipment Advisory listing~~ receive packing lists itemizing the print materials shipped and the number of approved digital licenses or access codes ~~to it~~. The school’s designee ~~or depository agent~~ shall verify the materials (print/digital) received with the materials listed on the ~~Shipment Advisory~~ packing list. If the title(s) and number of materials received do not agree with the title(s) and number of materials on the ~~Shipment Advisory, a report must be made promptly to the responsible office at the SCDE showing: (1) the name of the school and county, (2) the number and date of the Shipment Advisory, (3) a complete itemized list of the differences between Shipment Advisory and books received, both over and short.~~ packing list, a Shipping Error Form must be completed via the SCDE’s Instructional Materials ~~w~~Web site.

Section ~~9~~7. ~~Records~~ Inventory (Print/Digital) and Reports. ~~Each~~ ~~s~~Schools ~~and depository~~ shall participate in the annual statewide inventory of print and digital materials through the Instructional Materials Management System. ~~maintain a separate and complete file for instructional material records, correspondence, and forms. Each school and depository shall maintain an accurate record of the number of materials on hand, materials received and materials returned. They, also, shall keep an accurate record of sales, lost materials, and damage fees and report same to the SCDE and remit all funds collected and pay promptly all amounts due. The Department will issue an official receipt covering each remittance.~~ Schools shall report lost and damaged materials and remit fees to the SCDE (see Section 8(B) Lost and Damaged Print Instructional Materials). Each school ~~and depository~~ shall furnish the responsible office at the SCDE with membership reports~~, anticipated membership reports, inventory reports,~~ and other ~~reports~~ data as ~~may be~~ requested. ~~Each school shall maintain a record of materials issued to each pupil.~~

Section ~~10~~8. ~~Storage. Each school and depository shall provide for instructional materials adequate places of storage which are safe, clean, dry, well arranged, and free of insects. Care must be taken to see that materials do not mold while in storage. Materials should not be stored on floors and should be at least one inch from walls to allow proper ventilation and protection from terminates.~~ Managing Print Materials. Schools shall adhere to the procedures for managing and maintaining print instructional materials in accordance with the Instructional Materials Management Procedures for Schools to include proper and secure storage; student care and return of materials; materials that are defective, lost or damaged by fire, or contaminated; and the following:

~~Section 11. Distribution within the School. Materials may be distributed directly to the pupils from the central bookroom or delivered from the bookroom to each teacher to be issued to the pupils. Materials as determined by the responsible office at the SCDE shall be distributed and circulated using the online state textbook manager.~~

~~Section 12. Inspection. All materials and materials records shall be subject at any time to inspection by authorized agents of the county and/or district board of trustees and the SCDE. It shall be the duty of each teacher to inspect frequently the materials issued to pupils and to emphasize the proper care and handling of materials.~~

~~Section 13.~~A. Stamping or Labeling of Print Instructional Materials. ~~Free~~ Print editions of state adopted ~~I~~instructional materials issued to ~~pupils~~ students shall have a barcode label properly affixed marked “Property State of SC”. New materials shall not be stamped or labeled or have a barcode affixed or otherwise marked until issued to ~~pupils~~ students. Students shall not remove, deface, or damage barcodes on state-owned materials.

~~Section 14. Issuing Used Print Instructional Materials. All used materials of each title shall be issued before any new materials of the same title are issued.~~

~~Section 15. Marking in Print Instructional Materials. Pupil's name may be written below the property stamp impression or on the property label. Pupils may appropriately mark lesson assignments, otherwise they shall not mark or write in instructional materials. Pupils shall not remove, deface, or damage barcodes on state-owned materials. (See Section 20 Damaged Instructional Materials)~~

~~Section 16. No Deposits Charged on Instructional Materials. No board or agent thereof shall require a pupil to pay a deposit on any free materials issued by the SCDE.~~

~~Section 17. Instructional Materials to be Returned by Pupils. Materials shall be turned in to the school by the pupil, parents or guardians under the following circumstances:~~

 ~~1.~~  ~~When appropriately requested by a teacher or school official.~~

 ~~2. When the course is completed or discontinued by the school or pupil.~~

 ~~3. When the pupil withdraws from school.~~

 ~~4. At the end of the school year.~~

~~Section 18. Transfer Students. A school from which a pupil transfers shall make an appropriate notation on the pupil's transcript records as to whether all his or her materials were returned to the school and whether any damage or lost materials fees are unpaid. (See Sections 17, 19, and 20)~~

~~Section 19.~~B. Lost and Damaged Print Instructional Materials.

 1. Schools may require ~~pupils~~ students, parents or guardians to pay for lost and damaged instructional materials ~~lost~~ and the ~~pupil~~ student, parent or guardian may be denied further benefits of the ~~Free~~ State Adopted Instructional Materials Program until in compliance~~with this requirement~~. This requirement may be waived in instances where the judgment of the principal and/or responsible officials believes that the child is a victim of unusual circumstances. The school district shall be responsible for the cost. ~~The report of lost instructional materials paid for and sales should be itemized by titles on an appropriate form sent to each school at the end of the school year.~~

 2. The schedule of charges for lost and damaged beyond use materials shall be determined by the ~~State Board of Education~~ SBE upon the recommendation of the SCDE. ~~Fees collected for lost materials shall be remitted to the SCDE.~~

~~Section 20. Damaged Instructional Materials. Schools are required to collect appropriate damage fees from any pupil, parent or guardian for abuse or improper care of instructional materials and the pupil student, parent or guardian may be denied further benefits of the Free Instructional Materials Program until in compliance with this requirement. This requirement may be waived in instances where the judgment of the principal and/or responsible officials believes that the child is a victim of unusual circumstances. The school or district shall be responsible for the cost.~~ The amount to be charged ~~in such cases~~ for useable damaged materials shall be determined by the ~~agent~~ authorized personnel in charge of materials. In no case, shall the ~~cost exceed the amount of charge applicable had the material been lost~~ amount charged for lost or damaged materials exceed the replacement cost.~~,~~ ~~provided that the pupil, parent, guardian shall have the option of paying the damage fee or purchasing the material according to the schedule in Section 19 above.~~ Useable m~~M~~aterials on which only a damage fee is collected shallremain the property of the state and shall remain with the school for further use. ~~Materials damage fees collected should be reported in a lump sum in the space provided on the annual instructional materials inventory form sent each school at the end of the school year.~~ Fees collected for lost or damaged beyond use materials shall be remitted to the SCDE. (See Section 9)

~~Section 21. Fire Loss. Materials destroyed or damaged beyond further use by fire in school buildings or private homes shall not be charged to the individual or school provided an official of the school furnishes the SCDE a certified list of the materials destroyed and the place and date of the fire.~~

~~Section 22. Contagious Diseases. Materials issued to a pupil having a contagious disease such as scarlet fever, diphtheria, etc., shall be burned by the local agent provided such destruction has been recommended by the physician attending the child. The local agent shall provide the SCDE with a certified list of the materials destroyed.~~

~~Section 23.~~C. Returning Instructional Materials to Central Depository. Schools ~~or depositories shall not~~ must return to the Central Depository ~~used free~~ surplus instructional materials (print/digital) using the Instructional Materials Management System. ~~instructional materials except when requested or authorized to do so by the SCDE. New instructional materials (materials which never have been put in use or tagged, stamped, or labeled) may be returned at any time. (See instructions below)~~

 ~~A.~~  ~~Address all shipments to:~~

 ~~Central Depository~~

 ~~301 Greystone Blvd.~~

 ~~Columbia, South Carolina 29210~~

 ~~B. Return instructional materials by completing the Return Form.~~

 ~~C. When preparing the Return Form, list the instructional materials and follow the instructions on the form.~~

~~Section 24. Defective Instructional Materials. Defective materials should be clearly marked "DEFECT" on the outside of the front cover and the defect identified on the inside of the front cover or in a visible place on the outside of a non-book item. Return the defective materials as soon as possible to the Instructional Materials Central Depository and notify the responsible office at the SCDE whether a replacement or an inventory credit is desired.~~

~~Section 25.~~D. Disposition of Out-of-Adoption Print Instructional Materials.

 ~~A.~~ Out-of-adoption instructional materials are those for which the state contracts with the publishers/vendors have expired.

 1. Schools may continue to use a title on which the contract has expired. Maximum use should be made of these materials, such as additional resources for classroom assignments or consigned for home study.

 ~~B.~~2. ~~Schools shall return all new out of adoption instructional materials to the Instructional Materials Central Depository promptly after the expiration of the contract.~~ The SCDE will remove out-of-adoption materials from the inventory of materials charged to the school before the second year after the expiration of the contract with the publisher/vendor.

 ~~C. Schools may continue to use a title on which the contract has expired as long as the title is available from stock owned by the state. Schools should continue to use such materials until they have carefully evaluated all newly adopted materials and selected those best suited to their needs. Schools may continue to use the old title for some grade sections and new titles for other grade sections if they wish.~~

 ~~D. Schools which change to new titles may be requested to return all or a portion of the titles that are being discontinued. The remaining copies may be used or disposed of by the school. Maximum use should be made of these materials, such as additional text material including assignments for classroom work or consigned for home study.~~

 ~~E. Out-of-adoption materials will be removed from the inventory of books charged to the school before the second year after the expiration of the contract with the publisher.~~

 3. Districts should ~~attempt to~~ dispose of out**-**of**-**adoption materials locally~~. Districts may dispose of those materials in any manner~~, ~~including~~ to include donating or selling materials for the purpose of recycle or resale. Funds received by the sale of ~~used~~ out**-**of**-**adoption materials must be used for the purchase of instructional materials or supplies. Districts or schools should not use trash receptacles or dumpsters to dispose of out-of-adoption materials.

~~Section 26. Consumable Instructional Materials.~~

 ~~A.~~  ~~The SCDE will publish annually a listing of consumable instructional materials. Any materials not on the listing shall be considered non-consumable. Schools using non-consumable materials as consumable shall be responsible for the cost of replacement.~~

 ~~B. Instructional materials such as workbooks, lab manuals, and test booklets that provide space for written comments and answers shall be classified as one year consumables and considered consumed once issued to a student and used for instruction. One year consumable materials issued to a student and used for instruction will be removed from inventory annually.~~

 ~~C. Funds to replace consumable materials will be provided annually to the extent that an Appropriation is provided by the General Assembly for instructional materials with replacement of non-consumable materials having first priority.~~

Section ~~27~~9. Accounts Must Be Settled. Fees for lost and damaged ~~textbooks~~ instructional materials for the prior school year are due no later than December 1 of the current school year when invoiced by the SCDE. The SCDE may withhold ~~textbook~~ instructional materials (print/digital) funding from schools that have not paid lost and damaged ~~textbook~~ instructional materials fees by the payment deadline.

~~Section 28. Special Adoptions.~~

~~Instructional materials, textbooks, or series not currently available from the SCDE that are subsequently added as a special adoption or a district adoption under Section 59-31-45 may be purchased with the district’s existing allocation. The SCDE may limit the exchange of instructional materials replaced by special and district adoptions.~~

Section ~~29~~10. Most Favored Purchaser. Pursuant to South Carolina Code, if publishers/vendors sell instructional materials (print/digital) to any other person or entity at a lower price than the price offered to South Carolina, that reduced price automatically becomes the contract price for South Carolina. At the end of each calendar year, publishers/vendors shall submit a certified list of all contracts made with other entities during the calendar year ~~just closed~~ on all instructional materials (print/digital) for which the publisher/vendor has a contract in South Carolina. That list must include the contract price for those instructional materials (print/digital). The SCDE may direct the Central Depository to withhold payment for instructional materials purchased from non-responsive publishers/vendors or assess non-responsive publishers/vendors liquidated damages in an amount equal to ~~5~~ five percent of the contract price of all instructional materials (print/digital) under contract with the publisher/vendor, not to exceed $5,000.

**Fiscal Impact Statement:**

 None.

**Statement of Rationale:**

 Regulation 43-71 amendments detail an update to the process to include the SCDE’s Instructional Materials Web site, deleting obsolete procedures, and cleaning up terminology for consistency and to bring the regulation in line with other agency regulations.

 Regulation 43-71, Sections4, 7, 11, 12, 14, 15, 16, 17, 18, 21, 22, 24, and Section 26 are deleted. The SCDE’s Instructional Materials Web site has made many of the procedures in regulation obsolete. The proposed deleted Sections 21, 22, and 24 remain applicable to the current process but will be addressed in the Instructional Management Procedures for Schools in accordance with this regulation.

 Regulation 43-71, Section 28 moves to Regulation 43-70, Section 14 with revisions. This Section pertains to Regulation 43-70 and the state adoption of instructional materials.