

Chapter 337

2017 EDITION

Books and Instructional Materials

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337.010 [Repealed by 1965 c.100 §248 (337.011 enacted in lieu of 337.010)]

337.011 [1965 c.100 §249 (enacted in lieu of 337.010); 1975 c.754 §1; repealed by 1995 c.111 §2]

337.020 [Amended by 1953 c.526 §1; 1965 c.100 §250; 1969 c.314 §22; repealed by 1995 c.111 §2]

**REVIEW AND SELECTION
OF TEXTBOOKS
AND INSTRUCTIONAL MATERIALS
BY STATE BOARD OF EDUCATION**

337.030 Annual notice to school textbook and instructional materials publishers. The Superintendent of Public Instruction, under the direction of the State Board of Education, shall provide annual notice to school textbook and instructional materials publishers in the United States about the textbook and instructional materials review and selection process. The superintendent may satisfy the requirement of this section by publishing the notice on the website of the Department of Education. The notice shall contain:

(1) The time and place of meeting of the board to review and adopt textbooks and instructional materials.

(2) The general form of the proposal to be followed by publishers in submitting textbooks and instructional materials for review and adoption.

(3) The general form of contract to be entered into between the board and a publisher whose textbooks or instructional materials may be adopted.

(4) The subject areas for which textbooks or instructional materials are to be adopted.

(5) The statutory provisions relating to the review and adoption of textbooks and instructional materials.

(6) Such additional information as may be considered useful. [Amended by 1965 c.100 §251; 1975 c.754 §5; 1991 c.886 §3; 2011 c.313 §11]

337.035 Establishment of guidelines and criteria for review and selection of textbooks and instructional materials; rules. The State Board of Education by rule shall establish guidelines and criteria for the review and selection of textbooks and other instructional materials to be placed on the list adopted under ORS 337.050. [1975 c.754 §3; 2001 c.461 §1]

337.040 [Amended by 1953 c.526 §2; 1955 c.406 §1; 1965 c.100 §252; 1975 c.754 §6; repealed by 1995 c.111 §2]

337.050 List of textbooks and instructional materials. (1) The State Board of Education shall review and adopt, for periods established by the board, a list of textbooks and other instructional materials for use by school districts. The list shall contain, whenever possible:

(a) More than one textbook selection for each grade and subject field in the standard curriculum for which, in its judgment, textbooks are required; and

(b) More than one instructional material selection for each grade and subject field in the standard curriculum for which, in its judgment, instructional materials are required.

(2) The State Board of Education shall consider the best educational interests of the students as well as the most economical method of purchasing textbooks and instructional materials in setting periods for textbook and instructional material review and adoption.

(3) The board shall refrain from adopting any textbook or instructional material in a subject field whenever it finds that no textbook or instructional material can be documented as meeting, to the degree determined by the board, the guidelines and criteria established by the board for textbooks and instructional materials.

(4) The board may approve the request of a publisher to substitute a more recent edition of any officially adopted textbook or item of instructional material in lieu of the edition or item adopted by the board. [Amended by 1953 c.121 §3; 1953 c.526 §3; 1955 c.406 §2; 1965 c.100 §253; 1967 c.370 §1; 1975 c.754 §7; 1983 c.300 §1; 1991 c.886 §4; 1997 c.115 §1; 2001 c.461 §2]

337.055 [1975 c.754 §4; repealed by 1995 c.111 §2]

337.060 Submission of proposals by publishers. (1) The proposals of each publisher shall be submitted to the Department of Education in writing and shall be responsive to the requirements of ORS 337.030 (2) and (3), and such other information relating to the terms and conditions under which the publisher proposes to furnish textbooks or instructional materials as the State Board of Education may require.

(2) In addition to the material required under subsection (1) of this section, the proposal shall include documentation and analysis on each textbook or instructional material showing how it conforms to the guidelines and criteria adopted by the State Board of Education for the review and adoption of textbooks and instructional materials. [Amended by 1965 c.100 §254; 1975 c.754 §8; 1991 c.886 §5; 2011 c.313 §12]

337.065 Publisher fee; rules. (1) The Department of Education shall collect from each publisher or other supplier who submits a proposal under ORS 337.060 a fee equal to the retail price, or \$50, whichever is the greater, for each textbook title or item of instructional material proposed by the publisher or supplier for review and adoption by the State Board of Education. Fees are payable prior to consideration of the proposal.

(2) The moneys received under subsection (1) of this section shall be paid into the State Treasury and placed to the credit of the Department of Education. The moneys are continuously appropriated to meet expenses incurred under ORS 337.030 to 337.260.

(3) Pursuant to rules adopted by the State Board of Education, the Department of Education may waive the fee described in subsection (1) of this section for a textbook title or item of instructional material if the title or item is:

(a) A teaching and learning resource that resides in the public domain or that has been released under an intellectual property license that permits the free use and repurposing by others of the title or item; and

(b) Submitted in the format that resides in the public domain or that has been released under an intellectual property license as described in paragraph (a) of this subsection. [1967 c.370 §§2,3; 1975 c.754 §9; 1991 c.886 §6; 2017 c.5 §1]

337.070 [Repealed by 1965 c.100 §456]

337.075 Adoption or rejection of textbooks. (1) The State Board of Education may adopt or reject any textbook contained in any proposal. If the terms and conditions for furnishing a textbook in all proposals relating to that textbook are considered by the board to be unreasonable or the textbook is considered to be unsuitable pursuant to guidelines and criteria established by the board, the board may reject the textbook.

(2) At the same or subsequent sessions, the board may receive new proposals for a textbook previously rejected and adopt the textbook in the same manner as other textbooks are required to be adopted. No proposal shall be considered unless the publisher has delivered without charge two copies of each textbook contained in the proposal to the Department of Education at least 60 days before the meeting. [1965 c.100 §255; 1975 c.754 §10; 1991 c.886 §7]

337.080 Report of textbook and instructional material adoptions. The State Board of Education shall immediately report to the public the textbooks and instructional materials that have been adopted and placed on the list under ORS 337.050. The report shall be signed by the chairperson of the board. [Amended by 1965 c.100 §256; 1975 c.754 §11; 1991 c.886 §8; 2001 c.461 §3]

337.090 Contract with publisher; terms; security; breach; remedies. (1) The State Board of Education, as soon as practicable, shall enter into a written contract with each publisher the textbook of which has been adopted. The contract shall require the publisher to maintain at least one depository to be designated by the board, where

such textbooks may be purchased and to furnish such textbooks according to law and the conditions named in the proposal.

(2) The board shall take from each publisher entering into a contract a good and sufficient bond, or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in such sum as stipulated damages as the board may determine, payable to the State of Oregon for the benefit of the Common School Fund, executed by the publisher as obligor together with a surety company authorized to do business in this state as surety and approved by the board, for the full and faithful performance of the contract.

(3) If any publisher fails to carry out the provisions of the contract on the part of the publisher, or, with intent to evade the provisions of the contract, sells any of the textbooks in this state at prices higher than specified in the contract of the publisher, the board may, on behalf of the state, rescind the contract and notify the publisher thereof, or bring the appropriate action or suit to enforce the provisions of the publisher's bond or letter of credit. [Amended by 1965 c.100 §257; 1975 c.754 §12; 1991 c.331 §57; 1991 c.886 §9; 1997 c.631 §463]

337.100 [Amended by 1965 c.100 §258; 1975 c.754 §13; 1991 c.886 §10; 2001 c.461 §4; repealed by 2011 c.313 §25]

337.110 Selection of substitute or additional textbooks and instructional materials. If at any time during the period for which a textbook or other instructional material is on the approved list adopted under ORS 337.050, it becomes necessary for the State Board of Education to adopt any textbook or other instructional material instead of those regularly adopted, the chairperson of the board may call a special session of the board. It may, upon convening, adopt such textbook or other instructional material in the same manner as other textbooks or other instructional materials are required to be adopted. [Amended by 1965 c.100 §259; 1967 c.99 §1; 1975 c.754 §14; 1991 c.886 §11; 1997 c.115 §2; 2001 c.461 §5; 2011 c.313 §13]

AUTHORITY AND DUTIES OF DISTRICT SCHOOL BOARDS AND CHARTER SCHOOLS

337.120 District school board adoption of list and use of approved textbooks and instructional materials. (1)(a) A district school board, with the assistance of teachers and administrators of the district, shall adopt a list of textbooks and other instructional materials for each grade and subject for which instruction is provided by the school district.

(b) When adopting a list of textbooks and other instructional materials, the district

school board shall consider whether the textbooks and other instructional materials are available through online resources that enable students with print disabilities to receive the textbooks and instructional materials free of charge.

(c) The district school board shall adopt the list in compliance with ORS 337.141 and shall involve parents and citizens in the process.

(2) The district school board shall cause the textbooks or other instructional materials, according to titles, that are included on the list adopted under subsection (1) of this section to be used in its schools at the beginning of the next school year following the state adoption under ORS 337.141, except when, pursuant to rules of the State Board of Education, the district school board is authorized by the Superintendent of Public Instruction to postpone use for a reasonable period of time.

(3) District school boards shall establish a process and timeline for regularly determining whether textbooks and instructional materials on the list adopted under subsection (1) of this section are available through online resources that enable students with print disabilities to receive textbooks and instructional materials free of charge. [Amended by 1953 c.121 §3; 1965 c.100 §260; 1967 c.100 §1; 1975 c.754 §15; 1989 c.491 §27; 1991 c.886 §12; 1997 c.115 §3; 2012 c.91 §7; 2013 c.98 §5]

337.130 [Repealed by 1965 c.100 §456]

337.140 [Repealed by 1965 c.100 §261 (337.141 enacted in lieu of 337.140)]

337.141 District school board selection of textbooks and instructional materials not on list adopted by State Board of Education. The State Board of Education shall adopt:

(1) A list of textbooks and other instructional materials that may be used by a school district; and

(2) Guidelines and criteria for a district school board to select textbooks and other instructional materials that are not on the list adopted under subsection (1) of this section. [1965 c.100 §262 (enacted in lieu of 337.140); 1975 c.754 §16; 1979 c.273 §2; 1991 c.886 §13; 2001 c.461 §6; 2012 c.91 §6]

337.150 School board and charter school duty to provide textbooks. (1) Subject to ORS 339.155, each district school board shall provide textbooks, prescribed or authorized by law, for free use by all resident public school pupils enrolled in kindergarten through grade 12.

(2) Subject to ORS 339.155, each public charter school as defined in ORS 338.005 shall provide textbooks, prescribed or authorized by law, for free use by all pupils enrolled in the public charter school.

[Amended by 1955 c.486 §2; 1957 c.272 §1; 1965 c.100 §263; 1965 c.272 §1; 1979 c.273 §1; 1989 c.130 §1; 1993 c.45 §303; 1999 c.200 §30]

337.160 [Amended by 1965 c.100 §264; repealed by 1965 c.272 §2]

337.170 [Repealed by 1965 c.100 §456]

337.180 [Repealed by 1965 c.100 §456]

337.190 [Repealed by 1965 c.100 §456]

337.200 [Amended by 1955 c.486 §3; repealed by 1965 c.100 §456]

337.210 [Repealed by 1965 c.100 §456]

337.220 [Repealed by 1965 c.100 §456]

337.230 [Repealed by 1965 c.100 §456]

337.240 [Repealed by 1965 c.100 §456]

337.250 [Repealed by 1965 c.100 §456]

REQUIRED TEXTBOOKS

337.260 Textbooks on American history and government. Every district school board, the State Board of Education and every committee or officer responsible for the adoption of textbooks for use in the public schools shall adopt textbooks on American history and government which adequately stress the services rendered by those who achieved our national independence, who established our form of constitutional government and who preserved our federal union. Respect for all people, regardless of race, color, creed, national origin, age, sex, or disability, and their contributions to our history and system of government shall be reflected in the textbooks adopted by the State Board of Education. [Amended by 1965 c.100 §265; 1975 c.754 §17; 1985 c.388 §2; 1985 c.709 §3; 1991 c.886 §14; 1993 c.45 §§304,305]

337.270 [Repealed by 1965 c.100 §456]

337.275 [1999 c.265 §1; repealed by 2012 c.91 §25]

337.285 [2001 c.271 §1; repealed by 2011 c.313 §25]

337.288 [2001 c.271 §2; 2005 c.209 §25; repealed by 2011 c.313 §25]

ANIMAL DISSECTION

337.300 Animal dissection; refusal by student; alternatives; notification. (1) A kindergarten through grade 12 public school student may refuse to dissect any vertebrate or invertebrate animal or the parent or legal guardian of a kindergarten through grade 12 public school student may refuse to allow the student to dissect any vertebrate or invertebrate animal.

(2) A school district that includes dissection as part of its coursework shall permit students to demonstrate competency in the coursework through alternative materials or methods of learning that do not include the dissection of animals. These alternative materials and methods may include but are not limited to:

- (a) Videotapes, DVDs and CD-ROMs;
- (b) Models;

- (c) Films;
- (d) Books;
- (e) Computer programs;
- (f) Clay modeling; and
- (g) Transparencies.

(3) A kindergarten through grade 12 public school teacher may not discriminate against a student or lower the grade of a student for not participating in the dissection of an animal.

(4) A school district shall notify students who have dissection as part of their coursework and the parents and legal guardians of those students about the provisions of this section. [2005 c.460 §1]

POST-SECONDARY TEXTBOOKS AND INSTRUCTIONAL MATERIALS

(Generally)

337.500 Definitions for ORS 337.500 to 337.506. As used in ORS 337.500 to 337.506:

(1) “Adopter” means any faculty member or academic department or other adopting entity at a higher education institution responsible for considering and choosing course materials to be utilized in connection with accredited courses taught at the institution.

(2) “Higher education institution” means:

(a) A community college, as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University;

(d) A private institution of higher education located in Oregon; and

(e) A bookstore that serves as the primary bookstore for an entity listed in paragraphs (a) to (d) of this subsection.

(3) “Special edition” means a bound book that does not constitute a traditional textbook and that may or may not be used for instructional purposes.

(4)(a) “Textbook bundle” means a textbook packaged together with other supplemental course materials, including but not limited to workbooks, study guides, online technologies, online course resources, CD-ROMs or other books, to be sold as course material for one price.

(b) “Textbook bundle” does not include a textbook that is unusable without the supplemental course materials, materials that cannot be sold separately due to third-party contractual agreements, custom editions or special editions. [2007 c.582 §1; 2011 c.637 §115]

337.503 Publisher of college textbooks; duties. (1) A publisher of college textbooks must provide to prospective adopters of a particular textbook or set of textbooks in a subject area in which an instructor is teaching a course:

(a) A complete list of all the different versions of the particular textbook or set of textbooks in that particular subject area and level in which an instructor is teaching a course, that are in the relevant language, including supplemental items, whether sold together or separately;

(b) The year in which each prior edition of the textbook listed in paragraph (a) of this subsection was published, if applicable; and

(c) The price at which the publisher would make the textbook or set of textbooks listed in paragraph (a) of this subsection available to adopters and higher education institutions that would resell the components to students.

(2) The information described in subsection (1) of this section may be provided in person, by telephone or electronically. The information must also be accessible to any member of the public and made available on the publisher’s website, by telephone or by postal or electronic mail. [2007 c.582 §2]

337.506 Textbook bundling; disclosure of information. (1) A publisher of college textbooks that sells textbook bundles shall offer to prospective adopters and higher education institutions the option of ordering each component of the textbook bundle separately.

(2) Any publisher of college textbooks that sells textbook bundles shall disclose to prospective adopters the availability of the textbook purchased separately from a textbook bundle and the price at which the publisher would make the separately purchased textbook available to the higher education institution. [2007 c.582 §3]

337.510 [1957 c.642 §1; 1963 c.570 §12; 1965 c.100 §266; repealed by 1989 c.216 §1]

(Instructional Materials in Alternative Formats)

337.511 Definitions for ORS 337.511 to 337.524. As used in ORS 337.511 to 337.524:

(1) “Alternative format” means any medium or format for the presentation of instructional materials other than standard print that is needed by a post-secondary student with a print disability for a reading accommodation, including but not limited to Braille, large print texts, audio recordings, digital texts and digital talking books.

(2) “Electronic format” means a medium or format containing digital text.

(3) “Instructional material” means a textbook or other material if:

(a) The textbook or other material, including additional prints or new editions of previously published instructional material, is published on or after January 1, 2004, and is published primarily for use by students in a course of study in which a post-secondary student with a print disability is enrolled;

(b) The textbook or other material is required for a student’s success in the course, as determined by the course instructor in consultation with the representative making the request for an electronic format under ORS 337.517 (2);

(c) The textbook or other material is required for the course as stated in the course syllabus or other curriculum documents, or the use of the materials by the student is necessary for the completion of course assignments that are used to evaluate the student, such as to determine the student’s proficiency level or assign a grade; and

(d) Software is commercially available to permit the conversion of an electronic file of the textbook or other material into a format that is compatible with assistive technologies such as speech synthesis software or Braille translation software.

(4) “Post-secondary education institution” means:

(a) A public university listed in ORS 352.002;

(b) A community college operated under ORS chapter 341;

(c) The Oregon Health and Science University; or

(d) An Oregon-based, generally accredited institution of higher education.

(5) “Print disability” means a disability that prevents a student from effectively utilizing print material and may include blindness, other serious visual impairments, specific learning disabilities or the inability to hold a book.

(6) “Printed instructional material” means instructional material in book or other printed form.

(7) “Publisher” means any person that publishes or manufactures instructional material used by students attending a post-secondary education institution.

(8) “Structural integrity” means the inclusion of all of the information provided in printed instructional material, including but not limited to the text of the material sidebars, the tables of contents, the chapter headings and subheadings, the footnotes, the page numbers, the indexes and the glossaries.

(9) “Working day” means a day that is not a Saturday, Sunday or legal holiday. [2007 c.466 §1; 2011 c.637 §116]

337.514 Purpose of ORS 337.511 to 337.524. The purpose of ORS 337.511 to 337.524 is to ensure, to the maximum extent possible, that all post-secondary students with print disabilities in Oregon who require reading accommodations, in accordance with section 504 of the Rehabilitation Act of 1978, 29 U.S.C. 794, or the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq., shall have equal and effective access, in alternative format, to instructional materials provided by a post-secondary education institution. [2007 c.466 §2]

337.517 Instructional material in electronic format; request; requirements; transmittal. (1)(a) A post-secondary education institution may submit a written request to a publisher to receive instructional material in an electronic format. In the request, the institution must certify that:

(A) The instructional material has been purchased:

(i) By a student for use by a student with a print disability; or

(ii) By the institution for use by a student with a print disability who attends or is registered to attend the institution;

(B) The student has a print disability that prevents the student from using the standard instructional material; and

(C) The instructional material is for use by the student in connection with a course in which the student is registered or enrolled.

(b) A publisher may require a statement signed by the student or, if the student is an unemancipated minor who is under 18 years of age, by the student’s parent or legal guardian, agreeing that the student will:

(A) Use the copy of the instructional material in an electronic format solely for the student’s own educational purposes; and

(B) Not copy or distribute the instructional material in an electronic format for use by other people.

(2) The request for instructional material in an electronic format submitted under subsection (1) of this section shall be prepared and signed by:

(a) A representative of services for students with disabilities at the post-secondary education institution;

(b) A representative of the Commission for the Blind; or

(c) A representative of the Department of Human Services.

(3)(a) A publisher shall, upon receipt of a request for instructional material that meets the requirements of subsections (1) and (2) of this section, provide to the post-secondary education institution printed instructional material in an electronic format.

(b) Except as provided in paragraph (c) of this subsection, the publisher may not charge the post-secondary education institution for the instructional material.

(c) The publisher may charge the post-secondary education institution for the cost of shipping and handling the instructional material at the ordinary commercial media rates.

(4) A publisher that provides instructional material in an electronic format under subsection (3) of this section shall make every reasonable effort to ensure that the instructional material:

(a) Maintains the structural integrity of the original instructional material;

(b) Is compatible with commonly used speech synthesis software and Braille translation software when necessary; and

(c) Includes corrections and revisions as may be necessary.

(5) In addition to the requirements of subsection (4) of this section, a publisher shall provide instructional material in an electronic format that is mutually agreed upon by the publisher and the post-secondary education institution. If good faith efforts fail to produce an agreement as to an electronic format that will preserve the structural integrity of the instructional material, the publisher shall:

(a) Provide the instructional material in an electronic format; and

(b) Preserve as much of the structural integrity of the original instructional material as possible.

(6)(a) The publisher shall transmit or otherwise send the instructional material in an electronic format within 15 working days of receipt of a request that meets the requirements of subsections (1) and (2) of this section.

(b) Notwithstanding paragraph (a) of this subsection, if meeting the time period requirements specified in paragraph (a) of this subsection is an undue burden on the publisher, the publisher may submit within the 15 working days a statement to the requesting post-secondary education institution certifying the expected date for transmission or delivery of the instructional material in an electronic format and a summary of the basis of the undue burden. [2007 c.466 §3]

337.520 [1957 c.642 §2; 1963 c.544 §44; 1965 c.100 §267; 1967 c.67 §7; repealed by 1989 c.216 §1]

337.521 Higher Education Coordinating Commission powers and duties; statewide guidelines. (1) The Higher Education Coordinating Commission may work with publishers, recognized national organizations of publishers, representatives of post-secondary education institutions, the system described in ORS 192.517 and other interested parties to:

(a) Develop unified, statewide guidelines consistent with ORS 337.511 to 337.524;

(b) Administer ORS 337.511 to 337.524; and

(c) Review guidelines annually and revise the guidelines as necessary due to changes in technology or other changes.

(2) The guidelines may address the following:

(a) The procedures and standards relating to the distribution of files and materials pursuant to ORS 337.511 to 337.524;

(b) Available electronic formats;

(c) Procedures for granting exceptions when it is determined that a publisher is not able to comply with the requirements of ORS 337.511 to 337.524 due to technical, economic or other practical impediments; and

(d) Other matters deemed necessary or appropriate to carry out the purposes of ORS 337.511 to 337.524.

(3) The Higher Education Coordinating Commission shall review the recommendations, published on or after July 1, 2007, of the Association of American Publishers' Alternative Formats Solutions Initiative, and determine whether the recommendations should be incorporated into ORS 337.511 to 337.524. [2007 c.466 §4; 2013 c.768 §133c]

337.524 Exceptions to requirement to provide electronic format. (1) Nothing in ORS 337.511 to 337.524 authorizes any use of instructional materials, or requires a publisher to perform any act, that would constitute an infringement of copyright under the Copyright Act of 1976, 17 U.S.C. 101 et seq.

(2) Notwithstanding ORS 337.511, 337.514, 337.517 or 337.521, a publisher is not required to provide an electronic format of the instructional material pursuant to ORS 337.517 if the publisher has commercially published or manufactured a version of the product that is accessible to students with print disabilities, or if the publisher has the capacity and offers to sell an electronic format of the instructional material directly to the student in a timely manner at the same cost as the commercially available material.

(3) Notwithstanding ORS 337.511, 337.514, 337.517 or 337.521, a publisher is not required to provide an electronic format of the instructional material pursuant to ORS 337.517

if the publisher has not previously produced a digital version of the fully edited and typeset instructional material, such as in the case of a work produced through a method that does not require the creation of a digital file.

(4) A post-secondary education institution that has obtained an electronic format from a publisher pursuant to ORS 337.517 may not duplicate the electronic format, or specialized format produced therefrom, to enable use by one or more additional students, or obtain the electronic format, or specialized format produced therefrom, from another institution or particular campus of the institution unless, for each additional student for whom a specialized format is sought, the

campus of the institution where the additional student is enrolled provides the publisher with a written request as described in ORS 337.517. [2007 c.466 §5]

337.530 [1957 c.642 §3; 1963 c.570 §13; 1965 c.100 §268; repealed by 1989 c.216 §1]

337.540 [1957 c.642 §§5,6,7; 1963 c.544 §45; 1963 c.570 §14; 1965 c.100 §269; repealed by 1989 c.216 §1]

337.550 [1957 c.642 §10; 1963 c.570 §15; repealed by 1989 c.216 §1]

337.560 [1957 c.642 §§8,9(1),(2); 1963 c.544 §46; 1963 c.570 §16; 1965 c.100 §270; repealed by 1989 c.216 §1]

337.570 [1957 c.642 §9(3); 1963 c.570 §17; repealed by 1965 c.100 §456]

337.990 [Repealed by 1965 c.100 §456]

