

March 13, 2007

Debra Strain
Regulations Coordinator, Legal Division
California Department of Education
1430 N Street, Room 5319
Sacramento, California 95814

Dear Ms. Strain:

On behalf of the Software & Information Industry Association (SIIA), I write to submit comments in response to the January 19, 2007 Notice of Proposed Rulemaking; Amendment to Title 5, California Code of Regulations, Regarding Instructional Materials.

SIIA is the principal trade association for the software and digital content industry. SIIA provides global services in government relations, business development, corporate education and intellectual property protection to more than 800 leading software and information companies around the world, including many based in California. Many SIIA members depend on California's schools for a skilled, high-tech workforce, while a number of SIIA members publish educational software, digital curricula and related technologies and services for use in education.

SIIA and our member companies have long worked with California officials and educators to deliver instructional resources and technologies that meet education needs, as well as to ensure educators have the information necessary to make informed curriculum and technology decisions. We have recently advocated for an update to the state's instructional materials process with the goal of removing barriers to the adoption of technology-based materials.

Learning technologies present new and exciting opportunities not available, or even imagined, just a short time ago. Quality electronic learning resources – in addition to being learner appropriate, aligned to state standards, and built around effective pedagogy – can provide the following educational benefits: (1) engaging, interactive, adaptive and personalized; (2) keep knowledge current and information accurate; (3) enhance accessibility for physical or learning disabled students; (4) support accountability through integration of assessment, instructional management and other instructional tools; (5) expedite delivery and increase portability; and (6) generally enhance flexibility to meet evolving and diverse curriculum needs.

Today, students and educators are eager to use technology to enhance and transform teaching and learning. Yet, the system employed in California to review and approve K-8 instructional materials – originally designed for print-based materials – does not sufficiently address opportunities and realities of technology-based instructional materials. Many software, web-based, and other digital and electronic resources are poised to meet core state learning standards and education needs if given a chance. Efforts are therefore now needed to reform state statute, regulations and processes to ensure appropriate consideration of technology-based instructional materials to provide access to such materials as desired and when appropriate.

While California allows for inclusion of such electronic resources in their definition of instructional materials, rules and processes originally crafted for print-based textbooks often result in the exclusion, albeit often unintended, of electronic learning resources. These include provisions that adopted instructional materials:

- remain unchanged in content, appearance and format for the adoption period, although such constraints fail to fully leverage technology's capacity for currency and innovation;
- be reviewed without ensuring reviewers have the expertise to review technology-based materials that differ from print materials in their format and instructional design; and
- be sampled without accounting for alternative sampling copies and methods that are most appropriate for technology-based materials, such as availability on a designated website.

We view updating of the instructional materials adoption process to address these and other issues as critical to ensuring it meets evolving education needs as increasing numbers of districts, schools, teachers and students look to technology-based materials for their primary curriculum.

The proposed regulations take several important steps at addressing these issues, including the continued move toward referencing "instructional materials" rather than "textbooks." SIIA also supports the proposed allowance that technology-based materials be updated without CDE approval, provided there is no change to content. SIIA proposes several additional changes as well as outlined in the attached document.

In response to the NPRM, attached are the following SIIA documents outlining the need for adoption rules updates and proposing changes to California's adoption process:

1. Summary of SIIA Proposed Changes to Proposed Regulations to California Code of Regulations, Title 5, Division 1, Chapter 9 Instructional Materials
2. SIIA's "State Instructional Materials Review and Adoption Reform: Rules and Processes to Support Electronic Learning Resources"
3. SIIA Proposed Changes to Proposed Regulations to California Code of Regulations, Title 5, Division 1, Chapter 9 Instructional Materials

Under separate process, SIIA also looks forward to working with California officials on more significant changes to state statutes to remove related barriers to technology-based materials.

On behalf of the Software & Information Industry Association and our member companies, we thank you for considering our views and look forward to working with California officials, educators and other stakeholders to ensure students can take advantage of the full array of instructional materials – both print-based and electronic – to meet state standards and educational needs. Meanwhile, if we can be of further assistance, please contact me at (202) 789-4444 or marks@siia.net.

Sincerely,



Mark Schneiderman
Director, Education Policy

Summary
SIIA Proposed Changes to Proposed Regulations
California Code of Regulations,
Title 5, Division 1, Chapter 9 Instructional Materials

*NOTE: All Proposed Changes Below Made to Marked-Up Version
as Included in Notice published January 19, 2007*

In Section 9511(d):

- SIIA Proposed Change: Insert “, *including at least two, but preferably more, individuals with significant knowledge of and experience in using technology-based instructional materials and the opportunities they present for the curriculum framework*” at the end after “practices.”
- Explanation: State curriculum committee members and curriculum reviewers often have limited experience in using and evaluating technology-based instructional materials. While technology-based materials must meet the same content criteria, they do present unique design and format issues that may challenge those most familiar with print materials in terms of their navigation, use and review. In such cases, the review process can not fairly treat such submitted materials. SIIA therefore proposes that requirements be put in place to ensure some, and preferably all, reviewers have technology proficiency and experience.

In Section 9512(c):

- SIIA Proposed Change: Insert “, *including knowledge of and experience in using technology-based instructional materials*” at the end after “practices.”
- Explanation: State reviewers often have limited experience in using and evaluating technology-based instructional materials. While technology-based materials must meet the same content criteria, they do present unique design and format issues that may challenge those most familiar with print materials in terms of their navigation, use and review. In such cases, the review process can not fairly treat such submitted materials. SIIA therefore proposes that requirements be put in place to ensure some, and preferably all, reviewers have technology proficiency and experience.

In Section 9515:

- SIIA Proposed Change: Insert after paragraph (d), “(e) *The Curriculum Commission and SBE shall adopt a curriculum framework and evaluation criteria that shall support inclusion of, and include criteria for the evaluation of, technology-based instructional materials.*”
- Explanation: Current state curriculum frameworks and evaluation criteria are generally crafted with a focus on print instructional materials. As a result, they do not account for, and provide unintended barriers to adoption of, technology-based instructional materials. These materials differ in their multi-media format and are often interactive, adaptive, and non-linear

in their design. SIIA therefore proposes that the curriculum framework and evaluation criteria proactively consider these issues to remove any unintended barriers to technology-based materials.

In Section 9517:

- SIIA Proposed Change: In paragraph (a), insert “, and to every publisher whom CDE, in its judgment, is known to produce instructional materials included in that Invitation to Submit,” after “request.”
- Explanation: Many publishers of technology-based instructional materials have not traditionally been a part of the state adoption process. SIIA therefore proposes a more proactive state effort to reach out to publishers in order to provide the state with the widest possible sample of instructional materials.
- SIIA Proposed Change: In paragraph (d), delete “shall” and insert “need” after “Adopted instructional materials.”
- Explanation: Recognizing that California content standards are primary, educators and publishers often view reference/alignment to national and other standards as useful. In the case of technology-based materials, such alignment is most often included as an additional resource option that users may reference if and when desired. As such, such reference would not interfere with the primary criteria of reference/alignment to California content standards. SIIA therefore proposes that publishers be allowed the option of including references to such other content standards.
- SIIA Proposed Change: In paragraph (e), insert after paragraph 2, “(3) Other technology-based instructional materials may be submitted in alternative technology formats or platforms for the purpose of facilitating access for review purposes, so long as the material itself is the same.”
- Explanation: While maintaining identical content, design and layout, technology-based materials can be presented in multiple platforms and technical formats to facilitate access from different platforms and devices, including through a web-browser. SIIA therefore proposes adding an exception to the “same physical form” requirement for such materials to help facilitate the review process.
- SIIA Proposed Change: In paragraph (f), insert “Unless otherwise allowed by statute or regulation,” at the beginning before “Publishers shall.”
- Explanation: The state’s proposed regulations, as well as SIIA’s proposed changes to those proposed regulations, do allow for some limited changes or modifications to submitted instructional materials. SIIA therefore proposes to explicitly recognize these exceptions in order that the regulations be internally consistent.
- SIIA Proposed Change: Insert after paragraph (g), “(h) In the case of technology-based instructional materials, publishers may submit for review, as determined by the publisher, either: (1) a computer pre-loaded with the material; (2) a designated website at which the material can be accessed and reviewed; or (3) other means determined by the publisher or manufacturer as appropriate for enabling review of the materials. In the case of option (2), the state shall ensure sufficient access in terms of computer availability and high-speed Internet access.”

- Explanation: The provision of sample review copies has in some cases posed a technology challenge for the adoption of technology-based instructional materials. There is no one-size solution that will meet all needs, while shared responsibility is needed between CDE and the publisher. SIIA therefore proposes providing publishers with a range of options by which review samples would be made available, while requiring the state to also provide some technology access for reviewers.

In Section 9519:

- SIIA Proposed Change: In paragraph (b), insert “, *including at least a total of two, but preferably more, individuals with significant knowledge of and experience in using technology-based instructional materials*” at the end following “1 must be a CRE.”
- Explanation: State reviewers often have limited experience in using and evaluating technology-based instructional materials. While technology-based materials must meet the same content criteria, they do present unique design and format issues that may challenge those most familiar with print materials in terms of their navigation, use and review. In such cases, the review process can not fairly treat such submitted materials. SIIA therefore proposes that requirements be put in place to ensure some, and preferably all, reviewers have technology proficiency and experience.
- SIIA Proposed Change: Insert at the end following paragraph (j), “*(k) In the case of technology-based instructional materials, the CDE shall establish a process whereby technical assistance shall be provided to a review panel member at their request, including to provide explanation of the material’s functionality and navigation in so far as their format and design may differ from that of print instructional materials.*”
- Explanation: The use and review of technology-based instructional materials can present unique challenges, even for those with some technology experience but without experience in using the specific material in question. Challenges can include navigation, layout, technical format, use of multi-media, and technology platform as well as their often interactive, adaptive and non-linear design. Educators would not normally not be expected to use a technology-based material without at least some training. SIIA therefore proposes that CDE establish a process by which state reviewers would have, as needed, access to technical assistance to enable their access to and navigation of technology-based materials. Without such assistance, technology-based materials may in some cases not receive a fair review.

In Section 9521(c):

- SIIA Proposed Change: Delete “page number” and insert “*navigational reference point*” after “identify the instructional material and.”
- Explanation: Page number is largely unique to print materials, or digital versions of such materials; but page numbers are generally not employed in many technology-based materials that are interactive, adaptive, non-linear and include multi-media. SIIA therefore proposes that the non-medium-specific “navigational reference point” be used instead. This is consistent with the regulation’s overall approach to not use terms specific to a given medium.

In Section 9523:

- SIIA Proposed Change: Insert at the end after paragraph (c), “*(d) LRDCs shall include computer hardware and Internet access adequate to review technology-based instructional*

materials that may be, at the publisher's option, either installed on those computers or accessed through a web-browser from those computers."

- Explanation: The provision of sample review copies has in some cases posed a technology challenge for the adoption of technology-based instructional materials. There is no one-size solution that will meet all needs, while shared responsibility is needed between CDE and the publisher. SIIA therefore proposes providing publishers with a range of options by which review samples would be made available, while requiring the state to also provide some technology access for reviewers.

In Section 9529:

- SIIA Proposed Change: In paragraph (a), delete "may approve" and insert "*shall within 30 days rule on approval of*" after "the CDE."
- Explanation: SIIA supports the opportunities for publishers to make changes to adopted instructional materials. In the case of technology-based materials, the opportunity to make updates to, for example, keep knowledge current and accurate, is an important value and opportunity for educators and students. To clarify this process, SIIA proposes that CDE be provided a reasonable 30 day time frame within which to respond to a publisher's request for approval of a new addition. Absent such addition, approvals (or disapprovals) could come too late to meet education needs.
- SIIA Proposed Change: In paragraph (a), insert after paragraph (2) a new paragraph, "*(3) In the case of technology-based materials, the new edition can be substituted for the old edition for all copies, in which case changes may be more than minimal and include additional content, provided all changes comply with the social content standards as referenced in paragraph (a)(2) above.*"
- Explanation: SIIA supports the opportunities for publishers to make changes to adopted instructional materials. In the case of technology-based materials, the opportunity to make updates to, for example, keep knowledge current and accurate, is an important value and opportunity for educators and students. SIIA understands that a primary concern for the state in allowing updates to an adopted instructional material is the compatibility of the new edition with the old edition. In the case of print materials where each student and teacher has a unique physical copy, compatibility between editions suggests that only minimal changes are acceptable. In contrast, in the case of technology-based materials where the physical copy is fundamentally different in its nature and purpose, SIIA proposes a different standard that goes beyond minimal changes. For technology-based materials, all "copies" can be updated quickly and seamlessly so that the new edition replaces the old for all, and all "copies" are identical with little, if any, burden to the school, teacher or student.
- CDE Proposed Change: Insert "*(b) Upgrades of technology-based materials that do not contain content changes can be made by publishers without CDE approval, unless the upgrade results in a new ISBN or identifier.*"
- Explanation: SIIA supports this proposed change to recognize that publishers and educators may desire an upgrade of technology-based materials to recognize evolving underlying technologies, technical standards and technical specifications. SIIA agrees that, so long as the content does not change, state review and CDE approval is not appropriate or necessary.

Software & Information
Industry Association

www.siaa.net



Software & Information Industry Association

State Instructional Materials Review and Adoption Reform:
Rules and Processes to Support Electronic Learning Resources

SIIA Policy Brief

The Software & Information Industry Association invites state officials, educators and other stakeholders to undertake cooperative efforts aimed at reforming state instructional materials review processes and adoption rules to ensure appropriate consideration of electronic learning resources and thus enhance student access to such resources.

OVERVIEW

Learning technologies present new and exciting opportunities not available, or even imagined, just a short time ago. Today, students and educators are eager to use technology to enhance and transform teaching and learning. Yet, despite the increasing K-12 classroom availability of computers and Internet access, gaps remain as this infrastructure is frequently not matched with the appropriate electronic learning resources necessary to leverage the investment. One significant cause is that systems employed by states to review and approve K-12 instructional materials were originally designed for print-based materials. As a result, the rules and processes in many states do not sufficiently address the opportunities provided by technology-based instructional materials. These various factors have combined to create a classroom environment where instructional technology is utilized primarily as a supplement, even though many electronic resources are poised to meet core state learning standards and education needs. Cooperative efforts are therefore now needed to reform state review processes and adoption rules to ensure appropriate consideration of electronic learning resources and thus enhance student access to such resources.

Some twenty-one states follow an adoption process for review and approval of K-12 textbooks, other core instructional materials and related ancillary resources and tools. The review is intended to ensure core curricular materials align with state academic standards and meet other state regulations as varied as racial diversity and book weight. In most of these states, local school districts may use state instructional materials funds only for those adopted materials.

Quality electronic learning resources aligned to state standards provide a number of added benefits to students and educators. Such software and online curriculum often employs multi-

media, incorporates adaptive instruction, integrates testing, allows for real-time tracking of student performance to inform instruction and provide accountability, and links to additional information. As a result, digital resources can be engaging, personalized, flexible, current and efficient and as appropriate as print-based materials for meeting teaching and learning needs.

While many adoption states include such electronic resources in their definition of instructional materials, too many maintain rules and processes originally crafted for print-based textbooks that often result in the exclusion, albeit often unintended, of electronic learning resources. For example, some states require adopted materials to:

- be distributed through a depository, although such a physical warehousing is irrelevant for content distributed over the Internet; or
- remain unchanged in content, appearance and format for up to six years, although such constraints fail to fully leverage technology's capacity for currency and innovation.

The Software & Information Industry Association, representing publishers and developers of education technologies and digital content, looks forward to working with education policy leaders, education officials, and other stakeholders to ensure educators and students can take advantage of the full array of instructional materials – both print-based and electronic – to meet state standards. While recognizing that not all districts are now ready to take advantage of electronic learning resources as their primary curriculum, we view this state reform as critical for those districts now looking to electronic learning resources and who can provide examples for others to follow.

TECHNOLOGY BENEFITS

From Kindergarten to the corporate classroom, technology is encouraging us to rethink teaching and learning traditions and to fundamentally transform many long-standing education models. From diagnosing learner needs to managing accountability data and from distance learning to individualized instruction, technology is helping improve educational opportunities, productivity and outcomes. And with today's students born in a digital age, such technology is necessary to match their lives outside the classroom and engage them in learning.

Quality electronic learning resources – in addition to being learner appropriate, aligned to state standards, and built around effective pedagogy and instructional design – can provide the following educational benefits, a number of which are sometimes provided in a parallel way by print-based resources:

- engage students through multi-media, interactive content;
- adapt to support differentiated or personalized learning for students with alternative learning style, pace or needs;
- keep knowledge current and information accurate;
- enhance accessibility for physical or learning disabled students through assistive technologies and presentation of content in alternative modalities; and
- support accountability needs through integration of assessment, content management and alignment, classroom management and other courseware tools.

Electronic learning resources also provide a number of practical benefits, including:

- expedited delivery and access;
- increased portability (size, weight, etc.); and
- generally enhanced flexibility in meeting evolving and diverse curriculum needs.

In addition to these instructional and practical benefits, education technology is increasingly important in light of the changed learning needs and styles of today's students. Today's students matured in a digital world and are masters of technology. They seamlessly integrate multiple technology tools and digital resources into their daily lives, but are too often forced to leave these skills and aptitudes at the classroom door. As a result, students are increasingly disengaged in school, forced to adapt to a learning process and medium that stands in contrast to that which is most comfortable and successful for them.

As educators increasingly recognize this dynamic and adjust their instruction accordingly, it is critical that state adoption systems embrace innovation and change to ensure the sustainability and viability of the adoption process through the evolution of instructional materials and models.

At the same time, it is important to recognize the impact on technology of the adoption-related practice of ancillary resources provided with the textbook. These resources, including digital versions of textbooks as well as technology-based resources and tools, have been provided in response to educational needs for a more comprehensive instructional system than can be provided alone by the textbook. Yet, as the textbook adoption model has evolved, the expectation has grown that these electronic curricular, assessment, and management resources be included for no additional cost. This has reduced market incentives for development of next-generation digital resources, while at the same time educators are increasingly looking for such software tools to help diagnose and address student needs in this age of increased accountability. Better recognition that such resources are valuable – and worthy of additional or alternative state funding – is critical to enabling publishers to better address educational needs and goals.

ADOPTION BARRIERS & POLICY OPTIONS

While many adoption states define instructional materials to include software, digital learning resources or similar items, many states maintain rules and processes originally crafted for print-based textbooks that often result in the exclusion of electronic learning resources.

Among the issues needing to be addressed and outlined below are the following:

- review criteria and process
- pricing models
- content linking and substitution
- distribution/depositories

Other issues needing to be addressed but not detailed below are:

- reliability/support
- security and intellectual property protection
- technology standards and system requirements

In most cases, there has been no intentional effort to exclude or bias electronic learning resources. Instead, adoption rules and processes were crafted over many years in a period of exclusive reliance on print-based textbook and other core print-based instructional materials. In so doing, guidelines evolved that were often specific to print or failed to consider the relevance to, or other issues unique to, technology.

Addressed below are several of the most critical issues needing reconciliation to support state approval and adoption of electronic learning resources. In each case, the goal should be to address the underlying educational needs, while adding flexibility to any elements unique to the printed book or electronic resource. For each challenge, a number of policy options are proposed. In some cases, these options are complementary to each other and all could be implemented in harmony. In other cases, a menu of options is provided from which it would be appropriate to select only one or two. This menu of policy options is not intended to be comprehensive, and individual states will often need to customize policies to meet their unique statutes and circumstances.

- Review Criteria & Process

The current adoption review process generally focuses on two sets of criteria: content and design. Content includes alignment with state standards, appropriate scope and sequence, appropriate reading level, etc. Design includes both physical layout (e.g., readability, appropriate use of illustrations, etc.) and technical specifications (e.g., textbook weight, font size, etc.). Recognizing that electronic learning resources must meet the same standards for quality content, technology does present unique opportunities and challenges that state adoption review criteria should evolve to address.

- Reviewer Capacity: States generally assemble a team of curriculum specialists to review and recommend submitted instructional materials for adoption approval. Very often, reviewers have limited experience in evaluating electronic learning resources and employing technology in the classroom. In such cases, the review process can not fairly treat submitted electronic learning resources. For example, publishers submitting electronic resources are often asked to supply computer hardware for their reviewers, suggesting reviewers often are not themselves computer users. Therefore, a comprehensive review by technology savvy reviewers is critical for electronic learning resources, just as current reviewers are expected to be textbook savvy.

Policy Options:

- require technology proficiency and experience as a qualification for a reviewer
 - provide training in technology to all state curriculum reviewers
- Design: Most obviously, while textbooks are print-based, bound and linear, digital resources are multi-media, computer-based and often interactive and adaptive. As such, many physical design adoption requirements around paper weight, layout, book binding, etc. are not relevant, while many core elements unique to technology are not currently addressed.

Policy Options:

- Allow for submission forms (e.g., Forms B and M) and review processes which recognize that certain instructional resource design information and review criteria is specific to textbooks and therefore not applicable to electronic learning resources.
- Alignment to State Standards: Instructional materials are generally judged in large part on the degree to which they correlate to state content standards. Most often, states require publishers to submit a printed correlation worksheet demonstrating which book chapter, page, etc. covers each standard. This structure is often not natural for digital materials that are non-linear, adaptive and interactive, and presents navigation challenges that undermine the important goal of demonstrating content alignment.

Policy Options:

- Allow publishers the option of submitting a digital correlation. For example, allow the use of direct electronic links between the standards and the relevant component of the instructional resource to demonstrate correlation.
 - Allow correlation worksheets to employ digital navigation reference points rather than just those specific to printed books (i.e., page #).
- Pricing Models

The pricing models for electronic learning resources may vary significantly from that employed for printed textbooks, especially for products delivered over the Internet. Integration of this pricing model into state adoption contract terms presents a further issue to be addressed. In short, current adoption practices assume a fixed fee per unit to acquire possession of a physical book. In contrast, electronic learning resources are generally licensed or provided by yearly subscription fee, which takes into account that the resource is dynamic, highly portable among computer devices, and often hosted remotely (an on-going expense to the publisher).

- Pricing Terms: Adoption rules now provide for a single payment for an instructional material generally intended to last for six years. Prices are set in the state contract and generally remain fixed for the entire adoption period. However, electronic learning resources are instead licensed or offered by subscription, in part in recognition (and expectation) that the product will change and improve over time.

Policy Options:

- Allow the option for a subscription-based pricing model where the cost is divided over multiple years and paid annually.
- Provide, or allow publishers to provide, a staged pricing model whereby a schedule is submitted at the start of the adoption cycle detailing that prices can/will increase one or more times over the course of the adoption cycle to reflect and encourage updated/improved resources.

- Most Favored Nation (MFN): State adoption contracts often require that publishers provide the state with the same, lowest price as other states for identical or similar textbooks. Thus, if state A negotiates a contract for a certain amount, then state B would require the same price if the two textbooks are similar. In making this determination for electronic materials, such MFN policies must recognize several unique factors. First, while a cursory look may suggest two products are the same, software and web-based materials often evolve in subtle yet significant ways over time. Second, software and web-based materials often integrate various instructional, curricular, assessment and learning management tools that can fundamentally change the product and its value. Third, implementation may require various technical set up and support costs that vary across states (and districts), and which therefore impact the degree to which two seemingly like products are truly similar. Strictly implemented without accounting for these unique technology factors, MFN pricing would therefore provide significant disincentive for electronic publishers to enhance or vary their product to meet unique and evolving needs.

Policy Options:

- Include very limited interpretations of “similar” in determining equivalency of different instructional materials.
- Allow for publisher input, appeal and recourse as part of the process used to determine MFN applicability and similarity between instructional materials.

- Content Linking & Substitution

Electronic learning resources can provide great flexibility by both linking directly to additional resources as well as changing over time to reflect new information as well as new technologies. Adoption policies should embrace the dynamic qualities brought by electronic resources to enhance the student experience. The following policy options may also be appropriate for print-based materials that employ technology to keep information current and accurate subsequent to the date of adoption.

Policy Options:

- Allow for electronic learning resources to link with other web-based resources, provided publishers ensure all such resources are live and appropriate.
- Require publishers to provide a change log at intervals based on their regular periodic product/website update.
- Allow for update of content in electronic learning resources provided the changes are supplemental (i.e., add additional information) or a substitution (i.e., correct for errors or historical/scientific developments), and also remain aligned to state standards.
- Allow for refinement of the electronic learning resource’s technical design and functionality, provided the changes provide enhancement, are necessary in light of new technical standards, and do not impair continued use of the resource.
- Allow school customers to select an alternative web-based electronic learning material in mid-cycle upon demonstration that, due to changes to its content, the resource no longer meets state standards.

- Distribution/Depositories

In many adoption states, textbooks are distributed through a textbook depository, which often places orders, provides delivery, takes payment and otherwise acts as retail distributor for publishers. The role of depositories in the adoption and dissemination of instructional materials needs to be reevaluated in light of efficiencies brought by modern customer service management, billing and distribution technologies. For electronic learning resources, especially web-based resources, electronic fulfillment and delivery provides the most stark case for reconsideration and new or parallel models.

Policy Options:

- Allow for publishers of any instructional resources (print, digital, web-based, etc.) to use an alternative to a state depository, including acting as their own depository, provided both that: (1) this means is outlined in the adoption submission and approved by the state; and (2) the publisher maintains an acceptable level of customer service.
- Allow for publishers of web-based instructional materials to be exempt from depository requirements in light of the unique nature of the product and delivery method, provided both that: (1) this means is outlined in the adoption submission and approved by the state; and (2) the publisher maintains an acceptable level of customer service.

REQUEST FOR COLLABORATION

SIIA and our member companies view technology and electronic instructional materials as important tools for effective education and student success in the 21st century. In light of the evolution in student needs, educator interests and school technology infrastructure, we invite you to work with us to ensure state instructional materials review and adoption policies and practices treat equally both print-based and computer-based curricular materials.

SIIA encourages state officials, educators and other stakeholders to enhance state and national efforts to better support electronic curricular resources that differ from print-based materials in their design and delivery. SIIA and our member companies hope you agree this reform is needed to ensure educators and students with diverse teaching and learning styles and needs can take advantage of the full array of evolving curricular options to meet state standards.

For more information, please contact Mark Schneiderman, SIIA's Director of Education Policy at 202-789-4444 or marks@siia.net, or visit SIIA's Education Division at <http://www.siia.net/education>.

1 Title 5. EDUCATION

2 Division 1. California Department of Education

3 Chapter 9. Instructional Materials

4
5 Article 2. ~~Standards and Criteria for Adoption of Instructional Materials~~
6 Adoption of Curriculum Frameworks, Evaluation Criteria and Instructional
7 Materials – Procedures
8

9 § 9510. Definitions ~~Standards and Criteria for Specific Subject Matter~~
10 Adoptions.

11 For purposes of curriculum frameworks, evaluation criteria and instructional
12 materials adoptions, the following definitions shall apply:

13 (a) "Adoption Report" is the final report reflecting the State Board of Education's
14 (SBE) action on instructional materials submitted for adoption.

15 (b) "CDE" is the California Department of Education.

16 (c) "Content Standards" are those adopted by the SBE, pursuant to Education Code
17 section 60605, et seq.

18 (d) "Curriculum Commission" is the Curriculum Development and Supplemental
19 Materials Commission as referenced in Education Code section 33530.

20 (e) "Curriculum Commissioner" is one of the persons appointed to the Curriculum
21 Commission, pursuant to Education Code section 33530.

22 (f) "Deliberations" means the time set forth in the Schedule of Significant Events
23 when Content Review Experts (CREs) and Instructional Materials Reviewers (IMRs)
24 meet in open public meetings to discuss the instructional materials submitted for
25 adoption and to develop a report of findings.

26 (g) "Evaluation criteria" are adopted by the SBE for the evaluation of submitted
27 instructional materials, pursuant to Education Code section 60005(c)(2).

28 (h) "Free or gratis items" refer to adopted instructional materials provided at no cost
29 by a publisher to a district board, elementary school or high school.

30 (i) "Invitation to Submit Instructional Materials" (Invitation to Submit) is the document
31 prepared by the CDE for each instructional materials adoption that sets out the
32 statutes, regulations, specifications and timelines that govern the adoption process,
33 and invites publishers to participate in the process.

1 (j) "Learning Resources Display Center" (LRDC) is where instructional materials and
2 curriculum frameworks that are submitted for adoption shall be available for public
3 viewing, pursuant to Education Code section 60202.

4 (k) "Edits and corrections" are changes that must be made to submitted instructional
5 materials to meet the social content standards, to ensure accuracy, or to achieve clarity
6 and that are minimal in number, and include, but are not limited to:

7 (1) Misquoted content standards;

8 (2) Imprecise definitions;

9 (3) Mislabeled pictures or objects;

10 (4) Grammatical errors or misspellings;

11 (5) Simple factual errors;

12 (6) Computational errors.

13 (l) "Period of adoption" is the length of time established by the SBE, as set forth in
14 the Schedule of Significant Events, that instructional materials adopted by the SBE
15 shall be available for procurement, pursuant to Education Code section 60200(i)

16 (m) "Publisher" is any company, person, or entity that submits instructional materials
17 for adoption.

18 (n) "Report of Findings" is produced by IMRs and CREs to indicate whether
19 instructional materials submitted for adoption meet the content standards, curriculum
20 frameworks, evaluation criteria, and social content standards for a particular adoption.
21 The report of findings shall include, at a minimum:

22 (1) a recommendation for or against the adoption of instructional materials, and

23 (2) if applicable, a list of edits and corrections that should be made to the
24 instructional materials as a condition of adoption.

25 (o) "Rewrites" are extensive changes that would need to be made to instructional
26 materials in order for them to meet the content standards, curriculum frameworks,
27 evaluation criteria or social content standards and include, but are not limited to:

28 (1) Revising a paragraph, page, section or chapter;

29 (2) Adding new content;

30 (3) Moving materials from one grade level to another.

31 (p) "Schedule of Significant Events" is a timeline adopted by the SBE for each
32 instructional materials adoption that sets out the dates for key events that will take
33 place during the adoption. The Schedule of Significant Events is included in the

1 Invitation to Submit document and is posted on the CDE website.

2 (q) "Social content standards" are those set forth in the publication entitled
3 *Standards for Evaluating Instructional Materials for Social Content*, 2000 Edition.

4 NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code.

5 Reference: ~~Chapters 1 and 2 of Part 33 of Title 2,~~ Sections 33530, 60010, 60048,
6 60061, 60200, 60202, 60204 and 60605, Education Code.

7
8 **§ 9511. Standards and Criteria for All Subject Matter Adoptions Curriculum**
9 **Framework and Evaluation Criteria Committee Composition and Membership**
10 **Qualifications.**

11 ~~The standards and criteria in the publication entitled *Standards for Evaluating the*~~
12 ~~*Social Content of Instructional Materials*, 2000 Edition, approved by the State Board of~~
13 ~~Education on January 13, 2000, and published by the California State Department of~~
14 ~~Education in 2000 are incorporated in this section by reference and apply to all State~~
15 ~~Board of Education adoptions of instructional materials in all subjects.~~

16 (a) The SBE may establish a Curriculum Framework and Evaluation Criteria
17 Committee (CFCC) to assist in the process of reviewing and/or developing a curriculum
18 framework and evaluation criteria and making a recommendation to the Curriculum
19 Commission and SBE.

20 (b) The CFCC shall be composed of a minimum of 9 to a maximum of 20 members
21 appointed by the SBE.

22 (c) The Curriculum Commission shall make recommendations to the SBE on
23 appointing CFCC members according to the qualifications stated below.

24 (d) CFCC members shall have subject matter expertise and professional knowledge
25 of, and successful experience with, effective educational programs and practices.
26 including at least two, but preferably more, individuals with significant knowledge of and
27 experience in using technology-based instructional materials and the opportunities they
28 present for the curriculum framework.

29 (e) A majority of CFCC members, at the time of appointment, shall be classroom
30 teachers, or mentor teachers, currently assigned to teach kindergarten or grades 1-12.

31 (f) Nothing in this section shall preclude public members, i.e., non-educators, from
32 serving as a CFCC member as the SBE may deem appropriate.

33 (g) All CFCC members operate under the guidance and at the pleasure of the SBE.

NOTE: Authority cited: Sections 33031, 60005, ~~60048(d)~~, 60200(e) and 60206, Education Code. Reference: Sections ~~60040-60044, 60048, 60200 and 60200.2~~, 33530, and 60204, Education Code.

§9512. Appointment of Instructional Materials Reviewers and Content Review Experts.

(a) The SBE shall appoint Instructional Material Reviewers (IMRs), and Content Review Experts (CREs) to serve as advisors to the Curriculum Commission and SBE, in the review of instructional materials submitted for adoption.

(b) The Curriculum Commission shall make recommendations to the SBE on appointing IMRs and CREs according to the qualifications stated below.

(c) The primary qualification for IMRs shall be subject matter expertise and professional knowledge of, and successful experience with, effective educational programs and practices, including knowledge of and experience in using technology-based instructional materials.

(d) A majority of IMRs, at the time of appointment, shall be classroom teachers, or mentor teachers, currently assigned to teach kindergarten or grades 1-8.

(e) Nothing in this section shall preclude public members, i.e., non-educators, from serving as IMRs as the SBE may deem appropriate.

(f) CREs shall be experts in a content field who:

(1) hold a doctoral degree in that field, or

(2) have a masters degree or higher in that field and 5 or more years of curriculum expertise in that field.

(g) All IMRs and CREs operate under the guidance and at the pleasure of the SBE.

NOTE: Authority cited: Sections 33031, 60005, 60200, 60206, Education Code.

Reference: Sections 33530 and 60204, Education Code.

§9513. Application Process for Curriculum Framework and Evaluation Criteria Committee Members, Instructional Materials Reviewers and Content Review Experts.

(a) At least 90 days prior to appointment by the SBE, the CDE shall distribute CFCC member, IMR, and CRE applications to districts, county offices, Learning Resources Display Centers (LRDCs) and others upon request, as well as posting the

1 applications on the CDE website, to ensure sufficient time for applications to be
2 completed and submitted to CDE by interested parties.

3 (b) The CDE shall assist the Curriculum Commission in reviewing applications of
4 CFCC members, IMRs, and CREs to ensure applications are complete before the
5 Curriculum Commission makes its recommendations to the SBE.

6 (c) The SBE shall consider the recommendations of the Curriculum Commission
7 and appoint CFCC members, IMRs and CREs that in its view meet the qualifications
8 set forth above.

9 NOTE: Authority Cited: Sections 33031, 60005, 60200 and 60206, Education Code.
10 Reference: Sections 33530 and 60204, Education Code.

11
12 **§9514. Prohibited Communications.**

13 (a) CFCC members during their tenure shall not release draft copies of the
14 curriculum framework or evaluation criteria.

15 (b) Publishers, or their representatives, shall not communicate with IMRs and
16 CREs, during their tenure, about anything related to the evaluation or adoption of
17 instructional materials, other than during the times for public comment in open public
18 meetings. Such communication outside of the times designated in the Schedule of
19 Significant Events may result in the disqualification of the publisher and IMR/CRE by
20 the SBE from further participation in the subject adoption.

21 (c) Publishers, or their representatives, shall not communicate with Curriculum
22 Commissioners about anything related to the evaluation or adoption of instructional
23 materials, other than during the times for public comment in open public meetings,
24 between the date set forth in the Schedule of Significant Events when instructional
25 materials are delivered to IMRs, CREs and LRDCs and the date when the SBE takes
26 action to adopt. Such contact may result in the disqualification of the publisher and the
27 Curriculum Commissioner by the SBE from further participation in the subject adoption.

28 (d) Notwithstanding the above prohibitions, IMRs, CREs, and Curriculum
29 Commissioners may contact publishers for technical assistance in using electronic
30 instructional materials.

31 NOTE: Authority Cited: Sections 33031 and 60206, Education Code. Reference:
32 Sections 33530, 60200 and 60204, Education Code.

1 **§ 9515. Definitions Display of Curriculum Frameworks and Evaluation Criteria for**
2 **Public Inspection and Comment.**

3 ~~{a} "Board means the State Board of Education.~~

4 ~~{b} "Curriculum Commission" means the Curriculum Development and~~
5 ~~Supplemental Materials Commission.~~

6 ~~{c} "Department" means the California Department of Education.~~

7 ~~{d} "Schedule of Significant Events" means the dates promulgated by the~~
8 ~~Department in the "Invitation to Submit Basic Instructional Materials for Adoption in~~
9 ~~California."~~

10 ~~{e} "Period of Adoption" means the period of time that the instructional materials~~
11 ~~shall remain in adoption. This time period shall be specified in the "Schedule of~~
12 ~~Significant Events."~~

13 ~~{f} "Primary Adoption" means the first instructional materials adoption following the~~
14 ~~approval of new evaluation criteria by the Board.~~

15 {a} Prior to recommending a curriculum framework and evaluation criteria to the
16 SBE, the Curriculum Commission shall approve a draft curriculum framework and
17 evaluation criteria for a minimum 45 day public review and comment period. The CDE
18 shall ensure that the draft curriculum framework and evaluation criteria are posted on
19 the CDE website and available at the LRDCs during this 45 day period.

20 {b} After the Curriculum Commission recommends a curriculum framework and
21 evaluation criteria to the SBE for adoption, the CDE shall ensure that the
22 recommended curriculum framework and evaluation criteria are available on the CDE
23 website and available at the LRDCs during a minimum 30 day period prior to SBE
24 consideration for adoption.

25 {c} Any person may submit a typewritten (or clearly legible handwritten) statement
26 regarding the content of a draft curriculum framework and evaluation criteria to the
27 Executive Director of the Curriculum Development and Supplemental Materials
28 Commission, 1430 N Street, Suite 3207, Sacramento, California, 95814, postmarked
29 not later than 10 days prior to the date set for the public hearing at which the
30 Curriculum Commission is scheduled to vote on whether the draft curriculum
31 framework and evaluation criteria should be recommended to the SBE for adoption.

32 {d} Nothing in this section shall restrict a member of the public from directly
33 addressing a state body at any public meeting relating to a curriculum framework and

1 evaluation criteria.

2 (e) The Curriculum Commission and SBE shall adopt a curriculum framework and
3 evaluation criteria that shall support inclusion of, and include criteria for the evaluation
4 of, technology-based instructional materials.

5 NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code.

6 Reference: Sections ~~60200, 60201, 60202, and 60204, 60206, 60221, 60222 and~~
7 ~~60227~~, Education Code; Section 11125.7, Government Code.

8 **§9516. Advisory Task Forces and Committees to the Curriculum Commission**
9 **Public Hearings Held by the Curriculum Commission and the SBE Regarding**
10 **Curriculum Frameworks and Evaluation Criteria.**

11 ~~The Board may, upon recommendation by the Curriculum Commission, appoint task~~
12 ~~forces or committees of subject matter experts to assist and advise the Curriculum~~
13 ~~Commission. Each task force or committee shall include, at the time of appointment, a~~
14 ~~majority of current classroom teachers providing instruction in kindergarten and grades~~
15 ~~one to either, inclusive, or mentor teachers, or certificated teachers employed by school~~
16 ~~districts of county offices of education who are not in a position that requires a services~~
17 ~~credential with a specialization in administrative services, or any combination of those~~
18 ~~teachers. The primary criteria for membership shall be subject matter expertise and~~
19 ~~professional knowledge of, and successful experience with, effective educational~~
20 ~~programs and practices for the full range of the state's diverse population. The Board~~
21 ~~shall, to the extent possible, appoint persons who are representative of the various~~
22 ~~ethnic groups and types of school districts in the state. Nothing in this section shall~~
23 ~~preclude public members, i.e., noneducators, from serving on a task force or committee~~
24 ~~as the Board may deem appropriate.~~

25 ~~For purpose of developing a curriculum framework or for other activities not~~
26 ~~associated with the evaluation of basis instructional materials, the Board may expand~~
27 ~~the committees or task forces to include teachers who provide instruction in~~
28 ~~kindergarten and grades one to twelve, inclusive.~~

29 (a) Prior to recommending a curriculum framework and evaluation criteria to the
30 SBE for adoption, the Curriculum Commission shall hold at least one public hearing
31 and conduct a roll call vote with at least 9 votes required to recommend a curriculum
32 framework and evaluation criteria to the SBE.

33 (b) Prior to adopting a curriculum framework and evaluation criteria, the SBE shall

1 receive the recommendation of the Curriculum Commission and hold at least one
2 public hearing.

3 NOTE: Authority cited: Sections 33031 and ~~60004~~60005 and 60206, Education Code.

4 Reference: Sections ~~33530~~60200 and 60204, Education Code.

5
6
7
8 **§9517. Invitation to Submit Basic Instructional Materials for Adoption.**

9 **Procedures for Submitting Instructional Materials for Adoption.**

10 The Board shall ensure that a written notice of an upcoming primary and follow-up
11 adoption of instructional materials is posted on the Department Website and mailed to
12 every person or firm who has submitted a request for notice to the Department and to
13 any person or firm whom the Department, in its judgment, deems to be interested in the
14 notice. This notice shall be known as the Invitation to Submit Basic Instructional
15 Materials for Adoption in California. The failure to mail an invitation to any person as
16 provided in this section shall not invalidate any action taken by the Board, Curriculum
17 Commission, or Department.

18 With respect to the submission of instructional materials for adoption by the Board,
19 publishers and manufacturers shall comply with the following requirements:

20 (a) Instructional materials may be submitted in any language, but essential
21 teachers' materials shall be included in English.

22 (b) Publishers and manufacturers shall indicate, either in the teacher's edition or in
23 the student's edition or both, which literary works contained in the student's edition or
24 teacher's edition have been abridged, adapted, or excerpted. Publishers and
25 manufacturers shall provide detailed descriptions of these changes upon request by the
26 Department or local educational agencies.

27 (c) Publishers and manufacturers shall list, either in the teacher's edition or in the
28 student's edition or both, only authors, reviewers, consultants, advisors, field test
29 teachers, and others who actually contributed to the development of the materials and
30 shall indicate, for those who are listed, in what capacity they served. Publishers and
31 manufacturers shall provide additional related information upon request by the
32 Department or local educational agencies.

33 (d) Education Code sections 32060-32066 prohibit the purchase of toxic art or craft

1 supplies for grades kindergarten through six and allow their purchase for grades seven
2 through twelve only if they display a warning label. Publishers and manufacturers shall
3 ensure that all art or craft materials included or suggested in their instructional
4 materials comply with the requirements of these Education Code sections.

5 ~~(e) On or before 5:00 P.M. of the date specified in the Schedule of Significant~~
6 ~~Events, which is included in the Invitation to Submit Basic Instructional Materials for~~
7 ~~Adoption, publishers and manufacturers shall provide to the Department a list of all~~
8 ~~instructional materials that will be submitted for adoption. Receipt of submission~~
9 ~~information after this deadline shall result in disqualification of the instructional~~
10 ~~materials from further consideration in the current adoption unless publishers or~~
11 ~~manufacturers can show extenuating and compelling circumstances beyond their~~
12 ~~control.~~

13 ~~(f) On or before 5:00 P.M. of the date specified in the Schedule of Significant~~
14 ~~Events, publishers and manufacturers shall deliver samples of instructional materials to~~
15 ~~the evaluators and locations specified by the Department. Failure to meet the deadline~~
16 ~~for delivery of samples shall result in disqualification of the instructional materials from~~
17 ~~further consideration in the current adoption unless the publisher or manufacturer can~~
18 ~~show extenuating and compelling circumstances involving natural disasters or~~
19 ~~independent carriers beyond the control of the publishers and manufacturers. In~~
20 ~~addition:~~

21 ~~(1) Publishers and manufacturers shall deliver all samples in final form (i.e., a form~~
22 ~~that will be offered for purchase over the period of adoption) unless written permission~~
23 ~~to submit a sample in other than final form is obtained from the Department before any~~
24 ~~samples are shipped.~~

25 ~~(2) Publishers and manufacturers shall deliver all samples free of shipping,~~
26 ~~handling, sampling, or other charges.~~

27 ~~(3) After the final date for delivery of samples, changes or modifications to~~
28 ~~instructional materials during the adoption review period by the publisher or~~
29 ~~manufacturer shall result in disqualification of the materials from the adoption unless~~
30 ~~those changes or modifications are made pursuant to the Board's social content review~~
31 ~~or educational content review.~~

32 ~~(4) Publishers and manufacturers shall retrieve samples of nonadopted instructional~~
33 ~~materials from display centers during the first thirty (30) days following the date of~~

~~Board adoption. The deadline for retrieval shall be specified in the Schedule of Significant Events in the invitation. All materials shall be retrieved without any cost to the display center or its staff. Display center directors may dispose of or donate for educational use any samples of instructional materials not retrieved within the 30-day period. Board and Curriculum Commission members, instructional materials reviewers, and Department staff may offer their samples back to publishers and manufacturers, retain their samples, or donate them, provided that the materials are used to benefit public education in California.~~

~~(g) On or before 5:00 P.M. of the date specified in the Schedule of Significant Events, publishers and manufacturers shall submit to the Department price quotations (bids) for the sale of completed materials, including all transportation costs.~~

~~(h) Publishers and manufacturers are discouraged from withdrawing from a state adoption after the submission of their materials. No publisher or manufacturer may withdraw their submitted instructional materials from a state adoption within seven working days prior to the beginning of the Instructional Materials Advisory Panel educational content deliberations, which date(s) shall be specified in the Schedule of Significant Events. Publishers and manufacturers withdrawing prior to this date shall be so noted in the Curriculum Commission's report of adoption recommendations.~~

~~(i) Other than during the times specified in the Schedule of Significant Events, publishers and manufacturers shall not contact Instructional Materials Advisory Panel members during their tenure to discuss anything related to the state evaluation or state adoption of materials. Contact initiated by publishers or manufacturers regarding the evaluation or adoption of materials may lead to disqualification of the publisher's or manufacturer's materials from further consideration in the current adoption, legal action, or both. Instructional Materials Advisory Panel members shall not discuss materials under adoption consideration with publishers or manufacturers or their spokespeople or representatives.~~

~~(j) Publishers and manufacturers shall not publicize in printed marketing materials any part of the Instructional Materials Advisory Panel Report.~~

~~(k) Follow-up adoptions shall be based on the Invitation to Submit Basic Instructional Materials and evaluation criteria issued for the primary adoption. A new Schedule of Significant Events shall be approved prior to implementing a follow-up adoption.~~

1 (a) The CDE shall provide a copy of the Invitation to Submit to every publisher that
2 submits a request, and to every publisher whom CDE, in its judgment, is known to
3 produce instructional materials included in that Invitation to Submit, and also make it
4 available on its website.

Deleted:

5 (b) Publishers submitting instructional materials for SBE adoption shall comply with
6 the Invitation to Submit.

7 (c) Publishers shall adhere to all dates and times set forth in the Schedule of
8 Significant Events.

9 (d) Publishers shall include in instructional materials submitted for adoption, only
10 content standards approved by the SBE and specified in the evaluation criteria for the
11 adoption. Adopted instructional materials need not include references to national
12 standards or standards from other states.

Deleted: shall

13 (e) Publishers shall submit all instructional materials in the same physical form that
14 will be offered for purchase during the adoption period with the following exceptions:

15 (1) Audio recordings may be submitted in manuscript form;

16 (2) Artwork may appear in black and white that will ultimately appear in color in the
17 instructional materials offered for purchase during the adoption period.

18 (3) Other technology-based instructional materials may be submitted in alternative
19 technology formats or platforms for the purpose of facilitating access for review
20 purposes, so long as the material itself is the same.

21 (f) Unless otherwise allowed by statute or regulation, Publishers shall not change or
22 modify instructional materials after the date specified in the Schedule of Significant
23 Events for delivery of instructional materials to IMRs, CREs and LRDCs. Instructional
24 materials changed or modified after this delivery date shall be disqualified from
25 consideration in the Adoption unless the changes or modifications are made pursuant
26 to the SBE's direction.

27 (g) Publishers shall not publicize in marketing materials any part of the Report of
28 Findings or the Adoption Report.

29 (h) In the case of technology-based instructional materials, publishers may
30 submit for review, as determined by the publisher, either: (1) a computer pre-loaded
31 with the material; (2) a designated website at which the material can be accessed
32 and reviewed; or (3) other means determined by the publisher or manufacturer as
33 appropriate for enabling review of the materials. In the case of option (2), the state
34 shall ensure sufficient access in terms of computer availability and high-speed
35 Internet access.

Formatted: Indent: Left: 0.25",
First line: 0", Tabs: 0.25", List tab +
Not at 0.5"

Formatted: Bullets and Numbering

NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference: Sections 60200, ~~60201~~, 60202, 60204, ~~60206~~, 60221, and 60222, ~~and 60227~~, Education Code.

§9517.1. Follow-Up Adoptions: Notice to Publishers and Manufacturers, Intent to Submit, Fee, List of Adopted Materials.

Follow-up adoptions shall be conducted according to the following requirements:

(a) ~~The Board shall ensure that a written notice of an upcoming follow up adoption in a given subject is posted on the Department Website and mailed to all publishers or manufacturers known to produce instructional materials in that subject. The notice shall include:~~

~~(1) A "Schedule of Significant Events."~~

~~(2) Specifications for "Intent to Submit."~~

(b) ~~Each publisher or manufacturer shall provide an "Intent to Submit" that specifies the following:~~

~~(1) Number of programs that the publisher or manufacturer will submit.~~

~~(2) Number of grade levels covered by each program.~~

(c) ~~Based on the specifications in subdivision (b) as reported in the "Intent to Submit," the Department shall assess a fee of \$5,000 per grade level submitted for review.~~

(d) ~~A "small publisher" or "small manufacturer," as defined in Education Code Section 50227(f)(3), may request a reduction of the fee by submitting documentation that includes, but is not limited to, the following:~~

~~(1) A statement of earnings for the most recent three fiscal years.~~

~~(2) Number of full-time employees excluding contracted employees.~~

~~(3) A statement verifying that the small publisher or small manufacturer is not dominant in its field for the subject matter being submitted for follow-up adoption.~~

(e) ~~Instructional materials approved by the Board in a follow-up adoption shall be added to the existing adoption list for that subject and remain on the list until the established expiration date for that list.~~

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Sections 60200, 60201, 60202, 60204, 60206, 60221, 60222 and 60227, Education

Code.

§9518. Social Content Review of Instructional Materials Standards for All Instructional Materials Adoptions.

~~The standards and criteria in the publication entitled Standards for Evaluation of Instructional Materials with Respect to Social Content, referenced in Section 9511, shall apply to all instructional materials approved by the Board for compliance with social content requirements, as follows:~~

~~(a) Reviews of instructional materials for compliance with social content requirements may be conducted by the Department or its agent.~~

~~(b) The Department shall notify publishers or manufacturers in writing of approval of instructional materials for compliance with social content requirements or any citations of noncompliance.~~

~~(c) If a publisher or manufacturer requests that their instructional materials be reviewed for compliance with social content requirements, and those materials are not concurrently being submitted for adoption, the Department or its agent may charge publishers and manufacturers a fee not to exceed the cost of the service for conducting a social content review and/or for including them in the list of instructional materials which have been approved by the Board for compliance with social content requirements. The list of approved materials shall be available to all school districts in the state. The publisher or manufacturer requesting such a review shall provide samples of instructional materials in completed form and in numbers to be determined by the Department.~~

~~(d) A publisher or manufacturer may appeal the decision of the Department or its agent to the Curriculum Commission. The following procedures apply:~~

~~(1) Within thirty (30) days from the postmark date of the Department's written notification to a publisher or manufacturer of noncompliance with social content requirements, a publisher or manufacturer shall notify the Department in writing of proposed revisions or intent to appeal.~~

~~(2) The appeal shall be limited to consideration of citations of noncompliance identified during the initial social content review.~~

~~(e) A publisher or manufacturer may appeal the decision of the Curriculum Commission to the Board.~~

(1) Within ten (10) days following the postmark date of the Curriculum Commission's written decision, a publisher or manufacturer shall notify the Curriculum Commission chairperson of any intent to appeal to the Board.

(2) An appeal to the Board shall be limited to consideration of revisions or issues raised during the first level appeal.

(f) Instructional materials which have been approved for compliance with social content requirements shall not be re-evaluated unless the materials have changed substantively, or the Board's social content standards and criteria have been amended to the extent that, in the judgment of the Board, a re-evaluation is necessary.

(g) Publishers and manufacturers shall not describe or represent as adopted by the Board those instructional materials which have passed only a social content review at the state level. Misrepresentation may result in deletion of the instructional materials from the list of materials approved for compliance with social content requirements.

The social content standards in the publication entitled *Standards for Evaluating Instructional Materials for Social Content*, 2000 Edition, approved by the SBE on January 13, 2000, and maintained on the CDE website at <http://www.cde.ca.gov/ci/cr/cf/lc.asp>, is incorporated in this section by reference and applies to all SBE adoptions of instructional materials in all subjects.

NOTE: Authority cited: Sections 33031, 60005, 60048, 60200 and 6000460206, Education Code. Reference: Sections 60040-60044, and 60048, 60200 and 60200.2, Education Code.

§9519. Display of Instructional Materials Review Panels and Report of Findings and Curriculum Frameworks.

Before final adoption of any instructional materials, the Board shall make any instructional materials recommended for adoption available for public review for not less than thirty (30) days at display centers designated by the State Superintendent of Public Instruction. These dates shall be specified in the Schedule of Significant Events. Samples of instructional materials adopted by the Board shall be available at display centers for a minimum of two years from the date specified in the Schedule of Significant Events.

Prior to recommending any curriculum frameworks to the Board for adoption, the Curriculum Commission shall ensure that copies of the curriculum framework are

1 mailed to any person upon request to the Curriculum Commission. Copies shall also be
2 available at specified display centers throughout the state.

3 Public comment forms shall be provided at the display centers and may be used for
4 written statements regarding instructional materials and curriculum frameworks. Use of
5 a public comment form to submit a written statement shall not be required.

6 (a) The CDE will propose and the Curriculum Commission shall approve, for each
7 adoption of instructional materials, the organization of IMRs and CREs into review
8 panels.

9 (b) Each review panel shall be composed of 5 to 11 IMRs and CREs, of which a
10 majority must be IMRs and at least 1 must be a CRE, including at least a total of two, but
11 preferably more, individuals with significant knowledge of and experience in using technology-
12 based instructional materials.

Deleted: .

13 (c) Each review panel must evaluate instructional materials according to the SBE
14 adopted content standards, curriculum frameworks, evaluation criteria and social
15 content standards.

16 (d) Each review panel shall decide which instructional materials to recommend for
17 adoption.

18 (e) Each review panel shall make recommendations as to edits and corrections that
19 should be made to instructional materials.

20 (f) Review panels shall not recommend rewrites of instructional materials.

21 (g) Each review panel is encouraged to reach consensus on recommendations. If
22 necessary, the panel will conduct a vote with a simple majority necessary to put
23 forward a recommendation.

24 (h) The recommendations of the review panels shall be compiled by the CDE into a
25 document titled "Report of Findings" that shall be presented to the Curriculum
26 Commission.

27 (i) The Curriculum Commission and the SBE may call upon IMRs and CREs to
28 assist in understanding how instructional materials meet the content standards,
29 curriculum frameworks, evaluation criteria and social content standards.

30 (k) In the case of technology-based instructional materials, the CDE shall establish
31 a process whereby technical assistance shall be provided to a review panel
32 member at their request, including to provide explanation of the material's
33 functionality and navigation in so far as their format and design may differ from
34 that of print instructional materials.

Formatted: Numbered + Level: 1 +
Numbering Style: a, b, c, ... + Start
at: 11 + Alignment: Left + Aligned
at: 0.25" + Tab after: 0.5" + Indent
at: 0.5"

NOTE: Authority cited: Sections 33031, 60005, and 60206~~60004~~, Education Code.
Reference: Sections 60200 and 60204~~60202~~, Education Code.

**§9520. Written Statements to the Curriculum Commission Regarding
Instructional Materials and Curriculum Frameworks Submitted for Adoption.**

Any person may submit to the Curriculum Commission a written statement regarding any instructional materials or curriculum frameworks submitted for Board adoption, as follows:

(a) A statement of error appearing in the instructional materials or curriculum framework. The statement shall indicate the page, pages, or place in which the error appears, shall include a specification of the error, and, where possible, shall mention a responsible source of information from which the Curriculum Commission can confirm the existence of such error.

(b) A statement of objection to a specified item of content which shall include the page number or other identification of, and reference to, the item of content to which objection is made, and the grounds for the objection.

(c) Comments relating to any other factor of which the Curriculum Commission should be aware before making a decision to recommend the instructional materials or curriculum framework to the Board for adoption.

(d) A general objection to the adoption of the instructional materials or curriculum framework. The statement shall include a brief statement of the objection and evidence or grounds supporting the objection.

(e) A statement supporting the instructional materials or curriculum framework as a whole or any portion thereof. The statement shall include the reasons for supporting the recommended adoption or for supporting specified portions thereof.

Written statements, typewritten (or in clearly legible manuscript), shall be mailed postpaid, to the Executive Secretary of the Curriculum Development and Supplemental Materials Commission, 721 Capitol Mall, Sacramento, California, 95814, postmarked not later than ten (10) days prior to the date set for the Curriculum Commission's public hearing on the instructional materials or curriculum framework.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference:
Section 60202, Education Code.

**§9521. Public Hearings Held by the Curriculum Commission and the Board
Regarding Instructional Materials and Curriculum Frameworks Written
Comments Regarding Content of Instructional Materials.**

~~Prior to recommending a curriculum framework or any instructional materials to the Board for adoption, the Curriculum Commission shall hold at least one public hearing on the curriculum framework and at least one public hearing on any instructional materials submitted for Board adoption.~~

~~Prior to adopting a curriculum framework, the Board shall hold a public hearing on the curriculum framework. Pursuant to Education Code section 602023, the Board shall hold a public hearing on any instructional materials submitted for adoption.~~

(a) Any person, including the CDE or its agent, may submit a typewritten (or clearly legible handwritten) comment regarding the content of instructional materials to the Executive Director of the Curriculum Development and Supplemental Materials Commission, 1430 N Street, Suite 3207, Sacramento, California, 95814, postmarked not later than 14 days prior to the date set for review panel deliberations in the Schedule of Significant Events. Notice of this deadline shall be posted at all LRDCs and on the CDE website.

(b) Any written comment received after the above deadline will be accepted, but may not be evaluated by the IMRs and CREs.

(c) Written comments challenging the content of instructional materials shall specifically identify the instructional material and **navigational reference point** where the subject content appears and provide a reason as to why the content is inaccurate or does not meet the content standards, curriculum frameworks, evaluation criteria or social content standards.

Deleted: page number

(d) No later than the first day of deliberations, CDE staff will distribute written comments that were received by the above deadline to the review panel that is reviewing the instructional material that is the subject of the written comment.

(e) IMRs and CREs on the review panel shall evaluate the written comments that were received by the above deadline during deliberations.

(f) All written comment received in accordance with this section shall be forwarded with the Report of Findings to the Curriculum Commission and to the SBE.

(g) Nothing in this section shall restrict a member of the public from directly

1 addressing a state body at any public meeting relating to the adoption of instructional
2 materials.

3 NOTE: Authority cited: Sections 33013, 60005 and ~~60004~~60206, Education Code.

4 Reference: Sections ~~60200~~60203 and ~~60202~~60204, Education Code; Section 11125.7,
5 Government Code.

7 **§9522. Speakers Presentation of Public Testimony**

8 ~~Persons wishing to address the Curriculum Commission on a subject to be considered~~
9 ~~at a further meeting, including any matter designated as a public hearing, shall present~~
10 ~~a written request to the Executive Secretary of the Curriculum Development and~~
11 ~~Supplemental Materials Commission, 721 Capitol Mall, Sacramento, California, 95814,~~
12 ~~by noon of the third working day before the scheduled meeting, stating the subject they~~
13 ~~wish to address, the organization they represent, if any, and the nature of their~~
14 ~~testimony.~~

15 At or before any public hearing related to the evaluation or adoption of a curriculum
16 framework, evaluation criteria, or instructional materials, at which oral comments from
17 the public are to be received, the chairperson or presiding member of the hearing body
18 shall determine the total amount of time that will be devoted to hearing oral comments,
19 and may determine the time to be allotted to each person or to each side of an issue.

20 NOTE: Authority cited: Sections 33031, 60005 and ~~60004~~60206, Education Code.

21 Reference: Sections ~~33530, 33534 and 33535~~ 60200, Education Code; Section
22 11125.7, Government Code.

24 **§ 9523. Presentation of Public Testimony Display of Instructional Materials for** 25 **Public Inspection.**

26 ~~At or before the hearing at which oral comments from the public are to be received,~~
27 ~~the Curriculum Commission chairperson or the chairperson of a hearing body other~~
28 ~~than the full Curriculum Commission shall determine the total amount of time that will~~
29 ~~be devoted to hearing such oral comments, and may determine the time to be allotted~~
30 ~~to each person or to each side of an issue.~~

31 (a) On or before the delivery date designated in the Schedule of Significant Events,
32 publishers shall send instructional materials that are being submitted for adoption to
33 LRDCs at the addresses indicated in the Invitation to Submit. Instructional materials

1 that are submitted for adoption shall be displayed at the LRDCs at least until the date
2 the SBE adopts instructional materials.

3 (b) LRDCs shall ensure that instructional materials received are on display within
4 three weeks after the date of receipt.

5 (c) Instructional materials adopted by the SBE shall be available at LRDCs for a
6 minimum of two years after the date of adoption.

7 (d) LRDCs shall include computer hardware and Internet access adequate to review
8 technology-based instructional materials that may be, at the publisher's option, either
9 installed on those computers or accessed through a web-browser from those
10 computers.

11
12 NOTE: Authority cited: Sections 33031 and ~~6000560004~~, Education Code. Reference:
13 Section ~~6020233536~~, Education Code.

14
15 **§ 9524. Waiver by Chairperson Public Hearings Held by the Curriculum**
16 **Commission and the State Board of Education Regarding Instructional Materials.**

17 ~~At any time, upon a showing of good cause, the Curriculum Commission~~
18 ~~chairperson or the chairperson of a hearing body other than the full Curriculum~~
19 ~~Commission may waive the requirements of Sections 9522 and 9523.~~

20 (a) Prior to recommending instructional materials to the SBE for adoption, the
21 Curriculum Commission shall do the following:

22 (1) Not more than 30 days after the issuance of the Report of Findings, the
23 Curriculum Commission shall hold a public hearing during which any interested party
24 may provide the Curriculum Commission with written or oral comments regarding the
25 submitted instructional materials and/or the recommendations contained in the Report
26 of Findings.

27 (2) Curriculum Commissioners must evaluate instructional materials according to
28 the SBE adopted content standards, curriculum frameworks, evaluation criteria, and
29 social content standards

30 (3) Not more than 30 days after the Curriculum Commission meeting discussed in
31 subdivision (a)(1) above, the Curriculum Commission will hold a second public meeting
32 at which time it will adopt its recommendations to the SBE regarding instructional
33 materials, and edits and corrections.

1 (4) The Curriculum Commission may add to the Report of Findings to include
2 recommendations different than those of the review panels, but shall in no way delete
3 or alter the recommendations of the review panels. The Curriculum Commission shall
4 not recommend rewrites of instructional materials. The Report of Findings, as approved
5 by the Curriculum Commission shall be presented to the SBE.

6 (b) Following the Curriculum Commission meetings described above, the SBE will
7 hold at least one public meeting to adopt both instructional materials and edits and
8 corrections.

9 NOTE: Authority cited: Sections 33031, 60005 and ~~60004~~60206, Education Code.

10 Reference: Section ~~33536~~60200, 60203 and 60204, Education Code.

11
12 **§ 9525. Post Adoption Edits and Corrections Procedures.**

13 (a) Following the action of the SBE on a specific instructional materials adoption,
14 CDE staff will notify publishers, in writing, of any edits and corrections adopted by the
15 SBE.

16 (b) CDE staff will schedule individual meetings with each publisher to discuss edits
17 and corrections, at which time publishers will provide evidence showing that the
18 adopted edits and corrections have been made to the adopted instructional materials.

19 (c) Under direction from the SBE, CDE staff may work with Curriculum
20 Commissioners, CREs, or any additional content experts as needed to evaluate
21 whether publishers have made the adopted edits and corrections to their instructional
22 materials.

23 NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference:
24 Section 60200, Education Code.

25
26 **~~Article 2.1. Adoption of Curriculum Frameworks and Instructional Materials –~~**
27 **~~Procedures Acquisition of Adopted Instructional Materials~~**

28 **~~Article 2.2. Acquisition of Adopted Instructional Materials~~**
29 **§9527. Free or Gratis Items Instructional Materials.**

30 ~~If free instructional materials are offered to school districts, publishers and~~
31 ~~manufacturers shall comply with the following requirements in addition to those stated~~
32 ~~in Education Code section 60061:~~

33 ~~(b) Publishers and manufacturers shall inform the Department in writing of all offers~~

1 of free instructional materials within thirty (30) working days of the effective date of the
2 offer so that all school districts may have the opportunity to order these materials.
3 Failure or refusal by the publisher or manufacturer to inform the Department within this
4 deadline shall constitute a rebuttable presumption that the violation of Education Code
5 section 60061 was willful.

6 (a) Only adopted instructional materials may be offered by a publisher as free or
7 gratis items to a district board, elementary school or high school.

8 (b) Publishers shall inform the CDE in writing of the terms and duration of an offer of
9 free or gratis items at least 30 working days prior to the effective date of the offer.

10 (c) As a condition of adoption, any publisher choosing to provide free or gratis items
11 shall provide CDE with the URL for a publisher-maintained website. This website shall
12 be a direct link to the free or gratis items being offered so that they are easily
13 discerned. The website will identify free or gratis items with the ISBN or identifier that
14 appears on the list of adopted materials.

15 NOTE: Authority cited: Sections 33031, 60005 and 6000460206, Education Code.

16 Reference: Section 60061, Education Code.

17 18 **§9528. Alternate Formats of Adopted Instructional Materials.**

19 ~~Alternate formats are (1) instructional materials which are identical in content to~~
20 ~~adopted instructional materials but different in physical format, or (2) translations or~~
21 ~~literature that is equivalent in content to adopted instructional materials. Publishers and~~
22 ~~manufacturers may submit alternate formats of adopted instructional materials to the~~
23 ~~Department for approval at any time during the period of adoption.~~

24 ~~Submissions for approval shall include a sample of the proposed alternate format~~
25 ~~material.~~

26 ~~An alternate format package may include free instructional materials that have not~~
27 ~~been adopted by the Board, provided that:~~

28 ~~(a) the non-adopted free materials have passed a state review for legal compliance~~
29 ~~with the social content requirements as required by Section 9527 and in accordance~~
30 ~~with Section 9518.~~

31 ~~(b) the purchase price of the alternate format package shall not include any costs~~
32 ~~attributable to the non-adopted free instructional materials such as, but not limited to,~~
33 ~~development and production, correlation to the adopted materials, packaging and~~

1 shipping costs.

2 ~~(c) the publisher or manufacturer includes with the submission a certification of~~
3 ~~compliance with the proviso in subdivision (b) of this section, and~~

4 ~~(d) the publisher includes in the alternate format package a statement that identifies~~
5 ~~any items that are free and which have not been adopted by the Board.~~

6 (a) Publishers may submit alternate formats of adopted instructional materials to
7 the CDE for approval at any time during the period of adoption.

8 (b) Alternate formats of adopted instructional materials shall include:

9 (1) instructional materials that are identical in content to adopted instructional
10 materials, but that are different in physical format, and

11 (2) translations of adopted instructional materials into other languages. Translations
12 of adopted instructional materials into other languages may include different literary
13 selections that are equivalent in content to those contained in the English version.

14 (c) Submissions of alternate formats shall be reviewed as follows:

15 (1) For approval of an alternate physical format, the CDE staff will review submitted
16 materials to confirm that the content is identical to the adopted instructional materials.

17 (2) For approval of alternate formats in languages other than English, the CDE will
18 employ qualified CDE staff or contract with experts in the alternate language to review
19 the materials to confirm that the translation is accurate and to determine if the materials
20 are equivalent in content to the adopted instructional materials.

21 (d) The price of the alternate format shall be equal to or lower than the adopted
22 instructional material.

23 NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference:
24 Sections 60200 and 60222, Education Code.

25
26 **§ 9529. New Editions of Adopted Instructional Materials.**

27 ~~Upon written request by a publisher or manufacturer, the Department may approve~~
28 ~~a new edition of an instructional material to replace the original edition adopted by the~~
29 ~~Board, provided that:~~

30 ~~(a) Changes contained in the new edition are so minimal that both the new edition~~
31 ~~and the old edition may be used together in a classroom environment. (Technical~~
32 ~~upgrades of computer software which do not contain educational or social content~~
33 ~~changes shall be exempt from this requirement.)~~

(b) All changes comply with the social content requirements of Education Code sections 60040-60044 and the Board's Standards for Evaluation of Instructional Materials with Respect to Social Content.

The price of the original edition or a lower price shall apply until the next scheduled biennial price adjustment for that subject area.

(a) Upon written request by a publisher, the CDE shall within 30 days rule on approval of a new edition of an adopted instructional material to replace the original adopted edition, provided that:

Deleted: may

Deleted: e

(1) Changes contained in the new edition are so minimal that both the new edition and the original adopted edition may be used together in a classroom environment. No additional content may be included in the new edition

(2) All changes comply with the social content standards set forth in the publication entitled Standards for Evaluating Instructional Materials for Social Content, 2000, as referenced in section 9518 above. The price of the new edition is equal to or lower than the price of the original adopted edition.

(3) In the case of technology-based materials, the new edition can be substituted for the old edition for all copies, in which case changes may be more than minimal and include additional content, provided all changes comply with the social content standards as referenced in paragraph (a)(2) above.

(b) Upgrades of technology-based materials that do not contain content changes can be made by publishers without CDE approval, unless the upgrade results in a new ISBN or identifier.

NOTE: Authority cited: Sections 33031, 60005 and 6000460206, Education Code.

Reference: Sections 60040-60044, 60061, 60222 and 60223, Education Code.

§9530. School District Ordering of Instructional Materials.

Each school district shall purchase adopted instructional materials directly from publishers and manufacturers. With respect to the purchase of instructional materials by a school district, the publisher or manufacturer shall comply with the following requirements:

(a) The provisions of Education Code section 60061 and 60061.5.

(b) Instructional materials furnished and delivered to the school district by the publisher or manufacturer shall conform to and be of the same quality of workmanship

1 as the samples of the respective instructional materials submitted by the publisher or
2 manufacturer to the Department, except that the instructional materials shall also
3 include all revisions, corrections, additions, and substitutions required by the Board at
4 the price adjusted by the Board and the publisher or manufacturer.

5 ~~(c) Upon request by any school district, a publisher or manufacturer shall provide a~~
6 ~~copy of any manufacturing standards and specifications for textbooks with which the~~
7 ~~publisher or manufacturer is currently in compliance.~~

8 ~~(d) A discontinuation of an instructional material before its adoption expiration date~~
9 ~~or before eight years, whichever is less, may cause a hardship on the school districts~~
10 ~~by limiting the reorder availability of components necessary for the use of instructional~~
11 ~~materials sets or programs. Should the publisher or manufacturer discontinue to supply~~
12 ~~an instructional material before its adoption expiration date or before eight years,~~
13 ~~whichever is less, without prior written approval from the district, upon receipt of written~~
14 ~~notice from the district, the publisher or manufacturer shall buy back, from all school~~
15 ~~districts having received the program, set, or system within the adoption period of the~~
16 ~~program, set, or system, all components of the instructional materials program, set, or~~
17 ~~system in which the discontinued item was designed to be used. The publisher shall~~
18 ~~buy back the instructional materials program, set, or system at the price in effect~~
19 ~~pursuant to the purchase order or agreement at the time the particular material from the~~
20 ~~program, set, or system is discontinued.~~

21 ~~(e) The failure of the publisher or manufacturer to perform under the term of any~~
22 ~~purchase order or agreement by late or nondelivery of instructional materials, or the~~
23 ~~discontinuation to supply materials without prior approval by the Board and the delivery~~
24 ~~of unauthorized materials will disrupt and delay the intent of the school district's~~
25 ~~educational process, causing loss and damage to the school, its students, and the~~
26 ~~public interest. It is difficult to assess and fix the actual damages incurred due to the~~
27 ~~failure of the publisher or manufacturer to perform. Therefore, the publisher or~~
28 ~~manufacturer shall comply with any of the following requirements made by the school~~
29 ~~districts pursuant to this section as compensating or liquidating damages and not as~~
30 ~~penalties:~~

31 ~~(1) For purposes of this subdivision, unauthorized instructional materials are those~~
32 ~~that do not appear in exact description and terms in the purchase order or agreement~~
33 ~~or are materials that have not been approved for delivery to California schools in written~~

notice to the publisher or manufacturer from the Board or Department.

Should the publisher or manufacturer deliver unauthorized instructional materials to the school district, on written notice from the district, the publisher or manufacturer shall comply with the following requirements:

(A) Withdraw the delivered unauthorized instructional materials from the school district.

(B) Replace the unauthorized instructional materials with authorized materials that are comparable in subject matter, quality, quantity, and price in the California schools.

(C) Incur all costs of transportation or any other costs involved to complete the transactions of withdrawing and replacing unauthorized materials.

(D) Complete the transactions of withdrawing unauthorized instructional materials and replacing them in the school district with comparable authorized materials within 60 calendar days of the receipt of written notice from the district.

(2) Should the publisher or manufacturer fail to deliver instructional materials within 60 days of the receipt of a purchase order from the school district and the publisher or manufacturer had not received prior written approval from the district for such a delay in delivery, which approval shall not be unreasonably withheld, the school district may assess as damages an amount up to five hundred dollars (\$500) for each working day the order is delayed beyond sixty (60) calendar days. If late delivery results from circumstances beyond the control of the publisher or manufacturer, the publisher or manufacturer shall not be held liable. Pursuant to this section, the maximum dollar amount that shall be assessed to the publisher or manufacturer by the school district from any individual purchase order shall be twenty thousand dollars (\$20,000.00). Should the district take such action, the district shall give the publisher or manufacturer written notification of the delivery delay and the date commencing the accrual of dollar amounts to be assessed to the publisher or manufacturer.

Each school district shall purchase adopted instructional materials directly from publishers. With respect to the purchase of adopted instructional materials by a school district, the publisher shall comply with the following requirements:

(a) Instructional materials furnished and delivered to the school district by the publisher shall conform to and be of the same quality of workmanship as the instructional materials submitted for adoption.

(b) Upon request by any school district, a publisher shall provide a copy of any

1 manufacturing standards and specifications for instructional materials with which the
2 publisher is currently in compliance.

3 (c) Should the publisher discontinue an instructional material before its adoption
4 expiration date or before eight years, whichever is less, upon receipt of a written
5 request from a district that has purchased the discontinued instructional materials, the
6 publisher shall buy back from the school district all of the instructional materials
7 discontinued and any instructional materials designed to be used with the discontinued
8 instructional material. The publisher shall buy back the instructional materials at the
9 price in effect pursuant to the purchase order or agreement at the time when the
10 instructional materials were purchased.

11 (d) Should the publisher fail to deliver adopted instructional materials within 60 days
12 of the receipt of a purchase order from the school district, and the publisher has not
13 received prior written approval from the district for such a delay in delivery, which
14 approval shall not be unreasonably withheld, the school district may assess as
15 damages an amount up to \$500 for each working day the order is delayed beyond 60
16 calendar days. If late delivery results from circumstances beyond the control of the
17 publisher, the publisher shall not be held liable. Pursuant to this section, the maximum
18 dollar amount that shall be assessed to the publisher by the school district from any
19 individual purchase order shall be \$20,000.00. Should the district take such action, the
20 district shall give the publisher written notification of the delivery delay and the date
21 commencing the accrual of dollar amounts to be assessed to the publisher.

22 NOTE: Authority cited: Sections 33031, 60005 and ~~60004~~60206, Education Code.

23 Reference: Sections 60061 and 60061.5, Education Code.

24
25
26
27
28
29
30
31
32
33 12-27-06 [California Department of Education]