

ITEM 6
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 60000, 60002, 60045, 60048, 60119, 60200, 60242, 60242.5, 60248, 60252, 60421, 60422, 60423, 60424, 60501, 60510.5, 60521
Statutes 1976, Chapter 817; Statutes 1977, Chapter 36; Statutes 1979, Chapter 282; Statutes 1982, Chapter 1503; Statutes 1983, Chapter 498; Statutes 1985, Chapter 1440; Statutes 1985, Chapter 1470; Statutes 1985, Chapter 1546; Statutes 1985, Chapter 1597; Statutes 1986, Chapter 211; Statutes 1987, Chapter 1452; Statutes 1989, Chapter 1181; Statutes 1991, Chapter 353; Statutes 1991, Chapter 529; Statutes 1991, Chapter 1028; Statutes 1993, Chapter 56; Statutes 1994, Chapter 927; Statutes 1995, Chapter 325; Statutes 1995, Chapter 413; Statutes 1995, Chapter 534; Statutes 1995, Chapter 764; Statutes 1996, Chapter 124; Statutes 1997, Chapter 251; Statutes 1999, Chapter 276; Statutes 1999, Chapter 646; Statutes 2000, Chapter 461; Statutes 2002, Chapter 802; and Statutes 2003, Chapter 4
California Code of Regulations, Title 5, Sections 9505, 9530, 9531, 9532 and 9535
Register 77, No. 39 (Sept. 23, 1977); Register 83, No 25 (June 17, 1983); Register 95, No. 3, (Dec. 30, 1994); Register 97, No. 31 (July 31, 1997); and Register 2003, No. 3 (Jan. 16, 2003)
Standards for Evaluating Instructional Materials for Social Content (2000 ed.)

Instructional Materials Funding Requirements
03-TC-07
Castro Valley Unified School District, Claimant

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Claimant's Response to Department of Finance Comments on Test Claim, March 19, 2004 í	370
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Exhibit F

Assembly Committee on Education, Analysis of AB 116 (1999-2000 Reg. Sess.), amended April 7, 1999í 441

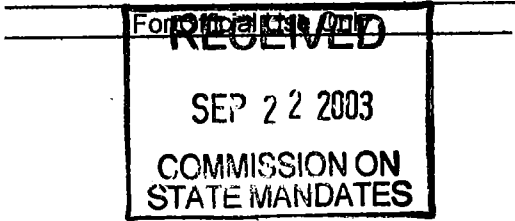
Assembly Floor, Analysis of SB 4 (3d Ex. Sess) as amended February 14, 2009, page 1.

California Department of Education, "Instructional Materials FAQ, Instructional Materials Funding Realignment Program (IMFRP) and Williams Case FAQ and Answers," as of July 18, 2012.

Office of the Legislative Analyst, "Reforming California's Instructional Material Adoption Process," May 2007.

Office of the Legislative Analyst, "Analysis of the 2003-2004 Budget Bill: Education"

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562
CSM 2 (1/91)



TEST CLAIM FORM

Claim No. 03-TC-07

Local Agency or School District Submitting Claim

CASTRO VALLEY UNIFIED SCHOOL DISTRICT

Contact Person

Telephone Number

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Claimant Address

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Representative Organization to be Notified

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This claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code citation(s) within the chaptered bill, if applicable.

Instructional Materials Funding Requirements

(See Attached)

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Telephone No.

Jerry Macy
Deputy Superintendent
Castro Valley Unified School District

Voice: (510) 537-3335 Ext. 1223
Fax: (510) 886-7529

Signature of Authorized Representative

Date

X

September 12, 2003

Attachment to: CSM Form 2 (1/91)
Test Claim Form
Test Claim of Castro Valley Unified School District
Chapter 4, Statutes of 2003
Instructional Materials Funding Requirements

Statutes

Chapter 4, Statutes of 2003
Chapter 802, Statutes of 2002
Chapter 461, Statutes of 2000
Chapter 646, Statutes of 1999
Chapter 276, Statutes of 1999
Chapter 251, Statutes of 1997
Chapter 124, Statutes of 1996
Chapter 764, Statutes of 1995
Chapter 534, Statutes of 1995
Chapter 413, Statutes of 1995
Chapter 325, Statutes of 1995
Chapter 927, Statutes of 1994
Chapter 56, Statutes of 1993
Chapter 1028, Statutes of 1991
Chapter 529, Statutes of 1991
Chapter 353, Statutes of 1991
Chapter 1181, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 211, Statutes of 1986
Chapter 1597, Statutes of 1985
Chapter 1546, Statutes of 1985
Chapter 1470, Statutes of 1985
Chapter 1440, Statutes of 1985
Chapter 498, Statutes of 1983
Chapter 1503, Statutes of 1982
Chapter 282, Statutes of 1979
Chapter 36, Statutes of 1977
Chapter 817, Statutes of 1976

Education Code Sections

Education Code Section 60000
Education Code Section 60002
Education Code Section 60045
Education Code Section 60048
Education Code Section 60119
Education Code Section 60200
Education Code Section 60242
Education Code Section 60242.5
Education Code Section 60248
Education Code Section 60252
Education Code Section 60421
Education Code Section 60422
Education Code Section 60423
Education Code Section 60424
Education Code Section 60501
Education Code Section 60510.5
Education Code Section 60521

Title 5, Code of Regulations

Section 9505
Section 9530
Section 9531
Section 9532
Section 9535

Executive Orders

Standards for Evaluating Instructional
Materials for Social Content (2000 Edition)

1 Claim Prepared By:
2 Keith B. Petersen
3 SixTen and Associates
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5 San Diego, CA 92117
6 Voice: (858) 514-8605
7

8 BEFORE THE
9
10 COMMISSION ON STATE MANDATES
11
12 STATE OF CALIFORNIA
13

14 Test Claim of:)
15) No. CSM _____
16)
17 Castro Valley Unified School District)
18) Chapter 4, Statutes of 2003
19) Chapter 802, Statutes of 2002
20) Chapter 461, Statutes of 2000
21) Chapter 646, Statutes of 1999
22 Test Claimant.) Chapter 276, Statutes of 1999
23) Chapter 251, Statutes of 1997
24) Chapter 124, Statutes of 1996
25) Chapter 764, Statutes of 1995
26) Chapter 534, Statutes of 1995
27) Chapter 413, Statutes of 1995
28) Chapter 325, Statutes of 1995
29) Chapter 927, Statutes of 1994
30) Chapter 56, Statutes of 1993
31) Chapter 1028, Statutes of 1991
32) Chapter 529, Statutes of 1991
33) Chapter 353, Statutes of 1991
34) Chapter 1181, Statutes of 1989
35) Chapter 1452, Statutes of 1987
36) Chapter 211, Statutes of 1986
37) Chapter 1597, Statutes of 1985
38) Chapter 1546, Statutes of 1985
39)
40) (Continued on Next Page)
41)
42) INSTRUCTIONAL MATERIALS
43) FUNDING REQUIREMENTS
44)
45) TEST CLAIM FILING
46)

**Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements**

1		
2	)	Chapter 1470, Statutes of 1985
3	)	Chapter 1440, Statutes of 1985
4	)	Chapter 498, Statutes of 1983
5	)	Chapter 1503, Statutes of 1982
6	)	Chapter 282, Statutes of 1979
7	)	Chapter 36, Statutes of 1977
8	)	Chapter 817, Statutes of 1976
9)	
10	)	Education Code Sections: 60000, 60002,
11	)	60045, 60048, 60119, 60200, 60242,
12	)	60242.5, 60248, 60252, 60421, 60422,
13	)	60423, 60424, 60501, 60510.5 and 60521
14)	
15	)	Title 5, California Code of Regulations,
16	)	Sections: 9505, 9530, 9531, 9532
17	)	and 9535
18)	
19	)	Executive Orders: Standards for
20	)	Evaluating Instructional Materials for
21	)	Social Content (2000 Edition)
22)	
23)	

PART 1. AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution." Castro Valley Unified School District is a "school district" as defined in Government Code section 17519.¹

¹ Government Code Section 17519, as added by Chapter 1459/84:

"School District" means any school district, community college district, or county

1 **PART II. LEGISLATIVE HISTORY OF THE CLAIM**

2 This test claim alleges mandated costs subject to reimbursement by the state for
3 school districts to comply with the administrative procedures required by the state to
4 qualify for and obtain instructional materials funding pursuant to the Instructional
5 Materials Funding Program and the Instructional Materials Funding Realignment
6 Program.

7 **SECTION 1. LEGISLATIVE HISTORY PRIOR TO JANUARY 1, 1975**

8 Chapter 929, Statutes of 1972, Section 2, added Education Code Section 9200 to
9 declare the Legislative intent to provide for the acquisition of instructional materials for
10 elementary and secondary schools.

11 Chapter 1233, Statutes of 1972, Section 6, amended Education Code Section
12 9244 to require governing boards to adopt instructional materials for use in the schools
13 that are satisfactorily accurate, objective, and current and suited to the needs and
14 comprehension of pupils at their respective grade levels.

15 Chapter 929, Statutes of 1972, Section 2, added Education Code Section 9425
16 which provided that any district board shall, as may be necessary, seek approval from
17 the county superintendent of schools and request publishers and manufacturers or other
18 qualified persons or organizations to provide in-service training in the use of instructional
19 materials produced by them.

20 Chapter 1233, Statutes of 1972, Section 10, amended Education Code Section

superintendent of schools.”

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

1 9440 to create the State Instructional Materials Fund to fund the acquisition of
2 instructional materials as required by the Constitution of the State of California.

3 Chapter 647, Statutes of 1973, Section 3, amended Education Code Section
4 9442 to require the state board to encumber the State Instructional Materials Fund to
5 establish a credit for each district board with which instructional materials adopted by the
6 state board may be ordered, to establish a cash allotment in an amount determined by
7 the state board for use in purchasing instructional materials from any source, or for the
8 purchase of tests or in-service training pursuant to Section 9424 and 9425, and to obtain
9 instructional materials in subsequent fiscal years.

10 Chapter 1233, Statutes of 1972, Section 17, amended Education Code Section
11 9600 to require the district board of each district maintaining one or more high schools to
12 adopt textbooks, for use in the high school under its control, only from those publishers
13 who comply with the requirements of Article 3 and Article 4 of Chapter 1.

14 Chapter 929, Statutes of 1972, Section 2, added Education Code Section 9621
15 which required the district board of each high school district to purchase textbooks for
16 the use of pupils enrolled in the high schools of the district. The school districts could
17 purchase supplementary books. The textbooks and supplementary books, at all times,
18 were to remain the district's property. These materials were required to be supplied to
19 the pupils for their use without charge.

20 Chapter 929, Statutes of 1972, Section 2, added Education Code Section 9800
21 which required governing boards to adopt rules, regulations and procedures for

Test Claim of Castro Valley Unified School District
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1 prescribing standards for determining when instructional materials adopted by them and
2 either loaned by them or in their possession are obsolete, and if such materials are
3 usable or unusable for educational purposes.

4 Chapter 1233, Statutes of 1972, Section 18, amended Education Code Section
5 9820 to provide that the state board, any district board which employs a superintendent
6 of schools, and other school districts with the approval of the county superintendent of
7 schools, may dispose of surplus or undistributed obsolete instructional materials in its
8 possession which are usable for educational purposes in any of the following ways:

- 9 (1) By donation to any governing board, county free library or other state
10 institution.
- 11 (2) By donation to any public agency or institution of any territory or
12 possession of the United States, or the government of any country which
13 formerly was a territory or possession of the United States.
- 14 (3) By donation to any nonprofit charitable organization.
- 15 (4) By donation to children or adults in the State of California, or foreign
16 countries for the purpose of increasing the general literacy of the people.
- 17 (5) By sale for a nominal price for use within the State of California to any
18 organization which agrees to use such materials solely for educational
19 purposes.

20 Chapter 929, Statutes of 1972, Section 2, added Education Code Section 9861
21 which required that any money received by a district board from the sale of obsolete

Test Claim of Castro Valley Unified School District
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1 instructional materials pursuant to the provisions of the Chapter be deposited in any
2 such fund of the school district as the district board prescribes and be used for school
3 district purposes.

4 **SECTION 2. LEGISLATIVE HISTORY AFTER DECEMBER 31, 1974**

5 Chapter 817, Statutes of 1976, Section 2, repealed Education Code Section
6 9400. Chapter 817, Statutes of 1976, Section 3, added a new Education Code Section
7 9400². Subdivision (c) provides that in the event that a district board establishes to the

² Education Code Section 9400, added by Chapter 817, Statutes of 1976, Section 3:

“The state board shall adopt instructional materials for use in kindergarten and grades 1 through 8 for a use period for governing boards of six years, commencing the first year of use in a district, subject to Section 9465 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits to purchase, through the Department of Education, materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and

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Chapter 4/03 Instructional Materials Funding Requirements

1 satisfaction of the state board that the state-adopted instructional materials do not
2 promote the maximum efficiency of pupil learning in the district, the district board shall
3 be authorized to use its instructional materials' credits to purchase, through the
4 Department of Education, materials as specified by the state board, in accordance with
5 standards and procedures established by the state board. Subdivision (d) requires that
6 the district boards be aware of the procedures established by the state board that
7 provide the most open and flexible submissions, as to timing and processing, and

flexible submissions, as to timing and processing, to provide collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils."

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1 provide collections of instructional materials which, when taken as a whole, illustrate
2 diverse points of view; represent cultural pluralism and provide a broad spectrum of
3 knowledge, information, and a cross section of opinions; and allow for a combination of
4 approaches and media to best meet the goals of a program and the needs of pupils.

5 Chapter 1010, Statutes of 1976, Section 2, renumbered and recodified Education
6 Code Sections listed as follows:

<u>Former Section</u>	<u>Renumbered Section</u>
9200	60000
9244	60045
9442	60242
9861	60521

12 Chapter 36, Statutes of 1977, Section 495, added Education Code Section 60200
13 which is substantially similar to former Section 9400.

14 Chapter 282, Statutes of 1979, Section 37, amended Education Code Section
15 60200 to make technical changes.

16 Chapter 1503, Statutes of 1982, Section 1, amended Education Code Section
17 60200³. Subdivision (c) no longer requires district boards to use their instructional

³ Education Code Section 60200, added by Chapter 36, Statutes of 1977, Section 495, as amended by Chapter 1503, Statutes of 1982, Section 1:

“ . . .
(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for basic instructional materials in each subject in each grade: (a) instructional materials,

Test Claim of Castro Valley Unified School District
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1 materials' allowances (formerly "credits") to purchase instructional materials only through
2 the Department of Education.

3 Chapter 1503, Statutes of 1982, Section 3, amended Education Code Section
4 60242⁴. Former subdivision (b) was added to the provisions of subdivision (a). A new

(b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

Nothing in this subdivision shall limit the authority of the state board to adopt materials which are not basic instructional materials, and the adoption of those materials shall not be governed by the maximum and minimum limits specified by this subdivision.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits allowances to purchase, ~~through the Department of Education,~~ materials as specified by the state board, in accordance with standards and procedures established by the state board.

...
(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of such materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.
..."

⁴ Education Code Section 60242, former Section 9442, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 1503, Statutes of 1982, Section 3:

"After the application of Section ~~9444~~ 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

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1 subdivision (b) was added to require the state board to establish an allowance for each
2 district board which may be used for purchasing instructional materials adopted by the
3 state board, purchasing instructional materials from any source, or purchasing tests or
4 in-service training pursuant to Sections 60224 and 60225. District boards may only use
5 the percentage of their allowances for the purposes of subdivisions (a) and (b) as
6 authorized by the state board.

7 Chapter 1503, Statutes of 1982, Section 5, added Education Code Section

(1) The state board shall establish a credit for each district board with which instructional materials adopted by the state board may be ordered by districts which choose to order materials through the state.

(b)(2) The state board shall Eestablishing a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 9424 and 9425 60224 and 60225.

The state board shall specify the percentage of a district board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district board, which the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education of their decision to operate under this subdivision.

(c) Obtaining instructional materials in subsequent fiscal years.

In establishing the credit and cash allotment for each school district, the board may take into consideration estimated increases or decreases in average daily attendance for the year in which the instructional materials are to be used."

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1 60242.5⁵ to provide that allowances received by districts pursuant to subdivision (b) of
2 Section 60242 shall be deposited into a separate account as specified by the
3 Superintendent of Public Instruction. These allowances, including any interest
4 generated by them, shall be used only for the purchase of instructional materials, tests,
5 or in-service training pursuant to subdivision (b) of Section 60242. All purchases of
6 instructional materials made with funds from this account shall conform to law and the
7 applicable rules and regulations adopted by the state board and, for the first time, the
8 district superintendent is required to provide written assurance of such conformance to
9 the Superintendent of Public Instruction. Commencing September 1, 1984, the
10 Superintendent of Public Instruction may withhold the allowance established pursuant to

⁵ Education Code Section 60242.5, added by Chapter 1503, Statutes of 1982, Section 5:

“Allowances received by districts pursuant to subdivision (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, or in-service training pursuant to subdivision (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of such conformance to the Superintendent of Public Instruction. Commencing September 1, 1984, the Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The Department of Finance, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.”

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1 Section 60242 for any district which has failed to file a written assurance for the prior
2 fiscal year. The Superintendent of Public Instruction may restore the amount withheld
3 once the district provides the written assurance.

4 Chapter 498, Statutes of 1983, Section 113, amended Education Code Section
5 60240⁶ to continue the existence of the State Instructional Materials Fund and make
6 other technical changes.

7 Chapter 498, Statutes of 1983, Section 116, added Education Code Section
8 60248⁷ which requires district boards to use the funds apportioned pursuant to Section
9 60247 solely for the purchase of instructional materials for pupils in grades 9 through 12
10 in accordance with Sections 60400 and 60401.

11 Chapter 1440, Statutes of 1985, Section 7, amended Education Code Section

⁶ Education Code Section 60240 (former Section 9440, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 498, Statutes of 1983, Section 113:

~~“There is hereby created the State Instructional Materials Fund, effective July 1, 1973 is hereby continued in existence.~~ The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, All money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this division. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials.”

⁷ Education Code Section 60248, added by Chapter 498, Statutes of 1982, Section 116:

“School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional materials for pupils in grades 9 through 12 in accordance with Sections 60400 and 60401.”

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1 60248⁸ to provide that other materials may be purchased in addition to only instructional
2 materials.

3 Chapter 1470, Statutes of 1985, Section 2, amended Education Code Section
4 60248 without change.

5 Chapter 1546, Statutes of 1985, Section 17, amended Education Code Section
6 60248 to make technical changes.

7 Chapter 1597, Statutes of 1985, Section 12, amended Education Code Section
8 60242 to make technical changes.

9 Chapter 211, Statutes of 1986, Section 3, amended Education Code Section
10 60200 to make technical changes.

11 Chapter 1452, Statutes of 1987, Section 511, amended Education Code Section
12 60242.5 to make technical changes.

13 Chapter 1181, Statutes of 1989, Section 4, amended Education Code Section
14 60200⁹. Technical changes were made to subdivisions (a) and (b). A new subdivision

⁸ Education Code Section 60248, added by Chapter 498, Statutes of 1983, Section 116, as amended by Chapter 1440, Statutes of 1985, Section 7:

“School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional and other materials, as defined in Article 2 (commencing with Section 60010) of Chapter 1, for pupils in grades 9 through 12. Textbooks purchased with these funds shall be those adopted in accordance with Sections 60400 and 60401.”

⁹ Education Code Section 60200, added by Chapter 36, Statutes of 1977, Section 495, as amended by Chapter 1181, Statutes of 1989, Section 4:

“The state board shall adopt basic instructional materials for use in kindergarten

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1

and grades 1 to 8, inclusive, for governing boards, subject to ~~Section 60265 and to the following provisions:~~

~~(a) At least biennially, adoptions~~ The State Board shall be made adopt basic instructional materials for all applicable grade levels for in each of the following categories:

~~(1) l~~Language arts;

~~(2) m~~Mathematics;

~~(3) r~~Reading;

~~(4) s~~Science;

~~(5) s~~Social sScience;

~~(6) b~~Bilingual or bicultural subjects; and

~~(7) a~~Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable to promote the maximum efficiency in pupil learning.

~~(b) While categories may be designated to be adopted in alternate years, t~~The state board shall adopt not less than five but no more than 15 of any of the following for basic instructional materials in each subject in each grade:

~~(a)~~(1) iInstructional materials;

~~(b)~~(2) iInstructional materials systems;

~~(c)~~(3) iInstructional materials sets; and

~~(d)~~(4) aA combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects.

~~(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:~~

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless that state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

~~(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board and its appropriate advisors and advisory groups~~

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shall use, and ensure that, in its judgement, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) The submitted instructional materials are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the subject area for the grade or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon on or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed in paragraphs (1) to (5), inclusive of subdivision (d) of Section 60200, or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this subdivision section shall limit the authority of the state board to adopt materials that are not basic instructional materials, and the adoption of those materials shall not be governed by the maximum and the minimum limits specified by this subdivision.

(e)(h) In the event that a district board establishes to the satisfaction of the state

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board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

~~(d)~~(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall establish prescribe procedures to provide the most open and flexible materials submissions, as to timing and processing, system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, to provide collections of instructional materials that, when taken as a whole, illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and opinions; and allow for a combination of approaches and media to best meet the goals of a the program and the needs of pupils.

~~(e)~~(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of ~~not less than four years following the date of initial use as established pursuant to subdivision (i):~~ beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

~~(f)~~(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever ~~the state board designates it determines~~ that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; ~~however, all materials so designated shall be adopted subject to the limitations of subdivision (b).~~

~~(g)~~(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

~~(h)~~(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

~~(i)~~(n) Upon making an adoptions, the state board shall, at the time of initiating

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1 (c) was added to require that a district board's submission of instructional materials to
2 the state board for approval must comply with the following:

3 (1) Instructional materials may only be submitted for adoption at least every
4 two years that there will be submissions in each subject consistent with the
5 framework cycles established by the state board. The resubmission of
6 materials that have been previously rejected may be restricted if those
7 resubmitted materials have no substantive changes.

8 (2) Submitted instructional materials will be adopted or rejected within six
9 months of the submission date unless the state board determines that a
10 longer period of time, not to exceed an additional three months, is
11 necessary due to the estimated volume or complexity of the materials for
12 that subject in that year, or due to other circumstances beyond the
13 reasonable control of the state board.

14 Subdivision (d) was added to require that district boards submit basic instructional
15 materials that satisfy all of the following conditions before the state board and its
16 appropriate advisors and advisory groups adopt them:

17 (1) The submitted basic instructional materials must be consistent with the
18 criteria and the standards of quality prescribed in the state board's adopted
19 curriculum framework, taking into account the framework and the

~~the call for bids for instructional materials, establish the date upon which those such~~
~~state-adopted materials shall initially be available for use by the pupils schools."~~

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1 submitted instructional materials as a whole;

2 (2) The submitted basic instructional materials comply with the
3 requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5,
4 and 60200.6, and the state board's guidelines for social content;

5 (3) The submitted instructional materials are factually accurate and
6 incorporate principles of instruction reflective of current and confirmed
7 research;

8 (4) The submitted instructional materials adequately cover the subject area for
9 the grade or levels for which they are submitted; and

10 (5) The submitted instructional materials meet other criteria as are
11 established by the state board as being necessary to accomplish the intent
12 of Section 7.5 of Article IX of the California Constitution and of Section 1 of
13 this act, provided that the criteria are approved by resolution at the time
14 the resolution adopting the framework for the current adoption is approved,
15 or at least 30 months prior to the date that the materials are to be
16 approved for adoption.

17 Subdivision (e) was added to provide the state board's procedure for rejecting basic
18 instructional materials. Subdivision (f) was added to provide that the state board may
19 adopt less than five basic instructional materials for each subject as long as several
20 conditions are met. Former subdivision (c) was relettered as subdivision (h). Former
21 subdivisions (d) through (i) were relettered as subdivisions (i) through (n), respectively.

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1 Chapter 353, Statutes of 1991, Section 2, and Chapter 529, Statutes of 1991,
2 Section 2.5, amended Education Code Section 60200 to make technical changes.

3 Chapter 529, Statutes of 1991, Section 3, amended Education Code Section
4 60242 to make technical changes.

5 Chapter 1028, Statutes of 1991, Section 2, added Education Code Section
6 60510.5¹⁰ which encourages a school district, prior to disposing of any instructional
7 materials, to do the following:

- 8 (1) Notify the public of its intention to dispose of those materials through a
9 public service announcement on a television station in the county in which
10 the district is located, a public notice in a newspaper of general circulation
11 published in that county, or any other means that the governing board

¹⁰ Education Code Section 60510.5, added by Chapter 1028, Statutes of 1991,
Section 2:

“(a) Prior to the disposition by a school district of any instructional materials pursuant to Section 60510, the school district governing board is encouraged to do both of the following:

(1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.

(2) Permit representatives of the entities described in subdivisions (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.

(b) This section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.”

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1 determines to reach most effectively the entities described in subdivisions
2 (a) to (e), inclusive, of Section 60510, no later than 60 days prior to that
3 disposition, and

4 (2) Permit representatives of the entities described in subdivisions (a) to (e),
5 inclusive, of Section 60510 and members of the public to address the
6 governing board regarding that disposition.

7 Chapter 56, Statutes of 1993, Section 6 amended Education Code Section 60200
8 to make technical changes.

9 Chapter 927, Statutes of 1994, Section 2, added Education Code Section
10 60117¹¹ to provide that Article 7 shall be cited as the Pupil Textbook and Instructional
11 Incentive Program Act.

12 Chapter 927, Statutes of 1994, Section 2, added Education Code Section
13 60119¹². Subdivision (a) requires the district board take the following actions in order to

¹¹ Education Code Section 60117, added by Chapter 927, Statutes of 1994,
Section 2:

“This article shall be known and may be cited as the Pupil Textbook and
Instructional Materials Incentive Program Act.”

¹² Education Code Section 60119, added by Chapter 927, Statutes of 1994,
Section 2:

“(a) For the 1994-95 fiscal year and each fiscal year thereafter, in order to be
eligible to receive funds available for the purposes of this article, the governing board of
a school district shall take the following actions:

(1) The governing board shall hold a public hearing or hearings at which
the governing board shall encourage participation by parents, teachers,
members of the community interested in the affairs of the school district, and

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- 1 be eligible to receive funds under the Pupil Textbook and Instructional Incentive
2 Program Act:
3 (1) Hold a public hearing or hearings at which the governing board must

bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

(c) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year."

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1 encourage participation by parents, teachers, members of the community
2 interested in the affairs of the school district, and bargaining unit leaders,
3 and make a determination, through a resolution, as to whether each pupil
4 in each school in the district has, or will have prior to the end of that fiscal
5 year, sufficient textbooks or instructional materials, or both, in each subject
6 that are consistent with the content and cycles of the curriculum
7 framework adopted by the state board; and

8 (2) If the governing board determines that there are insufficient
9 textbooks or instructional materials, or both, the governing board must
10 provide information to classroom teachers and to the public setting forth
11 the reasons that each pupil does not have sufficient textbooks or
12 instructional materials, or both, and take any action, except an action that
13 would require reimbursement by the Commission on State Mandates, to
14 ensure that each pupil has sufficient textbooks or instructional materials, or
15 both, within a two-year period from the date of the determination.

16 Subdivision (b) requires the governing board to provide 10 days notice of the public
17 hearing or hearings set forth in subdivision (a). The notice must contain the time, place,
18 and purpose of the hearing and must be posted in three public places in the school
19 district. Subdivision (c) provides that, except for purposes of Section 60252, governing
20 boards receiving funds for instructional materials from any state source, are subject to
21 the requirements of this Section only in a fiscal year in which the Superintendent of

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1 Public Instruction determines that the base revenue limit for each school district will
2 increase by at least 1 percent per unit of average daily attendance from the prior fiscal
3 year.

4 Chapter 927, Statutes of 1994, Section 3, added Education Code Section
5 60252¹³. Subdivision (a), created the Pupil Textbook and Instructional Materials
6 Incentive Account within the State Instructional Materials Fund. To receive an allocation
7 of these funds from the Superintendent of Public Instruction, each school district
8 maintaining any kindergarten or any grades 1 to 12, inclusive, is required to:

9 (1) Provide assurance to the Superintendent of Public Instruction that the

¹³ Education Code Section 60252, added by Chapter 927, Statutes of 1994,
Section 3:

“(a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.”

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1 district has complied with Section 60119, and

- 2 (2) Ensure that the money will be used to carry out its compliance with Section
3 60119 and shall supplement any state and local money that is expended
4 on textbooks or instructional materials, or both.

5 Subdivision (b) requires that each school district has an opportunity for funding per pupil
6 based upon the district's prior year base revenue limit in relation to the prior year
7 statewide average base revenue limit for similar types and sizes of districts. Districts
8 below the statewide average shall receive a greater percentage of state funds, and
9 districts above the statewide average shall receive a smaller percentage of state funds,
10 in an amount equal to the percentage that the district's base revenue limit varies from
11 the statewide average. However, any district with a base revenue limit that equals or
12 exceeds 200 percent of the statewide average shall not be eligible for state funding
13 under this Section.

14 Chapter 325, Statutes of 1995, Section 1, added Education Code Section
15 60118¹⁴ to provide that the terms "governing board" or "governing board of a school
16 district," as used in the Pupil Textbook and Instructional Incentive Program Act, include

¹⁴ Education Code Section 60118, added by Chapter 325, Statutes of 1995,
Section 1:

"County offices of education may, at their option, be eligible to receive funds pursuant to this article. Allocations to county offices of education shall be based upon prior year average daily attendance in county operated educational programs and at the average amount allocated to school districts per unit of average daily attendance. For the purposes of this article, the terms "governing board of a school district" and "governing board" are deemed to include county boards of education."

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1 county offices of education.

2 Chapter 413, Statutes of 1995, Section 1, amended Education Code Section
3 60000¹⁵. The former section was designated as subdivision (a) and subject to technical
4 changes. Subdivision (b) was added to recognize the need to establish broad minimum
5 standards and general educational guidelines for the selection of instructional materials
6 for the public schools, but also recognizes that, because of economic, geographic,
7 physical, political, educational, and social diversity, specific choices about instructional
8 materials must be made at the local level. Subdivision (c) provides that, since district
9 boards have the responsibility to establish courses of study, they must have the ability to
10 choose instructional materials that are appropriate to their courses of study.

11 Chapter 413, Statutes of 1995, Section 4, added Education Code Section

¹⁵ Education Code Section 60000 (former Section 9200, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 413, Statutes of 1995, Section 1:

“(a) It is the intent and purpose of the Legislature in enacting this division part to provide for the acquisition adoption and selection of quality instructional materials for use in the elementary and secondary schools.

“(b) The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but that because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level.

“(c) The Legislature further recognizes that the governing boards of school districts have the responsibility to establish courses of study and that they must have the ability to choose instructional materials that are appropriate to their courses of study.”

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1 60002¹⁶ which requires that each district board provide for substantial teacher
2 involvement in the selection of instructional materials and promote the involvement of
3 parents and other members of the community in the selection of instructional materials.

4 Chapter 413, Statutes of 1995, Section 13, amended Education Code Section
5 60200¹⁷. Former subdivision (b) was deleted and the subsequent subdivisions were

¹⁶ Education Code Section 60002, added by Chapter 413, Statutes of 1995,
Section 4:

“Each district board shall provide for substantial teacher involvement in the selection of instructional materials and shall promote the involvement of parents and other members of the community in the selection of instructional materials.”

¹⁷ Education Code Section 60200, added by Chapter 36, Statutes of 1977,
Section 495, as amended by Chapter 413, Statutes of 1995, Section 13:

“The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social Science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the

state board determines the adoption of instructional materials to be necessary or desirable.

(b) ~~The state board shall adopt any of the following for basic instructional materials in each subject in each grade:~~

- ~~(1) Instructional materials.~~
- ~~(2) Instructional materials systems.~~
- ~~(3) Instructional materials sets.~~
- ~~(4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.~~

(c) The state board shall adopt procedures for the submission of basic

instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

~~(d)~~(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, ~~all of the following conditions are met~~ the submitted basic instructional materials meet all of the following criteria:

(1) ~~The submitted basic instructional materials a~~Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) ~~The submitted basic instructional materials c~~Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) ~~The submitted instructional materials a~~Are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) ~~The submitted instructional materials a~~Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) ~~The submitted instructional materials m~~Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

~~(e)~~(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision ~~(d)~~(c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

~~(f)~~(e) The state board may adopt fewer than five basic instructional materials in

each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision ~~(d)(c)~~, or the materials fail to meet the state board's adopted curriculum framework. ~~In the event that~~ If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

~~(g)(f)~~ Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

~~(h)(g)~~ ~~In the event that~~ If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

~~(i)(h)~~ Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

~~(j)(i)~~ Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to ~~subdivision (b) of Section 60222 and Section 60223~~ existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, ~~for a period beginning with~~ from the date of the adoption of the item and ~~ending on~~ until a date established by the state board ~~as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based.~~ The date established by the board for continuing items on that list shall be the earlier of not more than eight years from the date of adoption of the items or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. ~~All previous adoptions shall be integrated on lists and~~ Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the

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1 relettered accordingly. Subdivision (n) was also deleted. Other minor technical changes
2 were also made.

3 Chapter 413, Statutes of 1995, Section 17, amended Education Code Section
4 60225¹⁸ to delete the ability of a district board to request in-service training and provided
5 that publishers and district boards must now agree before the publishers provide in-

date prescribed by the state board pursuant to this subdivision.

(k)(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(h)(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m)(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) ~~Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.~~

¹⁸ Education Code Section 60225, former Section 9425, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2, as amended by Chapter 413, Statutes of 1995, Section 17:

~~“At the request of any district board and with the approval of the county superintendent of schools, As agreed upon by publishers and school districts, publishers and manufacturers or other qualified persons or organizations shall may provide in-service training or professional development in the use of the instructional materials produced provided by them. The in-service training shall be provided on terms agreed to by the publisher or manufacturer or other qualified person or organization and may be paid for by the district board. If the publisher or manufacturer or other qualified person or organization does not provide the in-service training at no cost to the district board, and the district board does not agree to pay for the in-service training, no penalties shall be imposed upon the publisher or manufacturer or other qualified person or organization.”~~

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1 service training or professional development in the use of the instructional materials
2 provided by them.

3 Chapter 413, Statutes of 1995, Section 20, amended Education Code Section
4 60242¹⁹ to delete former subdivision (a). Former subdivision (b) was relettered

¹⁹ Education Code Section 60242 (former Section 9442, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 413, Statutes of 1995, Section 20:

~~“After the application of Section 60241, (a) t~~The state board shall encumber the balance of the fund for the purpose of:

~~(a) Establishing credits and cash allotments as follows:~~

~~(1) The state board shall establish a credit for each district governing board with which instructional materials adopted by the state board may be ordered by districts that choose to order materials through the state.~~

~~(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.~~

~~The state board shall specify the percentage of a district governing board's credit authorized to be used for each of the above purposes:~~

~~(b) E~~establishing an allowance for each district governing board, which may include consideration of increases or decreases in average daily attendance, that the district governing board may use for the following purposes:

~~(1) To purchase instructional materials adopted by the state board.~~

~~(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.~~

~~(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.~~

~~(4) To fund in-service training.~~

~~(b) The state board shall specify the percentage of a district governing board's allowance authorized to be used for each of the above purposes.~~

~~(c) Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041 in September of each fiscal year.~~

~~The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education if they wish to operate under a different subdivision during the next fiscal year.~~

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1 subdivision (a) and amended to provide an allowance for in-service training. New
2 subdivision (b) continues to provide that the State Board shall specify the percentage of
3 a district's allowance to be used for each purpose set forth in subdivision (a). Former
4 subdivision (c) was also deleted and the new subdivision (c) provides that allowances
5 established for school districts shall be apportioned in September of each fiscal year.

6 Chapter 413, Statutes of 1995, Section 37, amended Education Code Section
7 60510²⁰, subdivision (e), to provide that a district board may dispose of surplus or
8 undistributed obsolete instructional materials by sale to any organization that agrees to
9 use the materials solely for educational purposes.

~~(c) Obtaining instructional materials in subsequent fiscal years."~~

²⁰ Education Code Section 60510 (former Section 9820, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 413, Statutes of 1995, Section 37:

"The state board, the governing board of any school district board which that employs a superintendent of schools, and other school districts with the approval of the county superintendent of schools, may dispose of surplus or undistributed obsolete instructional materials in its their possession which that are usable for educational purposes in any of the following ways:

- (a) By donation to any governing board, county free library or other state institution.
- (b) By donation to any public agency or institution of any territory or possession of the United States, or the government of any country which that formerly was a territory or possession of the United States.
- (c) By donation to any nonprofit charitable organization.
- (d) By donation to children or adults in the State of California, or foreign countries for the purpose of increasing the general literacy of the people.
- (e) By sale ~~for a nominal price for use within the State of California~~ to any organization which that agrees to use such the materials solely for educational purposes."

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1 Chapter 413, Statutes of 1995, Section 41, amended Education Code Section
2 60521²¹ to require that any money received by a district board from the sale of
3 instructional materials shall be used to purchase instructional materials.

4 Chapter 534, Statutes of 1995, Section 2, amended Education Code Section
5 60242²² to require the state board, for the first time, to establish an allowance for each
6 district board to bind basic textbooks that are otherwise usable and are on the most

²¹ Education Code Section 60521 (former Section 9861, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 413, Statutes of 1995, Section 41:

"Any money received by ~~a the governing board of a school district board~~ from the sale of ~~obsolete~~ instructional materials pursuant to the provisions of this chapter code shall be deposited in any such fund of the school district as the district board prescribes and shall be used for school district purposes to purchase instructional materials."

²² Education Code Section 60242 (former Section 9442, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 534, Statutes of 1995, Section 2:

"(a) The state board shall encumber the fund for the purpose of establishing an allowance for each district board, which may include consideration of increases or decreases in average daily attendance, that the district board may use for the following purposes:

- (1) To purchase instructional materials adopted by the state board.
- (2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.
- (3) To purchase tests.
- (4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.
- (5) To fund ~~inservice~~ in-service training.

(b) The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year."

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1 recent list of basic instructional materials adopted by the state board and made available
2 pursuant to Section 60200. Other technical changes were also made.

3 Chapter 764, Statutes of 1995, Section 2, amended Education Code Section
4 60200 to make technical changes.

5 Chapter 124, Statutes of 1996, Section 23, amended Education Code Section
6 60242 to make technical changes.

7 Chapter 251, Statutes of 1997, Section 1, amended Education Code Section
8 60200²³. Subdivision (a) was amended to make technical changes. Subdivision (b)(1)

²³ Education Code Section 60200, added by Chapter 36, Statutes of 1977,
Section 495, as amended by Chapter 251, Statutes of 1991, Section 1:

"The state board shall adopt basic instructional materials for use in kindergarten
and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all
applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

~~(3) Reading.~~

~~(4)(3) Science.~~

~~(5)(4) Social Science.~~

~~(6)(5) Bilingual or bicultural subjects.~~

~~(7)(6) Any other subject, discipline, or interdisciplinary areas for which the
state board determines the adoption of instructional materials to be necessary or
desirable.~~

(b) The state board shall adopt procedures for the submission of basic
instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the
subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) at
least every two years so that there will be submissions in each subject consistent
with the framework cycles established by the state board not less than two times
every six years and in any of the subject areas pursuant to paragraph (6) of
subdivision (a) not less than two times every eight years. The state board shall
ensure that curriculum frameworks are reviewed and adopted in each subject

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1 was amended to require that instructional materials may be submitted for adoption in
2 any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a)
3 not less than two times every six years, and in any of the subject areas pursuant to
4 paragraph (6) of subdivision (a) not less than two times every eight years. Technical
5 changes were made to subdivision (i) in accordance with the changes made to
6 subdivision (b)(1).

7 Chapter 276, Statutes of 1999, Section 1, amended Education Code Section
8 60045²⁴. Former Section 60045 was designated as subdivision (a). Subdivision (b) was

area consistent with the six and eight year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c)....

²⁴ Education Code Section 60045 (former 9244, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 276, Statutes of 1999, Section 1:

“(a) All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(b) With the exception of literature and tradebooks, all instructional materials adopted by any governing board for use in schools shall use proper grammar and spelling. The state board may adopt regulations that provide for other allowable

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1 added to require governing boards to adopt only instructional materials, excluding
2 literature, tradebooks and state board approved exceptions, that use proper grammar
3 and spelling.

4 Chapter 276, Statutes of 1999, Section 2, added Education Code Section
5 60048²⁵. Subdivision (a) prohibits a district board from adopting any basic instructional
6 materials, or any instructional materials required to be legally and socially compliant
7 pursuant to Sections 60040 through 60047, or that provide any exposure to a

exceptions to this subdivision for educational purposes, as determined by the state board.”

²⁵ Education Code Section 60048, added by Chapter 276, Statutes of 1999,
Section 2:

“(a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.

(b) The governing board of a school district may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

(c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.

(e) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.”

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1 commercial brand name, product, or corporate or company logo in a manner that is
2 inconsistent with guidelines or frameworks adopted by the state board. Subdivision (b)
3 requires a district board to make a finding in accordance with Section 60200, subdivision
4 (c), that the use of a commercial brand name, product, or corporate or company logo in
5 its instructional materials is appropriate before it can adopt basic instructional materials,
6 and other instructional materials required to be legally and socially compliant pursuant to
7 Sections 60040 through 60047, that contain the same. Subdivision (c) allows publishers
8 to use their own corporate name or logo. Subdivision (d) provides that the state board
9 may adopt regulations that allow exceptions to this Section. Subdivision (e) requires the
10 Superintendent of Public Instruction to develop, and the State Board of Education to
11 adopt, guidelines to implement this Section.

12 Chapter 276, Statutes of 1999, Section 3, amended Education Code Section
13 60200²⁶ to add a new subdivision (c)(5) and renumber the previous version of

²⁶ Education Code Section 62000, added by Chapter 36, Statutes of 1977, Section 495, as amended by Chapter 276, Statutes of 1999, Section 3:

“ . . .
(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction

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1 subdivision (c)(5) as (c)(6). New subdivision (c)(5) requires that district boards submit
2 basic instructional materials that do not contain materials, including illustrations, that
3 provide unnecessary exposure to a commercial brand name, product, or corporate or

reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

~~(5)~~(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) Nothing in this section shall be construed to prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

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1 company logo before the state board and its appropriate advisors and advisory groups
2 adopt them. Materials, including illustrations, that contain a commercial brand name,
3 product, or corporate or company logo may not be used unless the board determines
4 that the use of the commercial brand name, product, or corporate or company logo is
5 appropriate based on one of the following specific findings:

6 (1) If text, the use of the commercial brand name, product, or
7 corporate or company logo in the instructional materials is necessary for
8 an educational purpose, as defined in the guidelines or frameworks
9 adopted by the state board.

10 (2) If an illustration, the appearance of a commercial brand name,
11 product, or corporate or company logo in an illustration in instructional
12 materials is incidental to the general nature of the illustration.

13 New subdivision (m) was added to require the state board to give publishers the
14 opportunity to modify instructional materials if they do not comply with new subdivision
15 (c)(5). New subdivision (n) was added to allow publishers of instructional materials to
16 include whatever corporate name or logo on the instructional materials necessary to
17 provide basic information about the publisher, to protect its copyright, or to identify third
18 party sources of content. New subdivision (o) was added to provide that the state board
19 may adopt other exceptions. New subdivision (p) was added to require that the
20 Superintendent of Public Instruction develop, and the State Board of Education adopt,
21 guidelines to implement this section.

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1 Chapter 646, Statutes of 1999, Section 32.2, amended Education Code Section
2 60119²⁷. A new subdivision (d) was added to provide that the district board is eligible to
3 receive funds available for the purposes of this article for the 1994-95 fiscal year to the
4 1998-99 fiscal year, inclusive, whether or not the district board complied with the public
5 hearing requirement set forth in paragraph (1) of subdivision (a).

6 Chapter 461, Statutes of 2000, Section 1, added Education Code Section
7 60501²⁸ to provide that a school district may review instructional materials to determine
8 when those materials are obsolete pursuant to the rules, regulations, and procedures
9 adopted pursuant to Section 60500 and may report the results of its review and staff
10 recommendations at a public meeting of the school district governing board.

11 Chapter 802, Statutes of 2002, Section 4, amended Education Code Section

²⁷ Education Code Section 60119, added by Chapter 927, Statutes of 1994, Section 2, as amended by Chapter 646, Statutes of 1999, Section 2:

“(a) For the ~~1994-95~~ 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

...
(d) The governing board of a school district is eligible to receive funds available for the purposes of this article for the 1994-95 fiscal year to the 1998-99 fiscal year, inclusive, whether or not the governing board complied with the public hearing requirement set forth in paragraph (1) of subdivision (a).”

²⁸ Education Code Section 60501, added by Chapter 461, Statutes of 2000, Section 1:

“A school district may review instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and may report the results of its review and staff recommendations at a public meeting of the school district governing board.”

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1 60242²⁹, effective January 1, 2003. Subdivision (a)(1) was amended to allow the

²⁹ Education Code Section 60242 (former Section 9442, renumbered and recodified by Chapter 1010, Statutes of 1976, Section 2), as amended by Chapter 802, Statutes of 2002, Section 4:

“(a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district board, which may reflect increases or decreases in average daily attendance enrollment, that the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's board's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding under this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan. A charter school may apply for funding on its own behalf or through its chartering entity. Notwithstanding Section 47610, a charter school

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1 purchase of instructional materials for kindergarten and grades 1 to 8 that have been
2 adopted by the State Board and the purchase of instructional materials for grades 9 to
3 12 that have been adopted by the governing board. Subdivision (a)(2) was amended to
4 allow supplementary instructional materials to be acquired from any source. Subdivision
5 (a)(6) was added to allow the purchase of classroom library materials for kindergarten
6 and grades 1 to 4. Subdivision (d) was added to provide that a school district that
7 purchases classroom library materials, shall, as a condition of receiving funding under
8 this article, develop a districtwide classroom library plan for kindergarten and grades 1 to
9 4, inclusive, and shall receive certification of the plan from the governing board of the
10 school district. A school district must include in the plan a means of preventing loss,
11 damage, or destruction of the materials. A school district is encouraged to consult with
12 school library media teachers and primary grade teachers and to consider selections
13 included in the list of recommended books established pursuant to Section 19336. If a
14 school library media teacher is not employed by the school district, the district is
15 encouraged to consult with a school library media teacher employed by the local county
16 office of education in developing the plan. If a school district or county office of
17 education already has a plan meeting the criteria of subdivision (d), then no new plan is
18 required to establish eligibility.

applying on its own behalf is required to develop and certify approval of a
classroom library plan.

(3) To the extent that a school district, county office of education, or
charter school already has a plan meeting the criteria specified in paragraphs (1)
and (2), no new plan is required to establish eligibility."

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1 Chapter 802, Statutes of 2002, Section 5, amended Education Code Section
2 60242.5³⁰ to include classroom library materials in the grouping of instructional materials
3 upon which districts may expend their allowances and made technical changes. These
4 amendments became effective January 1, 2003.

5 Chapter 802, Statutes of 2002, Section 10, amended Education Code Section
6 60248 to make technical changes, effective January 1, 2003.

7 Chapter 802, Statutes of 2002, Section 11, amended Education Code Section
8 60252³¹, adding subdivision (c), which provides a sunset date of January 1, 2003, unless

³⁰ Education Code Section 60242.5, added by Chapter 1503, Statutes of 1982, Section 5, as amended by Chapter 802, Statutes of 2002, Section 12, effective January 1, 2003:

"Allowances received by districts pursuant to subdivisions (a) and (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, classroom library materials, or in-service training pursuant to subdivisions (a) and (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of such conformance to the Superintendent of Public Instruction. ~~Commencing September 1, 1984,~~ ~~the~~ Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

~~The Office of the~~ Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions."

³¹ Education Code Section 60252, added by Chapter 927, Statutes of 1994, Section 3, as amended by Chapter 802, Statutes of 2002, Section 11:

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1 a later enacted statute becomes operative on or before January 1, 2007, upon which
2 date the section is repealed.

3 Chapter 802, Statutes of 2002, Section 12, added Chapter 3.25, entitled the
4 Instructional Materials Funding Realignment Program, Education Code Sections 60420
5 through 60424. Education Code Section 60420³² created the Instructional Materials
6 Funding Realignment Program ("Program"), effective January 1, 2003.

7 Section 60421³³, subdivision (a), provides that the State Department of Education

"(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed."

³² Education Code Section 60420, added by Chapter 802, Statutes of 2002, Section 12:

"The Instructional Materials Funding Realignment Program is hereby established and shall be administered by the Superintendent of Public Instruction."

³³ Education Code Section 60421, added by Chapter 802, Statutes of 2002, Section 12:

"(a) The State Department of Education shall apportion funds appropriated for purposes of this chapter to school districts on the basis of an equal amount per pupil enrolled in kindergarten and grades 1 to 12, inclusive, in the prior year, excluding summer school, adult, and regional occupational center and regional occupational programs enrollment. Enrollment shall be certified by the Superintendent of Public Instruction and based on data as reported by the California Basic Education Data System count. A school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall be eligible to receive funding pursuant to this chapter based on enrollment estimates provided to the State Department of Education by the school district or charter school. As a condition of receipt of funding, a school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall provide enrollment estimates, as approved by the school district governing board or charter school's charter-granting local educational agency and the

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1 shall apportion funds appropriated for purposes of this chapter to school districts on the
2 basis of an equal amount per pupil enrolled in kindergarten and grades 1 to 12,
3 inclusive, in the prior year, excluding summer school, adult, and regional occupational
4 center and regional occupational programs enrollment and requires that a school district,
5 in its first year of operation or of expanding grade levels at a schoolsite, must provide
6 enrollment estimates which have been approved by both the school district governing
7 board and the county office of education in which the school district is located to the
8 State Department of Education to be eligible for funding under this Program.

9 Subdivision (b) defines "school district" to include any school district or county office of
10 education, and a "local governing board" to include any governing board of a school
11 district or county board of education. Subdivision (c) provides that school districts will
12 receive their apportionments under the Program in September of each fiscal year.

13 Subdivision (d) provides that the State Board of Education may authorize a school
14 district to use any state basic instructional materials allowance to purchase

county office of education in which the school district or charter school's charter-granting
agency is located. These estimates and associated funding shall be adjusted for actual
enrollment as reported by the subsequent California Basic Education Data System.

(b) For the purposes of this chapter, the term "school district" means a school
district, county office of education, or charter school, and the term "local governing
board" means the governing board of a school district, county board of education, or
governing body of a charter school.

(c) Allowances established pursuant to this chapter shall be apportioned to school
districts in September of each fiscal year.

(d) Notwithstanding any other provision of law, pursuant to subdivision (g) of
Section 60200, the State Board of Education may authorize a school district to use any
state basic instructional materials allowance to purchase standards-aligned materials as
specified within this part."

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1 standards-aligned materials as specified in this part.

2 Section 60422³⁴, subdivision (a), requires a local governing board to use funding
3 received under the Program to ensure that each pupil is provided with a

³⁴ Education Code Section 60422, added by Chapter 802, Statutes of 2002,
Section 12:

“(a) A local governing board shall use funding received pursuant to this chapter to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pupils shall be provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the State Board of Education.

(b) Once a governing board certifies compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences, and if the governing board of a school district has met the eligibility requirements of Section 60119, the remaining funds may only be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5.

(c) The State Board of Education may grant the school district additional time to meet the purchasing requirements of subdivision (a) if the governing board of the school district demonstrates, to the satisfaction of the state board, that all of the following criteria apply to the district:

(1) The school district has implemented a well-designed, standards-aligned basic instructional materials program.

(2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.

(3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with subdivision (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(d) The funds provided for the purchase of instructional materials in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of Item 6110-485 of Section 2.00 of the Budget Act of 2002 shall be used for the purposes of, and allocated consistent with, this chapter.”

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1 standards-aligned textbook or basic instructional materials after adopting content
2 standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or
3 pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. The school district
4 is further required to provide its pupils with these standards-aligned textbooks or basic
5 instructional materials by the beginning of the first school term that commences no later
6 than 24 months after those materials were adopted by the State Board of Education.

7 Subdivision (b) provides that once a governing board certifies compliance with the
8 requirements of subdivision (a) with regard to standards-aligned instructional materials
9 in the core curriculum areas of reading/language arts, mathematics, science, and
10 history/social sciences, and meets the eligibility requirements of Section 60119, the
11 remaining Program funds may only be used in accordance with Section 60242,
12 subdivision (a), and Section 60242.5. Subdivision (c) requires a school district to
13 demonstrate the following criteria to receive additional time to comply with the State
14 Department of Education's requirements in subdivision (a):

- 15 (1) The school district must have implemented a well-designed,
16 standards-aligned basic instructional materials program;
- 17 (2) The school district, at the time of its request for additional time, has
18 sufficient textbooks or basic instructional materials for use by each pupil;
19 and
- 20 (3) The school district has adopted a plan for the purchase of
21 standards-aligned instructional materials in accordance with subdivision (a)

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1 but that plan indicated an alternative date for compliance that is declared
2 in the request for additional time.

3 Subdivision (d) provides that any funds allocated for the purchase of instructional
4 materials in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of Item
5 6110-485 of Section 2.00 of the Budget Act of 2002 must be used for the purposes this
6 Program. This section is effective January 1, 2003.

7 Section 60424 provides a sunset date on the Program whereby it shall become
8 inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later
9 enacted statute, that becomes operative on or before January 1, 2008, deletes or
10 extends the dates on which it becomes operative and is repealed.

11 Chapter 4, Statutes of 2003, Section 9, added Education Code Section 60423³⁵,
12 effective March 18, 2003. For the fiscal years of 2002-03 and 2003-04 only, the
13 governing board may satisfy the requirements of Section 60422, subdivision (a), if the

³⁵ Education Code Section 60423, as added by Chapter 4, Statutes of 2003, Section 9, effective March 18, 2003:

“(a) Notwithstanding Section 60422 or any other law, for the 2002-03 and 2003-04 fiscal years only, a requirement that the governing board of a school district provide a pupil with standards-aligned instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, may be satisfied if the governing board of a school district provides a pupil with standards-aligned instructional materials that were adopted by the State Board of Education pursuant to Chapter 481 of the Statutes of 1998.

“(b) This section shall be in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2004, deletes or extends that date.”

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1 governing board provides its pupils with standards-aligned instructional materials that
2 were adopted by the State Board of Education pursuant to Chapter 481 of the Statutes
3 of 1998. Subdivision (b), provides a sunset date on this section giving it effect only until
4 July 1, 2004, and as of that date it is repealed, unless a later enacted statute, which is
5 enacted before July 1, 2004, deletes or extends that date.

6 Title 5 Regulations³⁶

7 Title 5, California Code of Regulations Section 9505 (as amended in 1977)
8 prohibits the expenditure of cash allotments authorized by Education Code Section
9 60242, subdivision (b), for purchase of in-service training to be used for salaries or for
10 travel or per diem expenses of district employees during or attendant to participation in
11 such in-service training.

12 Section 9530 (added in 1994) requires each school district to purchase adopted
13 instructional materials directly from publishers and manufacturers. Subdivision (d)
14 provides that should a publisher or manufacturer discontinue to supply an instructional
15 material before its adoption expiration date or before eight years, whichever is less,
16 without prior written approval from the district, upon receipt of written notice from the
17 district, the publisher or manufacturer shall buy back, from all school districts having
18 received the program, set, or system within the adoption period of the program, set, or
19 system, all components of the instructional materials program, set, or system in which

³⁶ Copies of all Regulations cited below are attached hereto as Exhibit 4 and are incorporated herein by reference.

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1 the discontinued item was designed to be used. Subdivision (e) provides that, upon the
2 failure of the publisher or manufacturer to perform under the terms of any purchase
3 order or agreement by late or nondelivery of instructional materials, or the
4 discontinuation to supply materials without prior approval by the Board and the delivery
5 of unauthorized materials³⁷, the publisher or manufacturer shall comply with any of the
6 following requirements made by the school districts pursuant to this section as
7 compensating or liquidating damages and not as penalties:

8 (1) Should the publisher or manufacturer deliver unauthorized instructional
9 materials to the school district, on written notice from the district, the
10 publisher or manufacturer shall comply with the following requirements:

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

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

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

³⁷ For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

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

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

20 Section 9531 (added in 2003, operative January 16, 2003, last amended June 16,
21 2003), subdivision (a), requires that as much of a district's allocation, as is necessary,

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1 from the Instructional Materials Funding Realignment Program must be spent to
2 purchase textbooks or basic instructional materials adopted subsequent to the adoption
3 of content standards (Education Code Section 60605) for each pupil, in reading
4 language arts, mathematics, history-social science, and science. Subdivision (b)
5 requires certification by the local governing board that each pupil has been provided with
6 a standards-aligned textbook or basic instructional materials in the four core curriculum
7 areas before annual Program funds may be spent to purchase other instructional
8 materials adopted by the State Board of Education. Subdivision (c) requires a
9 determination through the annual local public hearing and approval of a resolution by the
10 local governing board, pursuant to Education Code Section 60119, that each K-12 pupil
11 has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional
12 materials or both, or the local governing board has taken action to ensure sufficiency of
13 textbooks or instructional materials or both within a two-year period as required, and
14 also, pursuant to Education Code Section 60422(a), that the local governing board has
15 provided each K-12 pupil with standards-aligned textbooks or basic instructional
16 materials by the beginning of the first school term that commences no later than 24
17 months after those materials were adopted by the State Board of Education, for grades
18 9-12, inclusive, were adopted by the local governing board before up to 100 percent of
19 the remaining funds may be spent on any of the following:

- 20 (1) Instructional materials, including but not limited to supplementary
21 instructional materials and technology-based materials, from any source

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1 and approved locally or by the state for legal and social compliance
2 pursuant to Education Code Sections 60040-60045 and 60048 and the
3 SBE guidelines in Standards for Evaluating Instructional Materials for
4 Social Content (2000 Edition).

5 (2) To purchase tests.

6 (3) To bind basic textbooks that are otherwise useable and are on the most
7 recent list of basic instructional materials adopted by the state board and
8 made available pursuant to Education Code Section 60200 or by the
9 governing board pursuant to Education Code Section 60400 for grades 9
10 to 12.

11 (4) To fund in-service training related to instructional materials.

12 (5) To purchase classroom library materials for kindergarten and grades 1 to 4
13 with the condition the school district has developed a district wide
14 classroom library plan pursuant to Education Code Section 60242 (d)(1),
15 (2) and (3).

16 Subdivision (e) requires a local governing board to certify by resolution adopted at a duly
17 noticed public meeting, a decision to pilot (i.e. evaluate in actual classroom application),
18 during that fiscal year immediately following the primary adoption, one or more of the
19 textbooks or basic instructional materials adopted by the SBE in that primary adoption
20 before it may use up to nine dollars (\$9.00) per student of a local agency's Program
21 allocation for that fiscal year generated by students in kindergarten through grade 8, and

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1 grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of
2 subdivision (c).

3 Section 9532 (added in 2003 and operative January 16, 2003), subdivision (d),
4 requires a school district in its first year of operation or of expanding grade levels at a
5 school site to provide enrollment estimates to the California Department of Education by
6 September 30 of the current fiscal year in order to receive funding in that fiscal year.
7 The enrollment estimates must be certified by the school district governing board and
8 the county office of education in which the district is located.

9 Section 9535 (added in 1997) provides that if, in the judgment of the governing
10 board of a school district or a county office of education, none of the instructional
11 materials adopted by the California State Board of Education in 1996 promotes the
12 maximum efficiency of pupil learning in that local educational agency's core reading
13 program, and a governing board desires to purchase non-adopted materials with the
14 funds apportioned to it pursuant to Education Code section 60351, it must request
15 authorization to do so from the California State Board of Education. The request must
16 include all of the following:

- 17 (1) An overview of the goals and objectives of the local educational agency's
18 core reading program for kindergarten and grades 1 to 3, inclusive,
19 including a statement about how the goals and objectives were developed
20 and a description of their consistency with a reading program advisory
21 jointly approved by the State Superintendent of Public Instruction,

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- 1 California State Board of Education, and the California Commission on
2 Teacher Credentialing, and published by the California Department of
3 Education in 1996.
- 4 (2) A list of the core reading program instructional materials proposed to be
5 purchased, including titles of individual curricular units, literature, and
6 technology resources.
- 7 (3) An analysis of the proposed materials, describing the strengths and
8 weaknesses of the materials, including the local educational agency's
9 rubrics, criteria, and standards used to evaluate the materials for
10 consistency with the requirements of this section, including, in particular,
11 subdivisions (j) and (k).
- 12 (4) A description of the process by which the proposed materials were
13 evaluated and selected by the local educational agency.
- 14 (5) A description of the local educational agency's plans for staff development
15 for teachers regarding the use of the proposed materials.
- 16 (6) A description of how the proposed materials will be used by the local
17 educational agency's teachers.
- 18 (7) A description of the projected timeline for the purchase of the proposed
19 materials.
- 20 (8) A description of the process used for public display of the proposed
21 materials by the local educational agency, with a statement of assurance

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1 from the local educational agency that the materials have been or will be
2 on public display for at least 30 days prior to their purchase, with all
3 comments received during the display period being made part of the
4 official records of the local educational agency's governing board.

5 (9) A statement of assurance from the local educational agency that the
6 proposed materials are for use in kindergarten or any of grades 1 to 3,
7 inclusive.

8 (10) A statement of assurance from the local educational agency that the
9 proposed materials are based on the fundamental skills required by
10 reading, including, but not limited to, systematic, explicit phonics and
11 spelling, within the meaning of Education Code Section 60200.4.

12 (11) A statement of assurance from the local educational agency that the
13 proposed materials include, but are not necessarily limited to, phonemic
14 awareness, systematic explicit phonics, and spelling patterns,
15 accompanied by reading materials that provide practice in the lesson being
16 taught, within the meaning of Education Code section 60352(d).

17 (12) Evidence that the local educational agency's governing board:

18 (a) Formally approved the authorization request at a properly noticed
19 public meeting.

20 (b) Supports the use of the specified funds for the purpose expressed
21 in the request.

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- 1 (c) Verified that the local educational agency considered the California
2 State Board of Education adopted materials for its core reading
3 program and considered the reasons given by the California State
4 Board of Education for not adopting the materials proposed for
5 purchase, if those materials were submitted for adoption in 1996.
- 6 (d) Verified that the proposed materials comply with Education Code
7 Sections 60040, 60041, 60042, 60044, 60045, and 60046.
- 8 (e) Verified that all statements of assurance included within the request
9 for authorization are true and correct.

10 **PART III. STATEMENT OF THE CLAIM**

11 **SECTION 1. COSTS MANDATED BY THE STATE**

12 The "Standards for Evaluating Instructional Materials for Social Content, 2000
13 Edition"³⁸ is an "Executive Order" as defined in Government Code Section 17516³⁹, and

³⁸ A copy of this Executive Order is attached hereto as Exhibit 5, and is incorporated herein by reference.

³⁹ Government Code Section 17516, added by Chapter 1459, Statutes of 1984, Section 1:

"Executive Order" means any order, plan, requirement, rule, or regulation issued by any of the following:

- (a) The Governor.
- (b) Any officer or official serving at the pleasure of the Governor.
- (c) Any agency, department, board, or commission of state government.

'Executive Order' does not include any order, plan, requirement, rule, or regulation issued by the State Water Resources Control Board or by any regional water quality control board pursuant to Division 7 (commencing with Section 13000) of the Water Code. It is the intent of the Legislature that the State Water Resources Control

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1 together with the statutes, code sections and regulations referenced in this test claim,
2 result in school districts and county offices of education incurring costs mandated by the
3 state, as defined in Government Code Section 17514⁴⁰, by creating new state-mandated
4 duties related to the uniquely governmental function of providing public services and
5 these statutes apply to school districts and county offices of education and do not apply
6 generally to all residents and entities in the state⁴¹.

7 The new duties mandated by the state upon school districts and county offices of
8 education require state reimbursement of the direct and indirect costs of labor, materials

Board and regional water quality control boards will not adopt enforcement orders against publicly owned dischargers which mandate major waste water treatment facility construction costs unless federal financial assistance and state financial assistance pursuant to the Clean Water Bond Act of 1970 and 1974, is simultaneously made available. 'Major' means either a new treatment facility or an addition to an existing facility, the cost of which is in excess of 20 percent of the cost of replacing the facility."

⁴⁰ Government Code section 17514, as added by Chapter 1459/84:

"Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

⁴¹ Public schools are a Article XIII B, Section 6 "program," pursuant to Long Beach Unified School District v. State of California, (1990) 225 Cal.App.3d 155; 275 Cal.Rptr. 449:

"In the instant case, although numerous private schools exist, education in our society is considered to be a peculiarly government function. (Cf. Carmel Valley Fire Protection Dist. V. State of California (1987) 190 Cal.App.3d at p.537) Further, public education is administered by local agencies to provide service to the public. Thus public education constitutes a 'program' within the meaning of Section 6."

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1 and supplies, data processing services and software, contracted services and
2 consultants, equipment and capital assets, staff and student training and travel to
3 implement the following activities:

4 A) Pursuant to Education Code Sections 60000 through 60521, developing,
5 adopting and implementing policies and procedures, and periodically updating
6 those policies and procedures, to ensure compliance with laws and regulations
7 governing the selection, acquisition and use of instructional materials in public
8 schools.

9 B) Pursuant to Education Code Section 60000, subdivision (b), establishing broad
10 minimum standards and general educational guidelines for the selection of
11 instructional materials for the district's schools.

12 C) Pursuant to Education Code Section 60002, providing for substantial teacher
13 involvement in the selection of instructional materials and promoting the
14 involvement of parents and other members of the community in the selection of
15 instructional materials.

16 D) Pursuant to Education Code Section 60045, subdivision (a), adopting
17 instructional materials for use in the schools that are accurate, objective, and
18 current and suited to the needs and comprehension of pupils at their respective
19 grade levels. Pursuant to subdivision (b), adopting instructional materials that
20 use proper grammar and spelling.

21 E) Pursuant to Education Code Section 60048, subdivision (a), adopting basic

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1 instructional materials, and other instructional materials required to be legally and
2 socially compliant pursuant to Sections 60040 to 60047, inclusive, deleting
3 illustrations, that contain a commercial brand name, product, or corporate or
4 company logo unless the governing board makes a specific finding pursuant to
5 the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the
6 use of the commercial brand name, product, or corporate or company logo in the
7 instructional materials is appropriate.

8 F) Pursuant to Education Code Section 60119, subdivision (a), when the base
9 revenue limit for a school district will increase by at least 1 percent per unit of
10 average daily attendance from the prior fiscal year, taking the following actions:

11 (1) Holding a public hearing or hearings at which the governing board shall
12 encourage participation by parents, teachers, members of the community
13 interested in the affairs of the school district, and bargaining unit leaders,
14 and making a determination, through a resolution, as to whether each pupil
15 in each school in the district has, or will have prior to the end of that fiscal
16 year, sufficient textbooks or instructional materials, or both, in each subject
17 that are consistent with the content and cycles of the curriculum framework
18 adopted by the state board.

19 (2) (A) If the governing board determines that there are insufficient
20 textbooks or instructional materials, providing information to
21 classroom teachers and to the public setting forth the reasons that

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1 each pupil does not have sufficient textbooks or instructional
2 materials, or both, and take any action to ensure that each pupil will
3 have sufficient textbooks or instructional materials, or both, within a
4 two-year period from the date of the determination.

5 **(B)** In carrying out subparagraph (A), the governing board may use
6 money in any of the following funds:

7 (i) Any funds available for textbooks or instructional
8 materials, or both, from categorical programs, including any
9 funds allocated to school districts that have been
10 appropriated in the annual Budget Act.

11 (ii) Any funds of the school district that are in excess of the
12 amount available for each pupil during the prior fiscal year to
13 purchase textbooks or instructional materials, or both.

14 (iii) Any other funds available to the school district for
15 textbooks or instructional materials, or both.

16 **G)** Pursuant to Education Code Section 60119, subdivision (b), providing 10 days
17 notice of the public hearing or hearings required by subdivision (a). The notice
18 shall contain the time, place, and purpose of the hearing and shall be posted in
19 three public places in the school district.

20 **H)** Pursuant to Education Code Section 60200, subdivision (c), when appropriate,
21 making a determination that the use of a commercial brand name, product, or

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1 corporate or company logo is appropriate based on one of the following specific
2 findings:

3 (A) If text, the use of the commercial brand name, product, or corporate
4 or company logo in the instructional materials is necessary for an
5 educational purpose, as defined in the guidelines or frameworks
6 adopted by the State Board of Education.

7 (B) If an illustration, the appearance of a commercial brand name,
8 product, or corporate or company logo in an illustration in
9 instructional materials is incidental to the general nature of the
10 illustration.

11 I) Pursuant to Education Code Section 60200, subdivision (g), establishing to the
12 satisfaction of the state board the fact that the state-adopted instructional
13 materials do not promote the maximum efficiency of pupil learning in the district,
14 when requesting authorization for the district governing board to use its
15 instructional materials allowances to purchase other materials.

16 J) Pursuant to Education Code Section 60242, subdivision (d)(1), unless a district
17 already has a plan meeting the criteria specified, developing a districtwide
18 classroom library plan for kindergarten and grades 1 to 4, inclusive, and obtaining
19 certification of the plan from the governing board of the school district. A school
20 district shall include in the plan a means of preventing loss, damage, or
21 destruction of the materials.

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- 1 **K)** Pursuant to Education Code Section 60242, subdivision (d)(2), when developing
2 the plan required by subdivision (d)(1), consulting with school library media
3 teachers and primary grade teachers and considering selections included in the
4 list of recommended books established pursuant to Section 19336. If a school
5 library media teacher is not employed by the school district, consulting with a
6 school library media teacher employed by the local county office of education in
7 developing the plan.
- 8 **L)** Pursuant to Education Code Section 60242.5, providing written assurance of
9 conformance to the Superintendent of Public Instruction that all purchases of
10 instructional materials conform to law and the applicable rules and regulations
11 adopted by the state board.
- 12 **M)** Pursuant to Education Code Section 60248, using the funds apportioned
13 pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional
14 materials for pupils in grades 9 to 12, inclusive.
- 15 **N)** Pursuant to Education Code Section 60252, subdivisions (a) and (b), (until
16 January 1, 2003) satisfying each of the following requirements when applying for
17 funds from the Pupil Textbook and Instructional Materials Incentive Account:
- 18 (1) Providing assurance to the Superintendent of Public Instruction that
19 the district has complied with Section 60119.
- 20 (2) Ensuring that the money will be used to carry out its compliance
21 with Section 60119 and shall supplement any state and local money

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1 that is expended on textbooks or instructional materials, or both.

2 O) Pursuant to Education Code Sections 60421, subdivision (a), and 60424,
3 effective July 1, 2002, for a school district in its first year of operation or of
4 expanding grade levels at a schoolsite, to be eligible to receive funding for the
5 Instructional Materials Funding Realignment Program, providing enrollment
6 estimates, as approved by the school district governing board and the county
7 office of education in which the school district is located. These estimates and
8 associated funding shall be adjusted for actual enrollment as reported by the
9 subsequent California Basic Education Data System.

10 P) Pursuant to Education Code Sections 60422, subdivision (a), and 60424,
11 effective July 1, 2002, using funding received pursuant to the chapter on the
12 Instructional Materials Funding Realignment Program to ensure that each pupil is
13 provided with a standards-aligned textbook or basic instructional materials, as
14 adopted by the State Board of Education subsequent to the adoption of content
15 standards pursuant to Section 60605 for kindergarten and grades 1 to 8,
16 inclusive, or as adopted by the local governing board pursuant to Sections 60400
17 and 60411, for grades 9 to 12, inclusive. Pursuant to subdivision (b), certifying
18 compliance with subdivision (a) with regard to standards-aligned instructional
19 materials in the core curriculum areas of reading/language arts, mathematics,
20 science, and history/social sciences before any remaining funds may be used
21 consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5,

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1 provided the governing board of a school district has met the eligibility
2 requirements of Section 60119. Pursuant to subdivision (c), in order to obtain
3 additional time to meet the purchasing requirements of subdivision (a),
4 demonstrating, to the satisfaction of the state board, that all of the following
5 criteria apply to the district:

6 (1) The school district has implemented a well-designed, standards-aligned
7 basic instructional materials program.

8 (2) The school district, at the time of its request for additional time
9 pursuant to this subdivision, has sufficient textbooks or basic instructional
10 materials for use by each pupil.

11 (3) The school district has adopted a plan for the purchase of
12 standards-aligned instructional materials in accordance with subdivision (a) but
13 that plan indicated an alternative date for compliance that is declared in the
14 request for additional time.

15 (Pursuant to Education Code Section 60423, effective March 18, 2003, for fiscal
16 years of 2002-03 and 2003-04 only, a district may satisfy the requirements of
17 Section 60422, subdivision (a), by providing its pupils with standards-aligned
18 instructional materials that were adopted by the State Board pursuant to Chapter
19 481 of the Statutes of 1998.)

20 Q) Pursuant to Education Code Section 60501, reviewing instructional materials to
21 determine when those materials are obsolete pursuant to the rules, regulations,

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1 and procedures adopted pursuant to Section 60500 and report the results of its
2 review and staff recommendations at a public meeting of the school district
3 governing board.

4 R) Pursuant to Education Code Section 60510.5, subdivision (a), prior to the
5 disposition by a school district of any instructional materials pursuant to Section
6 60510, doing both of the following:

7 (1) No later than 60 days prior to that disposition, notify the public of its
8 intention to dispose of those materials through a public service
9 announcement on a television station in the county in which the
10 district is located, a public notice in a newspaper of general
11 circulation published in that county, or any other means that the
12 governing board determines to reach most effectively the entities
13 described in subdivisions (a) to (e), inclusive, of Section 60510.

14 (2) Permit representatives of the entities described in subdivisions (a)
15 to (e), inclusive, of Section 60510 and members of the public to
16 address the governing board regarding that disposition.

17 Pursuant to subdivision (b), this section does not apply to any school district that,
18 as of January 1, 1992, had in operation a procedure for the disposition of
19 instructional materials pursuant to Section 60510.

20 S) Pursuant to Education Code Section 60521, using any money received by the
21 governing board of a school district from the sale of instructional materials to

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1 purchase instructional materials.

2 Title 5, California Code of Regulations

3 A) Pursuant to Title 5, California Code of Regulations, Section 9505, bearing the
4 cost of salaries and travel and per diem expenses of district employees during or
5 attendant to participation in in-service training in the use of instructional materials.

6 B) Pursuant to Title 5, California Code of Regulations, Section 9530, purchasing
7 adopted instructional materials directly from publishers and manufacturers.

8 C) Pursuant to Title 5, California Code of Regulations, Section 9530, subdivision (d),
9 providing notice to a publisher or manufacturer demanding that it buy back, from
10 the district a program, set, or system within the adoption period of the program,
11 set, or system, all components of the instructional materials program, set, or
12 system when the publisher or manufacturer discontinues the supply of
13 instructional material before its adoption expiration date or before eight years,
14 whichever is less.

15 D) Pursuant to Title 5, California Code of Regulations, Section 9530, subdivision (e),
16 demanding that a publisher or manufacturer, who has failed to perform under the
17 term of any purchase order or agreement, or has failed to deliver instructional
18 materials, or has discontinued to supply materials without prior approval of the
19 district, or has delivered unauthorized materials, comply with the following
20 requirements:

21 (1) Should the publisher or manufacturer deliver unauthorized instructional

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1 materials to the school district (i.e., materials that do not appear in exact
2 description and terms in the purchase order or agreement or are materials
3 that have not been approved for delivery to California schools in written
4 notice to the publisher or manufacturer from the Board or Department):

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

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

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

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

17 (2) Should the publisher or manufacturer fail to deliver instructional materials
18 within 60 days of the receipt of a purchase order from the school district
19 and the publisher or manufacturer had not received prior written approval
20 from the district for such a delay in delivery, which approval shall not be
21 unreasonably withheld, the school district may assess as liquidated

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1 damages an amount up to five hundred dollars (\$500) for each working
2 day the order is delayed beyond sixty (60) calendar days. If late delivery
3 results from circumstances beyond the control of the publisher or
4 manufacturer, the publisher or manufacturer shall not be held liable.

5 Pursuant to this section, the maximum dollar amount that shall be
6 assessed to the publisher or manufacturer by the school district from any
7 individual purchase order shall be twenty thousand dollars (\$20,000.00).

8 E) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (a),
9 effective January 16, 2003, spending as much of the district's annual allocation
10 from the Instructional Materials Funding Realignment Program, as is necessary,
11 to purchase textbooks or basic instructional materials adopted subsequent to the
12 adoption of content standards (Education Code section 60605) for each pupil, in
13 reading language arts, mathematics, history-social science, and science.

14 F) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (b),
15 effective January 16, 2003, certifying that each pupil has been provided with a
16 standards-aligned textbook or basic instructional materials in the four core
17 curriculum areas, so that annual IMFRP funds may be spent to purchase other
18 instructional materials adopted by the SBE pursuant to Education Code section
19 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board
20 pursuant to Education Code section 60400 for grades 9 to 12, as may be
21 necessary to meet the requirements of Education Code section 60119.

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1 G) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (c),
2 effective January 16, 2003, making a determination through the annual local
3 public hearing and approval of a resolution by the local governing board, pursuant
4 to Education Code section 60119, that each K-12 pupil has, or will have prior to
5 the end of that fiscal year, sufficient textbooks or instructional materials or both,
6 or the local governing board has taken action to ensure sufficiency of textbooks
7 or instructional materials or both within a two-year period as required, and also
8 that, pursuant to Education Code section 60422(a), the local governing board has
9 provided each K-12 pupil with standards-aligned textbooks or basic instructional
10 materials by the beginning of the first school term that commences no later than
11 24 months after those materials were adopted by the SBE or, for grades 9-12,
12 inclusive, were adopted by the local governing board, before any remaining
13 Instructional Materials Funding Realignment funds may be spent on any of the
14 following:

15 (1) Instructional materials, including but not limited to supplementary
16 instructional materials and technology-based materials, from any source
17 and approved locally or by the state for legal and social compliance
18 pursuant to Education Code sections 60040-60045 and 60048 and the
19 SBE guidelines in Standards for Evaluating Instructional Materials for
20 Social Content (revised 2000).

21 (2) To purchase tests.

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- 1 (3) To bind basic textbooks that are otherwise useable and are on the most
2 recent list of basic instructional materials adopted by the state board and
3 made available pursuant to Education Code section 60200 or by the
4 governing board pursuant to Education Code section 60400 for grades 9
5 to 12.
- 6 (4) To fund in-service training related to instructional materials.
- 7 (5) To purchase classroom library materials for kindergarten and grades 1 to 4
8 with the condition that the school district has developed a district wide
9 classroom library plan pursuant to Education Code section 60242 (d)(1),
10 (2) and (3).
- 11 H) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (e),
12 effective January 16, 2003, certifying by resolution adopted at a duly noticed
13 public meeting a decision to pilot (i.e. evaluate in actual classroom application),
14 one or more of the textbooks or basic instructional materials adopted by the SBE
15 in reading/language arts, mathematics, history-social science, or science, before
16 using up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation
17 for that fiscal year generated by students in kindergarten through grade 8, and
18 grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5),
19 inclusive, of subdivision (c).
- 20 I) Pursuant to Title 5, California Code of Regulations, Section 9532, subdivision (d),
21 effective January 16, 2003, a school district in its first year of operation or of

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Chapter 4/03 Instructional Materials Funding Requirements

1 expanding grade levels at a school site shall provide enrollment estimates to the
2 California Department of Education by September 30 of the current fiscal year in
3 order for the school district to receive funding in that fiscal year. Enrollment
4 estimates shall be certified by the school district governing board and the county
5 office of education in which the school district is located.

6 J) Pursuant to Title 5, California Code of Regulations, Section 9535, when, in the
7 judgment of the governing board of a school district or a county office of
8 education, none of the instructional materials adopted by the California State
9 Board of Education in 1996 promotes the maximum efficiency of pupil learning in
10 that local educational agency's core reading program, and the governing board
11 desires to purchase non-adopted materials with the funds apportioned to it
12 pursuant to Education Code section 60351, requesting authorization to do so
13 from the California State Board of Education. The request shall include all of the
14 following:

- 15 (1) An overview of the goals and objectives of the local educational agency's
16 core reading program for kindergarten and grades 1 to 3, inclusive,
17 including a statement about how the goals and objectives were developed
18 and a description of their consistency with "Teaching Reading: A
19 Balanced, Comprehensive Approach to Teaching Reading in
20 Prekindergarten Through Grade Three" (Reading Program Advisory),
21 jointly approved by the State Superintendent of Public Instruction,

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Chapter 4/03 Instructional Materials Funding Requirements

1 California State Board of Education, and the California Commission on
2 Teacher Credentialing, and published by the California Department of
3 Education in 1996.

4 (2) A list of the core reading program instructional materials proposed to be
5 purchased, including titles of individual curricular units, literature, and
6 technology resources.

7 (3) An analysis of the proposed materials, describing the strengths and
8 weaknesses of the materials, including the local educational agency's
9 rubrics, criteria, and standards used to evaluate the materials for
10 consistency with the requirements of this section, including, in particular,
11 subdivisions (j) and (k).

12 (4) A description of the process by which the proposed materials were
13 evaluated and selected by the local educational agency.

14 (5) A description of the local educational agency's plans for staff development
15 for teachers regarding the use of the proposed materials.

16 (6) A description of how the proposed materials will be used by the local
17 educational agency's teachers.

18 (7) A description of the projected timeline for the purchase of the proposed
19 materials.

20 (8) A description of the process used for public display of the proposed
21 materials by the local educational agency, with a statement of assurance

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Chapter 4/03 Instructional Materials Funding Requirements

1 from the local educational agency that the materials have been or will be
2 on public display for at least 30 days prior to their purchase, with all
3 comments received during the display period being made part of the
4 official records of the local educational agency's governing board.

5 (9) A statement of assurance from the district that the proposed materials are
6 for use in kindergarten or any of grades 1 to 3, inclusive.

7 (10) A statement of assurance from the district that the proposed materials are
8 based on the fundamental skills required by reading, including, but not
9 limited to, systematic, explicit phonics and spelling, within the meaning of
10 Education Code section 60200.4.

11 (11) A statement of assurance from the district that the proposed materials
12 include, but are not necessarily limited to, phonemic awareness,
13 systematic explicit phonics, and spelling patterns, accompanied by reading
14 materials that provide practice in the lesson being taught, within the
15 meaning of Education Code section 60352(d).

16 (12) Evidence that the local educational agency's governing board:

17 (a) Formally approved the authorization request at a properly noticed
18 public meeting.

19 (b) Supports the use of the specified funds for the purpose expressed
20 in the request.

21 (c) Verified that the local educational agency considered the California

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

1 State Board of Education adopted materials for its core reading
2 program and considered the reasons given by the California State
3 Board of Education for not adopting the materials proposed for
4 purchase, if those materials were submitted for adoption in 1996.

5 (d) Verified that the proposed materials comply with Education Code
6 sections 60040, 60041, 60042, 60044, 60045, and 60046.

7 (e) Verified that all statements of assurance included within the request
8 for authorization are true and correct.

9 **SECTION 2. EXCEPTIONS TO MANDATE REIMBURSEMENT**

10 None of the Government Code Section 17556⁴² statutory exceptions to a finding

⁴² Government Code section 17556, as last amended by Chapter 589, Statutes of 1989:

"The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

(a) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

(b) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.

(c) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

(d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

1 of costs mandated by the state apply to this test claim. To the extent school districts
2 may have previously performed functions similar to those mandated by the referenced
3 code sections, such efforts did not establish a preexisting duty that would relieve the
4 state of its constitutional requirement to later reimburse school districts when these
5 activities became mandated.⁴³

6 **SECTION 3. FUNDING PROVIDED FOR THE MANDATED PROGRAM**

7 School districts may receive dedicated grant and categorical funding for some of
8 the activities included in this test claim. To the extent that the funding is provided each
9 year, and to the extent that the dedicated funds are applied to activities mandated by the
10 state, the amounts received and applicable to mandated activities will reduce the
11 amount of costs mandated by the state. The test claimant is informed and believes that
12 the Superintendent of Public Instruction has the documentation necessary to determine

(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

(f) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.

(g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.”

⁴³ Government Code section 17565, added by Chapter 879, Statutes of 1986:

“If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

1 the amounts of these special purpose funds allocated for each fiscal year, and the
2 purposes for which the funds were intended. This information can be utilized to
3 determine the revenue offset amounts each year.

4 **PART IV. ADDITIONAL CLAIM REQUIREMENTS**

5 The following elements of this claim are provided pursuant to Section 1183, Title
6 2, California Code of Regulations:

7 Exhibit 1: Declaration of Elizabeth Blasquez
8 Assistant Superintendent
9 Curriculum and Instruction
10 Castro Valley Unified School District
11

12 Exhibit 2: Copies of Statutes Cited

- 13 Chapter 4, Statutes of 2003
- 14 Chapter 802, Statutes of 2002
- 15 Chapter 461, Statutes of 2000
- 16 Chapter 646, Statutes of 1999
- 17 Chapter 276, Statutes of 1999
- 18 Chapter 251, Statutes of 1997
- 19 Chapter 124, Statutes of 1996
- 20 Chapter 764, Statutes of 1995
- 21 Chapter 534, Statutes of 1995
- 22 Chapter 413, Statutes of 1995
- 23 Chapter 325, Statutes of 1995
- 24 Chapter 927, Statutes of 1994

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

- 1 Chapter 56, Statutes of 1993
- 2 Chapter 1028, Statutes of 1991
- 3 Chapter 529, Statutes of 1991
- 4 Chapter 353, Statutes of 1991
- 5 Chapter 1181, Statutes of 1989
- 6 Chapter 1452, Statutes of 1987
- 7 Chapter 211, Statutes of 1986
- 8 Chapter 1597, Statutes of 1985
- 9 Chapter 1546, Statutes of 1985
- 10 Chapter 1470, Statutes of 1985
- 11 Chapter 1440, Statutes of 1985
- 12 Chapter 498, Statutes of 1983
- 13 Chapter 1503, Statutes of 1982
- 14 Chapter 282, Statutes of 1979
- 15 Chapter 36, Statutes of 1977
- 16 Chapter 817, Statutes of 1976

- 17 Exhibit 3: Copies of Code Sections Cited
- 18 Education Code Section 60000
- 19 Education Code Section 60002
- 20 Education Code Section 60045
- 21 Education Code Section 60048

Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

- 1 Education Code Section 60119
- 2 Education Code Section 60200
- 3 Education Code Section 60242
- 4 Education Code Section 60242.5
- 5 Education Code Section 60248
- 6 Education Code Section 60252
- 7 Education Code Section 60421
- 8 Education Code Section 60422
- 9 Education Code Section 60423
- 10 Education Code Section 60424
- 11 Education Code Section 60501
- 12 Education Code Section 60510.5
- 13 Education Code Section 60521

14 Exhibit 4: Copies of Regulations Cited

- 15 Title 5, California Code of Regulations, Section 9505
- 16 Title 5, California Code of Regulations, Section 9530
- 17 Title 5, California Code of Regulations, Section 9531
- 18 Title 5, California Code of Regulations, Section 9532
- 19 Title 5, California Code of Regulations, Section 9535

20 Exhibit 5: Executive Orders Cited

- 21 Standards for Evaluating Instructional Materials for Social Content (2000 Edition)

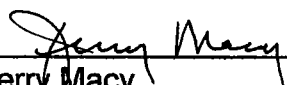
Test Claim of Castro Valley Unified School District
Chapter 4/03 Instructional Materials Funding Requirements

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PART V. CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete of my own knowledge or information and belief.

Executed on September 12, 2003, at Castro Valley, California by:

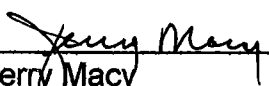


Jerry Macy
Deputy Superintendent
Castro Valley Unified School District

Voice: (510) 537-3335 Ext. 1223
Fax: (510) 886-7529

PART VI. APPOINTMENT OF REPRESENTATIVE

Castro Valley Unified School District appoints Keith B. Petersen, SixTen and Associates, as its representative for this test claim.



Jerry Macy
Deputy Superintendent
Castro Valley Unified School District

9/12/03

Date

**EXHIBIT 1
DECLARATION**

DECLARATION OF ELIZABETH BLASQUEZ

Castro Valley Unified School District

Test Claim of Castro Valley Unified School District

COSM No. _____

Statutes

Chapter 4, Statutes of 2003
Chapter 802, Statutes of 2002
Chapter 461, Statutes of 2000
Chapter 646, Statutes of 1999
Chapter 276, Statutes of 1999
Chapter 251, Statutes of 1997
Chapter 124, Statutes of 1996
Chapter 764, Statutes of 1995
Chapter 534, Statutes of 1995
Chapter 413, Statutes of 1995
Chapter 325, Statutes of 1995
Chapter 927, Statutes of 1994
Chapter 56, Statutes of 1993
Chapter 1028, Statutes of 1991
Chapter 529, Statutes of 1991
Chapter 353, Statutes of 1991
Chapter 1181, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 211, Statutes of 1986
Chapter 1597, Statutes of 1985
Chapter 1546, Statutes of 1985
Chapter 1470, Statutes of 1985
Chapter 1440, Statutes of 1985
Chapter 498, Statutes of 1983
Chapter 1503, Statutes of 1982
Chapter 282, Statutes of 1979
Chapter 36, Statutes of 1977
Chapter 817, Statutes of 1976

Education Code Sections

Education Code Section 60000
Education Code Section 60002
Education Code Section 60045
Education Code Section 60048
Education Code Section 60119
Education Code Section 60200
Education Code Section 60242
Education Code Section 60242.5
Education Code Section 60248
Education Code Section 60252
Education Code Section 60421
Education Code Section 60422
Education Code Section 60423
Education Code Section 60424
Education Code Section 60501
Education Code Section 60510.5
Education Code Section 60521

Title 5, Code of Regulations

Section 9505
Section 9530
Section 9531
Section 9532
Section 9535

Executive Orders

Standards for Evaluating Instructional
Materials for Social Content (2000 Edition)

Instructional Materials Funding Requirements

I, Elizabeth Blasquez, Assistant Superintendent, Curriculum and Instruction,

Castro Valley Unified School District, make the following declaration and statement.

In my capacity as Assistant Superintendent, Curriculum and Instruction, I am responsible for establishing and implementing procedures for the acquisition of instructional materials. I am familiar with the provisions and requirements of the statutes, Education Code Sections and Title 5, California Code of Regulations sections enumerated above.

These Title 5, California Code of Regulations sections require the Castro Valley Unified School District to:

- A) Pursuant to Education Code Sections 60000 through 60521, developing, adopting and implementing policies and procedures, and periodically updating those policies and procedures, to ensure compliance with laws and regulations governing the selection, acquisition and use of instructional materials in public schools.
- B) Pursuant to Education Code Section 60000, subdivision (b), establishing broad minimum standards and general educational guidelines for the selection of instructional materials for the district's schools.
- C) Pursuant to Education Code Section 60002, providing for substantial teacher involvement in the selection of instructional materials and promoting the involvement of parents and other members of the community in the selection of instructional materials.
- D) Pursuant to Education Code Section 60045, subdivision (a), adopting

instructional materials for use in the schools that are accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels. Pursuant to subdivision (b), adopting instructional materials that use proper grammar and spelling.

- E) Pursuant to Education Code Section 60048, subdivision (a), adopting basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, deleting illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.
- F) Pursuant to Education Code Section 60119, subdivision (a), when the base revenue limit for a school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year, taking the following actions:
- (1) Holding a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and making a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject

that are consistent with the content and cycles of the curriculum framework adopted by the state board.

- (2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, providing information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action to ensure that each pupil will have sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.
- (B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:
- (i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.
 - (ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.
 - (iii) Any other funds available to the school district for textbooks or instructional materials, or both.

- G) Pursuant to Education Code Section 60119, subdivision (b), providing 10 days

notice of the public hearing or hearings required by subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

- H) Pursuant to Education Code Section 60200, subdivision (c), when appropriate, making a determination that the use of a commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:
- (A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.
 - (B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.
- I) Pursuant to Education Code Section 60200, subdivision (g), establishing to the satisfaction of the state board the fact that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, when requesting authorization for the district governing board to use its instructional materials allowances to purchase other materials.
- J) Pursuant to Education Code Section 60242, subdivision (d)(1), unless a district

already has a plan meeting the criteria specified, developing a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and obtaining certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

- K) Pursuant to Education Code Section 60242, subdivision (d)(2), when developing the plan required by subdivision (d)(1), consulting with school library media teachers and primary grade teachers and considering selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, consulting with a school library media teacher employed by the local county office of education in developing the plan.
- L) Pursuant to Education Code Section 60242.5, providing written assurance of conformance to the Superintendent of Public Instruction that all purchases of instructional materials conform to law and the applicable rules and regulations adopted by the state board.
- M) Pursuant to Education Code Section 60248, using the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials for pupils in grades 9 to 12, inclusive.
- N) Pursuant to Education Code Section 60252, subdivisions (a) and (b), (until January 1, 2003) satisfying each of the following requirements when applying for

funds from the Pupil Textbook and Instructional Materials Incentive Account:

- (1) Providing assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.
 - (2) Ensuring that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.
- O) Pursuant to Education Code Sections 60421, subdivision (a), and 60424, effective July 1, 2002, for a school district in its first year of operation or of expanding grade levels at a schoolsite, to be eligible to receive funding for the Instructional Materials Funding Realignment Program, providing enrollment estimates, as approved by the school district governing board and the county office of education in which the school district is located. These estimates and associated funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.
- P) Pursuant to Education Code Sections 60422, subdivision (a), and 60424, effective July 1, 2002, using funding received pursuant to the chapter on the Instructional Materials Funding Realignment Program to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400

and 60411, for grades 9 to 12, inclusive. Pursuant to subdivision (b), certifying compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences before any remaining funds may be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5, provided the governing board of a school district has met the eligibility requirements of Section 60119. Pursuant to subdivision (c), in order to obtain additional time to meet the purchasing requirements of subdivision (a), demonstrating, to the satisfaction of the state board, that all of the following criteria apply to the district:

(1) The school district has implemented a well-designed, standards-aligned basic instructional materials program.

(2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.

(3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with subdivision (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(Pursuant to Education Code Section 60423, effective March 18, 2003, for fiscal years of 2002-03 and 2003-04 only, a district may satisfy the requirements of

Section 60422, subdivision (a), by providing its pupils with standards-aligned instructional materials that were adopted by the State Board pursuant to Chapter 481 of the Statutes of 1998.)

- Q) Pursuant to Education Code Section 60501, reviewing instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and report the results of its review and staff recommendations at a public meeting of the school district governing board.
- R) Pursuant to Education Code Section 60510.5, subdivision (a), prior to the disposition by a school district of any instructional materials pursuant to Section 60510, doing both of the following:
- (1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.
 - (2) Permit representatives of the entities described in subdivisions (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.

Pursuant to subdivision (b), this section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.

- S) Pursuant to Education Code Section 60521, using any money received by the governing board of a school district from the sale of instructional materials to purchase instructional materials.

Title 5, California Code of Regulations

- A) Pursuant to Title 5, California Code of Regulations, Section 9505, bearing the cost of salaries and travel and per diem expenses of district employees during or attendant to participation in in-service training in the use of instructional materials.
- B) Pursuant to Title 5, California Code of Regulations, Section 9530, purchasing adopted instructional materials directly from publishers and manufacturers.
- C) Pursuant to Title 5, California Code of Regulations, Section 9530, subdivision (d), providing notice to a publisher or manufacturer demanding that it buy back, from the district a program, set, or system within the adoption period of the program, set, or system, all components of the instructional materials program, set, or system when the publisher or manufacturer discontinues the supply of instructional material before its adoption expiration date or before eight years, whichever is less.
- D) Pursuant to Title 5, California Code of Regulations, Section 9530, subdivision (e), demanding that a publisher or manufacturer, who has failed to perform under the

term of any purchase order or agreement, or has failed to deliver instructional materials, or has discontinued to supply materials without prior approval of the district, or has delivered unauthorized materials, comply with the following requirements:

- (1) Should the publisher or manufacturer deliver unauthorized instructional materials to the school district (i.e., materials that do not appear in exact description and terms in the purchase order or agreement 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):
 - (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 liquidated 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).
- E) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (a), effective January 16, 2003, spending as much of the district's annual allocation from the Instructional Materials Funding Realignment Program, as is necessary, to purchase textbooks or basic instructional materials adopted subsequent to the adoption of content standards (Education Code section 60605) for each pupil, in reading language arts, mathematics, history-social science, and science.
- F) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (b), effective January 16, 2003, certifying that each pupil has been provided with a standards-aligned textbook or basic instructional materials in the four core

curriculum areas, so that annual IMFRP funds may be spent to purchase other instructional materials adopted by the SBE pursuant to Education Code section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Education Code section 60400 for grades 9 to 12, as may be necessary to meet the requirements of Education Code section 60119.

- G) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (c), effective January 16, 2003, making a determination through the annual local public hearing and approval of a resolution by the local governing board, pursuant to Education Code section 60119, that each K-12 pupil has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials or both, or the local governing board has taken action to ensure sufficiency of textbooks or instructional materials or both within a two-year period as required, and also that, pursuant to Education Code section 60422(a), the local governing board has provided each K-12 pupil with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the SBE or, for grades 9-12, inclusive, were adopted by the local governing board, before any remaining Instructional Materials Funding Realignment funds may be spent on any of the following:

- (1) Instructional materials, including but not limited to supplementary instructional materials and technology-based materials, from any source

and approved locally or by the state for legal and social compliance pursuant to Education Code sections 60040-60045 and 60048 and the SBE guidelines in Standards for Evaluating Instructional Materials for Social Content (revised 2000).

- (2) To purchase tests.
 - (3) To bind basic textbooks that are otherwise useable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Education Code section 60200 or by the governing board pursuant to Education Code section 60400 for grades 9 to 12.
 - (4) To fund in-service training related to instructional materials.
 - (5) To purchase classroom library materials for kindergarten and grades 1 to 4 with the condition that the school district has developed a district wide classroom library plan pursuant to Education Code section 60242 (d)(1), (2) and (3).
- H) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (e), effective January 16, 2003, certifying by resolution adopted at a duly noticed public meeting a decision to pilot (i.e. evaluate in actual classroom application), one or more of the textbooks or basic instructional materials adopted by the SBE in reading/language arts, mathematics, history-social science, or science, before using up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation

for that fiscal year generated by students in kindergarten through grade 8, and grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of subdivision (c).

- I) Pursuant to Title 5, California Code of Regulations, Section 9532, subdivision (d), effective January 16, 2003, a school district in its first year of operation or of expanding grade levels at a school site shall provide enrollment estimates to the California Department of Education by September 30 of the current fiscal year in order for the school district to receive funding in that fiscal year. Enrollment estimates shall be certified by the school district governing board and the county office of education in which the school district is located.
- J) Pursuant to Title 5, California Code of Regulations, Section 9535, when, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program, and the governing board desires to purchase non-adopted materials with the funds apportioned to it pursuant to Education Code section 60351, requesting authorization to do so from the California State Board of Education. The request shall include all of the following:
- (1) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive,

including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

- (2) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.
- (3) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's rubrics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).
- (4) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.
- (5) A description of the local educational agency's plans for staff development for teachers regarding the use of the proposed materials.
- (6) A description of how the proposed materials will be used by the local

educational agency's teachers.

- (7) A description of the projected timeline for the purchase of the proposed materials.
- (8) A description of the process used for public display of the proposed materials by the local educational agency, with a statement of assurance from the local educational agency that the materials have been or will be on public display for at least 30 days prior to their purchase, with all comments received during the display period being made part of the official records of the local educational agency's governing board.
- (9) A statement of assurance from the district that the proposed materials are for use in kindergarten or any of grades 1 to 3, inclusive.
- (10) A statement of assurance from the district that the proposed materials are based on the fundamental skills required by reading, including, but not limited to, systematic, explicit phonics and spelling, within the meaning of Education Code section 60200.4.
- (11) A statement of assurance from the district that the proposed materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading materials that provide practice in the lesson being taught, within the meaning of Education Code section 60352(d).
- (12) Evidence that the local educational agency's governing board:

- (a) Formally approved the authorization request at a properly noticed public meeting.
- (b) Supports the use of the specified funds for the purpose expressed in the request.
- (c) Verified that the local educational agency considered the California State Board of Education adopted materials for its core reading program and considered the reasons given by the California State Board of Education for not adopting the materials proposed for purchase, if those materials were submitted for adoption in 1996.
- (d) Verified that the proposed materials comply with Education Code sections 60040, 60041, 60042, 60044, 60045, and 60046.
- (e) Verified that all statements of assurance included within the request for authorization are true and correct.

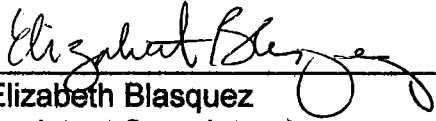
It is estimated that the Castro Valley School District incurred more than \$1,000 in staffing and other costs for the period from July 1, 2002 through June 30, 2003 to implement these new duties mandated by the state for which the school district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement.

The foregoing facts are known to me personally and, if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except where stated upon

Declaration of Elizabeth Blasquez
Castro Valley Unified School District

information and belief and where so stated I declare that I believe them to be true.

EXECUTED this _____ day of September, 2003, at Castro Valley, California



Elizabeth Blasquez
Assistant Superintendent
Curriculum and Instruction
Castro Valley Unified School District

EXHIBIT 2
COPIES OF STATUTES CITED

CHAPTER 817

An act to amend Sections 9322, 9401, 9422, and 9423 of, to add Section 9400 to, and to repeal Section 9400 of, the Education Code, relating to instructional materials.

[Approved by Governor September 8, 1976. Filed with Secretary of State September 9, 1976.]

The people of the State of California do enact as follows:

SECTION 1. Section 9322 of the Education Code is amended to read:

9322. No provision of this division shall be construed as prohibiting any district board, or any public library, from ordering and purchasing from their own funds such instructional materials as they may require, including state-listed materials at a price equal to that computed pursuant to Section 9443.

SEC. 2. Section 9400 of the Education Code is repealed.

SEC. 3. Section 9400 is added to the Education Code, to read:
9400. The state board shall adopt instructional materials for use in kindergarten and grades one through eight for a use period for governing boards of six years, commencing the first year of use in a district, subject to Section 9465 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for each subject in each grade:
(a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials

sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits to purchase, through the Department of Education, materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

SEC. 4. Section 9401 of the Education Code is amended to read:
9401. In approving and maintaining lists of adopted instructional materials at least biennially, the state board shall, pursuant to subdivision (e) of Section 9400, do any one or more of the following,

when applicable:

(a) Retain any instructional materials from a previous list and biennially make any adjustment in prices based on information provided pursuant to Section 9423.

(b) Delete from the lists any instructional material which it determines is obsolete pursuant to Section 9800, or which received no order from any district board during the previous biennial period.

(c) Add instructional materials not previously submitted for adoption, or materials previously submitted which have been revised to comply with any recommendations of the state board.

SEC. 5. Section 9422 of the Education Code is amended to read:

9422. Publishers and manufacturers shall, at a time designated by the state board, submit the following information:

(a) Detailed specifications of the physical characteristics of such material. Such specifications shall be complied with by the publisher or manufacturer if the material is adopted and purchased in completed form by the state board or any district board. If the material is adopted under a lease contract, the Department of General Services shall follow comparable specifications in manufacturing the material. Changes in specifications may be made when approved by the state board and the publisher or manufacturer.

(b) A price schedule for the sale of completed materials to the state, including all costs of transportation pursuant to subdivision (a) of Section 9261, a statement of the cost to the State of California of purchasing a single unit of each item of instructional material, and any discounts for quantity purchases and any discounts for payment within any specified period of time.

(c) A price schedule for the lease and/or purchase by the state of films, dies, and other materials to be used by the state to manufacture such materials.

(d) A price schedule of royalty costs to be paid to the publisher or manufacturer whenever the state manufactures and distributes to school districts any such materials.

SEC. 6. Section 9423 of the Education Code is amended to read:

9423. Publishers and manufacturers may biennially submit revisions to price schedules submitted pursuant to Section 9422 for purposes of subdivision (a) of Section 9401.

CHAPTER 36

An act to amend Sections 40, 1042, 1330, 1891, 1904, 1908, 2104, 2502, 4200, 4210, 4321, 4364, 5012, 5016, 5018, 5204, 5454, 8203, 8210, 8211, 8212, 8240, 8242, 8245, 8246, 8248, 8250, 8250.1, 8251, 8252, 8254, 8321, 8326, 8327, 8329, 8330, 8360, 8361, 8362, 8363, 8364, 8365, 8366, 8367, 8368, 8369, 8383, 8395, 8500, 10101, 10103, 10104, 10106, 10601, 10602, 10603, 10604, 10606, 12516, 14002, 14003, 14020, 15104, 16035, 16040, 16044, 16057, 16058, 16063, 16192, 16250, 16310, 16343, 18383, 18535, 19422, 19423, 19424, 19510, 19511, 19512, 19515, 19521, 19522, 21107, 21108, 21110, 21111, 21112, 21180, 21183, 21189, 21192, 22112, 22114, 22122, 22127, 22142, 22401, 22716, 22802, 22809, 23006, 23100, 23108, 23401, 23506, 23702, 23703, 23704, 23800, 23803, 23804, 23811, 23900, 23903, 23909, 23910, 23918, 23919, 23920, 23921, 24100, 24200, 24203, 24600, 33332, 35041.5, 35101, 35174, 35214, 35300, 35330, 35511, 35512, 35515, 35518, 35704, 35705, 37220, 37228, 39002, 39140, 39143, 39149, 39210, 39214, 39227, 39230, 39321, 39363.5, 39440, 39602, 39651, 39674, 39830, 40000, 40013, 41015, 41020, 41201, 41301, 41372, 41601, 41700, 41718, 41761, 41762, 41840, 41856, 41857, 41859, 41863, 41886, 41888, 41915, 42238, 42244, 42245, 42603, 42631, 42633, 42635, 42636, 42639, 42643, 42831, 44008, 44009, 44228, 44263, 44274, 44335, 44346, 44853, 44909, 45023.5, 45057, 45203, 45205, 45207, 45250, 46010, 46111, 46300, 48011, 48200, 48265, 48412, 48414, 48938, 48980, 49061, 49063, 49065, 49068, 49069, 49070, 49075, 49076, 49077, 51226, 51767, 51872, 52002, 52012, 52015, 52113, 52309, 52315, 52317, 52321, 52324, 52372, 52500, 52506, 52517, 52570, 52612, 54002, 54006, 54123, 54125, 54665, 54666, 54669, 56336, 56601, 56717, 56811, 56829, 60014, 60101, 60201, 60202, 60204, 60222, 60223, 60261, 60640, 60643, 60664, 66602, 68014, 69273, 69274, 69511, 69532, 69536, 69538, 69565, 69566, 69582, 69583, 69584,

69602, 69604, 69605, 69621, 69623, 71046, 72023, 72246, 72419.5, 72511, 72620, 72632, 72640, 74162, 74165, 74644, 74645, 76066, 76140, 76143, 76210, 76221, 76223, 76225, 76230, 76231, 76232, 76240, 76242, 76243, 76244, 78031, 78247, 78405, 78461, 78462, 78601, 78932, 79020, 79150, 81033, 81130, 81133, 81139, 81160, 81165, 81178, 81180, 81350, 81363.5, 81390, 81602, 81651, 81820, 81822, 81831, 81833, 82321, 82508, 84035, 84040, 84201, 84301, 84322, 84324, 84327, 84362, 84520, 84521, 84522, 84526, 84528, 84533, 84701, 84706, 84790, 84817, 84836, 84838, 85132, 85133, 85133.5, 85203, 85231, 85233, 85235, 85236, 85239, 85243, 85431, 87008, 87009, 87215, 87290, 87422, 87470, 87830, 88070, 88203, 88205, 88207, 89033, 89301, 89304, 89505, 89900, 89903, 90273, 92492, 94110, 94144, 94151, 94153, 94190, 94191, and 94324 of, to amend the heading of Article 5 (commencing with Section 8360) of Chapter 2 of Part 6 of, and the heading of Article 5 (commencing with Section 19510) of Chapter 8 of Part 11 of, to add Sections 1294.5, 1910, 2112, 2113, 2500.3, 2506.5, 5015.5, 5203.5, 8243.5, 8331, 8512, 16051.5, 16071.5, 16321.7, 16330.5, 18534.3, 18534.5, 22141, 22141.5, 22229, 22504, 22608, 22725, 22726, 22727, 23400.5, 23701, 23904.5, 23910.5, 23910.6, 24104, 24105, 24202, 33318, 35016, 35046, 35511.4, 35511.5, 35512.1, 35512.2, 35512.3, 35512.4, 35512.5, 35513.5, 37065.4, 37065.5, 39002.5, 39141.6, 39234, 39384, 39617, 39645.5, 39646, 39649.5, 41716.5, 41760.5, 41836, 41841, 42239.5, 42244.2, 42244.3, 42244.4, 42244.5, 42244.6, 42244.7, 42637.5, 42649, 42650, 42901.5, 44253.5, 44253.6, 44978.5, 45206.5, 48204, 48985, 49064, 51224, 51225, 51225.5, 51411, 51760.5, 52022.5, 52310.5, 52327.5, 52331, 52501.3, 52501.5, 52610, 56033.5, 56034.5, 56613.5, 56728.5, 60200, 66903.2, 66903.4, 66903.6, 68082, 71094, 71095, 72013, 72026.5, 72241.5, 72426, 74011.5, 74161.4, 74162.3, 74162.5, 74162.7, 74163.5, 76222, 78014, 78440, 78452, 78460.5, 78462.5, 81033.5, 81131.6, 81184, 81383, 81645.5, 81646, 81649.5, 84521.5, 84524.5, 84726, 84730.5, 84850, 85112, 85134.5, 85237.5, 85265, 85266, 87781.5, 88205.5, 89519, and 89546 to, to add Article 6 (commencing with Section 1340) to Chapter 2 of Part 2, Article 2 (commencing with Section 7050) to Chapter 1 of Part 5, Article 14.5 (commencing with Section 18555) to Chapter 3 of Part 11, Chapter 1.5 (commencing with Section 33080) to Part 20, Article 8 (commencing with Section 33400) to Chapter 3 of Part 20, Article 13.5 (commencing with Section 35335) to Chapter 2 of Part 21, Article 2 (commencing with Section 39030) to Chapter 1 of Part 23, Chapter 12 (commencing with Section 43000) to Part 24, Article 3 (commencing with Section 52160) to Chapter 7 of Part 28, Chapter 13 (commencing with Section 67100) to Part 40, Article 9 (commencing with Section 81190) to Chapter 1 of Part 49, Article 4.5 (commencing with Section 84762) to Chapter 5 of Part 50, Article 2.5 (commencing with Section 89550) to Chapter 5 of Part 55, and Chapter 3.5 (commencing with Section 94360) to Part 59 of, to add and repeal Sections 10916, 39213, 39233, 46605.5, 68076.6, 68077.5, 69538.5, 81163, and 81183 of, to add and repeal Chapter 2.5 (commencing with Section 8400) of Part 6 and Article 1.5 (commencing with Section 69503) of Chapter 2 of Part 42 of, to repeal Sections 8380, 8512, 10605, 10608, 14030, 16078, 22141, 23700,

23701, 24202, 24501, 33384, 35517, 37531, 37645, 39215, 39216, 39217, 39218, 39219, 39220, 39221, 39222, 39223, 39224, 39646, 44034, 44641, 45314, 45315, 45316, 49064, 51224, 51225, 52152, 52390, 52610, 52613, 54109, 54425, 54601, 54640, 54641, 54670, 56616, 56630, 56631, 56632, 58513, 60200, 60247, 60630, 60631, 60632, 68110, 74167, 76222, 78000, 78400, 78440, 78450, 78460, 78463, 78615, 81166, 81167, 81168, 81169, 81170, 81171, 81172, 81173, 81174, 81175, 81646, 84524, 84525, 84721, 84722, 84723, 84731, 84760, 84770, 84780, 84850, 85112, 85130, 85135, 85136, 85137, 85138, 85139, 85140, 85141, 87034, 88133, 88134, and 88135 of, and to repeal Article 2 (commencing with Section 5050) of Chapter 1 of Part 4, Chapter 4 (commencing with Section 5500) of Part 4, Article 4 (commencing with Section 54680) of Chapter 9 of Part 29, and Article 3 (commencing with Section 84550) of Chapter 4 of Part 50 of the Education Code as enacted by Chapter 1010 and Chapter 1011 of the Statutes of 1976, and to repeal Sections 91, 190.5, 373, 403, 472, 473, 474, 475, 477, 653, 895.12, 924.6, 945.1, 1009.7, 1070, 1073, 1081.5, 1102, 1114, 1117.5, 1118, 1120, 1203.2, 1203.5, 1251, 1463, 1992, 1992.1, 1992.2, 1993, 1993.1, 1993.2, 1993.3, 1993.4, 1993.5, 1994.1, 1996, 1999, 2369, 2370, 3100, 3106, 3202, 3255, 5201, 5207, 5302, 5605.15, 5605.16, 5701, 5702.1, 5702.5, 5708, 5746, 5746.1, 5749.8, 5750.6, 5750.10, 5753, 5753.1, 5756, 5756.1, 5756.5, 5757, 5757.1, 5764.5, 5768.2, 5768.6, 5769, 5769.4, 5778, 5778.5, 5779, 5780, 5902, 5985.1, 5991, 6443.5, 6445.1, 6445.11, 6445.14, 6445.22, 6499.56, 6499.57, 6499.60, 6499.232, 6499.237, 6750.1, 6755.4, 6812.1, 6820.5, 6871.6, 6872.1, 6880.16, 6880.46, 6950.6, 7020, 7451.7, 7451.11, 7455.3, 7456, 7459, 7460, 7463.5, 7466.5, 8573, 8574, 8574.5, 8575, 9222, 9322, 9400, 9401, 9402, 9404, 9422, 9423, 9461, 10705, 10805.1, 10921, 10926, 10932, 10934, 10935, 10936, 10939, 10940, 10941, 10946, 10947, 10948, 10953, 11002, 11251, 11475, 11475.1, 11475.2, 11475.5, 11476.1, 11477, 11481, 11487, 11501, 12101, 12101.1, 12406, 12603, 12605, 12851, 12910, 12911, 13116.1, 13125.4, 13125.5, 13134, 13135.1, 13166, 13175, 13220.16, 13271, 13329, 13401.5, 13468.4, 13501.5, 13529, 13656, 13656.2, 13656.4, 13657, 13708, 13830, 13832, 13835.2, 13838, 13846.5 as added by Chapter 1308 of the Statutes of 1976, 13846.5 as added by Chapter 1412 of the Statutes of 1976, 13846.8, 13870.2, 13931, 13946, 13969, 13988.1, 13988.2, 13988.3, 13997, 14023, 14031, 14056, 14070, 14076, 14084.1, 14100.5, 14111, 14116.5, 14116.10, 14152, 14153, 14154, 14155, 14180, 14185, 14186, 14189, 14210, 14210.5, 14214, 14214.1, 14214.3, 14220.1, 14220.5, 14225, 14226, 14227, 14228, 14245, 14245.2, 14260, 14280, 14283, 14284, 14390, 15002.1, 15002.2, 15002.3, 15451, 15452.3, 15454, 15459.1, 15501, 15503.1, 15503.5, 15516, 15518, 15518.01, 15518.2, 15716, 15802.1, 15815, 15835, 15955.3, 15955.5, 15957.1, 15958, 16051.1, 16053.1, 16075, 16501, 16521, 16665, 16702, 16709, 16710, 16711, 16720, 16721, 16722.1, 16725, 16726, 16728, 16730, 16730.1, 16732, 16733, 16735, 16740.5, 16746, 16746.5, 16750, 16751, 16752, 16760, 16761, 16762, 16763, 16764, 16765, 16766, 16767, 16768, 16769, 16783, 16794, 16851, 17203, 17206, 17262, 17301, 17301.2, 17301.9, 17301.12, 17301.13, 17303.5, 17303.6, 17402, 17407, 17411.1, 17503, 17601.1, 17611, 17651, 17667, 17668.6, 17668.8, 17669, 17701.4, 17702, 17702.2, 17946, 17951, 17951.1, 17970, 18055, 18056, 18057, 18060,

18102.6, 18102.9, 18151, 18258, 19576, 19578, 19581, 19584.4, 19589, 19590, 19594, 19601.5, 19682.5, 19699.9, 19700.51, 19700.78, 19700.608, 19700.695, 20065, 20067, 20076, 20078, 20110, 20204, 20212, 20213, 20450.5, 20452, 20456.4, 20803, 20905, 20905.55, 20906, 20906.1, 20906.2, 20906.3, 20906.4, 20906.5 as added by Chapter 323 of the Statutes of 1976, 20906.5 as added by Chapter 397 of the Statutes of 1976, 20907, 20935, 20935.1, 20935.15, 20935.2, 20954, 21102, 21104, 21106, 21107, 21107.6, 21109, 21113, 21118, 21119, 21352, 21702.2, 22601, 22712.5, 22712.6, 22712.7, 22809, 22855.5, 22856.5, 22859.6, 23583.22, 23604.5, 23802, 23805, 24054, 24055, 24204, 24217, 24317, 25393, 25411.5, 25411.7, 25424.3, 25425, 25430.1, 25430.3, 25430.4, 25430.5, 25430.7, 25430.8, 25430.9, 25430.10, 25430.12, 25430.14, 25430.15, 25430.16, 25457.5, 25502.1, 25505.4, 25505.8, 25505.20, 25506.5, 25515.3, 25515.7, 27803, 27804, 27805, 27901, 27902, 27902.1, 27903, 27952, 27953, 28204, 28455.1, 28455.2, 28456, 29042, 30303, 30313, 30320, 30321.5, 30328, 30329, 31026, 31058, 31059, 31061, 31062, 31063, 31151, 31154, 31160, 31163, 31913, 31913.5, 40201, 40402, 40405, 40406, 40406.5, 41006, 41007, 41201.1, 41202, 41203, 41402, 41403.1, 41404, 41801, 41803, 42200, 42401, 43003, 43203, 45000, and 45022 of, to repeal Article 2.5 (commencing with Section 27) of Chapter 1 of Division 1, Article 7 (commencing with Section 490) of Chapter 3 of Division 2, Article 9.5 (commencing with Section 1084) of Chapter 3 of Division 4, Article 14.5 (commencing with Section 1900) of Chapter 6 of Part 2 of Division 1 of Title 1, Chapter 5.76 (commencing with Section 5767) of Division 6, Article 1.5 (commencing with Section 12930) of Chapter 1 of Division 10, Article 2 (commencing with Section 15051) of Chapter 1 of Division 11, Division 12.4 (commencing with Section 16690), Article 8.2 (commencing with Section 17971) of Chapter 3 and Chapter 3.9 (commencing with Section 20940) of Division 14, Chapter 1.2 (commencing with Section 22509) and Chapter 4.5 (commencing with Section 22670) of Division 16.5, Article 3 (commencing with Section 24320) of Chapter 9 of Division 18, Article 11.5 (commencing with Section 28520) of Chapter 6 of Division 20, Chapter 1.5 (commencing with Section 29090) of Division 21, and Article 1 (commencing with Section 40100) of Chapter 1 of Division 25 of, and to repeal the headings of Chapter 4 (commencing with Section 16760) of Division 12.5, and Article 4 (commencing with Section 27901) of Chapter 5 of Division 20 of, the Education Code as enacted by Chapter 2 of the Statutes of 1959, relating to education law and declaring the urgency thereof, to take effect immediately.

[Approved by Governor April 29, 1977. Filed with
Secretary of State April 29, 1977.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the 1977 Education Code Supplemental Act.

SEC. 1.5. Section 40 of the Education Code as enacted by Chapter

(a) Retain any instructional materials from a previous list and biennially make any adjustment in prices based on information provided pursuant to Section 60223.

(b) Delete from the lists any instructional material which it determines is obsolete pursuant to Section 60500, or which received no order from any district board during the previous biennial period.

(c) Add instructional materials not previously submitted for adoption, or materials previously submitted which have been revised to comply with any recommendations of the state board.

SEC. 253. Section 60202 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

60202. Before final adoption of any instructional materials not currently listed, the state board shall make any instructional materials proposed for adoption available for public inspection for not less than 30 days at display centers designated by the Superintendent of Public Instruction. There shall be an adequate distribution of display centers throughout the state.

SEC. 254. Section 60204 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

60204. The commission shall:

(a) Recommend curriculum frameworks to the state board.

(b) Develop criteria for evaluating instructional materials submitted for adoption so that the materials adopted shall adequately cover the subjects in the indicated grade or grades and which comply with the provisions of Article 3 (commencing with Section 60040) of Chapter 1 of this part. Such criteria shall be public information and shall be provided in written or printed form to any person requesting such information.

(c) Study and evaluate instructional materials submitted for adoption.

(d) Recommend to the state board instructional materials which it approves for adoption.

SEC. 255. Section 60222 of the Education Code as enacted by Chapter 1010 of the Statutes of 1976 is amended to read:

60222. Publishers and manufacturers shall, at a time designated by the state board, submit the following information:

(a) Detailed specifications of the physical characteristics of such material. Such specifications shall be complied with by the publisher or manufacturer if the material is adopted and purchased in completed form by the state board or any district board. If the material is adopted under a lease contract, the Department of General Services shall follow comparable specifications in manufacturing the material. Changes in specifications may be made when approved by the state board and the publisher or manufacturer.

(b) A price schedule for the sale of completed materials to the state, including all costs of transportation pursuant to subdivision (a) of Section 60061, a statement of the cost to the State of California of purchasing a single unit of each item of instructional material, and

prorated amounts determined pursuant to regulations of the Superintendent of Public Instruction.

SEC. 493. Section 56613.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

56613.5. If a parent or guardian seeks to enroll his child in an educationally handicapped program and enrollment is denied, or if a parent or guardian disagrees with the proposed enrollment of a child in a program, provision shall be made for an appeals process and, if necessary, a hearing on the issue of whether or not the child shall be enrolled.

The State Board of Education shall adopt rules and regulations relating to the conduct of such appeals processes or hearings. The rules and regulations shall ensure that educationally handicapped pupils and their parents are guaranteed procedural safeguards in appeals processes and hearings regarding pupil identification, evaluation, and educational placement.

SEC. 494. Section 56728.5 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

56728.5. Any regional occupational program or center providing classes for severely handicapped students approved pursuant to Section 52309 may be supervised by a person holding a valid special education credential which authorizes the person to teach such students.

SEC. 495. Section 60200 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

60200. The state board shall adopt instructional materials for use in kindergarten and grades 1 through 8 for a use period for governing boards of six years, commencing the first year of use in a district, subject to Section 60265 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do

not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits to purchase, through the Department of Education, materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

SEC. 496. Section 66903.2 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

66903.2. The commission shall issue a Health Sciences Education Plan which shall take into account the Health Manpower Plan issued by the State Department of Health pursuant to Section 429.96 of the Health and Safety Code.

SEC. 497. Section 66903.4 is added to the Education Code as enacted by Chapter 1010 of the Statutes of 1976, to read:

66903.4. The Health Sciences Education Plan shall consist of at least the following elements:

(a) A finding, taking into account the findings of the Health

incorporate the changes made in the Education Code, in 1976, into the Education Code as enacted by Chapter 1010 of the Statutes of 1976. It is not the intent of the Legislature to make any substantive change in the law.

SEC. 1136. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The new reorganized Education Code, enacted by Chapter 1010 of the Statutes of 1976, will become operative on April 30, 1977, which is long before the effective date of ordinary statutes enacted in 1977 in the 1977-78 Regular Session of the Legislature. Other 1976 education legislation was directed to the Education Code as enacted by Chapter 2 of the Statutes of 1959. This bill would adapt such other education legislation enacted in 1976 to the reorganized Education Code as enacted by Chapter 1010 of the Statutes of 1976. In order that statutory continuity may be maintained and that administrative confusion may be avoided, such adaptation must become operative on the operative date of the new Education Code. It is, therefore, necessary that this act take effect immediately, as an urgency statute.

CHAPTER 282

An act to amend Section 19632 of the Business and Professions Code, to amend Sections 16250, 39246, 39247, 39363, 41300, 41301, 41403, 41604, 42103.5, 52171, 60200, 60265, 84370, 84897, 84904, and 85003.5 of, to add Sections 16096.5, 39618, 39619, 39620, 39621, 41601.5,

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41886.5, 45452, 54057, and 56364 to, to add Article 3 (commencing with Section 2550) to Chapter 12 of Part 2 of, Article 1 (commencing with Section 14000) to Chapter 1 of Part 9 of, Chapter 24 (commencing with Section 17780) and Chapter 25 (commencing with Section 17785) to Part 10 of, Chapter 15 (commencing with Section 23400) to Part 13 of, Article 2.5 (commencing with Section 39327) to Chapter 3 of Part 23 of, Chapter 5.3 (commencing with Section 41975) to Part 24 of, Article 2 (commencing with Section 42237) to Chapter 7 of Part 24 of, Part 34 (commencing with Section 62000) to, and Chapter 5 (commencing with Section 84700) to Part 50 of, to repeal Sections 24105, 39453, 41716, 41716.5, 52045, 54057, and 56364 of, to repeal Article 1 (commencing with Section 14000) of Chapter 1 of Part 9 of, Article 6.5 (commencing with Section 16255) of Chapter 8 of Part 10 of, Chapter 15 (commencing with Section 23400) of Part 13, Article 2 (commencing with Section 42230) of Chapter 7 of Part 24 of, and Chapter 5 (commencing with Section 84700) of Part 50 of, the Education Code, to amend Sections 10500, 10527, 10528, 16115, 16250, 16260, 16496.5, 16497.5, 16498, 16499, 16499.5, 54775, and 65974 of, and to add Sections 16117, 26912.3, 26912.7, 53898, 54790.3, 65979, 65980, 65981, and 66434.1 to, the Government Code, to amend, repeal, and add Section 11836 of the Health and Safety Code, to add Part 0.5 (commencing with Section 95) to Division 1 of the Revenue and Taxation Code, to amend Sections 11450, 11451.5, 11454, 15200.1, 15200.2, 15204.2, 16120, and 18917 of, to amend, repeal, and add Sections 5705 and 15200 of, to add Sections 11406, 11407, 14154, 15200.3, 15200.4, 15204.5, 18905, 18906, and 18906.5 to, to add Chapter 4.1 (commencing with Section 10815) to Part 2 of Division 9 of, and Part 4.5 (commencing with Section 16700) to Division 9 of, to repeal Sections 11403, 11450.2, 14150, 14150.3, 14150.5, and 18906 of, and to repeal Article 9 (commencing with Section 12400) of Chapter 3 of Part 3 of Division 9 of, the Welfare and Institutions Code, to amend Section 5 of Chapter 292 of the Statutes of 1978, and to add Section 29.6 to Chapter 977 of the Statutes of 1976, relating to public finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 24, 1979. Filed with
Secretary of State July 24, 1979.]

The people of the State of California do enact as follows:

SECTION 1. Section 19632 of the Business and Professions Code is amended to read:

19632. All license fees for conducting horseracing meetings, other than those attributable to breakage, not payable into the Fair and Exposition Fund shall be paid as follows:

(a) During each fiscal year there shall be paid into the Wildlife Restoration Fund, which fund is hereby continued in existence, to

crossings to ensure the safety of elementary school children shall be reimbursed from funds including, but not limited to, those collected pursuant to Sections 42200 and 42201 of the Vehicle Code.

SEC. 33. Section 52045 of the Education Code is repealed.

SEC. 34. Section 52171 of the Education Code is amended to read: 52171. At least once during each school year, the district shall assess each limited-English-speaking pupil. The pupil's achievement in comprehending, reading, and writing English and, to the extent assessment instruments are available, the second language of instruction shall be assessed. At least annually there shall be submitted to the Department of Education an evaluation of pupil progress for every program which has been approved pursuant to this article. The evaluation report shall identify variables, including other programs, which may have affected pupil academic achievement.

It shall also include, but not be limited to, reading comprehension and speaking skills, in English and, to the extent assessment instruments are available, the primary language.

This section shall take effect on July 1, 1978.

SEC. 35. Section 54057 of the Education Code is repealed.

SEC. 36. Section 54057 is added to the Education Code, to read: 54057. There is hereby appropriated from the General Fund to Section A of the State School Fund the sum of eighteen million dollars (\$18,000,000) in augmentation of Item 319 of the Budget Act of 1979 for the 1979-80 fiscal year.

SEC. 36.2. Section 56364 of the Education Code is repealed.

SEC. 36.4. Section 56364 is added to the Education Code, to read: 56364. (a) For the 1979-80 fiscal year and each fiscal year thereafter, there is hereby annually appropriated thirty-nine million eight hundred thousand dollars (\$39,800,000) for the purposes specified in this section. This appropriation is in addition to the amount provided in the Budget Act for the then current fiscal year for the purposes of apportionment pursuant to this article.

(b) From funds provided in this section and in the Budget Act for apportionment pursuant to this article, each responsible local agency shall receive up to two thousand two hundred ninety-six dollars (\$2,296) per pupil approved for funding pursuant to Section 56360. Each responsible local agency that operated programs pursuant to this chapter in the 1977-78 fiscal year shall receive at least the same amount per pupil that was received by such responsible local agency in the 1977-78 fiscal year.

(c) For the 1979-80 fiscal year only, first priority for funds provided in this section and in Item 323 of Chapter 259 of the Statutes of 1979 shall be to fund the per pupil limit specified in subdivision (a) for responsible local agencies that actually operated under this chapter in the 1978-79 fiscal year.

SEC. 37. Section 60200 of the Education Code is amended to read: 60200. The state board shall adopt instructional materials for use in kindergarten and grades 1 through 8 for governing boards, subject

to Section 60265 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' credits to purchase, through the Department of Education, materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar

grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

SEC. 38. Section 60265 of the Education Code is amended to read:
60265. After any instructional material, including any state-adopted textbook, has been placed in use by a district board subsequent to a biennial adoption, it shall be retained in use by the district for a period of not less than two years after the date of its first use.

Any textbook which has been placed in use by a district board prior to July 1, 1974, pursuant to a state board adoption made prior to August 15, 1972, may be retained in use by the district up to but not beyond the date determined by the state board pursuant to subdivision (e) of Section 60200 for the second biennial adoption in that particular subject.

However, the Superintendent of Public Instruction may exempt materials from these requirements whenever the district board demonstrates that the continued use of the material will contribute to the maximum efficiency of pupil learning.

SEC. 38.5. Part 34 (commencing with Section 62000) is added to the Education Code, to read:

PART 34. EVALUATION AND TERMINATION OF PROGRAMS

CHAPTER 1. GENERAL PROVISIONS

62000. The following educational programs shall cease to be operative on the date specified, unless the Legislature enacts legislation to continue the program after the review prescribed in Section 62006:

- (a) Termination date of June 30, 1981:
 - (1) Driver training.
 - (2) Instructional television.
 - (3) Environmental education.
 - (4) Special education for physically handicapped, educationally handicapped, mentally retarded, severely mentally retarded, and individuals with exceptional needs.
- (b) Termination date of June 30, 1982:
 - (1) Miller Unruh Basic Reading Act of 1965.
 - (2) Adult education.
 - (3) Career guidance centers.
 - (4) Demonstration programs in reading and mathematics.

Any other deadlines required for the development of the budget may be delayed 30 days.

SEC. 103. Sections 8, 18, 19, 20, 21, and 28.5 of this act shall be operative on July 1, 1980.

SEC. 104. If any section, part, clause or phrase of this act is for any reason held to be invalid or unconstitutional, the remainder of the act shall not be affected but will remain in full force and effect.

SEC. 105. (a) No appropriation is made by this act, nor is any obligation created thereby under Section 2231 or 2234 of the Revenue and Taxation Code, for the reimbursement of any local agency or school district for any costs that may be incurred by it in carrying on any program or performing any service required to be carried on or performed by it by this act.

(b) Notwithstanding Section 905.2 of the Government Code, Section 2253 of the Revenue and Taxation Code, or any other provision of law, no local agency or school district shall have standing to make a claim to the State Board of Control for any costs incurred by it under this act pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code or pursuant to Article 3.5 (commencing with Section 2250) of Chapter 3 of Part 4 of Division 1 of the Revenue and Taxation Code.

(c) Notwithstanding Section 2246 of the Revenue and Taxation Code, the Department of Finance shall not review this act to determine costs or revenue losses and shall not report on this act nor make recommendations to the Legislature on this act concerning reimbursements to local agencies or school districts.

(d) The Legislature finds and declares that the complete waiver of the provisions of Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code is justified for the following reasons:

(1) This act implements an initiative constitutional amendment approved by the people of the State of California.

(2) This act is part of an overall legislative program implementing Article XIII A of the California Constitution, which includes billions of dollars of local assistance to local agencies.

(3) There are administrative savings as well as costs mandated by the provisions of this act.

SEC. 106. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The adoption of Article XIII A of the California Constitution has reduced the amount of property tax revenues available to local government and schools to meet operating and certain debt expenses, and may cause the curtailment or elimination of programs and services which are vital to the state's public health, safety, education, and welfare. In order that such services not be interrupted, it is necessary that this act take effect immediately.

CHAPTER 1503

An act to amend Sections 60200, 60241, 60242, 60243, 60263, 60264, 60280, 60281, 60285, 60286, 60294, and 60310 of, and to add Sections 60206, 60242.1, 60242.5, and 60296 to, the Education Code, relating to instructional materials.

[Approved by Governor September 28, 1982. Filed with Secretary of State September 30, 1982.]

The people of the State of California do enact as follows:

SECTION 1. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt instructional materials for use in kindergarten and grades 1 through 8 for governing boards, subject to Section 60265 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board may determine the need and desirability for instructional materials to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for basic instructional materials in each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject, per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects. The state board shall not adopt more than two instructional materials sets for each subject in each grade.

Nothing in this subdivision shall limit the authority of the state board to adopt materials which are not basic instructional materials, and the adoption of those materials shall not be governed by the maximum and minimum limits specified by this subdivision.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials' allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide

collections of instructional materials which, when taken as a whole, illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and a cross section of opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of such materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever the state board designates that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which such state-adopted materials shall initially be available for use by the pupils.

SEC. 1.5. Section 60206 is added to the Education Code, to read: 60206. The state board may adopt appropriate regulations to implement this chapter. These regulations may include a procedure to review district invoices for instructional materials purchases made pursuant to subdivision (b) of Section 60242.

SEC. 2. Section 60241 of the Education Code is amended to read: 60241. The fund shall be administered by the Department of Education under policies established by the state board. The state board shall encumber part of the fund to:

(a) Pay for the cost of royalties, warehousing, and shipping for those textbooks in the state textbook warehouse as of July 1, 1973, and adopted by the state board prior to March 7, 1973.

(b) Pay for the costs of instructional materials to be loaned to nonpublic school pupils pursuant to Section 60315.

(c) Pay for the costs of braille and large print textbooks to be furnished for visually handicapped pupils pursuant to Sections 60312

and 60313.

(d) Pay for the costs of warehousing and transporting textbooks acquired for the purposes of Sections 60281 and 60310. Such costs shall not exceed 10 percent of the cost of each textbook printed by the Department of General Services.

(e) Establish, commencing with the 1974-75 fiscal year, a reserve account, of not to exceed two hundred thousand dollars (\$200,000) to pay for the cost of:

(1) Acquisition of instructional materials, including those ordered for purchase by persons and entities pursuant to subdivisions (a) and (b) of Section 60310.

(2) Replacement of instructional materials obtained by a school district with its credit or allowance, which are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

SEC. 3. Section 60242 of the Education Code is amended to read: 60242. After the application of Section 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

(1) The state board shall establish a credit for each district board with which instructional materials adopted by the state board may be ordered by districts which choose to order materials through the state.

(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district board, which the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education of their decision to operate under this subdivision.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 4. Section 60242.1 is added to the Education Code, to read: 60242.1. In establishing the credits and allowances authorized by Section 60242, the state board may take into consideration estimated increases or decreases in average daily attendance for the year in

which the instructional materials will be used.

SEC. 5. Section 60242.5 is added to the Education Code, to read:
60242.5. Allowances received by districts pursuant to subdivision (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, or in-service training pursuant to subdivision (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of such conformance to the Superintendent of Public Instruction. Commencing September 1, 1984, the Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The Department of Finance, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

SEC. 6. Section 60243 of the Education Code is amended to read:
60243. District boards ordering instructional materials from lists adopted by the state board pursuant to subdivision (a) of Section 60242 shall have deducted from their credit a unit cost based on the information provided by publishers or manufacturers pursuant to subdivision (b) of Section 60222.

SEC. 7. Section 60263 of the Education Code is amended to read:
60263. District boards may order state-adopted textbooks and instructional materials on forms prescribed by the State Department of Education. The forms shall include, or be accompanied by, information concerning the grade or grades and subject or subjects for which each instructional material is intended, and the unit cost of the material, as computed pursuant to Section 60243, which will be deducted from the credit of the district when ordered.

SEC. 8. Section 60264 of the Education Code is amended to read:
60264. (a) All district orders made pursuant to subdivision (a) of Section 60242 for state-adopted instructional materials shall be forwarded as directed by the Superintendent of Public Instruction for procurement of such materials in the most economical and timely manner pursuant to Article 5 (commencing with Section 60280) of this chapter. However, in cases where the district does not qualify as a city school district and is an elementary district with fewer than 901 average daily attendance or a unified district with fewer than 1,501 average daily attendance, the county superintendent of schools shall approve the orders for instructional materials by the districts before

forwarding as directed by the Superintendent of Public Instruction.

(b) All district orders for instructional materials not adopted by the state shall be placed directly with the publisher or manufacturer at any of its offices in the State of California or at any publishers' or manufacturers' depository in the State of California, except that all district orders for instructional materials other than textbooks, and other than instructional materials systems and instructional materials sets which include textbooks, may be placed directly with the publisher or manufacturer. The provisions of this paragraph with respect to the purchase of textbooks are subject to the numerical limitations of subdivision (f) of Section 60061.

SEC. 9. Section 60280 of the Education Code is amended to read:
60280. The state board shall cause to be acquired and distributed any instructional materials ordered by district boards pursuant to subdivision (a) of Section 60242.

SEC. 10. Section 60285 of the Education Code is amended to read:
60285. The state board, in order to procure textbooks, shall tabulate all orders for each textbook title received from school districts and nonpublic school pupils pursuant to subdivision (a) of Section 60243. The Department of General Services shall select from the tabulation those titles which can be manufactured by that department at a unit cost lower than that specified in the price schedule submitted by the publisher or manufacturer pursuant to subdivision (b) of Section 60222 and which that department can complete manufacture of in time to permit delivery to the school districts and nonpublic school pupils prior to the opening of school in the year in which the textbooks are to be used.

SEC. 11. Section 60286 of the Education Code is amended to read:
60286. All textbooks not printed pursuant to Section 60285 and all other instructional materials may be obtained by the state board pursuant to Section 60281.

SEC. 12. Section 60294 of the Education Code is amended to read:
60294. The Superintendent of Public Instruction shall arrange for the warehousing and shipping of all instructional materials for handicapped minors acquired pursuant to Section 60281 in the most economical and timely manner.

SEC. 13. Section 60296 is added to the Education Code, to read:
60296. The state board, in cooperation with the Department of General Services, shall develop a procedure for the expeditious disposition of instructional materials warehoused, or proposed to be manufactured, by the Department of General Services prior to July 1, 1983.

As part of this procedure, the state board shall charge against the cash allotment established for a district pursuant to subdivision (b) of Section 60242, as in effect on or before June 30, 1983, the cost of materials previously ordered by that district which have been, or are proposed to be, manufactured by the Department of General Services prior to July 1, 1983.

The provisions of this section shall not apply to instructional

materials acquired by the State Board of Education for purposes of Sections 60281 and 60310.

SEC. 14. Section 60310 of the Education Code is amended to read:

60310. The following individuals or organizations may order instructional materials from lists adopted by the state board:

(a) The head of any state institution offering instruction in the elementary grades, or giving instruction in the teaching of elementary subjects.

(b) Governing boards or nonpublic schools.

(c) Individuals for use only in California.

The materials shall be purchased at the unit cost determined pursuant to subdivision (b) of Section 60222.

SEC. 15. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 14 of this act shall become operative July 1, 1983.

SEC. 16. The Legislative Analyst in cooperation with the Department of Education shall review the instructional materials review process of the Department of Education and report on the increase in funding needed by the Department of Education and the Curriculum Development and Instructional Materials Commission to support effective quality and legal compliance review processes. Any needed increase shall not exceed the administrative savings created by the implementation of this act. The report shall be made to the appropriate legislative budget subcommittees during the 1983-84 budget review process.

SEC. 17. Before January 1, 1986, the Department of Education shall submit an evaluation of this act to the Legislature. The evaluation shall include an analysis of the amount of interest income posted to the accounts of local districts pursuant to Section 60242.5, any evidence of violations of the provisions of Section 60242.5, and any other relevant information.

SEC. 18. It is not the intent of the Legislature in enacting the provisions of this act to cause the layoff of any permanent state civil service employees employed on a full-time basis.

SEC. 19. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 498

An act to amend Sections 1296, 2557, 8152, 8153, 17717.5, 17722, 17749, 17780, 35031, 39363, 41972, 44251, 44662, 44663, 44664, 44682, 44683, 44684, 44685, 44687, 44688, 44689, 44882, 44884, 44901, 44932, 44933, 44934, 44935, 44936, 44937, 44938, 44943, 44944, 44948, 44949, 44955, 44956, 44957, 46142, 46144, 46147, 48430, 49067, 52302.5, 52853, 52858, 54060, 56723, 56782, 60240, 60246, 60602, 60603, 60604.5, and 62000 of, to amend the heading of Article 3 (commencing with Section 44681) of Chapter 3.1 of Part 25 of, to amend and renumber Section 48438 of, to amend and repeal Sections 42241.4, 44255, and 51225 of, to add Sections 8154, 14002.1, 14002.2, 17717.7, 17751, 33308.5, 35160.5, 41301.3, 41868, 42238.9, 42250, 44227.5, 44277, 44278, 44279, 44830.3, 44885.5, 44948.3, 44948.5, 44955.5, 44956.5, 45023.4, 45100.5, 45104.5, 45108.5, 45108.7, 45256.5, 48260.5, 48431.6, 48431.7, 48438, 48440, 51225.3, 51225.4, 51226, 51228, 52048, 52049, 52304.1, 52333, 54029, 56774.5, 60247, 60603.5, 62048, 60249, 60604.7, and 76006 to, to add and repeal Sections 42238.1, 42238.2, 42238.4, 42238.7, and 42238.8 of, to add Chapter 11 (commencing with Section 11000) to Part 7 of, Article 7 (commencing with Section 33600) to Chapter 4 of Part 20 of, Article 4.5 (commencing with Section 42290) to Chapter 7 of Part 24 of, Article 7.5 (commencing with Section 44325) and Article 9 (commencing with Section 44360) to Chapter 2 of Part 25 of, Chapter 3.15 (commencing with Section 44689.5) to Part 25 of, Chapter 3.3 (commencing with Section 44700) to Part 25 of, Article 8 (commencing with Section 46200) to Chapter 2 of Part 26 of, Article 7 (commencing with Section 48070) to Chapter 1 of Part 27 of, Article 2.3 (commencing with Section 48643) to Chapter 4 of Part 27 of, Article 7.5 (commencing with Section 52460) to Chapter 9 of Part 28 of, Article 2.5 (commencing with Section 54650) to Chapter 9 of Part 29 of, Chapter 6 (commencing with Section 58800) to Part 31 of, Article 8 (commencing with Section 60700) to Chapter 5 of Part 33 of, Part 35 (commencing with Section 63000) to, and Article 6 (commencing with Section 69600) to Chapter 2 of Part 42 of, to add and repeal Chapter 3.4 (commencing with Section 44750) of Part 25 of, to repeal Sections 1275, 42237, 42239.1, 42239.5, and 42239.8 of, to repeal Chapter 2 (commencing with Section 44200) of Part 25 of, and Article 8 (commencing with Section 56770) of Chapter 7 of Part 30 of, to repeal and add Sections 42238, 42238.5, 42238.6, 42239, 46145, and 52616 of, to repeal and add Article 4 (commencing with Section 42280) of Chapter 7 of, and Article 10 (commencing with Section 41850) of Chapter 8 of, Part 24 of, Article 4 (commencing with Section 44490) of Chapter 3 of, and Article 2 (commencing with Section 44680) to Chapter 3.1 of, Part 25 of, and Article 1 (commencing with Section 48900) of Chapter 6 of Part 27 of, the Education Code, to amend Sections 3543.2, 3543.4, 35040, and 66493 of the Government Code, to amend Sections 72, 17024.5, 17048, 17053.7, 17063, 17137, 17932, 18033, 18681.1, 18684, 18685, 18685.07, 18699, 18802, 18934, 19062.11, 19405, 19414, 23701d, 23701q, 24305,

24307, 24330, 24359, 24373.5, 24455, 24457, 24465, 24466, 24483.5, 24488, 24501, 24504, 24511, 24514, 24516, 24535, 24562, 24602, 24603, 24667, 25934, 25935, 25961, 25962, and 26080 of, to add Sections 100.55, 17141, 17206, 17210, 17286, 17514, 18586.7, 18654, 18681.2, 18684.4, 18684.6, 18803.5, 18836, 18935, 19415, 19416, 19417, 19418, 19419, 19420, 24272.5, 24344.5, 24373.5, 24518, 24903, 25663d, 25934.4, 25934.6, 25957, 25957.1, 25957.2, 25959.3, 25965, and 26491 to, to add Chapter 3.5 (commencing with Section 75) to Part 0.5 of Part 2 of Division 1 of, and to repeal Sections 18693 and 25904 of, the Revenue and Taxation Code, and to amend Sections 328, 650, and 13051 of, and to add Sections 13004.1 and 13020.5 to, the Unemployment Insurance Code, relating to education, including the financing thereof, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 28, 1983. Filed with
Secretary of State July 28, 1983.]

I object to the following appropriations and language of appropriation contained in Senate Bill No. 813:

SEC. 8.3.—Adding Section 14002.1 to the Education Code. I am deleting the following language contained in Section 14002.1 of the Education Code. The deleted language is shown in strike out.

"Sec. 8.3. Section 14002.1 is added to the Education Code, to read:

14002.1. In addition to all other funds appropriated to Section A of the State School Fund, the Controller shall for the 1983-84 fiscal year ~~and each fiscal year thereafter~~, transfer from the General Fund to Section A of the State School Fund for apportionment ~~during each fiscal year~~ such additional amounts as are necessary to meet actual computed apportionments as certified by the Superintendent of Public Instruction for the purposes set forth in Section 41301.3; provided that the total of such additional amounts transferred shall not exceed one hundred thirteen dollars and six-nine cents (\$113.69) per pupil in average daily attendance during the preceding fiscal year credited to all elementary, high, and unified school districts and to all county superintendents of schools in the state as certified by the Superintendent of Public Instruction."

The section as amended above will make the transfer to the State School Fund and the appropriation of \$113.69 per pupil in average daily attendance effective in the 1983-84 fiscal year only.

Sec. 8.5.—Adding Section 14002.2 to the Education Code. I eliminate this section. This section would have added Education Code Section 14002.2 making a General Fund continuing appropriation of \$119.45 per pupil in average daily attendance for the 1984-85 fiscal year and each fiscal year thereafter.

Sec. 18.5.—Adding Section 41301.3 to the Education Code. I eliminate the language contained in Subsection (c) of Section 41301.3 of the Education Code. The following language is deleted:

"(c) The amount transferred to Section A of the State School Fund pursuant to Sections 14002, 14002.1, and 14002.2, and any other appropriation, in the 1984-85 fiscal year and each fiscal year thereafter shall be expended as needed to first fund the schedule in Section 41301 and any remaining funds shall be expended according to the following schedule, but not to exceed the amounts allocated for each item according to the schedule. The amounts in the schedule are expressed as amounts per pupil in average daily attendance during the preceding fiscal year credited to all elementary, high, and unified school districts and to all county superintendents of schools in the state as certified by the Superintendent of Public Instruction:

(1) District revenue limits pursuant to Section 42238, except for the portion of the revenue limits attributable to the operation of Section 42238.2 as it read in the 1983-84 fiscal year, fifty-eight dollars and three cents (\$58.03).

(2) Maintenance of cost-of-living adjustments granted for special education programs and other categorical education programs in prior fiscal years, twenty-three dollars and forty-four cents (\$23.44).

(3) Instructional Materials Fund, nine dollars and nineteen cents (\$9.19).

(4) Extended School Year pursuant to Section 46200, sixty dollars and thirty-nine

cents (\$60.39).

(5) Minimum teacher salaries pursuant to Section 45023.4, five dollars and eighty cents (\$5.80).

(6) Grants to teachers pursuant to Section 44700, four dollars and thirty-five cents (\$4.35).

(7) Teacher mentor program pursuant to Section 44490, seven dollars and twenty-five cents (\$7.25).

(8) Summer school programs pursuant to Section 42238.6, nine dollars and sixty-six cents (\$9.66).

(9) Tenth grade counseling pursuant to Section 48431.7, one dollar and forty-five cents (\$1.45).

(10) School Improvement Program pursuant to Section 52048, two dollars and forty-one cents (\$2.41).

(11) Necessary small school revenue limits pursuant to Section 42280, seventy-two cents (\$0.72).

(12) Urban Impact Aid for nonunified school districts pursuant to Section 54060, two dollars and seventeen cents (\$2.17).

(13) County superintendents of schools revenue limits pursuant to Section 2558, one dollar and eighty-six cents (\$1.86).

(14) Year round school operation incentive pursuant to Section 42250, one dollar and eighty-one cents (\$1.81).

(15) Teacher Education and Computer Centers pursuant to Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25, one dollar and twenty-one cents (\$1.21).

(16) Adult education revenue limits pursuant to Section 52616, two dollars and eighty-three cents (\$2.83).

(17) Opportunity schools pursuant to Section 48643, ninety-seven cents (\$0.97).

(18) Academic partnership program pursuant to Section 11000, twenty-four cents (\$0.24).

(19) Specialized high schools pursuant to Section 58800, forty-eight cents (\$0.48).

(20) Administrator training pursuant to Section 44681, twelve cents (\$0.12).

(21) Education performance incentive pursuant to Section 54680, one dollar and sixty-nine cents (\$1.69).

(22) Funds to districts which lost Public Law 81-874 funds pursuant to Section 42238.3 as proposed by Senate Bill 391, if enacted, six dollars and thirty-five cents (\$6.35).

(23) For the portion of district revenue limits attributable to the operation of Section 42238.2, as it read in the 1983-84 fiscal year, thirty dollars and seventy-two cents (\$30.72)."

This section provides statutory allocations for the appropriations made in Education Code Sections 14002.1 and 14002.2. This section also specifies which programs will not be funded if total appropriations are insufficient to fund all of the programs specified in this and other statutory allocations. The deleted language provided the statutory allocation for the 1984-85 fiscal year and each fiscal year thereafter.

I have eliminated the 1984-85 statutory appropriations and allocations contained in SB 813. By establishing statutory appropriations for the cost-of-living increases and the proposed new programs, SB 813 would allow future K-12 funding levels and priorities to be established outside of the normal budgetary review process. Elimination of the 1984-85 statutory appropriations will ensure that the appropriate amount of funding for K-12 education programs in 1984-85 and future years is reviewed on an annual basis.

With the above deletions, I approve Senate Bill No. 813.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Hughes-Hart Educational Reform Act of 1983.

SEC. 2. The Legislature declares its intent to encourage continued reform and improvement of California's elementary and secondary schools through a series of reforms, incentives, and strategies which can provide for the educational, personal, and career needs of every pupil. The Legislature believes that our schools

to provide advanced instruction and training in high technology fields and in the performing arts.

The Legislature recognizes that the establishment of these specialized high schools will benefit the state economy by providing opportunities to talented pupils to obtain enhanced learning opportunities in high technology fields and in the performing arts while enrolled in schools located in school districts in close proximity to urban areas in which these industries are located.

The Legislature also recognizes that the high technology specialized high schools established under the provisions of this chapter will enable the faculty providing instruction in these schools to develop model curricula of general application in the fields of mathematics, science, performing arts, and computer technology to be made available to other school districts in the public school system.

58801. Any school district operating one or more high schools, or any consortium of school districts which operate one or more high schools, may submit a proposal to the Superintendent of Public Instruction to establish a school or schools with specialized curricula in high technology, performing arts, or other special curricular areas, for pupils in grades 9 through 12. School districts which submit proposals as a consortium shall agree to accept pupils from each district in the consortium at the specialized school.

The Superintendent of Public Instruction shall, commencing with the 1984-85 fiscal year, allocate funds for start-up costs of these specialized secondary school programs.

58802. Faculty members providing instruction in specialized secondary programs shall develop model curricula which the Superintendent of Public Instruction shall make available to other school districts in the state. The superintendent shall review and evaluate the model curricula, and report his or her findings to the Legislature by December 31, 1985.

58803. Notwithstanding any other provision of law, specialized secondary programs may select as teachers noncredentialed persons who possess unique talents or skills from business, performing arts, or postsecondary institutions. No noncredentialed person shall be retained as a teacher in a specialized secondary program unless, within 60 days after the governing board has hired such a person, the Commission on Teacher Credentialing has issued a certificate of clearance for him or her, which the commission shall issue when it has verified the person's personal identification and good moral character.

Each school district governing board that employs noncredentialed persons to teach in specialized secondary programs shall annually report to the Superintendent of Public Instruction the number of those persons employed, the subjects they are employed to teach, and the unique talents and skills they possess.

SEC. 113. Section 60240 of the Education Code is amended to read:

60240. The State Instructional Materials Fund is hereby continued in existence. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this division. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials.

SEC. 114. Section 60246 of the Education Code is amended to read:

60246. The State Controller shall during each fiscal year, commencing with the 1983-84 fiscal year, transfer from the General Fund of the state to the State Instructional Materials Fund, an amount of twenty-one dollars and eighteen cents (\$21.18) per pupil in the average daily attendance in the public elementary schools during the preceding fiscal year, as certified by the Superintendent of Public Instruction, except that this amount shall be adjusted annually in conformance with the Consumer Price Index, all items, of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year next preceding the fiscal year to which it applies.

SEC. 115. Section 60247 is added to the Education Code, to read:

60247. The Superintendent of Public Instruction shall annually apportion to each school district the sum of fourteen dollars and forty-one cents (\$14.41) per pupil enrolled in grades 9 through 12 in the school district in the prior fiscal year for the purpose of purchasing instructional materials for the pupils enrolled in those grades.

SEC. 116. Section 60248 is added to the Education Code, to read:

60248. School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional materials for pupils in grades 9 through 12 in accordance with Sections 60400 and 60401.

SEC. 117. Section 60249 is added to the Education Code, to read:

60249. In order to expend funds apportioned to the district pursuant to Section 60247, the governing board shall, by resolution adopted at a meeting open to the public, certify that the funds to be expended are in excess of what would otherwise have been expended for instructional materials in grades 9 through 12.

SEC. 118. Section 60602 of the Education Code is amended to read:

60602. As used in this chapter:

(a) "Achievement test" means any standardized test which measures or attempts to measure the level of performance which a pupil has attained in one or more courses of study. It shall include (1) tests in basic skills courses administered annually and (2) tests in content courses administered from time to time as designated by the State Board of Education.

to the Student Aid Commission for administration costs incurred pursuant to Article 6 (commencing with Section 69600) of Chapter 2 of Part 42 of the Education Code, the following sums:

- | | |
|---------------------------------------|-----------|
| (a) For the 1983-84 fiscal year | \$100,000 |
| (b) For the 1984-85 fiscal year | 100,000 |

SEC. 236. Notwithstanding Section 3525 of the Elections Code or any other provision of law to the contrary, if the Legislature adopts Assembly Constitutional Amendment 44 during the 1983-84 Regular Session, it shall be submitted to the voters by the Secretary of State at the first special or regular statewide election conducted on or after June 5, 1984, and occurring at least 131 days after the adoption of the measure by the Legislature.

SEC. 237. Notwithstanding Section 6 of Article XIII B of the California Constitution and Section 2231 or 2234 of the Revenue and Taxation Code, no appropriation is made by this act for the purpose of making reimbursement pursuant to these sections. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of that code.

SEC. 238. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

SEC. 239. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to permit this act to become operative as early as possible in the 1983-84 school year, and so facilitate the orderly administration of the public school system, it is necessary that this act take effect immediately.

CHAPTER 1440

An act to amend Section 60248 of, to add Section 60247.5 to, to add Articles 23 (commencing with Section 8480) and 24 (commencing with Section 8493) to Chapter 2 of Part 6 of, and to add Article 4.7 (commencing with Section 42300) to Chapter 7 of Part 24 of, the Education Code, to amend Section 15463 of the Government Code, and to add Section 2549 to the Streets and Highways Code, relating to fiscal affairs, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 1, 1985. Filed with Secretary of State October 1, 1985.]

I am reducing the appropriation in Assembly Bill No. 1024 from \$117,779,500 to \$117,279,500 by deleting the \$500,000 appropriation in Section 19 for workshops concerning the California Medi-Cal Reform Act.

While I agree to set aside these funds for the purpose indicated, I believe the workshops are the appropriate responsibility of the Department of Health Services, rather than the California Medical Assistance Commission.

With this deletion, I am approving Assembly Bill No. 1024.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. Article 23 (commencing with Section 8480) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 23. Child Supervision Programs

8480. The governing board of any school district conducting instruction for students in any grade level up to, and including, the completion of junior high school may establish a program of affordably priced supervision for children before and after school.

8481. Child supervision programs conducted pursuant to this article shall be licensed or exempt programs administered and monitored by the school district. Programs may be staffed by district personnel or may be subcontracted to qualified private or nonprofit, or other public agencies. Each program shall be designed by administrators of the district to fit the needs at each school or site where a program is conducted.

42303. (a) A study shall be conducted of school transportation costs which shall report findings and make recommendations regarding the state's role in financing school transportation. The study shall include, but not be limited to, the following aspects of home-to-school transportation:

(1) The short and long-run cost of contract busing versus district-owned and operated systems.

(2) The cost and feasibility of regional and other multidistrict home-to-school transportation systems.

(3) The factors that contribute to the cost of home-to-school transportation in districts with diverse characteristics across the state.

(4) The impact of enrollment growth over the next 10 years on the need for home-to-school transportation.

(5) The use of incentives in funding formulas to encourage cost-effective local transportation programs.

(6) Alternative arrangements for financing home-to-school transportation including state, regional, multidistrict, local district, and user funds.

(b) A preliminary report for the study required by subdivision (a) shall be completed by March 31, 1986, with a final report to be submitted to the Legislative Analyst by June 30, 1986.

SEC. 6. Section 60247.5 is added to the Education Code, to read:

60247.5. (a) For the 1985-86 fiscal year only, in addition to any amounts apportioned pursuant to Section 60247, the Superintendent of Public Instruction shall apportion 30 percent of the amount appropriated by Section 8 of the act adding this section, so that each school district receives an equal amount per pupil enrolled in grades 9 through 12 in the district in the prior fiscal year for purposes of purchasing instructional materials, supplies, and equipment for use in science classes in those grade levels, and for the purpose of minor remodeling of buildings for science instruction in grades 9 through 12. No school district shall use funds apportioned pursuant to this subdivision to lease, construct, lease-purchase, or otherwise acquire any facility.

(b) Any school district that receives an apportionment pursuant to subdivision (a) and certifies to the Superintendent of Public Instruction that it has sufficient funds to provide instructional materials in the 1985-86 fiscal year for the science courses required by Section 51225.3 may redirect all or a portion of the amount received pursuant to subdivision (a) for the purchase of instructional materials in other subject areas for pupils in grades 9 through 12.

SEC. 7. Section 60248 of the Education Code is amended to read:

60248. School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional and other materials, as defined in Article 2 (commencing with Section 60010) of Chapter 1, for pupils in grades 9 through 12. Textbooks purchased with these funds shall be those adopted in accordance with Sections 60400 and 60401.

CHAPTER 1470

An act to amend Section 60248 of, and to add Section 60247.5 to, the Education Code, relating to school instructional materials, and making an appropriation therefor.

[Approved by Governor October 2, 1985. Filed with
Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 60247.5 is added to the Education Code, to read:

60247.5. (a) For the 1985-86 fiscal year, in addition to any amounts apportioned pursuant to Section 60247, the Superintendent of Public Instruction shall apportion 30 percent of the amount appropriated by Section 3 of Senate Bill 51 of the 1985-86 Regular Session, so that each school district receives an equal amount per pupil enrolled in grades 9 through 12 in the district in the prior fiscal year for purposes of purchasing instructional materials, supplies, and equipment for use in science classes in those grade levels, and for the purpose of minor remodeling of buildings for science instruction in grades 9 through 12. No school district shall use funds apportioned pursuant to this subdivision to lease, construct, lease-purchase, or otherwise acquire any facility.

(b) Any school district that receives an apportionment pursuant to subdivision (a) and certifies to the Superintendent of Public Instruction that it has sufficient funds to provide instructional materials in the 1985-86 fiscal year for the science courses required by Section 51225.3 may redirect all or a portion of the amount received pursuant to subdivision (a) for the purchase of instructional materials in other subject areas for pupils in grades 9 through 12.

SEC. 2. Section 60248 of the Education Code is amended to read:
60248. School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional and other materials, as defined in Article 2 (commencing with Section 60010) of Chapter 1, for pupils in grades 9 through 12. Textbooks purchased with these funds shall be those adopted in accordance with Sections 60400 and 60401.

SEC. 3. (a) The sum of seven million five hundred forty thousand dollars (\$7,540,000) is hereby appropriated from settlement funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1337(g)) to the State Instructional Materials Fund for the 1985-86 fiscal year. The funds appropriated by this subdivision shall supplement, and shall not supplant, any other funds appropriated for instructional materials by the Budget Act of 1985.

(b) Seventy percent of the funds appropriated by subdivision (a) shall be used according to Section 4 of this act, and the remaining 30

percent shall be apportioned pursuant to Section 60247.5 of the Education Code.

SEC. 4. Seventy percent of the funds appropriated by Section 3 of this act shall be expended in accordance with the provisions of Article 3 (commencing with Section 60240) of Chapter 2 of Part 33 of the Education Code for the benefit of pupils enrolled in kindergarten and grades 1 through 8.

SEC. 5. Funds appropriated by Section 3 of this act shall supplement, and shall not supplant or be supplanted by, any payments for public education made pursuant to Chapter 12.5 (commencing with Section 8880) of Division 1 of Title 2 of the Government Code.

CHAPTER 1546

An act to amend Sections 41311, 41350, 41352, 41353, 41851, 41853, 46200, 51427, 54653, 54656, 54657.5, 60248, and 62000 of, to add Sections 51873.2, 51878.5 and 54653.6 to, to repeal Section 41312 of, to repeal and add Section 56858 of, the Education Code, and to add Section 3091.5 to the Labor Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 2, 1985. Filed with
Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 41311 of the Education Code is amended to read:

41311. It is the intent of the Legislature that the Child Nutrition Program shall provide permanent financial assistance to eligible school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, for implementing the school meal program. That financial assistance shall be used to reimburse the cafeteria account of school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, based upon the number of qualifying meals served to students.

SEC. 2. Section 41312 of the Education Code is repealed.

SEC. 3. Section 41350 of the Education Code is amended to read:

41350. The Superintendent of Public Instruction shall make allowances for child nutrition as follows:

(a) Reimbursement of child nutrition entities, as defined by Section 49530.5, for all eligible meals, pursuant to Section 49536.

(b) Reimbursement of school districts for the difference between the current fiscal year average statewide lunch or breakfast cost for all free and reduced-price meals required by Section 49550 as determined by the Superintendent of Public Instruction and the combined total income per meal derived from pupil charges, federal funds, and state funds as provided in Article 11 (commencing with Section 49550) of Chapter 9 of Part 27 of Division 4 of this title, except that this amount shall be reduced by the district contribution, computed pursuant to Section 41351.

(c) Reimbursement of county superintendents of schools for the difference between the current fiscal year average statewide lunch or breakfast cost for all free and reduced-price meals as determined by the Superintendent of Public Instruction and the combined total income per meal derived from pupil charges, federal funds, and state funds as provided in Article 11 (commencing with Section 49550) of Chapter 9 of Part 27 of Division 4 of this title.

The combined state and federal reimbursements shall not exceed the current fiscal year average statewide lunch or breakfast cost. If

without regard to fiscal year.

SEC. 14. Section 54657.5 of the Education Code is amended to read:

54657.5. In order to ensure the validity of the composite ratings of 12th grade performance used for purposes of this article, the State Department of Education shall develop procedures for the 12th grade for the proctoring of tests administered as part of the testing program by persons not employed by the school district administering the test. At least one proctor shall be present in each classroom used for the administration of the test while the test is being conducted.

The proctor assigned to each classroom shall be given the responsibility of delivering the completed test forms to the State Department of Education for scoring. The department shall elicit assistance from geographically distributed county offices of education in developing and implementing these procedures.

SEC. 15. Section 56858 of the Education Code is repealed.

SEC. 16. Section 56858 is added to the Education Code, to read:

56858. (a) The State Department of Developmental Services shall, commencing August 1, 1985, and on the first day of each month thereafter, upon submission of an invoice by the county superintendent of schools, pay to the county superintendent of schools 8 percent of the amount projected to cover the cost of hospital pupils educated in community school programs.

(b) The amount projected to cover the cost of hospital pupils educated in community school programs shall be determined according to procedures agreed by the State Department of Developmental Services and the State Department of Education.

(c) Upon completion of the fiscal year, the county superintendent of schools shall calculate the actual cost of hospital pupils educated in community schools according to procedures in subdivision (b) approved by the State Department of Developmental Services and the State Department of Education.

(d) If the calculated actual cost of educating these pupils is more or less than the total amount the county superintendent of schools has received for the fiscal year pursuant to subdivision (a), the following years' distribution shall be adjusted accordingly.

(e) The county superintendent of schools shall distribute funds to participating districts on a pro rata basis.

SEC. 17. Section 60248 of the Education Code is amended to read:

60248. School district governing boards shall use the funds apportioned pursuant to Section 60247 solely for the purchase of instructional materials, as defined in Sections 60011 to 60018, inclusive, for pupils in grades 9 to 12, inclusive. Textbooks purchased with these funds shall be adopted in accordance with Sections 60400 and 60401.

SEC. 18. Section 62000 of the Education Code is amended to read: 62000. "Sunset" and "sunset date," as used in this part, mean the date on which specific categorical programs cease to be operative

and Sections 62002, 62003, 62004, 62005, and 62005.5 govern program funding.

The following educational programs shall cease to be operative on the date specified, unless the Legislature enacts legislation to continue the program after the review prescribed in Section 62006:

(a) Sunset date of June 30, 1986:

(1) Local staff development and teacher education and computer centers.

(2) Professional development centers.

(3) Instructional materials.

(b) Sunset date of June 30, 1987:

(1) Miller-Unruh Basic Reading Act of 1965.

(2) School improvement program.

(3) Indian early childhood education.

(4) Economic impact aid.

(5) Bilingual education.

(c) Sunset date of June 30, 1988:

(1) Special education.

(2) Gifted and talented education.

(d) Sunset date of June 30, 1989:

(1) Child development and preschool programs.

(2) Adult education.

(3) Indian education centers.

(e) Sunset date of June 30, 1990:

(1) Demonstration programs in reading and mathematics.

SEC. 19. Section 3091.5 is added to the Labor Code, to read:

3091.5. Pursuant to Section 16370 of the Government Code, there is hereby authorized in the State Treasury a Special Deposit Fund Account, which shall consist of moneys collected from the sale of instructional material to persons enrolled in any apprenticeship training program under this chapter. All of the moneys collected are hereby appropriated without regard to fiscal year for the support of the Department of Education to be used for the development and production of apprenticeship instructional material.

CHAPTER 1597

An act to amend Sections 46145, 46201, and 60242 of, to add Sections 2550.2, 2558.1, 23400.1, 23400.3, 42238.10, 42288, 42289, and 84700.5 to, and to repeal and add Section 22720 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor October 2, 1985. Filed with
Secretary of State October 2, 1985.]

The people of the State of California do enact as follows:

SECTION 1. Section 2550.2 is added to the Education Code, to read:

2550.2. The Superintendent of Public Instruction shall make the following computations to determine the revenue limits for juvenile court school programs operated by county superintendents of schools pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of Part 27:

(a) For the 1985-86 fiscal year and each fiscal year thereafter, add to the prior fiscal year revenue limit per unit of average daily

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pursuant to subdivision (a) in the 1984-85 fiscal year and which reduces the amount of instructional time offered below the minimum amounts specified in paragraph (1) of subdivision (a) in the 1985-86 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1985-86 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1985-86 fiscal year and fiscal years thereafter.

For each school district which receives an apportionment pursuant to subdivision (a) in the 1985-86 fiscal year and which reduces the amount of instructional time offered below the minimum amounts specified in paragraph (2) of subdivision (a) in the 1986-87 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1986-87 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1986-87 fiscal year and fiscal years thereafter.

For each school district which receives an apportionment pursuant to subdivision (a) in the 1986-87 fiscal year and which reduces the amount of instructional time offered below the minimum amounts specified in paragraph (3) of subdivision (a) in the 1987-88 fiscal year or any fiscal year thereafter, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for the fiscal year in which the reduction occurs by an amount attributable to the increase in the 1987-88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (4) of subdivision (b) of Section 42238, as adjusted in the 1987-88 fiscal year and fiscal years thereafter.

As used in this section, "class period" means an amount of uninterrupted instructional time of not less than 45 minutes.

SEC. 12. Section 60242 of the Education Code is amended to read: 60242. After the application of Section 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

(1) The state board shall establish a credit for each district board with which instructional materials adopted by the state board may be ordered by districts which choose to order materials through the state.

(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district board, which the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education if they wish to operate under a different subdivision during the next fiscal year.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 13. Section 84700.5 is added to the Education Code, to read: 84700.5. For the 1986-87 fiscal year, the amount computed pursuant to Section 84700 shall be increased by the amount reported by the Teachers' Retirement Board for that community college district under Section 23400.3, divided by the district's second principal apportionment average daily attendance for the 1985-86 fiscal year.

SEC. 14. Section 11.5 of this bill incorporates amendments to Section 46201 of the Education Code proposed by both this bill and AB 1855. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1986, (2) each bill amends Section 46201 of the Education Code, and (3) this bill is enacted after AB 1855, in which case Section 11 of this bill shall not become operative.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

CHAPTER 211

An act to amend Sections 60061, 60063, 60200, 60222, 60226, 60241, 60264, 60281, 60285, 60291, 60401, 62000, 62001, and 62002 of, to add Sections 62000.1, 62000.2, 62000.3, 62000.4, 62000.45, and 62000.5 to, and to add and repeal Section 62006.8 of, and to repeal Sections 60265, 60296, and 60403 of, the Education Code, relating to educational programs, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 27, 1986. Filed with
Secretary of State June 27, 1986.]

The people of the State of California do enact as follows:

SECTION 1. Section 60061 of the Education Code is amended to read:

60061. A publisher or manufacturer shall:

(a) Furnish the instructional materials offered by him or her at a price in this state that, including all costs of transportation to that place, does not exceed the lowest price at which the publisher offers those instructional materials for adoption or sale to any state or school district in the United States.

(b) Automatically reduce the price of those instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(c) Provide any instructional materials free of charge in this state to the same extent as that received by any state or school district in the United States.

(d) Guarantee that all copies of any instructional materials sold in this state are at least equal in quality to the copies of those instructional materials that are sold elsewhere in the United States, and are kept revised, free from all errors, and up to date as may be required by the state board.

(e) Not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in this state.

(f) Maintain a representative, office, or depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

For purposes of the preceding paragraph of this subdivision, "instructional materials" means textbooks, or instructional materials systems or instructional materials sets which include textbooks.

(g) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the governing board in the amount of three times the total sum that the

publisher or manufacturer was paid in excess of the price required under subdivisions (a), (b), and (e), and in the amount of three times the total value of the instructional materials and services that the governing board is entitled to receive free of charge under subdivision (c).

SEC. 2. Section 60063 of the Education Code is amended to read: 60063. Any governing board may order any publisher or manufacturer who violates any provision of this division to cease to offer or sell any instructional materials to that governing board. If that order is made, it shall be unlawful for that publisher or manufacturer to sell instructional materials to that governing board until the publisher or manufacturer has demonstrated, to the governing board that made the order, that it is no longer violating the specified provision of this part.

SEC. 3. Section 60200 of the Education Code is amended to read: 60200. The state board shall adopt instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to Section 60265 and to the following provisions:

(a) At least biennially, adoptions shall be made for all applicable levels for each of the following categories: (1) language arts, (2) mathematics, (3) reading, (4) science, (5) social science, (6) bilingual or bicultural subjects, and (7) any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable to promote the maximum efficiency of pupil learning.

(b) While categories may be designated to be adopted in alternate years, the state board shall adopt not less than five but no more than 15 of any of the following for basic instructional materials in each subject in each grade: (a) instructional materials, (b) instructional materials systems, (c) instructional materials sets, and, (d) a combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select. However, less than five items per subject per grade may be adopted when the state board establishes that adequate materials are not available for certain grades and subjects.

Nothing in this subdivision shall limit the authority of the state board to adopt materials that are not basic instructional materials, and the adoption of those materials shall not be governed by the maximum and minimum limits specified by this subdivision.

(c) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(d) The state board shall establish procedures to provide the most open and flexible submissions, as to timing and processing, to provide collections of instructional materials that, when taken as a whole,

illustrate diverse points of view; represent cultural pluralism and provide a broad spectrum of knowledge, information, and opinions; and allow for a combination of approaches and media to best meet the goals of a program and the needs of pupils.

(e) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period of not less than four years following the date of initial use as established pursuant to subdivision (i). All previous adoptions shall be integrated on lists and made available by subject and level.

(f) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations; however, all materials so designated shall be adopted subject to the limitations of subdivision (b).

(g) A composite listing in the format of an order form may be used to meet the requirements of this section.

(h) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(i) The state board shall, at the time of initiating the call for bids for instructional materials, establish the date upon which those state-adopted materials shall initially be available for use by the pupils.

SEC. 4. Section 60222 of the Education Code is amended to read: 60222. Publishers and manufacturers shall, at a time designated by the state board, submit the following information:

(a) Detailed specifications of the physical characteristics of that material. These specifications shall be complied with by the publisher or manufacturer if the material is adopted and purchased in completed form by the state board or any district board. If the material is adopted under a lease contract, the Department of General Services shall follow the same specifications in manufacturing the material. Changes in specifications may be made when approved by the state board and the publisher or manufacturer.

(b) A price schedule for the sale of completed materials to the state, including all costs of transportation pursuant to subdivision (a) of Section 60061, a statement of the cost to the State of California of purchasing a single unit of each item of instructional material, and any discounts for quantity purchases and any discounts for payment

Code, as added by Section-17 of this bill, shall remain operative only until the effective date of AB 2813 and on that date shall be repealed. This section shall govern the operation of Section 62000.2 of the Education Code, as added by this bill, regardless of the order of chaptering of this bill and AB 2813.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that there is no disruption in the operation of the educational programs otherwise scheduled to cease operation June 30, 1986, it is necessary that this act take effect immediately.

CHAPTER 1452

An act to amend Sections 1007, 1011, 1080, 1205, 1208, 1240, 1249, 4010, 8321, 8322, 10000, 10902, 12130, 14050, 14058, 18330, 18385, 18710, 18720, 18731, 18740, 18741, 18743, 18744, 18745, 18746, 18747, 18765, 19143, 19167, 19301, 19320, 19321, 19325, 19330, 19331, 19332, 19333, 19425, 19524, 19601, 19644, 19901, 22609, 33420, 35000, 35001, 35023, 35031, 35034, 35124, 35145, 35161, 35512, 35734, 37201, 39007, 39365.5, 39802, 39839, 39902, 41002, 41032, 41306, 41350, 41901, 41903, 42125, 42238.5, 42600, 42601, 42631, 42636, 42646, 42821, 44015, 44032, 44265, 44492, 44897, 44903.7, 44981, 45303, 46201, 46320, 46360, 48000, 48010,

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48200, 48205, 48980, 51210, 51833, 52001, 52035, 52500, 52857, 54004.7, 54301, 54659, 56027, 56100, 56101, 56129, 56156, 56156.5, 56157, 56159, 56170, 56172, 56194, 56200, 56220, 56240, 56242, 56300, 56301, 56302, 56322, 56328, 56340, 56341, 56342, 56344, 56345, 56345.5, 56360, 56361.5, 56363.3, 56363.5, 56364.5, 56365, 56365.5, 56366, 56366.1, 56366.5, 56369, 56380, 56450, 56451, 56454, 56456, 56500, 56601, 56602, 56606, 56700, 56760, 56761, 56824, 56825, 56826, 56851, 60241, 60242.5, 60246, 60285, 60660, and 60690 of, to amend the heading of Article 10 (commencing with Section 39480) of Chapter 3 of Part 23 of, to amend and renumber Sections 8480, 8481, 8482, 8483, 8485, 8486, 8490, 8491, 8492, 35104, 37227.6, 37228, 39118, 39119, 40005, 42637.5, 44882, 44883, and 48012 of, to add Sections 1278, 33319.5, 35160.1, 39304.5, 41002.5, 46307, 46307.1, and 51204.5 to, to add Article 2.7 (commencing with Section 44929.20) to Chapter 4 of Part 25 of, to add Chapter 10 (commencing with Section 49600) to Part 27 of, to repeal Sections 88, 1209, 1210, 1211, 1212, 1213, 1241, 1242, 1247, 1248, 1257, 1264, 1265, 1291, 1624, 1925, 1930, 1931, 2001, 2500, 2500.1, 2500.3, 2502, 2503, 2504, 2506, 2506.1, 2506.5, 2506.7, 2507, 2507.5, 2507.7, 2508, 2510, 2559, 5001, 5015, 5015.5, 5032, 5226, 5305, 5364, 5444, 8323, 8325, 10002, 10010, 10915, 14002.1, 14051, 14053, 16030, 16071, 18331, 18332, 18334, 18512, 18514, 18516, 18517, 18721, 18748, 18752, 19144, 19304, 19305, 19523, 19602, 19606, 19607, 19609, 19800, 23500, 23502, 23503, 23504, 23507, 23508, 23509, 23513, 23514, 23515, 23516, 23517, 23518, 23519, 23520, 23521, 23522, 23523, 23524, 23525, 23527, 23600, 23601, 23602, 23603, 23604, 23605, 23606, 23607, 23608, 23609, 23610, 23611, 23612, 23613, 23616, 24006, 24101, 35002, 35027, 35036, 35037, 35040, 35042, 35043, 35122, 35123, 35125, 35147, 35148, 35169, 35173, 35176, 35209, 35210, 35212, 35270, 35273, 35274, 35276, 35340, 37000.5, 37001, 37002, 37003, 37004, 37005, 37006, 37007, 37008, 37060, 37061, 37062, 37065, 37073, 37074, 37075, 37076, 37077, 37078, 37079, 37084, 37087, 37088, 37203, 37222, 37223, 37224, 37225, 37226, 37227, 37227.5, 37229, 37230, 37231, 37232, 37250, 37430, 39001, 39003, 39004, 39009, 39010, 39011, 39117, 39121, 39122, 39123, 39124, 39230.5, 39362, 39365, 39373, 39482, 39483, 39484, 39491, 39600, 39642, 39645, 39651, 39659, 39840.5, 40004, 40010, 40012, 40013, 41301.3, 41302, 41331, 41351, 41377, 41760, 42237.7, 42237.9, 42241, 42243.5, 42244.7, 42660, 42834, 44013, 44804, 44841, 44880, 44882, 44883, 44884, 44885, 44885.5, 44886, 44887, 44889, 44890, 44891, 44978.5, 45021, 45026, 45027, 45053, 45054, 45133, 46013.9, 46116, 46143, 46180.1, 46361, 46362, 46363, 46365, 46366, 46367, 48001, 48013, 48020, 48030, 48040, 48227, 48228, 48229, 48810, 49401, 49404, 49420, 49421, 49453, 49502, 51001, 51201, 51211, 51213, 51227, 51700, 51701, 51710, 51830, 51831, 51832, 52043, 52380, 52463, 54030, 54424, 54487, 56032, 60314, 60315, 60640, 60641, 60642, 60643, 60664, and 63002 of, to repeal the heading of Article 11 (commencing with Section 39490) of Chapter 3 of Part 23 of, to repeal Article 5 (commencing with Section 1110) of Chapter 2 of Part 2 of, Article 11 (commencing with Section 35300) of Chapter 2 of Part 21 of, Article 2 (commencing with Section 37020) of, Article 3 (commencing with Section 37040) of, Article 4 (commencing with Section 37050) of, and Article 6 (commencing

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with Section 37100) of, Chapter 1 of, Article 2 (commencing with Section 37210) of Chapter 2 of, and Article 2 (commencing with Section 37410) of Chapter 3 of, Part 22 of, Article 7 (commencing with Section 39240) of Chapter 2 of, Article 8 (commencing with Section 39440) of, Article 12 (commencing with Section 39500) of, and Article 16 (commencing with Section 39560) of, Chapter 3 of, and Article 3.5 (commencing with Section 39660) of Chapter 4 of, Part 23 of, Article 1 (commencing with Section 41700) of, Article 2 (commencing with Section 41730) of, Article 3 (commencing with Section 41750) of, and Article 7 (commencing with Section 41810) of, Chapter 5 of, Article 1 (commencing with Section 42200) of Chapter 7 of, and Article 3.5 (commencing with Section 42625) of Chapter 9 of, Part 24 of, Chapter 4 (commencing with Section 46500) of Part 26 of, and Article 3 (commencing with Section 48650) of Chapter 4 of, and Article 3 (commencing with Section 49440) of Chapter 9 of, Part 27 of, to repeal Chapter 9 (commencing with Section 2200) of Part 2 of, Chapter 4 (commencing with Section 10300) of Part 7 of, Chapter 14 (commencing with Section 23300) of Part 13 of, Chapter 2 (commencing with Section 41200) of, Chapter 5.5 (commencing with Section 42000) of, Chapter 5.7 (commencing with Section 42050) of, Chapter 8 (commencing with Section 42400) of, Chapter 8.5 (commencing with Section 42501) of, and Chapter 8.7 (commencing with Section 42521) of, Part 24 of, and to repeal and add Sections 37060, 37220 and 37221 of, and to repeal and add Article 2 (commencing with Section 35010) of Chapter 1 of Part 21 of, and Article 8.5 (commencing with Section 41835) of Chapter 5 of Part 24 of, the Education Code, to add Part 4 (commencing with Section 24000) to Division 14 of the Elections Code, to amend Sections 20330 and 53853 of the Government Code, to add Sections 20117, 20118, 20118.1, 20118.3, and 20118.4 to, and to add and repeal Section 20118.2 of, the Public Contract Code, to add Section 21151.2 to the Public Resources Code, and to add Article 28 (commencing with Section 960) to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, relating to education.

[Approved by Governor September 30, 1987. Filed with
Secretary of State September 30, 1987.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that, in 1972, the people of the state adopted an amendment to Section 14 of Article IX of the California Constitution, which permits the Legislature to authorize the governing boards of school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.

It is the intent of the Legislature, in enacting this act, to implement more fully, for the school districts, county boards of education, and

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individualized education program shall be responsible for all individual protections, including notification and due process.

SEC. 510. Section 60241 of the Education Code is amended to read:

60241. The fund shall be administered by the State Department of Education under policies established by the state board. The state board shall encumber part of the fund to:

(a) Pay for the costs of braille and large print textbooks to be furnished for visually handicapped pupils pursuant to Sections 60312 and 60313.

(b) Pay for the costs of warehousing and transporting textbooks acquired for the purposes of Sections 60281 and 60310. These costs shall not exceed 10 percent of the cost of each textbook printed by the Department of General Services.

(c) Establish, commencing with the 1974-75 fiscal year, a reserve account, not to exceed two hundred thousand dollars (\$200,000), to pay for the cost of:

(1) Acquisition of instructional materials, including those ordered for purchase by persons and entities pursuant to subdivisions (a) and (b) of Section 60310.

(2) Replacement of instructional materials, obtained by a school district with its credit or allowance, that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

SEC. 511. Section 60242.5 of the Education Code is amended to read:

60242.5. Allowances received by districts pursuant to subdivision (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, or in-service training pursuant to subdivision (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of such conformance to the Superintendent of Public Instruction. Commencing September 1, 1984, the Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The office of the Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

SEC. 512. Section 60246 of the Education Code is amended to read:

60246. (a) The Controller shall during each fiscal year, commencing with the 1983-84 fiscal year, transfer from the General Fund of the state to the State Instructional Materials Fund, an amount of twenty-one dollars and eighteen cents (\$21.18) per pupil in the average daily attendance in the public elementary schools during the preceding fiscal year, as certified by the Superintendent of Public Instruction, except that this amount shall be adjusted annually in conformance with the Consumer Price Index, all items, of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year next preceding the fiscal year to which it applies.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, and in-service training.

SEC. 513. Section 60285 of the Education Code is amended to read:

60285. The state board, in order to procure textbooks, shall tabulate all orders for each textbook title received from school districts pursuant to Section 60243. The Department of General Services shall select from the tabulation those titles that can be manufactured by the department at a unit cost lower than that specified in the price schedule submitted by the publisher or manufacturer pursuant to subdivision (b) of Section 60222, less the amount of sales tax payments on those titles to the State of California, and for which the department can complete manufacture in time to permit delivery to the school districts prior to the opening of school in the year in which the textbooks are to be used. In manufacturing any title, the department shall include the related teacher edition that would ordinarily be included by a publisher or manufacturer.

SEC. 514. Section 60314 of the Education Code is repealed.

SEC. 515. Section 60315 of the Education Code is repealed.

SEC. 516. Section 60640 of the Education Code is repealed.

SEC. 517. Section 60641 of the Education Code is repealed.

SEC. 518. Section 60642 of the Education Code is repealed.

SEC. 519. Section 60643 of the Education Code is repealed.

SEC. 520. Section 60660 of the Education Code is amended to read:

60660. The State Department of Education shall prepare and submit an annual report to the Legislature, the State Board of Education, and to each school district in the state containing an analysis, on a district-by-district basis, of the results and test scores of the testing program in basic skills courses, including tests administered pursuant to the Miller-Unruh Basic Reading Act of 1965 and Chapter 2 (commencing with Section 54100) of Part 29. The report shall include an analysis of the operational factors that appear to have a significant relationship to or bearing on the results.

The analysis may include, but need not be limited to, the following factors:

(a) Demographic characteristics.

expense be paid in whole or in part by his or her parent, guardian, or other person liable for his or her support and maintenance.

984. If the adjustment school is organized, established, equipped, and maintained by only one county or city and county, the entire expense of the school shall be borne by the county or city and county, and the board of supervisors, or other governing body of the county or city and county shall make due and annual provision therefor. The necessary items of expense shall be set forth in the annual budget of the county or city and county.

985. If an adjustment school is organized, established, equipped, and maintained by two or more counties, the initial expense of organizing, establishing, and equipping the school shall be apportioned between each of the counties on a pro rata basis in the ratio that the number of children of school age residing in each county bears to the number of children of school age residing in all of the counties.

986. The annual expense of maintaining the school by two or more counties, shall be apportioned between the counties on a pro rata basis in the ratio that the average daily enrollment of minors placed in the school from each county during the preceding year bears to the total average daily enrollment in the school from all of the counties during the year.

987. The governing board shall require any officer entrusted with money belonging to an adjustment school or to any of the minors entrusted to its care, or any officer placed in a position of trust and responsibility in the custody of property or in the handling of supplies belonging to the school, to file with the board a bond with sureties approved by the board and in a sum that it may determine, conditioned upon the faithful performance of the duties required, and upon the faithful accounting of all money and property coming into his or her hands or under his or her control by virtue of his or her office. The premiums on the bonds shall be a part of the cost of maintaining the adjustment school.

SEC. 535. To the extent Assembly Bill 93, Assembly Bill 947, Assembly Bill 1782, Assembly Bill 2628, Senate Bill 136, Senate Bill 789, or Senate Bill 939 is chaptered and takes effect on or before January 1, 1988, and amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, added, repealed and added, or repealed by this act, any of those acts shall prevail over this act, whether enacted prior to or subsequent to, this act.

SEC. 536. Sections 44882 and 44883 of the Education Code, as amended and renumbered by Sections 366.5 and 367.5 of this act, shall become operative only if this bill and Senate Bill 798 are chaptered and become effective on or before January 1, 1988, and this bill is chaptered after Senate Bill 798. In that case, the repeals of Sections 44882 and 44883 of the Education Code in Sections 367 and 368 of this act, and the addition of Sections 44929.20 and 44929.21 of the Education Code in Section 380 of this act, shall not become operative.

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CHAPTER 1181

An act to amend Sections 33530, 60041, 60200, 60204, and 60205 of, and to add and repeal Section 60200.1 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 30, 1989. Filed with Secretary of State September 30, 1989.]

I am deleting the \$150,000 General Fund appropriation contained in Section 8 of Senate Bill No. 594.

This bill would modify the instructional materials adoption process for grades one through eight, requiring adoption of materials in each subject area every two years instead of every seven.

I believe the duties imposed upon the Superintendent of Public Instruction by this legislation can be accomplished from within existing resources.

With this deletion, I approve Senate Bill No. 594.

GEORGE DEUKMEJIAN, Governor

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to simplify, clarify, and improve the current instructional materials adoption system for kindergarten and grades 1 to 8, inclusive. It is further the intent of the Legislature that textbooks shall be adopted by the State Board of Education and furnished without cost for use in these grades, as required by Section 7.5 of Article IX of the California Constitution.

The Legislature hereby declares that the objectives of the instructional materials adoption systems shall be to make available the most up-to-date materials with respect to content and quality, to provide a diverse assortment of basic instructional materials, to provide a wide range of instructional materials which reflect the diversity of the pupils enrolled in the state school system, including, where appropriate, a diversity of pedagogical approaches to learning, and to increase the availability and quality of instructional materials in the public schools that are in concert with the subject area frameworks.

SEC. 2. Section 33530 of the Education Code is amended to read: 33530. There is in the state government the Curriculum

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Development and Supplemental Materials Commission consisting of a Member of the Assembly appointed by the Speaker of the Assembly, a Member of the Senate appointed by the Senate Committee on Rules, one public member appointed by the Speaker of the Assembly, one public member appointed by the Senate Committee on Rules, one public member appointed by the Governor, and 13 public members appointed by the State Board of Education upon the recommendation of the Superintendent of Public Instruction or the members of the State Board of Education.

So far as is practical and consistent with the duties assigned to the commission by the State Board of Education, at least seven of the 13 public members appointed by the State Board of Education shall be persons, who because they have taught, written, or lectured on the subject matter fields specified in Section 33533, in the course of public or private employment, have become recognized authorities or experienced practitioners in such fields. The State Board of Education shall make its appointments so as to ensure that, at any one time, at least seven of the public members shall be current classroom teachers, or mentor teachers, or both assigned to teach kindergarten or any of grades 1 to 12, inclusive.

Notwithstanding the requirement that seven of the public members shall be current classroom teachers or mentor teachers, current members of the commission who were appointed on or before December 31, 1989, shall be allowed to complete their terms.

In making the remaining appointments to the commission, and in establishing the commission's advisory task forces or committees, the State Board of Education is encouraged to consider the role of other representatives of the educational community in the development of curriculum and instructional materials, including, but not limited to, administrators, governing school board members and parents who are reflective of the various ethnic groups and types of school districts in California.

SEC. 3. Section 60041 of the Education Code is amended to read:

60041. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray, whenever appropriate:

(a) Humanity's place in ecological systems and the necessity for the protection of our environment.

(b) The effects on the human system of the use of tobacco, alcohol, narcotics and restricted dangerous drugs as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.

SEC. 4. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts.

- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social Science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board and its appropriate advisors and advisory groups shall use, and ensure that, in its judgment, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the

subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (d) of Section 60200, or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and media to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available

to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 5. Section 60200.1 is added to the Education Code, to read: 60200.1. The implementation of the new submission cycle pursuant to Section 60200 may be phased in over a three-year period concluding January 1, 1993, if the state board ensures that submission opportunities for major subjects are available, during the transition period.

This section shall remain in effect only until January 1, 1993, and as of that date is repealed.

SEC. 6. Section 60204 of the Education Code is amended to read: 60204. The commission shall:

(a) Recommend curriculum frameworks to the state board.

(b) Develop criteria for evaluating instructional materials submitted for adoption so that the materials adopted shall adequately cover the subjects in the indicated grade or grades and which comply with the provisions of Article 3 (commencing with Section 60040) of Chapter 1. The criteria developed by the commission shall be consistent with the duties of the state board pursuant to Section 60200. The criteria shall be public information and shall be provided in written or printed form to any person requesting such

information.

(c) Study and evaluate instructional materials submitted for adoption.

(d) Recommend to the state board instructional materials which it approves for adoption.

(e) Review and have the authority to adopt the educational films or videotapes produced in accordance with Article 3 (commencing with Section 52740) of Chapter 11 of Part 28.

(f) Recommend to the state board policies and activities to assist the department and school districts in the use of the curriculum framework and other available model curriculum materials for the purpose of guiding and strengthening the quality of instruction in the public schools.

SEC. 7. Section 60205 of the Education Code is amended to read: 60205. The commission may, in order to fulfill its duties pursuant to Section 60204, appoint task forces or committees of subject matter experts to assist and advise them. Each task force or committee appointed by the commission shall include a majority consisting of current classroom teachers as defined in Section 33150 providing instruction in kindergarten and grades 1 to 8, inclusive, or mentor teachers, or certificated teachers employed by school districts or county offices of education who are not in a position that requires a services credential with a specialization in administrative services, or any combination of those teachers. The commission shall endeavor to appoint persons who are representatives of various ethnic groups and of various types of school districts. Accurate records of the advice and recommendations of each task force or committee member shall be maintained by the commission, and made available to the state board at its request. For the purpose of developing the curriculum framework or for other activities not associated with the evaluation of basic instructional materials, the commission may expand the authority for the appointment of classroom teachers to include teachers providing instruction in kindergarten and grades 1 to 12, inclusive.

SEC. 8. The sum of one hundred fifty thousand dollars (\$150,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the period commencing January 1, 1990, and ending June 30, 1990, for the purpose of establishing six additional staff positions and for administrative costs incurred in the implementation of this act.

It is the intent of the Legislature that commencing with the 1990-91 fiscal year, and for each subsequent fiscal year, funds shall be made available to the State Department of Education through the annual Budget Act for the purpose of implementing the department's duties with respect to the instructional materials adoption system for kindergarten and grades 1 to 8, inclusive.

CHAPTER 353

An act to amend Sections 60001 and 60200 of the Education Code, relating to education.

[Approved by Governor August 29, 1991. Filed with Secretary of State August 30, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 60001 of the Education Code is amended to read:

60001. For the purposes of any provision of the California Constitution that requires the adoption of textbooks for use in the elementary schools, the state board, subject to the provisions of this division, shall adopt at least five separate series of textbooks or instructional materials systems for any of the several courses offered in the elementary schools, or for any combination of those courses. For these purposes the term "elementary schools" shall have the meaning prescribed by Section 60024.

SEC. 2. Section 60200 of the Education Code is amended to read:
60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

- (1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two

years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board and its appropriate advisers and advisory groups shall use, and ensure that, in its judgment, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs

(1) to (5), inclusive, of subdivision (d), or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and media to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar

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grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 2.5. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the

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and become effective on January 1, 1992, (2) each bill amends Section 60200 of the Education Code, and (3) this bill is enacted after SB 1008, in which case Section 2 of this bill shall not become operative.

CHAPTER 529

An act to amend Sections 60011, 60200, and 60242 of, and to add Section 60017.1 to, the Education Code, relating to instructional materials.

[Approved by Governor October 5, 1991. Filed with Secretary of State October 7, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 60011 of the Education Code is amended to read:

60011. "Instructional material" means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests.

SEC. 1.5. Section 60017.1 is added to the Education Code, to read:
60017.1. "Technology-based materials" means those basic or

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instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 2.5. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social Science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board and its appropriate advisors and advisory groups shall use, and ensure that, in its judgment, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

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(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (d), or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of

knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 3. Section 60242 of the Education Code is amended to read:

60242. After the application of Section 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

(1) The state board shall establish a credit for each district governing board with which instructional materials adopted by the state board may be ordered by districts that choose to order materials through the state.

(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district governing board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district governing board, which the district governing board may use for the following

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purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district governing board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education if they wish to operate under a different subdivision during the next fiscal year.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 60200 of the Education Code proposed by both this bill and AB 588. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1992, (2) each bill amends Section 60200 of the Education Code, and (3) this bill is enacted after AB 588, in which case Section 2 of this bill shall not become operative.

CHAPTER 1028

An act to amend Section 33112 of, and to add Section 60510.5 to, the Education Code, relating to schools.

[Approved by Governor October 14, 1991. Filed with
Secretary of State October 14, 1991.]

The people of the State of California do enact as follows:

SECTION 1. Section 33112 of the Education Code is amended to read:

33112. The Superintendent of Public Instruction shall:

- (a) Superintend the schools of this state.
- (b) Prepare, have printed, and furnish to teachers and to all officers charged with the administration of the laws relating to the public schools the blank forms and books necessary to the discharge of their duties, including blank teachers' certificates to be used by county and city and county boards of education.
- (c) Authenticate with his or her official seal all drafts or orders drawn by him or her, and all papers and writings issued from his or her office.
- (d) Have bound, at the state bindery, all valuable school reports, journals, and documents in his or her office, or received by him or her.

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(e) Deliver over, at the expiration of his or her term of office, on demand, to his or her successor, all property, books, documents, maps, records, reports, and other papers belonging to his or her office, or which may have been received by him or her for the use of his or her office.

(f) Designate and appoint, or terminate the designation and appointment of, any officer or employee of the department to have the powers and liabilities of a deputy, including designation pursuant to Section 7.9 of the Government Code, which appointment and termination of appointment shall be effective when filed in writing in the office of the Secretary of State.

(g) Annually inform the governing boards of school districts, in a manner prescribed by the superintendent, of the provisions of Section 60510.5.

SEC. 2. Section 60510.5 is added to the Education Code, to read:

60510.5. (a) Prior to the disposition by a school district of any instructional materials pursuant to Section 60510, the school district governing board is encouraged to do both of the following:

(1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.

(2) Permit representatives of the entities described in subdivisions (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.

(b) This section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.

CHAPTER 56

An act to repeal Section 5718 of the Business and Professions Code, to amend Sections 11201, 60200, and 69534.1 of, to repeal Section 69673 of, to repeal Article 5 (commencing with Section 33570) of Chapter 4 of Part 20 of, the Education Code, to amend Sections 10406.5, 56702, and 58101 of, and to repeal Sections 465, 56731, and 58576 of, the Food and Agricultural Code, to amend Sections 8257 and 19795 of, to add Section 8001 to, to add Chapter 11 (commencing with Section 15399.50) to Part 6.7 of Division 3 of Title 2 of, to repeal Sections 8590, 12092, 19235, 65040.9, 65913.3, 65922.3, 65922.5, 65922.7, 65923, 65923.5, and 65946 of, and to repeal Article 3 (commencing with Section 11720) of Chapter 7 of Division 3 of Title 2 of, the Government Code, to amend Sections 1901.2 and 18949.6 of, and to repeal Sections 199.57, 11780, and 11862 of, the Health and Safety Code, to amend Sections 11060 and 13854 of, and to repeal Sections 13842 and 13863 of, the Penal Code, to amend Section 4694 of, and to repeal Sections 742, 4531.5, 25447, and 25447.1 of, the Public Resources Code, and to repeal Chapter 3 (commencing with Section 10700) of Part 2 of Division 9 of the Welfare and Institutions Code, relating to state operations.

[Approved by Governor June 30, 1993. Filed with
Secretary of State June 30, 1993.]

The people of the State of California do enact as follows:

SECTION 1. Section 5718 of the Business and Professions Code is repealed.

SEC. 2. Section 11201 of the Education Code is amended to read:

11201. The State Department of Education shall take a leadership role in providing school districts and county offices of education that elect to use microcomputers in school business applications with information and other material that will facilitate their use of microcomputers. In addition, the State Department of Education may make grants, not to exceed ten thousand dollars (\$10,000) each, to develop microcomputer software that will assist a large number of school districts and county offices of education.

SEC. 4. Article 5 (commencing with Section 33570) of Chapter 4 of Part 20 of the Education Code is repealed.

SEC. 6. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.

- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use, and ensure that, in its judgment, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (d), or the materials fail to meet the state board's adopted curriculum framework. In the event that the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) In the event that a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section

60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 7. Section 69534.1 of the Education Code is amended to read:

69534.1. (a) The Student Aid Commission shall authorize the use of standardized student financial aid application forms for California. These forms shall be simple in nature and collect common data elements required by the federal government and those elements needed to meet the objectives of state-funded and institutional financial aid programs.

(b) These forms shall be utilized for the Cal Grant Program, all other programs funded by the state or a public institution of postsecondary education (except for the Board of Governors' Financial Assistance Program authorized by Chapter 1118 of the Statutes of 1987, for which a simplified form designed for that sole purpose may be used), and all federal programs administered by a public postsecondary education institution.

(c) Supplemental forms may be utilized if the forms are essential to accomplishing the objectives of individual programs. All supplemental forms utilized by public postsecondary educational institutions shall be subject to approval by the commission, and forms shall be identical for programs with similar objectives, as determined by the commission.

(d) Public postsecondary institutions are encouraged to, but may

repealed.

SEC. 37. Chapter 3 (commencing with Section 10700) of Part 2 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 38. Any section of any act enacted by the Legislature during the 1993 calendar year, which takes effect on or before January 1, 1994, and which amends, amends and renumbers, adds, repeals and adds, or repeals a section amended, amended and renumbered, repealed and added, or repealed by this act, shall prevail over this act, whether that act is enacted prior to, or subsequent to, this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

CHAPTER 927

An act to add Article 9 (commencing with Section 60117) to Chapter 1 of Part 33 of, and to add Section 60252 to, the Education Code, relating to instructional materials, and making an appropriation therefor.

[Approved by Governor September 27, 1994. Filed with Secretary of State September 28, 1994.]

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the California Supreme Court, in its 1976 decision, *Serrano v. Priest* (18 Cal. 3d 728), reaffirmed the principle that education is a fundamental interest which is secured by the state constitutional guarantee of equal protection under the law, and held invalid a school financing system that resulted in disparate educational opportunity. The Legislature further declares that, to the extent that every pupil does not have access to textbooks or instructional materials in each subject, a pupil's right to equal educational opportunity is impaired.

SEC. 2. Article 9 (commencing with Section 60117) is added to Chapter 1 of Part 33 of the Education Code, to read:

Article 9. Pupil Textbook and Instructional Materials Incentive Program

60117. This article shall be known and may be cited as the Pupil Textbook and Instructional Materials Incentive Program Act.

60119. (a) For the 1994-95 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has

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sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

(c) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

SEC. 3. Section 60252 is added to the Education Code, to read:

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 9 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that

equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

SEC. 4. It is the intent of the Legislature that the Superintendent of Public Instruction administer this act as if it has been in effect for the entire 1994-95 fiscal year.

SEC. 5. Of the amount appropriated in the Budget Act of 1994 for instructional materials in Item 6110-186-001, nine million one hundred eighteen thousand dollars (\$9,118,000) is hereby reappropriated to the Pupil Textbook and Instructional Materials Incentive Account in the State Instructional Materials Fund and shall be allocated pursuant to subdivision (b) of Section 60252 of the Education Code.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 391 CHAPTERED 08/03/95

CHAPTER 325
 FILED WITH SECRETARY OF STATE AUGUST 3, 1995
 APPROVED BY GOVERNOR AUGUST 3, 1995
 PASSED THE ASSEMBLY JULY 24, 1995
 PASSED THE SENATE JULY 21, 1995
 AMENDED IN SENATE JULY 13, 1995
 AMENDED IN ASSEMBLY MAY 23, 1995
 AMENDED IN ASSEMBLY MAY 10, 1995

INTRODUCED BY Assembly Member Bustamante

FEBRUARY 14, 1995

An act to add Sections 60118 and 60251.5 to the Education Code, relating to instructional materials, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 391, Bustamante. State Instructional Materials Fund.

(1) Existing law, the Pupil Textbook and Instructional Materials Incentive Program Act, provides funds to the governing boards of school districts that meet certain requirements for the purpose of providing sufficient textbooks or instructional materials for pupils, as specified.

This bill would, for purposes of that program, define "governing boards of school districts" to also include county boards of education and would make county offices of education, at their option, eligible to receive those funds and would specify the level of funding those entities are eligible to receive under that program.

(2) Existing law establishes the Pupil Textbook and Instructional Materials Incentive Account in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program, as specified. All moneys in the State Instructional Materials Fund are continuously appropriated for the purpose of instructional materials. Each fiscal year, the Controller is required to make a specified transfer from the General Fund to the State Instructional Materials Fund.

This bill would require that, for any fiscal year in which the amount of the moneys appropriated to the State Instructional Materials Fund exceeds the sum of the amount that was appropriated to that fund in the prior fiscal year plus any amounts appropriated in the current fiscal year for instructional materials pursuant to a specified provision of law, an amount that is not less than 50% of the difference shall be transferred to the Pupil Textbook and Instructional Materials Incentive Account that exists in the State Instructional Materials Fund. By requiring that transfer, the bill would thereby make an appropriation.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60118 is added to the Education Code, to read:

60118. County offices of education may, at their option, be eligible to receive funds pursuant to this article. Allocations to county offices of education shall be based upon prior year average daily attendance in county operated educational programs and at the average amount allocated to school districts per unit of average daily attendance. For the purposes of this article, the terms "governing board of a school district" and "governing board" are deemed to include county boards of education.

SEC. 2. Section 60251.5 is added to the Education Code, to read:

60251.5. For any fiscal year in which the amount of the moneys appropriated to the State Instructional Materials Fund exceeds the sum of the amount that was appropriated to that fund in the prior fiscal year plus any amounts appropriated in the current fiscal year for instructional materials pursuant to Section 42238.15, an amount that is not less than 50 percent of the difference shall be transferred to the Pupil Textbook and Instructional Materials Incentive Account that exists in the State Instructional Materials Fund.

BILL NUMBER: SB 152 CHAPTERED 08/11/95

CHAPTER 413

FILED WITH SECRETARY OF STATE AUGUST 11, 1995
 APPROVED BY GOVERNOR AUGUST 10, 1995
 PASSED THE SENATE JULY 29, 1995
 PASSED THE ASSEMBLY JULY 28, 1995
 AMENDED IN ASSEMBLY JULY 21, 1995
 AMENDED IN ASSEMBLY JUNE 22, 1995
 AMENDED IN SENATE MAY 9, 1995
 AMENDED IN SENATE APRIL 17, 1995
 AMENDED IN SENATE MARCH 23, 1995

INTRODUCED BY Senator Maddy
 (Coauthors: Senators Mello and O'Connell)

JANUARY 26, 1995

An act to amend Sections 60000, 60001, 60061, 60200, 60222, 60223, 60225, 60240, 60242, 60245, 60312, 60313, 60510, 60520, 60521, and 62000.4 of, to amend and renumber the heading of Article 8 (commencing with Section 60110) of, and Article 9 (commencing with Section 60117) of, Chapter 1 of Part 33 of, to repeal Sections 60003, 60063, 60224, 60241, 60242.1, 60243, 60311, 60316, 60401, 60402, 60404, 60412, 60413, 60414, 60512, and 60513 of, to repeal Article 7 (commencing with Section 60100) of Chapter 1 of, Article 4 (commencing with Section 60260) of, and Article 5 (commencing with Section 60280) of, Chapter 2 of, and Article 3 (commencing with Section 60420) of Chapter 3 of, Part 33 of, to repeal and add Section 60002 of, and to repeal and add Article 2 (commencing with Section 60010) of Chapter 1 of Part 33 of, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 152, Maddy. Instructional materials.

(1) Existing law makes legislative declarations relating to the acquisition of instructional materials for use in elementary and secondary schools. Existing law also recognizes the need to establish broad minimum standards and general educational guidelines for the selection of instructional materials and that the governing boards of school districts must have ability to choose instructional materials that are appropriate to their courses of study.

This bill would consolidate those provisions and would repeal related provisions of law as a conforming change.

(2) Existing law requires the State Board of Education (state board), for the purposes of the provision of the California Constitution that requires the adoption of textbooks for use in elementary schools, to adopt at least 5 separate series of textbooks, as specified.

This bill would require the state board to adopt instead at least 5 separate basic instructional materials for each grade level and each subject area, as specified.

(3) Existing law requires district boards, as defined, to provide for substantial teacher involvement in the election of instructional materials, and to promote the involvement of parents and other members of the community in selecting instructional materials.

This bill would change the placement of that section and make

technical changes to that provision.

(4) Existing law sets forth various definitions for the purposes of provisions pertaining to the selection of textbooks.

This bill would repeal obsolete definitions, would consolidate the other definitions into one provision setting forth definitions, and would make technical changes.

(5) Existing law requires a publisher or manufacturer of textbooks to, among other things, maintain a representative or office in this state to receive and fill orders for instructional materials. For that purpose, "instructional materials" is defined as textbooks, or instructional materials systems or instructional materials sets that include textbooks.

This bill would delete that definition.

(6) Existing law expressly provides that the provisions dealing with instructional materials shall not be construed to require the governing board of a school district to provide instructional materials free of charge to adults enrolled in a class for adults. Existing law also expressly provides that the governing board of a school district or a public library is not prohibited from ordering and purchasing from their own funds any instructional materials that they may require.

This bill would repeal those provisions.

(7) Existing law provides that any governing board, as defined, may order any publisher or manufacturer who violates specified provisions pertaining to publishers or manufacturers to cease to offer or sell any instructional materials to that governing board, as specified.

This bill would repeal that provision.

(8) Existing law requires the state board to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, as specified, to adopt specified forms of basic instructional materials in each subject in each grade level, and to make available a list of approved instructional materials. Items placed on that list are required to remain on the list until a date established by the state board, but not less than 30 months after the state board's curriculum framework that will succeed the framework on which the current adoption is based. The state board is required to establish the date upon which adopted instructional materials be initially available for use by schools.

This bill would delete the requirement that the state board adopt specified forms of instructional materials. The bill would require that instructional materials remain on the list of approved instructional materials for the earlier of not more than 8 years after adoption of the item, or the date that the state board adopts instructional materials based on a new or revised curriculum framework. The bill would delete the provision requiring the state board to establish the date on which adopted instructional materials are initially available.

(9) Existing law requires that publishers and manufacturers of instructional materials provide certain information, including a price schedule of specified costs.

This bill would delete the requirements relating to price schedules and would make conforming changes.

(10) Existing law requires publishers and manufacturers to make available for purchase by any governing board any diagnostic, criterion referenced, or other tests that they may develop.

This bill would delete that requirement.

(11) Existing law requires publishers and manufacturers, as specified, to provide in-service training in the use of instructional materials produced by them, as specified. 184

This bill would delete that requirement and instead authorize publishers to provide in-service training or professional development in the use of the instructional materials provided by them, as agreed upon by the publishers and the school districts.

(12) Existing law establishes the State Instructional Materials Fund. Among the purposes for which the state board may encumber part of the fund is to pay for the costs of braille and large print textbooks to be furnished for pupils with visual impairments, as specified.

This bill would reorganize and consolidate provisions pertaining to the fund.

(13) Existing law requires the state board to encumber the State Instructional Materials Fund for specified purposes, including, among others, for the purpose of establishing credits for each governing board of a school district with which instructional material may be ordered, and a cash allotment for purchase of instructional materials, as specified. The state board is required to establish an allowance for each school district for the purchase of instructional materials.

This bill would eliminate the requirements pertaining to establishing credits and would make conforming changes to related provisions of law.

(14) Existing law declares the intent of the Legislature that governing boards of school districts order instructional materials that meet the needs of pupils in their district that relate to their courses of study, as specified.

This bill would repeal that provision.

(15) Existing law requires governing boards of school districts to determine the necessary quantities and distribution pattern of instructional materials to pupils, as specified, and to order state-adopted textbooks and instructional materials on forms prescribed by the State Department of Education, as specified. All district orders for state-adopted instructional materials are required to be forwarded as directed by the Superintendent of Public Instruction for procurement of those materials, as specified. Existing law also sets forth various requirements pertaining to the procurement of instructional materials by the state board and the printing of instructional materials by the state board.

This bill would repeal those provisions.

(16) Existing law requires the Superintendent of Public Instruction to keep an accurate account of the amount of money received from the sale of instructional materials and report to the Controller, as specified.

This bill would repeal that provision.

(17) Existing law requires the state board to make available copies of adopted textbooks and other state-adopted print materials in large print and other accessible media for elementary school pupils whose visual acuity is 20/70 or less or who have other visual impairments, as specified.

This bill would authorize the state board to purchase or contract for the development of those materials, and would change the above-referenced visual acuity to 10/70.

(18) Existing law authorizes the governing board of any school district to sell or lease instructional materials belonging to the district to any private educational institution, as specified.

This bill would repeal that provision.

(19) Existing law requires the state board to designate the kinds of books that are classified as textbooks. Other provisions also make that requirement.

This bill would repeal the duplicate provision.

(20) Existing law requires textbooks adopted by the state board to be put into use in the district not later than the school year next following their adoption.

This bill would repeal that provision.

(21) Existing law requires the clerk, secretary, or other person named by the governing board of a school district for the purposes of purchasing textbooks to purchase textbooks on order of the governing board, as specified. The governing board of a high school district is authorized to make all necessary provisions and arrangements to place the books purchased within easy reach and accessible for the use of all pupils in the schools under its control, to sell textbooks and related materials, as specified, to purchase textbooks for the use of pupils residing in the district but attending a public high school in an adjoining state, as specified, and to provide for the disposition of textbooks that have been declared obsolete by the governing board, in a specified manner. The state board and any governing board of a school district, as specified, may dispose of surplus or undistributed obsolete instructional materials in its possession.

This bill would streamline these provisions by repealing duplicative provisions. The bill would eliminate the requirement that textbooks sold to the state or any organization that agrees to use the materials solely for educational purposes, be sold for a nominal price. The bill would make conforming changes to other provisions of law.

(22) Existing law authorizes the governing board of a school district to use funds from the State Instructional Materials Fund to order or ship obsolete instructional materials, as specified.

This bill would repeal that provision.

(23) Existing law requires the state board to pay the publisher or manufacturer certain royalties, as specified.

This bill would repeal that provision.

(24) Existing law requires that any money received by the state board from the sale of obsolete instructional materials be deposited in the State Instructional Materials Fund and that any money received by a district board be used for school district purposes.

This bill would make technical changes to those provisions and would require a school district to use the funds it receives from this sale to purchase instructional materials.

(25) Existing law provides for a program for the adoption of lists of instructional materials, makes certain requirements relating to the publishers and manufacturers of instructional materials, establishes the State Instructional Materials Fund for the purposes of providing funds for the acquisition of instructional materials, and sets forth local order procedures and other requirements relating to instructional materials. Existing law provides that the Instructional Materials Program shall become inoperative on June 30, 1996.

This bill would instead make the Instructional Materials Program inoperative on June 30, 2001.

This bill would incorporate additional changes in Section 60242 of the Education Code proposed by AB 1039, to be operative only if AB 1039 and this bill are both chaptered and become effective on January 1, 1996, and this bill is chaptered last.

This bill would incorporate additional changes in Section 60200 of the Education Code, proposed by AB 1504, to be operative only if AB 1504 and this bill are both chaptered and become effective January 1, 1996, and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60000 of the Education Code is amended to read:

60000. (a) It is the intent and purpose of the Legislature in enacting this part to provide for the adoption and selection of quality instructional materials for use in the elementary and secondary schools.

(b) The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but that because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level.

(c) The Legislature further recognizes that the governing boards of school districts have the responsibility to establish courses of study and that they must have the ability to choose instructional materials that are appropriate to their courses of study.

SEC. 2. Section 60001 of the Education Code is amended to read:

60001. For the purposes of any provision of the California Constitution that requires the adoption of textbooks for use in the elementary schools, the state board shall adopt at least five separate basic instructional materials for each grade level and each subject area as required by Section 60200.

SEC. 3. Section 60002 of the Education Code is repealed.

SEC. 4. Section 60002 is added to the Education Code, to read:

60002. Each district board shall provide for substantial teacher involvement in the selection of instructional materials and shall promote the involvement of parents and other members of the community in the selection of instructional materials.

SEC. 5. Section 60003 of the Education Code is repealed.

SEC. 6. Article 2 (commencing with Section 60010) of Chapter 1 of Part 33 of the Education Code is repealed.

SEC. 7. Article 2 (commencing with Section 60010) is added to Chapter 1 of Part 33 of the Education Code, to read:

Article 2. Definitions

60010. For the purpose of this part, the following terms have the following meanings unless the context in which they appear clearly requires otherwise:

(a) "Basic instructional materials" means instructional materials that are designed for use by pupils as a principal learning resource and that meet in organization and content the basic requirements of the intended course.

(b) "Commission" means the Curriculum Development and Supplemental Materials Commission.

(c) "Curriculum framework" means an outline of the components of a given course of study designed to provide state direction to school districts in the provision of instructional programs.

(d) "District board" means the board of education or governing board of any county, city and county, city, or other district that has the duty to provide for the education of the children in its county, city and county, city, or district.

(e) "Elementary school" means all public schools in which instruction is given through grade 8 or in any one or more of those grades.

(f) "Governing boards" means the state board and any one or more district boards.

(g) "High school" means all public schools other than elementary schools in which instruction is given through grade 12, or in any one or more of those grades.

(h) "Instructional materials" means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests.

(i) "Nonpublic school" means a school that both satisfies the requirements of Section 48222, and is exempt from taxation under Section 214 of the Revenue and Taxation Code.

(j) "School official" means any member of any governing board, any city, county, city and county, or district superintendent of schools, and any principal, teacher, or other employee under his or her charge.

(k) "State board" means the State Board of Education.

(l) "Supplementary instructional materials" means instructional materials designed to serve, but not be limited to, one or more of the following purposes, for a given subject, at a given grade level:

(1) To provide more complete coverage of a subject or subjects included in a given course.

(2) To provide for meeting the various learning ability levels of pupils in a given age group or grade level.

(3) To provide for meeting the diverse educational needs of pupils with a language disability in a given age group or grade level.

(4) To provide for meeting the diverse educational needs of pupils reflective of a condition of cultural pluralism.

(m) "Technology-based materials" means those basic or supplemental instructional materials that are designed for use by pupils and teachers as learning resources and that require the availability of electronic equipment in order to be used as a learning resource. Technology-based materials include, but are not limited to, software programs, video disks, compact disks, optical disks, video and audio tapes, lesson plans, and data bases. Technology-based materials do not include the equipment required to make use of those materials.

(n) "Test" means any device used to measure the knowledge or achievement of students.

SEC. 8. Section 60061 of the Education Code is amended to read: 60061. A publisher or manufacturer shall:

(a) Furnish the instructional materials offered by the publisher at a price in this state that, including all costs of transportation to that place, does not exceed the lowest price at which the publisher offers those instructional materials for adoption or sale to any state or school district in the United States.

(b) Automatically reduce the price of those instructional materials to any governing board to the extent that reductions are made elsewhere in the United States.

(c) Provide any instructional materials free of charge in this state to the same extent as that received by any state or school district in the United States.

(d) Guarantee that all copies of any instructional materials sold in this state are at least equal in quality to the copies of those instructional materials that are sold elsewhere in the United States, and are kept revised, free from all errors, and up to date as may be required by the state board.

(e) Not in any way, directly or indirectly, become associated or

connected with any combination in restraint of trade in instructional materials, or enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in this state.

(f) Maintain a representative, office, or depository in the State of California or arrange with an independently owned and operated depository in the State of California to receive and fill orders for instructional materials.

(g) Provide to the state, at no cost, the right to transcribe, reproduce, and distribute the material in Braille, large print, recordings, or other accessible media for use by pupils with visual disabilities. This right shall include computer diskette versions of print materials if made available to any other state, and those corrections and revisions as may be necessary.

(h) Upon the willful failure of the publisher or manufacturer to comply with the requirements of this section, be liable to the governing board in the amount of three times the total sum that the publisher or manufacturer was paid in excess of the price required under subdivisions (a), (b), and (e), and in the amount of three times the total value of the instructional materials and services that the governing board is entitled to receive free of charge under subdivision (c).

SEC. 9. Section 60063 of the Education Code is repealed.

SEC. 10. Article 7 (commencing with Section 60100) of Chapter 1 of Part 33 of the Education Code is repealed.

SEC. 11. The heading of Article 8 (commencing with Section 60110) of Chapter 1 of Part 33 of the Education Code is amended and renumbered to read:

Article 6. Instructional Materials on Alcohol and Drug Education

SEC. 12. The heading of Article 9 (commencing with Section 60117) of Chapter 1 of Part 33 of the Education Code is amended and renumbered to read:

Article 7. Pupil Textbook and Instructional Materials Incentive Program

SEC. 13. Section 60200 of the Education Code is amended to read:
60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.

(7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two

years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the

state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than eight years from the date of adoption of the items or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

SEC. 13.5. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling.

(2) Mathematics.

(3) Reading.

(4) Science.

(5) Social science.

(6) Bilingual or bicultural subjects.

(7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of

basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisors to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If the district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than eight years from the date of adoption of the items or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

SEC. 14. Section 60222 of the Education Code is amended to read:
60222. Publishers and manufacturers, at a time designated by the state board, shall submit detailed specifications of the physical characteristics of that material. The publisher or manufacturer shall comply with those specifications if the material is adopted and purchased in completed form by the state board or any district board. Changes in specifications may be made when approved by the state board and the publisher or manufacturer.

SEC. 15. Section 60223 of the Education Code is amended to read:
60223. Publishers and manufacturers may biennially submit revisions to price schedules submitted pursuant to subdivision (a) of Section 60201.

SEC. 16. Section 60224 of the Education Code is repealed.

SEC. 17. Section 60225 of the Education Code is amended to read:

60225. As agreed upon by publishers and school districts, publishers may provide in-service training or professional development in the use of the instructional materials provided by them.

SEC. 18. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c) (1) The state board shall encumber part of the fund to pay for accessible instructional materials to accommodate pupils with visual disabilities pursuant to Sections 60312 and 60313.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars (\$200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

SEC. 19. Section 60241 of the Education Code is repealed.

SEC. 20. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each district board, which may include consideration of increases or decreases in average daily attendance, that the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests.

(4) To fund inservice training.

(b) The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

SEC. 20.5. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each district board, which may include consideration of increases or decreases in average daily attendance, that the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

SEC. 21. Section 60242.1 of the Education Code is repealed.

SEC. 22. Section 60243 of the Education Code is repealed.

SEC. 23. Section 60245 of the Education Code is amended to read:

60245. The fiscal yearend unexpended balance of any cash allotment of any district board shall be separately encumbered for the district board and shall be separately carried over into the subsequent fiscal year for their respective uses by the district board.

SEC. 24. Article 4 (commencing with Section 60260) of Chapter 2 of Part 33 of the Education Code is repealed.

SEC. 25. Article 5 (commencing with Section 60280) of Chapter 2 of Part 33 of the Education Code is repealed.

SEC. 26. Section 60311 of the Education Code is repealed.

SEC. 27. Section 60312 of the Education Code is amended to read:

60312. The state board shall make available copies of adopted textbooks and other state adopted print materials in large print and other accessible media for pupils enrolled in the elementary schools whose visual acuity is 10/70 or less or who have other visual impairments making the use of these textbooks and alternate formats necessary. The state board shall make available adopted textbooks in braille characters for pupils enrolled in elementary schools whose corrected visual acuity is 20/200 or less. The state board may purchase or contract for the development of those materials.

SEC. 28. Section 60313 of the Education Code is amended to read:

60313. The Superintendent of Public Instruction shall maintain a central clearinghouse-depository and duplication center for the design, production, and distribution of Braille, large print, special recordings, and other accessible versions of instructional materials for pupils who are visually impaired and assistive devices and materials for use by pupils with visual impairments enrolled in the public schools of California who may require their use as shall be determined by the state board.

The instructional materials in specialized media shall be available to other pupils with disabilities enrolled in the public schools of California who are unable to benefit from the use of conventional print copies of textbooks, reference books, and other study materials in a manner determined by the state board.

The specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment, and other similar items shall be available for use by students with visual impairments enrolled in the public community colleges, the California State University, and the University of California.

SEC. 29. Section 60316 of the Education Code is repealed.

SEC. 30. Section 60401 of the Education Code is repealed.

SEC. 31. Section 60402 of the Education Code is repealed.

SEC. 32. Section 60404 of the Education Code is repealed.

SEC. 33. Section 60412 of the Education Code is repealed.

SEC. 34. Section 60413 of the Education Code is repealed.

SEC. 35. Section 60414 of the Education Code is repealed.

SEC. 36. Article 3 (commencing with Section 60420) of Chapter 3 of Part 33 of the Education Code is repealed.

SEC. 37. Section 60510 of the Education Code is amended to read:

60510. The state board, the governing board of any school district that employs a superintendent of schools, and other school districts with the approval of the county superintendent of schools,

may dispose of surplus or undistributed obsolete instructional materials in their possession that are usable for educational purposes in any of the following ways:

(a) By donation to any governing board, county free library or other state institution.

(b) By donation to any public agency or institution of any territory or possession of the United States, or the government of any country that formerly was a territory or possession of the United States.

(c) By donation to any nonprofit charitable organization.

(d) By donation to children or adults in the State of California, or foreign countries for the purpose of increasing the general literacy of the people.

(e) By sale to any organization that agrees to use the materials solely for educational purposes.

SEC. 38. Section 60512 of the Education Code is repealed.

SEC. 39. Section 60513 of the Education Code is repealed.

SEC. 40. Section 60520 of the Education Code is amended to read:

60520. Any money received by the state board from the sale of obsolete instructional materials pursuant to this chapter shall be deposited in the State Instructional Materials Fund.

SEC. 41. Section 60521 of the Education Code is amended to read:

60521. Any money received by the governing board of a school district from the sale of instructional materials pursuant to this code shall be used to purchase instructional materials.

SEC. 42. Section 62000.4 of the Education Code is amended to read:

62000.4. The Instructional Materials Program shall sunset on June 30, 2001.

SEC. 43. Section 13.5 of this bill incorporates amendments to Section 60200 of the Education Code proposed by both this bill and AB 1504. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 60200 of the Education Code, and (3) this bill is enacted after AB 1504, in which case Section 13 of this bill shall not become operative.

SEC. 44. Section 20.5 of this bill incorporates amendments to Section 60242 of the Education Code proposed by both this bill and AB 1039. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 60242 of the Education Code, and (3) this bill is enacted after AB 1039, in which case Section 20 of this bill shall not become operative.

BILL NUMBER: AB 1039 CHAPTERED 10/04/95

CHAPTER 534

FILED WITH SECRETARY OF STATE OCTOBER 4, 1995

APPROVED BY GOVERNOR OCTOBER 4, 1995

PASSED THE ASSEMBLY SEPTEMBER 6, 1995

PASSED THE SENATE SEPTEMBER 1, 1995

AMENDED IN SENATE JULY 21, 1995

AMENDED IN ASSEMBLY APRIL 18, 1995

INTRODUCED BY Assembly Member Bustamante

FEBRUARY 23, 1995

An act to amend Section 60242 of the Education Code, relating to instructional materials, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1039, Bustamante. Instructional materials: rebinding textbooks.

Under existing law, the State Instructional Materials Fund, a continuously appropriated fund, may be used for, among other purposes, the acquisition of instructional materials and in-service training in the use of instructional materials.

This bill would additionally authorize these funds to be used for rebinding textbooks, as specified. By expressly authorizing the use of this continuously appropriated fund for a new purpose, this bill would constitute an appropriation.

This bill would incorporate additional changes in Section 60242 of the Education Code proposed by SB 152, to be operative only if SB 152 and this bill are both chaptered and become effective on January 1, 1996, and this bill is chaptered last.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60242 of the Education Code is amended to read:

60242. After the application of Section 60241, the state board shall encumber the balance of the fund for the purpose of:

(a) Establishing credits and cash allotments as follows:

(1) The state board shall establish a credit for each district governing board with which instructional materials adopted by the state board may be ordered by districts that choose to order materials through the state.

(2) The state board shall establish a cash allotment in an amount determined by the state board for use in purchasing instructional materials from any source, or for the purchase of tests or in-service training pursuant to Sections 60224 and 60225.

The state board shall specify the percentage of a district governing board's credit authorized to be used for each of the above purposes.

(b) Establishing an allowance for each district governing board, which the district governing board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests or in-service training pursuant to Sections 60224 and 60225.

(4) To rebind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

The state board shall specify the percentage of a district governing board's allowance authorized to be used for each of the above purposes.

Allowances established for school districts pursuant to this section shall be apportioned to districts as part of the special purpose apportionment in accordance with paragraph (5) of subdivision (a) of Section 14041.

The Superintendent of Public Instruction may establish a date each fiscal year by which districts shall notify the State Department of Education if they wish to operate under a different subdivision during the next fiscal year.

(c) Obtaining instructional materials in subsequent fiscal years.

SEC. 2. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each district board, which may include consideration of increases or decreases in average daily attendance, that the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training.

The state board shall specify the percentage of a district board's allowance authorized to be used for each of the above purposes.

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

SEC. 3. Section 2 of this bill incorporates amendments to Section 60242 of the Education Code proposed by both this bill and SB 152. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 60242 of the Education Code, and (3) this bill is enacted after SB 152, in which case Section 1 of this bill shall not become operative.

BILL NUMBER: AB 1504 CHAPTERED 10/11/95

CHAPTER 764
 FILED WITH SECRETARY OF STATE OCTOBER 11, 1995
 APPROVED BY GOVERNOR OCTOBER 11, 1995
 PASSED THE ASSEMBLY AUGUST 31, 1995
 PASSED THE SENATE JULY 30, 1995
 AMENDED IN SENATE JULY 13, 1995
 AMENDED IN SENATE JUNE 29, 1995
 AMENDED IN SENATE JUNE 28, 1995

INTRODUCED BY Assembly Members Burton, Alpert, and Conroy

FEBRUARY 24, 1995

An act to amend Section 60200 of the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1504, Burton. Instructional materials: spelling.

Existing law requires the State Board of Education to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for specified categories, including, among other categories, language arts.

This bill would require that the instructional materials for language arts for use in those grades, include, but not necessarily be limited to, spelling. To the extent that this requirement results in school districts being required to purchase instructional materials that otherwise would not be required to be purchased under existing law, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would incorporate additional changes in Section 60200 of the Education Code, proposed by SB 152, to be operative only if SB 152 and this bill are both chaptered and become effective January 1, 1996, and this bill is chaptered last.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional

materials for all applicable grade levels in each of the following categories:

- (1) Language arts, including, but not limited to, spelling.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.
- (7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt any of the following for basic instructional materials in each subject in each grade:

- (1) Instructional materials.
- (2) Instructional materials systems.
- (3) Instructional materials sets.
- (4) A combination of instructional materials, instructional materials systems, and instructional materials sets, as the state board may select.

(c) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(d) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use, and ensure that, in its judgment, all of the following conditions are met:

(1) The submitted basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) The submitted basic instructional materials comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) The submitted instructional materials are factually accurate and incorporate principals of instruction reflective of current and confirmed research.

(4) The submitted instructional materials adequately cover the subject area for the grade level or levels for which they are submitted.

(5) The submitted instructional materials meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months

prior to the date that the materials are to be approved for adoption.

(e) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (d). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(f) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (d), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(g) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(h) If the district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(i) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(j) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to subdivision (b) of Section 60222 and Section 60223. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, for a period beginning with the date of the adoption of the item and ending on a date established by the state board as being not less than 30 months after the state board's approval of the curriculum framework that will succeed the framework on which the current adoption is based. All previous adoptions shall be integrated on lists and made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(k) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade

designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(l) A composite listing in the format of an order form may be used to meet the requirements of this section.

(m) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(n) Upon making an adoption, the state board shall establish the date upon which those adopted materials shall initially be available for use by schools.

SEC. 2. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts, including, but not limited to, spelling.
- (2) Mathematics.
- (3) Reading.
- (4) Science.
- (5) Social science.
- (6) Bilingual or bicultural subjects.

(7) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to subdivision (a) at least every two years so that there will be submissions in each subject consistent with the framework cycles established by the state board. The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area ~~202~~ the grade level or

levels for which they are submitted.

(5) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than eight years from the date of adoption of the items or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no

longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

SEC. 3. Section 2 of this bill incorporates amendments to Section 60200 of the Education Code proposed by both this bill and SB 152. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1996, (2) each bill amends Section 60200 of the Education Code, and (3) this bill is enacted after SB 152, in which case Section 1 of this bill shall not become operative.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

BILL NUMBER: AB 3470 CHAPTERED 07/05/96

CHAPTER 124

FILED WITH SECRETARY OF STATE JULY 5, 1996

APPROVED BY GOVERNOR JULY 3, 1996

PASSED THE SENATE JUNE 20, 1996

PASSED THE ASSEMBLY APRIL 18, 1996

INTRODUCED BY Committee on Judiciary (Assembly Members Morrow (Chairman), Alby, Battin, Baugh, Bowen, Goldsmith, House, Kaloogian, Knight, Knowles, Machado, and Mazzoni)

MARCH 4, 1996

An act to amend Sections 650.4, 2725, 12240, 23057, 23104.1, and 25662 of the Business and Professions Code, to amend Sections 2079.12, 2945.11, 2983.2, 3319, 3320, and 3321 of the Civil Code, to amend Section 1991.1 of, to amend and renumber Sections 107.65 and 708.750 of, and to repeal the heading of Part 3.5 (commencing with former Section 1823) of, the Code of Civil Procedure, to amend Section 9501 of the Commercial Code, to amend Sections 15320, 19336, 48664, 58552, 58751, 60242, and 84751 of, and to repeal the heading of Chapter 15 (commencing with Section 11400) of Part 7 of, the Education Code, to amend Sections 8051.2 and 8280.5 of the Fish and Game Code, to amend Section 24014 of the Food and Agricultural Code, to amend Sections 6518, 8546, 8879.13, 8880.68, 11354.1, 11504, 12805, 15399.22, 19853.1, 19854, 29530.5, 50022.5, 53069.8, 69911, and 73665.5 of, to amend and renumber Sections 6599, 6599.1, and 12173 of, and to amend and renumber the heading of Title 7.91 (commencing with Section 67910), Title 7.92 (commencing with Section 67920), and Title 7.93 (commencing with Section 67930) of, the Government Code, to amend Sections 1597.15, 1771, 1779, 1779.4, 11837.9, 18062.8, 18080.9, 25158.4, 25198, 25201.1, 25218.11, 41503.6, 44017, 44085, and 44220 of, to amend and renumber Sections 1250.9, 18965, 18966, 18967, 18968, 18969, 18970, 18971, 27622.5, and 27623 of, to add the heading of Chapter 7 (commencing with Section 18949.25) to Part 2.5 of Division 13 of, and to repeal the heading of Chapter 7 (commencing with Section 18965) of Part 2.5 of Division 13 of, the Health and Safety Code, to amend Sections 10082, 10083, 10089.40, 10089.7, 10603, 10604, and 12376 of, and to amend and renumber Section 10089.7 of, the Insurance Code, to amend Section 626.10 of, and to amend and renumber Section 11113 of, the Penal Code, to amend Sections 4551.3 and 30514 of, and to repeal Section 21083.8 of, the Public Resources Code, to amend Section 2889.5 of, and to amend and renumber Sections 739.3 and 5387.5 of, the Public Utilities Code, to amend Section 75.60, 214, 2503.2, 2611.6, 3698.5, 3698.7, 6202.5, 6359, 17233, 17266, 23051.5, 23622, 24356.4, 24385, 60706.1, and 60707.1 of, and to amend the heading of Chapter 2.92 (commencing with Section 7286.50) of Part 1.7 of Division 2 of, the Revenue and Taxation Code, to amend Sections 10218.5 and 15037.1 of the Unemployment Insurance Code, to amend Sections 415, 672, 1656.2, 1675, 1810, 4655, 5011.5, 5070, 8200, 9252, 11216.2, 13378, 17302, 21114.5, 21663, 22507.9, 22512, 22851.1, 23197, 23203, 25110, 25802, 27207, 32050, 33002, 35782, 35790, 36505, 38010, 38080, 40000.7, 40513, 40802, 40802.5, 40803, 40901, 42003, and 42230 of the Vehicle Code, to amend Sections 10610.2, 10635, 10913, 13274, 35281, and 35282 of, and to amend and renumber Section 21267 of, the Water Code, to amend and renumber the heading of Article 4.05 (commencing with Section 14139.05) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, and to amend Section 205 of Chapter 52 of the

Statutes of 1941 and Section 3 of Chapter 981 of the Statutes of 1995, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

AB 3470, Committee on Judiciary. Maintenance of the Codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1996, and would not make any substantive change in the law.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 650.4 of the Business and Professions Code is amended to read:

650.4. (a) Notwithstanding Section 650, subdivision (o) of Section 4982, or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 13 (commencing with Section 4980) or any other person, to participate in or operate a group advertising and referral service for marriage, family, and child counselors if all of the following conditions are met:

- (1) The patient referrals by the service are the result of patient-initiated responses to service advertising.
- (2) The service advertises, if at all, in conformity with Section 651 and subdivision (p) of Section 4982.
- (3) The service does not employ a solicitor to solicit prospective patients or clients.
- (4) The service does not impose a fee on the member marriage, family, and child counselors that is dependent upon the number of referrals or amount of professional fees paid by the patient to the marriage, family, and child counselor.
- (5) Participating marriage, family, and child counselors charge no more than their usual and customary fees to any patient referred.
- (6) The service registers with the Board of Behavioral Science Examiners, providing its name, street address, and telephone number.

(7) The service files with the Board of Behavioral Science Examiners a copy of the standard form contract that regulates its relationship with member marriage, family, and child counselors, which contract shall be confidential and not open to public inspection.

(8) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more marriage, family, and child counselors, the service discloses that fact in all public communications, including, but not limited to, communications by means of television, radio, motion picture, newspaper, book, list, or directory of healing arts practitioners.

(9) (A) When member marriage, family, and child counselors pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: "Paid for by participating marriage, family, and child counselors." In print advertisements, the required statement shall

for pupils that directly relate to the identified individual learning objectives and the educational or employment goals.

(3) The educational clinic does not provide opportunities for employment orientation or reentry orientation as required by this chapter.

(4) The educational clinic fails to meet any of the criteria for certification prescribed by subdivision (a).

(f) The ratio of pupils to professional staff members for a certified educational clinic shall not exceed 20 to 1.

SEC. 22. Section 58751 of the Education Code is amended to read:

58751. The following definitions apply for the purposes of this chapter:

(a) "Applicant" means a local education agency that may collaborate with a nonprofit organization, private child care provider, park and recreation agency, or other public agency and that is applying for a grant pursuant to this chapter.

(b) "Local education agency" means a school district, county superintendent of schools, or a consortium of those entities.

(c) "Nonprofit organization" means any private nonprofit organization that provides coordinated educational and human services to schoolage children, qualifies for exempt status under paragraph (3) of subsection (c) of Section 501 of the United States Internal Revenue Code of 1986, and is working or will work in cooperation with a local education agency in operating a program pursuant to this chapter.

(d) "Volunteer" means any person willing and able to donate time, energy, and skills to the tasks and duties necessary to operate an extended schoolday program. Volunteers shall be adults or older pupils, other than those pupils being served by the program.

Notwithstanding any other provision of law, any volunteer staff person or employee who has frequent and routine contact with the participants in an extended schoolday program that is not covered under Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) of Division 2 of the Health and Safety Code, and does not possess a valid state teaching credential, shall submit, on or before the first day of his or her service, two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. The Department of Justice shall return a criminal record summary to the grant recipient. The grant recipient shall use the substantive rules of Section 1596.871 of the Health and Safety Code to guide it in determining the retention of the volunteer or employee. A volunteer shall not be deemed to have frequent and routine contact for this purpose unless the volunteer is given sole charge for the care and supervision of children without staff assistance or supervision.

SEC. 23. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each district board, which may reflect increases or decreases in average daily attendance, that the district board may use for the following purposes:

(1) To purchase instructional materials adopted by the state board.

(2) To purchase instructional materials, including, but not limited to, technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training.

(b) The state board shall specify the percentage of a district board's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

SEC. 24. Section 84751 of the Education Code is amended to read:
84751. In calculating each community college district's revenue level for each fiscal year pursuant to subdivision (a) of Section 84750, the chancellor shall subtract, from the total revenues owed, all of the following:

(a) The local property tax revenue specified by law for general operating support, exclusive of bond interest and redemption.

(b) Ninety-eight percent of the fee revenues collected pursuant to Sections 76300 and 76330.

(c) Motor vehicle license fees received pursuant to Section 11003.4 of the Revenue and Taxation Code.

(d) Timber yield tax revenue received pursuant to Section 38905 of the Revenue and Taxation Code.

(e) Any amounts received pursuant to Section 33492.15, 33607.5, or 33607.7 of the Health and Safety Code, and Section 33676 of the Health and Safety Code as amended by Section 2 of Chapter 1368 of the Statutes of 1990, that are considered to be from property tax revenues pursuant to those sections for the purposes of community college revenue levels, except those amounts that are allocated exclusively for educational facilities.

(f) Ninety-eight percent of the revenues received through collection of a student fee from a student enrolled in the district who registered or enrolled between July 1, 1995, and August 3, 1995.

SEC. 25. Section 8051.2 of the Fish and Game Code is amended to read:

8051.2. (a) The landing tax collected pursuant to Section 8051.1 shall be deposited in the Fish and Game Preservation Fund and 60 percent of the revenue deposited shall be used solely for the Sea Urchin Resources Enhancement Program in support of the recommendations of the committee established by subdivision (c) and other sea urchin resource enhancement measures as provided in the annual Budget Act. The remaining 40 percent of the revenue shall be used solely for research and management activities to monitor and maintain the sea urchin resource. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of Sea Urchin Resources Enhancement Program funds and research and management funds are met.

(b) The revenues received pursuant to former subdivision (b) of Section 8051.1, as that section read on December 31, 1995, shall first be used for the grant and departmental overhead charges, as provided in Section 1068, and any remaining revenues shall be used for sea urchin enhancement as described in subdivision (a).

(c) An amount, not to exceed 15 percent of the allocations made pursuant to subdivision (a) from the total annual revenues deposited in the fund pursuant to subdivision (a), may be used by the department for the administration of the Sea Urchin Resources Enhancement Program, including any reasonable and necessary expenses.

(d) The Commercial Sea Urchin Advisory Committee in existence on October 14, 1991, which consists of 12 members, shall be continued in existence and renamed the Director's Sea Urchin Advisory Committee. One member shall be selected by the director from the personnel of the department. Ten members, who shall **208** at the pleasure of the

does not exceed 7.5 percent of the total amount of the county's statutorily required assessed value, as determined pursuant to the board's survey described in subparagraph (A).

SEC. 94. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity

BILL NUMBER: AB 1263 CHAPTERED 08/08/97

CHAPTER 251
FILED WITH SECRETARY OF STATE AUGUST 8, 1997
APPROVED BY GOVERNOR AUGUST 8, 1997
PASSED THE ASSEMBLY JULY 24, 1997
PASSED THE SENATE JULY 18, 1997
AMENDED IN SENATE JUNE 24, 1997
AMENDED IN SENATE JUNE 12, 1997

INTRODUCED BY Assembly Member Poochigian

FEBRUARY 28, 1997

An act to amend Sections 60200 and 60201 of the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1263, Poochigian. Instructional materials: adoption.

Existing law requires the State Board of Education (state board) to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for use by governing boards of school districts. The state board is also required to adopt procedures for the submission of basic instructional materials, including a procedure for the submittal of instructional materials for adoption in specified subject areas at least every 2 years. Existing law requires items placed on a listing of instructional materials to remain on the list from the date of the adoption of the item until a date established by the state board, but requires that date to be the earlier of not more than 8 years from the date of adoption of the item or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework.

This bill would change that procedure by providing that instructional materials may be submitted for adoption by the state board in specified subject areas not less than 2 times every 6 years and in other specified subject areas not less than 2 times every 8 years. The bill would require the state board to ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the 6 and 8 year submission cycles and that the criteria for evaluating instructional materials developed by the curriculum development and supplemental materials commission are consistent with criteria used by the state board in reviewing and adopting or recommending for adoption basic instructional materials.

This bill would provide that the date established by the state board for continuing items on the list of instructional materials shall be not more than the earlier of 6 years from the date of adoption for specified subject areas and 8 years from the date of adoption for other specified subject areas or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. The bill would authorize the state board to delete from the lists any instructional material that did not receive an order from any district during the previous 2 years.

This bill would make conforming changes to existing provisions of law.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60200 of the Education Code is amended to read:

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six and eight year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Meet other criteria as are established by the state board as

being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state board adopts instructional materials based upon a new or revised

curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

SEC. 2. Section 60201 of the Education Code is amended to read:

60201. In approving and maintaining lists of adopted instructional materials, the state board shall, pursuant to subdivision (e) of Section 60200, do any one or more of the following, when applicable:

(a) Retain any instructional materials from a previous list and biennially make any adjustment in prices based on information provided pursuant to Section 60223.

(b) Delete from the lists any instructional material which it determines is obsolete pursuant to Section 60500, or which received no order from any district board during the previous two years.

(c) Add instructional materials not previously submitted for adoption, or materials previously submitted which have been revised to comply with any recommendations of the state board.

BILL NUMBER: AB 116 CHAPTERED 09/01/99

CHAPTER 276
 FILED WITH SECRETARY OF STATE SEPTEMBER 1, 1999
 APPROVED BY GOVERNOR AUGUST 31, 1999
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 PASSED THE SENATE AUGUST 19, 1999
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 AMENDED IN SENATE JUNE 23, 1999
 AMENDED IN SENATE JUNE 9, 1999
 AMENDED IN ASSEMBLY APRIL 15, 1999
 AMENDED IN ASSEMBLY MARCH 18, 1999
 AMENDED IN ASSEMBLY MARCH 9, 1999

INTRODUCED BY Assembly Member Mazzoni
 (Coauthors: Assembly Members Alquist, Aroner, Thomson, and
 Washington)

JANUARY 5, 1999

An act to amend Sections 60045 and 60200 of, and to add Sections 60048 and 60200.2 to, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 116, Mazzoni. Basic instructional materials: commercial brand name, product, corporate or company logo.

(1) Existing law requires all instructional materials adopted by any governing board for use in schools to be accurate, objective, and current, and suited to the needs and comprehension of pupils.

This bill would also require instructional materials to use proper grammar and spelling, except as specified.

(2) Under existing law, the State Board of Education is required to adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for school district governing boards. Existing law requires the state board, in reviewing and adopting or recommending for adoption basic instructional materials, to ensure that, in its judgment, the basic instructional materials are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework, comply with certain statutory requirements and the state board's guidelines for social content, are factually accurate and incorporate principles of instruction reflective of current and confirmed research, adequately cover the subject area for the grade level or levels for which they are submitted, and meet certain other criteria.

This bill would add to these criteria, a determination by the state board that these basic instructional materials, do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. This bill would further provide that basic instructional materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board makes a specific finding, including among others, that the use of the commercial brand name, product, or corporate or company logo is appropriate. The bill would require the State Board of Education to give publishers the opportunity to modify instructional materials

that do not comply with these provisions. The bill would provide that nothing in those provisions shall be construed to prohibit the publishers of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publishers, to protect its copyright, or to identify 3rd party sources of content. The bill would also permit the State Board of Education to adopt regulations that provide for other exceptions to those provisions. The bill would require the Superintendent of Public Instruction to develop, and the State Board of Education to adopt, guidelines to implement those provisions.

This bill would also prohibit the governing board of a school district from adopting basic instructional materials, and other instructional materials required to be legally and socially compliant, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo that is inconsistent with guidelines or frameworks adopted by the state board and would provide that the governing board may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60045 of the Education Code is amended to read:

60045. (a) All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(b) With the exception of literature and tradebooks, all instructional materials adopted by any governing board for use in schools shall use proper grammar and spelling. The state board may adopt regulations that provide for other allowable exceptions to this subdivision for educational purposes, as determined by the state board.

SEC. 2. Section 60048 is added to the Education Code, to read:

60048. (a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.

(b) The governing board of a school district may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

(c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate

name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.

(e) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

SEC. 3. Section 60200 of the Education Code is amended to read: 60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

(1) Language arts, including, but not limited to, spelling and reading.

(2) Mathematics.

(3) Science.

(4) Social science.

(5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil

populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) Nothing in this section shall be construed to prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

SEC. 4. Section 60200.2 is added to the Education Code, to read:

(a) In addition to the findings authorized under subparagraphs (A) and (B) of paragraph (5) of subdivision (c) of Section 60200, if the state board finds that the use of a commercial brand name, product, or corporate or company logo in an instructional material is authorized under a contract entered into under paragraph (3) of subdivision (a) of Section 35182.5 as added by Assembly Bill 117 of

the 1999-2000 Regular Session, the state board may allow the use of that instructional material.

(b) This section shall become operative only if Section 35182.5 as proposed by Assembly Bill 117 of the 1999-2000 Regular Session is enacted and takes effect.

SEC. 5. Sections 1 to 3, inclusive, of this act shall only apply to notices of "Invitation to Submit Basic Instructional Materials for Adoption in California" issued after January 1, 2000, and for other instructional materials submitted after January 1, 2000, to the State Board of Education for a determination of compliance with the requirements of Article 3 (commencing with Section 60040) of Chapter 1 of Part 33 of the Education Code.

BILL NUMBER: AB 1600 CHAPTERED 10/10/99

CHAPTER 646
 FILED WITH SECRETARY OF STATE OCTOBER 10, 1999
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 AMENDED IN SENATE SEPTEMBER 3, 1999
 AMENDED IN SENATE AUGUST 16, 1999
 AMENDED IN SENATE JUNE 28, 1999
 AMENDED IN SENATE JUNE 15, 1999

INTRODUCED BY Committee on Education (Mazzoni (Chair), Campbell (Vice Chair), Baldwin, Calderon, Correa, Cunneen, Davis, Honda, Nakano, Robert Pacheco, Scott, Strom-Martin, Washington, and Zettel)
 (Coauthors: Assembly Members Alquist and Leach)

FEBRUARY 26, 1999

An act to amend Sections 1317, 8208, 8359, 10554, 15120, 17150, 17578, 18181, 18182, 32228.1, 32228.2, 35254, 41023, 41852, 42238, 44498, 44503, 44504, 44505, 44506, 44507, 44579.4, 44695, 44695.7, 45023.4, 47632, 47634, 47636, 47642, 47646, 47660, 48660, 48661, 48900.3, 48916.1, 52244, 52853, 56045, and 60119 of, to add Sections 8261.5, 18185, 32228.5, 41344.2, 47613.1, 47634.3, and 47652 to, to add Part 23.5 (commencing with Section 39800) to, to add and repeal Section 41344.1 of, to repeal Sections 41380, 42101, and 60511 of, to repeal Article 3 (commencing with Section 38150) of, and Article 4 (commencing with Section 38155) of, Chapter 4 of, and to repeal Chapter 2 (commencing with Section 38020) of, Part 23 of, to repeal Chapter 1 (commencing with Section 58000) of Part 31 of, the Education Code, to amend Section 628.2 of the Penal Code, to amend Sections 97.2 and 97.3 of the Revenue and Taxation Code, to amend Section 2 of Chapter 3 of the Statutes of the 1999-2000 First Extraordinary Session, to amend Items 6110-122-0001, 6110-186-0001, 6110-495, and 6110-498 of Section 2.00 of Chapter 50 of, and to amend Section 65 of Chapter 78 and Section 6 of Chapter 152 of, the Statutes of 1999, relating to education, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1600, Committee on Education. Education.

(1) Existing law provides for the adoption of the merit system for classified county school employees in certain circumstances. A county office of education adopting the merit system is required to cause a personnel commission to be appointed in a prescribed manner.

This bill would authorize any personnel commission in a county of a third class to, upon meeting certain requirements, adopt a regulation providing for the appointment of one or more alternate members of the personnel commission.

(2) Existing law defines various terms for purposes of the Child Care and Development Services Act, including the term "cost." Under existing law, the term "cost" includes amounts for licensable facilities in the community served by a child care program, including lease payments or depreciation and payments of principal and

interest on loans incurred to acquire, rehabilitate, or construct licensable facilities.

This bill would provide that the term "cost" also includes down payments for licensable facilities in the community served by a child care program.

(3) Existing federal law requires the State Department of Education to report information to the federal government regarding the expenditure of funding pursuant to the federal Child Care and Development Fund, including the social security number of the head of household of family units that receive services funded thereby.

This bill would authorize the Superintendent of Public Instruction to require the collection and submission of social security numbers of heads of households, and other information as required, from public and private agencies contracting with the State Department of Education, including local educational agencies.

(4) Existing law requires county welfare departments and alternative payment programs to provide certain data regarding child care usage and demand by recipients of the CalWORKs Program to the State Department of Education or the State Department of Social Services and the local planning council, on a quarterly basis.

This bill would instead require county welfare departments and alternative payment programs to provide the data on a monthly basis, thereby imposing a state-mandated local program.

(5) Under existing law there is a Educational Telecommunication Fund, which becomes inoperative on January 1, 2000.

This bill would continue the fund until January 1, 2001.

(6) Existing law requires notice of an election for the sale of bonds of school districts and community college districts to include the maximum number of years, not to exceed 25, for which the bonds may run.

This bill would instead require notice of an election for the sale of bonds of school districts and community college districts to include the maximum number of years, not to exceed 40, for which the bonds may run.

(7) Existing law, the California Public School Library Act of 1998, provides funding through the continuously appropriated California Public School Library Protection Fund to school districts for library resources.

This bill would provide that a county office of education may receive funding commencing in the 1999-2000 fiscal year under the act, thereby making an appropriation.

(9) Under existing law, upon approval by the governing board of the school district to proceed with the issuance of certificates for participation revenue bonds or to enter into any agreement for certain financing school construction pursuant, the school district is required to notify the county superintendent of the school district to provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public.

This bill would provide that prior to the delivery of the notice, neither the county nor any of its officers have any responsibility for the administration of the schools indebtedness and that failure to comply with other requirements does not affect the validity of the indebtedness.

(10) Under the California Public School Library Act of 1998, as a condition of receiving funding under for the establishment and maintenance of school libraries, school districts are required to develop a districtwide school library plan and the local school district governing board is required to certify approval of the plan.

In developing the plan, school districts are encouraged to include school library media teachers.

This bill would apply these provisions to county offices of education.

(11) Existing law establishes the School Safety and Violence Prevention Act, whereby funds are allocated to school districts on the basis of enrollment.

This bill would provide that the funds be allocated on the basis of prior year enrollment as reported by the California Basic Educational Data System. The bill would provide that the number of schoolsites in each district that receive funding under the act would be equal to the number of county-district-school codes for that school district. The bill would also require the Superintendent of Public Instruction to report annually regarding the use of funds under the act.

(12) Existing law authorizes the governing board of a school district to make photographic or microfilm copies of any records of the district.

This bill would authorize the governing board of a school district also to make electronic copies of any records of the district.

(13) Existing law, which becomes operative January 1, 2000, requires the governing board of each district maintaining any or all of grades 7 to 12, inclusive, to offer, and authorizes a charter school that maintains any or all of those grades to offer, summer school instructional programs for pupils enrolled in those grades who do not demonstrate sufficient progress toward passing the high school exit examination.

Existing law requires the governing board of each district maintaining any or all of grades 2 to 9, inclusive, to offer, and authorizes a charter school maintaining any or all of those grades to offer, programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in those grades who have been retained. Existing law also authorizes each charter school and the governing board of each district maintaining any or all of grades 2 to 6, inclusive, to offer programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in those grades with low mathematics, reading, or written expression scores to allow those pupils to achieve proficiency in standards adopted by the State Board of Education.

Existing law authorizes the governing board of any school district that offers summer school instructional programs, and a charter school, to offer summer school programs for instruction in mathematics, science, or other core academic areas.

Under existing law, these 3 types of educational services are required to be offered during the summer, after school, on Saturdays, or during intersession, or in a combination of summer school, after school, Saturday, or intersession instruction.

This bill would also permit the educational services to be offered before school.

(14) Existing law provides for the provision of transportation services by school districts and contains provisions that govern the minimum training required for drivers to obtain or renew a certificate to operate a school pupil activity bus, transit bus, schoolbus, and farm labor vehicles.

This bill would repeal and reenact these provisions and would make technical, nonsubstantive changes in those provisions. This bill would provide that one of these provisions would not become operative if AB 15 of the 1999-2000 Regular Session is chaptered and adds a particular section to the Education Code.

(15) Under existing law, a local education agency may be required

to repay an apportionment significant audit exception resulting from an audit or review, which may not be waived by the State Board of Education.

This bill would authorize the State Board of Education to consider and act upon requests to retroactively waive any provision of the Education Code or any regulation adopted by the State Board of Education that is the basis of an apportionment significant audit if the request was received in writing by the State Department of Education prior to July 7, 1999.

(16) Under existing law, for the 1998-99 school year, a school district may request the State Board of Education to provide a waiver of instructional time requirements under specified conditions.

This bill would instead provide that a school district may make the request on or before October 31, 1999, and the State Board of Education may provide, a waiver of instructional time requirements if the conditions are met.

(17) Existing law authorizes the Covina Valley Unified School District to conduct an experimental kindergarten program.

This bill would delete this provision.

(18) Existing law requires the Superintendent of Public Instruction to annually compute a general-purpose entitlement, as defined, and a categorical block grant amount, as defined, for each charter school.

This bill would make technical clarifying changes to these funding provisions. The bill would require the superintendent to compute average daily attendance for these purposes utilizing a statutory formula, would permit a charter school in its first year of operation to be eligible for an advanced apportionment based on an estimate of average daily attendance, and would revise the method for calculating a sponsoring school district's average daily attendance.

(19) Existing law requires the governing board of each school district to approve, on a form prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year.

This bill would delete a duplicative provision requiring the statement to be in the form prescribed by the Superintendent of Public Instruction.

(20) Existing law authorizes the establishment of community day schools for pupils in kindergarten or any of grades 1 to 12, inclusive, who are expelled, probation referred, or referred by a school attendance review board. Existing law prohibits a community day school serving kindergarten or grades 1 to 12, inclusive, from being situated on the same site as an elementary, middle, junior high, comprehensive senior high, opportunity, or continuation school unless it is certified that no satisfactory alternative facilities are available. Certifications regarding the unavailability of these facilities for community day schools serving kindergarten or any of grades 1 to 6, inclusive, may be made by any school district, but certifications regarding the unavailability of these facilities for community day schools that serve any of grades 7 to 12, inclusive, or grades 7 to 9, inclusive, may be made only by districts with 2,500 or fewer units of average daily attendance.

This bill would provide that, if a school district is organized as a district that offers instruction in kindergarten and grades 1 to 8, inclusive, the governing board may establish a community day school program for kindergarten and grades 1 to 8, inclusive, upon a 2/3 vote of the board and would authorize those school districts to make the aforementioned certification without regard to the number of units of average daily attendance. The ~~223~~ would provide that a

charter school may not receive funding as a community day school unless it meets all of the conditions of apportionment.

(21) Under existing law, the California Mentor Teacher Program will become inoperative on July 1, 2001, and will be repealed as of January 1, 2002. Existing law establishes the California Peer Assistance and Review Program for Teachers, which will become fully operational on July 1, 2001, to replace the California Mentor Teacher Program.

Existing law provides that, when a school district notifies the Superintendent of Public Instruction that it plans to implement a program pursuant to the California Peer Assistance and Review Program for Teachers, the California Mentor Teacher Program will no longer apply to that district.

This bill would require the superintendent to continue to apportion funding to the school district pursuant to the California Mentor Teacher Program for the 1999-2000 and 2000-01 fiscal years. The bill would also modify the formula for the amount the Superintendent of Public Instruction is required to apportion to school districts participating in the California Peer Assistance and Review Program for Teachers.

This bill would require that California Mentor Teacher Program funding allocated but unclaimed by individual local education agencies at the end of the 1998-99 and the 1999-2000 fiscal years be offset from program funds advanced for the succeeding fiscal year, provided sufficient funds are available. The bill would provide that mentor teacher support funding that has been claimed, but remains unexpended, may be carried over and used for the purposes of the California Peer Assistance and Review Program for Teachers, thereby making an appropriation.

The bill would also require the Superintendent of Public Instruction to determine a base funding rate for the California Peer Assistance and Review Program for Teachers commencing in the 2001-02 school year.

(22) Existing law requires the State Department of Education to administer a program of staff development grants to reimburse school districts and county offices of education for teachers to take mathematics courses at institutions of higher education in California.

This bill would instead authorize funding for mathematics courses at institutions of higher education, regardless of whether the institutions of higher education are in California.

(22.5) Under existing law, the Superintendent of Public Instruction is required to annually compute a general-purpose entitlement, funded from a combination of state aid and local funds, for each charter school that elects to be funded in this manner.

This bill would provide for certain apportionments in the 1999-2000, 2000-01, and 2001-02 fiscal years to be made to those charter schools that elect not to be funded pursuant to this general-purpose entitlement.

(23) Existing law establishes a pilot grant program, administered by the State Department of Education, for the award of grants to cover the costs of advanced placement examination fees.

This bill would authorize the State Department of Education to enter into a contract with the provider of advanced placement examinations.

(23) Existing law establishes the School-Based Program Coordination Act. Under existing law, schools that participate in school-based coordinated categorical programs are required to develop a school plan.

This bill would require the school plan to include the proposed

(6) The proposed expenditures of funds available to the school through the programs described in Section 52851. For purposes of this subdivision, proposed expenditures of funds available to the school through the programs described in Section 52851 shall include, but not be limited to, salaries and staff benefits for persons providing services for those programs.

(7) The proposed expenditure of funds available to the school through the federal Improving America's Schools Act of 1994 (IASA) (20 U.S.C. Sec. 6301 et seq.) and its amendments. If the school operates a state-approved schoolwide program pursuant to Section 6314 of Title 20 of the United States Code in a manner consistent with the expenditure of funds available to the school pursuant to Section 52851, employees of the schoolwide program may be deemed funded by a single cost objective.

(b) The schoolsite council shall annually review the school plan, establish a new budget, and if necessary, make other modifications in the plan to reflect changing needs and priorities.

SEC. 31.5. Section 56045 of the Education Code, as added by Chapter 78 of the Statutes of 1999, is amended to read:

56045. (a) The Superintendent of Public Instruction shall send a notice to each member of the governing board of a local education agency within 30 days of the superintendent's receipt of notification by the federal government that a local educational agency is not in compliance with the Individual's with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), or when the Superintendent of Public Instruction determines that the local educational agency is not in substantial compliance with any provision of this part. The notice shall provide a description of those services required by the statute with which the local educational agency is not in compliance.

(b) Upon receipt of the notification sent pursuant to subdivision (a), the governing board shall at a regularly scheduled public hearing address the issue of noncompliance.

SEC. 32. Chapter 1 (commencing with Section 58000) of Part 31 of the Education Code is repealed.

SEC. 32.2. Section 60119 of the Education Code is amended to read:

60119. (a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.

(2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

(c) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

(d) The governing board of a school district is eligible to receive funds available for the purposes of this article for the 1994-95 fiscal year to the 1998-99 fiscal year, inclusive, whether or not the governing board complied with the public hearing requirement set forth in paragraph (1) of subdivision (a).

SEC. 35. Section 628.2 of the Penal Code is amended to read:

628.2. (a) On forms prepared and supplied by the State Department of Education, each principal of a school in a school district and each principal or director of a school, program, or camp under the jurisdiction of the county superintendent of schools shall forward a completed report of crimes committed on school or camp grounds at the end of each reporting period to the district superintendent or county superintendent of schools, as the case may be.

(b) The district superintendent, or, as appropriate, the county superintendent of schools, shall compile the school data and submit the aggregated data to the State Department of Education not later than February 1 for the reporting period of July 1 through December 31, and not later than August 1 for the reporting period of January 1 through June 30.

(c) The superintendent of any school district that maintains a police department pursuant to Section 39670 of the Education Code may direct the chief of police or other administrator of that department to prepare the completed report of crimes for one or more schools in the district, to compile the school data for the district, and to submit the aggregated data to the State Department of Education in accordance with this section. If the chief of police or other designated administrator completes the report of crimes, the chief of police or other designated administrator shall provide information to each school principal about the school crime reporting program, the crime descriptions included in the reporting program, the reporting guidelines, and the required documentation identified by the State Department of Education for each crime description.

(d) The State Department of Education shall distribute, upon request, to each school district governing board, each office of the county superintendent of schools, each county probation department, the Attorney General, the Fair Employment and Housing Commission, county human relations commissions, civil rights organizations, and private organizations, a summary of the statewide aggregated data.

share of all moneys allocated pursuant to this subparagraph and subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2 for the 1995-96 fiscal year. Upon the request of the auditor, the Department of Finance shall provide to the auditor all information in the department's possession that is necessary for the auditor to comply with this clause.

(iv) Notwithstanding clause (i) of this subparagraph, for the 1999-2000 fiscal year only, if, after making the allocations pursuant to paragraphs (2) and (3) and subparagraph (A), the auditor determines that there are still additional funds to be allocated, the auditor shall allocate the funds to the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. The amount allocated pursuant to this clause shall not exceed eight million two hundred thirty-nine thousand dollars (\$8,239,000), as appropriated in Item 6110-250-0001 of Section 2.00 of the Budget Act of 1999 (Chapter 50, Statutes of 1999).

(C) For purposes of allocating the Educational Revenue Augmentation Fund for the 1996-97 fiscal year, the auditor shall, after making the allocations for special education programs, if any, required by subparagraph (B), allocate all remaining funds among the county, cities, and special districts in proportion to the amounts of ad valorem property tax revenue otherwise required to be shifted from those local agencies to the county's Educational Revenue Augmentation Fund for the relevant fiscal year. For purposes of ad valorem property tax revenue allocations for the 1997-98 fiscal year and each fiscal year thereafter, no amount of ad valorem property tax revenue allocated to the county, a city, or a special district pursuant to this subparagraph shall be deemed to be an amount of ad valorem property tax revenue allocated to that local agency in the prior fiscal year.

(5) For purposes of allocations made pursuant to Section 96.1 for the 1994-95 fiscal year, the amounts allocated from the Educational Revenue Augmentation Fund pursuant to this subdivision, other than those amounts deposited in the Educational Revenue Augmentation Fund pursuant to any provision of the Health and Safety Code, shall be deemed property tax revenue allocated to the Educational Revenue Augmentation Fund in the prior fiscal year.

SEC. 38. Section 2 of Chapter 3 of the Statutes of the 1999-2000 First Extraordinary Session, is amended to read:

Sec. 2. (a) The sum of one hundred ninety-three million two hundred thousand dollars (\$193,200,000) is hereby appropriated according to the following schedule:

(1) Sixty-three million seven hundred four thousand dollars (\$63,704,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for planning and grants for implementing the Immediate Intervention/Underperforming Schools Program as set forth in Article 3 (commencing with Section 52053) of Chapter 6.1 of Part 28 of the Education Code.

(2) Thirty-two million four hundred forty-six thousand dollars (\$32,446,000) from the Federal Trust Fund to the Superintendent of Public Instruction for allocation to school districts for purposes of providing funding for implementing comprehensive school reform pursuant to Public Law 105-78.

(3) Ninety-six million one hundred fifty thousand dollars (\$96,150,000) from the General Fund to the Superintendent of Public Instruction for allocation to school districts that meet or exceed performance growth targets established by the board pursuant to the

High Achieving/Improving Schools Program as set forth in Article 4 (commencing with Section 52056) of Chapter 6.1 of Part 28 of the Education Code. Funds appropriated pursuant to this paragraph that have not been allocated by June 30, 2000, shall be available for allocation and expenditure for purposes of this paragraph in the 2001-02 fiscal year.

(4) Nine hundred thousand dollars (\$900,000) from the General Fund to the Superintendent of Public Instruction to provide support services related to programs established by the Public Schools Accountability Act of 1999 pursuant to Chapter 6.1 (commencing with Section 52050) of Part 28 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraphs (1) and (3) shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1999-2000 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1999-2000 fiscal year.

SEC. 39. Section 65 of Chapter 78 of the Statutes of 1999 is amended to read:

Sec. 65. The sum of fifteen million four hundred seventy-one thousand dollars (\$15,471,000) is hereby reappropriated from the Proposition 98 Reversion Account to the Superintendent of Public Instruction, in accordance with the following schedule:

(a) Forty thousand dollars (\$40,000) for allocation on a one-time basis to the Alpine Union School District to work in collaboration with the Alpine Community Center to support the Each One Teach One program.

(e) Two thousand five hundred dollars (\$2,500) for allocation on a one-time basis to the Alta-Dutch Flat Union School District to provide afternoon school busing service.

(j) Thirty thousand dollars (\$30,000) for allocation on a one-time basis to the Lafayette School District in Contra Costa County for the purchase of age-appropriate school playground equipment.

(q) Two hundred thousand dollars (\$200,000) for allocation on a one-time basis to the Palmdale Elementary School District to support a joint-use library with the City of Palmdale.

(s) Fifty thousand dollars (\$50,000) for allocation on a one-time basis to the ABC School District for construction of a joint-use recreational facility at Hawaiian Gardens Elementary School.

(t) Fifty-seven thousand dollars (\$57,000) for allocation on a one-time basis to the Central Union School District to provide a covered outdoor structure for the Stratford School.

(u) Eighty-five thousand dollars (\$85,000) for allocation on a one-time basis to the Sunol Glen Unified School District for a septic system.

(v) One hundred thousand dollars (\$100,000) for allocation on a one-time basis to the Long Beach Unified School District for construction of a swimming facility in the City of Avalon on Catalina Island.

(w) One hundred twenty thousand dollars (\$120,000) for allocation on a one-time basis to the Anaheim Unified School District for construction of a lunch shelter at Henry Elementary School.

(x) One hundred twenty thousand dollars (\$120,000) for allocation on a one-time basis to the Anaheim Unified School District for construction of a lunch shelter at Lincoln Elementary School.

(y) Six hundred thousand dollars (\$600,000) for allocation on a

one-time basis to Lawndale Elementary School District to renovate the William Green Park, school park, and playground.

(z) Seven hundred thousand dollars (\$700,000) for allocation on a one-time basis to the County Office Fiscal Crisis and Management Assistance Team (FCMAT) for distribution to the Compton Unified School District for the purposes of assisting with the implementation of the school district's recovery plan.

(aa) One million five hundred thousand dollars (\$1,500,000) for allocation on a one-time basis to school districts and county offices of education that operate programs to subsidize the costs for low-income children to participate in residential outdoor science programs, pursuant to legislation enacted in the 1999-2000 Regular Session that becomes operative on or before January 1, 2000.

(bb) Two million dollars (\$2,000,000) for allocation on a one-time basis to the Superintendent of Public Instruction to provide matching grants to school districts for the purpose of improving or replacing schoolsite playground equipment to meet state-mandated playground safety standards, pursuant to legislation enacted in the 1999-2000 Regular Session that becomes operative on or before January 1, 2000.

(ee) Two million dollars (\$2,000,000) for allocation on a one-time basis to the Grossmont Union High School District for the Valhalla High School Library.

(ff) Two hundred fifty thousand dollars (\$250,000) for allocation on a one-time basis to the Los Angeles County Office of Education and the Long Beach Unified School District for the Los Angeles High School for the Arts and the California Academy of Math and Science.

(gg) Twenty-five thousand dollars (\$25,000) for allocation on a one-time basis to the Fairfield-Suisun Unified School District on a one-time basis for the Youth Diversion Program at Crystal Middle School.

(ii) Seven hundred fifty thousand dollars (\$750,000) for allocation on a one-time basis to the San Luis Coastal Unified School District for construction of a swimming pool at San Luis Obispo High School.

(kk) One million dollars (\$1,000,000) for allocation on a one-time basis equally among the following school districts for the Home Instruction for Preschool Youngsters program:

- (1) Long Beach Unified School District.
- (2) Moreno Valley Unified School District.
- (3) San Diego Unified School District.
- (4) Contra Costa County Office of Education.
- (5) San Francisco Unified School District.

(ll) One hundred fifty thousand dollars (\$150,000) for allocation on a one-time basis to the Baldwin Park Unified School District for science laboratory equipment.

(nn) One hundred eighty-two thousand five hundred dollars (\$182,500) for allocation in the specified amounts on a one-time basis to the following districts for snow removal:

- (1) Eighty thousand dollars (\$80,000) to the Tahoe-Truckee Unified School District.
- (2) Four thousand five hundred dollars (\$4,500) to the Alpine County Unified School District.
- (3) Two thousand dollars (\$2,000) to the Vallecito Union Elementary School District.
- (4) Five thousand dollars (\$5,000) to the Susanville School District.
- (5) Forty thousand dollars (\$40,000) to the Mammoth Unified School District.
- (6) One thousand dollars (\$1,000) to the Sierra-Plumas Joint

Unified School District.

(7) Fifty thousand dollars (\$50,000) to the Lake Tahoe Unified School District.

(pp) Seven hundred fifty thousand dollars (\$750,000) for allocation on a one-time basis to the County Office Fiscal Crisis and Management Assistance Team (FCMAT) for an audit of the Oakland Unified School District.

(rr) Five hundred thousand dollars (\$500,000) for allocation on a one-time basis to the Mount Diablo Unified School District for a multipurpose facility for the Diablo View Parent Club.

(tt) Five hundred thousand dollars (\$500,000) for allocation on a one-time basis to the Sweetwater Union High School District for a joint-use library project between the Sweetwater Union High School District and the South Bay Union Elementary School District.

(uu) Two hundred seventy-six thousand six hundred dollars (\$276,600) for allocation on a one-time basis to the Sanger Unified School District for a swimming pool.

SEC. 40. Item 6110-122-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999 is amended to read:

6110-122-0001--For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.40.090--Specialized Secondary Programs, pursuant to Chapter 6 (commencing with Section 58800) of Part 31 of the Education Code \$4,462,000

Provisions:

1. Of the funds appropriated in this item, \$1,500,000 shall be allocated to Specialized Secondary Programs established pursuant to Chapter 6 (commencing with Section 58800) of Part 31 of the Education Code prior to the 1991-92 fiscal year that operate in conjunction with the California State University.
2. Of the funds appropriated in this item, \$64,000 is for the purpose of providing an adjustment for increase in average daily attendance at a rate of 1.47 percent and \$62,000 is for the purpose of providing a cost-of-living adjustment at a rate of 1.41 percent.

SEC. 41. Item 6110-186-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999 is amended to read:

6110-186-0001--For local assistance, Department of Education (Proposition 98), for transfer by the Controller to the Instructional Materials Fund, Program 20.20.020.001--Instructional Materials, Kindergarten and Grades 1-8 125,946,000

Provisions:

2. Of the amount appropriated by this item,

\$1,799,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.47 percent and \$1,751,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 1.41 percent for instructional materials for kindergarten and grades 1 to 8, inclusive.

SEC. 42. Item 6110-495 of Section 2.06 of Chapter 50 of the Statutes of 1999 is amended to read:

6110-495--Reversion, Department of Education, Proposition 98. The following amounts shall revert to the Proposition 98 Reversion Account:

1. \$43,404,000 from Item 6110-295-0001, Schedule 19, of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998), Mandates.
2. \$50,000,000 from Section 39 of Chapter 204 of the Statutes of 1996.
3. \$15,000,000 from Item 6110-212-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998), High-Risk Youth Education and Public Safety Program.
4. \$10,000,000 from Item 6110-112-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998).
5. \$2,000,000 from the amount appropriated for the Pilot Program Single Gender Academies (Ch. 3.1 (commencing with Sec. 58520), Pt. 31, Ed. C.) pursuant to Section 27 of Chapter 204 of the Statutes of 1996.
6. \$5,000,000 from the amount appropriated for the Academic Improvement and Achievement Act (Ch. 12 (commencing with Sec. 11020, Pt. 7, Ed. C.) pursuant to Section 2 of Chapter 803 of the Statutes of 1998.
7. \$30,000,000 from Item 6110-232-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998).

SEC. 42.5. Item 6110-498 of Section 2.00 of Chapter 50 of the Statutes of 1999 is amended to read:

6110-498--Reversion (Proposition 98). Department of Education. The following amounts shall revert to the Proposition 98 Reversion Account:

- (1) \$3,999,999 from Section 6 of Chapter 975 of the Statutes of 1995, as reappropriated by Item 6110-490 of Chapter 282 of the Statutes of 1997, and subdivision (a) of Section 57 of Chapter 330 of the Statutes of 1998.
- (2) \$6,000,000 from subdivision (d) of Section 41 of Chapter 299 of the Statutes of 1997, as reappropriated by subdivision (b)

of Section 57 of Chapter 330 of the Statutes of 1998.

- (3) \$1,000,000 from Schedule (b) of Item 6110-113-0001 of Section 2.00 of the Budget Act of 1997 (Ch. 282, Stats. 1997).
- (4) \$1,002,000 from Schedule (b) of Item 6110-113-0001 of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998).

SEC. 43. Section 6 of the Chapter 152 of the Statutes of 1999 is amended to read:

Sec. 6. The unencumbered balance as of June 30, 1999, of the funds appropriated by Item 6110-156-0001 of Section 2.00 of the Budget Act of 1997 (Chapter 282 of the Statutes of 1997) is hereby reappropriated to the Superintendent of Public Instruction for allocation to school districts on a one-time basis for the purpose of providing school districts an opportunity to apply for additional authorized units of adult education average daily attendance or funding to support the development of site management information systems. Notwithstanding the provisions of Section 52616 and 52616.23 of the Education Code, or any other provision of law, funds allocated pursuant to this section shall not be included in the ongoing base funding of individual adult education programs.

SEC. 44. If Assembly Bill 15 of the 1999-2000 Regular Session is chaptered and adds Section 39831.5 to the Education Code, Section 39831.5, as added by this bill, shall not become operative.

SEC. 45. Section 11.5 of this bill incorporates changes to Section 38048 of the Education Code proposed by both this bill and AB 1573. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) this bill repeals Section 38048 of, and adds Section 39831.5 to, the Education Code, and (3) this bill is enacted after AB 1573, in which case Section 11.5 of this bill shall become operative and Section 39831.5, as added by Section 14 of this bill shall not become operative.

SEC. 46. Section 39831.5 of the Education Code, as added by Section 14 of this bill, shall not become operative if AB 1573 is chaptered and becomes operative and amends and renumbers Section 38048 of the Education Code.

SEC. 47. It is the intent of the Legislature that the changes made by Sections 20, 23, 23.1, 23.2, 23.3, 23.4, 23.5, 23.6, 23.7, and 23.8 of this act shall apply to the entire 1999-2000 fiscal year, regardless of the effective date of this act.

SEC. 48. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

BILL NUMBER: AB 2236 CHAPTERED 09/18/00

CHAPTER 461
 FILED WITH SECRETARY OF STATE SEPTEMBER 18, 2000
 APPROVED BY GOVERNOR SEPTEMBER 15, 2000
 PASSED THE ASSEMBLY AUGUST 30, 2000
 PASSED THE SENATE AUGUST 29, 2000
 AMENDED IN SENATE AUGUST 25, 2000
 AMENDED IN SENATE AUGUST 8, 2000
 AMENDED IN ASSEMBLY MAY 26, 2000
 AMENDED IN ASSEMBLY MAY 11, 2000
 AMENDED IN ASSEMBLY MAY 1, 2000

INTRODUCED BY Assembly Member Leach

FEBRUARY 24, 2000

An act to add Section 60501 to the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2236, Leach. Instructional materials: textbooks.

Existing law requires governing boards of school districts to adopt rules, regulations, and procedures for prescribing standards for determining when instructional materials adopted by them and either loaned by them or in their possession are obsolete, and if the materials are usable or unusable for educational purposes.

This bill would permit a school district to review instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted by its governing board and report the results and staff recommendations at a public meeting of the school district governing board.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 60501 is added to the Education Code, to read:

60501. A school district may review instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and may report the results of its review and staff recommendations at a public meeting of the school district governing board.

BILL NUMBER: AB 1781 CHAPTERED 09/23/02

CHAPTER 802
 FILED WITH SECRETARY OF STATE SEPTEMBER 23, 2002
 APPROVED BY GOVERNOR SEPTEMBER 22, 2002
 PASSED THE ASSEMBLY AUGUST 29, 2002
 PASSED THE SENATE AUGUST 28, 2002
 AMENDED IN SENATE AUGUST 27, 2002
 AMENDED IN SENATE AUGUST 12, 2002
 AMENDED IN SENATE JUNE 20, 2002
 AMENDED IN ASSEMBLY MAY 29, 2002
 AMENDED IN ASSEMBLY MAY 24, 2002
 AMENDED IN ASSEMBLY MAY 1, 2002
 AMENDED IN ASSEMBLY MARCH 21, 2002

INTRODUCED BY Assembly Member Hertzberg
 (Coauthors: Assembly Members Alquist, Aroner, Diaz, Havice,
 Horton, Longville, Matthews, Nakano, Robert Pacheco, Rod Pacheco,
 Pavley, Salinas, Strom-Martin, Thomson, Vargas, Washington, and
 Wiggins)
 (Coauthors: Senators Karnette and Kuehl)

JANUARY 10, 2002

An act to amend Sections 60240, 60242, 60242.5, and 60248 of, to amend and repeal Sections 60246, 60247, and 60252 of, to add Sections 60246.5 and 60247.5 to, to add and repeal Chapter 3.25 (commencing with Section 60420) of Part 33 of, and to repeal Sections 18200 and 18201 of, the Education Code, relating to instructional materials.

LEGISLATIVE COUNSEL'S DIGEST

AB 1781, Hertzberg. Instructional materials: funding.

(1) Existing law establishes the California Classroom Library Materials Act of 1999 to provide state funding for classroom library materials and establish the Business Organizations and Opportunities for Kids Fund for the donation of moneys by private entities for classroom reading materials.

This bill would repeal certain provisions in the California Classroom Library Materials Act of 1999 regarding state funding.

(2) Existing law provides for the State Instructional Materials Fund as a means of annually funding the acquisition of instructional materials. Existing law requires the State Board of Education to encumber the fund for the purpose of establishing an allowance for the governing board of each school district, which may reflect increases or decreases in average daily attendance, that the district board may use for instructional materials, tests, textbooks, and in-service training.

This bill would additionally authorize a school district to use the funding to purchase library materials and classroom library materials on the condition that the school district develop a districtwide classroom library plan, as specified. The bill would authorize the allowances to reflect increases or decreases in enrollment instead of average daily attendance.

(3) Existing law requires the Controller, during each fiscal year, to transfer from the General Fund to the State Instructional Materials Fund, a specified amount per pupil average daily attendance in the public elementary schools during the preceding fiscal year,

as provided, and requires the superintendent to annually apportion to each school district \$14.41 per pupil enrolled in grades 9 to 12, inclusive, in the school district in the prior fiscal year for the purpose of purchasing instructional materials.

This bill would make those funding provisions inoperative on January 1, 2003, and would provide for their repeal on January 1, 2007.

(4) Existing law provides for the Pupil Textbook and Instructional Materials Incentive Account in the State Instructional Materials Fund to ensure availability of textbooks and instructional materials.

This bill would make those provisions relating to the account inoperative on January 1, 2003, and would provide for their repeal on January 1, 2007.

(5) This bill would establish the Instructional Materials Funding Realignment Program to provide funding for instructional materials to school districts on the basis of an equal amount per pupil enrolled in public elementary and high schools, as specified.

This bill would authorize the State Board of Education to permit a school district to use any state instructional materials allowances to purchase standards-aligned materials, as specified.

The bill would require a local governing board to use funding received pursuant to the program to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the state board or the local governing board, as specified. The bill would provide that if any funds received pursuant to the program remain after providing each pupil with a standards-aligned textbook or basic instructional materials in core curriculum areas, and if the local governing board has met certain eligibility requirements, the remaining funds may only be used for instructional materials, as specified. The bill would permit the State Board of Education to grant additional time to the school district to meet the purchasing requirements if the governing board of the school district meets specific criteria.

The bill would provide that specified funds appropriated in the Budget Act of 2002 shall be used for purposes of the program. Under the bill, the program would become inoperative on June 30, 2007, and would be repealed as of January 1, 2008.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 18200 of the Education Code is repealed.

SEC. 2. Section 18201 of the Education Code is repealed.

SEC. 3. Section 60240 of the Education Code is amended to read:

60240. (a) The State Instructional Materials Fund is hereby continued in existence in the State Treasury. The fund shall be a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California. Notwithstanding Section 13340 of the Government Code, all money in the fund is continuously appropriated to the State Department of Education without regard to fiscal years for carrying out the purposes of this part. It is the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials.

(b) The State Department of Education shall administer the fund under policies established by the state board.

(c) (1) The state board shall encumber part of the fund to pay for accessible instructional materials pursuant to Sections 60312 and

60313 to accommodate pupils who are visually impaired or have other disabilities and are unable to access the general curriculum.

(2) The state board may encumber funds, in an amount not to exceed two hundred thousand dollars (\$200,000), for replacement of instructional materials, obtained by a school district with its allowance that are lost or destroyed by reason of fire, theft, natural disaster, or vandalism.

(3) The state board may encumber funds for the costs of warehousing and transporting instructional materials it has acquired.

SEC. 4. Section 60242 of the Education Code is amended to read:

60242. (a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district, which may reflect increases or decreases in enrollment, that the district may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d) (1) A school district that purchases classroom library materials, shall, as a condition of receiving funding under this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan. A charter school may apply for funding on its own behalf or through its chartering entity. Notwithstanding Section 47610, a charter school applying on its own behalf is required to develop and certify approval of a classroom library plan.

(3) To the extent that a school district, county office of education, or charter school already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.

SEC. 5. Section 60242.5 of the Education Code is amended to read:

60242.5. Allowances received by districts pursuant to

subdivisions (a) and (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, classroom library materials, or in-service training pursuant to subdivisions (a) and (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of conformance to the Superintendent of Public Instruction. The Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

SEC. 6. Section 60246 of the Education Code is amended to read:

60246. (a) The Controller shall, during each fiscal year, commencing with the 1983-84 fiscal year, transfer from the General Fund of the state to the State Instructional Materials Fund, an amount of twenty-one dollars and eighteen cents (\$21.18) per pupil in the average daily attendance in the public elementary schools during the preceding fiscal year, as certified by the Superintendent of Public Instruction, except that this amount shall be adjusted annually, through and including fiscal year 1987-88, in conformance with the Consumer Price Index, all items, of the Bureau of Labor Statistics of the United States Department of Labor, measured for the calendar year next preceding the fiscal year to which it applies. Commencing with the 1990-91 fiscal year, the amount shall be adjusted annually by an amount equal to the percentage change determined pursuant to subdivision (b) of Section 42238.1.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, and in-service training.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 60246.5 is added to the Education Code, to read:

60246.5. (a) The Controller shall, during each fiscal year, commencing with the 2002-03 fiscal year, transfer from the General Fund to the State Instructional Materials Fund for instructional materials for kindergarten and grades 1 to 8, inclusive, the amount to be allocated pursuant to Section 60421.

(b) The amount transferred pursuant to subdivision (a) includes the designated percentage of the cash entitlements to be used to pay for unadopted state materials, tests, classroom library materials, and in-service training.

SEC. 8. Section 60247 of the Education Code is amended to read:

60247. (a) The Superintendent of Public Instruction shall annually apportion to each school district the sum of fourteen dollars and forty-one cents (\$14.41) per pupil enrolled in grades 9 to 12, inclusive, in the school district in the prior fiscal year for the purpose of purchasing instructional materials for the pupils

enrolled in those grades.

(b) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9. Section 60247.5 is added to the Education Code, to read:

60247.5. The Controller shall, during each fiscal year, commencing with the 2002-03 fiscal year, transfer from the General Fund to the State Instructional Materials Fund for instructional materials for grades 9 to 12, inclusive, the amount to be allocated pursuant to Section 60421.

SEC. 10. Section 60248 of the Education Code is amended to read:

60248. The governing board of a school district shall use the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials for pupils in grades 9 to 12, inclusive. Textbooks purchased with these funds shall be adopted in accordance with Section 60400.

SEC. 11. Section 60252 of the Education Code is amended to read:

60252. (a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Chapter 3.25 (commencing with Section 60420) is added to Part 33 of the Education Code, to read:

CHAPTER 3.25. INSTRUCTIONAL MATERIALS FUNDING REALIGNMENT PROGRAM

60420. The Instructional Materials Funding Realignment Program is hereby established and shall be administered by the Superintendent of Public Instruction.

60421. (a) The State Department of Education shall apportion funds appropriated for purposes of this chapter to school districts on the basis of an equal amount per pupil enrolled in kindergarten

and grades 1 to 12, inclusive, in the prior year, excluding summer school, adult, and regional occupational center and regional occupational programs enrollment. Enrollment shall be certified by the Superintendent of Public Instruction and based on data as reported by the California Basic Education Data System count. A school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall be eligible to receive funding pursuant to this chapter based on enrollment estimates provided to the State Department of Education by the school district or charter school. As a condition of receipt of funding, a school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall provide enrollment estimates, as approved by the school district governing board or charter school's charter-granting local educational agency and the county office of education in which the school district or charter school's charter-granting agency is located. These estimates and associated funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.

(b) For the purposes of this chapter, the term "school district" means a school district, county office of education, or charter school, and the term "local governing board" means the governing board of a school district, county board of education, or governing body of a charter school.

(c) Allowances established pursuant to this chapter shall be apportioned to school districts in September of each fiscal year.

(d) Notwithstanding any other provision of law, pursuant to subdivision (g) of Section 60200, the State Board of Education may authorize a school district to use any state basic instructional materials allowance to purchase standards-aligned materials as specified within this part.

60422. (a) A local governing board shall use funding received pursuant to this chapter to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pupils shall be provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the State Board of Education.

(b) Once a governing board certifies compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences, and if the governing board of a school district has met the eligibility requirements of Section 60119, the remaining funds may only be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5.

(c) The State Board of Education may grant the school district additional time to meet the purchasing requirements of subdivision (a) if the governing board of the school district demonstrates, to the satisfaction of the state board, that all of the following criteria apply to the district:

(1) The school district has implemented a well-designed, standards-aligned basic instructional materials program.

(2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.

(3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with

subdivision (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(d) The funds provided for the purchase of instructional materials in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of Item 6110-485 of Section 2.00 of the Budget Act of 2002 shall be used for the purposes of, and allocated consistent with, this chapter.

60424. This chapter shall be administered for purposes of funding as if it had been in effect at the beginning of the 2002-03 fiscal year. This chapter shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes operative and is repealed.

SEC. 13. It is the intent of the Legislature to appropriate in the annual Budget Act or other measure, in each of the fiscal years from 2003-04 to 2006-07, inclusive, subject to the availability of funds, the following amounts from the General Fund to the Superintendent of Public Instruction for allocation to school districts for use pursuant to Chapter 3.25 (commencing with Section 60420) of Part 33 of the Education Code:

(a) Three hundred fifty million dollars (\$350,000,000) for the 2003-04 fiscal year.

(b) Four hundred fifty million dollars (\$450,000,000) for the 2004-05 fiscal year.

(c) Five hundred fifty million dollars (\$550,000,000) for the 2005-06 fiscal year.

(d) Six hundred million dollars (\$600,000,000) for the 2006-07 fiscal year.

BILL NUMBER: SBX1 18 CHAPTERED 03/18/03

CHAPTER 4
 FILED WITH SECRETARY OF STATE MARCH 18, 2003
 APPROVED BY GOVERNOR MARCH 18, 2003
 PASSED THE SENATE MARCH 13, 2003
 PASSED THE ASSEMBLY MARCH 10, 2003
 AMENDED IN ASSEMBLY MARCH 4, 2003

INTRODUCED BY Senator Chesbro

FEBRUARY 24, 2003

An act to amend Sections 69995, 69997, and 69998 of, to amend, repeal, and add Section 41335 of, to add Sections 14041.5, 33128.1, 33128.2, and 41339.1 to, to add and repeal Section 60423 of, and to repeal and add Section 41330 of, the Education Code, to add Items 6110-301-0660 and 6110-497 to Section 2.00 of, and to add Section 12.65 to, Chapter 379 of the Statutes of 2002, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 18, Chesbro. Education finance.

(1) Existing law requires the State Board of Education to adopt standards and criteria to be used by local educational agencies in the development of annual budgets and the management of subsequent expenditures from that budget. Existing law requires those standards and criteria to include comparisons and reviews of reserves and fund balances.

This bill would, notwithstanding any law, authorize a local educational agency to count any amount of state funding deferred from the current fiscal year and appropriated from a subsequent fiscal year for payment of current year costs as a receivable in the current year. The bill would, notwithstanding any law and for the 2002-03 fiscal year only, authorize a local educational agency to use for purposes determined by its governing body up to 50% of its reserves for economic uncertainties and up to 50% of the balances, as of July 1, 2002, of restricted accounts in its General Fund, excluding restricted reserves committed for capital outlay, bond funds, sinking funds, and federal funds. The bill would state the intent of the Legislature that local educational agencies use this flexibility for certain purposes and make every effort to maintain a prudent expenditure plan that ensures solvency for the 2002-03 fiscal year and in subsequent fiscal years.

(2) Existing law requires the Superintendent of Public Instruction to make the second principal apportionment on or before June 25th of each year.

This bill would instead require this apportionment to be made on or before July 2. The bill would make conforming and technical changes in this regard.

(3) Existing law requires a local governing board of a school district that receives funding pursuant to the Instructional Materials Funding Realignment Program to provide a pupil with standards-aligned instructional materials, as adopted by the State Board of Education, pursuant to a specified provision, subsequent to the adoption of content standards for kindergarten and grades 1 to 8,

(d) It is further the intent of the Legislature that a local educational agency make every effort to maintain a prudent expenditure plan that ensures its solvency for the 2002-03 fiscal year and in subsequent fiscal years.

SEC. 4. Section 41330 of the Education Code is repealed.

SEC. 5. Section 41330 is added to the Education Code, to read:

41330. Commencing with the 2003-04 fiscal year, for the purposes of allocating the advance apportionment for the current fiscal year, the Superintendent of Public Instruction shall on or before July 20th of each year certify to the Controller the amounts estimated to be apportioned to each effective school district for the current fiscal year on the basis of the report of the districts for the second principal apportionment of the preceding fiscal year, the amounts estimated to be apportioned to each county school tuition fund and to each county school service fund for schools and classes to be maintained by the county superintendent of schools during the current fiscal year on the basis of reports provided by the county superintendent of schools, and the amounts estimated by the Superintendent of Public Instruction to be apportioned to the county school service fund during the current fiscal year under subdivisions (a) and (b) of Section 14054.

SEC. 6. Section 41335 of the Education Code is amended to read:

41335. (a) The Superintendent of Public Instruction shall on or before June 25th of each year apportion to each elementary school district, high school district, county school service fund, and county school tuition fund the total amounts allowed to each respective district or fund under Sections 14054, 14057, 14058, 41790, 41800, 41810, 41811, 41840, 41841, 41863, 41866, 41882, 41884, 41885, 41886, 41888, 41950, 41970, 41971, 42004, 42005, 42054, 42055, 42056, and 52205, whichever are in effect. This apportionment shall be called the second principal apportionment.

(b) This section shall become inoperative on June 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 7. Section 41335 is added to the Education Code, to read:

41335. (a) The Superintendent of Public Instruction shall on or before July 2 of each year apportion to each elementary school district, high school district, county school service fund, and county school tuition fund the total amounts allowed to each respective district or fund, as would have been apportioned on June 25 of the fiscal year of the apportionment pursuant to Section 41335 as it read on May 30, 2003, under Sections 14054, 14057, 14058, 41790, 41800, 41810, 41811, 41840, 41841, 41863, 41866, 41882, 41884, 41885, 41886, 41888, 41950, 41970, 41971, 42004, 42005, 42054, 42055, 42056, and 52205, whichever are in effect. This apportionment shall be called the second principal apportionment.

(b) This section shall become operative on June 1, 2003.

SEC. 8. Section 41339.1 is added to the Education Code, to read:

41339.1. Notwithstanding subdivision (b) of Section 41339, 10 working days prior to the dates prescribed in Section 41330 and Section 41335, as Section 41335 reads on and after June 1, 2003, the Superintendent of Public Instruction shall notify the Joint Legislative Budget Committee and the Department of Finance of the average daily attendance numbers and the local property tax revenues to be utilized in the respective certification.

SEC. 9. Section 60423 is added to the Education Code, to read:

60423. (a) Notwithstanding Section 60422 or any other law, for the 2002-03 and 2003-04 fiscal years only, a requirement that the governing board of a school district provide a pupil with

standards-aligned instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, may be satisfied if the governing board of a school district provides a pupil with standards-aligned instructional materials that were adopted by the State Board of Education pursuant to Chapter 481 of the Statutes of 1998.

(b) This section shall be in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2004, deletes or extends that date.

SEC. 10. Section 69995 of the Education Code is amended to read:

69995. (a) It is the intent of the Legislature in enacting this article to encourage high school pupils to study hard and master the California academic content standards adopted by the State Board of Education and to excel in mathematics and the sciences.

(b) The Scholarshare Investment Board, known hereafter as "the board," unless otherwise specified, shall administer the programs authorized by this article, including the adoption of rules and regulations as provided by subdivision (d) of Section 69981, and in so doing shall cooperate with the State Department of Education, the Treasurer's office, the Controller, the college board, private test publishing companies, and other entities necessary to ensure the accurate and timely identification and reporting of award recipients, granting of awards, and administration of these programs. The State Department of Education shall ensure that the contract with the test publisher selected pursuant to Section 60642 reflects the reporting requirements of this article and that the publisher meets those requirements.

(c) The definitions in Section 69980 apply to this article.

(d) To be eligible for an award pursuant to the programs authorized by this article, a pupil shall meet all of the following eligibility criteria:

(1) The pupil took the achievement test authorized by Section 60640 in grade 9, 10, or 11.

(2) The pupil was enrolled at a California public school for at least 12 consecutive months immediately preceding, or was in attendance for at least 110 days of the school year in which the test is administered and at least 110 days of the school year immediately preceding, the administration of the achievement test specified in paragraph (1), as evidenced by his or her school records obtained pursuant to administration of the program authorized by this article.

(3) The pupil took both of the following:

(A) The nationally normed reading and mathematics portions of the achievement test, as specified by the State Board of Education and authorized by Section 60640.

(B) The English/language arts and mathematics portions of the achievement test authorized by Section 60640 that are augmented and aligned, pursuant to Section 60643, with the California academic content standards, unless otherwise exempted by action of the State Board of Education.

(e) Awards made pursuant to this article shall be an entitlement to pupils identified as qualifying for an award pursuant to this article. The State Department of Education shall annually provide the board with an estimate of the number of pupils with qualifying scores by October 15. Within 30 days of receipt of the estimate, the board shall deposit a single amount equal to the sum of the amounts of the awards earned by qualifying pupils, as specified in subdivision (f), into a single account separate and apart from all participant accounts within the Golden State Scholarshare Trust in

two hundred seventy-one thousand dollars (\$210,271,000) shall be expended consistent with Schedule 1 of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002) and three million eight hundred thirty-two thousand dollars (\$3,832,000) shall be expended consistent with Schedule 2 of that item.

(6) The sum of four million four hundred fifty-one thousand dollars (\$4,451,000) for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

(7) The sum of three million six hundred twenty-one thousand dollars (\$3,621,000) for 7th and 8th Grade Math Academies to be expended consistent with the requirements specified in Item 6110-204-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

(8) The sum of nine million seven hundred seventy-six thousand dollars (\$9,776,000) for reading programs in kindergarten and grades 1 to 4, inclusive, to be expended consistent with the requirements specified in Item 6110-205-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

(9) The sum of four million six hundred thirty-five thousand dollars (\$4,635,000) for categorical programs for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002).

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by this section shall be deemed to be "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003-04 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003-04 fiscal year.

SEC. 84. (a) Not later than May 15, 2003, the Director of Finance, in consultation with the Chancellor of the California Community Colleges, shall determine the amount of the property tax shortfall for the California Community Colleges for the 2002-03 fiscal year. This amount shall be equal to the difference between the amount of the estimate of property tax receipts by community colleges as of January 10, 2003, and the actual property tax receipts of community colleges for the 2002-03 fiscal year as estimated when the determination required by this subdivision is made.

(b) If the amount of the property tax shortfall, as determined pursuant to subdivision (a), is less than thirty-eight million dollars (\$38,000,000), the Director of Finance may reduce the amount appropriated pursuant to schedule (4) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2002 by an amount not to exceed the difference between thirty-eight million dollars (\$38,000,000) and the amount of the property tax shortfall determined pursuant to subdivision (a).

SEC. 85. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the public school system is able to provide proper educational services for its pupils at the earliest possible time, it is necessary that this act take effect immediately.

EXHIBIT 3
COPIES OF CODE SECTIONS CITED

§ 60000. Legislative intent

(a) It is the intent and purpose of the Legislature in enacting this part to provide for the * * * adoption and selection of quality instructional materials for use in the elementary and secondary schools.

(b) The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but that because of economic, geographic, physical, political, educational, and social diversity, specific choices about instructional materials need to be made at the local level.

(c) The Legislature further recognizes that the governing boards of school districts have the responsibility to establish courses of study and that they must have the ability to choose instructional materials that are appropriate to their courses of study.

(Amended by Stats.1995, c. 413 (S.B.152), § 1.)

§ 60002. Selection of instructional materials; involvement of teachers, parents, and members of the community

Each district board shall provide for substantial teacher involvement in the selection of instructional materials and shall promote the involvement of parents and other members of the community in the selection of instructional materials.

(Added by Stats.1995, c. 413 (S.B.152), § 4.)

§ 60045. Accuracy, objectivity, suitability, proper grammar and spelling

(a) All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.

(b) With the exception of literature and tradebooks, all instructional materials adopted by any governing board for use in schools shall use proper grammar and spelling. The state board may adopt regulations that provide for other allowable exceptions to this subdivision for educational purposes, as determined by the state board.

(Amended by Stats.1999, c. 276 (A.B.116), § 1.)

§ 60048. Commercial brand names, products, or logos

(a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.

(b) The governing board of a school district may not adopt basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.

(c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.

(e) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

(Added by Stats.1999, c. 276 (A.B.116), § 2.)

§ 60117. Short title

This article shall be known and may be cited as the Pupil Textbook and Instructional Materials Incentive Program Act.

(Added by Stats.1994, c. 927 (A.B.2600), § 2.)

§ 60118. County offices of education; program funds; eligibility; allocations

County offices of education may, at their option, be eligible to receive funds pursuant to this article. Allocations to county offices of education shall be based upon prior year average daily attendance in county operated educational programs and at the average amount allocated to school districts per unit of average daily attendance. For the purposes of this article, the terms "governing board of a school district" and "governing board" are deemed to include county boards of education.

(Added by Stats.1995, c. 325 (A.B.391), § 1.)

§ 60119. Hearings; steps to ensure availability of textbooks and instructional materials

(a) For the 1999-2000 fiscal year and each fiscal year thereafter, in order to be eligible to receive funds available for the purposes of this article, the governing board of a school district shall take the following actions:

(1) The governing board shall hold a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and shall make a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.

(2)(A) If the governing board determines that there are insufficient textbooks or instructional materials, or both, the governing board shall provide information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action, except an action that would require reimbursement by the Commission on State Mandates, to ensure that each pupil has sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.

(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:

(i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.

(iii) Any other funds available to the school district for textbooks or instructional materials, or both.

(b) The governing board shall provide 10 days' notice of the public hearing or hearings set forth in subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

(c) Except for purposes of Section 60252, governing boards of school districts that receive funds for instructional materials from any state source, are subject to the requirements of this section only in a fiscal year in which the Superintendent of Public Instruction determines that the base revenue limit for each school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year.

(d) The governing board of a school district is eligible to receive funds available for the purposes of this article for the 1994-95 fiscal year to the 1998-99 fiscal year, inclusive, whether or not the governing board complied with the public hearing requirement set forth in paragraph (1) of subdivision (a).

(Added by Stats.1994, c. 927 (A.B.2600), § 2. Amended by Stats.1999, c. 646 (A.B.1600), § 32.2.)

§ 60200. Adoption of list of basic instructional materials; submission procedures; criteria

The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions:

(a) The state board shall adopt at least five basic instructional materials for all applicable grade levels in each of the following categories:

- (1) Language arts, including, but not limited to, spelling and reading.
- (2) Mathematics.
- (3) Science.
- (4) Social science.
- (5) Bilingual or bicultural subjects.

(6) Any other subject, discipline, or interdisciplinary areas for which the state board determines the adoption of instructional materials to be necessary or desirable.

(b) The state board shall adopt procedures for the submission of basic instructional materials in order to comply with each of the following:

(1) Instructional materials may be submitted for adoption in any of the subject areas pursuant to paragraphs (1) to (5), inclusive, of subdivision (a) not less than two times every six years and in any of the subject areas pursuant to paragraph (6) of subdivision (a) not less than two times every eight years. The state board shall ensure that curriculum frameworks are reviewed and adopted in each subject area consistent with the six- and eight-year submission cycles and that the criteria for evaluating instructional materials developed pursuant to subdivision (b) of Section 60204 are consistent with subdivision (c). The state board may prescribe reasonable conditions to restrict the resubmission of materials that have been previously rejected if those resubmitted materials have no substantive changes.

(2) Submitted instructional materials shall be adopted or rejected within six months of the submission date of the materials pursuant to paragraph (1), unless the state board determines that a longer period of time, not to exceed an additional three months, is necessary due to the estimated volume or complexity of the materials for that subject in that year, or due to other circumstances beyond the reasonable control of the state board.

(c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria:

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(1) Are consistent with the criteria and the standards of quality prescribed in the state board's adopted curriculum framework. In making this determination, the state board shall consider both the framework and the submitted instructional materials as a whole.

(2) Comply with the requirements of Sections 60040, 60041, 60042, 60043, 60044, 60048, 60200.5, and 60200.6, and the state board's guidelines for social content.

(3) Are factually accurate and incorporate principles of instruction reflective of current and confirmed research.

(4) Adequately cover the subject area for the grade level or levels for which they are submitted.

(5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:

(A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.

(B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

(6) Meet other criteria as are established by the state board as being necessary to accomplish the intent of Section 7.5 of Article IX of the California Constitution and of Section 1 of this act, provided that the criteria are approved by resolution at the time the resolution adopting the framework for the current adoption is approved, or at least 30 months prior to the date that the materials are to be approved for adoption.

(d) If basic instructional materials are rejected, the state board shall provide a specific, written explanation of the reasons why the submitted materials were not adopted, based upon one or more of the criteria established under subdivision (c). In providing this explanation, the state board may use, in whole or in part, materials written by the commission or any other advisers to the state board.

(e) The state board may adopt fewer than five basic instructional materials in each subject area for each grade level if either of the following occurs:

(1) Fewer than five basic instructional materials are submitted.

(2) The state board specifically finds that fewer than five basic instructional materials meet the criteria prescribed by paragraphs (1) to (5), inclusive, of subdivision (c), or the materials fail to meet the state board's adopted curriculum framework. If the state board adopts fewer than five basic instructional materials in any subject for any grade level, the state board shall conduct a review of the degree to which the criteria and procedures used to evaluate the submitted materials for that adoption were consistent with the state board's adopted curriculum framework.

(f) Nothing in this section shall limit the authority of the state board to adopt materials that are not basic instructional materials.

(g) If a district board establishes to the satisfaction of the state board that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, the state board shall authorize that district governing board to use its instructional materials allowances to purchase materials as specified by the state board, in accordance with standards and procedures established by the state board.

(h) Consistent with the quality criteria for the state board's adopted curriculum framework, the state board shall prescribe procedures to provide the most open and flexible materials submission system and ensure that the adopted materials in each subject, taken as a whole, provide for the educational needs of the diverse pupil populations in the public schools, provide collections of instructional materials that illustrate diverse points of view, represent cultural pluralism, and provide a broad spectrum of knowledge, information, and technology-based materials to meet the goals of the program and the needs of pupils.

(i) Upon making an adoption, the state board shall make available to listed publishers and manufacturers and all school interests a listing of instructional materials, including the most current unit cost of those materials as computed pursuant to existing law. Items placed upon lists shall remain thereon, and be available for procurement through the state's systems of financing, from the date of the adoption of the item and until a date established by the state board. The date established by the board for continuing items on that list shall be the earlier of not more than six years from the date of adoption for instructional materials pertaining to subject areas designated in paragraphs (1) to (5), inclusive, of subdivision (a), and not more than eight years from the date of adoption for instructional materials pertaining to subject areas designated in paragraph (6) of subdivision (a), or the date on which the state

Additions or changes indicated by underline; deletions by asterisks * * *

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board adopts instructional materials based upon a new or revised curriculum framework. Lists of adopted materials shall be made available by subject and grade level. The lists shall terminate and shall no longer be effective on the date prescribed by the state board pursuant to this subdivision.

(j) The state board may approve multiple lists of instructional materials, without designating a grade or subject, and the state board may designate more than one grade or subject whenever it determines that a single subject designation or a single grade designation would not promote the maximum efficiency of pupil learning. Any materials so designated may be placed on single grade or single subject lists, or multigrade or interdisciplinary lists, or may be placed on separate lists including other materials with similar grade or subject designations.

(k) A composite listing in the format of an order form may be used to meet the requirements of this section.

(l) The lists maintained pursuant to this section shall not be deemed to control the use period by any local district.

(m) The state board shall give publishers the opportunity to modify instructional materials, in a manner provided for in regulations adopted by the state board, if the state board finds that the instructional materials do not comply with paragraph (5) of subdivision (c).

(n) Nothing in this section shall be construed to prohibit the publisher of instructional materials from including whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third party sources of content.

(o) The state board may adopt regulations that provide for other exceptions to this section, as determined by the board.

(p) The Superintendent of Public Instruction shall develop, and the State Board of Education shall adopt, guidelines to implement this section.

(Amended by Stats.1989, c. 1181, § 4; Stats.1991, c. 353 (A.B.588), § 2; Stats.1991, c. 529 (S.B.1008), § 2.5; Stats.1993, c. 56 (A.B.2351), § 6; Stats.1995, c. 413 (S.B.152), § 13; Stats.1995, c. 764 (A.B.1504), § 2; Stats.1997, c. 251 (A.B.1263), § 1; Stats.1999, c. 276 (A.B.116), § 3.)

§ 60242. Encumbrance of funds; purposes

(a) The state board shall encumber the fund for the purpose of establishing an allowance for each school district * * *, which may reflect increases or decreases in * * * enrollment, that the district * * * may use for the following purposes:

(1) To purchase instructional materials adopted by the state board pursuant to Section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Section 60400 for grades 9 to 12, inclusive.

(2) To purchase, at the district's discretion, instructional materials, including, but not limited to, supplementary instructional materials and technology-based materials, from any source.

(3) To purchase tests.

(4) To bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200.

(5) To fund in-service training related to instructional materials.

(6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive.

(b) The state board shall specify the percentage of a * * * district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

(c) Allowances established for school districts pursuant to this section shall be apportioned in September of each fiscal year.

(d)(1) A school district that purchases classroom library materials, shall, as a condition of receiving funding under this article, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.

(2) In developing the plan required by paragraph (1), a school district is encouraged to consult with school library media teachers and primary grade teachers and to consider selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, the district is encouraged to consult with a school library media teacher employed by the local county office of education in developing the plan. A charter school may apply for funding on its own behalf or through its chartering entity. Notwithstanding Section 47610, a charter school applying on its own behalf is required to develop and certify approval of a classroom library plan.

(3) To the extent that a school district, county office of education, or charter school already has a plan meeting the criteria specified in paragraphs (1) and (2), no new plan is required to establish eligibility.
(Amended by Stats.1991, c. 529 (S.B.1008), § 3; Stats.1995, c. 413, (S.B.152), § 20; Stats.1995, c. 534 (A.B.1039), § 2; Stats.1996, c. 124 (A.B.3470), § 23; Stats.2002, c. 802 (A.B.1781), § 4.)

§ 60242.5. Deposit and use of allowances; conformance of purchases to law, rules, and regulations

Allowances received by districts pursuant to * * * subdivisions (a) and (b) of Section 60242 shall be deposited into a separate account as specified by the Superintendent of Public Instruction. These allowances, including any interest generated by them, shall be used only for the purchase of instructional materials, tests, classroom library materials, or in-service training pursuant to * * * subdivisions (a) and (b) of Section 60242. Interest posted to the account shall be based upon reasonable estimates of monthly balances in the account and the average rate of interest earned by other funds of the district.

All purchases of instructional materials made with funds from this account shall conform to law and the applicable rules and regulations adopted by the state board, and the district superintendent shall provide written assurance of conformance to the Superintendent of Public Instruction. * * * The Superintendent of Public Instruction may withhold the allowance established pursuant to Section 60242 for any district which has failed to file a written assurance for the prior fiscal year. The Superintendent of Public Instruction may restore the amount withheld once the district provides the written assurance.

The * * * Controller, in cooperation with the State Department of Education, shall include procedures to review compliance with this section in its independent audit instructions.

(Amended by Stats.2002, c. 802 (A.B.1781), § 5.)

§ 60248. Restrictions on use of funds

* * * The governing * * * board of a school district shall use the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials * * * for pupils in grades 9 to 12, inclusive. Textbooks purchased with these funds shall be adopted in accordance with Section 60400 * * *

(Amended by Stats.2002, c. 802 (A.B.1781), § 10.)

§ 60252. Pupil Textbook and Instructional Materials Incentive Account; criteria for use of funds

(a) The Pupil Textbook and Instructional Materials Incentive Account is hereby created in the State Instructional Materials Fund, to be used for the Pupil Textbook and Instructional Materials Incentive Program set forth in Article 7 (commencing with Section 60117) of Chapter 1. All money in the account shall be allocated by the Superintendent of Public Instruction to school districts maintaining any kindergarten or any of grades 1 to 12, inclusive, that satisfy each of the following criteria:

(1) A school district shall provide assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.

(2) A school district shall ensure that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.

(b) The superintendent shall ensure that each school district has an opportunity for funding per pupil based upon the district's prior year base revenue limit in relation to the prior year statewide average base revenue limit for similar types and sizes of districts. Districts below the statewide average shall receive a greater percentage of state funds, and districts above the statewide average shall receive a smaller percentage of state funds, in an amount equal to the percentage that the district's base revenue limit varies from the statewide average. Any district with a base revenue limit that equals or exceeds 200 percent of the statewide average shall not be eligible for state funding under this section.

(c) This section shall become inoperative on January 1, 2003, and, as of January 1, 2007, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

(Added by Stats.1994, c. 927 (A.B.2600), § 3. Amended by Stats.2002, c. 802 (A.B.1781), § 11.)

§ 60420. Establishment of program

The Instructional Materials Funding Realignment Program is hereby established and shall be administered by the Superintendent of Public Instruction.

(Added by Stats.2002, c. 802 (A.B.1781), § 12.)

§ 60421. Apportionment of funds; "school district" defined

(a) The State Department of Education shall apportion funds appropriated for purposes of this chapter to school districts on the basis of an equal amount per pupil enrolled in kindergarten and grades 1 to 12, inclusive, in the prior year, excluding summer school, adult, and regional occupational center and regional occupational programs enrollment. Enrollment shall be certified by the Superintendent of Public Instruction and based on data as reported by the California Basic Education Data System count. A school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall be eligible to receive funding pursuant to this chapter based on enrollment estimates provided to the State Department of Education by the school district or charter school. As a condition of receipt of funding, a school district or charter school in its first year of operation or of expanding grade levels at a schoolsite shall provide enrollment estimates, as approved by the school district governing board or charter school's charter-granting local educational agency and the county office of education in which the school district or charter school's charter-granting agency is located. These estimates and associated funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.

(b) For the purposes of this chapter, the term "school district" means a school district, county office of education, or charter school, and the term "local governing board" means the governing board of a school district, county board of education, or governing body of a charter school.

(c) Allowances established pursuant to this chapter shall be apportioned to school districts in September of each fiscal year.

(d) Notwithstanding any other provision of law, pursuant to subdivision (g) of Section 60200, the State Board of Education may authorize a school district to use any state basic instructional materials allowance to purchase standards-aligned materials as specified within this part.

(Added by Stats.2002, c. 802 (A.B.1781), § 12.)

§ 60422. Providing pupils with standards-aligned textbooks or basic instruction materials; certification of compliance; time to meet purchasing requirements

(a) A local governing board shall use funding received pursuant to this chapter to ensure that each pupil is provided with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pupils shall be provided with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the State Board of Education.

(b) Once a governing board certifies compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences, and if the governing board of a school district has met the eligibility requirements of Section 60119, the remaining funds may only be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5.

(c) The State Board of Education may grant the school district additional time to meet the purchasing requirements of subdivision (a) if the governing board of the school district demonstrates, to the satisfaction of the state board, that all of the following criteria apply to the district:

(1) The school district has implemented a well-designed, standards-aligned basic instructional materials program.

(2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.

(3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with subdivision (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(d) The funds provided for the purchase of instructional materials in Schedules 1 and 2 of Item 6110-189-0001 and paragraph 6 of Item 6110-485 of Section 2.00 of the Budget Act of 2002 shall be used for the purposes of, and allocated consistent with, this chapter.

(Added by Stats.2002, c. 802 (A.B.1781), § 12.)

SEC. 9. Section 60423 is added to the Education Code, to read:

60423. (a) Notwithstanding Section 60422 or any other law, for the 2002-03 and 2003-04 fiscal years only, a requirement that the governing board of a school district provide a pupil with standards-aligned instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, may be satisfied if the governing board of a school district provides a pupil with standards-aligned instructional materials that were adopted by the State Board of Education pursuant to Chapter 481 of the Statutes of 1998.

(b) This section shall be in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2004, deletes or extends that date.

§ 60424. Administration and duration of chapter

This chapter shall be administered for purposes of funding as if it had been in effect at the beginning of the 2002-03 fiscal year. This chapter shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes operative and is repealed.

(Added by Stats.2002, c. 802 (A.B.1781), § 12.)

§ 60501. Review of instructional materials; report

A school district may review instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and may report the results of its review and staff recommendations at a public meeting of the school district governing board. (Added by Stats.2000, c. 461 (A.B.2236), § 1.)

§ 60510.5. Disposal of instructional materials; prior notice and opportunity for hearing; inapplicability of section

(a) Prior to the disposition by a school district of any instructional materials pursuant to Section 60510, the school district governing board is encouraged to do both of the following:

(1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.

(2) Permit representatives of the entities described in subdivisions (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.

(b) This section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.

(Added by Stats.1991, c. 1028 (A.B.667), § 2.)

§ 60521. Proceeds received by governing board; purchase of instructional materials

Any money received by * * * the governing board of a school district * * * from the sale of * * * instructional materials pursuant to this * * * code shall be used * * * to purchase instructional materials.

(Amended by Stats.1995, c. 413 (S.B.152), § 41.)

EXHIBIT 4
COPIES OF REGULATIONS CITED

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9502. Loan of Instructional Materials.

NOTE: Authority cited: Sections 33031, 60404 and 60500, Education Code. Reference: Sections 60314 and 60315, Education Code.

HISTORY

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9503. Distribution of Large Print Textbooks.

HISTORY

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9504. Distribution of Braille Textbooks.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Section 60312, Education Code.

HISTORY

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9505. Purchase of In-Service Training.

No cash allotment authorized by Education Code Section 60242(b) for purchase of in-service training shall be expended for salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60242(b), Education Code.

HISTORY

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. New NOTE filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9506. Improvement of Quality and Reliability Through Learner Verification.

A plan developed by a publisher or manufacturer to improve the quality and reliability of instructional materials through learner verification shall include, but not be limited to, the following components:

(a) A design for evaluating the effectiveness of the materials in achieving a positive impact on pupil learning, including the effectiveness of the materials with diverse pupil populations and pupils with special needs.

(b) A description of the process for the collection of field testing data.

(c) Provisions for input on the materials from parents, teachers, pupils, and administrators.

(d) A description of the process by which problems with the materials will be identified and a description of the anticipated procedures for solving the problems.

NOTE: Authority cited: Sections 33031 and 60206, Education Code. Reference: Section 60226, Education Code; and *Engelmann v. State Board of Education* (1991), 2 Cal. App. 4th 47, 50.

HISTORY

1. New section filed 8-28-96; operative 9-27-96 (Register 96, No. 35).

Article 2. Standards and Criteria for Adoption of Instructional Materials

§ 9510. Standards and Criteria for Specific Subject Matter Adoptions.

NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference: Chapters 1 and 2 of Part 33 of Title 2, Education Code.

HISTORY

1. New article 2 (sections 9510 and 9511) filed 9-10-92; operative 10-12-92. Submitted to OAL for printing only pursuant to Education Code section 60004 (Register 92, No. 37).
2. Amendment filed 7-22-93; operative 8-23-93. Submitted to OAL for printing only pursuant to section 60004, Education Code (Register 93, No. 30).
3. Amendment of subsection (h) and new subsections (o)-(p) filed 9-10-93; operative 10-11-93. Submitted for printing only pursuant to Education Code section 60004 (Register 93, No. 37).
4. New subsection (q) filed 12-13-93; operative 1-12-94. Submitted to OAL for printing only pursuant to Education Code section 6000 (Register 93, No. 51).

5. New subsections (r) and (s) adopted by the Department of Education on 12-5-94. New subsection submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).
6. Repealer of section and amendment of NOTE filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

§ 9511. Standards and Criteria for All Subject Matter Adoptions.

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

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

HISTORY

1. New section filed 9-10-92; operative 10-12-92. Submitted to OAL for printing only pursuant to Education Code section 60004 (Register 92, No. 37).
2. Amendment of section and NOTE filed 8-28-96; operative 9-27-96 (Register 96, No. 35).
3. Amendment of section and NOTE filed 1-22-2001; operative 2-21-2001 (Register 2001, No. 4).

Article 2.1. Adoption of Curriculum Frameworks and Instructional Materials—Procedures

§ 9515. Definitions.

(a) "Board" means the State Board of Education.

(b) "Curriculum Commission" means the Curriculum Development and Supplemental Materials Commission.

(c) "Department" means the California Department of Education.

(d) "Schedule of Significant Events" means the dates promulgated by the Department in the "Invitation to Submit Basic Instructional Materials for Adoption in California."

(e) "Period of Adoption" means the period of time that the instructional materials shall remain in adoption. This time period shall be specified in the "Schedule of Significant Events."

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 33539, 60019, 60020 and 60200, Education Code.

HISTORY

1. New Article 2.1 (sections 9515-9524) and section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9516. Advisory Task Forces and Committees to the Curriculum Commission.

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

For the purpose of developing a curriculum framework or for other activities not associated with the evaluation of basic instructional materials,

oral comments, and may determine the time to be allotted to each person or to each side of an issue.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 33536, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9524. Waiver by Chairperson.

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

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 33536, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.2. Acquisition of Adopted Instructional Materials

§ 9527. Free Instructional Materials.

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

(a) Free instructional materials shall comply with the requirements of Education Code sections 60040-60044 and the Board's Standards for Evaluation of Instructional Materials with Respect to Social Content.

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

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 60061, Education Code.

HISTORY

1. New Article 2.2 (sections 9527-9530) and section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9528. Alternate Formats of Adopted Instructional Materials.

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

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

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

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

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

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

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

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

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

2. Amendment filed 2-27-97; operative 3-29-97 (Register 97, No. 9).

§ 9529. New Editions of Adopted Instructional Materials.

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

(a) Changes contained in the new edition are so minimal that both the new edition and the old edition may be used together in a classroom environment. (Technical upgrades of computer software which do not contain educational or social content 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60040-60044, 60061, 60222 and 60223, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

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

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

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

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

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.3. Instructional Materials Funding

§ 9531. Instructional Materials Funding Realignment

Program: Expenditure Policy Percentages and 24 Month Purchasing Requirement.

(a) As much of the allocation, as is necessary, from the Instructional Materials Funding Realignment Program (IMFRP) annual appropriation to local education agencies must be spent to purchase textbooks or basic instructional materials adopted subsequent to the adoption of content

standards (Education Code section 60605) for each pupil, in reading language arts, mathematics, history-social science, and science.

(1) For kindergarten and grades 1 to 8 this shall be textbooks or basic instructional materials adopted by the State Board of Education (SBE) pursuant to Education Code section 60200 inclusive. For grades 9 to 12, this shall be textbooks or instructional materials adopted by the local governing board pursuant to Education Code section 60400 following receipt of the standards maps submitted by publishers in accordance with Education Code section 60451.

(2) Textbooks or instructional materials must be purchased that are consistent with the content and cycles of the curriculum frameworks as required by Education Code section 60119.

(3) To ensure compliance with Education Code section 60119, first priority shall be for the purchase of textbooks or instructional materials after the adoption of the *K-12 Reading Language Arts Curriculum Framework* (December 1998), and the *K-12 Mathematics Curriculum Framework* (December 1998). For purposes of K-8 instructional materials, only mathematics materials adopted in or after 2001 and reading/language arts/English language development materials adopted in or after 2002 meet the requirements of this paragraph.

(4) Second priority shall be for the purchase of K-8 SBE adopted textbooks or basic instructional materials in history-social science (1999) and science (2000), or 9-12 textbooks or instructional materials adopted locally after the completion of the *K-12 History-Social Curriculum Framework* (October 2000) and the *K-12 Science Curriculum Framework* (February 2002).

(b) Upon certification by the local governing board that each pupil has been provided with a standards-aligned textbook or basic instructional materials in the four core curriculum areas, up to 100 percent of the annual IMFRP funds may be spent to purchase other instructional materials adopted by the SBE pursuant to Education Code section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Education Code section 60400 for grades 9 to 12, as may be necessary to meet the requirements of Education Code section 60119 in all subjects which are consistent with the content and cycles of the curriculum frameworks.

(c) Upon determination through the annual local public hearing and approval of a resolution by the local governing board, pursuant to Education Code section 60119, that each K-12 pupil has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials or both, or the local governing board has taken action to ensure sufficiency of textbooks or instructional materials or both within a two-year period as required, and also that pursuant to Education Code section 60422(a), the local governing board has provided each K-12 pupil with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the SBE or, for grades 9-12, inclusive, were adopted by the local governing board, up to 100% of the remaining Instructional Materials Funding Realignment funds may be spent on any of the following:

(1) Instructional materials, including but not limited to supplementary instructional materials and technology-based materials, from any source and approved locally or by the state for legal and social compliance pursuant to Education Code sections 60040-60045 and 60048 and the SBE guidelines in *Standards for Evaluating Instructional Materials for Social Content* (revised 2000).

(2) To purchase tests.

(3) To bind basic textbooks that are otherwise useable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Education Code section 60200 or by the governing board pursuant to Education Code section 60400 for grades 9 to 12.

(4) To fund in-service training related to instructional materials.

(5) To purchase classroom library materials for kindergarten and grades 1 to 4 with the condition the school district has developed a district

wide classroom library plan pursuant to Education Code section 60242 (d)(1), (2) and (3).

(d) For purposes of subdivision (c) and Education Code section 60422(a), the reference to adoption of textbooks or basic instructional materials by the SBE shall refer to a primary adoption, which is the first adoption after the adoption of evaluation criteria by the SBE. A primary adoption is distinguished from a follow-up adoption, which is the second adoption of textbooks or basic instructional materials conducted by the SBE using the same evaluation criteria. Textbooks and basic instructional materials adopted in a follow-up adoption are added to the then-existing list of adopted textbooks and basic instructional materials for a subject area, and the period of adoption for those materials is the remaining time of the list for the primary adoption.

(e) Notwithstanding the provisions of subdivisions (a) and (b), in a fiscal year immediately following a primary adoption of textbooks and basic instructional materials in reading/language arts, mathematics, history-social science, or science, a local education agency may use up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation for that fiscal year generated by students in kindergarten through grade 8, and grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of subdivision (c), provided the local governing board certifies by resolution adopted at a duly noticed public meeting a decision to pilot (i.e. evaluate in actual classroom application), during that fiscal year immediately following the primary adoption, one or more of the textbooks or basic instructional materials adopted by the SBE in that primary adoption. The local governing board certification must be made after the SBE concludes the primary adoption and before the commencement of the fiscal year immediately following that primary adoption.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 60242, 60242.5, 60421, 60422 and 60423, Education Code.

HISTORY

1. New article 2.3 (sections 9531-9532) and section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-16-2003 order, including amendment of subsection (a)(3) and NOTE, transmitted to OAL 5-12-2003 and filed 6-16-2003 (Register 2003, No. 25).

§ 9532. School District or Charter School in its First Year of Operation or of Expanding Grade Levels at a School Site.

(a)(1) In order to be eligible to receive funding pursuant to Education Code section 60421 and consistent with Education Code section 47652, in the current fiscal year, a charter school in its first year of operation must commence operation on or before September 30 of that fiscal year. A charter school in its first year of operation that begins operations after September 30 of the current fiscal year shall not be eligible to receive instructional materials funding until the following fiscal year.

(2) For the purposes of this section and Education Code section 60421, "operation" shall be defined as providing instruction to pupils enrolled in the charter school.

(3) For purposes of receiving funding pursuant to Education Code section 60421, and consistent with Education Code section 35534, except as provided in Education Code sections 35535 and 35536, the first year of operation of a school district shall be July 1 of the calendar year following the calendar year in which the school district reorganization action is completed.

(b)(1) For the purposes of Education Code section 60421, "expanding grade levels" shall be defined as additional grades in the current fiscal year that did not exist as a school site of the school district or charter school in the prior fiscal year. For charter schools that operate multiple sites, expanding grade levels shall also only include any additional grades that did not exist in the prior fiscal year when considering all of the individual or satellite sites of the charter school in aggregate. If any one site of a charter school with multiple sites provides instruction to pu-

pils in a particular grade level, then that grade level shall not be included in expanding grade levels.

(2) In order to receive funding pursuant to Education Code section 60421, the provision of instruction to pupils enrolled in the expanding grade levels at a school site of the school district or charter school shall commence on or before September 30 of the current fiscal year. A school site of the school district or charter school that commences instruction in its expanding grade levels after September 30 of the current fiscal year shall not be eligible to receive funding until the following fiscal year.

(c) For the purposes of this section and Education Code section 60421, "school site" shall be defined as a school with a separate County/District/School (CDS) code, as maintained by the Superintendent of Public Instruction as of September 30 of the current fiscal year. Charter schools operating multiple school sites under one charter number provided by the SBE and one CDS code shall be considered one school site.

(d) A school district or charter school in its first year of operation or of expanding grade levels at a school site shall provide enrollment estimates to the California Department of Education by September 30 of the current fiscal year in order for the school district or charter school to receive funding in that fiscal year. The enrollment estimates shall be certified by the school district governing board or the charter school's charter-granting local educational agency (LEA), as appropriate, and the county office of education in which the school district or charter school's charter granting LEA is located. These enrollment estimates and the associated funding shall be adjusted for actual enrollment as reported by the California Basic Education Data System for the current fiscal year.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 47652 and 60421, Education Code.

HISTORY

1. New section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-16-2003 order transmitted to OAL 5-12-2003 and filed 6-16-2003 (Register 2003, No. 25).

Article 3. Request to Purchase Nonadopted Core Reading Program Instructional Materials

§ 9535. Request to Purchase Nonadopted Core Reading Program Instructional Materials.

If, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program, and if that governing board desires to purchase non-adopted materials with the funds apportioned to it pursuant to Education Code section 60351, it shall request authorization to do so from the California State Board of Education. The request shall include all of the following:

(a) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive, including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

(b) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.

(c) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's ru-

brics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).

(d) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.

(e) A description of the local educational agency's plans for staff development for teachers regarding the use of the proposed materials.

(f) A description of how the proposed materials will be used by the local educational agency's teachers.

(g) A description of the projected timeline for the purchase of the proposed materials.

(h) A description of the process used for public display of the proposed materials by the local educational agency, with a statement of assurance from the local educational agency that the materials have been or will be on public display for at least 30 days prior to their purchase, with all comments received during the display period being made part of the official records of the local educational agency's governing board.

(i) A statement of assurance from the local educational agency that the proposed materials are for use in kindergarten or any of grades 1 to 3, inclusive.

(j) A statement of assurance from the local educational agency that the proposed materials are based on the fundamental skills required by reading, including, but not limited to, systematic, explicit phonics and spelling, within the meaning of Education Code section 60200.4.

(k) A statement of assurance from the local educational agency that the proposed materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading materials that provide practice in the lesson being taught, within the meaning of Education Code section 60352(d).

(l) Evidence that the local educational agency's governing board:

(1) Formally approved the authorization request at a properly noticed public meeting.

(2) Supports the use of the specified funds for the purpose expressed in the request.

(3) Verified that the local educational agency considered the California State Board of Education adopted materials for its core reading program and considered the reasons given by the California State Board of Education for not adopting the materials proposed for purchase, if those materials were submitted for adoption in 1996.

(4) Verified that the proposed materials comply with Education Code sections 60040, 60041, 60042, 60044, 60045, and 60046.

(5) Verified that all statements of assurance included within the request for authorization are true and correct.

If the request for authorization complies with subdivisions (a) to (l), inclusive, and establishes to the satisfaction of the California State Board of Education that none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in the applying local educational agency's core reading program, then the request for authorization shall be granted by the California State Board of Education.

NOTE: Authority cited: Sections 33031, 60206 and 60352(d), Education Code. Reference: Sections 60351 and 60352(d), Education Code.

HISTORY

1. New article 3 (section 9535) and section filed 1-30-97 as an emergency; operative 1-30-97 (Register 97, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-97 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 83, No. 25.
2. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 31).
3. New section filed 7-31-97; operative 7-31-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 31).

Article 4. Additions to Lists of Adopted Instructional Materials in Reading/Language Arts and Mathematics

§ 9540. Establishment of Policy.

This article is the policy the State Board is required to adopt under Education Code section 60200.1(a)(5). The provisions of this article shall apply to additional submissions and adoptions of instructional materials in reading/language arts and mathematics under Education Code section 60200.1(a)(5).

NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference: Section 60200.1(a)(5), Education Code.

HISTORY

1. New article 4 (sections 9540-9550) and section filed 11-2-98 as an emergency; operative 11-2-98 (Register 98, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-99 or emergency language will be repealed by operation of law on the following day. For prior history of article 4 (sections 9550-9551) and article 5 (sections 9560-9566), see Register 75, No. 40. For prior history of subchapter 2 (sections 9540-9583), see Register 75, No. 40 and Register 83, No. 25.
2. Certificate of Compliance as to 11-2-98 order, including amendment of section, transmitted to OAL 3-2-99 and filed 4-13-99 (Register 99, No. 16).

§ 9541. Definitions.

(a) "Basic program" means an instructional materials submission that covers a course of study within the meaning of Education Code section 60200.1(a)(5)(A). It shall be comprehensive, i.e., it shall be designed for use as a principal learning resource that meets in organization and content the basic requirements for the intended course (generally a full school year in length).

(b) "Curriculum Commission" means the Curriculum Development and Supplemental Materials Commission.

(c) "Individual standards" means the individually identified and numbered components which together compose the primary elements of the language arts standards or the mathematics standards.

(d) "Language arts standards" means the final edited version of the English-Language Arts Content Standards for California Public Schools, Kindergarten through Grade Twelve, adopted by the State Board in November 1997 pursuant to Education Code section 60605.

(e) "Mathematics standards" means the final edited version of the Mathematics Content Standards for California Public Schools, Kindergarten through Grade Twelve, adopted by the State Board in December 1997 pursuant to Education Code section 60605.

(f) "Partial program" means an instructional materials submission that covers a substantial portion of a course of study within the meaning of Education Code section 60200.1(a)(5)(A). Its potential contribution to the efficient and effective delivery of the whole of the subject matter content for the intended course of study shall be clear and significant. A submission that presents subject matter content that is not clearly connected or only peripherally related to the intended course, or that would otherwise make a less-than-significant contribution to the intended course, shall not be added to a list of adopted instructional materials as a partial program.

(g) "Special student populations" means students who face identified academic challenges and includes, but is not limited to, students (1) who are enrolled in special education, (2) whose demonstrated English-language proficiency is not comparable to that of the school district's average native English-language speakers; and (3) whose achievement is either significantly below or significantly above that typical of students at the grade level.

EXHIBIT 5
EXECUTIVE ORDERS

*Standards for
Evaluating Instructional
Materials for Social Content*
2000 Edition

Developed by the
Curriculum Frameworks and Instructional
Resources Division
California Department of Education

Adopted by the
California State Board of Education

Published by the
California Department of Education



Publishing Information

When *Standards for Evaluating Instructional Materials for Social Content* was approved by the California State Board of Education on January 13, 2000, the members of the State Board were the following: Robert L. Trigg, President; Kathryn Dronenburg, Vice President; Marian Bergeson; Susan Hammer; Carlton Jenkins; Marion Joseph; Yvonne Larsen; Monica Lozano; Janet Nicholas; Vicki Reynolds; and Nickolas Rodriguez.

The document was developed by the Curriculum Frameworks and Instructional Resources Division, California Department of Education.

The 2000 edition was edited by Faye Ong, working in cooperation with Greg Geeting, Interim Executive Director, California State Board of Education. It was prepared for printing by the staff of CDE Press. The cover and interior design were prepared by Juan Sanchez. Typesetting was done by Carey Johnson. The document was published by the California Department of Education, 721 Capitol Mall, Sacramento, California (mailing address: P.O. Box 944272, Sacramento, CA 94244-2720). It was distributed under the provisions of the Library Distribution Act and *Government Code* Section 11096.

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Ordering Information

Copies of this publication are available for \$8 each, plus shipping and handling charges. California residents are charged sales tax. Orders may be sent to the California Department of Education, CDE Press, Sales Office, P.O. Box 271, Sacramento, CA 95812-0271; FAX (916) 323-0823. See page 16 for complete information on payment, including credit card purchases. Prices on all publications are subject to change.

A partial list of other educational resources available from the Department appears on page 16. In addition, an illustrated *Educational Resources Catalog* describing publications, videos, and other instructional media available from the Department can be obtained without charge by writing to the address given above or by calling the Sales Office at (916) 445-1260.

Notice

The guidance in *Standards for Evaluating Instructional Materials for Social Content* is not binding on local educational agencies or other entities. Except for the statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory. (See *Education Code* Section 33308.5.)



Prepared for publication
by CSEA members.

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Foreword

Standards for Evaluating Instructional Materials for Social Content reflects California's continuing effort to ensure that the instructional materials we use in our public schools contribute to a positive educational experience for all students. These standards are based on California law as well as policies established by the State Board of Education regarding matters of social importance.

Instructional materials play an important role in forming a child's attitudes; therefore, these materials need to reflect a multicultural society and to avoid stereotyping. The following standards ensure that instructional materials contain appropriate depictions of matters such as male and female roles, older people and the aging process, people with disabilities, and religion.

The standards also address other sensitive issues, including brand names and corporate logos. In addition, the standards provide for exceptional situations where less than full compliance is allowed, including classical or contemporary literature; music, art, stories, or articles; and the presentation of historical perspectives.

These social content standards are used by evaluators at the state level to determine instructional materials' compliance with legal requirements and State Board policy. In addition, we encourage local educational agencies to review these standards carefully in their own selection of instructional materials. This document will help ensure that locally selected materials comply with the requirements for social content.



DELAINE EASTIN

State Superintendent of Public Instruction



MONICA LOZANO

President

California State Board of Education

Standards for Evaluating Instructional Materials for Social Content

Research has documented that the interests, prejudices, and ideas children develop as they mature are influenced directly by everything they see and hear. Much of a child's early development takes place in school; therefore, instructional materials contribute to a positive or negative school experience. The California Legislature recognized the vital role of instructional materials in the formation of a child's attitudes and beliefs when it adopted *Education Code* sections 60040 through 60044, 60048, and 60200 (see the Appendix).

In addition to providing positive school experiences and encouraging students' aspirations, instructional materials should reflect a pluralistic, multicultural society composed of unique individuals. The *Education Code* sections referenced in this document are intended to help end stereotyping in instructional materials by showing diverse people in positive roles contributing to society. Instructional materials used by students in California public schools should never portray in an adverse or inappropriate way the groups referenced in the laws.

Purpose of Standards

The laws require that instructional materials portray accurately and equitably the cultural and racial diversity of American society; the male and female roles; and the contributions of minority groups and males and females to the development of California and the United States. These requirements imply that instructional materials must also help students to understand both the historical roles and the contributions of women and minorities in other societies; the forces that shaped those roles and contributions; and how and why the roles and contributions of contemporary American women and minorities differ from those of women and minorities at other times and in other cultures.

Many evaluators are needed to review the large number of instructional materials that are submitted to the California Department of Education. Those materials must be examined for legal compliance with the various social content requirements specified in the *Education Code*. Evaluators must use individual judgment to determine whether materials do in fact comply. This document provides reasonable, systematic standards on which evaluators may base their judgments so that the evaluation will be as consistent and equitable as possible.

There are standards pertaining to age, disability, and nutrition that are not referenced in statute. These standards are based on policies adopted by the State Board of Education. As such, the standards regarding those areas must be considered by those who review for compliance. Policy areas are identified by the date of Board approval, not by statutory code sections.

In applying the standards to instructional materials, evaluators should consider special circumstances under which compliance is not required. Those special circumstances are described below.

Special Circumstances

Less than full compliance may be allowed under the following special circumstances:

1. *Literary, historical, and cultural perspectives.* When examining instructional materials for adverse reflection or roles, an evaluator must make a qualitative judgment of classical or contemporary literature (including folktales), music, art, stories, or articles having a particular historical or cultural perspective. Complete compliance with the guidelines may be inappropriate in some cases. What might be considered an adverse reflection or a failure to portray appropriate roles should be judged in the context of high-quality literary works. Discussion material should be included in the teacher's edition of instructional materials indicating that, although a particular attitude toward women or a minority group was prevalent during a period in history, that attitude has changed or is changing.
2. *Reference to humans.* Not all instructional materials need to include references to human beings. For instance, math problems described solely in abstract terms or stories about animals without human attributes are perfectly acceptable in instructional materials but are outside the scope of the standards. In addition, materials that contain references to children need not include references to adults even though this omission may limit the scope of the roles and contributions that can be presented.
3. *Special purpose—limited portrayals.* Several kinds of circumstances make it necessary to modify requirements regarding proportion and balance of portrayals. These circumstances do not eliminate the need to carefully review for adverse reflection or derogatory references, but they do make it difficult to achieve the usual kind of required balance.
 - a. *Narrow focus—limited scope and content.* An evaluator must consider the number of characters presented and the relationships among them; if the material includes only three or four main characters or if all of the main characters are members of the same family, obviously it will be unrealistic to expect portrayal of a wide diversity of ethnic groups or roles and contributions. If the setting is restricted to a limited locale, such as an inner-city ghetto or a sparsely settled desert region, the possibilities for showing a wide range of socioeconomic groups in a wide range of activities are necessarily limited. Materials with a narrow focus and/or limited portrayals should be clearly identified as such so that no false impressions are conveyed.
 - b. *Infrequent use.* The materials are designed to be used infrequently (example: a test to be administered only two or three times a year).

- c. *Small group.* The materials are part of a small group of materials that are designed for a special purpose (example: an enrichment series of pamphlets with fewer than eight pamphlets per grade level).
 - d. *Audience.* The intended audience is other than students (example: parents).
 - e. *Ancillary materials.* These materials are part of the core program and support the basic program (example: workbooks, test booklets, transparencies, tapes, and slides).
4. *Series.* When conducting a compliance review of a series of instructional materials designed to be used as a basic program, an evaluator must judge each grade level individually without regard to the content of any other component. However, it is important to consider certain exceptions referred to previously under "Special purpose."
 5. *Teachers' materials.* Evaluators must use the standards for reviewing students' and teachers' materials. Two considerations are especially important in connection with teachers' materials: (1) In no case may instructions in a teacher's edition designed to counteract noncompliant pictures or text in a student's edition be given any weight in the evaluation of the student's edition. (2) Instructions to the teacher about students' activities that could reasonably be expected to cause adverse reflection or represent roles inaccurately must be considered noncompliant even though those instructions are not seen by the student.

Male and Female Roles

Education Code Sections 60040(a) and 60044(a)

Purpose. The standards promote the individual development and self-esteem of each student, regardless of gender.

Method. The standards will be achieved by portraying people of both sexes in the full range of their human potential in all societal roles.

Applicability of Standards. The standards regarding adverse reflection and equal portrayal must be applied in every instance. The other standards require compliance when appropriate.

1. *Adverse reflection.* Descriptions, depictions, labels, or rejoinders that tend to demean, stereotype, or patronize males or females because of their sex must not appear.
2. *Equal portrayal.* Instructional materials containing references to, or illustrations of, people must refer to or illustrate both sexes approximately evenly, in both number and degree of importance, except as limited by accuracy or special purpose.
3. *Occupations.* If professional or executive occupations, parenting, trades, or other gainful employment is portrayed, men and women should be represented equally.
4. *Achievements.* Whenever instructional material presents developments in history or current events or achievements in art, science, or any other field, the contributions of women and men should be represented in approximately equal numbers.

5. *Mental and physical activities.* An approximately equal number of male and female characters should be depicted in roles in which they are being mentally and physically active, being creative, solving problems, and experiencing success and failure in those roles.
6. *Traditional and nontraditional activities.* The number of traditional and nontraditional activities engaged in by characters of both sexes should be approximately even.
7. *Emotions.* A range of emotions (e.g., fear, anger, tenderness) should be depicted as being experienced by male and female characters.
8. *Gender-neutral language.* Such general terms as *people, men and women, pioneers,* and *they* should be used to avoid the apparent exclusion of females or males.
9. *Parenting activities.* Both sexes should be portrayed in nurturing roles with their families. The responsibility of parenting should be emphasized.

Ethnic and Cultural Groups

Education Code Sections 60040(b) and 60044(a)

Purpose. The standards project the cultural diversity of society; instill in each child a sense of pride in his or her heritage; develop a feeling of self-worth related to equality of opportunity; eradicate the roots of prejudice; and thereby encourage the optimal individual development of each student.

Method. The standards will be achieved by including a fair representation of majority and minority group characters portrayed in a wide variety of occupations and roles, including cultural and artistic roles.

Applicability of Standards. The word *group* as used in these standards refers generally to one of those named in *Education Code* Section 60040: "American Indians, American Negroes, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups." Current federal and state reporting guidelines for affirmative action and other similar programs use a different type of classification. However, because any racial, ethnic, or cultural groups can be fitted into those listed in the *Education Code*, that code section will remain the basis for implementation of the guidelines.

All the following standards apply to all instructional materials that depict contemporary U.S. or California society or any unidentifiable society. In addition, standards 1, 2, and 3 apply to all materials that depict any contemporary society outside the United States subject to standard 1 under "Special Circumstances" concerning certain perspectives regarding literature, music, art, history, or other cultures; and standard 3 applies concerning certain kinds of limited portrayals.

The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate.

1. *Adverse reflection.* Descriptions, depictions, labels, or rejoinders that tend to demean, stereotype, or patronize minority groups are prohibited.

2. *Proportion of portrayals.* Instructional materials containing references to, or illustrations of, people must portray accurately, to the extent possible, the roles and contributions of a fair proportion of diverse ethnic groups, especially those groups referenced in the statute (Section 60040[b]).
3. *Customs and lifestyles.* When ethnic or cultural groups are portrayed, portrayals must not depict differences in customs or lifestyles as undesirable and must not reflect adversely on such differences.
4. *Occupations.* If professional or executive roles, trade jobs, or other gainful occupations are portrayed, majority and minority groups should be presented therein in fair proportion.
5. *Socioeconomic settings.* Minority persons should be depicted in the same range of socioeconomic settings as are persons of the majority group.
6. *Achievements.* Whenever developments in history or current events, or achievements in art, science, or other fields, are presented, the contributions of minority persons, particularly prominent minority persons, should be included and discussed when it is historically accurate to do so.
7. *Mental and physical activities.* Majority and minority group characters should be depicted in fair proportion in roles in which they are being mentally and physically active, being creative, solving problems, and experiencing success and failure in those roles.
8. *Traditional and nontraditional activities.* The portrayal of minority characters engaged in activities that have traditionally been viewed as typical of their culture should be balanced by portrayal of such characters engaged in other less traditionally recognized activities.
9. *Root culture.* Depiction of diverse ethnic and cultural groups should not be limited to the groups' root cultures (traditional activities associated with ancestral culture) but, rather, must include such groups in the mainstream of U.S. life and must identify them as Americans.

Older Persons and the Aging Process

Approved by the State Board of Education

On July 12, 1979

Purpose. The standards promote the development of a healthy perception of older people and a concept of the aging process as a natural phenomenon.

Method. The standards will be achieved by depicting older persons and their activities and contributions as a vital part of society.

Applicability of Standards. The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other two standards require compliance when appropriate.

1. *Adverse reflection.* Descriptions, depictions, labels, or rejoinders that tend to demean, stereotype, or patronize older persons are prohibited.
2. *Proportion of portrayals.* Instructional materials containing references to, or illustrations of, usual human activities must include older persons except as limited by accuracy or special purpose.
3. *Roles.* The presentation of older persons in instructional materials should not be significantly different from the portrayal of people of other age groups except as is necessary to identify them as older persons.
4. *Aging process.* When appropriate, the aging process should be pictured as a continuous process spanning an entire lifetime.

People with Disabilities

Approved by the State Board of Education

On July 12, 1979

Purpose. The standards promote the development of a perception of people with disabilities that is clear and undistorted, without fear, distrust, loathing, amusement, ridicule, contempt, or pity.

Method. The standards will be achieved by depicting the involvement, activities, and contributions of people with disabilities as an integral part of society.

Applicability of Standards. The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate.

Whether a disability is temporary or permanent is of no particular significance to evaluators. In programs for persons with disabilities, a disability is a disability regardless of duration.

1. *Adverse reflection.* Descriptions, depictions, labels, or rejoinders that tend to demean, stereotype, or patronize disabled persons are prohibited.
2. *Proportion of portrayals.* Instructional materials that depict a broad range of human activities must include some representations of people with disabilities except as limited by special purpose or the need for accuracy.
3. *Roles.* The presentation of people with disabilities in instructional materials should not be significantly different from the portrayal of nondisabled persons except as is necessary to identify them as people with disabilities.
4. *Emotions.* Materials should not convey the impression that people with disabilities are any different from other people in their emotions or their ability to love and be loved.
5. *Achievements.* When developments in history or current events or achievements in art, science, or any other field are presented, the contributions of people with disabilities must be included when it is appropriate and historically accurate to do so.

Entrepreneur and Labor

Education Code Sections 60040(c) and 60044(a)

Purpose. The standards develop in students an unbiased view of the functions of the entrepreneur and of labor in American society.

Method. The standards will be achieved by presenting, when it is appropriate to do so, a balanced picture of the roles of entrepreneurs, managers, and labor (as represented by workers and their organizations) in the American free enterprise system.

Applicability of Standards. The standard of adverse reflection must be applied in every instance. The other standard requires compliance only when appropriate.

1. *Adverse reflection.* References or labels that tend to demean, stereotype, or patronize any persons engaged in any particular occupation or vocation, whether essentially entrepreneur, management, or labor, are prohibited.
2. *Roles.* Accurate reference should be made to the role and contribution of the entrepreneur and labor in the total development of California and the United States.

Religion

Education Code Section 60044(a) and Subsection (b)

Purpose. The standards enable all students to become aware and accepting of religious diversity while being allowed to remain secure in any religious beliefs they may already have.

Method. The standards will be achieved by depicting, when appropriate, the diversity of religious beliefs held in the United States and California, as well as in other societies, without displaying bias toward or prejudice against any of those beliefs or religious beliefs in general.

Applicability of Standards. The standards are derived to a degree from the United States and the California constitutions and relate closely to the requirements concerning the portrayal of cultural diversity. Compliance is required.

These standards should not be construed to mean that the mere depiction of religious practices constitutes indoctrination. Religious music and art, for example, may be included in instructional materials when appropriate.

1. *Adverse reflection.* No religious belief or practice may be held up to ridicule and no religious group may be portrayed as inferior.
2. *Indoctrination.* Any explanation or description of a religious belief or practice should be presented in a manner that does not encourage or discourage belief or indoctrinate the student in any particular religious belief.
3. *Diversity.* When religion is discussed or depicted, portrayals of contemporary American society should reflect religious diversity.

Ecology and the Environment

Education Code Section 60041(a)

Purpose. The standards develop in all students a sense of responsibility for the protection and improvement of the natural environment as much as possible.

Method. The standards will be achieved by emphasizing to students, when appropriate, issues related to ecology and the environment and what ordinary citizens can do to contribute to the resolution of those issues.

Applicability of Standards. This standard is applicable only when appropriate. Instructional materials may omit discussion or portrayal of the kind required by these standards and still comply with the *Education Code* under this section. The material may be silent on those issues *provided* such silence does not imply that no problems exist in the environment.

1. *Ecology.* The interdependence of people and their environment should be represented.
2. *Environmental protection.* People's responsibilities for creating and protecting a healthy environment should be emphasized.
3. *Resource use.* Wise use of natural resources should be encouraged. Instructional materials should never depict, encourage, or condone waste of resources except as necessary to illustrate a point.

Dangerous Substances

Education Code Section 60041(b)

Purpose. The standards provide all students knowledge of the various uses and misuses of dangerous substances.

Method. The standards will be achieved by presenting factual information regarding the effects of dangerous substances.

Applicability of Standards. The following standards require compliance when appropriate:

1. *Discouragement of use.* The use of tobacco, alcohol, narcotics, or restricted dangerous drugs, except as prescribed by a physician, must not be glamorized or encouraged by illustrations or text.
2. *Hazards of use.* When references to, or illustrations of, the use of substances are included in other than an incidental manner, such as a passing reference to a character taking cough medicine or a classic short story referring to "father's pipe," the hazards of such use should be depicted or pointed out.

Thrift, Fire Prevention, and Humane Treatment of Animals and People

Education Code Section 60042

Purpose. The standards instill in all students some basic values: thrift, fire prevention, and humane treatment of animals and people.

Method. The standards will be achieved by demonstrating the connection between these values and both everyday and extraordinary occurrences in human living and history.

Applicability of Standards. The prohibitions listed below require compliance in all cases; all other mandates apply when appropriate. When making judgments based on these standards, evaluators must consider the vast differences that have existed among different cultures and in acceptable standards of humane behavior during different historical periods.

1. *Waste.* Waste must not be encouraged or glamorized.
2. *Fire hazards.* Unsafe practices and situations that constitute fire hazards must not be depicted (except for clarifying a point), condoned, or encouraged.
3. *Inhumane treatment.* Physical abuse of adults or children or violence against, or other inhumane or depraved treatment of, animals or people must not be depicted (except for clarifying a point), condoned, or encouraged.
4. *Thrift.* The practice of thrift should be encouraged through illustrations or text or both.
5. *Fire prevention.* Methods of fire prevention and fire safety rules in general should be explained and the use of such methods and rules encouraged through illustrations or text or both.
6. *Humane treatment.* Humane treatment of people and animals should be encouraged through illustrations and text. However, inhumane treatment that occurred in history (such as historical references to slavery or the Holocaust) should not be omitted or glossed over but should be depicted when it is appropriate to do so.

Declaration of Independence and Constitution of the United States

Education Code Section 60043

These standards need to be met only when students are at a level appropriate to the comprehension of the Declaration of Independence and the U.S. Constitution. In addition, the standards apply only to instructional materials for social science, history, or civics classes.

1. The Declaration of Independence should be presented.
2. The United States Constitution should be included.

Brand Names and Corporate Logos

Education Code Sections 60048 and 60200

"Guidelines" approved by the State Board of Education

On January 13, 2000

Purpose. The standards prevent unfair exposure of any privately produced product and students' exposure to unnecessary advertising.

Method. The standards will be achieved by omitting, whenever possible, illustrations of or references to private producers or their products.

Applicability of Standards. The two standards require compliance when appropriate. They also require judgment concerning the educational purpose of the material or the segment of the materials involved; the educational purpose determines how the standards are to be applied.

These standards apply to all instructional materials that depict contemporary American society. In representations of foreign societies, the standards apply to brand names, products, and logos familiar to the average American who has *not* traveled abroad.

1. *Use of any such depictions.* Instructional materials shall not contain illustrations of any identifiable commercial brand names, products, or corporate or company logos unless such illustrations are necessary to the educational purpose of the instructional material and that purpose cannot be achieved without using such illustrations, or unless such illustrations are incidental to a scene of a general nature (example: Times Square, New York City).
2. *Prominent use of any one depiction.* These exceptions aside, if a brand name, representation, or company logo is illustrated, prominence shall not be given to any one brand or company unless, in turn, such illustration is necessary to the educational purpose of the instructional material and that purpose cannot be achieved without using such illustration (example: a Coca Cola sign in a foreign country, demonstrating the social influence of American corporations abroad).

Guidelines for Exemptions. Exemptions to the standards regarding brand names and corporate logos are allowable for the following purposes:

Historical purposes. Use of a corporate name or product may provide a historical reference.

Examples: Photograph of "Dewey Defeats Truman" headline with the newspaper's name in full view; Henry Ford and history of automobiles, manufacturing

Consumer and career-related education. A real-world example may contain valuable information that cannot be duplicated with a fictitious scenario.

Examples: Analysis of commercials to determine why some advertising campaigns are successful and others are not; analysis of job trends in various fields and corporations

Research applications. Students need to know how to conduct valid research to find reliable information.

Examples: The use of the *World Book Encyclopedia* or *Bartlett's Familiar Quotations* as sources; use of information gathering through Internet search engines or other online resources, such as the *Encyclopaedia Britannica*

Foreign language instruction. Prominent commercial products are shown in foreign language materials to provide a better picture of day-to-day lives of people within that culture.

Example: Names of newspapers or products unfamiliar in the U.S. may be mentioned in descriptions of people's daily lives.

Necessary sources of information. The use of information from the best or only source is acceptable and necessary to avoid plagiarism or to maintain the accuracy of a primary-source document.

Example: A 1942 newspaper used for researching articles about World War II contains incidental advertising.

Copyright protection. Sources should be listed unobtrusively, such as in small font underneath a photograph or numbered in the back of the book except where copyright protections are necessary. Corporate logos or names should not be repeated elsewhere in the instructional material unless there is a clear educational purpose for doing so.

Examples: A publisher may have the corporate name or logo on the front of the book and on a page that provides copyright information; a publisher may use a corporate name to refer the reader to another document for further information.

Literature and references to literature. Literature is generally exempt from a review for social content and includes previously published novels, short stories, poetry, essays, speeches, non-fiction, musical scores, and folktales.

Web-based resources and television shows. Those items are not reviewed because the content changes constantly. School districts are responsible for reviewing them to evaluate appropriateness of use.

Events, locations, sports teams, and people. International or national events that make a profit but are part of the general culture and do not target advertising solely to students (e.g., the Tour de France, Olympics, Indianapolis 500) may be referenced. Names of sports teams and organizations are allowed. Theme parks and commercial products associated with them may be depicted in instructional materials only if they fit into one of the categories noted above. Individuals and names of fictitious characters that are in the public domain may also be referenced.

Examples: Some photographs of historical people or various cartoon characters are part of the public domain and may be used without violating copyright laws. Use of popular cultural icons that are current would most likely violate copyright laws.

Each of the exceptions noted previously must serve an educational purpose in the instructional materials.

Diet and Exercise

Approved by the State Board of Education
On January 10, 1986

Purpose. The standards accustom students to seeing and dealing with representations of nutritious foods and foster a positive attitude toward exercise; diet and exercise are essential to children's health and well-being.

Method. The standards will be achieved by emphasizing foods of high nutritional value and regular exercise when it is appropriate to do so.

Applicability of Standards. The standards require compliance when appropriate. Depictions of foods of low nutritional value and of sedentary people are not absolutely prohibited; materials are to emphasize the importance of proper diet and regular exercise.

The relationship of diet and exercise to the overall health and well-being of children is well documented. A variety of opportunities to learn about good nutrition and exercise should be available so that children can attain optimal physical and mental development. Instructional materials should provide appropriate reinforcement in *illustration and content*. Illustrations should emphasize the selection of a variety of nutritious foods that are low in fat, salt, and sugar and high in fiber content. Foods that contribute little other than calories should be minimized.

1. *Variety of opportunities.* A variety of opportunities should be available for students to learn about good nutrition and exercise so that they attain optimal physical and mental development.
2. *Reinforcement through illustrations and content.* Instructional materials should appropriately reinforce through illustrations and content the benefits of consuming nutritious foods and exercising regularly. Illustrations of foods should emphasize the selection of a variety of nutritious foods that are low in fat, salt, and sugar and high in fiber. Depictions of foods that are of low nutritional value should be minimized.

Appendix

Requirements of the Education Code Regarding Social Content

Portrayal of cultural and racial diversity

60040. When adopting instructional materials for use in the schools, governing boards shall include only instructional materials which, in their determination, accurately portray the cultural and racial diversity of our society, including:

- (a) The contributions of both men and women in all types of roles, including professional, vocational, and executive roles.
- (b) The role and contributions of American Indians, American Negroes, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups to the total development of California and the United States.
- (c) The role and contributions of the entrepreneur and labor in the total development of California and the United States.

Ecological system; use of tobacco, alcohol, drugs, and other dangerous substances

60041. When adopting instructional materials for use in schools, governing boards shall include only instructional materials which accurately portray, whenever appropriate:

- (a) Man's place in ecological systems and the necessity for the protection of our environment.
- (b) The effects on the human system of the use of tobacco, alcohol, narcotics, and restricted dangerous drugs as defined in Section 11032 of the *Health and Safety Code*, and other dangerous substances.

Thrift, fire prevention, and humane treatment of animals and people

60042. When adopting instructional materials for use in the schools, the governing board shall require such materials as they deem necessary and proper to encourage thrift, fire prevention, and the humane treatment of animals and people.

Declaration of Independence and Constitution of the United States

60043. When adopting instructional materials for use in the schools, the governing board shall require, when appropriate to the comprehension of pupils, that textbooks for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States.

Prohibited instructional materials

60044. No instructional materials shall be adopted by any governing board for use in the schools, which in its determination, contains:

- (a) Any matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex, handicap, or occupation.
- (b) Any sectarian or denominational doctrine or propaganda contrary to law.

Commercial brand names, products, or logos

60048.

- (a) Basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to sections 60040 to 60047, inclusive, including illustrations, that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with guidelines or frameworks adopted by the State Board of Education may not be adopted by a school district governing board.
- (b) The governing board of a school district may not adopt basic instructional materials and other instructional materials required to be legally and socially compliant pursuant to sections 60040 to 60047, inclusive, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.
- (c) Nothing in this section shall be construed to prohibit the publisher of instructional materials to include whatever corporate name or logo on the instructional materials that is necessary to provide basic information about the publisher, to protect its copyright, or to identify third-party sources of content.
- (d) The state board may adopt regulations that provide for other allowable exceptions to this section, as determined by the state board.
- (e) The Superintendent of Public Instruction shall develop and the State Board of Education shall adopt guidelines to implement this section.

Adoption of List of Basic Instructional Materials; Submission Procedures; Criteria

60200. The state board shall adopt basic instructional materials for use in kindergarten and grades 1 to 8, inclusive, for governing boards, subject to the following provisions: . . .

- (c) In reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria, and ensure that, in its judgment, the submitted basic instructional materials meet all of the following criteria: . . .
- (5) Do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo. Materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo may not be used unless the board determines that the use of the commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:
 - (A) If text, the use of the commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.
 - (B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

Publications Available from the Department of Education

This publication is one of over 600 that are available from the California Department of Education. Some of the more recent publications or those most widely used are the following:

Item no.	Title (Date of publication)	Price
1356	Best Practices for Designing and Delivering Effective Programs for Individuals with Autistic Spectrum Disorders (1997) ...	\$10.00
1436	California Department of Education Early Start Program Guide (1998)	10.00
1373	Challenge Standards for Student Success: Health Education (1998)	10.00
1409	Challenge Standards for Student Success: Language Arts Student Work Addendum (1998)	12.75
1435	Challenge Standards for Student Success: Physical Education (1998)	8.50
1429	Challenge Standards for Student Success: Visual and Performing Arts (1998)	12.50
1290	Challenge Toolkit: Family-School Compacts (1997)	9.75*
1439	Check It Out! Assessing School Library Media Programs: A Guide for School District Education Policy and Implementation Teams (1998)	9.25
1476	Educating English Learners for the Twenty-First Century: The Report of the Proposition 227 Task Force (1999)	10.50
1509	Elementary Makes the Grade! (2000)	10.25
1389	English--Language Arts Content Standards for California Public Schools, Kindergarten Through Grade Twelve (1998)	9.25
1475	First Class: A Guide for Early Primary Education (1999)	12.50
0804	Foreign Language Framework for California Public Schools, Kindergarten Through Grade Twelve (1989)	7.25
1064	Health Framework for California Public Schools, Kindergarten Through Grade Twelve (1994)	10.00
1488	History--Social Science Content Standards for California Public Schools, Kindergarten Through Grade Twelve (2000)	9.00
1284	History--Social Science Framework for California Public Schools, 1997 Updated Edition (1997)	12.50
1457	Mathematics Content Standards for California Public Schools, Kindergarten Through Grade Twelve (1999)	8.50
1508	Mathematics Framework for California Public Schools, Kindergarten Through Grade Twelve (2000 Revised Edition)	17.50
1065	Physical Education Framework for California Public Schools, Kindergarten Through Grade Twelve (1994)	7.75
1514	Prekindergarten Learning and Development Guidelines (2000)	13.50
1462	Reading/Language Arts Framework for California Public Schools, Kindergarten Through Grade Twelve (1999)	17.50
1399	Ready to Learn--Quality Preschools for California in the 21st Century: The Report of the Superintendent's Universal Preschool Task Force (1998)	8.00
1511	SB 65 School-Based Pupil Motivation and Maintenance Program Guidelines (2000)	10.00
1496	Science Content Standards for California Public Schools, Kindergarten Through Grade Twelve (2000)	9.00
0870	Science Framework for California Public Schools, Kindergarten Through Grade Twelve (1990)	9.50
1452	Service-Learning: Linking Classrooms and Communities: The Report of the Superintendent's Service Learning Task Force (1999)	7.00
1472	Strategic Teaching and Learning: Standards-Based Instruction to Promote Content Literacy in Grades Four Through Twelve (2000)	12.50
1255	Taking Charge: A Disaster Preparedness Guide for Child Care and Development Centers (1996)	10.25
1261	Visual and Performing Arts Framework for California Public Schools, Kindergarten Through Grade Twelve (1996)	15.00

*Other titles in the *Challenge Toolkit* series are *Outline for Assessment and Accountability Plans* (item no. 1300), *Safe and Healthy Schools* (item no. 1299), *School Facilities* (item no. 1294), *Site-Based Decision Making* (item no. 1295), *Service-Learning* (item no. 1291), *Student Activities* (item no. 1292), and *Student Learning Plans* (item no. 1296). Call 1-800-995-4099 for prices and shipping charges.

Orders should be directed to:

California Department of Education
CDE Press, Sales Office
P.O. Box 271
Sacramento, CA 95812-0271

Please include the item number and desired quantity for each title ordered. Shipping and handling charges are additional, and purchasers in California also add county sales tax.

Mail orders must be accompanied by a check, a purchase order, or a credit card number, including expiration date (VISA or MasterCard only). Purchase orders without checks are accepted from educational institutions, businesses, and governmental agencies. Telephone orders will be accepted toll-free (1-800-995-4099) for credit card purchases. *All sales are final.*

The *Educational Resources Catalog* contains illustrated, annotated listings of departmental publications, videos, and other instructional materials. Free copies of the *Catalog* may be obtained by writing to the address given above or by calling (916) 445-1260.

Prices and availability are subject to change without notice. Please call 1-800-995-4099 for current prices and shipping charges.

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January 8, 2007

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: No. CSM. 03-TC-07
Instructional Materials Funding Requirements

Dear Ms. Higashi:

Please find enclosed a supplement to the test claim filing, specifically, a history of the Title 5, CCR, sections included in the test claim.

Sincerely,



Keith B. Petersen

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8 BEFORE THE
9 COMMISSION ON STATE MANDATES
10 STATE OF CALIFORNIA

11	Supplement to the:)	No. CSM. 03-TC-07
12)	
13	Test Claim Filed September 22, 2003	)	<u>Instructional Materials Funding</u>
14		)	<u>Requirements</u>
15)	
16		)	History Index for
17		)	Title 5, California Code of Regulations
18	by Castro Valley)	
19	Unified School District)	
20		)	Section 9505
21		)	Section 9530
22		)	Section 9531
23		)	Section 9532
24		)	Section 9535
25	_____)	

26 SUPPLEMENTAL INFORMATION

27 This supplement to the test claim provides an index and copy of each change to
28 the Title 5, CCR, sections included in the test claim. The Registers cited are attached
29 as Exhibit A. Amended language is underlined (new language) or stricken out (deleted
30 language).

31 HISTORY OF TITLE 5, CCR, SECTIONS INCLUDED IN THE TEST CLAIM

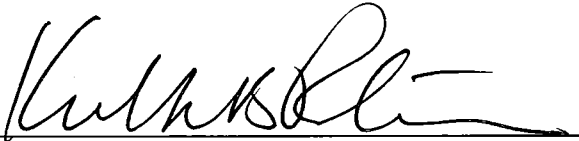
32 **Register 69-39** New Chapter 1 (§§ 9500 - 9505, 9520, 9530 - 9536, 9550, 9551,
33 9560 - 9566) filed.

- 1 **Register 75-39** Repealer of Article 1 (Sections 9500 - 9505) and new Article 1
2 (Sections 9500 - 9505).
- 3 **Register 75-40** § 9505: Repealer and added new section.
- 4 **Register 77-39** § 9505: Amendment.
- 5 **Register 83-25** § 9505: New note.
- 6 **Register 95-03** § 9530: New section.
- 7 **Register 97-05** § 9535: New section filed as an emergency.
- 8 **Register 97-31** § 9535: Repealer and added new article with no substantive
9 change.
- 10 **Register 2003-03** § 9531: New article 2.3 and section filed as an emergency.
11 § 9532: New section filed as an emergency.
- 12 **Register 2003-25** § 9531: Amendment of subsection (a)(3) and note and Certificate
13 of Compliance filed.
14 § 9532: Certificate of Compliance filed.
- 15 **Subsequent Registers:** There may be changes to the regulations after the date the
16 test claim was filed, which are not included.
17 /
- 18 /
- 19 /
- 20 /
- 21 /
- 22 /
- 23 /

CERTIFICATION

By my signature below, I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and complete to the best of my own knowledge or information or belief, and that the attached regulations are true and correct copies of documents from archives of a recognized law library.

EXECUTED this 8th day of January 2008, at Sacramento, California



FOR THE TEST CLAIMANT
Keith Petersen, President
SixTen and Associates

ATTACHMENT

Exhibit A Title 5, CCR Registers

Title 5, CCR, Register 69-39

§ 9505

Article 1. General Provisions

9500. Definition. The term "state textbooks" as used in this Chapter means textbooks adopted by the State Board for use in the elementary schools as "elementary schools" are defined in Education Code Section 9301.5.

History: 1. New Chapter 1 (§§ 9500-9505, 9520, 9530-9536, 9550, 9551, 9560-9566) filed 9-23-69; effective thirtieth day thereafter (Register 69, No. 39).

9501. Textbooks Are State Property. All state textbooks distributed to school districts, county superintendents of schools, and state institutions remain the property of the State.

9502. Management and Care of State Textbooks. The governing board of each school district maintaining any grade of grades kindergarten through 8, shall:

(a) Provide for an annual inventory of all state textbooks in the custody of the district and report such inventory at the time state textbooks are requisitioned.

(b) Prescribe and enforce rules with respect to state textbooks as follows:

- (1) Their use as provided by law.
- (2) Their management and care by school personnel.
- (3) Their proper care by pupils.
- (4) The collection of money in payment for their loss or wilful or negligent damage to them. All money so collected shall be transmitted, at the close of the fiscal year during which it was collected, to the Superintendent of Public Instruction by a warrant on the general fund of the school district payable to the State Department of Education and accompanied by a report of the collection on a form provided by the Superintendent of Public Instruction.

9503. Distribution of Textbooks. (a) The governing board of each school district maintaining any grade of kindergarten through 8, and the county superintendent maintaining any such grade, shall in the manner specified in (b) submit to the Superintendent of Public Instruction, on forms provided by the Superintendent of Public Instruction, requisitions for the number of copies of:

- (1) Each basic and supplementary textbook adopted for a grade by the State Board prior to November 13, 1968, needed to fulfill the ratio requirements fixed by the State Board for that grade.
- (2) Each basic textbook adopted by the State Board after November 13, 1968, needed to fulfill the ratio requirements fixed by the State Board for that book for that grade.
- (3) Supplementary textbooks adopted by the State Board after November 13, 1968, needed to meet the supplementary textbooks distribution schedule for that district.

(b) Requisitions submitted by a governing board of a district with an enrollment of less than 40,000 in grades kindergarten through 8 shall be forwarded through the offices of the county superintendent of schools for his approval. Requisitions by other districts may, but need not, be forwarded through the office of the county superintendent for approval.

(c) The Superintendent of Public Instruction shall ascertain that the number of copies of textbooks requested are adequate but not in excess of the number of copies authorized by law. Due consideration shall be given anticipated increases in enrollment, needs of teachers and supervisors, and reasonable wear and loss of copies previously distributed.

(d) The Superintendent of Public Instruction shall obtain receipts for textbooks distributed and shall maintain records of distribution.

9504. Distribution of Large Print Textbooks. (a) The governing board of any school district may request the county superintendent of schools to supply large print textbooks for the use of pupils within the district. The county superintendent of schools shall:

(1) Submit requisitions to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks needed to supply the school districts.

(2) Supply such textbooks to the district and demand their return to his custody when the need for them ceases.

(3) Return to the Superintendent of Public Instruction upon his request any large print textbooks distributed to the county superintendent no longer needed in school districts.

(b) The governing board of any school district with an enrollment of 40,000 or more pupils in grades 1 through 8 may submit requisitions directly to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks for the use of pupils within the district. After the need for such textbooks within that district ceases the textbooks shall be returned to the Superintendent of Public Instruction upon his request.

(c) All requests and requisitions for large print textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician and surgeon or optometrist licensed to practice in California, meets one of the following qualifications:

(1) The pupil has a visual acuity of 20/70 or less in the better eye after the best possible correction and has a residue of sight adequate for the reading of large print textbooks;

(2) The pupil has such other visual impairment that he cannot profit from using regular textbooks, but has adequate vision for the reading of large print textbooks.

9505. Price of Textbooks Sold to Private Parties or School Districts. The sale price of any state textbook sold to private parties

pursuant to Education Code Section 9653 or to school districts pursuant to Education Code Section 9653.1 is the cost price of the textbook.

The cost price of a textbook purchased complete from a publisher is the contract purchase price to the State plus 10% of that price as overhead, except that the sale price of a teachers edition shall not be less than the determined sale price of the pupil's edition.

A standard shipping charge may be added to the cost price of books delivered outside of Sacramento.

The Superintendent of Public Instruction shall annually prepare a list of the sale prices of state textbooks. He may sell state textbooks to private parties only at the sale price so listed and only when the sale is made from stock on hand that is not needed for immediate use in the public schools.

NOTE: Specific authority cited: Sections 9653 and 9653.1, Education Code.

Article 2. Required Use of Basic Textbooks

9520. Basic Textbooks Required to Be Used. At the beginning of each school year the governing board of each district maintaining any grade of kindergarten through grade 8 shall supply to each school in the district, and the principal of each school shall keep on file and available for public inspection, a list of all basic textbooks adopted by the State Board for use during that year.

The governing board shall, by resolution, require the principal of each school in which it maintains any grade of kindergarten through grade 8 to file with the governing board during the last month of the school term his written certification that all basic textbooks adopted by the State Board for grades maintained in the school have been used as a principal source of instruction in the respective grades and subjects for which they were adopted.

NOTE: Specific authority cited: Section 9318, Education Code.

Article 3. Procedures for District Selection of Supplementary Textbooks

9530. Definitions. For the purposes of selection of supplementary books for schools maintained by a county superintendent of schools, a county superintendent is a "school district," as that term is used in this article.

9531. Information Furnished the District. Whenever the State Board provides to school districts a list of supplementary textbooks in a designated subject tentatively indicated for adoption, the State Board shall also supply to each district all of the following:

(a) The Board's recommended distribution schedule as established under Education Code Section 9308.

(b) An estimate prepared by the Department of Education in accordance with Section 9532 of the first-year budget cost per copy to the State Board of each book on the list, assuming all districts selected supplementary textbooks as set forth in the State Board's recommended distribution schedule.

(c) A statement of the amount of supplementary textbook credit available to the particular district computed as described in Section 9532.

(d) A statement informing the governing board of the district of its responsibilities under Education Code Section 9318.

(e) Designation of the date, as fixed by the Superintendent of Public Instruction, by which the district must give notice of the district's selection and distribution schedule.

9532. Textbook Credit. The Department of Education shall compute the textbook credit available for each district, using the estimated first-year budget per copy cost to the State Board, the district's estimate of its projected enrollment for the first year of the adoption period, and an allowance for loss and replacement.

9533. Acquisition and Distribution of Sample Copies. Whenever the Board is required by Education Code Sections 9310 and 9310.5 to cause basic and supplementary textbooks to be acquired for review by school districts, the Superintendent of Public Instruction, on behalf of the Board, shall acquire by purchase from the publisher the appropriate basic textbooks adopted and supplementary textbooks indicated for adoption in quantities sufficient to provide one full set of such basic and supplementary textbooks to each city school district and one full set to each county superintendent whose county contains one or more districts that do not qualify as city school districts and to provide additional samples of supplementary books as requested by districts under Section 9534(b).

9534. Additional Samples of Books. (a) A district wishing additional samples of basic books for use in the selection of supplementary books may purchase them from the appropriate source, using district funds. The district may not request additional free samples from the State Board, State Department of Education, or publishers.

(b) A district wishing additional samples of supplementary books for use in the selection procedure may order them from the State Department of Education and request that the charges be recorded against the district's supplementary textbook credit. The district may not request additional free samples from publishers.

9535. Notice of Selection. By not later than a date to be specified by the Superintendent of Public Instruction, the governing board of each district shall notify the Superintendent of Public Instruction of its selection of supplementary textbooks and of its distribution schedule. The notice shall be on forms provided by the Superintendent of Public Instruction and shall be postmarked not later than such date, addressed to the Superintendent of Public Instruction, Attention: Bureau of Textbooks, 721 Capitol Mall, Sacramento, California 95814. A district not wishing to receive any supplementary books shall send notice to that effect.

If a district does not give the required notice by the date specified, the supplementary textbook distribution schedule of that district is the State Board's recommended distribution schedule.

9536. Publishers' Representatives. In connection with the selection procedure no member of the governing board shall confer individually with publishers' representatives. At any meeting the governing board may entertain oral communications from such representatives and receive written communications from the publisher regarding textbooks on the list of supplementary textbooks tentatively indicated for adoption by the State Board.

Article 4. Disposal by School Districts and County Superintendents of Unusable or Obsolete Usable Textbooks

9550. Unusable Textbooks; Standards for Determination. (a) A textbook is unusable for educational purposes within the meaning of Education Code Section 9702 when it is one of the following:

- (1) So mutilated that the continuity of subject matter is disrupted to the degree that essential content is missing.
- (2) So defaced or soiled that such condition makes it undesirable for further educational use.

(b) The chief administrative officer of each school district shall, at times and in such form as specified by the governing board, submit to the governing board with his recommendation a list of the textbooks for its consideration under the provisions of subsection (a) of this section.

NOTE: Specific authority cited: Section 9702.1, Education Code.

9551. Obsolete Textbooks. A school district or county superintendent shall address the required notice of its intention to burn or otherwise destroy obsolete usable textbooks pursuant to Education Code Section 9701(h) to the Bureau of Textbooks, 721 Capitol Mall, Sacramento, California 95814.

Article 5. Disposal by Superintendent of Public Instruction of Obsolete Usable Textbooks and Unusable Textbooks

9560. Definitions. (a) "Obsolete usable textbook," as used in this article, means a textbook described in Education Code Section 9751.

(b) "California college or university" as used in Education Code Section 9751 means a public or private college or University of California.

(c) "Student body organization" means an organization of students of a college in which membership is open to all students, or to all students of one sex, and whose function it is to conduct most of the organized activities of students, or of students of one sex, at the campus.

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

9561. Obsolete Usable Textbooks: Publisher's Permission to Distribute. The Superintendent of Public Instruction shall seek the written permission of the publisher of a textbook to dispose of the

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Article 1. General Provisions

9500. Definition. (a) The term "instructional materials" as used in this chapter means instructional materials adopted by the State Board for use in the elementary schools as "elementary schools" are defined in Education Code Section 9231.

(b) "Replacement of instructional materials" as used in Education Code Section 9441 (e) (2) means replacement first, to the extent possible, by material which is identical to that lost or destroyed and then by material which, although it shall be of the same subject and type, need only be similar in content to that which is lost or destroyed.

NOTE: Authority cited: Sections 152, 9601, and 9800, Education Code. Reference: Sections 152, 9402, 9403, 9441 (e) (2), 9442 (b), 9502, 9505, 9601, and 9800-9840, Education Code.

History: 1. New Chapter 1 (§§ 9500-9505, 9520, 9530-9536, 9550, 9551, 9560-9566) filed 9-23-69; effective thirtieth day thereafter (Register 69, No. 39).

2. Repealer of Article 1 (Sections 9500-9505) and new Article 1 (Sections 9500-9505) filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).

9501. Ownership of Materials. All instructional materials loaned to pupils attending nonpublic schools pursuant to Education Code Section 9505 remain the property of the State.

Subject to the provisions of Education Code Section 9494: (a) Title to instructional materials acquired by the State Board of Education by means of manufacture by the Department of General Services shall pass to the school districts upon delivery thereto.

(b) Title to instructional materials purchased by the Board from publishers or manufacturers in completed form shall pass to the school districts upon delivery thereto by the publisher or manufacturer, except that, upon discovery of any defects in the delivered materials or failure to conform to specifications, the publisher or manufacturer shall, upon demand by the Board, promptly replace the defective or nonconforming materials with those having no defects and which comply with specifications.

9502. Loan of Instructional Materials. Each nonpublic school, to whose pupils state instructional materials are loaned, shall prescribe and enforce rules with respect to such materials as follows:

(a) Their proper care by pupils.

(b) The collection of money in payment for the loss or wilfull or negligent damage to them. All money so collected shall be transmitted, at the close of the fiscal year during which it was collected, to the State Department of Education by a bank check on the nonpublic school payable to the Department and accompanied by a report of the collection on a form provided by the Department. Such money shall be deposited in the State Instructional Materials Fund.

9503. Distribution of Large Print Textbooks. (a) The governing board of any school district, and any pupil attending a nonpublic school, may request the county superintendent of schools to supply large print textbooks for the use of pupils within the district or by such pupil in the nonpublic schools. The county superintendent shall:

(1) Submit requisitions to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks needed to supply the school districts and nonpublic school pupils.

(2) Supply such textbooks to the district and nonpublic school pupils and demand their return to his custody when the need of them ceases.

(3) Return to the Superintendent of Public Instruction upon his request any large print textbooks distributed to the county superintendent but no longer needed.

(b) The governing board of any school district with an enrollment of 40,000 or more pupils in grades 1 through 8 may submit requisitions directly to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks for the use of pupils within the district. After the need for such textbooks within that district ceases, the textbooks shall be returned to the Superintendent of Public Instruction upon his request.

(c) All requests and requisitions for large print textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meets one of the following qualifications:

(1) The pupil has a visual acuity of 20/70 or less in the better eye after the best possible correction and has a residue of sight adequate for the reading of large print textbooks;

(2) The pupil has such other visual impairment that he cannot profit from using regular textbooks, but has adequate vision for the reading of large print textbooks.

9504. Distribution of Braille Textbooks. (a) The governing board of any school district, and any pupil attending a nonpublic school, may request the State Superintendent of Public Instruction to supply braille textbooks for use by pupils within the district or by such pupil in the nonpublic schools. Requisitions for braille textbooks shall be made to the Superintendent of Public Instruction on forms provided by him, and such textbooks shall be returned to him upon request when the need of them ceases.

(b) All requests and requisitions for braille textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meet one of the following qualifications:

(1) The pupil's visual acuity in the better eye, after the best correction, is 20/200 or less.

(2) The pupil's visual loss is so severe that, for educational purposes, vision cannot be used as a major channel of learning.

9505. Purchase of In-service Training. No cash allotment authorized by Education Code Section 9442(b) for purchase of in-service training shall be expended for salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

Article 3. Disposal of Unusable or Obsolete Usable Instructional Materials

9520. Unusable Instructional Materials; Standards for Determination. An instructional material is unusable for educational purposes within the meaning of Education Code Section 9800 when it is one of the following:

(a) So mutilated that the continuity of subject matter is disrupted to the degree that essential content is missing.

(b) So defaced or soiled that such condition makes it undesirable for further educational use.

(c) So damaged or incomplete that such condition makes it undesirable for further educational use.

NOTE: Authority cited: Sections 152, 9601, and 9800, Education Code. Reference: Sections 152, 9402, 9403, 9441 (e) (2), 9442 (b), 9502, 9505, 9601, and 9800-9840, Education Code.

History: 1. Repealer of Article 2 (Section 9520) and Article 3 (Sections 9530-9536) and new Article 3 (Sections 9520-9524) filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39). For history of former Section 9520, see Register 69, No. 39.

9521. Distribution of Obsolete or Surplus Instructional Materials. The State Board of Education shall have the right to donate, sell, distribute or otherwise dispose of any remaining undistributed obsolete or surplus instructional materials as authorized by law in effect at that time. Except as provided in Education Code Section 9823, the State Board of Education shall have the right to so dispose of such remaining undistributed obsolete or surplus instructional materials that are printed or manufactured by the State without payment of royalty.

The State Board of Education may, at any time, declare instructional material to be obsolete or surplus within the meaning of Education Code Section 9800, but no sooner than two years following the close of the particular adoption period. After six years following the close of the particular adoption period, instructional material shall be deemed obsolete and surplus.

9522. Mutilation and Sale or Destruction. The Superintendent of Public Instruction shall request the State Board to direct him to dispose of instructional materials pursuant to Education Code Section 9840 whenever he finds that any undistributed and surplus obsolete instructional materials either:

(a) Cannot be distributed pursuant to Education Code Section 9820,

or

(b) Are unusable for instructional purposes and should be so declared by the State Board.

9523. Notice of Intention to Destroy Unusable or Obsolete Instructional Materials. A person desiring notice whenever the State Board of Education has directed the Superintendent of Public Instruction, pursuant to Education Code Section 9840, to mutilate and sell, or destroy, unusable materials or obsolete usable materials shall address his request to the Textbook Distribution Office, State Department of Education, 721 Capitol Mall, Sacramento, California 95814.

9524. Report of Disposition. The Superintendent of Public Instruction shall report annually to the State Board every disposition of instructional materials made pursuant to Sections 9521 and 9522.

Article 4. Disposal by School Districts and County Superintendents of Unusable or Obsolete Usable Textbooks

9550. Unusable Textbooks; Standards for Determination. (a) A textbook is unusable for educational purposes within the meaning of Education Code Section 9702 when it is one of the following:

- (1) So mutilated that the continuity of subject matter is disrupted to the degree that essential content is missing.
- (2) So defaced or soiled that such condition makes it undesirable for further educational use.

(b) The chief administrative officer of each school district shall, at times and in such form as specified by the governing board, submit to the governing board with his recommendation a list of the textbooks for its consideration under the provisions of subsection (a) of this section.

NOTE: Specific authority cited: Section 9702.1, Education Code.

9551. Obsolete Textbooks. A school district or county superintendent shall address the required notice of its intention to burn or otherwise destroy obsolete usable textbooks pursuant to Education Code Section 9701(h) to the Bureau of Textbooks, 721 Capitol Mall, Sacramento, California 95814.

Article 5. Disposal by Superintendent of Public Instruction of Obsolete Usable Textbooks and Unusable Textbooks

9560. Definitions. (a) "Obsolete usable textbook," as used in this article, means a textbook described in Education Code Section 9751.

(b) "California college or university" as used in Education Code Section 9751 means a public or private college or University of California.

(c) "Student body organization" means an organization of students of a college in which membership is open to all students, or to all students of one sex, and whose function it is to conduct most of the organized activities of students, or of students of one sex, at the campus.

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

9561. Obsolete Usable Textbooks: Publisher's Permission to Distribute. The Superintendent of Public Instruction shall seek the written permission of the publisher of a textbook to dispose of the surplus obsolete copies under Education Code Section 9751 without payment of royalty when all of the following conditions exist:

(a) The textbook contract either gave the Board the right to distribute and sell copies of the textbook only during the adoption period or only upon payment of a royalty if distributed after the adoption period.

(b) The adoption period has expired or in approximately 90 days will expire.

(c) At the end of the adoption period there will be a substantial number of surplus and undistributed copies of the textbook in the textbook warehouse.

9562. Obsolete Usable Textbooks: Authority to Dispose. The Superintendent of Public Instruction may dispose of obsolete usable textbooks pursuant to Education Code Section 9751 as follows:

(a) Any distribution of textbooks under subdivision (a) of that section is authorized:

(1) If it is consistent with the Board's contract with the publisher or is permitted in writing by the Publisher.

(2) If no payment of royalty to the publishers of the textbooks is required.

Any such possible distribution of textbooks shall be made before any other disposal.

(b) Donation or sale, as the Superintendent of Public Instruction deems advisable, pursuant to subdivisions (b) through (h) of that section is authorized under all of the following circumstances:

(1) He has received a request from an eligible applicant, accompanied by documents and statements showing that the applicant qualifies under Section 9751. The request should be addressed to the Bureau of Textbooks, 721 Capitol Mall, Sacramento, California 95814.

(2) No royalty to the publisher is required, or the nominal price at which the textbooks are sold is at least equal to any royalty required on them.

(3) Delivery is f.o.b. State Textbook Warehouse, Sacramento, California, except that if the Superintendent of Public Instruction determines that the cost of shipping obsolete usable textbooks to agencies authorized in Education Code Section 9751 (a), (b), (c), (g) and (h) will be lower than the estimated cost of storing or otherwise disposing of the obsolete textbooks involved, he may utilize funds from the State's free textbook budget to prepay the shipping costs.

History: 1. Amendment of Subsection (b)(3) filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

9563. Request for Direction to Donate or Sell Obsolete Usable Textbooks.

History: 1. Repealer filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

9564. Mutilation and Sale or Destruction. (a) **Request for Direction.** The Superintendent of Public Instruction shall request the State Board to direct him to dispose of textbooks pursuant to Education Code Section 9752 whenever he finds that any undistributed and surplus obsolete textbooks either:

- (1) Cannot be distributed pursuant to Education Code Section 9751.
- (2) Are unusable for instructional purposes and should be so declared by the State Board.

(b) **Action Notwithstanding Previous Direction.** Notwithstanding the previous direction of the State Board, if within the 60 days mentioned in Education Code Section 9752 the Superintendent of Public Instruction receives requests for disposal permitted by Education Code Section 9751 or 9752(a) and this article, he shall so dispose of as many of the textbooks as possible.

9565. Notice of Intention to Destroy Unusable or Obsolete Textbooks. A person desiring notice whenever the State Board of Education has directed the Superintendent of Public Instruction, pursuant to Education Code Section 9752(b), to burn or otherwise destroy unusable textbooks or obsolete usable textbooks shall address his request for notice, postage prepaid, to: Bureau of Textbooks, 721 Capitol Mall, Sacramento, California 95814.

9566. Report of Disposition. The Superintendent of Public Instruction shall report annually to the State Board every disposition of textbooks made pursuant to Sections 9562 and 9564.

History: 1. Amendment filed 5-18-72; effective thirtieth day thereafter (Register 72, No. 21).

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Article 1. General Provisions

9500. Definition. (a) The term "instructional materials" as used in this chapter means instructional materials adopted by the State Board for use in the elementary schools as "elementary schools" are defined in Education Code Section 9231.

(b) "Replacement of instructional materials" as used in Education Code Section 9441 (e) (2) means replacement first, to the extent possible, by material which is identical to that lost or destroyed and then by material which, although it shall be of the same subject and type, need only be similar in content to that which is lost or destroyed.

NOTE: Authority cited: Sections 152, 9601, and 9600, Education Code. Reference: Sections 152, 9402, 9403, 9441 (e) (2), 9442 (b), 9502, 9505, 9601, and 9800-9840, Education Code.

- History:*
1. New Chapter 1 (§§ 9500-9505, 9520, 9530-9536, 9550, 9551, 9560-9566) filed 9-23-69; effective thirtieth day thereafter (Register 69, No. 39).
 2. Repealer of Article 1 (Sections 9500-9505) and new Article 1 (Sections 9500-9505) filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
 3. Repealer of Article 1 (Sections 9500-9505) and new Article 1 (Sections 9500-9505) refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

9501. Ownership of Materials. All instructional materials loaned to pupils attending nonpublic schools pursuant to Education Code Section 9505 remain the property of the State.

Subject to the provisions of Education Code Section 9494: (a) Title to instructional materials acquired by the State Board of Education by means of manufacture by the Department of General Services shall pass to the school districts upon delivery thereto.

(b) Title to instructional materials purchased by the Board from publishers or manufacturers in completed form shall pass to the school districts upon delivery thereto by the publisher or manufacturer, except that, upon discovery of any defects in the delivered materials or failure to conform to specifications, the publisher or manufacturer shall, upon demand by the Board, promptly replace the defective or nonconforming materials with those having no defects and which comply with specifications.

9502. Loan of Instructional Materials. Each nonpublic school, to whose pupils state instructional materials are loaned, shall prescribe and enforce rules with respect to such materials as follows:

(a) Their proper care by pupils.

(b) The collection of money in payment for the loss or wilfull or negligent damage to them. All money so collected shall be transmitted, at the close of the fiscal year during which it was collected, to the State Department of Education by a bank check on the nonpublic school payable to the Department and accompanied by a report of the collection on a form provided by the Department. Such money shall be deposited in the State Instructional Materials Fund.

9503. Distribution of Large Print Textbooks. (a) The governing board of any school district, and any pupil attending a nonpublic school, may request the county superintendent of schools to supply large print textbooks for the use of pupils within the district or by such pupil in the nonpublic schools. The county superintendent shall:

(1) Submit requisitions to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks needed to supply the school districts and nonpublic school pupils.

(2) Supply such textbooks to the district and nonpublic school pupils and demand their return to his custody when the need of them ceases.

(3) Return to the Superintendent of Public Instruction upon his request any large print textbooks distributed to the county superintendent but no longer needed.

(b) The governing board of any school district with an enrollment of 40,000 or more pupils in grades 1 through 8 may submit requisitions directly to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks for the use of pupils within the district. After the need for such textbooks within that district ceases, the textbooks shall be returned to the Superintendent of Public Instruction upon his request.

(c) All requests and requisitions for large print textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meets one of the following qualifications:

(1) The pupil has a visual acuity of 20/70 or less in the better eye after the best possible correction and has a residue of sight adequate for the reading of large print textbooks;

(2) The pupil has such other visual impairment that he cannot profit from using regular textbooks, but has adequate vision for the reading of large print textbooks.

9504. Distribution of Braille Textbooks. (a) The governing board of any school district, and any pupil attending a nonpublic school, may request the State Superintendent of Public Instruction to supply braille textbooks for use by pupils within the district or by such pupil in the nonpublic schools. Requisitions for braille textbooks shall be made to the Superintendent of Public Instruction on forms provided by him, and such textbooks shall be returned to him upon request when the need of them ceases.

(b) All requests and requisitions for braille textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meet one of the following qualifications:

(1) The pupil's visual acuity in the better eye, after the best correction, is 20/200 or less.

(2) The pupil's visual loss is so severe that, for educational purposes, vision cannot be used as a major channel of learning.

9505. Purchase of In-service Training. No cash allotment authorized by Education Code Section 9442(b) for purchase of in-service training shall be expended for salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

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(2) Supply such textbooks to the district and nonpublic school pupils and demand their return to his custody when the need of them ceases.

(3) Return to the Superintendent of Public Instruction upon his request any large print textbooks distributed to the county superintendent but no longer needed.

(b) The governing board of any school district with an enrollment of 40,000 or more pupils in grades 1 through 8 may submit requisitions directly to the Superintendent of Public Instruction, on forms provided by him, for large print textbooks for the use of pupils within the district. After the need for such textbooks within that district ceases, the textbooks shall be returned to the Superintendent of Public Instruction upon his request.

(c) All requests and requisitions for large print textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meets one of the following qualifications:

(1) The pupil has a visual acuity of 20/70 or less in the better eye after the best possible correction and has a residue of sight adequate for the reading of large print textbooks;

(2) The pupil has such other visual impairment that he cannot profit from using regular textbooks, but has adequate vision for the reading of large print textbooks.

9504. Distribution of Braille Textbooks. (a) The governing board of any school district, and any pupil attending a nonpublic school, may request the State Superintendent of Public Instruction to supply braille textbooks for use by pupils within the district or by such pupil in the nonpublic schools. Requisitions for braille textbooks shall be made to the Superintendent of Public Instruction on forms provided by him, and such textbooks shall be returned to him upon request when the need of them ceases.

(b) All requests and requisitions for braille textbooks shall be accompanied by certified statements that they will be used only by pupils who, as determined by ophthalmological or optometrical examinations made by a physician or optometrist licensed to practice in California, meet one of the following qualifications:

(1) The pupil's visual acuity in the better eye, after the best correction, is 20/200 or less.

(2) The pupil's visual loss is so severe that, for educational purposes, vision cannot be used as a major channel of learning.

9505. Purchase of In-service Training. No cash allotment authorized by Education Code Section 60242(b) for purchase of in-service training shall be expended for salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

History: 1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).

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Article 1. General Provisions

9500. Definition.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Sections 20241 (e) (2) and 60024 Education Code.

HISTORY:

1. Amendment of section and N filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39). For prior history, see Register 75, No. 40.
2. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

9501. Ownership of Materials.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Sections 60295 and 60315, Education Code.

HISTORY:

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

9502. Loan of Instructional Materials.

NOTE: Authority cited: Sections 33031, 60404 and 60500, Education Code. Reference: Sections 60314 and 60315, Education Code.

HISTORY:

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

9503. Distribution of Large Print Textbooks.

HISTORY:

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

9504. Distribution of Braille Textbooks.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Section 60312, Education Code.

HISTORY:

1. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

9505. Purchase of In-service Training.

No cash allotment authorized by Education Code Section 60242 (b) for purchase of in-service training shall be expended for salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60242 (b), Education Code.

HISTORY:

1. Amendment filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
2. New NOTE filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

Article 3. Disposal of Unusable or Obsolete Usable Instructional Materials.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Sections 60022, 60500, 60510, 60513 and 60530, Education Code.

HISTORY:

1. Repealer of Article 2 (Section 9520) and Article 3 (Sections 9530-9536) and new Article 3 (Sections 9520-9524) filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39). For history of former Section 9520, see Register 69, No. 39.
2. Repealer of Article 2 (Section 9520) and Article 3 (Sections 9530-9536) and new Article 3 (Sections 9520-9524) refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).
3. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer of Article 3 (Sections 9520-9524) filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

TITLE 5

INSTRUCTIONAL MATERIALS

§ 9505

(Register 63, No. 25—8-18-83)

(p. 367)

**Article 4. Disposal by School Districts and County
Superintendents of Unusable or Obsolete Usable Textbooks**

NOTE: Specific authority cited: Section 9701.1, Education Code.

HISTORY:

1. Repealer of Article 4 (Sections 9550-9551) filed 10-3-75 (Register 75, No. 40).

**Article 5. Disposal by Superintendent of Public Instruction of
Obsolete Usable Textbooks and Unusable Textbooks**

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

HISTORY:

1. Repealer of Article 5 (Sections 9560-9566) filed 10-3-75 (Register 75, No. 40). For prior history, see Register 72, No. 21.

Title 5, CCR, Register 95-3

§ 9530

History

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.2. Acquisition of Adopted Instructional Materials

§ 9527. Free Instructional Materials.

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

(a) Free instructional materials shall comply with the requirements of Education Code sections 60040-60044 and the Board's Standards for Evaluation of Instructional Materials with Respect to Social Content.

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

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Section 60061, Education Code.

History

1. New Article 2.2 (sections 9527-9530) and section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9528. Alternate Formats of Adopted Instructional Materials.

Alternate formats are instructional materials which are identical in content but different in physical format. Publishers and manufacturers may submit alternate formats of adopted instructional materials at any time during the period of adoption. Publishers and manufacturers submitting alternate formats of adopted instructional materials shall:

(a) Ensure that the content of an alternate format is the equivalent of the adopted instructional material.

(b) After adoption by the Board, notify the Department of the availability of additional alternate formats of adopted instructional materials.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60200 and 60222, Education Code.

History

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

§ 9529. New Editions of Adopted Instructional Materials.

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

(a) Changes contained in the new edition are so minimal that both the new edition and the old edition may be used together in a classroom environment. (Technical upgrades of computer software which do not contain educational or social content 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60040-60044, 60061, 60222 and 60223, Education Code.

History

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt

from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

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

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

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

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

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 3. Disposal of Unusable or Obsolete Usable Instructional Materials.

NOTE: Authority cited: Sections 33031, 60401 and 60500, Education Code. Reference: Sections 60022, 60500, 60510, 60513 and 60530, Education Code.

HISTORY

1. Repealer of Article 2 (Section 9520) and Article 3 (Sections 9530-9536) and new Article 3 (Sections 9520-9524) filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39). For history of former Section 9520, see Register 69, No. 39.
2. Repealer of Article 2 (Section 9520) and Article 3 (Sections 9530-9536) and new Article 3 (Sections 9520-9524) refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).
3. Amendment of section and repealer of NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer of Article 3 (Sections 9520-9524) filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

Article 4. Disposal by School Districts and County Superintendents of Unusable or Obsolete Usable Textbooks

NOTE: Specific authority cited: Section 9701.1, Education Code.

HISTORY

1. Repealer of Article 4 (Sections 9550-9551) filed 10-3-75 (Register 75, No. 40).

Article 5. Disposal by Superintendent of Public Instruction of Obsolete Usable Textbooks and Unusable Textbooks

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

HISTORY

1. Repealer of Article 5 (Sections 9560-9566) filed 10-3-75 (Register 75, No. 40). For prior history, see Register 72, No. 21.

Subchapter 2. High School Instructional Materials

§ 9540. Instructional Material.

NOTE: Authority cited: Section 60401, Education Code. Reference: Sections 60010, 60016 and 60017, Education Code.

HISTORY

1. Amendment and renumbering from Section 9582 to Section 9540 filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Amendment and renumbering from Section 9582 to Section 9540 refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).
3. Amendment of section and new NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9580. Records Kept by Principals.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9581. Records Kept by District Superintendents.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9583. Bond of Publisher.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

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Title 5, CCR, Register 97-5

§ 9535

chase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 3. Request to Purchase Nonadopted Core Reading Program Instructional Materials

§ 9535. Request to Purchase Nonadopted Core Reading Program Instructional Materials.

If, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program, and if that governing board desires to purchase non-adopted materials with the funds appointed to it pursuant to Education Code section 60351, it shall request authorization to do so from the California State Board of Education. The request shall include all of the following:

(a) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive, including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California

State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

(b) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.

(c) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's rubrics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).

(d) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.

(e) A description of the local educational agency's plans for staff development for teachers regarding the use of the proposed materials.

(f) A description of how the proposed materials will be used by the local educational agency's teachers.

(g) A description of the projected timeline for the purchase of the proposed materials.

(h) A description of the process used for public display of the proposed materials by the local educational agency, with a statement of assurance from the local educational agency that the materials have been or will be on public display for at least 30 days prior to their purchase, with all comments received during the display period being made part of the official records of the local educational agency's governing board.

(i) A statement of assurance from the local educational agency that the proposed materials are for use in kindergarten or any of grades 1 to 3, inclusive.

(j) A statement of assurance from the local educational agency that the proposed materials are based on the fundamental skills required by reading, including, but not limited to, systematic, explicit phonics and spelling, within the meaning of Education Code section 60200.4.

(k) A statement of assurance from the local educational agency that the proposed materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading materials that provide practice in the lesson taught, within the meaning of Education Code section 60352(d).

(l) Evidence that the local educational agency's governing board:

(1) Formally approved the authorization request at a properly noticed public meeting.

(2) Supports the use of the specified funds for the purpose expressed in the request.

(3) Verified that the local educational agency considered the California State Board of Education adopted materials for its core reading program and considered the reasons given by the California State Board of Education for not adopting the materials proposed for purchase, if those materials were submitted for adoption in 1996.

(4) Verified that the proposed materials comply with Education Code sections 60040, 60041, 60042, 60044, 60045, and 60046.

(5) Verified that all statements of assurance included within the request for authorization are true and correct.

If the request for authorization complies with subdivision (a) to (l), inclusive, and establishes to the satisfaction of the California State Board of Education that none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in the applying local educational agency's core reading program, then the request for authorization shall be granted by the California State Board of Education.

NOTE: Authority cited: Sections 33031, 60206 and 60352(d), Education Code. Reference: Sections 60351 and 60352(d), Education Code.

HISTORY

1. New article 3 (section 9535) and section filed 1-30-97 as an emergency; operative 1-30-97 (Register 97, No. 5). A Certificate of Compliance must be transmitted to OAL by 3-30-97 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 83, No. 25.

Article 4. Disposal by School Districts and County Superintendents of Unusable or Obsolete Usable Textbooks

NOTE: Specific authority cited: Section 9701.1, Education Code.

HISTORY

1. Repealer of Article 4 (Sections 9550-9551) filed 10-3-75 (Register 75, No. 40).

Article 5. Disposal by Superintendent of Public Instruction of Obsolete Usable Textbooks and Unusable Textbooks

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

HISTORY

1. Repealer of Article 5 (Sections 9560-9566) filed 10-3-75 (Register 75, No. 40). For prior history, see Register 72, No. 21.

Subchapter 2. High School Instructional Materials

§ 9540. Instructional Material.

NOTE: Authority cited: Section 60401, Education Code. Reference: Sections 60010, 60016 and 60017, Education Code.

HISTORY

1. Amendment and renumbering from Section 9582 to Section 9540 filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Amendment and renumbering from Section 9582 to Section 9540 refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).
3. Amendment of section and new NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9580. Records Kept by Principals.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9581. Records Kept by District Superintendents.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9583. Bond of Publisher.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

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

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 3. Request to Purchase Nonadopted Core Reading Program Instructional Materials

§ 9535. Request to Purchase Nonadopted Core Reading Program Instructional Materials.

If, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core read-

ing program, and if that governing board desires to purchase non-adopted materials with the funds apportioned to it pursuant to Education Code section 60351, it shall request authorization to do so from the California State Board of Education. The request shall include all of the following:

(a) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive, including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

(b) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.

(c) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's rubrics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).

(d) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.

(e) A description of the local educational agency's plans for staff development for teachers regarding the use of the proposed materials.

(f) A description of how the proposed materials will be used by the local educational agency's teachers.

(g) A description of the projected timeline for the purchase of the proposed materials.

(h) A description of the process used for public display of the proposed materials by the local educational agency, with a statement of assurance from the local educational agency that the materials have been or will be on public display for at least 30 days prior to their purchase, with all comments received during the display period being made part of the official records of the local educational agency's governing board.

(i) A statement of assurance from the local educational agency that the proposed materials are for use in kindergarten or any of grades 1 to 3, inclusive.

(j) A statement of assurance from the local educational agency that the proposed materials are based on the fundamental skills required by reading, including, but not limited to, systematic, explicit phonics and spelling, within the meaning of Education Code section 60200.4.

(k) A statement of assurance from the local educational agency that the proposed materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading materials that provide practice in the lesson being taught, within the meaning of Education Code section 60352(d).

(l) Evidence that the local educational agency's governing board:

(1) Formally approved the authorization request at a properly noticed public meeting.

(2) Supports the use of the specified funds for the purpose expressed in the request.

(3) Verified that the local educational agency considered the California State Board of Education adopted materials for its core reading program and considered the reasons given by the California State Board of Education for not adopting the materials proposed for purchase, if those materials were submitted for adoption in 1996.

(4) Verified that the proposed materials comply with Education Code sections 60040, 60041, 60042, 60044, 60045, and 60046.

(5) Verified that all statements of assurance included within the request for authorization are true and correct.

If the request for authorization complies with subdivisions (a) to (l), inclusive, and establishes to the satisfaction of the California State Board

of Education that none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in the applying local educational agency's core reading program, then the request for authorization shall be granted by the California State Board of Education.

NOTE: Authority cited: Sections 33031, 60206 and 60352(d), Education Code. Reference: Sections 60351 and 60352(d), Education Code.

HISTORY

1. New article 3 (section 9535) and section filed 1-30-97 as an emergency; operative 1-30-97 (Register 97, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-97 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 83, No. 25.
2. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 31).
3. New section filed 7-31-97; operative 7-31-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 31).

Article 4. Disposal by School Districts and County Superintendents of Unusable or Obsolete Usable Textbooks

NOTE: Specific authority cited: Section 9701.1, Education Code.

HISTORY

1. Repealer of Article 4 (Sections 9550-9551) filed 10-3-75 (Register 75, No. 40).

Article 5. Disposal by Superintendent of Public Instruction of Obsolete Usable Textbooks and Unusable Textbooks

NOTE: Specific authority cited for Article 5: §§ 9751 and 9752, Education Code.

HISTORY

1. Repealer of Article 5 (Sections 9560-9566) filed 10-3-75 (Register 75, No. 40). For prior history, see Register 72, No. 21.

Subchapter 2. High School Instructional Materials

§ 9540. Instructional Material.

NOTE: Authority cited: Section 60401, Education Code. Reference: Sections 60010, 60016 and 60017, Education Code.

HISTORY

1. Amendment and renumbering from Section 9582 to Section 9540 filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Amendment and renumbering from Section 9582 to Section 9540 refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).
3. Amendment of section and new NOTE filed 9-23-77; effective thirtieth day thereafter (Register 77, No. 39).
4. Repealer filed 6-17-83; effective thirtieth day thereafter (Register 83, No. 25).

§ 9580. Records Kept by Principals.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9581. Records Kept by District Superintendents.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

§ 9583. Bond of Publisher.

HISTORY

1. Repealer filed 9-24-75; effective thirtieth day thereafter (Register 75, No. 39).
2. Repealer refiled 10-3-75; effective thirtieth day thereafter (Register 75, No. 40).

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

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.3. Instructional Materials Funding

§ 9531. Instructional Materials Funding Realignment Program: Expenditure Policy Percentages and 24 Month Purchasing Requirement.

(a) As much of the allocation, as is necessary, from the Instructional Materials Funding Realignment Program (IMFRP) annual appropriation to local education agencies must be spent to purchase textbooks or basic instructional materials adopted subsequent to the adoption of content

standards (Education Code section 60605) for each pupil, in reading language arts, mathematics, history-social science, and science.

(1) For kindergarten and grades 1 to 8 this shall be textbooks or basic instructional materials adopted by the State Board of Education (SBE) pursuant to Education Code section 60200 inclusive. For grades 9 to 12, this shall be textbooks or instructional materials adopted by the local governing board pursuant to Education Code section 60400 following receipt of the standards maps submitted by publishers in accordance with Education Code section 60451.

(2) Textbooks or instructional materials must be purchased that are consistent with the content and cycles of the curriculum frameworks as required by Education Code section 60119.

(3) To ensure compliance with Education Code section 60119, first priority shall be for the purchase of textbooks or instructional materials after the adoption of the *K-12 Reading Language Arts Curriculum Framework* (December 1998), and the *K-12 Mathematics Curriculum Framework* (December 1998). For purposes of K-8 instructional materials, only mathematics materials adopted in or after 2001 and reading/language arts/English language development materials adopted in or after 2002 meet the requirements of this paragraph.

(4) Second priority shall be for the purchase of K-8 SBE adopted textbooks or basic instructional materials in history-social science (1999) and science (2000), or 9-12 textbooks or instructional materials adopted locally after the completion of the *K-12 History-Social Curriculum Framework* (October 2000) and the *K-12 Science Curriculum Framework* (February 2002).

(b) Upon certification by the local governing board that each pupil has been provided with a standards-aligned textbook or basic instructional materials in the four core curriculum areas, up to 100 percent of the annual IMFRP funds may be spent to purchase other instructional materials adopted by the SBE pursuant to Education Code section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Education Code section 60400 for grades 9 to 12, as may be necessary to meet the requirements of Education Code section 60119 in all subjects which are consistent with the content and cycles of the curriculum frameworks.

(c) Upon determination through the annual local public hearing and approval of a resolution by the local governing board, pursuant to Education Code section 60119, that each K-12 pupil has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials or both, or the local governing board has taken action to ensure sufficiency of textbooks or instructional materials or both within a two-year period as required, and also that pursuant to Education Code section 60422(a), the local governing board has provided each K-12 pupil with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the SBE or, for grades 9-12, inclusive, were adopted by the local governing board, up to 100% of the remaining Instructional Materials Funding Realignment funds may be spent on any of the following:

(1) Instructional materials, including but not limited to supplementary instructional materials and technology-based materials, from any source and approved locally or by the state for legal and social compliance pursuant to Education Code sections 60040-60045 and 60048 and the SBE guidelines in *Standards for Evaluating Instructional Materials for Social Content* (revised 2000).

(2) To purchase tests.

(3) To bind basic textbooks that are otherwise useable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Education Code section 60200 or by the governing board pursuant to Education Code section 60400 for grades 9 to 12.

(4) To fund in-service training related to instructional materials.

(5) To purchase classroom library materials for kindergarten and grades 1 to 4 with the condition the school district has developed a district

wide classroom library plan pursuant to Education Code section 60242 (d)(1), (2) and (3).

(d) For purposes of subdivision (c) and Education Code section 60422(a), the reference to adoption of textbooks or basic instructional materials by the SBE shall refer to a primary adoption, which is the first adoption after the adoption of evaluation criteria by the SBE. A primary adoption is distinguished from a follow-up adoption, which is the second adoption of textbooks or basic instructional materials conducted by the SBE using the same evaluation criteria. Textbooks and basic instructional materials adopted in a follow-up adoption are added to the then-existing list of adopted textbooks and basic instructional materials for a subject area, and the period of adoption for those materials is the remaining time of the list for the primary adoption.

(e) Notwithstanding the provisions of subdivisions (a) and (b), in a fiscal year immediately following a primary adoption of textbooks and basic instructional materials in reading/language arts, mathematics, history-social science, or science, a local education agency may use up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation for that fiscal year generated by students in kindergarten through grade 8, and grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of subdivision (c), provided the local governing board certifies by resolution adopted at a duly noticed public meeting a decision to pilot (i.e. evaluate in actual classroom application), during that fiscal year immediately following the primary adoption, one or more of the textbooks or basic instructional materials adopted by the SBE in that primary adoption. The local governing board certification must be made after the SBE concludes the primary adoption and before the commencement of the fiscal year immediately following that primary adoption.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 60242, 60242.5, 60421 and 60422, Education Code.

HISTORY

1. New article 2.3 (sections 9531-9532) and section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.

§ 9532. School District or Charter School in Its First Year of Operation or of Expanding Grade Levels at a School Site.

(a)(1) In order to be eligible to receive funding pursuant to Education Code section 60421 and consistent with Education Code section 47652, in the current fiscal year, a charter school in its first year of operation must commence operation on or before September 30 of that fiscal year. A charter school in its first year of operation that begins operations after September 30 of the current fiscal year shall not be eligible to receive instructional materials funding until the following fiscal year.

(2) For the purposes of this section and Education Code section 60421, "operation" shall be defined as providing instruction to pupils enrolled in the charter school.

(3) For purposes of receiving funding pursuant to Education Code section 60421, and consistent with Education Code section 35534, except as provided in Education Code sections 35535 and 35536, the first year of operation of a school district shall be July 1 of the calendar year following the calendar year in which the school district reorganization action is completed.

(b)(1) For the purposes of Education Code section 60421, "expanding grade levels" shall be defined as additional grades in the current fiscal year that did not exist as a school site of the school district or charter school in the prior fiscal year. For charter schools that operate multiple sites, expanding grade levels shall also only include any additional grades that did not exist in the prior fiscal year when considering all of the individual or satellite sites of the charter school in aggregate. If any one site of a charter school with multiple sites provides instruction to pupils in a particular grade level, then that grade level shall not be included in expanding grade levels.

(2) In order to receive funding pursuant to Education Code section 60421, the provision of instruction to pupils enrolled in the expanding

grade levels at a school site of the school district or charter school shall commence on or before September 30 of the current fiscal year. A school site of the school district or charter school that commences instruction in its expanding grade levels after September 30 of the current fiscal year shall not be eligible to receive funding until the following fiscal year.

(c) For the purposes of this section and Education Code section 60421, "school site" shall be defined as a school with a separate County/District/School (CDS) code, as maintained by the Superintendent of Public Instruction as of September 30 of the current fiscal year. Charter schools operating multiple school sites under one charter number provided by the SBE and one CDS code shall be considered one school site.

(d) A school district or charter school in its first year of operation or of expanding grade levels at a school site shall provide enrollment estimates to the California Department of Education by September 30 of the current fiscal year in order for the school district or charter school to receive funding in that fiscal year. The enrollment estimates shall be certified by the school district governing board or the charter school's charter-granting local educational agency (LEA), as appropriate, and the county office of education in which the school district or charter school's charter granting LEA is located. These enrollment estimates and the associated funding shall be adjusted for actual enrollment as reported by the California Basic Education Data System for the current fiscal year.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 47652 and 60421, Education Code.

HISTORY

1. New section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.

Article 3. Request to Purchase Nonadopted Core Reading Program Instructional Materials

§ 9535. Request to Purchase Nonadopted Core Reading Program Instructional Materials.

If, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program, and if that governing board desires to purchase non-adopted materials with the funds apportioned to it pursuant to Education Code section 60351, it shall request authorization to do so from the California State Board of Education. The request shall include all of the following:

(a) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive, including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

(b) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.

(c) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's rubrics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).

(d) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.

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

(1) For purposes of this subdivision, unauthorized instructional materials are those that do not appear in exact description and terms in the purchase order or agreement 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.

NOTE: Authority cited: Sections 33031 and 60004, Education Code. Reference: Sections 60061 and 60061.5, Education Code.

HISTORY

1. New section adopted by the Department of Education on 12-5-94. New section submitted to OAL for printing only on 12-6-94, effective 12-30-94. Exempt from Chapter 3.5 of the Government Code pursuant to Education Code section 60004 (Register 95, No. 3).

Article 2.3. Instructional Materials Funding

§ 9531. Instructional Materials Funding Realignment Program: Expenditure Policy Percentages and 24 Month Purchasing Requirement.

(a) As much of the allocation, as is necessary, from the Instructional Materials Funding Realignment Program (IMFRP) annual appropriation to local education agencies must be spent to purchase textbooks or basic instructional materials adopted subsequent to the adoption of content

standards (Education Code section 60605) for each pupil, in reading language arts, mathematics, history-social science, and science.

(1) For kindergarten and grades 1 to 8 this shall be textbooks or basic instructional materials adopted by the State Board of Education (SBE) pursuant to Education Code section 60200 inclusive. For grades 9 to 12, this shall be textbooks or instructional materials adopted by the local governing board pursuant to Education Code section 60400 following receipt of the standards maps submitted by publishers in accordance with Education Code section 60451.

(2) Textbooks or instructional materials must be purchased that are consistent with the content and cycles of the curriculum frameworks as required by Education Code section 60119.

(3) To ensure compliance with Education Code section 60119, first priority shall be for the purchase of textbooks or instructional materials after the adoption of the *K-12 Reading Language Arts Curriculum Framework* (December 1998), and the *K-12 Mathematics Curriculum Framework* (December 1998). For purposes of K-8 instructional materials, only mathematics materials adopted in or after 2001 and reading/language arts/English language development materials adopted in or after 2002 meet the requirements of this paragraph, except as provided in Education Code section 60423.

(4) Second priority shall be for the purchase of K-8 SBE adopted textbooks or basic instructional materials in history-social science (1999) and science (2000), or 9-12 textbooks or instructional materials adopted locally after the completion of the *K-12 History-Social Curriculum Framework* (October 2000) and the *K-12 Science Curriculum Framework* (February 2002).

(b) Upon certification by the local governing board that each pupil has been provided with a standards-aligned textbook or basic instructional materials in the four core curriculum areas, up to 100 percent of the annual IMFRP funds may be spent to purchase other instructional materials adopted by the SBE pursuant to Education Code section 60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Education Code section 60400 for grades 9 to 12, as may be necessary to meet the requirements of Education Code section 60119 in all subjects which are consistent with the content and cycles of the curriculum frameworks.

(c) Upon determination through the annual local public hearing and approval of a resolution by the local governing board, pursuant to Education Code section 60119, that each K-12 pupil has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials or both, or the local governing board has taken action to ensure sufficiency of textbooks or instructional materials or both within a two-year period as required, and also that pursuant to Education Code section 60422(a), the local governing board has provided each K-12 pupil with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the SBE or, for grades 9-12, inclusive, were adopted by the local governing board, up to 100% of the remaining Instructional Materials Funding Realignment funds may be spent on any of the following:

(1) Instructional materials, including but not limited to supplementary instructional materials and technology-based materials, from any source and approved locally or by the state for legal and social compliance pursuant to Education Code sections 60040-60045 and 60048 and the SBE guidelines in *Standards for Evaluating Instructional Materials for Social Content* (revised 2000).

(2) To purchase tests.

(3) To bind basic textbooks that are otherwise useable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Education Code section 60200 or by the governing board pursuant to Education Code section 60400 for grades 9 to 12.

(4) To fund in-service training related to instructional materials.

(5) To purchase classroom library materials for kindergarten and grades 1 to 4 with the condition the school district has developed a district

wide classroom library plan pursuant to Education Code section 60242 (d)(1), (2) and (3).

(d) For purposes of subdivision (c) and Education Code section 60422(a), the reference to adoption of textbooks or basic instructional materials by the SBE shall refer to a primary adoption, which is the first adoption after the adoption of evaluation criteria by the SBE. A primary adoption is distinguished from a follow-up adoption, which is the second adoption of textbooks or basic instructional materials conducted by the SBE using the same evaluation criteria. Textbooks and basic instructional materials adopted in a follow-up adoption are added to the then-existing list of adopted textbooks and basic instructional materials for a subject area, and the period of adoption for those materials is the remaining time of the list for the primary adoption.

(e) Notwithstanding the provisions of subdivisions (a) and (b), in a fiscal year immediately following a primary adoption of textbooks and basic instructional materials in reading/language arts, mathematics, history-social science, or science, a local education agency may use up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation for that fiscal year generated by students in kindergarten through grade 8, and grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of subdivision (c), provided the local governing board certifies by resolution adopted at a duly noticed public meeting a decision to pilot (i.e. evaluate in actual classroom application), during that fiscal year immediately following the primary adoption, one or more of the textbooks or basic instructional materials adopted by the SBE in that primary adoption. The local governing board certification must be made after the SBE concludes the primary adoption and before the commencement of the fiscal year immediately following that primary adoption.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 60242, 60242.5, 60421, 60422 and 60423, Education Code.

HISTORY

1. New article 2.3 (sections 9531-9532) and section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-16-2003 order, including amendment of subsection (a)(3) and NOTE, transmitted to OAL 5-12-2003 and filed 6-16-2003 (Register 2003, No. 25).

§ 9532. School District or Charter School in its First Year of Operation or of Expanding Grade Levels at a School Site.

(a)(1) In order to be eligible to receive funding pursuant to Education Code section 60421 and consistent with Education Code section 47652, in the current fiscal year, a charter school in its first year of operation must commence operation on or before September 30 of that fiscal year. A charter school in its first year of operation that begins operations after September 30 of the current fiscal year shall not be eligible to receive instructional materials funding until the following fiscal year.

(2) For the purposes of this section and Education Code section 60421, "operation" shall be defined as providing instruction to pupils enrolled in the charter school.

(3) For purposes of receiving funding pursuant to Education Code section 60421, and consistent with Education Code section 35534, except as provided in Education Code sections 35535 and 35536, the first year of operation of a school district shall be July 1 of the calendar year following the calendar year in which the school district reorganization action is completed.

(b)(1) For the purposes of Education Code section 60421, "expanding grade levels" shall be defined as additional grades in the current fiscal year that did not exist as a school site of the school district or charter school in the prior fiscal year. For charter schools that operate multiple sites, expanding grade levels shall also only include any additional grades that did not exist in the prior fiscal year when considering all of the individual or satellite sites of the charter school in aggregate. If any one site of a charter school with multiple sites provides instruction to pu-

pils in a particular grade level, then that grade level shall not be included in expanding grade levels.

(2) In order to receive funding pursuant to Education Code section 60421, the provision of instruction to pupils enrolled in the expanding grade levels at a school site of the school district or charter school shall commence on or before September 30 of the current fiscal year. A school site of the school district or charter school that commences instruction in its expanding grade levels after September 30 of the current fiscal year shall not be eligible to receive funding until the following fiscal year.

(c) For the purposes of this section and Education Code section 60421, "school site" shall be defined as a school with a separate County/District/School (CDS) code, as maintained by the Superintendent of Public Instruction as of September 30 of the current fiscal year. Charter schools operating multiple school sites under one charter number provided by the SBE and one CDS code shall be considered one school site.

(d) A school district or charter school in its first year of operation or of expanding grade levels at a school site shall provide enrollment estimates to the California Department of Education by September 30 of the current fiscal year in order for the school district or charter school to receive funding in that fiscal year. The enrollment estimates shall be certified by the school district governing board or the charter school's charter-granting local educational agency (LEA), as appropriate, and the county office of education in which the school district or charter school's charter granting LEA is located. These enrollment estimates and the associated funding shall be adjusted for actual enrollment as reported by the California Basic Education Data System for the current fiscal year.

NOTE: Authority cited: Sections 33031 and 60005, Education Code. Reference: Sections 47652 and 60421, Education Code.

HISTORY

1. New section filed 1-16-2003 as an emergency; operative 1-16-2003 (Register 2003, No. 3). A Certificate of Compliance must be transmitted to OAL by 5-16-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 1-16-2003 order transmitted to OAL 5-12-2003 and filed 6-16-2003 (Register 2003, No. 25).

Article 3. Request to Purchase Nonadopted Core Reading Program Instructional Materials

§ 9535. Request to Purchase Nonadopted Core Reading Program Instructional Materials.

If, in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program, and if that governing board desires to purchase non-adopted materials with the funds apportioned to it pursuant to Education Code section 60351, it shall request authorization to do so from the California State Board of Education. The request shall include all of the following:

(a) An overview of the goals and objectives of the local educational agency's core reading program for kindergarten and grades 1 to 3, inclusive, including a statement about how the goals and objectives were developed and a description of their consistency with "Teaching Reading: A Balanced, Comprehensive Approach to Teaching Reading in Prekindergarten Through Grade Three" (Reading Program Advisory), jointly approved by the State Superintendent of Public Instruction, California State Board of Education, and the California Commission on Teacher Credentialing, and published by the California Department of Education in 1996.

(b) A list of the core reading program instructional materials proposed to be purchased, including titles of individual curricular units, literature, and technology resources.

(c) An analysis of the proposed materials, describing the strengths and weaknesses of the materials, including the local educational agency's ru-

brics, criteria, and standards used to evaluate the materials for consistency with the requirements of this section, including, in particular, subdivisions (j) and (k).

(d) A description of the process by which the proposed materials were evaluated and selected by the local educational agency.

(e) A description of the local educational agency's plans for staff development for teachers regarding the use of the proposed materials.

(f) A description of how the proposed materials will be used by the local educational agency's teachers.

(g) A description of the projected timeline for the purchase of the proposed materials.

(h) A description of the process used for public display of the proposed materials by the local educational agency, with a statement of assurance from the local educational agency that the materials have been or will be on public display for at least 30 days prior to their purchase, with all comments received during the display period being made part of the official records of the local educational agency's governing board.

(i) A statement of assurance from the local educational agency that the proposed materials are for use in kindergarten or any of grades 1 to 3, inclusive.

(j) A statement of assurance from the local educational agency that the proposed materials are based on the fundamental skills required by reading, including, but not limited to, systematic, explicit phonics and spelling, within the meaning of Education Code section 60200.4.

(k) A statement of assurance from the local educational agency that the proposed materials include, but are not necessarily limited to, phonemic awareness, systematic explicit phonics, and spelling patterns, accompanied by reading materials that provide practice in the lesson being taught, within the meaning of Education Code section 60352(d).

(l) Evidence that the local educational agency's governing board:

(1) Formally approved the authorization request at a properly noticed public meeting.

(2) Supports the use of the specified funds for the purpose expressed in the request.

(3) Verified that the local educational agency considered the California State Board of Education adopted materials for its core reading program and considered the reasons given by the California State Board of Education for not adopting the materials proposed for purchase, if those materials were submitted for adoption in 1996.

(4) Verified that the proposed materials comply with Education Code sections 60040, 60041, 60042, 60044, 60045, and 60046.

(5) Verified that all statements of assurance included within the request for authorization are true and correct.

If the request for authorization complies with subdivisions (a) to (l), inclusive, and establishes to the satisfaction of the California State Board of Education that none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in the applying local educational agency's core reading program, then the request for authorization shall be granted by the California State Board of Education.

NOTE: Authority cited: Sections 33031, 60206 and 60352(d), Education Code. Reference: Sections 60351 and 60352(d), Education Code.

HISTORY

1. New article 3 (section 9535) and section filed 1-30-97 as an emergency; operative 1-30-97 (Register 97, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-30-97 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 83, No. 25.

2. Repealed by operation of Government Code section 11346.1(g) (Register 97, No. 31).

3. New section filed 7-31-97; operative 7-31-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 31).

Article 4. Additions to Lists of Adopted Instructional Materials in Reading/Language Arts and Mathematics

§ 9540. Establishment of Policy.

This article is the policy the State Board is required to adopt under Education Code section 60200.1(a)(5). The provisions of this article shall apply to additional submissions and adoptions of instructional materials in reading/language arts and mathematics under Education Code section 60200.1(a)(5).

NOTE: Authority cited: Sections 33031, 60005 and 60206, Education Code. Reference: Section 60200.1(a)(5), Education Code.

HISTORY

1. New article 4 (sections 9540-9550) and section filed 11-2-98 as an emergency; operative 11-2-98 (Register 98, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-2-99 or emergency language will be repealed by operation of law on the following day. For prior history of article 4 (sections 9550-9551) and article 5 (sections 9560-9566), see Register 75, No. 40. For prior history of subchapter 2 (sections 9540-9583), see Register 75, No. 40 and Register 83, No. 25.

2. Certificate of Compliance as to 11-2-98 order, including amendment of section, transmitted to OAL 3-2-99 and filed 4-13-99 (Register 99, No. 16).

§ 9541. Definitions.

(a) "Basic program" means an instructional materials submission that covers a course of study within the meaning of Education Code section 60200.1(a)(5)(A). It shall be comprehensive, i.e., it shall be designed for use as a principal learning resource that meets in organization and content the basic requirements for the intended course (generally a full school year in length).

(b) "Curriculum Commission" means the Curriculum Development and Supplemental Materials Commission.

(c) "Individual standards" means the individually identified and numbered components which together compose the primary elements of the language arts standards or the mathematics standards.

(d) "Language arts standards" means the final edited version of the English-Language Arts Content Standards for California Public Schools, Kindergarten through Grade Twelve, adopted by the State Board in November 1997 pursuant to Education Code section 60605.

(e) "Mathematics standards" means the final edited version of the Mathematics Content Standards for California Public Schools, Kindergarten through Grade Twelve, adopted by the State Board in December 1997 pursuant to Education Code section 60605.

(f) "Partial program" means an instructional materials submission that covers a substantial portion of a course of study within the meaning of Education Code section 60200.1(a)(5)(A). Its potential contribution to the efficient and effective delivery of the whole of the subject matter content for the intended course of study shall be clear and significant. A submission that presents subject matter content that is not clearly connected or only peripherally related to the intended course, or that would otherwise make a less-than-significant contribution to the intended course, shall not be added to a list of adopted instructional materials as a partial program.

(g) "Special student populations" means students who face identified academic challenges and includes, but is not limited to, students (1) who are enrolled in special education, (2) whose demonstrated English-language proficiency is not comparable to that of the school district's average native English-language speakers; and (3) whose achievement is either significantly below or significantly above that typical of students at the grade level.

SixTen and Associates Mandate Reimbursement Services

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JUN 04 2008

**COMMISSION ON
STATE MANDATES**

June 2, 2008

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: CSM 03-TC-07
Instructional Materials Funding Requirements

Dear Ms. Higashi:

On January 8, 2007, I submitted to the Commission, on behalf of the test claimant, a supplement to the test claim filing, specifically, the history of the Title 5, CCR, sections included in the test claim, at the request of the Commission staff.

This letter transmits, on behalf of the test claimants, the list of registers and relevant section numbers, in the form of an amended attachment page to the CSM 2 form.

Sincerely,



Keith B. Petersen

C: Gail Treible, Director
Business Services
Castro Valley Unified School District
P.O. Box 2146 (4400 Alma Avenue)
Castro Valley, CA 94546

Amended Attachment to: CSM Form 2 (1/91)
03-TC-07
Test Claim of Castro Valley Unified School District
Chapter 4, Statutes of 2003
Instructional Materials Funding Requirements

Statutes

Chapter 4, Statutes of 2003
Chapter 802, Statutes of 2002
Chapter 461, Statutes of 2000
Chapter 646, Statutes of 1999
Chapter 276, Statutes of 1999
Chapter 251, Statutes of 1997
Chapter 124, Statutes of 1996
Chapter 764, Statutes of 1995
Chapter 534, Statutes of 1995
Chapter 413, Statutes of 1995
Chapter 325, Statutes of 1995
Chapter 927, Statutes of 1994
Chapter 56, Statutes of 1993
Chapter 1028, Statutes of 1991
Chapter 529, Statutes of 1991
Chapter 353, Statutes of 1991
Chapter 1181, Statutes of 1989
Chapter 1452, Statutes of 1987
Chapter 211, Statutes of 1986
Chapter 1597, Statutes of 1985
Chapter 1546, Statutes of 1985
Chapter 1470, Statutes of 1985
Chapter 1440, Statutes of 1985
Chapter 498, Statutes of 1983
Chapter 1503, Statutes of 1982
Chapter 282, Statutes of 1979
Chapter 36, Statutes of 1977
Chapter 817, Statutes of 1976

Education Code Sections

Education Code Section 60000
Education Code Section 60002
Education Code Section 60045
Education Code Section 60048
Education Code Section 60119
Education Code Section 60200
Education Code Section 60242
Education Code Section 60242.5
Education Code Section 60248
Education Code Section 60252
Education Code Section 60421
Education Code Section 60422
Education Code Section 60423
Education Code Section 60424
Education Code Section 60501
Education Code Section 60510.5
Education Code Section 60521

California Code of Regulations Registers

Register 75-39

Title 5, Sections: 9500 9501 9502 9503 9504 9505

Register 75-40

Title 5, Sections: 9505

Register 77-39

Title 5, Sections: 9505

Register 83-25

Title 5, Sections: 9505

Register 95-03

Title 5, Sections: 9530

Register 97-05

Title 5, Sections: 9535

Register 97-31

Title 5, Sections: 9535

Register 2003-03

Title 5, Sections: 9531 9532

Register 2003-25

Title 5, Sections: 9531 9532

Title 5, Code of Regulations Originally Listed

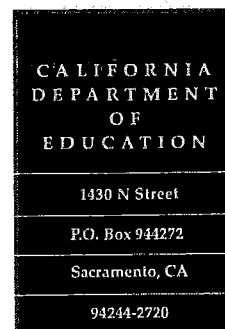
Section 9505
Section 9530
Section 9531
Section 9532
Section 9535

Executive Orders

Standards for Evaluating Instructional Materials for Social Content (2000 Edition)



JACK O'CONNELL
State Superintendent of Public Instruction



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**COMMISSION ON
STATE MANDATES**

November 3, 2003

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

Correspondence from the Commission on State Mandates (CSM) requested comments from interested parties on the Instructional Materials Funding Requirements (03-TC-07) test claim submitted by the Castro Valley Unified School District. Our comments are as follows.

Pages 56 and 57, Standards for Evaluating Instructional Materials for Social Content, 2000 Edition

This is neither a mandated program nor an Executive Order. This is a document that is used by the State Board of Education in the review of instructional materials submitted for state adoption. The foreword, page iv, states, "we encourage local educational agencies to review these standards carefully in their own selection of instructional materials." Districts are not required to perform these activities; therefore, this document does not constitute an Executive Order.

Page 59, Public Hearings

This is not a mandated program. The Instructional Materials Funding Realignment Program (IMFRP) is a voluntary program, therefore, school districts are not required to participate or accept these funds. If the district did not accept funds for instructional materials, there would be no need to hold a public hearing or post any notices regarding their use.

Pages 61 and 62, Classroom Library Plans

This is not a mandated program. Education Code (EC) section 60242.5 does not require school districts to purchase classroom library materials. The purchase of classroom library materials is voluntary and is an option available to school districts.

Pages 61 and 71, Preparation of Waivers

This is not a mandated program. School districts may voluntarily choose to request a waiver under EC section 60200 or California Code of Regulations (CCR) 5, section 9535. Therefore, this is an option that has been provided to school districts in order to allow some flexibility in the choice of instructional materials for grades K-8.

Page 63, Enrollment Estimates

This is not a mandated program. This is a voluntary option, available to new charter schools, school districts in their first year of operation, or schools that are adding new grade levels, that allows the charter school or school district to receive additional instructional materials funding. This option is available to schools in instances where they have not reported updated enrollment figures in their prior year California Basic Educational Data System (CBEDS) reporting (EC section 60421).

Pages 63-64, 69-70, IMFRP

This is not a mandated program. School districts may choose to accept these funds or not; therefore, participation in this program is voluntary on the part of school districts. Once a school district chooses to participate in the IMFRP and receive funds, it must meet the requirements in EC sections 60422 and CCR 5, section 9531, including providing standards-aligned instructional materials to all pupils.

Other factual irregularities include:

Districts are not required to apply to the State Board of Education for an extension of time to purchase standards-aligned instructional materials. This is an option available to school districts that are unable to purchase materials within the prescribed time frames of the IMFRP.

School districts may adopt a resolution regarding the piloting of newly adopted materials and use \$9 of their IMFRP funds in a number of ways. However, school districts are not required to adopt this resolution. This flexibility is granted under the authority of CCR 5, section 9531, which allows school districts to have added flexibility in the use of their IMFRP funds.

Page 64, Reviewing Materials for Obsolescence

This is not a mandated program. School districts are not required to review materials for obsolescence; therefore, this is not a mandated activity. EC section 60501 clearly states that “districts may review instructional materials....” for obsolescence and “may report....” on their obsolescence.

The requirements in EC section 60500 do not constitute a mandated program. EC section 9800 (Chapter 929, Statutes of 1972, page 4) required school boards to adopt rules and regulations for determining when school materials become obsolete. EC section 60500, that requires governing boards to “adopt rules, regulations and procedures...” for determining when school materials

become obsolete was enacted in 1977. Therefore, the requirements of EC section 60500 would not constitute new program or higher level of service, because these requirements were in existence, as a result of EC section 9800, beginning in 1972 (EC section 9800 was abolished and replaced by EC 60500).

Page 65, Disposition of Instructional Materials

This is not a mandated program. The language in EC section 60510.5 paragraph (a) clearly states that “the school district governing board is encouraged to...” dispose of instructional materials; therefore, the state does not require school districts to do so.

Page 66, Cost of Salaries for In-Service Training

This is not a mandated program. CCR 5, section 9505 does not require school districts to provide in-service-training for their employees, it only limits the use of the Instructional Materials Fund to pay for salaries and travel of employees attending training. It should also be noted that school districts have other sources of funding available to pay for these types of in-service training expenses.

Page 66, Purchasing Materials Directly from Publishers (CCR 5, section 9530)

This is not a mandated program. Districts have always been responsible for preparing their orders for instructional materials. In the past, however, orders were sent to the state and the state either printed the materials or forwarded the school district’s orders to publishers. CCR 5, section 9530 simply directs school districts to send their orders directly to publishers instead.

It should also be noted that the other provisions in CCR 5, section 9530, only apply if a publisher has shipped incorrect materials. The cost for all retrieval and replacement of the incorrect materials is the responsibility of the publisher, not the school district. In addition, this section also provides for district assessments against the publisher if the publisher does not comply with specific shipping deadlines.

Page 71-74, Request to Purchase Non-adopted Core Reading Program Instructional Materials

This is not a mandated program. Districts that wished to purchase materials that were not adopted, had the option of submitting a request to the State Board of Education for non-adopted materials under CCR 5, section 9535. This was a voluntary option that was offered to school districts, in order to provide some flexibility in their adoption of materials.

As required by CSM regulations, we are including a “Proof of Service” indicating that the parties included on the mailing list that accompanied your letter have been provided copies of this letter via either the United States Mail or, in the case of State agencies, Interagency Mail Service.

Page 4

Should you have questions, please contact Juan Sanchez at (916) 322-3074.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald C. Shelton". The signature is written in a cursive style with a long horizontal flourish at the end.

Gerald C. Shelton, Director
Fiscal and Administrative Services Division

TA:js

PROOF OF SERVICE

CALIFORNIA DEPARTMENT OF EDUCATION

Test Claim Name: Instructional Materials Funding Requirements

Claim Number: 03-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 1430 Street, Suite 2213, Sacramento, CA 95814.

On November 3, 2003 I served the attached comment of the California Department of Education in said cause, by facsimile to the Commission on State Mandates and by placing a true copy Therefore: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1430 Street, Suite 2213, Sacramento, CA 95814, for Interagency Mail Service, to the parties listed on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the fore going is true and correct, and that this declaration was executed on November 3, 2003, at Sacramento, California.



Juan Sanchez

MAILING LIST

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December 3, 2003

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

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**COMMISSION ON
STATE MANDATES**

Re: Test Claim 03-TC-07
Castro Valley Unified School District
Instructional Materials Funding Requirements

Dear Ms. Higashi:

I have received the comments of Gerald C. Shelton, Director, Fiscal and Administrative Services Division of the California Department of Education ("CDE") dated November 3, 2003, to which I now respond on behalf of the test claimant.

Although none of the objections generated by CDE are included in the statutory exceptions set forth in Government Code Section 17556, the objections stated additionally fail for the following reasons:

1. The Comments of the CDE are Incompetent and Should be Excluded

Test claimant objects to the Comments of the CDE, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d), requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information and belief."

The CDE comments do not comply with this essential requirement.

2. The Comments of the CDE Are Without Citation of Authority

The comments of the CDE are totally void of any citation or reference to Statute, Regulation or case law authority. Its comments are totally unsubstantiated by any authority whatsoever. Its comments should therefore be given no consideration other than being the unverified opinions of the author.

3. The Exhibit 5 Document: "Standards for Evaluating Instructional Materials for Social Content - 2000 Edition" is an Executive Order

CDE argues that the document attached to the test claim as Exhibit 5 - "Standards for Evaluating Instructional Material for Social Content - 2000 Edition" (hereinafter "Standards") is not an executive order. It quotes that portion of the Foreword to the Standards, at page iv, which states, "we encourage local educational agencies to review these standards carefully in their own selection of instruction materials."

So far as is applicable to this document, an "Executive Order" is any order, plan, requirement, rule or regulation issued by any agency, department, board or commission". Government Code Section 17516, subdivision (c)

The Foreword is signed by Delaine Eastin, State Superintendent of Public Instruction and by Monica Lozano, President of the California State Board of Education. The "Standards" includes the following orders, plans, requirements, rules and regulations:¹

"There are standards pertaining to age, disability, and nutrition that are not referenced in statute. These standards are based on policies adopted by the State Board of Education. As such, the standards regarding those areas must be considered by those who review for compliance. (Standards, at page 1, emphasis supplied)

"Less than full compliance may be allowed under the following special circumstances:..." (Standards, at page 2)

(Relative to Male and Female Roles) "The standards regarding adverse reflection and equal portrayal must be applied in every instance. The other standards require compliance when appropriate." (Standards, at page 3, emphasis supplied)

¹ This list is intended to be illustrative, not all-inclusive

(Relative to Ethnic and Cultural Groups) “The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate.” (Standards, at page 4, emphasis supplied)

(Relative to Older Persons and the Aging Process) “The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other two standards require compliance when appropriate.” (Standards, at page 5, emphasis supplied)

(Relative to People with Disabilities) “The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate.” (Standards, at page 6, emphasis supplied.)

must be applied in every instance. The other standard requires compliance only when appropriate.” (Standards, at page 7, emphasis supplied.)

(Relative to Religion) “Compliance is required...” (Standards, at page 7, emphasis supplied)

(Relative to Dangerous Substances) “The following standards require compliance when appropriate:...” (Standards, at page 8, emphasis supplied)

(Relative to Thrift, Fire Prevention, and Humane Treatment of Animals and People) “The prohibitions listed below require compliance in all cases; all other mandates apply when appropriate.” (Standards, at page 9, emphasis supplied)

(Relative to Brand Names and Corporate Logos) “The two standards require compliance when appropriate.” (Standards, at page 10)

(Relative to Diet and Exercise) The standards require compliance when appropriate.” (Standards, at page 12)

The text of the document is replete with orders, plans, requirements, rules and regulations. It is an Executive Order within the meaning of Government Code Section 17516, subdivision (c).

4. Purchasing Educational Materials is not an Option

The threshold argument found in the comments of CDE is that the new activities found in the test claim legislation are voluntary programs and “school districts are not required to participate or accept these funds”. This particular quotation is found on page 1 of its comments when referring to the required public hearings alleged at page 59 of the test claim.

This “public hearing” requirement is found in Education Code Section 60119, which is part of the “Pupil Textbook and Instructional Materials Incentive Program Act”. Education Code Section 60117² This Act was added to the Education Code by Chapter 927, Statutes of 1994.³ Section 1 of the Chapter sets forth the finding and declarations of the Legislature:

“The Legislature finds and declares that the California Supreme Court in its 1976 decision, *Serrano v. Priest* (18 Cal.3d 728), reaffirmed the principle that education is a fundamental interest which is secured by the state constitutional guarantee of equal protection under the law, and held invalid a school financing system that resulted in disparate educational opportunity. The Legislature further declares that, to the extent that every pupil CDEs not have access to textbooks or instructional materials in each subject, a pupil’s right to equal educational opportunity is impaired.”

Section 3 added Education Code Section 60252 which created “The Pupil Textbook and Instructional Materials Incentive Account” within the State Instructional Materials Fund to be used for the Pupil Textbook and Instructional Materials Incentive Program. Section 5 appropriated nine million one hundred eighteen thousand dollars (\$9,118,000) from the 1994 Budget Act to the Pupil Textbook and Instructional Materials Incentive Account.

The account was created. The money was appropriated. The test claim legislation, Education Code Section 60119, merely provides that “...to be eligible to receive (those) funds...”, a school district is required to perform certain acts (i.e., the new programs or higher levels of service alleged), including the holding of public hearings. For the CDE to suggest that “school districts are not required to participate or accept these funds”

² CDE incorrectly refers to this program as part of “The Instructional Materials Funding Realignment Program” which commences with Education Code Section 60420.

³ Test Claim, Exhibit 2, Page 2074

totally ignores the declaration of the Legislature that “to the extent that every pupil CDEs not have access to textbooks or instructional materials in each subject, a pupil’s right to equal educational opportunity is impaired.”

Verifying eligibility to obtain funding for constitutionally required programs is de facto compulsion.

The controlling case law on the subject of non-legal compulsion is still *City of Sacramento v. State of California* (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

A. *Sacramento II* Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax (“FUTA”). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally “certified” unemployment insurance program receive a “credit” against the federal tax in an amount determined as 90 percent of contributions made to the state system. A “certified” state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a “certified” state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

B. *Sacramento I* Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In *City of Sacramento v. State of California* (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, inter alia, that chapter 2/78 imposed state-

mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a “mandate of the federal government” under Section 9(b).⁴

In other words, *Sacramento I* concluded, inter alia, that the loss of federal funds and tax credits did not amount to “compulsion”.

C. *Sacramento II* Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the “program” and “service” standards for mandatory subvention because it imposed no “unique” obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

However, the court overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to “compulsion”.

D. *Sacramento II* “Compulsion” Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California’s failure to comply with the federal “carrot and stick” scheme were so substantial that the state had no realistic “discretion” to refuse.

In disapproving *Sacramento I*, the court explained:

“If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments.” (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have

⁴ Section 1 of article XIII B limits annual “appropriations”. Section 9(b) provides that “appropriations subject to limitation” do not include “Appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly.”

chosen to terminate its own unemployment insurance system, leaving the state's employers faced only with the federal tax. The court replied to this suggestion:

"However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state 'without discretion' to depart from federal standards." (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically "without discretion".

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of "mandatory" versus "optional":

"Given the variety of cooperative federal-state-local programs, we here attempt no final test for 'mandatory' versus 'optional' compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal." (Opinion, at page 76)

E. Statutory Compulsion is not Required

In *Department of Finance v. Commission on State Mandates* (supra, at page 736), the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

"For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate." (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court affirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

“In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* CDEs not face ‘certain and severe...penalties’ such as ‘double...taxation’ or other ‘draconian’ consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations.” (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

Therefore, “carrot and stick” situations must still be determined on a case by case basis.

The alternative suggested by CDE (i.e., not participating or accepting these funds) is so far beyond the realm of practical reality that the suggestion CDEs not merit serious consideration.

In order to conserve space and avoid repetition, test claimant replies to each and every additional recitation of the CDE arguing that specified line items are not mandated programs because they are voluntary in the same manner as hereinabove set forth in this section 4.

5. The Title 5 Regulations are Independent Mandates

The test claim sets forth certain Title 5, California Code of Regulations⁵ as the source of additional mandated activities.

Section 9505 - In-Service Training

CDE argues that section 9505 CDEs not require school districts to provide in-service training for their employees. (CDE Comments at page 3)

⁵ Test Claim Narrative, pages 48-56; Costs section, pages 66-74. Copies of the Regulations are attached to the test claim as Exhibit 4, pages 401-405

Training district personnel in the application of new mandates has always been considered by the Commission to be a reimbursable activity. Former Education Code section 9425 required each district board to request publishers and manufacturers to provide in-service training in the use of their instructional materials. Section 9425 was recodified and renumbered as Education Code section 60225. Chapter 413, Statutes of 1995, Section 17, amended section 60225 to provide that publishers may provide such training when mutually agreed with the district. Title 5, California Code of Regulations Section 9505 prohibits any cash allotment for the purchase of in-service training from being used for salaries, or for travel, or per diem expenses of district employees during or attendant to participation in such in-service training. Therefore, when providing such in-service training, districts must bear (and therefore seek reimbursement for) the cost of salaries or for travel or per diem expenses of district employees during or attendant to participation in such in-service training.

Section 9530 - Direct Orders and Publisher Breaches

CDE first argues that districts have always been responsible for preparing their orders for instructional materials. CDE goes on, however, to admit:

“In the past, however, orders were sent to the state and the state either printed the materials or forwarded the school district’s orders to publishers. CCR 5, section 9530 simply directs school districts to send their orders directly to publishers instead.” (CDE Comments, page 3)

First of all, the regulation CDEs not “simply direct”, it mandates that “[E]ach school district shall purchase adopted instructional materials directly from publishers and manufacturers.” Secondly, the use of the phrase “in the past” when describing a former activity admits a new program or higher level of service. Finally, to the extent that school districts may have previously performed similar functions to those now mandated, such efforts do not establish a preexisting duty that would relieve the state of its constitutional requirement to later reimburse school districts when these same or similar duties become mandated. Government Code Section 17565

CDE also argues that the cost for all retrieval and replacement of incorrect materials is the responsibility of the publisher. Subdivision (d) only requires the publisher to “buy back” at the price in effect at the time of discontinuance. This is not a guaranty of full recovery. Subdivision (e)(1) requires the publisher to “withdraw and replace” without any obligation to determine or reimburse other school district costs. Subdivision (e)(2) allows no recovery when late delivery results from circumstances beyond the control of the publisher or manufacturer. When the publisher or manufacturer is at fault,

damages are assessed, but not necessarily collected, at the rate of only \$500 per day with a maximum assessment of \$20,000. Again, there is no guaranty that all damages or costs will be recovered. The test claim recognizes this possibility: "To the extent that the funding is provided each year, and to the extent that the dedicated funds are applied to activities mandated by the state, the amounts received and applicable to mandated activities will reduce the amount of costs mandated by the state."⁶

Section 9535 - Purchasing Nonadopted Core Reading Materials

CDE argues that districts "...that wished to purchase materials that were not adopted, had the option of submitting a request to the State Board of Education for non-adopted materials under CCR 5, section 9535." (CDE Comments, at page 3)

The condition precedent to that option is when, "in the judgment of the governing board of a school district or a county office of education, none of the instructional materials adopted by the California State Board of Education in 1996 promotes the maximum efficiency of pupil learning in that local educational agency's core reading program". So, when the CDE goes on to argue this is "a voluntary option that was offered to school districts, in order to provide some flexibility in their adoption of materials", it can only mean that school districts have the "option" and "flexibility" to use materials that do not offer maximum efficiency or the choice of purchasing materials that do use materials that offer maximum efficiency for pupil learning. This is not an option, it is a violation of the district's obligation to educate students.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

⁶ Test Claim, page 75, lines 8-11

DECLARATION OF SERVICE

RE: Instructional Materials Funding Requirements 03-TC-07
CLAIMANT: Castro Valley Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of December 3, 2003, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278



U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.



FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.



OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:

_____(Describe)



A copy of the transmission report issued by the transmitting machine is attached to this proof of service.



PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 12/3/03, at San Diego, California.


Diane Bramwell

Commission on State Mandates

Original List Date: 10/2/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 10/03/2003

Mailing List

Claim Number: 03-TC-07

Issue: Instructional Materials Funding Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Mr. Keith B. Petersen

Claimant Representative

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Mr. Jerry Macy

Claimant

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February 9, 2004

RECEIVED

FEB 13 2004

COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of October 3, 2003, the Department of Finance has reviewed the test claim submitted by the Castro Valley Unified School District (claimant) asking the Commission to determine whether specified costs incurred under various statutes and executive orders are reimbursable State mandated costs (Claim No. CSM-03-TC-07 "Instructional Materials Funding Requirements"). Commencing with page 58 of the test claim, the claimant has identified new duties, which it asserts are reimbursable State mandates.

The State has provided funding for the purchase of instructional materials (last five fiscal years shown in Table I), which is more than sufficient to offset any marginal administrative costs. Additionally, districts are expected to use general purpose funds to supplement categorical funding. Categorical programs such as the State Instructional Materials Fund, Instructional Materials Funding Realignment Program, and the Schiff-Bustamante Standards-Based Instructional Materials Programs are optional. Therefore, activities that are a condition of funding are not mandates.

Table I
Instructional Materials Funding by Fiscal Year

1999-00	\$725 million
2000-01	1.024 billion
2001-02	606 million
2002-03	318 million
2003-04	184 million

Additionally, the "Standards for Evaluating Instructional Materials for Social Content, 2000 Edition" (Exhibit 5) does not impose any mandates on school districts or county offices of education. On the second page of the document (page 502 of the test claim), is the following notice: "The guidance in *Standards for Evaluating Instructional Materials for Social Content* is not binding on local educational agencies or other entities. Except for statutes, regulations, and court decisions that are referenced herein, the document is exemplary, and compliance with it is not mandatory. (See Education Code Section 33308.5.)"

Our comments on the individual activities listed are as follows:

Activity A, page 58

- A) Pursuant to Education Code Sections 60000 through 60521, developing, adopting and implementing policies and procedures, and periodically updating those policies and procedures, to ensure compliance with laws and regulations governing the selection, acquisition and use of instructional materials in public schools.**

Nowhere in Education Code Sections 60000 through 60521 is it stated that local agencies must develop, adopt, and implement policies and procedures as stated in the test claim.

Activity B, page 58

- B) Pursuant to Education Code Section 60000, subdivision (b), establishing broad minimum standards and general educational guidelines for the selection of instructional materials for the selection of instructional materials for the district's schools.**

Education Code Section 60000(b) states, "The Legislature hereby recognizes that ... there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials for the public schools, but ... specific choices about instructional materials need to be made at the local level." This does not require local agencies to establish standards and guidelines.

Activity C, Page 58

- C) Pursuant to Education Code Section 60002, providing for substantial teacher involvement in the selection of instructional materials and promoting the involvement of parents and other members of the community in the selection of instructional materials.**

Nothing specific is required with respect to teacher, parent, or community participation. Since there are no specific requirements, there can be no mandated costs. Nothing in this section requires extra compensation for teachers who participate in textbook reviewing, for example.

Activity D, page 58

- D) Pursuant to Education Code Section 60045, subdivision (a), adopting instructional materials for use in the schools that are accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels. Pursuant to subdivision (b), adopting instructional materials that use proper grammar and spelling.**

Adopting instructional materials that are accurate, objective, and current and suited to the needs and comprehension of pupils at the respective grade levels and that use proper grammar and spelling is, for the most part a matter of judgment on the part of the district which most new textbooks are likely to meet. While we agree some effort is required to review any materials available for adoption, this section does not specifically require any particular process or level of effort for the district.

Activity E, pages 58 and 59

- E) Pursuant to Education Code Section 60048, subdivision (a), adopting basic instructional materials, and other instructional materials required to be legally and socially compliant pursuant to Sections 60040 to 60047, inclusive, deleting illustrations, that contain a commercial brand name, product, or corporate or company logo unless the governing board makes a specific finding pursuant to the criteria set forth in paragraph (5) of subdivision (c) of Section 60200 that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.**

Instructional materials containing a commercial brand name, product, or corporate or company logo may not be adopted. Deleting illustrations that contain these would be at the discretion of the local governing board, or they could adopt alternative materials.

Activities F and G, pages 59 and 60

- F) Pursuant to Education Code Section 60119, subdivision (a), when the base revenue limit for a school district will increase by at least 1 percent per unit of average daily attendance from the prior fiscal year, taking the following actions:**
- (1) Holding a public hearing or hearings at which the governing board shall encourage participation by parents, teachers, members of the community interested in the affairs of the school district, and bargaining unit leaders, and making a determination, through a resolution, as to whether each pupil in each school in the district has, or will have prior to the end of the fiscal year, sufficient textbooks or instructional materials, or both, in each subject that are consistent with the content and cycles of the curriculum framework adopted by the state board.**
 - (2) (A) If the governing board determines that there are insufficient textbooks or instructional materials, providing information to classroom teachers and to the public setting forth the reasons that each pupil does not have sufficient textbooks or instructional materials, or both, and take any action to ensure that each pupil will have sufficient textbooks or instructional materials, or both, within a two-year period from the date of the determination.**
(B) In carrying out subparagraph (A), the governing board may use money in any of the following funds:
 - (i) Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.**

(ii) Any funds of the school district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.
instructional materials, or both.

- G) Pursuant to Education Code Section 60119, subdivision (b), providing 10 days notice of the public hearing or hearings required by subdivision (a). The notice shall contain the time, place, and purpose of the hearing and shall be posted in three public places in the school district.

These activities are a condition of receiving funds under the Pupil Textbook and Instructional Materials Incentive Program, which school districts are not required to participate in. Districts may, and usually do, use district general purpose funds and federal funds for instructional materials.

Activity H, pages 60 and 61

- H) Pursuant to Education Code Section 60200, subdivision (c) when appropriate, making a determination that the use of a commercial brand name, product, or corporate or company logo is appropriate based on one of the following specific findings:
- (A) If text, the use of commercial brand name, product, or corporate or company logo in the instructional materials is necessary for an educational purpose, as defined in the guidelines or frameworks adopted by the State Board of Education.
 - (B) If an illustration, the appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

Education Code Section 60200 states requirements for the State Board of Education, not local agencies.

Activities J and K, pages 61 and 62

- J) Pursuant to Educating Code Section 60242, subdivision (d)(1), unless a district already has a plan meeting the criteria specified, developing a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and obtaining certification of the plan from the governing board of the school district. A school district shall include in the plan a means of preventing loss, damage, or destruction of the materials.
- K) Pursuant to Education Code Section 60242, subdivision (d)(2), when developing the plan required by subdivision (d)(1), consulting with school library media teachers and primary grade teachers and considering selections included in the list of recommended books established pursuant to Section 19336. If a school library media teacher is not employed by the school district, consulting with a school library media teacher employed by the local county office of education in developing the plan.

These activities are a condition of receiving funds for the purchase of classroom library materials. The purchase of classroom library materials is discretionary as stated by Education Code Section 60242 (a), which reads, "The State board shall encumber the fund ... that the district may use for the following purposes: ... (6) To purchase classroom library materials for kindergarten and grades 1 to 4, inclusive."

Activity M, page 62

- M) Pursuant to Education Code Section 60248, using the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials for pupils in grades 9 to 12, inclusive.**

This is simply a restriction on the use of funding for certain grade levels as appropriated in the budget. It is not a mandate.

Activity N, page 62

- N) Pursuant to Education Code Section 60252, subdivision (a) and (b), (until January 1, 2003) Satisfying each of the following requirements when applying for funds from the Pupil Textbook and Instructional Materials Incentive Account:**
- (1) Providing assurance to the Superintendent of Public Instruction that the district has complied with Section 60119.**
 - (2) Ensuring that the money will be used to carry out its compliance with Section 60119 and shall supplement any state and local money that is expended on textbooks or instructional materials, or both.**

These activities are a condition of receiving funds under the Pupil Textbook and Instructional Materials Incentive Program, which school districts are not required to participate in. Districts may, and usually do, use district general purpose funds and federal funds for instructional materials.

Additionally, as stated on page 39 of the test claim, EC section 60119 was amended by Chapter 646, Statutes 1999 to make funds available for the fiscal years 1994-95 through 1998-99, whether or not the district board complied with the public hearing requirement. Therefore, there would be no mandate for that time period.

We would also point out that the public hearing requirements of EC section 60119 would result in minimal costs as local governing boards could us regularly scheduled board meetings for this purpose.

Activities O and P, pages 63 and 64

- O) Pursuant to Education Code Sections 60421, subdivision (a), and 60424, effective July 1, 2002, for a school district in its first year of operation or of expanding grade levels at a schoolsite, to be eligible to receive funding for the Instructional Materials Funding Realignment Program, providing enrollment estimates, as approved by the school district governing board and the county office of**

education in which the school district is located. These estimates and associate funding shall be adjusted for actual enrollment as reported by the subsequent California Basic Education Data System.

- P) Pursuant to Education Code Sections 60422, subdivision (a), and 60424, effective July 1, 2002, using funding received pursuant to the chapter on the Instructional Materials Funding Realignment Program the ensure that each pupil is provide with a standards-aligned textbook or basic instructional materials, as adopted by the State Board of Education subsequent to the adoption of content standards pursuant to Section 60605 for kindergarten and grades 1 to 8, inclusive, or as adopted by the local governing board pursuant to Sections 60400 and 60411, for grades 9 to 12, inclusive. Pursuant to subdivisions (b), certifying compliance with subdivision (a) with regard to standards-aligned instructional materials in the core curriculum areas of reading/language arts, mathematics, science, and history/social sciences before any remaining funds my be used consistent with subdivision (a) of Section 60242 and pursuant to Section 60242.5, provided the governing board of a school district has met the eligibility requirements of Section 60119. Pursuant to subdivision (c), in order to obtain additional time to meet the purchasing requirements of subdivision (a), demonstrating, to the satisfaction of the state board, that all of the following criteria apply to the district:
- (1) The school district has implemented a well –designed, standards-aligned basic instructional materials program.
 - (2) The school district, at the time of its request for additional time pursuant to this subdivision, has sufficient textbooks or basic instructional materials for use by each pupil.
 - (3) The school district has adopted a plan for the purchase of standards-aligned instructional materials in accordance with subdivison (a) but that plan indicated an alternative date for compliance that is declared in the request for additional time.

(Pursuant to Education Code Section 60423, effective March 18, 2003, for fiscal years of 2002-03 and 2003-04 only, a district may satisfy the requirements of Section 60422, subdivison (a), by providing its pupils with standards-aligned instructional materials that were adopted by the State Board pursuant to Chapter 481 of the Statutes of 1998.)

These activities are a condition of receiving funding under the Instructional Materials Funding Realignment Program, which school districts are not required to participate in. Districts may, and usually do, use district general purpose funds and federal funds for instructional materials.

Activity Q, pages 64 and 65

- Q) Pursuant to Education Code Section 60501, reviewing instructional materials to determine when those material are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and report the results of its review and staff recommendations at a public meeting of the school district governing board.

The language of Education Code Section 60501 is permissive and thus creates no mandate.

"A school district *may* review instructional materials ... and *may* report the results ..." (emphasis added)

Activity R, page 65

- R) Pursuant to Education Code Section 60510.5, subdivision (a), prior to the disposition by a school district of any instructional materials pursuant to Section 60510, doing both of the following:**
- (1) No later than 60 days prior to that disposition, notify the public of its intention to dispose of those materials through a public service announcement on a television station in the county in which the district is located, a public notice in a newspaper of general circulation published in that county, or any other means that the governing board determines to reach most effectively the entities described in subdivisions (a) to (e), inclusive, of Section 60510.**
 - (2) Permit representative of the entities described in subdivision (a) to (e), inclusive, of Section 60510 and members of the public to address the governing board regarding that disposition.**
- Pursuant to subdivision (b), this section does not apply to any school district that, as of January 1, 1992, had in operation a procedure for the disposition of instructional materials pursuant to Section 60510.**

The language of Education Code Section 60510.5 (a) is permissive and thus creates no mandate. "Prior to the disposition by a school district of any instructional materials pursuant to Section 60510, the school district governing board is *encouraged* to do both of the following:" (emphasis added)

Activity S, pages 65 and 66

- S) Pursuant to Education Code Section 60521, using any money received by the governing board of a school district from the sale of instructional materials to purchase instructional materials.**

This is simply a restriction on the use of money received from the discretionary sale of instructional materials. It is not a mandate.

The following activities reference Title 5, California Code of Regulations:

Activities E through G, pages 68 through 70

- E) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (a), effective January 16, 2003, spending as much of the district's annual allocation from the Instructional Materials Funding Realignment Program, as is necessary, to purchase textbooks or basic instructional materials adopted subsequent to the adopting of content standards (Education Code section 60605) for each pupil, in reading language arts, mathematics, history-social science, and science.**
- F) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision (b), effective January 16, 2003, certifying that each pupil has been provided with a standards-aligned textbook or basic instructional materials in the four core curriculum areas, so that annual IMFRP funds may be spent to purchase other instructional materials adopted by the SBE pursuant to Education Code section**

60200 for kindergarten and grades 1 to 8, inclusive, or by the governing board pursuant to Education Code section 60400 for grades 9 to 12, as may be necessary to meet the requirements of Education Code section 60119.

- G) Pursuant to Title 5, California Code of Regulations, Section 9531, subdivision ©, effective January 16, 2003, making a determination through the annual local public hearing and approval of a resolution by the local governing board, pursuant to Education Code section 60119, that each K-12 pupil has, or will have prior to the end of that fiscal year, sufficient textbooks or instructional materials or both, or the local governing board has taken action to ensure sufficiency of textbooks or instructional materials or both within a two-year period as required, and also that, pursuant to Education Code section 60422(a), the local governing board has provided each K-12 pupil with standards-aligned textbooks or basic instructional materials by the beginning of the first school term that commences no later than 24 months after those materials were adopted by the SBE or, for grades 9-12, inclusive, were adopted by the local governing board, before an remaining Instructional Materials Funding Realignment funds may be spent on any of the following:
- (1) Instructional materials, including but not limited to supplementary instructional materials and technology-based materials, from any source and approved locally or by the state for legal and social compliance pursuant to Education Code sections 60040-60045 and 60048 and the SBE guidelines in Standards for Evaluating Instructional Materials for Social Content (revised 2000).
 - (2) To purchase tests.
 - (3) To bind basic textbooks that are otherwise useable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Education Code section 60200 or by the governing board pursuant to Education Code section 60400 for grades 9 to 12.
 - (4) To fund in-service training related to instructional materials.
 - (5) To purchase classroom library materials for kindergarten and grades 1 to 4 with the condition that the school district has developed a district wide classroom library plan pursuant to Education Code section 60242 (d)(1), (2) and (3).

These are simply restrictions that set priorities on the use of funding for the Instructional Materials Funding Realignment Program as appropriated in the budget. They are not mandates.

Activity H, page 70

- H) Pursuant to title 5, California Code of Regulations, Section 9531, subdivision (e), effective January 16, 2003, certifying by resolution adopted at a duly notice public meeting a decision to pilot (i.e. evaluate in actual classroom application), one or more of the textbooks or basic instructional materials adopted by the SBE in reading/language arts, mathematics, history-social science, or science, before using up to nine dollars (\$9.00) per student of a local agency's IMFRP allocation for that fiscal year generated by students in kindergarten through grade 8, and grades 9-12 inclusive, for the purposes specified in paragraphs (1) to (5), inclusive, of subdivision (c).

There is no requirement that school districts pilot instructional materials. This would be a local decision and thus not reimbursable.

Activity I, pages 70 and 71

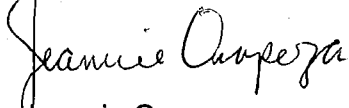
- l) Pursuant to Title 5, California Code of Regulations, Section 9532, subdivision (d), effective January 16, 2003, a school district in its first year of operation or of expanding grade levels at a school site shall provide enrollment estimates to the California Department of Education by September 30 of the current fiscal year in order for the school district to received funding in that fiscal year. Enrollment estimates shall be certified by the school district governing board and the county office of education in which the school district is located.**

These activities are provided as a condition of receiving funding under the Instructional Materials Funding Realignment Program, which school districts are not required to participate in. Districts may, and usually do, use district general purpose funds and federal funds for instructional materials.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 3, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Dan Troy, Principal Program Budget Analyst at (916) 445-0328 or Keith Gmeinder, State mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MARK HILL
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-07

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the various statutes sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2/9/04

at Sacramento, CA

Mark Hill

Mark Hill

PROOF OF SERVICE

Test Claim Name: Instructional Materials Funding Requirements
Test Claim Number: CSM-03-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: Michael Havey
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Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
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Sacramento, CA 95814

E-8
Department of Education
Fiscal and Administrative Services Division
Attention: Gerry Shelton
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Mandated Cost Systems, Inc.
Attention: Steve Smith
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Education Mandated Cost Network
C/O School Services of California
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Sacramento, CA 95816

Centration, Inc.
Attention: Beth Hunter
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Reynolds Consulting Group, Inc.
Attention: Sandy Reynolds, President
P.O. Box 987
Sun City, CA 92586

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-8363

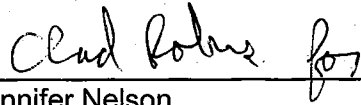
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Mandate Resource Services
Attention: Harmeet Barkschat
5325 Elkhorn Blvd., Suite 307
Sacramento, CA 95842

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Castro Valley Unified School District
Attention: Jerry Macy
4400 Alma Avenue
Castro Valley, CA 94546

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 2004, at Sacramento, California.



Jennifer Nelson

SixTen and Associates

Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

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March 19, 2004

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**COMMISSION ON
STATE MANDATES**

Re: Test Claim 03-TC-07
Castro Valley Unified School District
Instructional Materials Funding Requirements

Dear Ms. Higashi:

I have received the comments of the Department of Finance ("DOF") dated February 9, 2004, to which I now respond on behalf of the test claimant.

A. The Opposition and Comments of the DOF are Incompetent and Should be Excluded

Test claimant objects to the comments of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Furthermore, the test claimant objects to any and all assertions or representations of fact made in the response [such as, "Districts may, and usually do, use district general purpose funds and federal funds for instructional materials"] since DOF has failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

"If assertions or representations of fact are made (in a response), they

must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The DOF's comments do not comply with these essential requirements. Since the Commission cannot use unsworn comments or comments unsupported by declarations, but must make conclusions based upon an analysis of the statutes and facts supported in the record, test claimant requests that the comments and assertions of the DOF not be included in the Staff's Analysis.

B. DOF's Arguments Deny Students Equal Protection of the Laws

The thrust of DOF's comments is that the activities mandated by the test claim legislation are "activities (which) are a condition of receiving funds under the Pupil Textbook and Instructional Materials Incentive Program (or other programs), which school districts are not required to participate in (sic)." (e.g., at page 4, *et. al.*)

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution in 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district." That constitutional command, with the additional proviso that the school maintained by each district be "free" has persisted to the present day. *Butt v. State of California* (1992) 4 Cal.4th 668, 680¹ In *Butt* the court explained:

"Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (Citations) The system of public schools, although administered through local districts created by the Legislature, is 'one system...applicable to all the common schools...' (Citation) In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. (Citation) 'Management and control of the public schools [is] a matter of state[, not local,] care and supervision...'

¹ Pursuant to Title 2, California Code of Regulations, Section 1183.03(2), a copy of *Butt v. State of California* is attached hereto as Exhibit "A".

(citations) The Legislature's 'plenary' power over public education is subject only to constitutional restrictions. (Citations) Local districts are the State's agents for local operation of the common school system (Citations), and the State's ultimate responsibility for public education cannot be delegated to any other entity. (citation)" (Opinion, at pages 680-681)

Then after the court reminded us that, in Serrano², the court had struck down the then existing state public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values (Opinion, at page 683), the Supreme Court concluded:

"It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity. (¶)...Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State." (Opinion, at page 685)

The "Pupil Textbook and Instructional Materials Incentive Program Act" was added to the Education Code by Chapter 927, Statutes of 1994.³ Section 1 of the Chapter sets forth the finding and declarations of the Legislature:

"The Legislature finds and declares that the California Supreme Court in its 1976 decision, *Serrano v. Priest* (18 Cal.3d 728), reaffirmed the principle that education is a fundamental interest which is secured by the state constitutional guarantee of equal protection under the law, and held invalid a school financing system that resulted in disparate educational opportunity. The Legislature further declares that, to the extent that every pupil does not have access to textbooks or instructional materials in each

² *Serrano v. Priest* (1971) 5 Cal.3d 584

³ Test Claim, Exhibit 2, Page 2074

subject, a pupil's right to equal educational opportunity is impaired."

Following these declarations and findings, Section 2 of Chapter 927/94 added Article 9, the Pupil Textbook and Instructional Materials Incentive Program. Section 3, of Chapter 927/94, added Education Code Section 60252 which created "The Pupil Textbook and Instructional Materials Incentive Account" within the State Instructional Materials Fund to be used for the Pupil Textbook and Instructional Materials Incentive Program. Section 5 appropriated nine million one hundred eighteen thousand dollars (\$9,118,000) from the 1994 Budget Act to the Pupil Textbook and Instructional Materials Incentive Account. DOF's comments indicates that an additional \$2.857 billion dollars were appropriated for fiscal years 1999-00 through 2003-04. These later appropriations were not part of Chapter 927/94.

The account was created. The money was appropriated. Education Code Section 60119, merely provides that "...to be eligible to receive (those) funds...", a school district is required to perform certain acts (i.e., the new programs or higher levels of service alleged), including the holding of public hearings. For the DOF to suggest that "school districts are not required to participate" in the program totally ignores the declaration of the Legislature that "to the extent that every pupil does not have access to textbooks or instructional materials in each subject, a pupil's right to equal educational opportunity is impaired." DOF asserts a state policy which would be a violation of the equal protection laws of the State constitution. (Article I, §7, subdivisions (a),(b); Article IV, §16, subdivision (a))

C. Legal Compulsion is not Necessarily Required For a Finding of a Mandate

A finding of legal compulsion is not an absolute prerequisite to a finding of a reimbursable mandate. The controlling case law on the subject of non-legal compulsion is still City of Sacramento v. State of California (1990) 50 Cal.3rd 51 (hereinafter referred to as *Sacramento II*).

(1) Sacramento II Facts:

The adoption of the Social Security Act of 1935 provided for a Federal Unemployment Tax ("FUTA"). FUTA assesses an annual tax on the gross wages paid by covered private employers nationwide. However, employers in a state with a federally "certified" unemployment insurance program receive a "credit" against the federal tax in an amount determined as 90 percent of contributions made to the state system. A "certified" state program also qualifies for federal administrative funds.

California enacted its unemployment insurance system in 1935 and has sought to

maintain federal compliance ever since.

In 1976, Congress enacted Public Law number 94-566 which amended FUTA to require, for the first time, that a "certified" state plan include coverage of public employees. States that did not alter their unemployment compensation laws accordingly faced a loss of both the federal tax credit and the administrative subsidy.

In response, the California Legislature adopted Chapter 2, Statutes of 1978 (hereinafter chapter 2/78), to conform to Public Law 94-566, and required the state and all local governments to participate in the state unemployment insurance system on behalf of their employees.

(2) Sacramento I Litigation

The City of Sacramento and the County of Los Angeles filed claims with the State Board of Control seeking state subvention of the costs imposed on them by chapter 2/78. The State Board denied the claim. On mandamus, the Sacramento Superior Court overruled the Board and found the costs to be reimbursable. In City of Sacramento v. State of California (1984) 156 Cal.App.3d 182 (hereinafter *Sacramento I*) the Court of Appeal affirmed concluding, *inter alia*, that chapter 2/78 imposed state-mandated costs reimbursable under section 6 of article XIII B. It also held, however, that the potential loss of federal funds and tax credits did not render Public Law 94-566 so coercive as to constitute a "mandate of the federal government" under Section 9(b).⁴

In other words, *Sacramento I* concluded, *inter alia*, that the loss of federal funds and tax credits did not amount to "compulsion".

(3) Sacramento II Litigation

After remand, the case proceeded through the courts again. In *Sacramento II*, the Supreme Court held that the obligations imposed by chapter 2/78 failed to meet the "program" and "service" standards for mandatory subvention because it imposed no "unique" obligation on local governments, nor did it require them to provide new or increased governmental services to the public. The Court of Appeal decision, finding the expenses reimbursable, was overruled.

⁴ Section 1 of article XIII B limits annual "appropriations". Section 9(b) provides that "appropriations subject to limitation" do not include "appropriations required to comply with mandates of the courts or the federal government which, without discretion, require an expenditure for additional services or which unavoidably make the provision of existing services more costly."

However, the court also overruled that portion of *Sacramento I* which held that the loss of federal funds and tax credits did not amount to “compulsion”.

(4) *Sacramento II* “Compulsion” Reasoning

Plaintiffs argued that the test claim legislation required a clear legal compulsion not present in Public Law 94-566. Defendants responded that the consequences of California’s failure to comply with the federal “carrot and stick” scheme were so substantial that the state had no realistic “discretion” to refuse.

In disapproving *Sacramento I*, the court explained:

“If California failed to conform its plan to new federal requirements as they arose, its businesses faced a new and serious penalty - full, double unemployment taxation by both state and federal governments.” (Opinion, at page 74)

Plaintiffs argued that California was not compelled to comply because it could have chosen to terminate its own unemployment insurance system, leaving the state’s employers faced only with the federal tax. The court replied to this suggestion:

“However, we cannot imagine the drafters and adopters of article XIII B intended to force the state to such draconian ends. (¶) ...The alternatives were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.” (Opinion, at page 74, emphasis supplied)

In other words, terminating its own system was not an acceptable option because it was so far beyond the realm of practical reality so as to be a draconian response, leaving the state without discretion. The only reasonable alternative was to comply with the new legislation, since the state was practically “without discretion” to do otherwise.

The Supreme Court in *Sacramento II* concluded by stating that there is no final test for a determination of “mandatory” versus “optional”:

“Given the variety of cooperative federal-state-local programs, we here attempt no final test for ‘mandatory’ versus ‘optional’ compliance with federal law. A determination in each case must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance, or withdrawal.” (Opinion, at page 76)

(5) The “Kern” Case Did Not Change the Standard

In *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 736, (“Kern”) the supreme court first made it clear that the decision did not hold that legal compulsion was necessary in order to find a reimbursable mandate:

“For the reasons explained below, although we shall analyze the legal compulsion issue, we find it unnecessary in this case to decide whether a finding of legal compulsion is necessary in order to establish a right to reimbursement under article XIII B, section 6, because we conclude that even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.” (Emphasis in the original, underlining added)

After concluding that the facts in *Kern* did not rise to the standard of non-legal compulsion, the court reaffirmed that either double taxation or other draconian consequences could result in non-legal compulsion:

“In sum, the circumstances presented *in the case before us* do not constitute the type of non-legal compulsion that reasonably could constitute, in claimants’ phrasing, a ‘de facto’ reimbursable state mandate. Contrary to the situation that we described in (Sacramento II), a claimant that elects to discontinue participation in one of the programs *here at issue* does not face ‘certain and severe...penalties’ such as ‘double...taxation’ or other ‘draconian’ consequences (citation), but simply must adjust to the withdrawal of grant money along with the lifting of program obligations.” (Opinion, at page 754, emphasis supplied to illustrate holding is limited to facts presented)

Therefore, “carrot and stick” situations must still be determined on a case by case basis. The test for determining whether there is a mandate is whether compliance with the test claim legislation is a matter of true choice, that is whether participation is truly voluntary. *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582 \$2.857 billion dollars over the past 5 years is a very large carrot for a very short stick.

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D. DOF's Disputes of the Test Claim Activities Are Not Well Founded

Education Code Mandates

Test claimant first takes note of the fact that although DOF has made detailed comments on all other statutory activities, it has not made any comments on statutory activities I (Pursuant to Education Code Section 60200, subdivision (g), establishing to the satisfaction of the state board the fact that the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district, when requesting authorization for the district governing board to use its instructional materials allowances to purchase other materials) or L (Pursuant to Education Code Section 60242.5, providing written assurance of conformance to the Superintendent of Public Instruction that all purchases of instructional materials conform to law and the applicable rules and regulations adopted by the state board). Test claimant is therefore assuming DOF has no objections to these mandated duties.

Test claimant responds to the balance of DOF's comments as follows:

(1) Activities A and B - Policies and Procedures

DOF, at page 2, argues that nowhere in the test claim legislation is it stated that local agencies must develop, adopt, and implement policies and procedures or is there a requirement that they establish standards and guidelines.

First of all, developing, adopting and implementing policies and procedures is a standard requirement of all mandates. Otherwise, there would be no direction.

Secondly, subdivision (b) of Education Code Section 60000 provides:

“The Legislature hereby recognizes that, because of the common needs and interests of the citizens of this state and the nation, there is a need to establish broad minimum standards and general educational guidelines for the selection of instructional materials...(and)...specific choices about instructional materials need to be made at the local level.”

Finally, Education Code 60500 (Determinations of Obsolescence) requires:

“...governing boards⁵ shall adopt rules, regulations and procedures for prescribing standards for determining when instructional materials adopted by them and either loaned by them or in their possession are obsolete, and if such materials are usable or unusable for educational purposes.”

(2) Activity “C” - Teacher Participation

Referring to Education Code Section 60002, DOF, at page 2, states that “[N]othing specific is required with respect to teacher...participation. Since there are no specific requirements, there can be no mandated costs.”

To the contrary, Section 60002 provides:

“Each district board shall provide for substantial teacher involvement in the selection of instructional materials...” (Emphasis supplied)

Whether the teacher is already “compensated” for this involvement in the selection of instructional materials is another question. The correct answer to the question at this stage is to defer the question to the proceedings establishing the parameters and guidelines.

(3) Activity D - Adopting Instructional Materials

DOF, at page 3, agrees effort is required to review any materials available for adoption. Its only adverse comment is that the section does not specifically require any particular process or level of effort for the district. This is not a valid objection to a finding of a mandate. Government Code Section 17556

(4) Activity E - Adopting Legally and Socially Compliant Materials

DOF, at page 3, argues that “deleting illustrations that contain (brand names or corporate logos) would be at the discretion of the local governing board, or they could adopt alternative materials” and, therefore, there is no discretion.

⁵ “ “Governing boards” means the state board and any one or more district boards.” Education Code Section 60010(f) “ “District board” means the board of education or governing board of any county, city and county, city, or other district that has the duty to provide for the education of the children in its county, city and county, city, or district.” Education Code Section 60010(d)

Activity E alleges the duties found in Education Code Section 60048. Section 60048 incorporates Sections 60040 to 60047.

Section 60040 provides that “[W]hen adopting instructional materials for use in the schools, governing boards shall include only instructional materials which, in their determination, accurately portray the cultural and racial diversity of our society, including” (a) the contributions of both men and women in all types of roles, including professional, vocational, and executive roles, (b) the role and contributions of American Indians, American Negroes, Mexican Americans, Asian Americans, European Americans, and members of other ethnic and cultural groups to the total development of California and the United States, and (c) the role and contributions of the entrepreneur and labor in the total development of California and the United States.” (Emphasis added)

Section 60041 provides “[W]hen adopting instructional materials for use in the schools, governing boards shall include only instructional materials which accurately portray” (a) humanity’s place in ecological systems and the necessity for the protection of our environment, and (b) the effects on the human system of the use of tobacco, alcohol, narcotics and restricted dangerous drugs as defined in Section 11032 of the Health and Safety Code, and other dangerous substances.” (Emphasis added)

Section 60042 provides “[W]hen adopting instructional materials for use in the schools, governing boards shall require such materials as they deem necessary and proper to encourage thrift, fire prevention and the humane treatment of animals and people.” (Emphasis added)

Section 60043 provides “[W]hen adopting instructional materials for use in the schools, the governing board shall require, when appropriate to the comprehension of pupils, that textbooks for social science, history or civics classes contain the Declaration of Independence and the Constitution of the United States.” (Emphasis added)

Section 60044 provides “[N]o instructional materials shall be adopted by any governing board for use in the schools which, in its determination, contains” (a) any matter reflecting adversely upon persons because of their race, color, creed, national origin, ancestry, sex, handicap, or occupation, or (b) any sectarian or denominational doctrine or propaganda contrary to law.” (Emphasis added)

Section 60045, in part, provides “All instructional materials adopted by any governing board for use in the schools shall be, to the satisfaction of the governing board, accurate, objective, and current and suited to the needs and comprehension of pupils at their respective grade levels.” (Emphasis added)

So, when Section 60048 provides that instructional materials may not be adopted by a school district governing board that provide any exposure to a commercial brand name, product, or corporate or company logo in a manner that is inconsistent with the guidelines or frameworks adopted by the State Board of Education, there is no discretion left to the governing board. They “may not” be adopted.

(5) Activities F and G - Public Hearings

DOF, at pages 3-4, states that “[T]hese activities are a condition of receiving funds under the Pupil Textbook and Instructional Materials Incentive Program, which school districts are not required to participate in (sic).”

For test claimant’s response, see: Sections B and C above.

(6) Activity H - Submitted Basic Instructional Materials

Activity H incorporates the duties set forth in Education Code Section 60200, subdivision (c). DOF argues, at page 4, that Section 60200 states requirements for the State Board of Education and not local agencies.

Subdivision (c) of section 60200 provides that “[I]n reviewing and adopting or recommending for adoption submitted basic instructional materials, the state board shall use the following criteria...” It is the school districts that submit these basic instructional materials for review and adoption. They, therefore, must make sure that the materials meet the criteria used by the state board.

(7) Activities J and K - Classroom Library Plans

DOF, at pages 4-5, argues that these activities are only a “condition of receiving funds” and that the “purchase of classroom library materials is discretionary”.

Activities J and K refer to Education Code Section 60242, subdivisions (d)(1) and (d)(2).

Section 60242 is found in Article 3 which provides for the State Instructional Materials Fund. Subdivision (a) of Section 60240 continues the fund in as “a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California” and states the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials. (Emphasis supplied) Section 60242(a) requires the state board to encumber the fund for the purposes of establishing an allowance for each school district that the district may use

to purchase instructional materials adopted by the state board, to purchase, at the district's discretion, instructional materials,⁶ including, but not limited to, supplementary instructional materials⁷ and technology-based materials⁸, from any source, to purchase tests, to bind basic textbooks that are otherwise usable and are on the most recent list of basic instructional materials adopted by the state board and made available pursuant to Section 60200, to fund in-service training related to instructional materials, and to purchase classroom library materials for kindergarten and grades 1 to 4, inclusive. Section 60242(b) requires the state board to specify the percentage of a district's allowance that is authorized to be used for each of the purposes identified in subdivision (a).

At this point, the funding has been made as required by the California Constitution, an allowance has been made for each school district, and the state board has specified the

⁶ "Instructional materials" means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils to acquire facts, skills, or opinions or to develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests. Education Code Section 60010(h)

⁷ "Supplementary instructional materials" means instructional materials designed to serve, but not be limited to, one or more of the following purposes, for a given subject, at a given grade level:

- (1) To provide more complete coverage of a subject or subjects included in a given course.
- (2) To provide for meeting the various learning ability levels of pupils in a given age group or grade level.
- (3) To provide for meeting the diverse educational needs of pupils with a language disability in a given age group or grade level.
- (4) To provide for meeting the diverse educational needs of pupils reflective of a condition of cultural pluralism.

Education Code Section 60010(l)

⁸ "Technology-based materials" means those basic or supplemental instructional materials that are designed for use by pupils and teachers as learning resources and that require the availability of electronic equipment in order to be used as a learning resource. Technology-based materials include, but are not limited to, software programs, video disks, compact disks, optical disks, video and audio tapes, lesson plans, and data bases. Technology-based materials do not include the equipment required to make use of those materials. Education Code Section 60010(m)

percentage of the allowance that may be used for each approved purpose. The test claim then alleges [as provided in subdivision (d)] that a school district that purchases classroom library materials, shall, as a condition of receiving those funds, develop a districtwide classroom library plan for kindergarten and grades 1 to 4, inclusive, and shall receive certification of the plan from the governing board of the school district.

The only “option” available to school district is whether they should use available funds to purchase instructional materials or not buy any instructional materials at all. This is not an option. See also: Sections B and C, above.

(8) Activity M - Instructional Materials for Grades 9 to 12

DOF, at page 5, argues that this activity is “simply a restriction” on the use of funding for certain grade levels” and is not a mandate.

Activity M refers to Education Code 60248. Again, section 60248 is part of Article 3, the State Instructional Materials Fund, commencing at section 60240. Subdivision (a) of Section 60240 continues the fund as “a means of annually funding the acquisition of instructional materials as required by the Constitution of the State of California” and states the intent of the Legislature that the fund shall provide for flexibility of instructional materials, including classroom library materials. (Emphasis supplied)

Section 60248 refers to sections 60247 and 60247.5. Section 60247⁹ provides the Superintendent of Public Instruction shall annually apportion to each school district a specified sum per pupil enrolled in grades 9 to 12, inclusive, for the purpose of purchasing instructional materials for the pupils enrolled in those grades. Section 60247.5 provides that the Controller shall, during each fiscal year, commencing with the 2002-03 fiscal year, transfer from the General Fund to the State Instructional Materials Fund for instructional materials for grades 9 to 12, inclusive, the amount to be allocated pursuant to Section 60421.

Section 60248 then requires that the governing board of a school district shall use the funds apportioned pursuant to Sections 60247 and 60247.5 solely for the purchase of instructional materials for pupils in grades 9 to 12, inclusive.

The only “option” available to school district is whether they should use available funds to purchase instructional materials or not buy any instructional materials at all. This is

⁹ Pursuant to subdivision (b) of section 60247, this section became inoperative on January 1, 2003, and, as of January 1, 2007, is repealed

not an option. See also: Sections B and C, above.

(9) Activity N - The Pupil Textbook and Instructional Materials Incentive Account

Activity N requires school districts to satisfy public hearing requirements (pursuant to section 60119) when applying for funds from the Pupil Textbook and Instructional Materials Incentive Account pursuant to Education Code Section 60252. Again, DOF argues, at page 5, that “[T]hese activities are a condition of receiving funds” under the program, “which school districts are not required to participate in (sic).”

Test claimant responds by referring the reader to Sections B and C, above.

DOF also argues that section 60119 was amended by Chapter 646, Statutes of 1999 (effective fiscal year 1999-2000) to make funds available for fiscal years 1994-95 through 1998-99 whether or not a district complied with the public hearing requirements. DOF therefore concludes that “[T]herefore, there would be no mandate for that time period.”

This test claim was filed on September 22, 2003. That would make July 1, 2002 as the first date for which any activity may be claimed. Government Code Section 17557 Therefore, the amendment which affected fiscal years 1994-95 through 1998-99 is irrelevant.

(10) Activities O and P - Instructional Materials Funding Realignment Program

DOF, at pages 5-6, argues that the activities required by Education Code Sections 60421 and 60422 are activities that “are a condition of receiving funding under the Instructional Materials Funding Realignment Program which school districts are not required to participate in (sic).”

In response, test claimant refers the reader to Sections B and C, above.

(11) Activity Q - Reviewing Materials for Obsolescence

DOF, at pages 6-7, submits that the “language of Education Code Section 60501 is permissive and thus creates no mandate.

Section 60501 refers back to section 60500. Section 60500 provides that “[F]or the purposes of this chapter, governing boards shall adopt rules, regulations and procedures for prescribing standards for determining when instructional materials adopted by them and either loaned by them or in their possession are obsolete, and if

such materials are usable or unusable for educational purposes.” (Emphasis supplied) Section 60501 then provides that a school district may review instructional materials to determine when those materials are obsolete pursuant to the rules, regulations, and procedures adopted pursuant to Section 60500 and may report the results of its review and staff recommendations at a public meeting. Having been required to adopt rules, regulations and procedures for determining obsolescence, it is not a valid argument to then say that abiding by rules, regulations and procedures is permissive. Rules, regulations and procedures adopted by governing boards are not permissive.

(12) Activity R - Disposal of Surplus or Obsolete Materials

DOF, at page 7, argues that the language of Education Code Section 60510.5 is permissive and thus creates no mandate.

Section 60510.5 refers to section 60510 which provides that a school district may dispose of surplus or undistributed obsolete instructional materials by donation or by sale to any organization that agrees to use the materials solely for educational purposes. Section 60510.5 provides that prior to the disposition of any instructional materials pursuant to Section 60510, the school district governing board is encouraged to do both of the following: (1) notify the public of its intention to dispose of those materials through a public service announcement on a television station, a public notice in a newspaper of general circulation, or any other means determined to reach most effectively the entities described in Section 60510, and (2) permit representatives of the entities described and members of the public to address the governing board regarding that disposition.

If a statutory provision is “permissive”, there must be an alternative to the mandate. Here the alternatives are disposing of surplus or obsolete material by some other means (conflagration?) or not disposing of them at all (more warehouses?). It is not reasonable to believe that the legislature had that intention.

(13) Activity S - Use of Sale Proceeds

Section 60521 provides that any money received from the sale of (surplus or obsolete) instructional materials shall be used to purchase instructional materials. DOF argues, at page 7, that this “is simply a restriction” on the use of the money and is not a mandate.

Prior to its amendment (by Chapter 413, Statutes of 1995, Section 41), Section 60521 provided that any money received from the sale of obsolete materials would be deposited in any such fund of the school district as the district board prescribed and

would be used for school district purposes.¹⁰ As amended, school district can no longer use these funds for any school district purpose and must now restrict those proceeds to purchase instructional materials. This is a redirection of school district revenues to fund a state requirement and is fully reimbursable.

Title 5, Code of Regulations Mandates

Test claimant takes note of the fact that DOF has not responded to Activities A (bearing costs of salaries, travel and per diem expenses for in-service training), B (purchasing adopted materials directly from publishers and manufacturers), C (buy-back notices to publishers), D (demands on defaulting publishers), and J (purchasing non-adopted materials). Test claimant therefore assumes DOF has no objections to these mandated duties.

(14) Activities E through G

The comments of DOF to these activities, at pages 7-8) is that these are “simply restrictions that set priorities on the use of funding” and are not mandates.

Activity E refers to Title 5, California Code of Regulations Section 9531, subdivision (a), which states that funds must be spent to first purchase textbooks in reading language arts, mathematics, history-social science and science. This is a mandated activity.

Activity F refers to Title 5, California Code of Regulations Section 9531, subdivision (b), which provides that funds may be spent for other than the four core curriculum areas “upon certification” by the local board. Therefore, in order to obtain instructional materials for other than only the original four core curriculum areas, the board is required to make the necessary certification. This is a mandated activity.

Activity G refers to Title 5, California Code of Regulations Section 9531, subdivision (c), which allows the purchase of supplementary instructional materials and technology-based materials, the purchase of tests, the binding of otherwise useable textbooks, funding of in-service training, and the purchase of classroom library materials only upon determination by the board at the annual local public hearing that sufficient textbooks in the core areas are available. In order to purchase these additional materials, the board is required to make determinations at the annual public hearing. This is a mandated activity.

¹⁰ See: Test claim, at page 32, lines 1-3

To a degree these regulations do set priorities, but they just don't "happen" *sua sponte*. Mandated activities must first take place before these activities can be performed in the priority required.

(15) Activity H - Pilot Programs

Activity H refers to Title 5, California Code of Regulations Section 9531, subdivision (e) which provides that in certain years, a school district may "pilot" (i.e., evaluate in actual classroom application) a new textbook during the fiscal year immediately following the primary adoption of one or more of the textbooks adopted in that primary adoption. DOF, at pages 8-9, contends that the decision to "pilot" is a local decision.

The alleged activity is not the decision to adopt. Once the decision is made, the local governing board is required to certify the decision at a duly noticed public meeting before it can use a portion of their allocated funds for that purpose.

(16) Activity I - First Year Estimates

Activity I refers to Title 5, California Code of Regulations Section 9532, subdivision (d), which requires a school district in its first year of operation, or of expanding grade levels, to provide enrollment estimates to the California Department of Education to receive funding for that fiscal year. DOF argues that these activities are "a condition of receiving funding" for programs "which school districts are not required to participate in (sic)."

Test claimant, in response, refers the reader to Sections B and C, above.

E. The Possibility of Some Offsetting Costs Do Not Bar the Finding of a Mandate

At page 1, DOF states that the state has provided funding for the purchase of instructional materials which is "more than sufficient" to offset any marginal administrative costs, and that districts are "expected to use general purpose funds to supplement categorical funding."

Neither statement is supported by any facts or law.

The funding issue does bring into play subdivision (e) of Government Code Section 17556 which provides that the commission shall not find costs mandated by the state if, after a hearing, the commission finds that:

“(e) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.”

First, the funding which is currently provided is not provided by the same statute or executive order alleged in the test claim. There is absolutely no evidence before the Commission that the funding results “in no net costs to the school districts” or that the funding is “in an amount sufficient to fund the costs of the state mandate.” In fact, the figures supplied by DOF are highly suspect. For example, the funding for 2003-04 is only \$184 million, or 18% of the amount funded for fiscal year 2000-01.

In any event, the test claim has provided for this funding:

“School districts may receive dedicated grant and categorical funding for some of the activities included in this test claim. To the extent that the funding is provided each year, and to the extent that the dedicated funds are applied to activities mandated by the state, the amounts received and applicable to mandated activities will reduce the amount of costs mandated by the state. The test claimant is informed and believes that the Superintendent of Public Instruction has the documentation necessary to determine the amounts of these special purpose funds allocated for each fiscal year, and the purposes for which the funds were intended. This information can be utilized to determine the revenue offset amounts each year. (Test Claim, page 75, line 7 through page 76, line 3)

This comment of the DOF does not provide any justification for the denial of the test claim. To the extent funding is received in the past and in the future, the amounts received will be an offset to the annual claim.

F. The Exhibit 5 Document: “Standards for Evaluating Instructional Materials for Social Content - 2000 Edition” is an Executive Order

DOF argues that the document attached to the test claim as Exhibit 5 - “Standards for Evaluating Instructional Material for Social Content - 2000 Edition” (hereinafter “Standards”) is not an executive order. As authority for this conclusion, it quotes a disclaimer found in a “Notice” paragraph at the end of required “Publishing Information”, which is not a part of the body of the document.

So far as is applicable to this document, an “Executive Order” is any order, plan,

requirement, rule or regulation issued by any agency, department, board or commission". Government Code Section 17516, subdivision (c)

The Foreword is signed by Delaine Eastin, State Superintendent of Public Instruction and by Monica Lozano, President of the California State Board of Education. The "Standards" includes the following orders, plans, requirements, rules and regulations:¹¹

"There are standards pertaining to age, disability, and nutrition that are not referenced in statute. These standards are based on policies adopted by the State Board of Education. As such, the standards regarding those areas must be considered by those who review for compliance. (Standards, at page 1, emphasis supplied)

"Less than full compliance may be allowed under the following special circumstances:..." (Standards, at page 2)

(Relative to Male and Female Roles) "The standards regarding adverse reflection and equal portrayal must be applied in every instance. The other standards require compliance when appropriate." (Standards, at page 3, emphasis supplied)

(Relative to Ethnic and Cultural Groups) "The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate." (Standards, at page 4, emphasis supplied)

(Relative to Older Persons and the Aging Process) "The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other two standards require compliance when appropriate." (Standards, at page 5, emphasis supplied)

(Relative to People with Disabilities) "The standards regarding adverse reflection and proportion of portrayals must be applied in every instance. The other standards require compliance when appropriate." (Standards, at page 6, emphasis supplied.)

(Relative to Entrepreneur and Labor) "The standard of adverse reflection must be applied in every instance. The other standard requires

¹¹ This list is intended to be illustrative, not all-inclusive

compliance only when appropriate.” (Standards, at page 7, emphasis supplied.)

(Relative to Religion) “Compliance is required...” (Standards, at page 7, emphasis supplied)

(Relative to Dangerous Substances) “The following standards require compliance when appropriate:...” (Standards, at page 8, emphasis supplied)

(Relative to Thrift, Fire Prevention, and Humane Treatment of Animals and People) “The prohibitions listed below require compliance in all cases; all other mandates apply when appropriate.” (Standards, at page 9, emphasis supplied)

(Relative to Brand Names and Corporate Logos) “The two standards require compliance when appropriate.” (Standards, at page 10, emphasis supplied)

(Relative to Diet and Exercise) The standards require compliance when appropriate.” (Standards, at page 12, emphasis supplied)

The text of the document is replete with orders, plans, requirements, rules and regulations. It is an Executive Order within the meaning of Government Code Section 17516, subdivision (c).

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,



Keith B. Petersen

C: Per Mailing List Attached

DECLARATION OF SERVICE

RE: Instructional Materials Funding Requirements 03-TC-07
CLAIMANT: Castro Valley Unified School District

I declare:

I am employed in the office of SixTen and Associates, which is the appointed representative of the above named claimant(s). I am 18 years of age or older and not a party to the within entitled matter.

On the date indicated below, I served the attached: letter of March 19, 2004, addressed as follows:

Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

AND per mailing list attached

FAX: (916) 445-0278

- | | |
|--|---|
| <p><input checked="" type="checkbox"/> U.S. MAIL: I am familiar with the business practice at SixTen and Associates for the collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at SixTen and Associates is deposited with the United States Postal Service that same day in the ordinary course of business.</p> | <p><input type="checkbox"/> FACSIMILE TRANSMISSION: On the date below from facsimile machine number (858) 514-8645, I personally transmitted to the above-named person(s) to the facsimile number(s) shown above, pursuant to California Rules of Court 2003-2008. A true copy of the above-described document(s) was(were) transmitted by facsimile transmission and the transmission was reported as complete and without error.</p> |
| <p><input type="checkbox"/> OTHER SERVICE: I caused such envelope(s) to be delivered to the office of the addressee(s) listed above by:</p> <p>_____ (Describe)</p> | <p><input type="checkbox"/> A copy of the transmission report issued by the transmitting machine is attached to this proof of service.</p> <p><input type="checkbox"/> PERSONAL SERVICE: By causing a true copy of the above-described document(s) to be hand delivered to the office(s) of the addressee(s).</p> |

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 3/19/04, at San Diego, California.



Diane Bramwell

Commission on State Mandates

Original List Date: 10/2/2003

Mailing Information: Completeness Determination

Last Updated:

List Print Date: 10/03/2003

Mailing List

Claim Number: 03-TC-07

Issue: Instructional Materials Funding Requirements

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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EXHIBIT 'A'

Butt v. State of California (1992)

4 Cal.4th 668; 15 Cal.Rptr.2d 480; 842 P.2d 1240

[No. S020835. Dec. 31, 1992.]

THOMAS K. BUTT et al., Plaintiffs and Respondents, v.
THE STATE OF CALIFORNIA et al., Defendants and Appellants.

SUMMARY

Parents of school children enrolled in a unified school district filed a class action for injunctive relief against the state and the district's board of education, seeking to prevent the district from closing its schools six weeks before the official end of the school year due to a projected revenue shortfall. After granting plaintiffs' motion to amend the complaint to include the state Superintendent of Public Instruction and the state Controller as defendants, the trial court granted plaintiffs' motion for a preliminary injunction, ordering the state and the superintendent to ensure that the schools remained open until the end of the school year or to provide the students with a substantially equivalent educational opportunity. The court subsequently issued another order, pursuant to the superintendent's plan, authorizing the Controller to disburse an emergency loan to the district from unspent portions of appropriations for the Greater Avenues for Independence (GAIN) program and another unified school district, and authorizing the superintendent to relieve the present board, and to develop recovery and repayment plans. The state's appeal from the trial court's orders was transferred from the Court of Appeal to the Supreme Court. (Superior Court of Contra Costa County, No. C91-01645, Ellen Sickles James, Judge.)

The Supreme Court reversed the trial court's second order insofar as it approved funding of an emergency loan from appropriations for the GAIN program and the other school district; in all other respects, the court affirmed the orders, and directed the Court of Appeal to remand the matter to the trial court for further proceedings. The court held that the trial court, in deciding the propriety of a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case, since the early closure of the district's schools would have deprived the students of their fundamental right to basic equality in public education, and the state was required to intervene to prevent a deprivation of that right. The court also held that the trial court properly found that denial of the preliminary injunction would have caused students and their parents substantial and irreparable harm greater than that which defendants would suffer if the injunction were granted. The court held that

the trial court acted within its equitable powers in ordering the superintendent to displace the board, operate the district, and impose a plan for the district's permanent financial recovery, but that it was improper for the trial court to order the state to extend the loan by using unspent funds from appropriations for the GAIN program and the other school district, since those funds were not "reasonably available" for that purpose. (Opinion by Baxter, J., with Panelli, Arabian and George, JJ., concurring. Separate concurring and dissenting opinions by Lucas, C. J., Mosk and Kennard, JJ.)

HEADNOTES

Classified to California Digest of Official Reports

- (1) **Appellate Review § 119—Dismissal—Grounds—Mootness—Exception for Matters of Public Interest—Issues Concerning Injunction Requiring Emergency State Loan to Fund School District.**—On the state's appeal from a preliminary injunction requiring it to extend an emergency loan to a school district so that it could keep its schools open until the end of the school year despite revenue shortfalls, and to implement a recovery plan for the district, some issues were moot due to the fact that a plan had already been implemented and the state did not seek rescission of the loan. Nevertheless, the Supreme Court had discretion to decide the issues, which included whether the state was responsible to ensure the students' fundamental right to basic educational equality and whether the trial court had authority to order a loan from funds the Legislature had appropriated for other purposes, since those issues involved potentially recurring questions of public importance. As to the appropriations issue, there was a substantial possibility that similar crises would produce similar emergency orders in the future, thus favoring review. Moreover, the state had fully litigated the issue, and any mootness stemmed from the Supreme Court's denial of the state's request for a stay pending appeal.
- (2) **Injunctions § 21—Preliminary Injunctions—Appeal—Scope of Review.**—Appellate review of a trial court's decision as to whether to issue a preliminary injunction is limited to whether the decision was an abuse of discretion. In deciding whether to issue a preliminary injunction, the trial court must weigh two "interrelated" factors: (1) the likelihood that the moving party will ultimately prevail on the merits, and (2) the relative interim harm to the parties resulting from the issuance or nonissuance of the injunction. The trial court's determination must be guided by a "mix" of the two factors, and the greater the

plaintiff's showing on one, the less must be shown on the other to support an injunction. The scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at a trial on the merits, and the trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. Thus, unless the potential merit of the claim is conceded, the appellate court must address that issue when reviewing an order granting a preliminary injunction.

- (3a-3c) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—State's Obligation.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the district from ending the school year six weeks early due to a budget shortfall, the trial court, in granting plaintiffs a preliminary injunction, did not abuse its discretion in finding that there was a reasonable probability that plaintiffs would succeed on the merits of their case. Basic equality in public education for all students, regardless of the district in which they reside, is a fundamental right under the California Constitution, and denials of that right are subject to strict scrutiny. The state has the ultimate responsibility for assuring equal operation of the public school system, and is obliged to intervene when a local district's fiscal problems prevent its students from receiving basic educational equality. Moreover, there was no state policy of local autonomy and accountability at the district level that was compelling enough to justify the state's tolerance of the extreme and unprecedented educational deprivation that would have resulted from the early closure of the district's schools.

[See Cal.Jur.3d, Schools, §§ 291, 299.]

- (4) **Schools § 1—Legislature's Nondelegable Responsibility Over Public School System.**—Public education is an obligation that the state assumed by adoption of the state Constitution. The public school system, although administered through local districts created by the Legislature, is one system applicable to all of the common schools. In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. The Legislature's "plenary" power over public education is subject only to constitutional restrictions. Local districts are the state's agents for local operation of the common school system, and the state's ultimate responsibility for public education cannot be delegated to any other entity.

-
- (5) **Constitutional Law § 87.2—Equal Protection—Classification—Judicial Review—Strict Standard of Review for Suspect Classifications or Classifications Touching on Fundamental Interests—Right to Education.**—Under the equal protection clauses of the federal and state Constitutions, heightened judicial scrutiny applies to state-maintained discrimination whenever the disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. Education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.
- (6) **Schools § 4—School Districts; Financing; Funds—Shortening School Year on Emergency Basis Due to Budget Shortfall—Preliminary Injunction Against State—Balancing Harm to Parents and Students Against Harm to District.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district to prevent closure of the district's schools six weeks early due to a budget shortfall, the trial court properly found that denial of the parents' motion for a preliminary injunction would have caused district students and their parents substantial and irreparable harm that was greater than that which defendants would suffer if the injunction were granted. Plaintiffs' declarations suggested that the district's inability to complete the school year arose from its ever-worsening fiscal condition and the deterioration of negotiations for emergency aid, and that the teachers' lesson plans did not provide for the contingency of early closure. They also detailed the difficulties of maintaining the educational progress of over 31,000 suddenly displaced students. While plaintiffs may not have demonstrated that "irreparable" harm to students was unavoidable by other means, the trial court's findings both that plaintiffs had a reasonable probability of success on the merits and that they would suffer more harm if an injunction were denied than the state would suffer if it were granted fully justified its decision to grant the preliminary injunction.
- (7a, 7b) **Schools § 4—School Districts; Financing; Funds—District in Financial Distress Due to Mismanagement—Trial Court's Equitable Power to Grant Relief—Ordering Superintendent of Public Instruction to Assume Management.**—In an action for injunctive relief by parents against the state, the state Superintendent of Public Instruction, the state Controller, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court did not exceed its powers in issuing an order, based on a plan submitted by the superintendent and the Controller, authorizing the superintendent to

displace the board, operate the district, and impose a plan for the district's permanent financial recovery. Although no statute gave the superintendent such authority, the takeover order was within the trial court's inherent equitable power to enforce the state's constitutional obligations in light of the unique situation. The state was justified in satisfying its duty by extending a loan with conditions to ensure appropriate use of the funds and minimize the risk of default, especially since the district's ability to administer the loan under its existing systems and managers was uniquely suspect.

- (8) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Discretionary Acts By Executive or Legislature.**—In general, courts have equitable authority to enforce their constitutional judgments. Principles of comity and separation of powers, however, place significant restraints on the authority of courts to order or ratify acts that are normally committed to the discretion of other branches or officials. In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature. Moreover, a judicial remedy must be tailored to the harm at issue. A court should always strive for the least disruptive remedy that is adequate to its legitimate task.
- (9) **Constitutional Law § 40—Distribution of Governmental Powers—Between Branches of Government—Judicial Power—To Order Spending of Legislative Appropriations—Ordering Emergency Loan to School District From Funds Appropriated for Other Educational Purposes.**—In an action for injunctive relief by parents against the state, two state officials, and the board of education of a school district, seeking to prevent the school district from ending the school year six weeks early due to a budget shortfall, the trial court improperly ordered the state to extend the district an emergency loan of \$19 million out of unspent funds appropriated for the Greater Avenues for Independence (GAIN) program and for an emergency loan to another school district. The appropriations did not make funds “reasonably available” for the purpose of financing the remainder of the district's school term. GAIN's purpose is to provide employment, adult education, and job training to recipients of public aid. The GAIN appropriation was expressly designated for that program alone, and was not intended to fund the needs of non-GAIN students. Similarly, the emergency loan to the other district was specifically appropriated for that district, with conditions addressed to the circumstances of that case. The funding of the remainder of the district's term was clearly

outside the particular purposes for which the appropriations were reserved.

[See 7 **Witkin**, Summary of Cal. Law (9th ed. 1988) Constitutional Law, §§ 112, 115.]

COUNSEL

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Eva Paterson, Michael Harris, Morrison & Foerster, Darryl Rains, Arturo J. Gonzalez and Katherine E. Schuelke for Plaintiffs and Respondents.

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Robert J. Bezemek as Amicus Curiae.

OPINION

BAXTER, J.—In late April 1991, after a period of mounting deficits, the Richmond Unified School District (District) announced it lacked funds to complete the final six weeks of its 1990-1991 school term. The District proposed to close its doors on May 1, 1991. The Superior Court of Contra Costa County issued a preliminary injunction directing the State of California (State), its Controller, and its Superintendent of Public Instruction (SPI) to ensure that the District's students would receive a full school term or its equivalent. The court approved the SPI's plan for an emergency State loan, and for appointment by the SPI of an administrator to take temporary charge of the District's operation.

We declined to stay implementation of the plan pending the State's appeal. However, we transferred the appeal here in order to decide an important issue of first impression: Whether the State has a constitutional duty, aside from the equal allocation of educational funds, to prevent the budgetary problems of a particular school district from depriving its students of "basic" educational equality.

We affirm the trial court's determination that such a duty exists under the California Constitution. Further, the court did not err in concluding, on the basis of the plaintiffs' preliminary showing, that the particular circumstances of this case demanded immediate State intervention. However, the court exceeded its judicial powers by approving the diversion of emergency loan funds from appropriations clearly intended by the Legislature for other purposes.

FACTS AND PROCEDURAL HISTORY¹

On April 17, 1991, Thomas K. Butt and other named District parents filed a class action for temporary and permanent injunctive relief against the State and the District's board of education (Board).² The complaint alleged as follows: The State is responsible for educating all California children, and the Board is the State's agent for carrying out this responsibility in the District. The scheduled final day of the District's 1990-1991 school term was June 14, 1991, but the District had announced that its 44 elementary, secondary, and adult schools would close on May 1, 1991. The resulting loss of six weeks of instruction would cause serious, irreparable harm to the District's 31,500 students and would deny them their "fundamental right to an effective public education" under the California Constitution. Moreover, as an unjustified discrimination against District students compared to those elsewhere in California, the closure would violate equal protection guarantees of the California and United States Constitutions. Therefore, defendants should be enjoined from closing the District's schools before the scheduled end of the scholastic term.

On April 22, 1991, plaintiffs noticed a motion for preliminary injunction. In an attached declaration, Frank R. Calton, a member of the Board, stated

¹The State, as appellant, has elected to proceed by way of an appendix in lieu of the clerk's transcript, as permitted by rule 5.1 of the California Rules of Court. Some of the documents contained in the appendix, though they include handwritten filing dates, bear no official file stamps and have no proofs of service attached. However, rule 5.1 expressly allows the use of unofficial conformed copies (subd. (c)(1)) and provides that the filing of an appendix "constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the superior court file" (subd. (i)(1)). No party having urged otherwise, we adopt that assumption for purposes of this opinion.

²The named plaintiffs sued on behalf of themselves, their children, and other parents and students of the District.

that the District projected a revenue shortfall of \$23 million for the 1990-1991 academic year and only had sufficient funds to pay its employees through April 1991. Calton declared the District would have to close at the end of April unless new funds were obtained or employees agreed to work for registered warrants in lieu of paychecks. He indicated that the District's efforts to obtain an emergency loan from the State had not yet succeeded, and the District was preparing to file for bankruptcy.

Plaintiffs' motion papers also included declarations by District teachers, academicians in the field of education, and members of the Contra Costa County board of education. These statements detailed the serious disruptive effect the proposed closure would have upon the educational process in the District and upon the quality of education afforded its students.

The motion was heard on April 29, 1991. The Attorney General represented the State in opposition. Counsel for the District represented that the Board's appearance was precluded by an automatic bankruptcy stay. The trial court granted plaintiffs' unopposed motion for amendment of the complaint to include the SPI and the Controller as defendants. Pending applications for intervention and amicus curiae status were not formally granted,³ but as stipulated by the parties, the court heard argument from the applicants and agreed to consider their briefs.

At the conclusion of the hearing, the trial court ruled orally that under the California Constitution, the State itself is responsible for the "fundamental" educational rights of California students and must remedy a local district's inability to provide its students an education "basically equivalent" to that provided elsewhere in the State. Concluding that the threatened closure would deny the District's students a "constitutionally [equal] education," the court ordered the State and the SPI to act as "they deem appropriate" to ensure that District schools remained open until June 14, 1991, or to provide District students a "substantially equivalent educational opportunity" within the statutory school year ending June 30, 1991.

This oral decision was followed by two written orders filed May 2. One of these, drafted by plaintiffs' counsel, purported to formalize the April 29 ruling. It made findings that closure of District schools by May 1 would cause District students irreparable harm, that the balance of harm favored a preliminary injunction, that education is a "fundamental right" in California,

³Applications to appear as amici curiae were submitted by the Richmond Federation of Teachers (RFT) and jointly by the Meiklejohn Civil Liberties Institute, the National Lawyers Guild, and Multi-Cultural Education, Training, and Advocacy, Inc. (collectively Meiklejohn). Complaints in intervention and/or applications for leave to intervene were submitted by the Oakland Unified School District (OUSD), RFT, and United Teachers of Richmond (UTR).

that no "compelling interest" justified denying District students six weeks of instruction available to "every other child in the State," and that plaintiffs' ultimate success on the merits was reasonably probable. The State and its agents again were directed to act "as . . . appropriate" to ensure District students, within the school year ending June 30, 1991, an education "equivalent basically" to that provided elsewhere in California for a full school term. The Controller was added as a State official expressly bound by the court's commands.

On the same day, May 2, the SPI and the Controller submitted their plan for compliance with the preliminary injunction. With counsel for all interested parties present, the court took evidence indicating that uncommitted funds exceeding the estimated \$19 million necessary to complete the District's school year were available from existing State appropriations to the Greater Avenues for Independence (GAIN) program and for emergency assistance to the OUSD. Counsel for the OUSD stipulated that his client had "no objection" to use of the \$10 million OUSD appropriation for purposes of an emergency loan to the District.

Accordingly, the court executed an order, drafted by counsel for the SPI, approving in principle the submitted plan.⁴ The order authorized the Controller to disburse an emergency loan to the District from unspent portions of the GAIN and OUSD appropriations. (See Stats. 1989, ch. 93, § 22.00; Stats. 1989, ch. 1438, § 1 et seq.) Meanwhile, the SPI, by virtue of the State's "ultimate responsibility" for equal education and his own statutory obligation to "superintend the schools of this state" (Ed. Code, § 33112, subd. (a)),⁵ would have authority to "relieve the . . . [B]oard of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict's behalf as necessary" to ensure completion of the school term, the District's financial recovery, and the protection of the loaned funds.⁶

The Attorney General timely noticed appeals from the April 29 and May 2 orders on behalf of the State. Defendants SPI and Controller did not

⁴Though the court's order recites that the SPI and the Controller "presented . . . , after notice to all parties, an agreement" to provide an emergency loan, neither the agreement itself, nor a description of its precise terms, has been made part of the record on appeal.

⁵All further statutory references are to the Education Code unless otherwise indicated.

⁶The preliminary injunction motion was litigated with understandable haste, and evidence of the causes of the District's apparent insolvency was not presented below. On appeal, the SPI invites us to take judicial notice of grand jury findings on this subject which were released after the preliminary injunction was granted. (See *The Financial Affairs of the Richmond Unified School District*, Rep. of 1990-1991 Contra Costa County Grand Jury (May 29, 1991) [hereafter Report].) Without objection, we may note the Report's contents. (Evid. Code, §§ 452, subds. (c), (d), 455, 459; see *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1259, fn. 54 [275 Cal.Rptr. 729, 800 P.2d 1159].) Of course, we cannot accept its findings as evidence or its criticisms of the District and the Board as conclusively founded. We are

appeal. The State immediately requested transfer of the appeal from the Court of Appeal, First Appellate District, to this court (see Cal. Rules of Court, rule 20) and also asked that we stay enforcement of the trial court's orders pending appeal. (1)^(See fn. 7.) The SPI and the Controller opposed a stay but supported transfer of the appeal to this court. We granted the transfer request but denied a stay.⁷

DISCUSSION

1. *Standard of review.*

(2) In deciding whether to issue a preliminary injunction, a court must weigh two "interrelated" factors: (1) the likelihood that the moving party

particularly loath to do so when the District and the Board were disabled below from defending against claims of mismanagement and, except for a special appearance at oral argument, have not participated in the appeal.

Nonetheless, we cannot ignore the grand jury's assessment that despite repeated warnings, an earnest but financially inexperienced Board permitted massive, accelerating deficit spending over a period of several years to expand staff, boost salaries and benefits, and support innovative programs installed by the District's former superintendent. (Report, pp. 3-5.) According to the Report, the resulting deficit for the years 1986-1990 was \$29.5 million, with an \$18.1 million deficit for 1990 alone. (*Id.*, at p. 4.) In 1990, the District had received a State emergency loan exceeding \$9 million, in consequence of which a limited-powers trustee appointed by the SPI was overseeing District financial affairs during the 1990-1991 school term. (*Id.*, at p. 5.)

⁷Our denial of a stay allowed implementation of the plan approved by the trial court, and the District's school year was completed. Though the State vigorously contends the court lacked power to invade the GAIN and OUSD appropriations, it does not demand actual rescission of the court-approved loan. Moreover, we judicially notice without objection that in June 1992, the SPI approved a repayment and recovery plan adopted by the District, restored the Board's powers, and terminated the court-authorized appointment of the State administrator. (See Evid. Code, §§ 452, subds. (c), (h), 455, 459.) Although portions of the appeal may therefore be technically moot, we have discretion to decide the issues presented as potentially recurring questions of public importance. (E.g., *O'Hare v. Superior Court* (1987) 43 Cal.3d 86, 91, fn. 1 [233 Cal.Rptr. 332, 729 P.2d 766]; *DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58 [13 Cal.Rptr. 663, 362 P.2d 487]; *People v. West Coast Shows, Inc.* (1970) 10 Cal.App.3d 462, 468 [89 Cal.Rptr. 290].)

The Chief Justice objects in particular that we neither must nor should address whether the sources of funding approved by the trial court were proper. However, he fails to indicate why this important and sensitive issue is any more moot, or any less worthy of consideration, than other portions of the trial court's order which have also been irretrievably implemented. Indeed, in these uncertain times, the substantial possibility arises that similar future crises will produce similar emergency orders for immediate diversion of State funds from expedient sources. Hence, contrary to the Chief Justice's suggestion, the issue is one capable of repetition but difficult to review, and this concern favors its prompt consideration under the "public interest" exception to the mootness doctrine. (*DiGiorgio Fruit Corp.*, *supra*, 56 Cal.2d at p. 58.) Moreover, the State has fully litigated the merits of the appropriations issue throughout, and any mootness in this or other aspects of the injunction stems from our denial of the State's request for a stay pending appeal. Under these circumstances, the State should not be penalized on appeal for conceding that State funds already expended by the District cannot practicably be recovered.

will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-442 [261 Cal.Rptr. 574, 777 P.2d 610].) Appellate review is limited to whether the trial court's decision was an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286 [219 Cal.Rptr. 467, 707 P.2d 840].)

The trial court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction. (*King v. Meese* (1987) 43 Cal.3d 1217, 1227-1228 [240 Cal.Rptr. 829, 743 P.2d 889].) Of course, "[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits." (*Common Cause, supra*, 49 Cal.3d at p. 442.) A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim. (*Id.*, at pp. 442-443.) Unless potential merit is conceded, an appellate court must therefore address that issue when reviewing an order granting a preliminary injunction.

Here, the trial court found that plaintiffs' constitutional demand for State intervention had potential merit, and that the balance of interim harm justified the issuance of a preliminary injunction against the State. For the reasons that follow, we conclude that each of these determinations was within the court's discretion.⁸

2. Merits of plaintiffs' claims.

(3a) The trial court expressly found "[t]here is a reasonable probability that plaintiffs will succeed on the merits of their case." The court agreed with plaintiffs' claim that the equal protection guarantees of the California Constitution (art. I, § 7, subds. (a), (b); art. IV, § 16, subd. (a)) require State intervention to ensure that fiscal problems do not deprive a local district's

⁸The State insists that under the circumstances of this case, appellate review should not be limited to whether the trial court "abused its discretion" when weighing "interim" harm and "probable" merit. The State stresses that the unstayed injunction, though preliminary in form, was both final and unprecedented in fact. Accordingly, the State suggests, we must decide, as on appeal from a final judgment, whether plaintiffs were entitled to the relief they received.

We disagree. The abuse-of-discretion standard acknowledges that the propriety of preliminary relief turns upon difficult estimates and predictions from a record which is necessarily truncated and incomplete. Here, the urgency of the situation forced plaintiffs to produce, and the State to rebut, a hasty tentative showing of constitutional necessity. The evidence on which the trial court was forced to act may thus be significantly different from that which would be available after a trial on the merits. Neither the trial court nor this court could undertake a final adjudication of plaintiffs' lawsuit under such circumstances.

students of basic educational equality.⁹ The court also accepted plaintiffs' preliminary showing that the effect of the District's crisis on its students' educational rights was serious enough to trigger the State's constitutional duty. The State, supported by amicus curiae Pacific Legal Foundation (Pacific),¹⁰ assails these conclusions on multiple grounds.

At the outset, the State does not claim it lacks any and all constitutional role in local educational affairs. Instead, its reasoning proceeds as follows: The State fulfills its financial responsibility for educational equality by subjecting all local districts, rich and poor, to an equalized statewide revenue base.¹¹ Unless a district fails to provide the minimum six-month school term set forth in the "free school" clause (Cal. Const., art. IX, § 5),¹² the State has no duty to ensure prudent use of the equalized funds by local administrators. Even if local mismanagement causes one district's services to fall seriously below prevailing statewide standards, the resulting educational inequality is

⁹Article I, section 7, subdivision (a) provides in pertinent part that "[a] person may not be . . . denied equal protection of the laws. . . ." Article I, section 7, subdivision (b) provides in pertinent part that "[a] citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens. . . ." Article IV, section 16, subdivision (a) provides that "[a]ll laws of a general nature have uniform operation."

¹⁰The positions adopted by the various parties and numerous amici curiae in this appeal are diverse. The Attorney General, representing the State as defendant and appellant, opposes all aspects of the trial court orders. Though they were joined as defendants below, the SPI and the Controller, deeming themselves "respondents" on appeal, support plaintiffs' view that the orders were proper in all respects. Amicus curiae Pacific supports the State's position. Amici curiae RFT and UTR approve State financial aid but object to displacement of the local governing board by a State administrator. Amici curiae Frank R. Calton and Howard P. Abelson urge that the Board acted correctly by deciding to close District schools and should not have been displaced. Calton and Abelson also suggest the injunction was improper because the Board had no opportunity to appear and defend against claims of mismanagement. Amici curiae Mario Diaz and Rebecca Hazlewood Bezemek (Diaz and Bezemek) take no position on State financial assistance but argue that the SPI's takeover of District government was improper. Amicus curiae briefs in support of plaintiffs have been filed by the American Civil Liberties Union Foundation, Human Rights Advocates, and Meiklejohn.

¹¹The funding scheme for public education is complex, but no party disputes the summary description provided in the State's brief: "The Legislature has attempted to equalize school district funding . . . by the use of a 'base revenue limit' for each district. Each district is classified by size and type. ([Ed.] Code, [§] 42238.) Based upon this classification scheme, each district has a 'base revenue limit' per unit of average daily attendance. The base revenue limit for any district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the State, thus bringing each district into a rough equivalency of revenues. (Compare [Cal. Code Regs., tit. 5, [§] 15371, *et seq.*; Ed.] Code [§] 42238 *et seq.*) [¶] Because the student population is so diverse, the Legislature had to supplement the base revenue limit with specific augmentations targeted for categories of children with needs that require special attention. These supplements are designated as 'categorical' aid. . . ."

¹²Article IX, section 5 provides: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."

not grounded in district wealth, nor does it involve a "suspect classification" such as race. Thus, "strict scrutiny" of the disparity is not required, and the State's refusal to intervene must be upheld as rationally related to its policy of local control and accountability. Even if strict scrutiny is appropriate, the local-control policy is "compelling" enough to justify the State's inaction.

Under the unprecedented circumstances of this case, we cannot accept the State's contentions. We set forth our reasons in detail.

Since its admission to the Union, California has assumed specific responsibility for a statewide public education system open on equal terms to all. The Constitution of 1849 directed the Legislature to "provide for a system of common schools, by which a school shall be kept up and supported in each district" (Cal. Const. of 1849, art. IX, § 3.) That constitutional command, with the additional proviso that the school maintained by each district be "free," has persisted to the present day. (Cal. Const., art. IX, § 5.)

In furtherance of the State system of free public education, the Constitution also creates State and county educational offices, including a Superintendent of Public Instruction and a State Board of Education. (Cal. Const., art. IX, §§ 2-3.3, 7.) It authorizes the formation of local school districts (*id.*, §§ 6½, 14), requires that all public elementary and secondary schools be administered within the Public School System (*id.*, § 6), establishes a State School Fund (Fund) (*id.*, § 4), reserves a minimum portion of State revenues for allocation to the Fund (*id.*, art. XVI, §§ 8, 8.5), guarantees minimum allocations from the Fund for each public school (*id.*, art. IX, § 6), specifies minimum salaries for public school teachers (*ibid.*), authorizes the State Board of Education to approve public school textbooks (*id.*, § 7.5), and permits the Legislature to grant local districts such authority over their affairs as does not "conflict with the laws and purposes for which school districts are established" (*id.*, § 14).

(4) Accordingly, California courts have adhered to the following principles: Public education is an obligation which the State assumed by the adoption of the Constitution. (*San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 951-952 [92 Cal.Rptr. 309, 479 P.2d 669]; *Piper v. Big Pine School Dist.* (1924) 193 Cal. 664, 669 [226 P. 926].) The system of public schools, although administered through local districts created by the Legislature, is "one system . . . applicable to all the common schools" (*Kennedy v. Miller* (1893) 97 Cal. 429, 432 [32 P. 558], italics in original.) ". . . In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis. . . ." (*Jackson v.*

Pasadena City School Dist. (1963) 59 Cal.2d 876, 880 [31 Cal.Rptr. 606, 382 P.2d 878].) “[M]anagement and control of the public schools [is] a matter of state[, not local,] care and supervision. . . .” (*Kennedy v. Miller, supra*, 97 Cal. at p. 431; see also *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181 [302 P.2d 574]; *California Teachers Assn. v. Huff* (1992) 5 Cal.App.4th 1513, 1523-1524 [7 Cal.Rptr.2d 699].) The Legislature’s “plenary” power over public education is subject only to constitutional restrictions. (*Hall v. City of Taft, supra*, at pp. 180-181 [302 P.2d 574]; *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 903-904 [154 Cal.Rptr. 591].) Local districts are the State’s agents for local operation of the common school system (*Hall v. City of Taft, supra*, at p. 181; *San Francisco Unified School Dist. v. Johnson, supra*, 3 Cal.3d at p. 952; *California Teachers Assn., supra*), and the State’s ultimate responsibility for public education cannot be delegated to any other entity (*Hall v. City of Taft, supra*; *Piper v. Big Pine School Dist., supra*, 193 Cal. at p. 669).

(3b) It is true that the Legislature has assigned much of the governance of the public schools to the local districts (e.g., §§ 14000, 35160 et seq., 35160.1), which operate under officials who are locally elected and appointed (§§ 35020, 35100 et seq.). The districts are separate political entities for some purposes. (E.g., *Johnson v. San Diego Unified School Dist.* (1990) 217 Cal.App.3d 692, 698-700 [266 Cal.Rptr. 187] [general theory of respondeat superior does not make State liable for torts of local district or its employees]; *Gonzales v. State of California* (1972) 29 Cal.App.3d 585, 590-592 [105 Cal.Rptr. 804] [same]; *First Interstate Bank v. State of California* (1987) 197 Cal.App.3d 627, 633-634 [243 Cal.Rptr. 8] [State not vicariously liable for district’s breach of contract]; *Board of Education v. Calderon* (1973) 35 Cal.App.3d 490, 496 [110 Cal.Rptr. 916] [local district is not the “state” or the “People,” so as to be civilly bound in dismissal proceedings by teacher’s acquittal of criminal sex offense under principles of *res judicata*].)

Yet the existence of this local-district system has not prevented recognition that the State itself has broad responsibility to ensure basic educational equality under the California Constitution. Because access to a public education is a uniquely fundamental personal interest in California, our courts have consistently found that the State charter accords broader rights against State-maintained educational discrimination than does federal law. Despite contrary federal authority, California constitutional principles require State assistance to correct basic “interdistrict” disparities in the system of common schools, even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents.

In *Serrano v. Priest* (1971) 5 Cal.3d 584 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187] (*Serrano I*), this court struck down the existing State

public school financing scheme, which caused the amount of basic revenues per pupil to vary substantially among the respective districts depending on their taxable property values. *Serrano I* concluded at length that such a scheme violated both state and federal equal protection guaranties because it discriminated against a fundamental interest—education—on the basis of a suspect classification—district wealth—and could not be justified by a compelling state interest under the strict scrutiny test thus applicable. (Pp. 596-619.) As the court concluded, “where fundamental rights or suspect classifications are at stake, a state’s general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause. [Citation.]” (P. 612, italics added.)

Among other things, *Serrano I* rejected a claim that the wealth-based financing scheme was immune from challenge because the interdistrict revenue disparities it produced were not de jure, but merely de facto. Our opinion detailed the purposeful state legislative action which had produced the geographically based wealth classifications. It also made clear, however, that under California principles developed in cases involving school racial segregation, the absence of purposeful conduct by the State would not prevent a finding that the State system for funding public education had produced unconstitutional results. (*Serrano I, supra*, 5 Cal.3d at pp. 603-604, citing *Jackson v. Pasadena City School Dist., supra*, 59 Cal.2d 876, 881.)

Serrano I also discussed two groups of federal cases suggesting that place of residence was an impermissible basis for State discrimination in the quality of education. *Serrano I* cited with approval *Hall v. St. Helena Parish School Board* (E.D.La. 1961) 197 F.Supp. 649. This federal decision struck down a Louisiana statute permitting local parishes to close their schools rather than integrate them. As *Serrano I* noted, *Hall v. St. Helena Parish* found an equal protection violation not only because of the statute’s racial consequences, but also “‘because its application in one parish, while the state provides public schools elsewhere, would unfairly discriminate against the residents of that parish, irrespective of race. . . . [A]bsent a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.’” (*Serrano I, supra*, 5 Cal.3d at p. 612, quoting *Hall v. St. Helena Parish, supra*, 197 F. Supp. at pp. 651, 656.)

Serrano I further noted a “second group of cases, dealing with apportionment [of votes], [in which] the high court has held that accidents of geography and arbitrary boundary lines of local government can afford no ground for discrimination among a state’s citizens. [Citation.] . . . If a voter’s address may not determine the weight to which his ballot is entitled,

surely it should not determine the quality of his child's education. [Fn.]” (*Serrano I*, *supra*, 5 Cal.3d at p. 613.)

Finally, *Serrano I* rejected the State's claim that plaintiffs' wealth-discrimination theory would apply equally, and with disastrous effect, to all public services dependent in part on local property taxes. “[W]e are satisfied,” the majority concluded, that whatever the status of other public services, “its uniqueness among public activities clearly demonstrates that *education* must respond to the command of the equal protection clause.” (*Serrano I*, *supra*, 5 Cal.3d at p. 614, italics in original.)

In *San Antonio School District v. Rodriguez* (1973) 411 U.S. 1 [36 L.Ed.2d 16, 93 S.Ct. 1278], decided after *Serrano I*, the United States Supreme Court declined to subject Texas's similar local-property-tax based school financing scheme to heightened scrutiny under the Fourteenth Amendment. The *Rodriguez* majority concluded that a school finance scheme dependent on district tax values does not discriminate against the poor as a distinct class; in any event, the majority observed, wealth alone had never been deemed a suspect classification for federal purposes. Moreover, the majority reasoned, education is not a fundamental interest protected by the federal Constitution. Therefore finding the strict scrutiny standard of review inapplicable, the majority upheld Texas's system as rationally related to that state's policy of local control of schools. (411 U.S. at pp. 18-55.)

Nonetheless, in *Serrano v. Priest* (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (*Serrano II*), this court reaffirmed the reasoning and result of *Serrano I* as required by the separate equal protection guaranties of the California Constitution. (*Serrano II*, *supra*, 18 Cal.3d at pp. 760-768.) Among other things, *Serrano II* reiterated that for California purposes, education remains a fundamental interest “which [lies] at the core of our free and representative form of government [fn.]” (*Id.*, at pp. 767-768.)

Hence, *Serrano II* declared, “[i]n applying our state constitutional provisions guaranteeing equal protection of the laws we shall continue to apply strict and searching judicial scrutiny” to claims of discriminatory educational classifications. (*Serrano II*, *supra*, at p. 767.) More recent cases confirm that education is a fundamental interest under the California equal protection guaranties (e.g., *Steffes v. California Interscholastic Federation* (1986) 176 Cal.App.3d 739, 746 [222 Cal.Rptr. 355]) and that the unique importance of public education in California's constitutional scheme requires careful scrutiny of state interference with basic educational rights (see, e.g., *Hartzell v. Connell* (1984) 35 Cal.3d 899, 906-909 [201 Cal.Rptr. 601, 679 P.2d 35] [scope of free school guarantee]).

In *Tinsley v. Palo Alto Unified School Dist.*, *supra*, 91 Cal.App.3d 871, parents sought mandate requiring several neighboring San Mateo and Santa Clara County school districts, the State, and certain State school officials, to submit a plan for the redress of interdistrict racial segregation in the affected locality. The petitioners declined to allege any specific acts committed by State or local parties as the cause of the interdistrict imbalance.

The State respondents answered the petition, but the districts successfully demurred, and the petition was dismissed as to them. The Court of Appeal reversed, holding that the California Constitution, unlike its federal counterpart as construed in *Milliken v. Bradley* (1974) 418 U.S. 717 [41 L.Ed.2d 1069, 94 S.Ct. 3112], contemplates interdistrict relief to remedy mere de facto racial imbalance which extends across district lines. (*Tinsley, supra*, 91 Cal.App.3d at pp. 899-907.) Several aspects of the *Tinsley* decision emphasize the State's ultimate responsibility for maintaining a nondiscriminatory common school system.

At the outset, the districts asserted that an appeal was premature under the "one final judgment" rule, because as mere agencies of the State, which had not demurred, they had no separate legal interests which an appeal from their dismissal could finally resolve. The Court of Appeal observed that if the districts' claim of mere agency was correct, any relief ordered against the State would necessarily affect them, and the judgment dismissing them from the action should therefore be reversed. In any event, the court concluded, the premise of identical interests did not bear scrutiny, because while "[t]he local districts, as agents, may have limited powers in interdistrict affairs, . . . the state . . . has plenary powers in all school district affairs. . . ." (*Tinsley, supra*, 91 Cal.App.3d at pp. 880-881.)

Turning to the merits, *Tinsley* dismissed the majority reasoning in *Milliken* insofar as based on the federal rule, long rejected in California (see *Crawford v. Board of Education* (1976) 17 Cal.3d 280 [130 Cal.Rptr. 724, 551 P.2d 28]; *Jackson v. Pasadena City School Dist.*, *supra*, 59 Cal.2d 876), that only de jure racial segregation is a constitutional violation. (*Tinsley, supra*, 91 Cal.App.3d at p. 903.) *Tinsley* also distinguished the *Milliken* majority's concern that it "would disrupt and alter" Michigan's entrenched system of local control of schools to impose an interdistrict remedy for Detroit city school segregation without proof that the state or affected suburban districts had engaged in intentional segregative conduct. The *Tinsley* court noted, among other things, that in California, the State shares responsibility with "the local entities it has created" to provide "equal educational opportunity

to the youth of the state" and "has a duty to intervene to prevent unconstitutional discrimination" in its schools. (*Id.*, at pp. 903-904.)¹³

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

The State claims it need only ensure the six-month minimum term guaranteed by the free school clause (Cal. Const., art. IX, § 5). This contention, however, misconstrues the basis of the trial court's decision. Whatever the requirements of the free school guaranty, the equal protection clause precludes the State from maintaining its common school system in a manner that denies the students of one district an education basically equivalent to that provided elsewhere throughout the State.

The State argues that even if the District's fiscal problems threatened its students' basic educational equality, any State duty to redress the discrimination must be judged under the most lenient standard of equal protection review. The State reasons as follows: Plaintiffs do not claim discrimination on the suspect basis of race. Nor is wealth-based discrimination at issue; as all parties concede, the District received the full benefit of the equalized funding system mandated by our *Serrano* decisions. At most, plaintiffs assert that a misuse of equalized funds by the District's officials caused a geographical disparity in service. Because residence and geography are not suspect classifications, the State's failure to prevent educational discrimination on those grounds is not subject to strict scrutiny. Rather, State inaction must be accepted as rationally related to the legitimate State policy of local control of schools.

(5) However, both federal and California decisions make clear that heightened scrutiny applies to State-maintained discrimination whenever the

¹³In November 1979, the voters adopted a Senate amendment to the California Constitution's equal protection clause, article I, section 7, subdivision (a). The amendment declares that nothing in the California Constitution imposes upon the State, or any local district or official, any obligations beyond those imposed by the Fourteenth Amendment of the United States Constitution "with respect to the use of pupil school assignment or pupil transportation." The amendment further forbids California courts from imposing any school-assignment or pupil-transportation obligation except when a violation of the Fourteenth Amendment has occurred, and unless a federal court could impose such a remedy for the violation. Whatever effect this amendment may have on *Tinsley's* result, it does not affect consistent interpretations of the California equal protection guaranty where, as here, assignment or transportation of students is not at issue.

disfavored class is suspect or the disparate treatment has a real and appreciable impact on a fundamental right or interest. (*Plyler v. Doe* (1982) 457 U.S. 202, 216-217 [72 L.Ed.2d 786, 102 S.Ct. 2382]; *Shapiro v. Thompson* (1969) 394 U.S. 618, 634 [22 L.Ed.2d 600, 614-615, 89 S.Ct. 1322]; *Darces v. Woods* (1984) 35 Cal.3d 871, 885, 888 [201 Cal.Rptr. 807, 679 P.2d 458]; *Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 47 [157 Cal.Rptr. 855, 599 P.2d 46]; *Serrano II, supra*, 18 Cal.3d 728, 761, 767-768; *Weber v. City Council* (1973) 9 Cal.3d 950, 959 [109 Cal.Rptr. 553, 513 P.2d 601]; *Serrano I, supra*, 5 Cal.3d 584, 597; *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].) As we have seen, education is such a fundamental interest for purposes of equal protection analysis under the California Constitution.

(3c) The State suggests there was no showing that the impact of the threatened closure on District students' fundamental right to basic educational equality was real and appreciable. Of course, the Constitution does not prohibit all disparities in educational quality or service. Despite extensive State regulation and standardization (see discussion, *post*), the experience offered by our vast and diverse public school system undoubtedly differs to a considerable degree among districts, schools, and individual students. These distinctions arise from inevitable variances in local programs, philosophies, and conditions. "[A] requirement that [the State] provide [strictly] 'equal' educational opportunities would thus seem to present an entirely unworkable standard requiring impossible measurements and comparisons. . . ." (*Hendrick Hudson Dist. Bd. of Ed. v. Rowley* (1982) 458 U.S. 176, 198 [73 L.Ed.2d 690, 707, 102 S.Ct. 3034].) Moreover, principles of equal protection have never required the State to remedy all ills or eliminate all variances in service.

Accordingly, the California Constitution does not guarantee uniformity of term length for its own sake. While the current statutory system for allocating State educational funds strongly encourages a term of at least 175 days (see fn. 14, *post*, at p. 687), that system is not constitutionally based and is subject to change. In an uncertain future, local districts, faced with mounting fiscal pressures, may be forced to seek creative ways to gain maximum educational benefit from limited resources. In such circumstances, a planned reduction of overall term length might be compensated by other means, such as extended daily hours, more intensive lesson plans, summer sessions, volunteer programs, and the like. An individual district's efforts in this regard are entitled to considerable deference.

Even unplanned truncation of the intended school term will not necessarily constitute a denial of "basic" educational equality. A finding of constitutional disparity depends on the individual facts. Unless the actual quality

of the district's program, viewed as a whole, falls fundamentally below prevailing statewide standards, no constitutional violation occurs.

Here, however, plaintiffs' preliminary showing suggested that closure of the District's schools on May 1, 1991, would cause an extreme and unprecedented disparity in educational service and progress. District students faced the sudden loss of the final six weeks, or almost one-fifth, of the standard school term originally intended by the District and provided everywhere else in California.¹⁴ The record indicates that the decision to close early was a desperate, unplanned response to the District's impending insolvency and the impasse in negotiations for further emergency State aid.¹⁵ Several District teachers declared that they were operating on standard-term lesson schedules made at the beginning of the school year. These declarants outlined in detail how the proposed early closure would prevent them from completing instruction and grading essential for academic promotion, high school graduation, and college entrance.¹⁶ Faced with evidence of such extensive educational disruption, the trial court did not abuse its discretion

¹⁴The trial court record contains no evidence of the prevailing term length in California, but the parties assumed below that a minimum term of 175 days prevails, and no dispute has arisen on the issue here. The statutes provide that an established local district may not receive any part of its annual apportionment from the State School Fund if it failed to remain in session at least 175 days during the most recent fiscal year, unless specified circumstances excusing the failure are established to the satisfaction of the SPI. (§§ 41420, subd. (a), 41422.) In an appendix to his brief, the SPI provides copies of local district certifications, submitted to the SPI as a condition of funding under section 41420, which indicate that virtually every established school district in California operated for at least 175 days during the 1990-1991 school year. The SPI asks us to take judicial notice of this information. Having received no objection, we do so. (Evid. Code, §§ 452, subds. (c), (h), 455, 459.)

¹⁵The declaration of Board member Calton, dated April 12, 1991, detailed the District's growing financial woes and stated the following: ". . . The District has only enough money to pay its employees through April 1991 [even under the most favorable accounting assumptions]. . . . Unless (a) additional funds are received, or (b) employees are willing to work for registered warrants, not redeemable checks, the District will have no alternative but to close all of its public schools at the end of April 1991. [¶] . . . The District has applied to the State of California for a loan, but that request has not been approved. It is my understanding that [collective bargaining concessions demanded by the State] have not been made, although negotiations are continuing. The District has retained bankruptcy counsel, . . . and is preparing to file for bankruptcy prior to April 30, 1991, if necessary."

¹⁶For example, John Enos, a high school government/economics teacher, stated that early termination of his required senior government class would eliminate intended lessons covering the State's executive and judicial branches, and county and local government. Geoffrey Cantrell, a high school mathematics teacher, stated that if the District closed early, Algebra I students would miss essential instruction in quadratic equations; Algebra II students would miss essential instruction in trigonometry; and geometry students would miss lessons in coordinate systems, logical proof, and trigonometric ratios. Craig Brammer, another high school mathematics teacher who also teaches a preparatory course for the Scholastic Aptitude Test (SAT), opined that loss of six weeks' instruction would severely impair his students' chances on the mathematics portion of the SAT. Betty Jean Crenshaw, a teacher of first-year languages, declared that early closure would prevent students from learning vocabulary and

by concluding that the proposed closure would have a real and appreciable impact on the affected students' fundamental California right to basic educational equality.

The State asserts that its financial obligation to equal education is limited to the equalized system of interdistrict funding required by our *Serrano* decisions. Once revenues are fairly apportioned at the beginning of each school year, the State insists, it cannot be constitutionally liable for how local officials manage the funds.

Nothing in the *Serrano* cases themselves, or in other California decisions, supports the State's argument. On the contrary, the cases suggest that the State's responsibility for basic equality in its system of common schools extends beyond the detached role of fair funder or fair legislator. In extreme circumstances at least, the State "has a duty to intervene to prevent unconstitutional discrimination" at the local level. (*Tinsley, supra*, 91 Cal.App.3d at p. 904.)

The State's most vigorous contention is that its nonintervention should have been upheld even under the strict scrutiny standard of equal protection analysis. Allowing the District's students to absorb the consequences of District mismanagement, the State urges, was necessary to preserve the State's compelling educational policy of local autonomy and accountability. However, the State fails to demonstrate a policy of local control so compelling as to justify State tolerance of the extreme local educational deprivation at issue here.

In the first place, the local-district system of school administration, though recognized by the Constitution and deeply rooted in tradition, is not a constitutional mandate, but a legislative choice. (See Cal. Const., art. IX, §§ 6½, 14.) The Constitution has always vested "plenary" power over education not in the districts, but in the State, through its Legislature, which may create, dissolve, combine, modify, and regulate local districts at pleasure. (See *Tinsley, supra*, 91 Cal.App.3d at p. 904.) The legislative decision

grammar necessary for advancement to second-year courses. Amy Shinsako, a first grade teacher, stated that early closure would prevent instruction in phonics, reading comprehension, creative writing, handwriting skills, two-digit addition and subtraction, and addition with three addends, all necessary for advancement to the second grade. Several declarants noted that failure to complete the term would prevent the scheduling of final examinations and other term-end projects crucial to the assignment of final grades. Other declarants detailed the difficulties District students would face if forced to transfer to other districts to complete the year's studies. They also noted that unless graduating seniors completed required courses and received final grades, the District might not be able to award high school diplomas, any diplomas awarded would be "stigmatized," and the ability of departing seniors to qualify for college admission might be seriously compromised.

to emphasize local administration does not end the State's constitutional responsibility for basic equality in the operation of its common school system. Nor does disagreement with the fiscal practices of a local district outweigh the rights of its blameless students to basic educational equality.

Moreover, though the Constitution and statutes encourage maximum local program and spending authority consistent with State law (Cal. Const., art. IX, § 14; Ed. Code, §§ 14000, 35160, 35160.1), the degree of supervision voluntarily retained by the State over the common school system is high indeed. The volume and scope of State regulation indicate the pervasive role the State itself has chosen to assume in order to ensure a fair, high quality public education for all California students.

School finance aside, the statutes address at length such matters as county and district organization, elections, and governance (§§ 4000-5450, 35000-35780); educational programs, instructional materials, and proficiency testing (§§ 51000-62008); sex discrimination and affirmative action (§§ 40-41, 200-263, 44100-44105); admission standards (§§ 48000-48053); compulsory attendance (§§ 48200-48416); school facilities (§§ 39000-40048); rights and responsibilities of students and parents (§§ 48900-49079); holidays (§§ 37220-37223); school health, safety, and nutrition (§§ 32000-32254, 49300-49570); teacher credentialing and certification (§§ 44200-44481); rights and duties of public school employees (§§ 44000-44104, 44800-45460; see also Gov. Code §§ 3540-3549.3 [organizational and bargaining rights]); and the pension system for public school teachers (§§ 22000-24924). The statutory scheme has spawned further voluminous regulations administered by the State's Department of Education and the SPI. (Cal. Code Regs., tit. 5, §§ 1-23005.) This long-established level of State involvement in the public education system undermines any claim that local control is a paramount and compelling State policy for all purposes.

Nor is there any indication that the State has had a compelling policy of absolute budgetary freedom and responsibility for local districts. On the contrary, during the years in which the District's deficit developed, districts were required to adopt budgets meeting State standards, and to submit them for oversight and approval by county and State authorities. (§§ 33127, former §§ 42120-42129.) Failure to adopt a conforming budget precluded State or county funding of the district (former § 42128), and a district was required to operate under its most recent approved budget (former § 42127.4).

The State argues that by saddling the District with long-term debt to cover short-term operations, the trial court's orders undermine the District's future

financial health and compromise its ability to provide basic educational equivalency in years to come. The State also urges that other districts will feel free to overspend if encouraged to believe in the availability of State relief.

These are indeed troubling concerns, but we cannot accept the implication that the State deems them compelling. In fact, the State itself has endorsed a policy of emergency conditional loan assistance to districts in financial difficulty.

Under statutes in effect since 1977, distressed districts may, through the SPI, seek specific legislative apportionments for emergency loans. (§§ 41310, 41310.5, 41320 et seq.) As a condition of such aid, a district must prepare a financial recovery plan and obtain approval of the plan from the county superintendent and the SPI. (§ 41320.) The district must also accept a temporary SPI-appointed trustee with veto power over financially significant actions of the local governing board. (§ 41320.1.)

The District itself had received a \$9,525,000 conditional State loan under this program in spring 1990 (Stats. 1990, ch. 171, § 3), and its operations were already being monitored by a State trustee at the time closure of District schools was threatened in April 1991. The 1989 Legislature had also appropriated \$10 million for a similar emergency loan-with-trustee to the OUSD. (Stats. 1989, ch. 1438, §§ 1-11.) Under these circumstances, the State cannot claim it follows a compelling policy of local control by declining to intervene when financial adversity threatens a district's operations.

Shortly before this lawsuit began, the District faced the prospect of further legislative intervention in its crisis. Assembly Bill No. 128, 1991-1992 Regular Session (A.B. 128), as introduced in December 1990 and thereafter amended, would have appropriated an additional \$29 million for emergency loans to the District. Acceptance of the proposed loan would have subjected the District to unprecedented restrictions on self-government. These included a temporary takeover of all District affairs by an SPI-appointed administrator pending approval and implementation of a plan for financial recovery and loan repayment. The administrator would have had broad power, among others, to unilaterally determine wages and benefits for all District employees who, as of April 29, 1991, were not covered by ratified collective bargaining agreements meeting the requirements of an approved recovery plan. (A.B. 128, Sen. Amend. of Jan. 18, 1991, §§ 2, 5.)

A.B. 128 failed passage, but that fact does not suggest a compelling policy against emergency State financial assistance to a local district. On the

contrary, the State has forged into the realm of emergency assistance and control, using the "specific appropriation" requirement (§ 41320) to decide on a case-by-case basis whether, and on what terms, it will intervene.

The State claims that emergency assistance to mismanaged districts contravenes the compelling principle of equalized funding established in our *Serrano* decisions. As we have seen, however, nothing in the *Serrano* cases, which addressed wealth-based disparities in district revenues, prohibits emergency State assistance to a particular district which is experiencing financial difficulties despite its receipt of equalized funding.¹⁷

Finally, nothing in our analysis is intended to immunize local school officials from accountability for mismanagement, or to suggest that they may indulge in fiscal irresponsibility without penalty. The State is constitutionally free to legislate against any recurrence of the Richmond crisis. It may further tighten budgetary oversight, impose prudent, nondiscriminatory conditions on emergency State aid, and authorize intervention by State education officials to stabilize the management of local districts whose imprudent policies have threatened their fiscal integrity. To the extent such conditions compromise local autonomy and mortgage a district's future, they are not calculated to persuade local officials or their constituents that mismanagement and profligacy will be rewarded.

Indeed, in response to this case, the Legislature and the Governor have already agreed to tighter county and State control of local district budgets and spending.¹⁸ Under certain circumstances, this new legislation *requires* the SPI's complete takeover of an insolvent district as a precondition of an

¹⁷The *Serrano* decisions themselves, as well as the subsequent adoption of Proposition 13, have exacerbated the need for occasional emergency State intervention by restricting one aspect of local control—the power of local districts to tax themselves out of financial crises. Our *Serrano* opinions condemned the former dependence of school finance on local ad valorem property taxes, because, as a practical matter, however willing a local district might be to increase taxes for education, "districts with small [real property] tax bases simply cannot levy taxes at a rate sufficient to produce the revenue that more affluent districts reap with minimal tax efforts. . . ." (*Serrano I, supra*, 5 Cal.3d 584, 598.) In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their State-equalized revenue per average daily attendance. (§ 42238 et seq.) Moreover, Proposition 13 places a general ceiling on the ad valorem property taxes which may be levied on behalf of local governments and school districts. (Cal. Const., art. XIII A, § 1.)

¹⁸Legislation adopted in 1991 provides, among other things, that if a local district's proposed budget fails to win final county and State approval, the county superintendent of schools shall adopt a governing budget for the district which permits the district to meet current and "multiyear" commitments. The county superintendent may rescind any district action or payment which is inconsistent with the county superintendent's budget, except those

emergency State appropriation.¹⁹ Thus, the State has already made vast inroads on the principle that local control is paramount to State intervention in an insolvent district's affairs. The State's plenary power over education includes ample means to discourage future mismanagement in the day-to-day operations of local districts.

In sum, the California Constitution guarantees "basic" equality in public education, regardless of district residence. Because education is a fundamental interest in California, denials of basic educational equality on the basis of district residence are subject to strict scrutiny. The State is the entity with ultimate responsibility for equal operation of the common school system. Accordingly, the State is obliged to intervene when a local district's fiscal problems would otherwise deny its students basic educational equality, unless the State can demonstrate a compelling reason for failing to do so.

The preliminary facts before the trial court support the inference that the District's impending failure to complete the final six weeks of its scheduled school term would cause educational disruption sufficient to deprive District students of basic educational equality. The State has identified no compelling interest which negated its duty to intervene. We therefore find no abuse of discretion in the trial court's conclusion that plaintiffs' constitutional claims had potential merit.²⁰

3. *Interim harm.*

The trial court also expressly concluded that plaintiffs, District students and their parents, would suffer "substantial and irreparable harm" if a preliminary injunction were denied. This harm, the court further found,

in performance of a previously effective collective bargaining agreement. (§ 42127.3, subd. (b)(1), as amended by Stats. 1991, ch. 1213, § 18.) The county superintendent must also monitor all local budgets continuously to ensure that each district can meet its financial obligations for the current and ensuing fiscal years. A county superintendent's determination that a district will be unable to meet its obligations triggers a process which may culminate in forced revisions to the district's budget and rescission of actions, other than collective bargaining obligations, which are inconsistent with the revisions. (§ 42127.6, added by Stats. 1991, ch. 1213, § 20.)

¹⁹New sections 41325 through 41327 provide that when a local district accepts an emergency appropriation more than twice the size of its State-recommended reserve, the SPI must take control of the district for at least two fiscal years, assume all duties and powers of the local governing board, fire district officials who took no action to avert insolvency, impose a recovery plan including a ten-year repayment schedule, and remain in control until satisfied that local compliance with recovery requirements is probable.

²⁰Our conclusion that the trial court's finding of probable merit is supported by the equal protection clauses of the California Constitution makes it unnecessary to address claims that a State duty of intervention may also have arisen under the "free school" clause or the Fourteenth Amendment.

would be "greater . . . than defendants will suffer if the injunction is granted."

These determinations were based upon the uncontradicted declarations of District teachers, local and regional public school officials, and academic specialists in the field of public education. Besides detailing the severe and immediate academic disruption which would arise from the pending closure (see discussion, *ante*, fn. 16, at p. 687), these declarations set forth at length the "ripple" effect on District parents and students. For example, the declarations recounted, working parents, including the high percentage of needy families in the District, would be faced with expensive child care for the lost school hours; difficult efforts would be required to obtain other placement of the students for the remainder of the year; and special-need students would lose carefully nurtured progress.

The State submitted no evidence that it would suffer comparable or greater harm by offering emergency loan assistance necessary to ensure completion of the District's academic program for 1990-1991. Instead, the State simply argued that court-ordered State aid would damage the State's public school policies of local control and accountability.

(6) The State nonetheless claims plaintiffs' "interim harm" showing was inadequate as a matter of law. In the State's view, plaintiffs' declarations failed to establish that the early closure was unforeseeable, or to explain persuasively why any adverse effects on student progress could not be ameliorated.

We find the trial court's interim-harm findings amply supported. As previously noted, plaintiffs' preliminary showing suggested that the District's inability to complete its school year arose from its ever-worsening fiscal condition and from the deterioration of its negotiations for emergency aid. The declarations of District teachers uniformly indicated that their lesson plans did not provide for the contingency of early closure. Other declarations detailed the difficulties of alternate arrangements to maintain the educational progress of over 31,000 suddenly displaced District students, who included high school seniors poised for graduation. The court could reasonably infer that orderly planning to minimize the resulting educational disruption had not taken place and was not realistically possible.

In any event, the court was not obliged to deny a preliminary injunction simply because plaintiffs failed to demonstrate that "irreparable" harm to students was unavoidable by other means. The preliminary record properly convinced the court *both* that plaintiffs had a reasonable probability of

success on the merits, *and* that they would suffer more harm in the meantime if an injunction were denied than the State would suffer if it were granted. This “mix” of the “interrelated” relevant factors fully justified the court’s decision to grant the injunction. (See *Common Cause v. Board of Supervisors*, *supra*, 49 Cal.3d at pp. 441-442; *King v. Meese*, *supra*, 43 Cal.3d at p. 1227.) No error appears.

4. *Scope of remedial order.*

In orders dated April 29, 1991, and May 2, 1991, the trial court directed the State, the SPI, and the Controller to ensure “by whatever means they deem appropriate” that District students would receive their educational rights; both orders made clear that “[h]ow these defendants accomplish this is up to the discretion of defendants. . . .” When no other State official proposed a solution, the SPI and the Controller, on May 2, 1991, offered a conditional loan plan for approval by the court.

After a hearing on that day, the court found that \$19 million in aid funds proposed by the SPI and the Controller were presently available, and the court authorized the Controller to apportion such funds as an emergency loan to the District. The court further determined that, given the State’s obligation to provide an equal education, the SPI’s statutory authority to “[s]uperintend the schools of this state” (§ 33112, subd. (a)), and the “unique” emergency circumstances, “the [SPI] . . . has authority to relieve the [Board] of its legal duties and powers, appoint a trustee, develop a recovery plan and, subject to the approval of the Controller, [develop] a repayment plan on the [D]istrict’s behalf as necessary to ensure the operation of the schools through June 14, 1991, the financial recovery of the [D]istrict, and the protection of State funds loaned to the [D]istrict.”

(7a) The State and several amici curiae contend that even if the trial court could require State intervention to prevent violation of the District students’ constitutional rights, there was no legal or equitable basis for the court’s order authorizing the SPI to displace the Board, operate the District through his own administrator, and impose a plan for the District’s permanent financial recovery. Under the circumstances presented by this case, however, we conclude that this portion of the court’s order did not exceed its powers.

We agree that the statutes themselves provided no direct authority for the approach taken by the trial court. In general, though they act as regulated State agents, local governing boards are vested by statute with immediate jurisdiction over day-to-day district affairs. (§§ 14000, 35000 et seq.) The

SPI has important statutory responsibilities for allocating school funds (§§ 33118, 14000 et seq.), monitoring local budgets (§§ 42120 et seq., 41450), and administering the conditions of emergency loans *appropriated by the Legislature* (§§ 41310, 41320 et seq.; see also § 41325 et seq.), but no statute grants him emergency powers to operate a local district under other circumstances.²¹

The court relied in part on section 33112, subdivision (a), which provides that the SPI shall “[s]uperintend the schools of this state.” But no case has interpreted this statute to vest the SPI with nonexpress powers, and an older decision construed similar language narrowly against a county superintendent. (*McKenzie v. Board of Education* (1905) 1 Cal.App. 406, 409 [82 P. 392].) Indeed, counsel for the SPI conceded in the trial court that the SPI had no statutory authority to take over the District’s government.

The trial court also believed its takeover order was within its inherent equitable power to enforce the State’s constitutional obligations in light of the “unique emergency financial conditions” presented by the case. In the court’s view, ratification of all loan conditions proposed by the SPI was necessary to ensure the District’s continued operation through June 14, 1991, promote its permanent financial recovery, and protect the loan itself. We agree.

(8) In general, courts have equitable authority to enforce their constitutional judgments. (E.g., *Crawford v. Board of Education, supra*, 17 Cal.3d 280, 308.) Of course, principles of comity and separation of powers place significant restraints on courts’ authority to order or ratify acts normally committed to the discretion of other branches or officials. (*Common Cause v. Board of Supervisors, supra*, 49 Cal.3d 432, 445-446; *Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Serrano II, supra*, 18 Cal.3d 728, 751; *Crawford v. Board of Education, supra*, 17 Cal.3d at pp. 305-306; cf. *Missouri v. Jenkins* (1990) 495 U.S. 33, 50-58 [109 L.Ed.2d 31, 53-59, 110 S.Ct. 1651].) In particular, the separation of powers doctrine (Cal. Const., art. III, § 3) obliges the judiciary to respect the separate constitutional roles of the Executive and the Legislature.

Moreover, a judicial remedy must be tailored to the harm at issue. (E.g., *Sheet Metal Workers v. EEOC* (1986) 478 U.S. 421, 476 [92 L.Ed.2d 344, 388, 106 S.Ct. 3019]; *Dayton Board of Education v. Brinkman* (1977) 433

²¹A.B. 128 would have granted the SPI powers of this magnitude over the District, but the bill failed passage. (See discussion, *ante*, at p. 690.) 1991 statutory amendments call for the SPI’s takeover of districts that accept large emergency insolvency *appropriations* (§ 41325 et seq.; see discussion, *ante*, fn. 18 at p. 691), but even after 1991, the SPI has no such statutory authority *independent* of a specific insolvency appropriation by the Legislature.

U.S. 406, 420 [53 L.Ed.2d 851, 863-864, 97 S.Ct. 2766].) A court should always strive for the least disruptive remedy adequate to its legitimate task.

(7b) The trial court's remedial order in this case fell within proper boundaries. Having correctly held the State constitutionally responsible for the students' rights, the court could not deny the State and its officials effective means of fulfilling its obligation. Under the circumstances, the court was warranted in authorizing temporary transfer to the SPI of the Board's statutory powers over District affairs.

The emergency the court confronted on May 2, 1991, demanded a prompt State-assisted solution to prevent immediate closure of the District's schools. The State was justified in satisfying its constitutional duty of aid by extending a loan that would impose the ultimate consequences of the District's self-created predicament upon the District, rather than upon the State, its taxpayers, and the students of other districts. The State was also entitled to conditions on the loan that would ensure its appropriate use for the intended constitutional purpose, and would minimize the risk of the District's default in repayment.

The District's ability to administer the new loan under its existing systems and managers was uniquely suspect. As a matter of public record, the District's worsening financial situation had recently led the Legislature to provide a loan in excess of \$9 million. A limited-powers State trustee appointed to monitor the District's fiscal affairs in connection with that loan had not been able to stem a growing District deficit estimated by one declarant, a member of the Board, to exceed \$23 million for the 1990-1991 school year alone. In response to these difficulties, the Board had caused the District to seek bankruptcy protection against its existing creditors.

As counsel for the SPI explained on April 29, 1991, the District's unprecedented financial collapse indicated systemic management problems. Hence, counsel reported, the SPI considered it foolhardy to extend further substantial State credit to the District unless its management was placed in competent hands, its administrative practices were reformed and restructured from the outside, and a long-term plan for its financial recovery was imposed.²² On behalf of the State, the Attorney General contested the legality of vesting such extraordinary powers in the SPI, but no party disputed the logic of the SPI's position.

²²The following colloquy occurred between the court and counsel for the SPI: "[¶] MR. HERSHER [SPI's counsel]: . . . [The SPI] does not want to make . . . 20 to 30 million dollars in state funds available to a district that has already demonstrated substantial financial irresponsibility. It's pouring state money into a hole and it's never going to come back out. [¶] THE COURT: Would he want to do that if the State was given the responsibility for running the district as you suggested? [¶] MR. HERSHER: I believe so. I think what Bill Honig sees is that

Nor can we. Given the emergency circumstances, and under the extreme and aggravated conditions disclosed by the evidence, the court below could properly conclude that orderly completion of the District's 1990-1991 school term, and the sound financing essential to achieve that end, required temporary displacement of the sitting Board and the operation of the District by the SPI's designee for the purpose of stabilizing its financial affairs.²³ We conclude that the order approving temporary takeover of the District by the SPI was within the court's inherent equitable power to remedy the constitutional crisis.²⁴

5. *Source of loan funds.*

In order to obtain the necessary \$19 million in emergency loan funds, the trial court authorized the Controller to disburse (1) \$9 million of unspent funds from a special contingency appropriation to the Department of Education for the GAIN program, and (2) the unused \$10 million appropriated as an emergency loan to the OUSD. (9) The State and amicus curiae Pacific argue that because the Legislature had not earmarked either of these sums

the District has to be reorganized. The financial management of the District needs to be completely restructured, and there needs to be a long-term recovery plan [I]t has always been [the SPI's] position that somebody needs to . . . take over the District, come up with a long-term plan in which all the creditors of the District suffer equally or equitably."

²³Amici curiae Diaz and Bezemek ask us to receive additional evidence and make findings about the SPI's record as administrator of the District after May 2, 1991. Among other things, Diaz and Bezemek allege that the SPI's administrator has withdrawn the District's bankruptcy petition, dismantled essential programs, failed to reappoint a citizens' advisory committee, restructured the District's administration, dismissed faculty and counselors, obstructed reorganization of the District's existing debt, imposed an unconscionable interest rate on the court-approved loan, and diverted educational funds to debt repayment. Diaz and Bezemek claim this evidence supports their contention that the SPI's governance of the District presents an inherent conflict between his role as protector of State-loaned funds and his duty to restore the District to financial and educational health.

Appellate courts have limited powers to take evidence and find facts in nonjury civil cases. (Cal. Const., art. VI, § 11; Code Civ. Proc., § 909; Cal. Rules of Court, rule 23(b).) However, the matters Diaz and Bezemek seek to present are beyond the scope of this lawsuit and unnecessary to our analysis. Moreover, Diaz and Bezemek concede the proffered evidence is disputed; appellate courts will not resolve such factual conflicts. (E.g., *In re Marriage of Davis* (1983) 141 Cal.App.3d 71, 75-76 [190 Cal.Rptr. 104]; see *McCracken v. Teets* (1953) 41 Cal.2d 648, 653 [262 P.2d 561].) We therefore deny the motion.

²⁴The State argues that even if extraordinary judicial interference in the District's affairs was necessary to guarantee the constitutional rights of District students, the court erred by granting the SPI extralegal "discretion" to act rather than assuming control over the District itself, with the SPI as the court's appointed agent. The State cites no authority for its proposition that the court's remedial options were so narrowly confined. The remedial order of May 2, 1991, makes clear that the authority therein accorded the SPI flows from a direct and critical exercise of the court's equitable power and jurisdiction over the constitutional dispute. The order laudably minimizes direct judicial involvement in matters best left to officials with specific responsibilities and expertise in education, but its effect is no different than if it had expressly made the SPI a court functionary. We find no error.

for purposes "reasonably related" to resolving the District's financial crisis, the court improperly invaded the nonjudicial power of appropriation.

We agree. In a valid exercise of its constitutional powers, the Legislature had directed each of these sums to specific agencies and narrow purposes which did not include the District and its financial emergency. Hence, the Legislature had not made these funds reasonably available for disbursement to the District. By diverting the funds from their earmarked destinations and purposes, the court invaded the Legislature's constitutional authority.

Article III, section 3 of the California Constitution provides that "[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." Article XVI, section 7 provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." Article IV, sections 10 and 12 set forth the respective powers of the Legislature and Governor over the enactment of appropriations. It has long been clear that these separation-of-powers principles limit judicial authority over appropriations. (*Myers v. English* (1858) 9 Cal. 341, 349; see *Westinghouse Electric Co. v. Chambers* (1915) 169 Cal. 131, 135 [145 P. 1025]; *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 234 [108 Cal.Rptr. 251]; see also *Payne v. Superior Court* (1976) 17 Cal.3d 908, 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].)

In certain narrow circumstances, California courts have concluded that judicial orders for the disbursement of appropriated funds do not invade valid legislative functions. *Mandel v. Myers, supra*, 29 Cal.3d 531, is the only decision by this court which found judicial power to "commandeer" appropriated funds. The facts and analysis of that case demonstrate the strict limits on the judicial authority it recognized.

The plaintiff in *Mandel*, a Department of Health Services (DHS) worker, had prevailed in litigation challenging DHS's practice of allowing paid employee leave on Good Friday. The judgment against the State included an award of attorney fees. However, the Legislature removed appropriations for payment from successive claims and budget bills, including the 1978-1979 Budget Act (Act). The Act included the usual appropriation to DHS for "general operating expenses and equipment," which expressly included expenses for "services" and "all other proper purposes." Such "catchall" budget categories for State agencies had traditionally been used to pay agency legal expenses. However, the Act expressly precluded use of any appropriation therein "to achieve any purpose which has been denied by any formal action of the Legislature."

We upheld the trial court's order that the Controller pay the fee award from the general operating budget of DHS. We noted first that the "catchall" appropriation was "reasonably" or "generally" available for payment of legal expenses incurred by DHS, because the broad terms of the appropriation, as well as its historical uses, indicated such a legislative intent. In effect, we concluded that the Legislature had voluntarily made an appropriation for payments of this general kind. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 539-545.)

We further explained that, once having made an appropriation generally available, the Legislature may not impose specific restrictions which are unconstitutionally discriminatory, or which constitute an impermissible legislative attempt to readjudicate the merits of a final court judgment. Hence, we reasoned, the Legislature's attempt to avoid payment of the *Mandel* award in particular must be struck down. The DHS "catchall" appropriation thus remained "available" under its general terms for payment of the judgment. (*Mandel v. Myers*, *supra*, 29 Cal.3d at pp. 545-551.)

Subsequent Court of Appeal decisions adhered to these principles of *Mandel*. In *Serrano v. Priest* (1982) 131 Cal.App.3d 188 [182 Cal.Rptr. 387], attorneys who had won the school-finance class action sought judicial help after the State rebuffed their informal efforts to collect a court-ordered fee award. After *Mandel* was decided, the State conceded that the trial court had properly ordered payment from a "catchall" appropriation to the Department of Education, the SPI, and the State Board of Education for "operating expenses and equipment." (Pp. 197-198.) In *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852 [183 Cal.Rptr. 475], the court concluded, after disregarding an unconstitutional budget act provision against use of Medi-Cal funds for abortions (see *Committee to Defend Reproductive Rights v. Myers* (1981) 29 Cal.3d 252 [172 Cal.Rptr. 866, 625 P.2d 779, 20 A.L.R.4th 1118]); that abortion funding could be ordered from monies appropriated for other Medi-Cal pregnancy services. (132 Cal.App.3d at pp. 857-858.)

Plaintiffs and the SPI suggest that two more recent Court of Appeal decisions, *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155 [275 Cal.Rptr. 449] and *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521 [234 Cal.Rptr. 795], have expanded *Mandel*'s concept of "reasonable [or] general availability." The trial court in the instant case apparently relied on these decisions to conclude that it could divert the GAIN and OUSD appropriations to the District because they were "generally related" to education.

Long Beach and *Carmel Valley* do make occasional use of the term "generally related" to describe *Mandel*'s principle of reasonable or general

“availability.” (See *Long Beach*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) But nothing in those cases supports the trial court’s apparent view that funds appropriated for one specific educational purpose may be judicially diverted to another. So far as the face of the opinions discloses, the stated intent of the target appropriation in each case, or its historical uses, indicated that the court’s application of the funds was plausibly within purposes the Legislature might have contemplated.²⁵ No court has suggested that *Mandel* principles permit court-ordered diversion of an appropriation away from a clear, narrow, and valid purpose specified by the Legislature. We affirm that the words “generally related,” as used in *Long Beach* and *Carmel Valley*, do not countenance such judicial incursions into the legislative power over appropriations.²⁶

The instant trial court misapplied *Mandel* when it authorized the diversion of appropriated funds from the specific purposes and programs for which the Legislature had validly earmarked them. Nine million dollars was taken from an appropriation in the 1989-1990 Budget Act for the GAIN program. (Stats. 1989, ch. 93, § 22.00.) GAIN’s purpose is to provide employment, adult

²⁵In *Carmel Valley*, the Court of Appeal struck down budgetary language which had been inserted to foreclose the constitutionally required reimbursement of local agencies for expenses incurred in upgrading firefighter protective clothing as mandated by the State. (See Cal. Const., art. XIII B, § 6.) After disregarding these unconstitutional restrictions, the Court of Appeal quite logically determined that funds appropriated to the Department of Industrial Relations for Program 40, the Prevention of Industrial Injuries and Deaths of California Workers, were available for this expense. (*Carmel Valley*, *supra*, 190 Cal.App.3d at p. 541.) In *Long Beach*, a local school district sought reimbursement for the State-mandated expenses of developing desegregation programs. After the Legislature deleted an appropriation for this purpose from the 1985-1986 budget bill, the district obtained a trial court order for reimbursement from specified line-item accounts related to education, and from the general operating budget of the Department of Education, which had mandated the programs. The Court of Appeal affirmed on grounds that the record substantially supported the trial court’s order. As the Court of Appeal explained, these and similar accounts had historically been used to support programs such as the one for which reimbursement was sought, and were logical sources of funding for this specific purpose. (*Long Beach*, *supra*, 225 Cal.App.3d at pp. 181-182; see also p. 185.)

²⁶We are aware that in *Missouri v. Jenkins*, *supra*, 495 U.S. 33, the United States Supreme Court upheld the power of federal courts to order local tax levies to enforce judicial remedies for unconstitutional school segregation. However, even if the federal Constitution permits federal courts to impose far-reaching remedies for State government violations of federal constitutional rights, it does not follow that California courts are exempt from the constraints imposed by the California Constitution upon their power to invade the functions of a coequal branch of State government.

Indeed, the California Constitution’s separation of powers clause precludes any branch from usurping or improperly interfering with the essential operations of either of the other two branches. (See Cal. Const., art. IV, § 1 [legislative power]; Cal. Const., art. V, § 1 [executive power]; Cal. Const., art. VI, § 1 [judicial power].) Nothing in this opinion should be interpreted as sanctioning or immunizing such unconstitutional interference, or as addressing the question of the appropriate remedies that may be invoked in the event one branch improperly impinges on the essential operations of a coequal branch.

education, and job training to recipients of public assistance. (Welf. & Inst. Code, § 11320 et seq.) Local school districts can receive GAIN funds for adult education and training classes (*id.*, §§ 11320.8, 11322, 11323), and the Legislature intended that the 1989-1990 GAIN appropriation might include such funding subject to strict conditions (see Stats. 1989, ch. 93, § 22.00, subd. (b)). However, this appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students. Nothing in the trial court's order restricted use of the GAIN-derived funds to uses contemplated by the appropriation.

Similar considerations govern the remaining \$10 million of the emergency loan, which was derived from the 1989 Legislature's special appropriation for the OUSD. This appropriation, by its express terms, was "for the purpose of an emergency loan to [*that*] [*d*]istrict in compliance with Article 2 (commencing with Section 41320) of Chapter 3 of Part 24 of the Education Code." (Stats. 1989, ch. 1438, § 1, italics added.)

Section 41310 expresses the intent that emergency loans to distressed districts under section 41320 et seq. not occur "unless funds have been *specifically* appropriated *therefor* by the Legislature." (Italics added.) The statutory scheme imposes detailed conditions on emergency loans granted under its auspices (§§ 41320.1-41323), and the Legislature further refined the conditions on the OUSD appropriation to address the particular circumstances of that case (Stats. 1989, ch. 1438, §§ 2-9).

When it makes an appropriation to a specific district, under specific conditions addressed to the problems of that district, the Legislature clearly intends and contemplates that the appropriation will only be used for that purpose, and under those conditions. Hence, the appropriation is not reasonably available for court-ordered diversion to another district under different conditions.

The trial court, understandably anxious to resolve the crisis, concluded that it could fund its order from any monies previously appropriated "for a purpose that is reasonably related to educational purposes." The court found that the GAIN and OUSD appropriations were "reasonably related to the State's obligation to keep the Richmond schools open through June 14, 1991"

As we have seen, however, the test of reasonable availability under *Mandel* does not extend to uses clearly outside the particular purpose for which an appropriation was reserved. The GAIN and OUSD appropriations were earmarked for purposes entirely distinct from the subject matter of this

lawsuit.²⁷ They were not reasonably available for court diversion to finance the remainder of the District's school term.

In her concurring and dissenting opinion, Justice Kennard claims that by flatly disclaiming judicial power to divert appropriations from the purposes specified by the Legislature, we adopt a "formalistic" and outmoded view of the separation of powers. Citing language from two United States Supreme Court decisions (*Mistretta v. United States* (1989) 488 U.S. 361 [102 L.Ed.2d 714, 109 S.Ct. 647]; *Nixon v. Administrator of General Services* (1977) 433 U.S. 425 [53 L.Ed.2d 867, 97 S.Ct. 2777]), she proposes that interbranch conflicts of this kind be resolved under a "pragmatic" and "flexible" case-by-case balancing test, in which the derogation of one branch's powers by another may be warranted to promote overriding objectives within the "constitutional authority" of the latter. Because both the OUSD and GAIN appropriations were "generally related" to elementary and secondary education, she reasons, diversion of these funds to the District was not a "great" or "extreme" intrusion upon the appropriations power, and the court's action was justified by its constitutional responsibility to District students.

We cannot accept these contentions. Our adherence to *Mandel* can hardly be deemed rigid or formalistic; our decision in that case strained to find a practical, sensitive, and principled balance between legislative and judicial power over appropriations. In effect, Justice Kennard urges abandonment of *Mandel*'s careful analysis in favor of a rule giving the judiciary unchecked power to override the valid budgetary acts of coequal branches.

However, nothing in the California or federal cases on which Justice Kennard relies even hints that a court may nullify a specific and valid exercise by the Legislature and the Executive of fundamental budgetary powers explicitly entrusted to those branches, simply for the purpose of

²⁷No party or amicus curiae suggests that the purposes specified by the Legislature for these two appropriations were "improper or invalid . . . restriction[s]" on their use which may be disregarded by the courts. (*Mandel v. Myers, supra*, 29 Cal.3d at p. 542.) This is not a case where the Legislature, in defiance of the Constitution or the judicial branch, had prohibited use of appropriations for particular purposes to which they would otherwise logically extend.

We recognize that, at the May 2 hearing, counsel for the OUSD indicated his client had "no objection" to diversion of its loan appropriation for the court's purposes. The OUSD's position may not have been entirely altruistic; on April 29, counsel had committed the OUSD to accepting an influx of displaced District students but expressed concern about the disruption such a solution would cause. Even if the OUSD believed that diversion of its appropriation was in its own best interests, however, the OUSD could not unilaterally alter the terms and conditions the Legislature had imposed on the appropriation. Moreover, the OUSD's waiver was conditional; counsel made clear that the OUSD reserved its right to demand refunding of the OUSD appropriation "if and when [the OUSD] chooses to exercise its rights to request a loan from the state of [\$]10 million at any time up until June 30, 1993."

satisfying a judgment or order that is *unrelated* to the appropriation. (Compare, e.g., *Mistretta v. United States*, *supra*, 488 U.S. 361, 380-384 [102 L.Ed.2d 714, 735-738] [Congress's creation of United States Sentencing Commission, a judicial-branch agency charged with establishing mandatory federal sentencing guidelines, did not usurp authority of individual judicial officers or grant forbidden legislative power to judicial branch]; *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, 441-446 [53 L.Ed.2d 867, 889-893] [legislation vesting Administrator of General Services with limited control over presidential papers of resigned chief executive did not undermine authority of executive branch]; *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306] [Legislature's failure to reapportion justifies judicial adoption of reapportionment plan]; *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 72-87 [249 Cal.Rptr. 300, 757 P.2d 11] [District attorney's statutory power to disapprove local misdemeanor-diversion program was not improper delegation of legislative authority; prosecutor's absolute discretion to prevent diversion by charging "wobbler" as felony did not constitute forbidden judicial power]; *Younger v. Superior Court* (1978) 21 Cal.3d 102, 115-118 [145 Cal.Rptr. 674, 577 P.2d 1014] [statute requiring Department of Justice to destroy individual's marijuana arrest and conviction records upon application after sentence is complete did not create impermissible conflict with executive clemency powers].)

The balance proposed by Justice Kennard in this case would elevate the judiciary above its coequal brethren, upset the delicate system of checks and balances, and stand the separation of powers clause on its head. Applying *Mandel's* well-settled principles, we remain satisfied that the trial court acted in excess of its authority when it funded the District's loan with appropriations specifically earmarked by the Legislature for other purposes.²⁸

CONCLUSION AND DISPOSITION

The District's financial inability to complete the final six weeks of its 1990-1991 school term threatened to deprive District students of their

²⁸Although the instant record is silent on the point, Justice Kennard worries that there *may* have been no unearmarked educational appropriations available to enforce this trial court's order. She suggests further that such funds *may* also not be available under current laws and budgetary constraints to permit judicial enforcement of students' constitutional rights in similar future cases. These concerns have no practical effect in the instant lawsuit, because the State does not seek rescission of the District's loan, and the educational rights of the District's students are secure. In any event, we cannot overlook the fact that the urgency of the District's crisis denied the Legislature any opportunity to respond to the trial court's injunctive order. Once alerted by the trial court's constitutional ruling, however, the Legislature and the Governor have taken significant steps to prevent or remedy recurrences of the District's crisis. We may not assume they will fail or refuse to respond as necessary to our final determination of the State's constitutional responsibilities.

California constitutional right to basic educational equality with other public school students in this State. As the court further concluded, discrimination of this nature against education, a fundamental interest, could only be justified as necessary to serve a compelling interest. The State itself, as the entity with plenary constitutional responsibility for operation of the common school system, had a duty to protect District students against loss of their right to basic educational equality. Local control of public schools was not a compelling interest which would justify the State's failure to intervene.

The trial court thus properly ordered the State and its officials to protect the students' rights. The court also acted within its remedial powers by authorizing the SPI to assume control of the District's affairs, relieve the Board of its duties, and supervise the District's financial recovery. However, the court invaded the exclusive legislative power of appropriation by approving the diversion of appropriations for GAIN and the OUSD to an emergency loan for the District.

Accordingly, we reverse the trial court's remedial order of May 2, 1991, insofar as it approves funding of an emergency loan to the District from appropriations for the Oakland Unified School District and the Greater Avenues for Independence program. In all other respects, the court's orders of April 29 and May 2, 1991, are affirmed. The Court of Appeal is directed to remand the cause to the trial court for such further proceedings as may be appropriate under the views expressed in this opinion.

Panelli, J., Arabian, J., and George, J., concurred.

LUCAS, C. J., Concurring and Dissenting.—I concur with the majority's conclusions regarding the constitutional obligations of the State of California (State) to assure educational equality. I would not, however, address the propriety of the sources approved by the trial court to provide an emergency loan.

In my view, we need not consider questions regarding the use of the Oakland Unified School District (OUSD) emergency appropriation or the unused appropriation for the Greater Avenues for Independence (GAIN) program because the issues are moot and their resolution will have no impact on the status quo in this case. As the majority notes, at the May 2, 1991, proceeding, the State continued to object to the trial court's order arising out of the April 29, 1991, hearing. That order required the State, Superintendent of Public Instruction (SPI) and Controller, at their discretion and "by whatever means they deem appropriate," to ensure Richmond students were not deprived of six weeks of education provided to other students within California. In addition to renewing its basic position on the merits of the

constitutional arguments, the State also objected to use of the specific funds proposed by the SPI and Controller. It offered no alternative sources of funding and appealed from both orders.

Before us, however, the State does not demand rescission of the court-approved loan or any change in the status of that funding. The funding was granted as a loan and a loan repayment agreement has been worked out by the parties. The State, acknowledging those facts, expressly asserts "We do not argue that the Controller must be compelled immediately to recover the money." In other words, it seeks no relief from the trial court's order granting payment from the challenged sources and compelling repayment of the funds under a prescribed repayment schedule.

Accordingly, as the SPI observes, the matter is moot. The State's response, found in its reply brief, is only that "the trial court in the next case will still be guided by, unless this court disapproves the test, the 'generally related' test set forth in *Carmel Valley [Fire Protection Dist. v. State of California]* (1987) 190 Cal.App.3d 521, 540-541 (234 Cal.Rptr. 795) and *Long Beach [Unified Sch. Dist. v. State of California]* (1990) 225 Cal.App.3d 155, 181-182 (275 Cal.Rptr. 449)." It does not assert that this issue is capable of evading review because of timing or that a present controversy over the use of these particular funds still exists. Instead, it seeks guidance only for the future. I would decline to render what would essentially be an advisory opinion here. (See *People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912 [83 Cal.Rptr. 670, 464 P.2d 126] ["The rendering of advisory opinions falls within neither the functions nor the jurisdiction of this court"].)

MOSK, J., Concurring and Dissenting.—I am in general agreement with the views expressed in Justice Kennard's concurring and dissenting opinion.

However, I cannot embrace the ill-advised concession that the trial court's order "did pose a potential for disruption of a function of the legislative branch" although the degree of potential disruption "is not great" and the purported infringement on the legislative function is "not substantial." (Kennard, J., *post*, conc. and dis. opn. at pp. 710, 711.)

The theory of potential interference with legislative functions to any extent is inconsistent with the ultimate conclusion that the funds used for the emergency loan were "reasonably related" to the educational purposes of the legislation, and, indeed, "the trial court's order furthered, rather than defeated, that valid legislative purpose." As persuasively observed in footnote 2, the "funds were appropriated for purposes reasonably and closely related

to the purpose for which the trial court ordered them to be used.” (Kennard, J., *post*, conc. and dis. opn. at p. 711.)

Under the foregoing circumstances—with which I agree—there cannot be some conceptual interference, even though “not great,” with the functions of the legislative branch.

With that caveat, I join the concurring and dissenting opinion.

KENNARD, J., Concurring and Dissenting.—I agree with the majority that the threatened closure of the schools of the Richmond Unified School District (District) was such an extreme departure from prevailing educational standards as to infringe on the students’ state constitutional rights to basic educational equality, requiring the State of California (State) to intervene to protect those rights.

I do not agree, however, that the trial court violated the separation of powers doctrine by ordering that emergency loan funds be made available from an unused special appropriation to the Department of Education and an unused emergency appropriation to the Oakland Unified School District (OUSD). The majority has, in effect, declared that although the students’ right to education is fundamental, no means may exist by which our judicial system can enforce that right. In my view, the trial court’s order was an appropriate and pragmatic resolution of a difficult case under extreme pressure. Because the Legislature had already appropriated the funds in question for educational purposes reasonably related to the District’s needs, I discern no constitutional violation, and would affirm the trial court’s orders in their entirety.

I

On April 17, 1991, the District, facing a \$23 million budgetary shortfall, announced its schools would close on May 1, 1991, rather than as scheduled on June 14, 1991. Parents of students in the District’s schools then filed a class action against the State and the District’s board of education, alleging the closure would deprive children of their fundamental right to education and would violate equal protection guarantees. The trial court granted plaintiffs’ motion for a preliminary injunction, finding that “education is a fundamental right in California [and] unless injunctive relief is granted children in the District will be denied six weeks of instruction that will be provided to every other child in the State.” The trial court ordered the State, the Superintendent of Public Instruction (Superintendent), and the State Controller “to ensure that the students in the District are not deprived of six

weeks of public education while others within the state are not so deprived." The trial court added that "how these defendants accomplish this is up to the discretion of the defendants."

Thereafter, the Superintendent and the Controller proposed a plan to keep the schools open. They proposed that \$19 million in unspent funds from two educational programs—from the Greater Avenues for Independence (GAIN) program and from an appropriation to the OUSD—be loaned to the District. After an evidentiary hearing, the trial court ordered the State Controller to disburse an emergency loan to the District from these funds. This court denied the State's motion to stay the order pending appeal, but transferred the case here.

II

The majority holds that the trial court's remedial order violated the doctrine of separation of powers. Essentially, the majority reasons that by ordering that the unused funds be loaned to the District, the trial court impermissibly engaged in the appropriation of funds, an area of exclusive legislative concern.

The majority's conclusion originates from a fundamental misunderstanding of the separation of powers doctrine. Implicit in the majority's discussion is the assumption that under our tripartite scheme of government, particular powers can be definitively categorized as belonging to one of the three branches, and that these powers can never be exercised by a branch other than the designated branch. Thus, under the majority's approach, appropriation is exclusively a legislative function, and unless the Legislature has either appropriated funds for a specific purpose, or made a "catchall" appropriation under which a specific use of funds may fall, funds are simply not available for any purpose, no matter what rights are at stake.

This formalistic interpretation of the separation of powers concept is, however, contrary to modern understanding. The opinions of the United States Supreme Court, although not binding on this court in interpreting the separation of powers principles of the California Constitution, supply a persuasive body of case authority. Just as our state Constitution provides for the separation of the powers of government into three branches (Cal. Const., art. III, § 3), so does the federal Constitution segregate the branches of government (U.S. Const., art. I, § 1, art. II, § 1, & art. III, § 1).

The United States Supreme Court has "squarely rejected the argument that the Constitution contemplates a complete division of authority between the

three branches.” (*Nixon v. Administrator of General Services* (1977) 433 U.S. 425, 443 [53 L.Ed.2d 867, 891, 97 S.Ct. 2777].) Rather than reading the federal Constitution as “‘requiring three airtight departments of government,’” the high court has adopted a “pragmatic, flexible approach.” (*Id.* at pp. 443, 442 [53 L.Ed.2d at pp. 891, 890-891].) This approach, the court has explained, is supported by historical understanding. James Madison, one of the principal architects of the United States Constitution, wrote that the concept of separation of powers “‘d[oes] not mean that these departments ought to have no *partial agency* in, or no *control* over the acts of each other,’” but instead that “‘where the *whole* power of one department is exercised by the same hands which possess the *whole* power of another department, the fundamental principles of a free constitution are subverted.’” (J. Madison, *The Federalist* No. 47, pp. 325-326 (J. Cooke ed. 1961) (original italics), quoted in *Mistretta v. United States* (1989) 488 U.S. 361, 380-381 [102 L.Ed.2d 714, 735-736, 109 S.Ct. 647].) Thus, the basic purpose of the separation of powers is to guard against the concentration of power in the hands of one branch, but it is important to distinguish “partial agency” from those aggrandizements of power that pose genuine threats to the constitutional scheme.

The pragmatic and flexible approach favored by the nation’s highest court is also appropriate because, in a society growing ever more complex, the practical requirements of efficient government action by each of the three branches must be considered. “‘While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government.’” (*Mistretta v. United States, supra*, 488 U.S. at p. 381 [102 L.Ed.2d at p. 736], quoting *Youngstown Sheet & Tube Co. v. Sawyer* (1952) 343 U.S. 579, 635 [96 L.Ed. 1153, 1199, 72 S.Ct. 863, 26 A.L.R.2d 1378] (conc. opn. of Jackson, J.)) In contemporary society, concerns about the workability of government are especially weighty.

Thus, the high court has not evolved a rigid classification of governmental powers as belonging exclusively to one branch or another. Instead, the court has stated that “the proper inquiry focuses on the extent to which [the act complained of] prevents [one of the three branches] from accomplishing its constitutionally assigned functions.” (*Nixon v. Administrator of General Services, supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States, supra*, 488 U.S. at p. 383 [102 L.Ed.2d at pp. 737-738].) If the “potential for disruption is present,” the court must then “determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority” of the branch whose action is challenged. (*Nixon v. Administrator of General Services, supra*, 433 U.S. at p. 443 [53

L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

This court has expressed a similar understanding. We have recognized that the purpose of the doctrine of separation of powers "is to prevent one branch of government from exercising the *complete* power constitutionally vested in another [citation]; it is not intended to prohibit one branch from taking action properly within its sphere that has the *incidental* effect of duplicating a function or procedure delegated to another branch. [Citation.]" (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 117 [145 Cal.Rptr. 674, 577 P.2d 1014] [original italics].)

More recently, this court reiterated that the separation of powers doctrine "has not been interpreted as requiring the rigid classification of all the incidental activities of government, with the result that once a technique or method of procedure is associated with a particular branch of the government, it can never be used thereafter by another." . . . 'From the beginning, each branch has exercised all three kinds of powers.'" (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76 [249 Cal.Rptr. 300, 757 P.2d 11] [citations and italics omitted].)

III

A line of cases from California courts has established the principle that a court does not violate the separation of powers doctrine when it orders appropriate expenditures from already existing funds, if such funds are reasonably available for the expenditures in question. (*Mandel v. Myers* (1981) 29 Cal.3d 531, 540 [174 Cal.Rptr. 841, 629 P.2d 935]; *Long Beach Unified Sch. Dist. v. State of California* (1990) 225 Cal.App.3d 155, 180-181 [275 Cal.Rptr. 449]; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 538-539 [234 Cal.Rptr. 795]; *Committee to Defend Reproductive Rights v. Cory* (1982) 132 Cal.App.3d 852, 856 [183 Cal.Rptr. 475].) The precise question in this case is whether funds can be considered "reasonably available" when they are not made part of a "catchall" appropriation under which the specific use of the funds may fall. The majority concludes that unless the funds are part of a "catchall" appropriation, they are not reasonably available.¹

I would announce no such categorical rule. In my view, the proper inquiry is that set forth by the United States Supreme Court in *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425 and *Mistretta v. United States*,

¹The majority purports to reaffirm the rule of these cases, but in fact undermines it. The "catchall" appropriation exception to the majority's rule could easily be eliminated if the Legislature took the time to label more specifically the purpose of each appropriation in a particular area. If the Legislature did so, there would be no possible remedy for the failure to fund any program, no matter how essential.

supra, 488 U.S. 361: To what extent does the challenged act of one branch interfere with another branch's performance of its constitutionally assigned functions? If there is some potential disruption, the court must then determine whether the challenged act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services, supra*, at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States, supra*, at p. 383, fn. 13 [102 L.Ed.2d at p. 737].)

Applying the principles followed by the high court in *Nixon v. Administrator of General Services, supra*, 433 U.S. 425 and *Mistretta v. United States, supra*, 488 U.S. 361, and by this court in cases such as *Younger v. Superior Court, supra*, 21 Cal.3d 102 and *Davis v. Municipal Court, supra*, 46 Cal.3d 64, I conclude that the trial court's order authorizing the Controller to disburse funds from the GAIN and OUSD accounts as an emergency loan to the District to assure the District's schools remained open did pose a potential for disruption of a function of the legislative branch.

The degree of potential disruption, however, is not great. As the trial court concluded, the funds that were the source of the emergency loan were appropriated for purposes reasonably related to the educational purposes served by the District.

The OUSD loan funds were appropriated by the Legislature for the precise purpose for which they were employed here—to alleviate a fiscal crisis in a local school district and prevent disruption of an ongoing educational program. (See Stats. 1989, ch. 1438, § 1.) Moreover, the trial court had before it an application for leave to intervene from the OUSD itself, in which the OUSD stated that the threatened closure of the nearby District "would place substantial and difficult burdens on OUSD as displaced Richmond students seek admission to Oakland Schools," that would be "extremely costly and disruptive" to the operation of the Oakland schools. The emergency loan fund for the OUSD was intended by the Legislature to avoid disruption of the educational program at the Oakland schools, and the trial court's order furthered, rather than defeated, that valid legislative purpose.

The GAIN program was enacted to address the problem of teenage parenting, basic educational deficiencies, and long-term welfare dependency. Specifically, GAIN was intended to "[p]rovide the education and training services needed by teenage parents to help them earn a high school diploma or its equivalent," and to "[l]ink teenagers to other needed health and social services." (Welf. & Inst. Code, § 11330, subd. (c).) The purpose of the particular appropriation to the Department of Education at issue in this case

was solely to meet educational needs, and not to provide health and social services. (Stats. 1989, ch. 93, § 22.00.) This goal is served by keeping the District's schools open. The trial court had before it uncontradicted evidence that a large number of the students in the District came from low-income families, many of whom were welfare-dependent. The court could rationally conclude that the otherwise unused GAIN funds were reasonably available to meet the basic educational needs of the District's students, a significant portion of whom were in the welfare-dependent population the GAIN program was targeted to assist. Under the circumstances, the funds were ordered to be used for a purpose reasonably congruent with the statutory purpose.²

Thus, because the trial court authorized the OUSD and GAIN funds to be used for a purpose that was reasonably related to the purposes for which the funds were appropriated, any infringement on the legislative function is not substantial. By contrast, we are not faced with a situation in which a trial court has ordered that funds appropriated for one purpose be used for some entirely unrelated purpose; nor are we confronted with a trial court order that funds actually in use for one program be diverted to another. It is vital that

²The majority asserts that this opinion "urges abandonment" of the rule of *Mandel v. Myers*, *supra*, 29 Cal.3d 531 (*Mandel*). This is incorrect.

In *Mandel*, *supra*, 29 Cal.3d 531, this court held that the separation of powers doctrine does not prevent the courts from ordering appropriate expenditures from already existing funds when such funds are "reasonably available for the expenditures in question . . ." (*Id.* at p. 542.) There, the court found that certain "catchall" funds were reasonably available for the expenditures in question, the payment of attorney fees in a case enforcing constitutional rights. But nothing in *Mandel* indicated that the only funds that might ever be reasonably available in any case were "catchall" funds. And, as later cases made clear, *Mandel*'s test of "reasonable availability" encompasses unused funds that have been appropriated for purposes closely related to the purposes for which they are sought to be expended. (*Long Beach Unified Sch. Dist. v. State of California*, *supra*, 225 Cal.App.3d at p. 181; *Carmel Valley Fire Protection Dist. v. State of California*, *supra*, 190 Cal.App.3d at p. 541.)

In this case, as my analysis has demonstrated, the OUSD and GAIN funds were appropriated for purposes reasonably and closely related to the purpose for which the trial court ordered them to be used. Thus, *Mandel* and its progeny were not violated. The analysis in this opinion is entirely consistent with both the *Mandel* line of cases, and the cases from the United States Supreme Court and this court that more fully and generally articulate the doctrine of separation of powers. *Mandel* and its progeny represent an area of specific application of general separation of powers principles; properly understood, there is no disjunction between the *Mandel* line of cases and cases such as *Nixon v. Administrator of General Services*, *supra*, 433 U.S. 425, and *Mistretta v. United States*, *supra*, 488 U.S. 361, that set forth a principled and coherent view of the separation of powers doctrine.

Thus, the majority's accusation that the approach to separation of powers questions set forth in this opinion, which is the same approach employed by our nation's highest court, would "stand the separation of powers clause on its head," is meritless.

trial courts take care to minimize any impingement on legislative prerogatives. But the trial court in this case did use the least intrusive means available to it to ensure the students' rights.³

As discussed earlier, if there is some cognizable interference with the functions of another branch, the reviewing court must then determine whether the act is "justified by an overriding need to promote objectives within the constitutional authority" of the branch whose action is challenged. (*Nixon v. Administrator of General Services*, *supra*, 433 U.S. at p. 443 [53 L.Ed.2d at p. 891]; *Mistretta v. United States*, *supra*, 488 U.S. at p. 383, fn. 13 [102 L.Ed.2d at p. 737].) In my view, here the trial court's order was so justified.

The objective that the trial court sought to achieve by its orders in this case—to assure the protection of the fundamental rights of the District's students—was unquestionably within its constitutional authority. As this court has made clear on previous occasions, and as the majority reaffirms today, education is a fundamental right under the California Constitution. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 608-609 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; *Serrano v. Priest* (1976) 18 Cal.3d 728, 766 [135 Cal.Rptr. 345, 557 P.2d 929].)

Moreover, the court, in acting to protect the students' rights to education, had no practical alternative to the remedial order it issued. It was the court's

³At the hearing on the preliminary injunction, an official of the Department of Education testified without contradiction that there were two sources from which department funds were available that could be employed to assist the District—the OUSD fund and the GAIN fund. No other funds were identified as available.

The funds appropriated to the Department of Education for the general support of elementary and secondary schools are not placed in a "catchall" fund subject to the discretion of Department of Education officials. Instead, under the Education Code, virtually all sums transferred from the state's general fund to the Department of Education for the general support of elementary and secondary education are transferred subject to a strict formula under which each local district is entitled to an amount computed on the basis of average daily student attendance. (Ed. Code, § 14000 et seq., § 46000 et seq.) No state official appears to have any discretion to vary the legislatively mandated allocation of funds.

My research reveals that the only funds that might have been considered reasonably available to aid the District under the majority's criteria at the time of the trial court's decision in this case were certain emergency funds under control of the Director of Finance. (Stats. 1990, ch. 467, § 2.00.) But there is nothing in the record to show that these funds had not been used for some other emergency purpose. Even assuming that none of these funds had been committed to some other use, however, the funds would have been grossly inadequate to meet the District's needs in any event. The total amount of funds available to the Director of Finance to meet all the emergency needs of the State under the then-current budget was \$7 million. (*Ibid.*) As we have seen, the District faced a \$23 million budget shortfall.

duty to act. As the United States Supreme Court has held, "a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us." (*Reynolds v. Sims* (1964) 377 U.S. 533, 566 [12 L.Ed.2d 506, 530, 84 S.Ct. 1362].)

When the other branches of government have failed to act, the courts have not flinched from their duty to fashion appropriate remedies when necessary to guarantee constitutional rights to the people of this state. Thus, in *Wilson v. Eu* (1991) 54 Cal.3d 471, 473 [286 Cal.Rptr. 280, 816 P.2d 1306], we held that, although reapportionment is primarily a matter for the legislative branch, when that branch has failed to act and electoral rights will be irretrievably lost if no action is taken, "we must proceed forthwith to draft such [reapportionment] plans." And in *Crawford v. Board of Education* (1976) 17 Cal.3d 280, 307 [130 Cal.Rptr. 724, 551 P.2d 28], we held that when a recalcitrant school board failed to act to cure the harmful consequences of school segregation, the trial court could exercise "broad equitable powers" to frame a remedy that would assure the students' basic rights. (Accord, e.g., *Swann v. Board of Education* (1971) 402 U.S. 1, 15 [28 L.Ed.2d 554, 566, 91 S.Ct. 1267]; see *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 659 [180 Cal.Rptr. 297, 639 P.2d 939]; *Midway Orchards v. County of Butte* (1990) 220 Cal.App.3d 765, 779 [269 Cal.Rptr. 796].)

No sound reason exists to hold that although some fundamental rights demand judicial protection when they are endangered because the other branches of government have failed to act, other rights, equally fundamental, do not. Yet that is the consequence of the majority's holding in this case that the trial court erred in ordering that an emergency loan be made to the District.

The practical consequences of the majority's holding should not be overlooked. In an era of fiscal constraint and uncertainty for local governments, including school districts, we cannot assume that the District's problems will prove to be unique. If another school district experiences financial difficulties and the other branches of government fail to act, parents may indeed bring a lawsuit to protect their children's right to education. Under today's decision, the trial court will declare that the children have a constitutional right to basic educational equality, and that the State bears responsibility for assuring this right is not denied. The court may then announce that no means

exist by which it can enforce that right. And the doors to the schoolhouse will close.

I would affirm the orders of the trial court in their entirety.

BILL ANALYSIS

AB 116
Page 1

Date of Hearing: April 7, 1999

ASSEMBLY COMMITTEE ON EDUCATION
Kerry Mazzone, Chair
AB 116 (Mazzone) - As Amended: March 18, 1999

SUBJECT : Content of instructional materials.

SUMMARY : Restricts the use of commercial brand names and logos in basic instructional materials e.g., school textbooks. Specifically, this bill :

- 1) Provides that the governing board of a local school district may not adopt basic instructional materials, including illustrations, that contain a commercial brand name, product, or corporate or company logo unless the board makes a specific finding pursuant to specified criteria that the use of the commercial brand name, product, or corporate or company logo in the instructional materials is appropriate.
- 2) Provides that in reviewing and adopting or recommending for adoption submitted basic instructional materials, the State Board of Education (SBE) shall see that they do not contain materials, including illustrations, that provide unnecessary exposure to a commercial brand name, product, or corporate or company logo.
- 3) Allows that such brand names and logos can be used in basic instructional materials if the SBE makes one of the following specific findings:
 - a) The use of the commercial brand name, product, or corporate or company logo in the text of the instructional materials is necessary for an educational purpose that cannot be achieved without using the commercial brand name, product, or corporate or company logo.
 - b) The appearance of a commercial brand name, product, or corporate or company logo in an illustration in instructional materials is incidental to the general nature of the illustration.

EXISTING LAW

_ The SBE has the constitutional authority to adopt instructional

materials for grades one through eight. The Education Code describes the process for the adoption and mandates that the submitted materials be evaluated for consistency with the criteria and standards in the SBE's curriculum frameworks. The Curriculum Commission serves as an advisory body to the board in the adoption process.

The adoption process involves three steps:

- 1) Legal Compliance. This is conducted to ensure that all resources used in the public schools are in compliance with the Education Code as well as SBE guidelines in the board's Standards for Evaluation of Instructional Materials document.
- 2) Public Review and Comment. This provides a period of public review of the materials and involves three public hearings.
- 3) Education Content Review. The Curriculum Commission recommends and the SBE appoints a panel of people to conduct an in-depth content review. The review examines the degree of alignment of the materials with the criteria contained in the SBE adopted frameworks.

Currently the SBE has published Standards for Evaluation of Instructional Materials with Respect to Social Content which include a section on Brand Names and Corporate Logos. This section suggests omission, whenever possible and feasible, of illustrations of, or references to, such private producers or their products.

For grades nine through twelve, local school boards adopt their own instructional materials.

FISCAL EFFECT : Unknown.

COMMENTS :

Current SBE Policy . As mentioned, the board's Standards for Evaluation of Instructional Materials document contains a section on "Brand Names and Corporate Logos" which was adopted in 1977. The purpose is to prevent unfair exposure for any privately produced product. The Standards do allow some for some logo depictions, however, they must serve an educational purpose.

Compliance with current SBE policy . While there is evidence that the SDE tries to enforce the board's Standards, there is additional evidence that such enforcement can be improved. Specifically, a sixth grade mathematics book adopted in 1995 and currently being used in California contains numerous illustrations of, and references to, corporate logos and brand names. In fact, one sixth grade math book currently in use in the public schools contains references to a wide array of brand-name consumer products including M&Ms, Pop Secret, Nike, Gatorade, Topps baseball cards, and Disney-MGM Studios many of which appear with illustrations as well.

What are basic instructional materials? As defined in the Education Code, "basic instructional materials" means instructional materials that are designed for use by pupils as a principal learning resource and that meet in organization and content the basic requirements of the intended course. As such, this bill is directed solely at these tax payer funded materials and would not effect a myriad of other supplemental instructional materials such as corporate-sponsored educational materials including multimedia teaching kits, videos, software, books, posters or workbooks, etc. While some schools have policies for reviewing these materials to see that they are not biased and commercial, it is more often left to the classroom teacher to detect bias or determine accuracy.

Arguments in support . According to the author, pupils are required to attend public schools for twelve years during which time they should not be forced to be overly exposed to commercial logos and produces intertwined into tax payer funded instructional materials which the state requires them to use. Evidence indicates that the SDEs enforcement of their Standards in this area appears to be lax. A review of one textbook shows that it has written reference to and/or illustrations of logos and brand names of tennis shoes, candy, soda drinks, popcorn, chewing gum and an amusement park. Inclusion of commercial logos and brand names in required instructional materials is not justified unless there is a clear instructional purpose and the State Board of Education must be diligent in its enforcement.

REGISTERED SUPPORT / OPPOSITION : (as of 4/2/99)

Support

California Teachers Association
Center for Commercial-Free Public Education
Hundreds of citizen letters

Opposition

None on file.

Analysis Prepared by : Hal Geiogue / ED. / (916) 319-2087

(Without Reference to File)

SENATE THIRD READING
SB 4 X3 (Ducheny)
As Amended February 14, 2009
2/3 vote. Urgency

SENATE VOTE :Vote not relevant _

SUMMARY : Reduces the Proposition 98 guarantee in the current year by \$7.3 billion through a mix of program reductions, deferrals and redesignation of funds and makes various statutory changes to implement these reductions for the Budget Act of 2008 and the Budget Act of 2009.

- 1) Implements the administration's categorical flexibility proposal which allows school districts to use funding from 43 categorical programs, totaling \$5.9 billion, for any educational purpose. Programs exempted from this flexibility include: Economic Impact Aid (EIA), special education, K-3 Class Size Reduction, child nutrition, Adults in Correctional Facilities, Apprenticeship programs, English Learner Student Assistance, Foster Youth Services, K-12 High Speed Network, Partnership Academies, Student Assessments, Agricultural Vocational Education, Charter Schools Facility Grants and Year Round Schools.
- 2) Makes across the board reductions totaling \$944 million to 53 categorical programs. This results in approximately a 15% reduction to each program.
- 3) Defers a total of \$3.24 billion in K-14 funds from FY 2008-09 to 2009-10 as follows:
 - a) Defers \$2 billion of school district apportionment payments and \$570 million in K-3 Class Size Reduction funding from February (FY 2008-09) to July (FY 2009-10);
 - b) Increases the existing June-to-July deferral of school district principal apportionments by \$340 million;
 - c) Defers an additional \$340 million of community college apportionment payments from January through April to July for FY 2009-10; and,

- d) Defers \$2.7 billion in K-14 funds within the 2009-10 fiscal year as follows:
 - i) \$1.2 billion of K-14 apportionment payments from July 2009 to October 2009; and,
 - ii) \$1.5 billion of school district apportionment payments from August 2009 to October 2009.
- 4) Reappropriates unspent prior year one-time K-14 Proposition 98 funds totaling approximately \$46 million to the K-3 Class Size Reduction Program (K-3 CSR) and reduces ongoing funds for that program by the same amount. This is a technical change; K-3 CSR is simply the vehicle through which past-year unspent funds would be used to achieve current-year savings.
- 5) Reduces 2008-09 Proposition 98 appropriations for a variety of categorical programs by \$59.8 million to capture natural savings.
- 6) Specifies that \$1.1 billion of the over appropriation of the Proposition 98 guarantee in FY 2008-09 shall be scored in satisfaction of "settle-up", displacing the \$150 million annual payments that would otherwise be made in FY 2008-09 and future years.

- 7)Repeals, for FY 2008-09, the General Fund appropriation for home-to-school transportation and funds it instead with Public Transportation Account and Mass Transportation Fund monies, which results in General Fund savings of about \$619 million.
- 8)Increases the 2008-09 county office of education (COE) revenue limit deficit factor from 4.396% to 7.839% and the school district deficit factor from 4.713% to 7.844% to reflect withdrawal of the K-12 COLA (\$244 million) and a \$945 million reduction to the COE and school district revenue limit.
- 9)Creates, for FY 2009-10, a COE deficit factor of 13.360% and a school district deficit factor of 13.094%, which represents foregone estimated COLA in those years and an additional \$268 million reduction to the revenue limits in FY 2009-10.
- 10)^^Declares that the budgeted COLA rate of zero percent for

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various K-12 categorical programs in 2009-10 is in-lieu of the COLA that would be applied pursuant to any other law.

- 11)^^^Suspends statutory requirements that local educational agencies (LEAs) buy newly-adopted instructional materials in FY 2008-09 and 2009-10, and relieves county offices of education of the responsibility to confirm the purchase of such materials during site visits. Additionally, this bill ensures that if school districts do purchase instructional materials with any state funds, they are subject to the specified state law surrounding the purchase of such materials.
- 12)^^^Reduces, for FY 2008-09 through 2012-13 , the amount that school districts are required to set aside in "routine restricted maintenance accounts" from 3% to 1% of their General Fund budgets .
- 13)^^^Suspends, for FY 2008-09 through 2012-13, reporting requirements for school districts which fail to set at least a half percent of their "current-year revenue limit average daily attendance" funding for maintenance of facilities.
- 14)^^^ Suspends, f or FY 2009-10 , the requirement that funds be transferred from the Proposition 98 Reversion Account to the School Facilities Emergency Repair Account (created by the Williams lawsuit). Additionally, p rohibits school districts from using School Facilities Emergency Repair Account funds to supplant state funds provided for deferred maintenance, and from depositing those funds into district deferred maintenance funds. Emergency repair f unds can be used only for emergency repairs .
- 15)Authorizes, for FY 2008-09 and 2009-10, LEAs to use restricted ending fund balances (as of June 30, 2008) for any purpose. All ending balances can be accessed except balances from the following programs: Economic Impact Aid, Targeted Instructional Improvement Grants, Instructional Materials, Special Education, Quality Education Investment Act, CAHSEE Supplemental Instruction, and Home-to-School Transportation. Requires LEAs who elect to use this authority to submit a related report to the Superintendent of Public Instruction (SPI), and requires the SPI to compile those reports and submit the information to the Legislature by October 31, 2009.

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- 16)Changes the penalty structure for the K-3 CSR program for FY 2008-09 through FY 2011-12 for schools exceeding the maximum class sizes under the class size reduction incentive program as follows: 20.5-21.5 students: 5% penalty; 21.5-22.5 **446** penalty; 22.5-23: 15% penalty; 23-25: 20% penalty; over 25

students: 30% penalty. Specifies that districts are only eligible to receive funding under the relaxed requirements if they were participating in the K-3 Class Size Reduction program as of December 10, 2008.

17) Establishes for FY 2011-12, a "post-SB 727" equalization formula. This formula is meant to ensure that at least 90 percent of average daily attendance (according to size and type of district) would receive the same level of base revenue limit funding.

18) Clarifies that the charter school categorical block grant, teacher dismissal apportionment, and the Year Round Schools program will not receive a cost-of-living increase in 2008-09, which is consistent with the treatment of other K-12 categorical programs.

19) R epeals Control Section 12.40 of the 2008 Budget Act (Mega-item), which allows LEAs to move funds between certain categorical programs. That limited flexibility will be replaced by the broader flexibility provided in the bill.

20) Authorizes the Department of Education to reduce principal apportionment payments to LEAs to the extent necessary to recapture payments made before mid-year cuts were implemented.

21) Allows an additional month for the encumbrance of various categorical funds that are being deferred from 2009-10 to 2010-11.

22) ^^^ Suspends existing statute that specifies the division of Proposition 98 funding among K-12 Local Educational Agencies (LEAs), community colleges, and other state agencies, and reflects a division of funding that conforms to that of the 2008-09 Budget.

Higher Education:

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23) Declares legislative intent that no new General Fund augmentation be used for contributions to the UC Retirement Plan.

24) Eliminates the 2008-09 Community College COLA of 0.68% which is approximately \$39.8 million .

25) D ecreases funding for CCC reimbursable state mandates from \$4 million to \$3 ,000, in an effort to defer payments to a future year.

26) Reduces, for FY 2008-09, Proposition 98 appropriations for child care by \$97 million. Included in this amount is a savings of \$15 million which is attributable to the delay in implementing new Regional Market Rates for child care providers, which were previously slated to go into effect March 1, 2009.

27) Reappropriates \$108 million in prior-year child development savings for the purpose of meeting a current year CalWORKS Stage 2 child care shortfall.

28) States that this measure addresses the fiscal emergency declared by the Governor on December 19, 2008, and adds an urgency clause to the bill.

FISCAL EFFECT : Reduces overall Proposition 98 funding by \$7.3 billion in FY 2008-09, of which, \$2.3 billion are actual program reductions. Provides a total of \$50.7 billion to K-14 education. This funding level meets the Proposition 98 minimum funding guarantee.

The 2009-10 Budget Act provides \$55.3 billion for Proposition 98 which meets the minimum funding guarantee.

Analysis Prepared by : Misty Feusahrens and Sara Bachez /
BUDGET / (916) 319-2099

FN: 0000096

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Instructional Materials FAQ

Instructional Materials Funding Realignment Program (IMFRP) and Williams Case FAQ and Answers.

Important Notice:

In 2009, the IMFRP was significantly affected by the passage of the education trailer bill Senate Bill 4 of the 2009-10 Third Extraordinary Session (SBX3 4) (Chapter 12, Statutes of 2009) and Assembly Bill 2 of the 2009-10 Fourth Extraordinary Session (ABX4 2). The California Department of Education has provided [guidance on the flexibility provisions and Frequently Asked Questions](#). The FAQ for the IMFRP are included below as questions numbered 1 through 17.

In 2011, education trailer bill, Senate Bill 70 (SB 70), signed into law March 24, 2011, further affected the IMFRP by extending the "flexibility" timelines. Please see details within the FAQ below.

SBX3 4 and ABX4 2

Instructional Materials

FAQ page on how Instructional Materials Funding Realignment was affected by education trailer Senate Bill 4 of the 2009-10 Third Extraordinary Session (SBX3 4) and Assembly Bill 2 of the 2009-10 Fourth Extraordinary Session (ABX4 2), and education trailer bill, Senate Bill 70 (Statutes of 2011).

Note: Please refer to the [Fiscal Issues Relating to Budget Reductions and Flexibility Provisions](#) guidance letter for information on provisions that apply to all programs. The letter covers such matters as the public hearing requirement, base year funding provisions, and how funding reductions will be calculated.

In addition, local educational agencies (LEAs) that are in Year 3 or beyond of Program Improvement should review the Program Improvement frequently asked questions (available later). Certain flexibility provisions will have a different impact on those LEAs.

1. [Are funds from the Instructional Materials Funding Realignment Program \(IMFRP\) included in the new flexibility provisions of California *Education Code \(EC\) 42605*?](#)
2. [From what fiscal years may a local educational agency \(LEA\) use IMFRP funds pursuant to the flexibility provisions?](#)
3. [We have carryover IMFRP funds from fiscal year 2007-08; can we transfer these funds into our general fund pursuant to the flexibility provisions?](#)
4. [Can we use IMFRP for "any educational purpose"?](#)
5. [What instructional materials may an LEA purchase if using funds from any of the 39 categorical programs included in the flexibility provisions?](#)
6. [Have new laws affected the state's adoption of instructional materials?](#)
7. [Have new laws affected LEAs' requirement to provide students with instructional materials adopted by the SBE within a certain period of time?](#)
8. [The SBE adopted new instructional materials in Mathematics in 2007 and Reading/Language Arts—English-Language Development \(RLA/ELD\) in 2008. Do LEAs need to implement these new materials prior to July 1, 2015?](#)
9. [When must LEAs implement SBE-adopted instructional materials?](#)
10. [Are the Williams sufficiency requirements still in place?](#)
11. [May an LEA implement instructional materials from one adoption at one school and instructional materials from another adoption at another school?](#)
12. [May an LEA use different textbooks or instructional materials from the same adoption in different classrooms teaching the same course?](#)
13. [We understood the law to be that if the statewide revenue limit dropped below an annual one percent increase that we do not have to hold an instructional materials sufficiency hearing. Has anything changed—do we have to hold a public hearing regarding instructional materials sufficiency?](#)
14. [When will we have new curriculum frameworks?](#)
15. [Work had already begun on the update and revision of the history-social science, science, health and mathematics frameworks. What's happening to each of them?](#)

16. When will work on the frameworks begin again?
17. New standards have been adopted for health and world languages, but the frameworks have not been revised to align to these standards. When will that occur?

Instructional Materials General Information

This includes questions regarding definitions and other general information on instructional materials and adoptions in California.

18. What are "instructional materials?"
19. What are "technology-based materials"?
20. Does any kind of electronic hardware necessary for running technology-based materials qualify as a component of technology-based materials?
21. May publishers offer instructional materials to LEAs for free?
22. Where do I find the state adopted textbooks for high school?
23. When do the current adoption lists expire? Can we purchase materials if there is no current adoption list?
24. What are standards maps? Do you have them for grades nine through twelve?
25. Each local school board needs to do some type of board resolution as it relates to the adoption of instructional materials. What does this mean?

Instructional Materials Funding

Questions about the Instructional Materials Funding Realignment Program (IMFRP) which was reauthorized by SB 733 (Torlakson), Chapter 304 of the Statutes of 2008, and other sources of funding.

26. How much IMFRP funding will my district or county office get in 2009-10?
27. When will local education agencies receive IMFRP funding allocations?
28. Do charter schools receive IMFRP funding?
29. What Kindergarten through grade eight materials can we buy with IMFRP funds?
30. What high school (grades nine through twelve) materials can we buy with IMFRP funds?
31. What are the "Other Approved Purposes" for IMFRP?
32. What does the 24 month rule in IMFRP mean?
33. What does it mean in the IMFRP that "each pupil is provided with" instructional materials?
34. What is required to purchase classroom library materials for Kindergarten through grade four?
35. Are the requirements for the IMFRP and the Williams settlement the same?
36. Are there funds available to purchase supplementary materials for English Learners to support the core curriculum?
37. Did the state set aside funds solely for the schools to purchase textbooks for compliance with the Williams settlement?

Public Hearing and Sufficiency of Instructional Materials

Questions relating to the annual public hearing and resolution on the sufficiency of instructional materials required under the Williams settlement.

38. What are the Hearing and Resolution of *Education Code* Section 60119?
39. Do the instructional materials provisions of *Education Code* Section 60119 apply to all school districts?
40. Do the provisions of *Education Code* Section 60119 apply to charter schools?
41. What does a local governing board need to do to comply with the Williams settlement related to instructional materials?
42. When does the public hearing need to be held?
43. What does "sufficiency of instructional materials" mean?
44. Do the requirements regarding instructional materials sufficiency apply to technology-based materials?
45. If the district has insufficient instructional materials, what does the district need to do?

46. If we have insufficient instructional materials, what sources of funds can we use in addition to our IMFRP funds to purchase additional instructional materials?
47. When does the district need to remedy any insufficiency in instructional materials?
48. If we do not provide sufficient health or foreign language instructional materials or science laboratory equipment will our funding for instructional materials be affected?
49. What about Special Education students and English Learners? Are there any exceptions?
50. What materials should be provided to our English learners?
51. Schools believed that the state-adopted kindergarten through grade six reading/language arts materials met the science and history-social science standards, so therefore they did not have to buy kindergarten through grade six science or history-social science textbooks. Is this true?
52. May a district purchase the Big Books for use in class and a Student Practice Book for every student and be compliant with the requirements of the Williams settlement?
53. Do Web-based or electronic textbooks count as instructional materials?
54. How much of the kindergarten through grade eight adopted materials for each of the core academic areas must each student have to meet the Williams Legislation requirement?
55. If a local governing board approves a series of novels and a grammar book for high school English courses, is this acceptable?
56. What documentation or evidence of adequate materials purchased do we need to present or have ready?
57. How should a district document that it has sufficient materials in grades kindergarten through grade eight as defined in the instructional materials survey form?
58. What do we do if we did not hold the public hearing as required by Education Code Section 60119?

Williams Settlement Monitoring

Questions regarding the monitoring of instructional materials sufficiency.

59. What monitoring is required under the Williams settlement for API Decile 1- 3 schools?
60. What about the students who don't bring their textbooks when the school visit occurs? Will this count against us?
61. What happens if a district doesn't have sufficient instructional materials for Decile 1 and 2 schools and doesn't have sufficient funding to provide a standards-aligned textbook for each student in the four core areas?
62. If a school is on a multi-track schedule, does the county have to conduct site visits for all tracks?
63. What if we have not received all of our textbooks from the publisher by the first four weeks of school and/or time of the school visit?

Question 1:

Are funds from the Instructional Materials Funding Realignment Program (IMFRP) included in the new flexibility provisions of California Education Code (EC) 42605?

Answer:

Yes. Education Code (EC) Section 42605 stipulates that item 6110-189-0001 (IMFRP) of the Budget Act is included in the new flexibility provisions.

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Question 2:

From what fiscal years may a local educational agency (LEA) use IMFRP funds pursuant to the flexibility provisions?

Answer:

Pursuant to EC Section 42605 the flexibility provisions apply to fiscal years 2008-09 through 2014-15.

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Question 3:

We have carryover IMFRP funds from fiscal year 2007-08; can we transfer these funds into our general fund pursuant to the flexibility provisions?

Answer:

Yes. LEAs may transfer any remaining instructional materials fund balances existing as of June 30, 2008. While Senate Bill 4 of the 2009-10 Third Extraordinary Session (SBX3 4) specifically excluded instructional materials fund balances existing as of June 30, 2008, from being included in any flexibility provisions, Assembly Bill 2 of the 2009-10 Fourth Extraordinary Session (ABX4 2) subsequently removed the exclusion for instructional materials.

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Question 4:

Can we use IMFRP for “any educational purpose”?

Answer:

Yes, under *EC* Section 42605(a) IMFRP funds may be used “for any educational purpose.” However, it is important to note that *EC* Section 42605(e)(2) references certain restrictions on the use of funds if an LEA chooses to use IMFRP or other flexible funds to purchase instructional materials (please see question #5 below).

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Question 5:

What instructional materials may an LEA purchase if using funds from any of the 39 categorical programs included in the flexibility provisions?

Answer:

EC Section 42605(e)(2) states the following:

"(A) Any instructional materials purchased by a local education agency shall be the materials adopted by the state board for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, the materials purchased shall be aligned with state standards as defined by Section 60605, and shall also meet the reporting and sufficiency requirements contained in Section 60119.

"(B) For purposes of this section, 'sufficiency' means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119, and that all pupils within the local education agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3." When using funds from any of the 39 categorical programs included in the flexibility provisions of *EC* Section 42605 to purchase instructional materials for grades K–8, LEAs may only purchase State Board of Education (SBE) adopted instructional materials from the following adoption lists:

- Foreign Language 2003 and 2005 follow-up
- Health 2004
- History-Social Science 2005
- Science 2006
- Visual and Performing Arts 2006
- Mathematics 2007
- Reading/Language Arts—English-Language Development 2008

When using funds from any of the 39 categorical programs included in the flexibility provisions of *EC* Section 42605 to purchase instructional materials for grades 9–12, LEAs may only purchase standards-aligned, locally adopted instructional materials in the following subject areas:

- History-Social Science
- Science
- Mathematics
- Reading/Language Arts—English-Language Development

Materials from previous standards-aligned SBE adoption lists may be used to meet the requirements for instructional materials sufficiency. LEAs may utilize general funds or Proposition 20 lottery funds to purchase any instructional materials.

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Question 6:

Have new laws affected the state's adoption of instructional materials?

Answer:

Yes. *EC* Section 60200.7, states the following:

"Notwithstanding sections 60200 and 60200.1, the state board shall not adopt instructional materials or follow the procedures adopted pursuant to sections 60200 and 60200.1 until the 2015-16 school year."

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Question 7:

Have new laws affected LEAs' requirement to provide students with instructional materials adopted by the SBE within a certain period of time?

Answer:

Yes. *EC* Section 60422.1, states the following:

"(a) Notwithstanding subdivision (i) of Section 60200, Section 60422, or any other provision of law, for the 2008-09 to the 2014-15 fiscal years, inclusive, the governing board of a school district is not required to provide pupils with instructional materials by a specified period of time following adoption of those materials by the state board.

"(b) Notwithstanding subdivision (a), this section does not relieve school districts of their obligations to provide every pupil with textbooks or instructional materials, as provided in Section 1240.3....

"(d) This section shall become inoperative on July 1, 2015, and, as of January 1, 2016, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2014, deletes or extends the dates on which it becomes inoperative and is repealed."

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Question 8:

The SBE adopted new instructional materials in Mathematics in 2007 and Reading/Language Arts—English-Language Development (RLA/ELD) in 2008. Do LEAs need to implement these new materials prior to July 1, 2015?

Answer:

No.

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Question 9:

When must LEAs implement SBE-adopted instructional materials?

Answer:

The law is unclear on this issue. At present, it is sufficient to say that it is not before July 1, 2015.

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Question 10:

Are the Williams sufficiency requirements still in place?

Answer:

Yes. Please reference *EC* Section 60422.1 (b) above.

Districts must still insure that every student has standards-aligned instructional materials in the four core subjects (state-adopted in grades K–8 and locally adopted for grades 9–12). Additionally, compliance visits for Williams will continue as usual.

EC Section 60422.1 reiterates that nothing relieves the local board from conducting the annual public hearing required by *EC* Section 60119. For comprehensive FAQs on the public hearing requirements, please see additional related questions below.

An important point is that textbooks or instructional materials from the prior SBE adoption lists meet the sufficiency requirement; for example, mathematics textbooks or instructional materials from the 2001 SBE adoption list and RLA/ELD textbooks or instructional materials from the 2002 SBE adoption list meet Williams sufficiency requirements.

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Question 11:

May an LEA implement instructional materials from one adoption at one school and instructional materials from another adoption at another school?

Answer:

All students in the same grade level or course within an LEA must use instructional materials from the same adoption (SBE-adopted for grades K–8; locally adopted for grades 9–12). For example, if a high school district adopts new biology textbooks, all students in the district taking the same course must have books from the same local adoption.


EC Section 42605(e)(2)(B) states the following:

"...all pupils within the local education agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3."

EC Section 1240.3 states the following:

"1240.3. (a) For the purposes of Section 1240, for the 2008-09 to 2014-15 fiscal years, inclusive, sufficient textbooks or instructional materials include standards-aligned textbooks or instructional materials, or both, that were adopted prior to July 1, 2008, by the state board or local educational agency pursuant to statute, unless those local educational agencies purchased or arranged to purchase textbooks or instructional materials adopted by the state board after that date. It is the intent of the Legislature that each local educational agency provide each pupil with standards-aligned textbooks or instructional materials from the same adoption, consistent with sections 60119 and 60422. This section does not require a local educational agency to purchase all of the instructional materials included in an adoption if the materials that are purchased are made available to all the pupils for whom they are intended in all of the schools within the local educational agency."

However, Senate Bill 509 (2011-12), by Senator Price, authorized school districts to purchase instructional materials for their neediest schools (Academic Performance Index ranked 1-3) without having to acquire new materials for the higher performing schools. A copy of the letter sent by the State Superintendent of Public Instruction (SSPI) notifying school districts of the passage of this bill is available at the California Department of Education (CDE) Web site

[Instructional Materials Acquisitions For Neediest Schools](#). You may view the text of the bill on the California Legislative Information Web page [SB 509 Senate Bill - Chaptered](#). 

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Question 12:

May an LEA use different textbooks or instructional materials from the same adoption in different classrooms teaching the same course?

Answer:

Yes. LEAs must use textbooks or instructional materials from the same adoption for an entire grade level or course, but these instructional materials may be from different publishers; for example, two teachers within an LEA may choose to use algebra 1 textbooks from different publishers, as long as both books are from the same adoption list. Please reference *EC* Section 1240.3 above.

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Question 13:

We understood the law to be that if the statewide revenue limit dropped below an annual one percent increase that we do not have to hold an instructional materials sufficiency hearing. Has anything changed—do we have to hold a public hearing regarding instructional materials sufficiency?

Answer:

EC Section 60119 has been amended. Regardless of the revenue limit, the governing board of a school district must hold an annual public hearing in order to determine whether every student has sufficient and appropriate textbooks or instructional materials in mathematics, science, history-social science, and RLA/ELD. Additional information, including FAQs regarding these public hearings, is available in additional related questions below.

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Question 14:

When will we have new curriculum frameworks?

Answer:

Curriculum frameworks development is suspended by law until the 2015-16 school year.

EC Section 60200.7 states: "Notwithstanding Sections 60200 and 60200.1, the state board shall not adopt instructional materials or follow the procedures adopted pursuant to Sections 60200 and 60200.1 until the 2015-16 school year." EC Sections 60200 and 60200.1 include the process for curriculum frameworks development.

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Question 15:

Work had already begun on the update and revision of the history-social science, science, health and mathematics frameworks. What's happening to each of them?

Answer:

All development work on the frameworks for history-social science, science, health, and mathematics has been suspended. On July 17, 2009, the Curriculum Development and Supplemental Materials Commission (Curriculum Commission) approved the draft update of the History-Social Science Framework for California Public Schools for field review. The draft framework is posted on the CDE [Standards, Curriculum Frameworks & Instructional Resources Division Web page](#), but the actual field review and online survey will not occur at this time. The State Board of Education's appointment of members to the Curriculum Framework and Evaluation Criteria Committees (CFCCs) for the health and mathematics frameworks has been suspended. The previously scheduled meetings of the science, health, and mathematics CFCCs have been cancelled.

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Question 16:

When will work on the frameworks begin again?

Answer:

The current law provides for resumption of work on the frameworks to begin in the 2015-16 school year.

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Question 17:

New standards have been adopted for health and world languages, but the frameworks have not been revised to align to these standards. When will that occur?

Answer:

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Though the current law provides for resumption of work on the frameworks in the 2015-16 school year, no schedule has been established for the revision of specific frameworks.

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Question 18:

What are "instructional materials?"

Answer:

The definition of instructional materials is in *Education Code* Section 60010 (h). It states "instructional materials means all materials that are designed for use by pupils and their teachers as a learning resource and help pupils acquire facts, skills, or opinions or develop cognitive processes. Instructional materials may be printed or nonprinted, and may include textbooks, technology-based materials, other educational materials, and tests". This includes Web-based and electronic textbooks.

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Question 19:

What are "technology-based materials"?

Answer:

The definition of technology-based materials is in *Education Code* Section 60010(m)(1). It states "Technology-based materials" means basic or supplemental instructional materials that are designed for use by pupils and teachers as learning resources and that require the availability of electronic equipment in order to be used as a learning resource. Technology-based materials include, but are not limited to, software programs, video disks, compact disks, optical disks, video and audio tapes, lesson plans, and data bases.

Please also refer to [Question #52](#) below.

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Question 20 :

Does any kind of electronic hardware necessary for running technology-based materials qualify as a component of technology-based materials?

Answer:

Education Code Section 60010(m)(2) addresses this question as follows: "Technology-based materials do not include the electronic equipment required to make use of those materials, unless that equipment is to be used by pupils and teachers as a learning resource. However, this shall not be construed to authorize a school district to replace computers or related equipment in an existing computer lab or allow a school district to establish a new computer lab."

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Question 21:

May publishers offer instructional materials to LEAs for free?

Answer:

Yes. *EC* 60061 stipulates that a publisher must "Provide any instructional materials free of charge in this state to the same extent as that received by any state or school district in the United States." Links to lists of free instructional materials are available by subject matter and publisher on the [456 Price List of Adopted Instructional Materials](#) Web page. Please note, however, *EC* 60071 forbids publishers from offering "valuable thing(s)" to a school official for the purpose of

influencing the purchase of instructional materials.

Additionally, the definition of "instructional materials" (*EC 60010[h]*) was changed in 2009 (AB 1398) to include "technology-based materials" which in turn are defined as including the "electronic equipment" necessary to make use of those materials so long as such "electronic equipment" are utilized by pupils and teachers as a "learning resource" (*EC 60010[m]*). As the use of electronic media has become more popular in recent years, California modified *EC* to accommodate its increased use. However, this does not authorize a school district to replace computers or related equipment in an existing computer lab or allow a school district to establish a new computer lab. Please also see Q&A 18-20 and 53.

Question 22:

Where do I find the state adopted textbooks for high school?

Answer:

There are no state adoptions in grades nine through twelve. The State Board of Education only adopts instructional materials for kindergarten through grade eight. Local school district governing boards have the authority and responsibility under *Education Code* Section 60400 to adopt instructional materials for use in their high schools for grades nine through twelve.

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Question 23:

When do the current adoption lists expire? Can we purchase materials if there is no current adoption list?

Answer:

The issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp) [<http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp>].

The statutes now provide that each adoption list continues until the State Board of Education adopts a new list of instructional materials in that subject. For example, the 2001 mathematics adoption list expired in November 2007 and IMFRP funds could have been used to purchase instructional materials on that list until the November expiration date.

Once an adoption list expires, you may not use IMFRP funds to purchase materials from that list. However, if you need to purchase replacement texts after an adoption list has expired, you may use other funds to purchase these materials, such as Proposition 20 restricted lottery funds, general funds, or other funds that are allowed to be used to remedy insufficiencies. (See [Price Lists of K-8 Adopted Instructional Materials for currently adopted materials](http://www3.cde.ca.gov/impricelist/implsearch.aspx)) [<http://www3.cde.ca.gov/impricelist/implsearch.aspx>].

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Question 24:

What are standards maps? Do you have them for grades nine through twelve?

Answer:

The grade level content standards maps were developed so that the districts could determine the extent to which basic instructional materials in history-social science, mathematics, reading/language arts and science are aligned to the content standards adopted by the State Board of Education.

Publishers of instructional materials submitted for state adoption in kindergarten through grade eight complete standards maps for their programs by including citations that show where in their program each standard is taught. Copies of the standards map templates are on our Web site – see links below. The completed standards maps are available from the publisher.

Standards map templates for grades nine through twelve ~~457~~ also been developed. Publishers may provide completed standards maps to assist districts in their selection of instructional materials for high school, but they are not required

to do so. Districts are encouraged to use these standards maps, either by completing a standards map by entering their own citations, or by verifying the publisher's citations, to determine if the instructional materials are aligned to state content standards.

Reading/Language Arts Standards Maps

- [Program 1](http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp): [http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp] Reading/Language Arts Basic Program, Kindergarten Through Grade Eight
- [Program 2](http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp): [http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp] Reading/Language Arts Basic Program, Kindergarten Through Grade Eight
- [Program 3](http://www.cde.ca.gov/ci/rl/im/basicprog3instr.asp): [http://www.cde.ca.gov/ci/rl/im/basicprog3instr.asp] Primary Language/English-Language Development Basic Program, Kindergarten Through Grade Eight
- [Program 4](http://www.cde.ca.gov/ci/rl/im/rlamapsintintprg4.asp): [http://www.cde.ca.gov/ci/rl/im/rlamapsintintprg4.asp] Intensive Intervention Program in Reading/Language Arts, Grades Four Through Eight
- [Program 5](http://www.cde.ca.gov/ci/rl/im/rlaeldmapsintprg5.asp): [http://www.cde.ca.gov/ci/rl/im/rlaeldmapsintprg5.asp] Intensive Intervention Program for English Learners, Grades Four Through Eight

Mathematics, K-8 Standards Maps

- [Basic program](http://www.cde.ca.gov/ci/ma/im/mathstandmaps.asp) [http://www.cde.ca.gov/ci/ma/im/mathstandmaps.asp]
- [Intervention Program](http://www.cde.ca.gov/ci/ma/im/mathintprog.asp) [http://www.cde.ca.gov/ci/ma/im/mathintprog.asp]
- [Algebra Readiness](http://www.cde.ca.gov/ci/ma/im/stanmapalgebreadns.asp) [http://www.cde.ca.gov/ci/ma/im/stanmapalgebreadns.asp]

Science Standards Maps

- [Science, K-8 Standards Maps](http://www.cde.ca.gov/ci/sc/im/scstanmaps.asp) [http://www.cde.ca.gov/ci/sc/im/scstanmaps.asp]

History-Social Science Standards Maps

- [History-Social Science, K-8 Standards Maps](http://www.cde.ca.gov/ci/hs/im/hsstanmaps.asp) [http://www.cde.ca.gov/ci/hs/im/hsstanmaps.asp]

Grades 9-12 Standards Maps for the Core Content Areas

- [9-12 Standards Maps](http://www.cde.ca.gov/ci/cr/cf/gr912stmap.asp) [http://www.cde.ca.gov/ci/cr/cf/gr912stmap.asp]

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Question 25:

Each local school board needs to do some type of board resolution as it relates to the adoption of instructional materials. What does this mean?

Answer:

An annual public hearing and resolution on sufficiency is required by *Education Code* Section 60119. See following FAQ's related to this requirement. A [sample resolution](#) (DOC; 35KB; 3pp.) is available on our Web site. Districts are not required to use this resolution.

The Statement of Assurance for instructional materials funds that was previously distributed to districts at the end of each fiscal year is not required for fiscal years 2008-09 through 2014-15.

Instructional Materials Funding.

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Question 26:

How much IMFRP funding will my district or county office get in 2009-10?

Answer:

The state budget for 2009-10 is 333.7 million in total funding for the IMFRP. [Funding \[http://www.cde.ca.gov/fg/fo/index.asp\]](http://www.cde.ca.gov/fg/fo/index.asp) information year is available . This issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action \[http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp\]](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp)

[Top of Page](#)**Question 27:****When will local education agencies receive IMFRP funding allocations?**

Answer:

This issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action \[http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp\]](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp)

[Top of Page](#)**Question 28:****Do charter schools receive IMFRP funding?**

Answer:

Charter schools receive their IMFRP funds as part of their categorical block grant. "Categorical block grant funding may be used for any purpose determined by the governing body of the charter school." (*Education Code* Section 47634.1(f))

[Top of Page](#)**Question 29:****What Kindergarten through grade eight materials can we buy with IMFRP funds?**

This issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action \[http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp\]](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp).

[Top of Page](#)**Question 30:****What high school (grades nine through twelve) materials can we buy with IMFRP funds?**

This issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action \[http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp\]](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp).

[Top of Page](#)**Question 31:****What are the "Other Approved Purposes" for IMFRP?**

This issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp) [http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp].

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Question 32:

What does the 24 month rule in IMFRP mean?

The issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action](http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp) [http://www.cde.ca.gov/fg/fr/eb/yr09budgetacts.asp].

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Question 33:

What does it mean in the IMFRP that "each pupil is provided with" instructional materials?

Answer:

Education Code Section 1240.3(c)(2)(B), states the following: "For the purposes of this section, "sufficiency" means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119..."

There is no specific definition of the phrase "provided with." The local governing board will determine how it will provide these textbooks or basic instructional materials to students. However, *Education Code* Section 60119 now defines sufficient textbooks or instructional materials to mean that, "each pupil, including English learners, has a textbook, or instructional materials, or both, to use in class and to take home."

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Question 34:

What is required to purchase classroom library materials for Kindergarten through grade four?

The issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action](#).

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Question 35:

Are the requirements for the IMFRP and the Williams settlement the same?

Answer:

Though the requirements are similar and in some cases overlap, there are a few differences. School districts are required to meet the *Williams* requirements for sufficient instructional materials and, in order to continue to receive IMFRP funding, the district must meet the IMFRP requirements.

Both *Williams* and IMFRP require that each pupil be provided with standards-aligned textbooks or instructional materials in the four core curriculum areas of reading/language arts, mathematics, science and history-social science. The IMFRP requires that for students in kindergarten through grade eight these be state adopted standards-aligned textbooks or basic instructional materials, while the *Williams* settlement does not specifically require that the textbooks

be state adopted.

Williams requires that each pupil in kindergarten through grade twelve be provided with the appropriate standards-aligned instructional materials by the end of the second month of each school year.

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Question 36:

Are there funds available to purchase supplementary materials for English Learners to support the core curriculum?

Answer:

In the 2006-07 state budget a total of \$30 million was set aside for districts to purchase supplemental instructional materials for English Learners. These supplemental materials were to be used in addition to the adopted standards-aligned materials. All funds were to have been fully obligated by June 30, 2009.

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Question 37:

Did the state set aside funds solely for the schools to purchase textbooks for compliance with the Williams settlement?

Answer:

A total of \$138 million was allocated in 2004-05 to districts based on enrollment in schools in API Decile 1 and 2. These funds were restricted to the purchase of standards-aligned adopted textbooks, state-adopted for grades kindergarten through grade eight and locally adopted for grades nine through twelve, in reading/language arts, mathematics, science and history-social science for students in Decile 1 and 2 schools. This was a one-time appropriation.

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Public Hearing and Sufficiency of Instructional Materials

Question 38:

What are the Hearing and Resolution of *Education Code* Section 60119?

Answer:

Education Code Section 60119 requires that local governing boards hold an annual public hearing and adopt a [resolution](#) (DOC; 35KB; 3pp.) stating whether each pupil in the district has sufficient textbooks or instructional materials in reading/language arts, mathematics, science, and history-social science aligned to content standards and consistent with the content and cycles of the curriculum framework adopted by the State Board of Education.

The governing board must also make a written determination as to whether each pupil enrolled in health and foreign language classes has sufficient textbooks or instructional materials.

The governing board must also determine the availability of science laboratory equipment for high school science laboratory classes.

There must be at least ten calendar days notice of the public hearing posted in at least three public places within the

district. The notice must state the time, place, and purpose of the hearing. The hearing must not be held during or immediately after school hours.

Governing boards are to encourage participation by parents, teachers, members of the community, and bargaining unit leaders in the hearing.

If the local governing board finds that there are insufficient materials it must do the following:

- Give the percentage of students in each school and subject that lack sufficient instructional materials
- Provide information to classroom teachers and to the public that sets forth the reasons why each pupil does not have sufficient textbooks or instructional materials
- Take action to insure that each pupil has sufficient instructional materials within two months of the start of the school year

This public hearing and resolution are required annually. Districts should keep the resolution on file for the district's annual audit.

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Question 39:

Do the instructional materials provisions of *Education Code* Section 60119 apply to all school districts?

Answer:

Yes, the provisions of *Education Code* Section 60119 requiring an annual public hearing and adoption of a resolution on the sufficiency of instructional materials apply to all public school districts and county offices of education. Note that even with the IMFRP flexibility established by SBX3 4, ABX4 2, and SB 70, districts must continue provide students with sufficient instructional materials and hold annual public hearings during which a resolution regarding instructional materials sufficiency is made.

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Question 40:

Do the provisions of *Education Code* Section 60119 apply to charter schools?

Answer:

A charter school will only be required to comply with *Education Code* Section 60119 if it "opts in" to the Williams settlement or if it receives IMFRP funding as a separate allocation. Charter schools generally receive their IMFRP funds in the Charter School Categorical Block Grant. Therefore, they do not come under the Section 60119 requirements

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Question 41:

What does a local governing board need to do to comply with the Williams settlement related to instructional materials?

Answer:

All districts must hold an annual public hearing and make a determination through a resolution (DOC; 35KB; 3pp.) that every pupil has sufficient textbooks or instructional materials in the four core areas of reading/language arts, mathematics, science, and history-social science. If there are insufficient instructional materials in these areas the governing board must take action to correct the insufficiency. The governing board must also make a written determination as to whether there are sufficient health and foreign language textbooks for every pupil enrolled in those classes and on the availability of science laboratory equipment for grades nine through twelve.

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Question 42:**When does the public hearing need to be held?**

Answer:

The public hearing must be held between the first day that pupils attend school and the end of the eighth week of the school year. For multi-track year-round districts, the clock starts with the first day pupils attend school in any track that begins in August or September. The public hearing may not take place during or immediately following school hours.

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Question 43:**What does "sufficiency of instructional materials" mean?**

Answer:

Education Code Section 1240.3(c)(2)(B), states the following: "For the purposes of this section, "sufficiency" means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119..."

Education Code Section 60119(c)(1) states that sufficient textbooks or instructional materials means, "each pupil, including English Learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home. This paragraph does not require two sets of textbooks or instructional materials for each pupil." This specifically applies to four subject areas: reading/language arts, mathematics, science, and history-social science.

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Question 44:**Do the requirements regarding instructional materials sufficiency apply to technology-based materials?**

Answer:

Yes. The *Williams* Settlement instructional materials sufficiency requirements apply equally to technology-based materials. Please also refer to [Question #52](#) below.

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Question 45:**If the district has insufficient instructional materials, what does the district need to do?**

Answer:

The district must provide information to classroom teachers and the public setting forth, for each school in which there is an insufficiency:

- The percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area
- The reasons that each pupil does not have sufficient instructional materials.

The district must then take action to ensure that each pupil has sufficient instructional materials within two months of

the beginning of the school year.

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Question 46:

If we have insufficient instructional materials, what sources of funds can we use in addition to our IMFRP funds to purchase additional instructional materials?

The issue is affected by the budgetary flexibility provisions extended by SB 70. For more information please see the [Summary of Budget Action](#).

Answer:

Education Code Section 60119 (a)(2)(B) permits districts to use any of the following funds to remedy an insufficiency:

1. Any funds available for textbooks or instructional materials, or both, from categorical programs, including any funds allocated to school districts that have been appropriated in the annual Budget Act.
2. Any funds of the district that are in excess of the amount available for each pupil during the prior fiscal year to purchase textbooks or instructional materials, or both.
3. Any other funds available to the school district for textbooks or instructional materials, or both.

Examples of funds that may be used to remedy the insufficiency include, but are not limited to, lottery funds, Proposition 20 restricted lottery funds, school improvement funds, and general funds.

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Question 47:

When does the district need to remedy any insufficiency in instructional materials?

Answer:

The district will be expected to remediate any insufficiency of instructional materials within two months of the beginning of the school year. If a district has submitted purchase orders to the publisher to purchase instructional materials to remedy the insufficiency, these materials should be received and in students' hands by the end of the second month of the school year.

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Question 48:

If we do not provide sufficient health or foreign language instructional materials or science laboratory equipment will our funding for instructional materials be affected?

Answer:

The provision of textbooks for health and foreign language or science equipment in high schools is not a condition of receipt of funds.

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Question 49:

What about Special Education students and English Learners? Are there any exceptions?

Answer:

Special education resource students should be enrolled in mainstream core classes and should have textbooks or basic instructional materials in the four core subject areas. Students in special day classes or other types of special education programs that are segregated from the mainstream classroom should have sufficient quantities of the instructional materials required in that student's Individualized Education Program (IEP), which has been established and agreed to by the teachers and parents of that student. Special day students' IEPs may require modified instructional materials instead of, or in addition to, the adopted instructional materials or may require adopted instructional materials that are aligned to the content standards at a different grade level. The Williams settlement legislation does not circumvent IEPs.

Instructional materials for students not in mainstreamed special education classes should be based on the student's IEP.

English Learners are explicitly mentioned in the law and must have adopted textbooks in the four core subject areas, including the English language development component of an adopted program.

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Question 50:**What materials should be provided to our English learners?**

Answer:

English learners must be provided standards-aligned instructional materials. For grades kindergarten through grade eight these may be state-adopted instructional materials in mathematics, science, reading/language arts, and history-social science that are consistent with the content and cycles of the curriculum frameworks and include universal access features that address the needs of English learners. For grades nine through twelve local governing boards should adopt standards-aligned materials for all students that include universal access features.

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Question 51:**Schools believed that the state-adopted kindergarten through grade six reading/language arts materials met the science and history-social science standards, so therefore they did not have to buy kindergarten through grade six science or history-social science textbooks. Is this true?**

Answer:

No. The programs mentioned were adopted as reading/language arts/English language development programs. Kindergarten through grade six students must have science and history-social science instructional materials in addition to reading/language arts.

While the Williams settlement did not specifically require that each pupil be provided with state adopted instructional materials, districts must still meet the IMFRP requirement to provide each student in kindergarten through grade eight with state adopted, standards-aligned instructional materials in history-social science and science by the start of the school term that commences no later than 24 months from the date of adoption of the instructional materials by the State Board of Education (*Education Code* Section 60422).

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Question 52:

May a district purchase the Big Books for use in class and a Student Practice Book for every student and be compliant with the requirements of the Williams settlement?

Answer:

Districts should determine and specify in their sufficiency resolutions those materials which meet the definition of sufficiency. *Education Code* Section 60119 defines "sufficient textbooks or instructional materials" to mean that each pupil, including English learners, has a standards-aligned textbook or instructional materials, or both, to use in class and to take home." If a district determines that the Practice Book covers all of the standards, and so indicates in its sufficiency resolution, it may provide the practice books for each student to use in class and to take home. In this circumstance, the district is not required to buy an individual textbook for each student.

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Question 53:**Do Web-based or electronic textbooks count as instructional materials?**

Answer:

Yes, but in order to meet the definition of sufficient instructional materials students need to have access to the materials both at school and at home. This presumes that students with Web-based materials have access to computers and the Internet in school and at home and students with electronic textbooks have access to computers in school and at home.

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Question 54:**How much of the kindergarten through grade eight adopted materials for each of the core academic areas must each student have to meet the Williams Legislation requirement?**

Answer:

The CDE Web site [Price Lists of K-8 Adopted Instructional Materials](http://www.cde.ca.gov/impricelist/implsearch.aspx) [http://www.cde.ca.gov/impricelist/implsearch.aspx] has lists of the state-adopted kindergarten through grade eight instructional materials. Each district determines which components to purchase based on its students' needs and to insure that all of the state content standards in that subject and grade level are addressed.

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Question 55:**If a local governing board approves a series of novels and a grammar book for high school English courses, is this acceptable?**

Answer:

Yes, as long as the local board adopted that combination of materials as being standards-aligned. Districts will have to determine whether each pupil has sufficient instructional materials for those courses, including sufficient numbers of novels that can be reasonably rotated among pupils.

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Question 56:

What documentation or evidence of adequate materials purchased do we need to present or have ready?

Answer:

Education Code Section 60119 requires documentation of sufficiency of instructional materials to be presented at the board meeting and public hearing. The CDE has developed survey forms [<http://www.cde.ca.gov/ci/cr/cf/imsurveyfrms.asp>] that may be used as a self-study and county office validation tool for grades kindergarten through grade twelve. This includes a list of the state adopted standards-aligned programs for kindergarten through grade eight. Districts with high schools, grades nine through twelve, will generate a list of their locally adopted standards-aligned instructional materials information according to guidelines recommended by the CDE.

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Question 57:**How should a district document that it has sufficient materials in grades kindergarten through grade eight as defined in the instructional materials survey form?**

Answer:

Current law calls for a district to have sufficient materials that are consistent with the content and cycles of the curriculum frameworks. In the standards-based areas of history-social science, reading/language arts, science, and mathematics, a district may choose to provide a number of ways of documenting how its materials are consistent with a current curriculum framework. The CDE does provide standards maps (a matrix of standards) at:

Reading/Language Arts Standards Maps

- Program 1: [<http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp>] Reading/Language Arts Basic Program, Kindergarten Through Grade Eight
- Program 2: [<http://www.cde.ca.gov/ci/rl/im/rlaeldmapbasic1-2.asp>] Reading/Language Arts Basic Program, Kindergarten Through Grade Eight
- Program 3: [<http://www.cde.ca.gov/ci/rl/im/basicprog3instr.asp>] Primary Language/English-Language Development Basic Program, Kindergarten Through Grade Eight
- Program 4: [<http://www.cde.ca.gov/ci/rl/im/rlamapsintintprg4.asp>] Intensive Intervention Program in Reading/Language Arts, Grades Four Through Eight
- Program 5: [<http://www.cde.ca.gov/ci/rl/im/rlaeldmapsintprg5.asp>] Intensive Intervention Program for English Learners, Grades Four Through Eight

Mathematics, K-8 Standards Maps

- Basic program [<http://www.cde.ca.gov/ci/ma/im/mathstandmaps.asp>]
- Intervention Program [<http://www.cde.ca.gov/ci/ma/im/mathintprog.asp>]
- Algebra Readiness [<http://www.cde.ca.gov/ci/ma/im/stanmapalgebreadns.asp>]

Science Standards Maps

- Science, K-8 Standards Maps [<http://www.cde.ca.gov/ci/sc/im/scstanmaps.asp>]

History-Social Science Standards Maps

- History-Social Science, K-8 Standards Maps [<http://www.cde.ca.gov/ci/hs/im/hsstanmaps.asp>]

Grades 9-12 Standards Maps for the Core Content Areas

- 9-12 Standards Maps [<http://www.cde.ca.gov/ci/cr/cf/912stmap.asp>]

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Question 58:**What do we do if we did not hold the public hearing as required by *Education Code* Section 60119?**

Answer:

School district audits now include the reporting requirements for the sufficiency of textbooks and instructional materials as defined by *Education Code* Section 60119. If a district receives an audit finding the district should contact the county office of education regarding their ability to certify correction of the audit exception. More information can be found on the [Waiver Process Web page under 60119 Waiver Information after Williams Case Lawsuit Settlement \[http://www.cde.ca.gov/re/lr/wr/hottopics.asp#Districts\]](http://www.cde.ca.gov/re/lr/wr/hottopics.asp#Districts).

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Williams Settlement Monitoring**Question 59:****What monitoring is required under the Williams settlement for API Decile 1- 3 schools?**

Answer:

The initial monitoring under Williams was based on the 2003 API, but commencing in 2007-08 for schools ranked in Deciles 1- 3 on the 2006 API, an annual site visit will be conducted by the county office during the first four weeks of the school year to determine sufficiency of instructional materials, facility conditions, and accuracy of the School Accountability Report Card. However, a county superintendent of a school "under review" is not required to annually conduct a site visit at that school (see *Education Code* Section 1240(i)(3) and 5 CCR Section 17101). Such schools under review are not exempt from the Williams textbook sufficiency requirements of *Education Code* Section 60119.

In counties with more than 200 schools in Deciles 1-3, the county office may use a combination of visits and written surveys of teachers. This may include paper, electronic or online surveys. If a survey is used, the county office must visit the school within the same academic year to verify the accuracy of the information reported on the surveys.

In future years the cohort of schools in Deciles 1-3 requiring a visit by the county office will be adjusted every third year based on the API at that time.

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Question 60:**What about the students who don't bring their textbooks when the school visit occurs? Will this count against us?**

Answer:

Reviewers will use reasonable judgment to deal with situations like this. The visit will triangulate the data collected - the self-study, district documentation, and observations from the visit - to determine whether the school has made good faith attempts to fulfill the legal requirements.

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Question 61:

What happens if a district doesn't have sufficient instructional materials for Decile 1 and 2 schools and doesn't have sufficient funding to provide a standards-aligned textbook for each student in the four core areas?

Answer:

The county superintendent would prepare a report documenting the areas of noncompliance and share that report with the district. The district would have an opportunity to remedy the deficiency. If the deficiency is not remedied by the second month of the school term as required, the county superintendent would request that the California Department of Education (CDE) purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement. The funds used to make this purchase of instructional materials would be considered a loan that the district would need to repay to the CDE. The CDE would issue a public statement at the next State Board of Education meeting indicating that the district superintendent and the governing board failed to provide students with sufficient instructional materials.

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Question 62:

If a school is on a multi-track schedule, does the county have to conduct site visits for all tracks?

Answer:

Yes.

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Question 63:

What if we have not received all of our textbooks from the publisher by the first four weeks of school and/or time of the school visit?

Answer:

Districts should ensure that textbooks and instructional materials are ordered and available for students before the school year begins. School districts should make every attempt to prioritize the provision of instructional materials to schools affected by the settlement. Issues such as this are exactly what the *Williams* settlement legislation attempts to ameliorate. If the materials have been ordered, but have not arrived by the date of the county office visit, the county office will monitor to insure that the insufficiency is corrected by the end of the second month of the school year.

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May 2007

Reforming California's Instructional Material Adoption Process

The *Supplemental Report of the 2006 Budget Act* directed our office to examine instructional material costs and assess California's process for adopting kindergarten through eighth grade (K-8) instructional materials. This report details our findings. Most importantly, we identify several shortcomings with California's K-8 adoption process. To address these shortcomings, we recommend the Legislature adopt a package of six reforms designed to lower instructional material costs, expand school district choice, and enhance program effectiveness.

Executive Summary

In recent years, the Legislature has expressed growing concern with the rising cost of instructional materials in California. In response, it directed our office to compare spending trends in California with other states. Examining data from 1993 through 2003 (the most recent year for which consistent state data are available), we found that inflation-adjusted kindergarten through twelfth grade (K-12) instructional material spending in California increased more than \$100 per pupil, or almost 80 percent, over this period. This was about double the rate of growth of other states and about four times the rate of growth for "all other" K-12 support spending. Despite such a sizeable increase, California at the end of this period still spent slightly less per pupil on instructional materials than the national average.

In recent years, the Legislature also has expressed growing concern with the state's process for adopting K-8 instructional materials. In response, it directed our office to explore the relationship between instructional material review processes and state spending. We found that states with state-level adoption processes consistently spend slightly more than states with local-level selection processes. However, after controlling for such factors as state demographics, we found adoption states spend *less* than local-selection states. This means adoption states might be spending more as a result of other factors. For example, adoption states tend to serve larger percentages of low-income students and English learners (ELs), which, in turn, is linked to higher per-pupil spending.

To gain a better understanding of California's K-8 adoption process, we reviewed California law and regulations, examined various other state and industry documents, and interviewed various individuals—including state administrators, program experts, publishers, and representatives of state-level advocacy groups, as well as staff at school districts and county offices of education. The state's adoption process is a complex maze of activities—involving four sets of evaluation criteria and various expert panels, two curriculum committees, a Curriculum Commission, and two state agencies, as well as advocates and the general public. Just about when the process is fully implemented at the local level, districts must begin the process anew. We found this highly prescriptive process can be linked to less competition among publishers, more limited district choice, higher cost, questionable quality, and little useful information.

To address these shortcomings, we recommend the Legislature adopt a package of six reforms designed to lower cost, expand district choice, and enhance program effectiveness. Specifically, we recommend the Legislature reform the existing system by: (1) using fewer sets of evaluation criteria, (2) streamlining the review process, (3) offering districts voluntary extension of already adopted materials for up to two consecutive cycles, (4) shifting focus back to core materials by requiring ancillary materials to be priced and sold separately, (5) ensuring greater predictability by linking annual price increases to a specified inflationary index, and (6) enhancing the quality and availability of information by collecting better information from expert reviewers and making that information available to the public.

Introduction

In recent years, the Legislature has expressed concern with the rising cost of instructional materials as well as the process the state has constructed to adopt these materials for use in elementary and middle schools. Stemming from these concerns, the Legislature adopted language in the *Supplemental Report of the 2006 Budget Act* that directed our office to compare K-12 instructional material costs in California with other states over time. In doing so, it asked us to explore how states' instructional material review processes, academic content standards, and student diversity might be affecting these costs. In addition, we were directed to make recommendations for lowering the cost of instructional materials in California.

In the first half of this report, we explore trends in K-12 textbook costs and instructional material spending. In the second half of the report, we focus specifically on California's adoption process for K-8 instructional materials—first identifying the shortcomings of this system and then offering a package of recommendations

designed to reduce the cost of instructional materials, expand school district choice, and enhance program effectiveness.

Spending Trends

This section identifies general trends in K-12 textbook costs and instructional material spending and then explores how various factors might be affecting these trends.

General Trends

Below, we examine California textbook cost trends using data compiled by the California Department of Education (CDE) as well as cross-state spending trends using data compiled by the National Center for Education Statistics (NCES).

Costs of Textbooks in California Has Risen Sharply Since 1990. In a 2005 report, CDE tracked data on the average cost of fourth grade reading/language arts textbooks from 1990 through 2005. In 1990, the average cost of one of these fourth grade textbooks was \$18. By 2005, the average cost was more than \$50. Even adjusting for inflation, the average cost almost doubled over this time period. A study conducted on behalf of publishers also suggests that sizeable cost increases are likely to continue over the next several years. For example, the study estimated that the average cost of a fourth grade textbook in the upcoming 2008 reading/language arts adoption cycle would be approximately \$85.

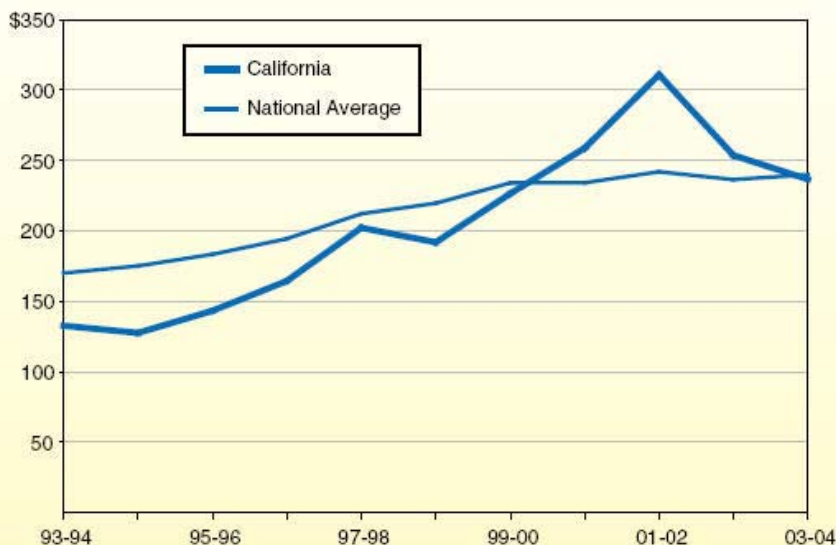
Little Cross-State Data on Textbook Costs. Each year, NCES collects data on state expenditures for K-12 education. Unfortunately, NCES did not begin collecting data on state textbook expenditures until 2003-04 (with only 38 states then reporting data in that category). Given this limitation, we reviewed other information sources, including a private firm that collects data for publishers. Unfortunately, the last year this firm collected data separately for textbooks was in 2000-01. In short, we were unable to find consistent cross-state data on textbook costs.

Cross-State Data on Instructional Material Spending Send Mixed Messages. The NCES, however, has collected data for many years on states' instructional material spending (which includes spending for textbooks, classroom teaching supplies, audiovisual supplies, and periodicals). We reviewed spending trends from 1993-94 through 2003-04 (the most recent year for which NCES data are available). Over this period, inflation-adjusted per-pupil spending on instructional materials in California grew from \$133 to \$237—an increase of \$104 or 78 percent (see Figure 1). The average annual rate of change in California was 5.9 percent. By comparison, average spending on instructional materials in other states grew from \$171 to \$240 per pupil—an increase of \$69 or 41 percent. The average annual rate of change in other states was 3.5 percent. Thus, spending in California grew at almost twice the rate of other states over this period. Nonetheless, at the end of this period, California still was spending slightly less than the national average. Whereas it was ranked 44th among the 50 states in per-pupil instructional spending in 1993-94, it ranked 25th in 2003-04.

Figure 1

Spending on Instructional Materials

Inflation-Adjusted Per-Pupil Spending



Source: National Center for Education Statistics.

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Spending on Instructional Materials Has Outpaced All Other Spending. To disentangle instructional

material spending trends from any underlying trends in spending for K-12 education, we also examined all other support spending (total K-12 support spending less instructional material spending). In both California and other states, inflation-adjusted all other support spending grew by about 20 percent from 1993-94 through 2003-04, reflecting an average annual rate of increase of less than 2 percent. These increases are substantially less than the increases in instructional material spending. This could mean that states felt they were underspending on instructional materials in the early 1990s and made special efforts to increase spending over the next ten years. Alternatively, it could mean that changes in state policies and/or publisher practices were driving up instructional material costs much more sharply than other K-12 education costs.

Instructional Material Review Policies

In an effort to understand what might be causing such significant increases in instructional material spending, we explored the relationship between states' spending and their instructional material review policies.

Two Basic Processes Used to Select Instructional Materials. Every state has policies regarding the selection and purchase of K-12 instructional materials. To select materials, 20 states use a state-level process. Most states that use such a process formally adopt a list of approved instructional materials and districts must purchase materials from this list. A few states, however, adopt lists of "suggested" or "recommended" materials and/or grant districts some discretion to purchase materials not on the state lists. In contrast to these adoption states, 30 states use a local-level selection process. In these states, districts may purchase any instructional materials of their choosing. Figure 2 shows the instructional material review process each state currently uses. California is unique among the 50 states in using both processes—it uses a state-adoption process for K-8 materials and a local-selection process at the high school level.

Figure 2

Majority of States Use Local-Selection Process

Local Selection (30)	State Adoption (20)
Alaska	Alabama
Arizona	Arkansas
Colorado	California ^a
Connecticut	Florida
Delaware	Georgia
Hawaii	Idaho
Illinois	Indiana
Iowa	Kentucky
Kansas	Louisiana
Maine	Mississippi
Maryland	New Mexico
Massachusetts	North Carolina
Michigan	Oklahoma
Minnesota	Oregon
Missouri	South Carolina
Montana	Tennessee
Nebraska	Texas
Nevada	Utah
New Hampshire	Virginia
New Jersey	West Virginia
New York	
North Dakota	
Ohio	
Pennsylvania	
Rhode Island	
South Dakota	
Vermont	
Washington	
Wisconsin	
Wyoming	

^a California has a state-adoption process for K-8 materials and a local-selection process for high school materials.
Source: Education Commission of the States.

Adoption States Spend Slightly More on Instructional Materials but Cause Unclear. Because many states did not institutionalize their existing adoption processes until the late 1990s, we confined our analysis in this section to the latter part of our data set (1998-99 through 2003-04). Over this period, adoption states consistently spent, on average, slightly more per pupil on instructional materials than states with local-selection processes. In 1998-99, for example, adoption states spent, on average, \$227 per pupil on instructional materials whereas local-selection states spent, on average, \$215 per pupil. Similarly, in 2003-04, adoption states spent \$249 per pupil compared to \$234 per pupil in local-selection states. Although adoption

states spent more per pupil than local-selection states, the rate of spending increases over this period were about the same for both groups (1.8 percent). Moreover, when controlling for other factors (such as state demographics), we found adoption states spend *less* than local-selection states. This means adoption states might appear to be spending more only because they are correlated with other "high-spending" factors, such as being states that serve more low-income and EL students.

No Firm Findings Relating to Type of Adoption System. We also examined differences in the types of adoption systems states use. Specifically, we classified adoption states as either "strict-adoption" states, in which states formally adopt lists of approved instructional materials and districts must purchase materials from those lists, or "flexible-adoption" states, in which states approve lists of suggested or recommended materials and/or districts can purchase materials not on the state lists. Strict-adoption states, on average, spent more per pupil on instructional materials than flexible-adoption states every year from 1998-99 through 2003-04. The differences, however, are much larger during the first half of the period. In 1998-99, for example, strict-adoption states spent, on average, \$237 per pupil on instructional materials whereas flexible-adoption states spent, on average, \$213 per pupil. By comparison, in 2003-04, strict-adoption states spent \$250 per pupil compared to \$246 per pupil in flexible-adoption states. Without additional years of data, the relationship between the type of adoption system and instructional material spending remains inconclusive.

K-12 Content Standards

In addition to exploring the relationship between states' spending and their instructional material review policies, we compared spending trends in California with states that have similar K-12 content standards. California commonly is recognized as having the most rigorous K-12 content standards in the country. The Fordham Foundation, which periodically ranks all 50 states according to the quality of their academic standards, ranked California second in 1998 and first in both 2000 and 2006. Only California, Arizona, Indiana, Massachusetts, and Virginia ranked in the top ten in each of the three review cycles.

Relationship Appears Weak. We examined the 1998, 2000, and 2003 Fordham Foundation rankings. In 1998 and 2000, state rankings were based on the rigor of content standards in all core subjects whereas the 2003 rankings were based only on content standards in history. (We were unable to use the 2006 Fordham rankings because NCES expenditure data were not available for that year). Although counterintuitive, the ten states with the most rigorous standards spent, on average, somewhat less on instructional materials than other states. The difference, however, has steadily narrowed over time. In 1998-99, states with the most rigorous standards spent, on average, \$48 per pupil less than other states whereas they spent \$15 less per pupil in 2000-01 and \$13 less per pupil in 2003-04. Conducting several other types of statistical analyses, the relationship between states' content standards and spending on instructional materials appears quite weak. This means states likely could strengthen or weaken their content standards without a major or direct effect on instructional materials costs.

K-12 Student Populations

As directed, we also compared California's spending with states that serve similar students yet have higher achievement. Given California's diversity, no other state makes for a particularly good comparison. Nonetheless, California commonly is compared to Texas, Florida, and New York. As Figure 3 shows, California has a notably higher percentage of EL students and a slightly higher percentage of low-income students than these three other states. It also has lower scores on national standardized tests for fourth and eighth graders in reading and mathematics. Of the four states, only New York typically scores above the national average in both subjects and both grades. Also shown in Figure 3, California spent more per pupil on instructional materials than Florida but somewhat less than New York and significantly less than Texas. Over the decade, however, California increased its spending at almost triple the rate of Texas as well as at a notably higher rate than Florida and New York.

Figure 3
Comparing California With Other Large States

(2003)

State	English Learners	Low-Income Students ^a	Test Scores ^b	Per-Pupil Spending ^c	Average Annual Rate Of Change ^d
California	25%	47%	251	\$237	5.9%
Florida	8	45	257	202	4.7
New York	13	43	264	260	4.6
Texas	16	45	259	322	2.0

^a Reflects students eligible for federal free and reduced-price meal programs.

^b Reflects average score on the National Assessment of Educational Progress for eighth graders in reading (scale of 0 to 500).

^c Reflects per-pupil instructional material spending.

^d Reflects changes in per-pupil spending between 1993-94 and 2003-04.

K-12 Student Demographics Do Affect Spending. We also conducted a number of other statistical analyses using data from all 50 states on instructional material spending, percentage of EL students, and percentage of students who are eligible for free or reduced-price meals (a proxy for low-income students). Controlling for various factors, we found that states with higher percentages of EL and low-income students typically spend more per pupil on instructional materials than states with lower percentages of these students. Specifically, for every 1 percent increase in a state's EL population or 1 percent increase in its low-income student population, we found per-pupil spending on instructional materials increased by a few dollars. This could mean states with more diverse populations spend more on targeted supplemental materials.

A Closer Look at California's Adoption Process

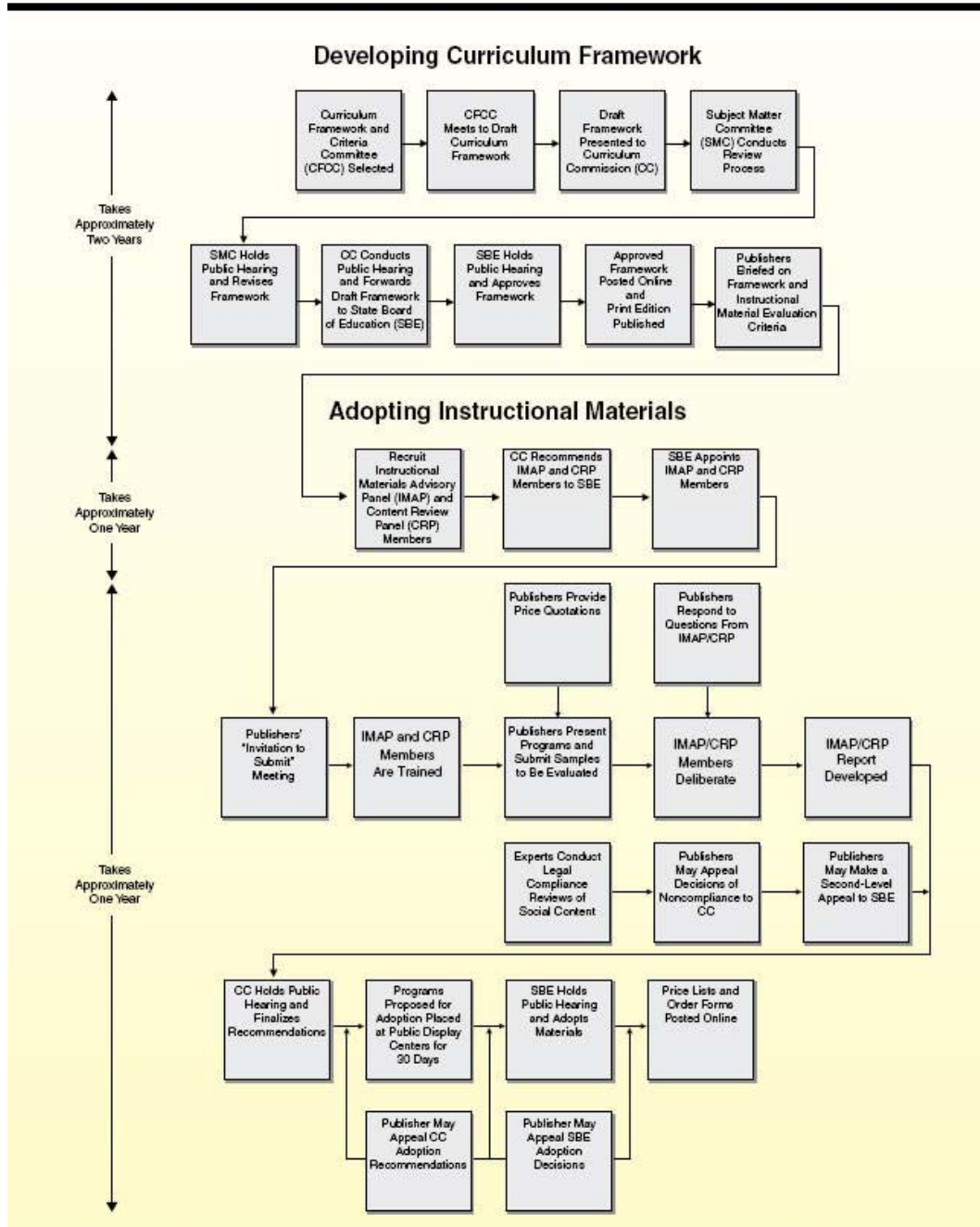
The available quantitative data do not tell a clear story. On the one hand, instructional material spending has been increasing in California and across the nation far in excess of inflation and enrollment growth. Despite such steep increases, spending in California still is slightly below the national average. Moreover, the data suggest that state demographics affect spending but the rigor of state content standards seems to have little, if any, effect on spending. Furthermore, if instructional material review processes matter, the available data are too crude to suggest exactly how they matter.

To gain a better understanding of what might be happening in California, this section focuses specifically on California's K-8 adoption process and its potential impact on instructional material costs. We reviewed California law and regulations, examined various other state and industry documents, and conducted more than 20 interviews with state administrators, program experts, publishers, and leaders of professional associations, as well as staff at school districts and county offices of education. These interviews helped us uncover inefficiencies in California's adoption process, identify factors likely to be driving up the cost of instructional materials, and develop recommendations designed to lower these costs.

Below, we describe California's existing K-8 adoption process. As shown in Figure 4, this process consists of a complex maze of activities.

Figure 4

State-Level Framework and Adoption Process: A Complex Maze of Activities



Instructional Materials Evaluated Based on Four Sets of Criteria

Instructional materials in California are evaluated based on four sets of criteria: (1) alignment with academic content standards, (2) consistency with subject-specific curriculum frameworks, (3) satisfaction of instructional material evaluation criteria, and (4) portrayal of social content.

Evaluation Based on Academic Content Standards. Beginning in the mid-1990s, the State Board of Education (SBE) began adopting content standards for every grade in English language arts, mathematics, history/social science, and science, as well as visual and performing arts, physical education, foreign language, and health education. The content standards delineate the specific knowledge and skills students should acquire in each subject. For example, California has 53 standards for fourth grade English language arts and 55 standards for fourth grade mathematics. A 21-member advisory committee made up of parents, teachers, administrators, business leaders, and academics develops the standards and presents them to SBE for approval. These content standards, coupled with performance standards, are designed to be the core of the state's accountability system. They also are designed to be the core of the instructional material evaluation process.

Also Evaluated Based on Curriculum Frameworks. The objective of a curriculum framework is to provide guidance on how to teach each content standard in a given subject. The frameworks are extensive

documents that specify: the instructional approaches needed for students to master the standards, appropriate student assessments, pedagogical strategies for working with all types of students, appropriate professional development, and requirements for instructional materials. The current reading/language arts and mathematics curriculum frameworks each contain almost 400 pages of discussion and specifications. Publishers are required to base their instructional materials on these frameworks.

. . . And Program/Evaluation Criteria. In addition to addressing each academic content standard and the associated state curriculum framework, instructional materials must meet certain program and evaluation criteria to become adopted. The program criteria delineate the specific types of programs that publishers may submit. For example, SBE is allowing three types of programs to be developed for the 2007 mathematics adoption: (1) basic grade-level programs (K-8), (2) intervention programs for struggling students (grades 4-7), and (3) an algebra readiness program for eighth grade students who are not yet ready for algebra. Each type of program is associated with certain requirements. For example, a basic grade-level mathematics program must consist of a comprehensive curriculum that provides instructional content for at least 50 minutes per day. Publishers may submit instructional materials for one or more of the above types of programs in one or more of the specified grade levels. If a set of instructional materials (typically including a student textbook, student workbooks, and teacher guide) meets all program requirements, it then is evaluated based on five other criteria—alignment with standards, organization, student assessments, universal access (including instructional strategies that address the full range of possible learning needs), and instructional planning and support. These program and evaluation criteria form the core of the document the state provides to publishers toward the beginning of each adoption cycle. These documents—typically running between 150 and 200 pages—also are filled with a myriad of minute specifications.

. . . And Social Content. In addition to meeting the requirements of the content standards, curriculum frameworks, and evaluation criteria, state law requires instructional materials to portray certain social content. For example, state law specifies that instructional materials must portray the contributions of both men and women in professional, vocational, and executive roles; Native Americans, African Americans, Mexican Americans, Asian Americans, and European Americans; and entrepreneurs and labor. The materials also must encourage thrift, fire prevention, and the humane treatment of animals and people, and discuss (when appropriate) the effects on the human system of the use of tobacco, alcohol, narcotics, restricted dangerous drugs, and other dangerous substances.

Each Adoption Cycle Involves Seemingly Countless Players

California's existing adoption process involves a slew of parties—many of whom perform the same functions. Specifically, the process involves various expert panels, two curriculum committees, a Curriculum Commission, and two state agencies, as well as interested stakeholders and the general public.

Involves Expert Panels. The bulk of the actual review of instructional materials is undertaken by two expert panels—the Instructional Materials Advisory Panel (IMAP) and the Content Review Panel (CRP). Most IMAP members are K-12 teachers but the panel may include school administrators, curriculum experts, and parents. Members of CRP are subject matter experts, often with doctoral degrees. All IMAP and CRP members receive training on the adoption criteria prior to individually reviewing submitted materials. Whereas CRP members focus almost solely on academic content, IMAP members focus on academic content as well as the other sets of evaluation criteria. Members of the IMAP and CRP are selected separately for each adoption cycle and volunteer their time. The SBE appoints the members upon recommendation of the Curriculum Commission. Districts absorb costs for any of their teachers who serve on an expert panel.

Also Involves Two Committees. As part of the curriculum frameworks process, SBE appoints a Curriculum Framework Criteria Committee (CFCC). The CFCC consists primarily of current K-8 teachers but may include some noneducators. All CFCC members are to have subject matter expertise and professional experience with effective educational programs. The CFCC's primary task is to develop a draft framework and submit it to the Curriculum Commission for consideration, after which a Subject Matter Committee (SMC) reviews the draft. The SMC consists of commission members who have expertise or interest in the relevant subject. This committee holds a public hearing to discuss the framework, makes revisions, and then submits it to the commission.

. . . And the Curriculum Commission. The Curriculum Commission, established in state law, is an 18 member advisory board to SBE. Commissioners tend to be recognized authorities in a specific subject matter, professors, curriculum experts, K-12 teachers, or community members. The commission advises SBE on the K-12 curriculum frameworks and K-8 instructional materials. In doing so, it serves as a kind of intermediary between the field experts and SBE. The commission holds a public hearing on a framework after the SMC hearing and before the SBE hearing on the framework. It also holds a public hearing on instructional materials after the IMAP/CRP members develop their evaluation report and before SBE holds a hearing to adopt the materials.

. . . And CDE. The department has a Curriculum Frameworks and Instructional Resources Division that provides various support and administrative services. Its activities include developing the "Publishers Invitation to Submit" document, contracting with county offices of education to assist with legal and social compliance reviews, supporting the commission and SBE in their instructional material activities, and administering the Instructional Materials Block Grant (the primary funding source for the purchase of K-12 materials).

. . . And SBE. The board approves finalized curriculum frameworks and makes final instructional materials adoption decisions. State law requires SBE to adopt at least five sets of basic instructional materials at each

grade level (K-8) in each of seven subjects (reading/language arts, mathematics, history/social science, science, visual/performing arts, foreign language, and health education). Exceptions are made, however, if fewer than five sets of materials are submitted or if SBE finds that fewer than five submittals meet the four sets of evaluation criteria.

. . . **And Advocates as Well as the General Public.** In addition to involving interested parties through the expert panels, committees, commission, and board, advocates have six other opportunities to be involved in the framework and adoption processes. Stakeholders may present oral and written feedback before the SMC as it develops the draft curriculum framework, before the whole commission as it finalizes recommendations on the framework, and before SBE as it makes final decisions on the framework. Similarly, stakeholders may present oral and written feedback before the commission as it finalizes its recommendations on instructional materials and before SBE as it makes final adoption decisions. Between these hearings, any interested party also may visit any of 21 Learning Resource Display Centers located throughout the state to view materials proposed for adoption. Furthermore, publishers can appeal decisions made at various stages of the adoption process.

Just When Fully Implemented, Process Starts All Over Again

California's separate six-year adoption cycles for seven academic subjects requires the state to conduct review activities every year and results in school districts having to buy new instructional materials in at least one subject virtually every year.

State Engaged in Framework/Adoption Activities Every Year. As shown earlier in Figure 4, development and release of a state curriculum framework takes approximately two years, recruiting experts to review instructional materials takes about one year, and actually undertaking the instructional material evaluation process takes another year. The state undergoes this process separately for each of seven subjects. As shown in Figure 5, the state has structured the process such that it is engaged in some framework and/or adoption activities every year.

Figure 5

Major State Activities by Year and Subject

State Activities:	
2005	<ul style="list-style-type: none"> • Approved mathematics framework. • Adopted history/social science materials.
2006	<ul style="list-style-type: none"> • Approved reading/language arts framework. • Adopted science materials. • Adopted visual/performing arts materials.
2007	<ul style="list-style-type: none"> • To adopt mathematics materials.
2008	<ul style="list-style-type: none"> • To approve physical education framework. • To adopt reading/language arts materials.
2009	<ul style="list-style-type: none"> • To approve foreign language framework. • To approve history/social science framework.
2010	<ul style="list-style-type: none"> • To approve health framework. • To approve science framework.
2011	<ul style="list-style-type: none"> • To approve mathematics framework. • To adopt foreign language materials. • To adopt history/social science materials.
2012	<ul style="list-style-type: none"> • To approve visual/performing arts framework. • To adopt health materials. • To adopt science materials.

School Districts Required to Purchase New Instructional Materials Virtually Every Year. After state adoption decisions have been made for a particular subject, school districts must purchase K-8 materials within 24 months. Given SBE adopts materials in some subject almost every year and, in some years, adopts materials for more than one subject, school districts must purchase new K-8 instructional materials virtually every year. Prior to purchasing new materials, school districts typically pilot materials for one year. After purchasing new materials in a particular subject, districts invest substantial effort in training teachers on the new materials while they are in use. Districts typically train only a portion of their teachers each year and report taking up to three years to complete all associated teacher training. This means school districts have only one or two years after fully implementing a set of instructional materials before the state requires them to begin the process anew. Moreover, they too undergo this process separately for each of seven subjects. In our interviews with district and county staff, representatives expressed frustration with such a process. They were frustrated they had to purchase new instructional materials for some subjects every year. They were frustrated they sometimes had to purchase new instructional materials for higher-cost core subjects in consecutive years. (For example, school districts had to begin purchasing science materials in 2006 and will have to begin purchasing mathematics materials in 2007 and reading/language arts materials in 2008.) They

also were frustrated that the frequency of the process meant they had to purchase “new” materials just as their professional development efforts seemed to be coming to fruition and teachers were becoming expert in using the “old” materials.

Highly Prescriptive Process Linked With Poor Outcomes

Presumably, the intent of a state-level adoption process is to ensure high quality at low cost. Instead, California's highly prescriptive process can be linked to less competition among publishers, more limited district choice, higher cost, questionable quality, and little useful information.

Less Competition. Over the last decade, many smaller publishers have either shut down or merged with larger publishers, resulting in an oligopoly in the California textbook market. Today, four publishing companies dominate the instructional materials market. Given California's extensive set of instructional material evaluation criteria, publishers claim they incur high upfront research and development costs. In our interviews, representatives of the Association of American Publishers (AAP) stated that publishers also view California as a high-risk market because large upfront investment is needed yet no guarantee of eventual state adoption is provided. Given such high upfront costs and high risk, few small- and mid-sized publishers, to date, have been able to develop California materials.

... And Fewer Local Choices. Over the last decade, this trend within the publishing industry has translated into fewer choices for school districts. For example, in 1988, SBE approved 13 reading/language arts instructional material packages. By comparison, in the 2002 reading/language arts adoption, only three publishers even submitted K-3 materials, and SBE approved only two of them. In our interviews, district and county staff as well as state-level education advocacy groups voiced concern with the limited number of instructional material options available to them.

... And Very, Very Lengthy Student and Teacher Editions. Representatives of AAP provided us with data for the only set of reading/language arts instructional materials adopted in both the 1988 and 2002 cycles. As shown in Figure 6, the 2002 grade 1 student edition was more than 1,000 pages longer than the 1988 edition—more than doubling in length. Even more dramatic, the 2002 teacher edition was more than 6,000 pages longer than the 1988 edition—increasing more than sevenfold.

Figure 6

More Specifications, More Pages Grade 1 Reading/Language Arts

	1988	2002	Change	
			Number	Percent
Program specifications (pages)	59	301	242	410%
Grade 1 student edition (pages)	792	1,808	1,016	128
Grade 1 teacher edition (pages)	848	6,913	6,065	715

Source: Strategic Education Services.

... And Higher Cost. With so few publishers developing K-8 materials in California, coupled with a state law that requires publishers to offer textbooks at a set price statewide, publishers have come to distinguish themselves by offering special “gratis” items (items offered free of charge). Technically, a gratis item may be virtually any product that has some instructional content. (Gratis items may not include equipment, such as overhead projectors and laptops.) Given publishers presumably intend to cover their costs, core materials likely are being overpriced in an effort to cover the cost of the ancillary materials that publishers are offering free of charge. In addition to inflating the price of core instructional materials, some district representatives believe publishers provide so many ancillary materials that teachers can not practically put them all to use. A comparison of 1988 and 2002 price lists, which are maintained by CDE and include the name and price of each textbook and ancillary product approved for use in the state, support these claims. In 1988, the price list for the 13 adopted sets of instructional materials was 12 pages. In 2002, the price list for the 2 adopted sets of materials was 44 pages.

Unconstrained Mid-Cycle Price Increases Exacerbate Matters. State law currently allows publishers to increase the price of their instructional materials every two years within an adoption cycle. No limit is placed on how much prices may be raised mid-cycle. These price increases affect the cost of lost and worn books as well as the cost of annual workbooks. Given the initial investment in a set of instructional materials is significant, districts essentially are captive to those materials throughout the six-year adoption cycle. This implies they are virtually compelled to pay whatever mid-cycle price increases a publisher might impose.

All This and Not Necessarily Better Programs. In our interviews, several state-level advocacy groups also believed the Curriculum Commission tended to base its recommendations on pedagogical preferences rather than standards alignment. Some groups have expressed their concerns to SBE. For example, in a letter to SBE, the California Science Teachers Association (CSTA) claimed it had witnessed “one or two Commissioners convince the entire commission to ignore the months-long work of the IMAPs and CRPs and reject a particular program for what appear to be personally based reasons . . . [T]he Commissioners pedagogical philosophy is

heavily skewed." Similarly, in a letter to SBE, the Association of California School Administrators) stated, "the Commission retains too much authority . . . and should focus more on its advisory role and less on the mechanics and politics of the adoption process." Furthermore, in our interviews with former IMAP and CRP members, they too expressed frustration, believing some Commissioners based decisions on pedagogy rather than alignment with content standards. In short, if these claims are true, California's highly prescriptive process might not be guaranteeing high-quality instructional materials.

. . . Nor Useful Information. The current system also produces little information about instructional material evaluations. Despite spending up to 90 hours reviewing a set of instructional materials, the IMAP and CRP members we interviewed thought their evaluation efforts did not result in good information about the quality of those materials. They stated this was because the state's evaluation matrix did not allow them to give critical feedback—such as being able to cite the strengths and weaknesses of the materials they reviewed. Instead, evaluators currently are asked only to check whether a set of materials meets each requirement. They do not have an opportunity to share how well it covers a particular content standard, how well it is organized, or how well it addresses the needs of EL students. In a letter to CDE, a former IMAP reviewer complained that "cursory information was considered to be sufficient." In short, under the state's existing evaluation process, valuable information on the quality of instructional materials is being lost.

School Districts Largely Duplicate the Review Process. As a result, districts are given virtually no information they can use to compare adopted materials. As a result, school districts typically spend one school year reevaluating and piloting state-adopted instructional materials. To do so, they often compensate teachers for work outside of their normal work hours. In the end, districts have spent additional time and resources to duplicate, at least in part, the efforts of the state's expert panels.

LAO Recommendations

We recommend the Legislature adopt a package of six reforms designed to expand district choice, lower cost, and enhance program effectiveness. Specifically, we recommend the Legislature reform the existing system by: (1) using fewer sets of evaluation criteria, (2) streamlining the review process, (3) offering districts voluntary extension of already adopted materials, (4) shifting focus back to core materials by eliminating gratis items, (5) ensuring greater predictability by capping mid-cycle price increases, and (6) enhancing information gathering and sharing.

Below, we discuss each of these six recommendations. All would require statutory change. Together, they could yield potentially big savings to both districts and the state, without undermining the publishing industry or stifling input from advocates. These recommendations—along with the problems they are intended to address and their likely effect on choice, cost, and quality—are summarized in Figure 7.

Figure 7

Summary of Recommended Reforms

Problem With Existing System	Recommended Reform	Likely Effect		
		District Choice	Cost of Materials	Program Effectiveness
Based on four sets of evaluation criteria, thereby increasing requirements and inflating instructional material costs	Eliminate use of curriculum frameworks as evaluation criteria	Increase number and types of adopted materials	Reduce for school districts, the state, and publishers	Streamline process —resulting in greater efficiency
Involves many agencies and groups, many of whom duplicate functions, thereby inflating costs	Have expert panels report directly to SBE	Increase number of adopted materials	Reduce for school districts and the state	Streamline process —resulting in greater efficiency
Just when fully implemented, process begins again, meaning school districts need to purchase "new" materials shortly after they feel expert in using "old" materials	Allow districts to maintain program for up to two consecutive cycles	Increase choice	Reduce for school districts and the state	No direct or major effect
Reduced competition has resulted in marketing strategies that shift focus from quality of core materials to "gratis" items	Eliminate gratis items, require each instructional material to be priced and sold separately	No direct or major effect	Reduce for school districts, the state, and publishers	Improve quality as each instructional material would be evaluated on its own merits
Significant initial investment in instructional materials program virtually compels school districts to pay unconstrained mid-cycle price increases	Limit annual price increases to inflationary index	None	Make more predictable for school districts	None

Use Fewer Sets of Evaluation Criteria. First, we recommend the state continue to assess instructional materials based on academic content standards, social content standards, and other basic evaluation criteria (such as program organization and instructional support), but eliminate curriculum frameworks (which are designed to guide the teaching of standards) from the evaluation process. Under the new system, K-8 frameworks would continue to be developed and available as instructional guides for school districts, as is currently the case with high school curriculum frameworks. Removing them from the instructional material review process, however, would help retain focus on overarching content standards rather than specific pedagogical preferences. It also likely would reduce the instructional material requirements. This, in turn, likely would allow more publishers, potentially even small- and mid-sized publishers, to submit materials, thereby increasing district choice and reducing cost.

Streamline Review Process. Second, we recommend the state continue to involve expert panels, CDE, SBE, publishers, other advocates, and the general public in the framework development and adoption process but eliminate the role of the Curriculum Commission. This would be consistent with the process used in most adoption states, which either do not have such commissions or do not involve them in adoption decisions. As with the frameworks themselves, the Curriculum Commission would continue to exist and provide state-level guidance in developing effective instructional programs. Removing the commission from the adoption process, however, would streamline the process significantly—eliminating virtually all of the existing redundancies. Under the new process, expert panels would report directly to SBE, and publishers would appeal compliance and adoption decisions directly to SBE. Eliminating the frameworks and commission from the process would cut the length of the process almost in half. It also would constrain the state-level tendencies to override the evaluation decisions of teachers and other experts. In so doing, it likely would increase the number of district options and reduce instructional material costs.

Offer Districts Voluntary Extension of Already Adopted Materials. Third, we recommend the Legislature allow school districts to use already adopted materials for up to two consecutive cycles. Under such a system, the state would continue to adopt new materials every six years, but school districts would have the choice whether to continue with existing materials or purchase new materials. School districts still would be required to replace lost and worn materials and could purchase new instructional tools as they became available, but they would not be required to purchase entirely new sets of materials every six years. This could be particularly helpful in subjects such as mathematics, for which new developments affecting K-12 education are less frequent. Being able to extend materials for up to 12 years would allow school districts to reduce both textbook and professional development costs significantly, with potential state savings. Voluntary extension also would allow teachers to become more familiar with and adept at using adopted materials. Given the longer time horizon and potential for more sustained payoffs, such a change also might entice small- and mid-sized publishers to submit materials in California. This would further increase competition and drive down costs.

Shift Focus Back to Core Program by Eliminating Gratis Items. Fourth, we recommend the Legislature amend statute to eliminate gratis items and require publishers to sell each product separately. Eliminating gratis items likely would reduce the cost of core instructional materials. This is because ancillary products would need to be sold separately at their market value. As a result, school districts could experience a significant decline in instructional material spending, with potential savings at the state level. In addition, eliminating gratis items would create stronger incentives for publishers to compete solely on the quality of their core materials, which, in turn, could improve the quality of those materials.

Cap Mid-Cycle Price Increases. Fifth, we recommend the Legislature link prices to an annual inflationary index (such as the Consumer Price Index or state and local price deflator) during the life of an adoption cycle. This would replace the state's current practice of allowing unconstrained price increases every two years. Linking price increases to an annual inflationary index would offer districts protection against unreasonable mid-cycle increases as well as greater predictability in prices and greater certainty in budgeting.

Enhance Information Sharing. Lastly, we recommend the Legislature create a better instructional material information system. We recommend the new system include both more and better information on each submitted and adopted set of instructional materials. Specifically, we recommend replacing the state's current evaluation matrix with one that allows each expert to assess each set of instructional materials on about five evaluation criteria, including alignment to each basic category of the content standards (for example, reading, writing, listening, and speaking), program organization, student assessments, teacher support, and support for EL students. We recommend displaying experts' assessments on CDE's public Web site for access by any interested party, including school district administrators, teachers, parents, publishers, and policymakers. In particular, school districts could use the new online information system to help them select programs to pilot, potentially reducing their review costs and enhancing the likelihood those programs would meet their needs.

Conclusion

The problems identified in this report are not trivial and are not likely to disappear over time or go away of their own volition. The shortcomings we identified largely were created by the state and can be addressed only by state action. We think the shortcomings can be largely overcome, however, with a package of six relatively modest reforms. Although the reforms we highlight could be enacted individually, they are likely to be less effective if pursued separately. For example, allowing districts to maintain materials for up to two consecutive cycles would reduce their overall costs, but, without other reforms, districts still would have relatively little upfront choice. Similarly, linking price increases to an annual inflationary index is likely to protect school districts against unreasonable mid-cycle increases, but, without other reforms, school districts'

overall savings would be relatively modest. Taken together, the recommendations would have much greater effect—adding up to more significant savings and more comprehensive reform.

Acknowledgments

This report was prepared by [Jennifer Kuhn](#) and Jacqueline Guzman. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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Legislative Analyst's Office



Analysis of the 2003-04 Budget Bill

Instructional Materials

We recommend that the Legislature enact legislation to allow materials adopted in the interim adoptions required under Chapter 481, Statutes of 1998 (AB 2519, Poochigian), to be recognized as standards-aligned materials for the purposes of eligibility for categorical programs. In adopting this recommendation, the Legislature would: (1) recognize the \$1 billion investment in Schiff-Bustamante Standards-Based Instructional Materials funding, much of which districts spent on these materials, and (2) relieve districts from the costs of new materials.

The Governor's budget proposes to create a \$5.1 billion categorical block grant composed of 58 individual K-12 programs. The block grant includes \$204.5 million that was previously budgeted for the Instructional Materials Funding Realignment Program (IMFRP). The Governor's block grant keeps the instructional materials program's laws and regulations in place, requiring school districts to provide each student with new standards-aligned materials within 24 months of a statewide adoption. Funding for instructional materials to school districts is based on an equal amount per pupil enrolled in elementary and high schools.

Background. California began moving to a standards-based educational system in 1995 when Chapter 975, Statutes of 1995 (AB 265, Alpert), required the creation of the Commission for the Establishment of Academic Content and Performance Standards. The commission was required to develop academically rigorous content and performance standards in the core curriculum subject areas for grades K-12. In 1998, academic content standards were developed for English language arts, mathematics, history-social science, and science. Recognizing the necessity of providing pupils with standards-aligned materials, the Legislature passed legislation (Chapter 481, Statutes of 1998 [AB 2519, Poochigian]) directing the State Board of Education (SBE) to conduct a special interim adoption of basic and partial programs in English language arts and mathematics prior to 2001. These materials were required to cover a course of study, or a substantial portion of a course of study, essential to meeting adopted academic content standards. These materials were adopted in 1999 and remain in effect until June 30, 2005 for English language arts, and June 30, 2003 for mathematics. In addition, the Legislature created the Schiff-Bustamante Standards-Based Instructional Materials program—Chapter 312, Statutes of 1998 (AB 2041, Bustamante)—which appropriated \$1 billion over a four-year period for school districts to purchase instructional materials that were aligned with state content standards. Between 1999 and 2001, many school districts purchased materials adopted during the interim adoption with their share of the \$1 billion in Schiff-Bustamante funds.

Creation of IMFRP. Chapter 802, Statutes of 2002 (AB 1781, Hertzberg), created IMFRP, which consolidated three existing categorical programs—K-8 Instructional Materials Fund, 9-12 Instructional Materials Fund, and the K-4 Classroom Library Materials Program—into a new block grant that took effect January 1, 2003. The main purpose of the IMFRP is to provide a source of funding for the purchase of standards-aligned materials in the core subject areas of English language arts, mathematics, history-social science, and science. Districts are to use funding in the following manner:

- First priority is the purchase of standards-aligned materials in (1) English language arts, (2) mathematics, and (3) reading intervention programs for English language learners in grade 4 through 8 or students reading two or more years below grade level.

- Second priority is the purchase of standards-aligned materials in history/social science and science.
- Third priority is the purchase of other instructional materials for areas such as visual and performing arts, foreign language, health materials, supplementary materials, tests, technology based materials, and classroom library materials for grades K-4. However, before they may purchase materials from the third category listed above, the governing board of a district is statutorily required to certify that every pupil will be provided with standards-aligned materials in the four core curriculum areas.

SBE Excludes Chapter 481 Materials. In developing the IMFRP regulations, the SBE concluded that the English language arts and mathematics materials adopted in the interim adoption under Chapter 481, did not qualify as being standards-aligned because they were not adopted using the existing standards-aligned "framework." Essentially, the English language arts content standards designate what to teach at specific grade levels. The framework provides guidelines and selected approaches for implementing instruction to help pupils in meeting the standards.

For districts that purchased interim adopted materials and who wished to access the IMFRP funding, this decision in effect required them to reinvest in new English language arts and mathematics instructional materials even though they are not significantly different from the interim materials. The SBE also requires school districts to purchase the new materials if they want to participate in and receive state funding for the following set of programs:

- ***Reading First***—A federal reading intervention program focused on ensuring that all children learn how to read by the end of the third grade. Funding is also available for special education pupils in K-12.
- ***Mathematics and Reading Professional Development***—A Governor's initiative to provide funding for professional development in mathematics and reading language arts for teachers, instructional aides, and paraprofessionals. Training focuses on standards-based instructional materials.
- ***Principal Training***—Provides funding for principals and vice principals to receive instruction and training in school financial and personnel management, core academic standards, and curriculum frameworks and instructional materials aligned to the state academic standards.
- ***High Priority Schools Grant Program***—A state intervention program for the lowest performing schools (schools in the first decile of the Academic Performance Index).

Benefits of Recognizing Chapter 481 Materials

The Legislature has historically been committed to ensuring that pupils are provided with standards-aligned instructional materials and providing school districts with funding to make the investment in these materials. Consistent with this commitment, we recommend the Legislature pass legislation to allow materials adopted in the interim adoptions required under Chapter 481 to be recognized as standards-aligned materials. In adopting this recommendation, the Legislature would be: (1) recognizing the \$1 billion investment in Schiff-Bustamante Standards-Based Instructional Materials funding that districts have made, (2) providing districts with greater flexibility in which to utilize IMFRP funding to purchase other instructional materials that will best meet their district needs, and (3) allowing districts using interim adopted materials to participate in new school reform programs.

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