

Adopting Curriculum and Related Resources

The Facts. The Law. The Process.

Although adopting curriculum and instructional materials has always been an action subject to local context and community needs, recent concerted actions have made it clear that what has been a routine procedure for many may now become a contested act. The information provided here is meant to give district leaders the definitions, language, guidelines, and references needed as they undertake the adoption process this year.

INSTRUCTIONAL MATERIALS AND TEXTBOOKS

Definitions

Although the Education Code does not define *curriculum*, it does define the term *curriculum framework* as an outline of the components of a given course of study designed to provide state direction to school districts in the provision of education programs.¹

Instructional materials are all materials designed for use by students and their teachers as a learning resource to help students 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.²

Supplementary instructional materials are those designed to serve a purpose, such as provide for meeting various learning ability levels of students in a given age group or grade level.³

THE ROLE OF THE DISTRICT BOARD

Textbook and Curriculum Adoption

The Education Code specifies that for grades K-8, **the Board must** select instructional materials that have been approved by the State Board of Education (SBE) **or** have otherwise been determined to be aligned with the state academic content standards adopted pursuant to Section 60605.⁴

For grades 9 through 12, **the Board must** determine and adopt instructional materials that meet the criteria specified in state law and administrative regulations.⁵

Policies and procedures for adoption of curriculum and instructional materials are found in District board policies (“BPs”) and administrative regulations (“ARs”), which delineate the involvement of the Board and Superintendent, and those with subject-matter expertise, such as teachers, principals, and district administrators.

District Governing Boards and school officials must not accept any money or any inducement to directly or indirectly introduce, recommend, vote for, or otherwise influence the adoption or purchase of any instructional materials, with the exception of sample copies of instructional materials.⁶

STATE REQUIREMENTS FOR TEXTBOOKS AND INSTRUCTIONAL MATERIALS

As boards consider the adoption of textbooks and instructional materials, they need to know that Education Code specifies the following requirements:

Textbooks and instructional materials must:

1. Be aligned to academic content standards adopted by the SBE **or** aligned with state academic content standards and/or the Common Core Standards;⁷
2. Be accurate, objective, current and suited to the needs and comprehension of district students at their respective grade levels, to the satisfaction of the Board;⁸
3. Use proper grammar and spelling, with the exception of literature and trade books;⁹
4. Meet the requirements of Education Code 60040-60043 for specific subject content; and
5. Otherwise meet the standards set forth in the applicable BP and AR.

Textbooks and instructional materials must not:

1. Reflect adversely upon persons because of their race/ethnicity, gender, religion, disability; sexual orientation or other characteristic listed in Education Code section 220;¹⁰
2. Contain any sectarian or denominational doctrine or propaganda contrary to law;¹¹ or
3. Expose students to a commercial brand name, product or company logo unless the Board makes a specific finding that the use is appropriate.¹²

Additionally, **boards must provide for substantial teacher involvement and promote involvement of parents and other community members** in the selection of instructional materials.¹³

PUBLIC HEARING ON SUFFICIENCY OF TEXTBOOKS AND INSTRUCTIONAL MATERIALS

Annually, Boards must conduct one or more public hearings on the sufficiency of the district's textbooks and other instructional materials. The hearing must be held before the end of the eighth week after the first day of school for that year.¹⁴ The hearing cannot take place during or immediately following school hours.¹⁵

The Superintendent or designee must post a notice in three public places within the district containing the time, place, and purpose of the hearing ten days before the hearing. At the hearing(s), the Board will determine, through a resolution:

- Whether each student in each school, including each English learner, has sufficient textbooks or instructional materials¹⁶ which are aligned to the state content standards or the Common Core Standards and which are consistent with the content and cycles of the state's curriculum frameworks in mathematics, science, history-social science¹⁷ and English language arts;¹⁸ and
- The availability of laboratory science equipment for science laboratory classes offered in grades 9 through 12.¹⁹

The Board must also make a written determination regarding sufficiency of materials in world language and health.²⁰

If the Board determines there are insufficient textbooks or instructional materials at a school, it will provide teachers and the public, through a resolution, with the percentage of students who lack sufficient standards-aligned textbooks or instructional materials in each subject area and the reasons why.²¹

The Board must take action to ensure that each student has sufficient materials **within 2 months** of the beginning of the school year in which the determination is made.²²

Complaints

If the District receives complaints that allege any of the following, the complaints should be managed according to Williams Uniform Complaint procedures:

- A student does not have standards-aligned textbooks or instructional materials or district-adopted materials to use in class;
- A student does not have access to instructional materials to use at home or after school in order to complete homework assignments; and/or
- Instructional materials are in poor or unusable condition, have missing pages, or are unreadable.²³

Some districts state in their relevant board policies and administrative regulations that complaints shall be handled in accordance with law, BPs, and ARs to address complaints regarding instructional materials that are not subject to the Williams Uniform Complaint procedures.

LIBRARY BOOKS

Boards are required to provide school library services for students and teachers by establishing and maintaining school libraries or by contracting with another agency.²⁴ Boards are responsible for the proper care and preservation of school libraries, and may make all necessary rules and regulations not provided by the SBE or the Superintendent of Public Instruction.²⁵ Boards may exclude from schools and school libraries all books, publications or papers of a sectarian, partisan or denominational character.²⁶

County boards of education may adopt books and other library materials for districts not employing a superintendent or full-time librarian.²⁷

Current Caselaw

In *Board of Education, Island Trees Union Free School District No. 26 v. Pico* ("Pico"), the U.S. Supreme Court opined that, while a district or administrator may remove books and other materials from a school library because of their educational suitability, pervasive vulgarity or profanity, or factual inaccuracies, it **"may not remove books from school library shelves simply because [officials] dislike the ideas contained in those books[.]"**²⁸ Nothing in the Pico case affects the discretion of boards to choose books to add to district school libraries.

"Those who choose the books and literature that will influence the minds and hearts of our nation's youth and those who teach young people in our schools bear an awesome responsibility."²⁹

SUGGESTED BEST PRACTICES FOR MATERIAL REVIEW

Ensure Access to Instructional Materials and Consider a Review Committee

- Make recommended instructional materials available for public inspection at the district office and/or online in accordance with District BPs and ARs, and/or enable the Superintendent or a designee to establish a process for the review and recommendation of instructional materials to the Board.
- Consider allowing the Superintendent to establish and work with an instructional materials review committee to evaluate and recommend instructional materials.³⁰
 - o Make sure to include teachers, administrators and staff who have subject-matter expertise, parents/guardians, and community members, and potentially students.
 - Examples include, but are not limited to, input from certificated staff as part of curriculum adoption committees, grade level review, and cross-level articulation of curriculum committees.
 - o Consider the involvement of other groups which are representative of your school community.
 - Examples include, but are not limited to, DELAC, SSCs, PTA/PTO, parent affinity groups, LCAP steering committee, and students to solicit input and feedback regarding content and titles.

Review Relevant BP/AR to Ensure Clear Procedures

- Consider reviewing BPs/ARs pertaining to the selection of instructional materials and textbooks. CSBA/standard titles and numbering are as follows: 6141, Curriculum Development and Evaluation; 6161.1, Selection and Evaluation of Instructional Materials; 6161.11, Supplementary Instructional Materials; 1312.2, Complaints Concerning Instructional Materials; 1312.4, Williams Uniform Complaint Procedures. Model policies are available to districts that subscribe to CSBA's policy services.

Establish Processes for Library Books:

- Establish internal procedures to select library books, which may include input from the Superintendent and a school librarian.
- Comply with any BPs/ARs regarding grade-level-appropriateness of library books and consider recommendations from the California Department of Education regarding school library policies.³¹
- Address complaints regarding literature in school libraries. Districts should determine how best to informally or formally resolve complaints in accordance with any relevant District BPs and ARs.

Clarify Required Curriculum vs. Optional Reading

- Have clear communication to parents and community members when instructional materials, textbooks, or other books and materials are required versus made available to all students or just particular grade levels.

Special thanks to F3 Law, leaders in education law, and their Next Level Client Services for assisting our members by creating this important resource.

¹ Ed. Code § 60010(c).

² Ed. Code § 60010(h).

³ Ed. Code § 60010(l).

⁴ Ed. Code §§ 60200, 60210.

⁵ Ed. Code § 60400.

⁶ Ed. Code §§ 60072, 60075.

⁷ Ed. Code §§ 60200, 60210.

⁸ Ed. Code § 60045.

⁹ Ed. Code § 60045.

¹⁰ Education Code 220 prohibits discrimination on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, immigration status, or association with a person or group with one or more of these actual or perceived characteristics in any district program that receives or benefits from state financial assistance. See Ed. Code §§ 51500, 51501, 60044.

¹¹ Ed. Code §§ 51501, 60044.

¹² Ed. Code §§ 60048, 60200.

¹³ Ed. Code § 60002.

¹⁴ Ed. Code § 60119(a)(1)(A).

¹⁵ Ed. Code § 60119(b).

¹⁶ "Sufficient textbook or instructional materials" means that each student has a standards-aligned textbook or instructional materials, or both, to use in class and to take home. Ed. Code § 60119(c).

¹⁷ Social sciences curriculum must include "the role and contributions of both men and women, Native Americans, African Americans, Mexican Americans, Asian Americans, Pacific Islanders, European Americans, lesbian, gay, bisexual, and transgender Americans, persons with disabilities, and members of other ethnic and cultural groups" to the development of California and the United States and "the role of these groups in contemporary society." Ed. Code § 51204.5; Ed. Code § 60040 [materials must accurately portray cultural and racial diversity of our society].

¹⁸ Ed. Code § 60119 (a)(1)(A).

¹⁹ Ed. Code § 60119(a)(1)(C).

²⁰ Ed. Code § 60119(a)(1)(C).

²¹ Ed. Code § 60119(a)(2)(A).

²² Ed. Code § 60119(a)(2)(A).

²³ Ed. Code 35186; 5 CCR § 4680.

²⁴ Ed. Code §§ 18100-18104.

²⁵ Ed. Code § 18121.

²⁶ Ed. Code § 18111.

²⁷ Ed. Code § 18110.

²⁸ *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico* (1982) 457 U.S. 872 [Some library books at issue in the case included *Slaughterhouse Five* by Kurt Vonnegut, Jr., *Laughing Boy*, by Oliver LaFarge, and *Best Short Stories of Negro Writers*, edited by Langston Hughes; see *Montiero v. Tempe Union High School District* (9th Cir. 1998) 158 F.3d 1022, 1029 ["[A] student's First Amendment rights are infringed when books that have been determined by the school district to have legitimate educational value are removed from a mandatory reading list because of threats of damages, lawsuits, or other forms of retaliation."].

²⁹ *Monteiro v. Tempe Union High School District* (9th Cir. 1998) 158 F.3d 1022, 1029

³⁰ Ed. Code § 60002; see Ed. Code § 49091.10.

³¹ California Department of Education, School Library Policies, <https://www.cde.ca.gov/ci/cr/lb/policies.asp>.