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Board of Education**

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DATE: July 10, 2009

TO: Chief Business Officials
Curriculum/Instructional Directors
K-12 School Districts and RCOE

FROM: Ellen Yufa, Coordinator
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Division of Administration and Business Services
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SUBJECT: 2009-10 Instructional Materials Compliance

ACTION: District Action Needed

In order for school districts to be eligible to receive instructional materials funding, there are specific requirements that must be met per Education Code (E.C.) Section 60119. This code section was amended by Senate Bill X3 4 Section 18. Regardless of the statewide revenue limit, in order to be eligible to receive the instructional materials funds, the districts must hold a 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. The requirements for public hearing are listed below.

- The governing board shall hold a public hearing and encourage participation by parents, teachers, community members and bargaining unit leaders.
- The hearing shall be held on or before the end of the eighth week after the first day pupils attend school that year. For multitrack, year-round schools, the requirement refers to the end of the eighth week after the first day that pupils attend classes in a track that begins in August or September.
- The notice of public hearing must be posted at least ten days in advance and in at least three public places within the district. The notice must state the time, place and purpose of the hearing. The hearing may not be held during or immediately following school hours.
- At the hearing, the governing board shall determine through a resolution, as to whether each pupil in the district has sufficient textbooks, instructional materials, or both, that are aligned to the content standards and are consistent with the content and cycles of the curriculum framework adopted by the State Board of Education in mathematics, science, history-social science and English/language arts.
- The governing board will also determine at the hearing whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials and will also determine the availability of laboratory science equipment as applicable to the courses offered in grades 9-12.

For purposes of E.C. Section 60119, “Sufficient textbooks or instructional materials” mean that each pupil, including English learners, has a standards-aligned textbook, instructional materials, or both, to use in class and to take home. Photocopied sheets from a portion of a textbook are *not* considered “sufficient”.

If the governing board determines that the district does not have sufficient textbooks or instructional materials, the board is required to take the following actions:

- Provide information to the classroom teachers and public as to the percentage of pupils for whom insufficiency exists and why.
- Take actions that will ensure that each pupil has sufficient textbooks or instructional materials within two months of the beginning of the current school year. This action cannot be one that would require reimbursement by the Commission on State Mandates.

The Senate Bill 3X 4 provides categorical flexibility for school districts to transfer instructional material funds for other educational purposes by action of the local governing board. It suspends the requirement to have materials in place within 24 months from the State Board of Education (SBE) adoption until July 1, 2010.

- According to new E.C. Section 60422.1, the suspension of adoption dates is effective only for 2008-09 and 2009-10 fiscal years. “The 24 month rule” will be reestablished in July 2010. The districts would need to implement both new mathematics and Reading/Language Arts instructional materials by the start of the 2010-11 fiscal year.
 - There has been a discussion about an extension of the suspension of adoption to 2012-13 and prohibiting the SBE from initiating new adoptions during this period, but this has not been finalized.

Although the Senate Bill X3 4 provides flexibility provisions, it includes specific language maintaining that the instructional materials purchased by a local education agency shall meet the reporting and sufficiency requirements contained in E.C. Sections 60119.

Enclosed please find a copy of E.C. 60119, as modified by Senate Bill X3 4 Section 18, and sample resolution language for the Sufficiency/Insufficiency of Instructional Materials.

Also enclosed is a copy to E.C. 60422, as amended by Senate Bill X3 4 with the new E.C. Section 60422.1.

- With the instructional material funds now being a part of the categorical flexibility, there is no need for a district to provide the Certification of Provision of Standards-Aligned Instructional Materials for the 2009-10 fiscal year.

We also enclosed Frequently Asked Questions (FAQs), which can be found on the CDE’s website at: <http://www.cde.ca.gov/fg/fr/eb/instructmaterial.asp>

Please send a copy of the signed resolution to our office within the required timeline. Your district should also retain a copy of this document along with a copy of the board minutes indicating when the resolution was board approved, to present to your independent auditor.

If you have any questions or need further assistance, please feel free to contact me.

EY/mh

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Enclosures

EDUCATION CODE SECTION 60119

(a) 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) (A) 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 sufficient textbooks or instructional materials, or both, that are aligned to the content standards adopted pursuant to Section 60605 in each of the following subjects, as appropriate, that are consistent with the content and cycles of the curriculum framework adopted by the state board:

(i) Mathematics.

(ii) Science.

(iii) History-social science.

(iv) English/language arts, including the English language development component of an adopted program.

(B) The public hearing shall take place on or before the end of the eighth week from the first day pupils attend school for that year. A school district that operates schools on a multitrack, year-round calendar shall hold the hearing on or before the end of the eighth week from the first day pupils attend school for that year on any tracks that begin a school year in August or September. For purposes of the 2004-05 fiscal year only, the governing board of a school district shall make a diligent effort to hold a public hearing pursuant to this section on or before December 1, 2004.

(C) As part of the hearing required pursuant to this section, the governing board also shall make a written determination as to whether each pupil enrolled in a foreign language or health course has sufficient textbooks or instructional materials that are consistent with the content and cycles of the curriculum frameworks adopted by the state board for those subjects. The governing board also shall determine the availability of laboratory science equipment as applicable to science laboratory courses offered in grades 9 to 12, inclusive. The provision of the textbooks, instructional materials, or science equipment specified in this subparagraph is not a condition of receipt of funds provided by this subdivision.

(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, in the resolution, for each school in which an insufficiency exists, the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area and 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 two months of the beginning of the school year in which the determination is made.

(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. The hearing shall be held at a time that will encourage the attendance of teachers and parents and guardians of pupils who attend the schools in the district and shall not take place during or immediately following school hours.

(c) (1) For purposes of this section, "sufficient textbooks or instructional materials" means that 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.

(2) Sufficient textbooks or instructional materials as defined in paragraph (1), does not include photocopied sheets from only a portion of a textbook or instructional materials copied to address a shortage.

(d) The governing board of a school district that receives funds for instructional materials from any state source is subject to the requirements of this section.

SUGGESTED RESOLUTION LANGUAGE ON SUFFICIENCY OF INSTRUCTIONAL MATERIALS:

WHEREAS, the governing board of the _____ School District, in order to comply with the requirements of Education Code Section 60119 held a public hearing on _____, at _____ o'clock, which is on or before the eighth week of school (between the first day that students attend school and the eighth week from that day) and did not take place during or immediately following school hours, and;

WHEREAS, the governing board provided at least 10 days notice of the public hearing posted in at least three public places within the district that stated the time, place, and purpose of the hearing, and;

WHEREAS, the governing board encouraged participation by parents, teachers, members of the community, and bargaining unit leaders in the public hearing, and;

WHEREAS, information provided at the public hearing and to the governing board at the public meeting detailed the extent to which textbooks and instructional materials were provided to all students, including English learners, in the district, and;

WHEREAS, the definition of "sufficient textbooks or instructional materials" means that each pupil has a textbook or instructional materials, or both, to use in class and to take home, and;

WHEREAS, sufficient textbooks and instructional materials were provided to each student, including English learners, that are aligned to the academic content standards and are consistent with the cycles and content of the curriculum frameworks in mathematics, science, history-social science, and English/language arts, including the English language development component of an adopted program, and, **

WHEREAS, sufficient textbooks or instructional materials were provided to each pupil enrolled in foreign language or health classes, and;

WHEREAS, laboratory science equipment was available for science laboratory classes offered in grades 9-12, inclusive;

THEREFORE, BE IT RESOLVED, that for the _____ school year, the _____ School District has provided each pupil with sufficient textbooks and instructional materials aligned to the academic content standards and consistent with the cycles and content of the curriculum frameworks.

Approved on: _____

Certified by: _____
(Clerk/Authorized Agent of Governing Board)

*** To insure that complete and accurate information has been provided upon which to base the board's findings, governing boards may wish to include in their resolution the names of the textbooks or instructional materials programs, which have been adopted by the governing board and were provided to pupils in the district to determine the sufficiency.*

SUGGESTED LANGUAGE FOR INSUFFICIENT INSTRUCTIONAL MATERIALS:

WHEREAS, the governing board of the _____ School District, in order to comply with the requirements of Education Code Section 60119 held a public hearing on _____, at _____ o'clock, which is on or before the eighth week of school (between the first day that students attend school and the eighth week from that day) and did not take place during or immediately following school hours, and;

WHEREAS, the governing board provided at least 10 days notice of the public hearing posted in at least three public places within the district that stated the time, place, and purpose of the hearing, and;

WHEREAS, the governing board encouraged participation by parents, teachers, members of the community, and bargaining unit leaders in the public hearing, and;

WHEREAS, the definition of "sufficient textbooks or instructional materials" means that each pupil has a textbook or instructional materials, or both, to use in class and to take home, and;

WHEREAS, information provided at the public hearing and to the governing board at the public meeting detailed that insufficient textbooks or instructional materials were provided to pupils in the following subjects and grade levels at district schools:

For each school list the percentage of students in each subject and grade level for which insufficiency exists in mathematics, science, history-social science, and English/language arts, foreign language, and health. (PLEASE NOTE: The determinations in foreign language and health are not a condition of receipt of instructional materials funds.)

WHEREAS, the insufficient textbooks or instructional materials listed above were not provided at each school due to the following reasons:

For each school at which there is an insufficiency list the reasons why each pupil does not have sufficient instructional materials in each subject and grade level listed above.

THEREFORE, BE IT RESOLVED, that for the _____ school year, the _____ district has not provided each pupil with sufficient textbooks and instructional materials consistent with the cycles and content of the curriculum framework, and;

BE IT FURTHER RESOLVED, that the following actions will be taken to ensure that all students have sufficient textbooks or instructional materials in all subjects that are aligned to the academic content standards and are consistent with the cycles and content of the curriculum frameworks within two months of the beginning of the school year in which this determination is made.

List actions to be taken – see Education Code Section 60119(a.2.B) for other funds that may be used to insure sufficient instructional materials.

Approved on: _____

Certified by: _____
(Clerk/Authorized Agent of Governing Board)

EDUCATION CODE SECTIONS 60422 AND 60422.1

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.

60422.1. (a) Notwithstanding subdivision (i) of Section 60200, Section **60422**, or any other provision of law, for the 2008-09 and 2009 -10 fiscal years, 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 under the law to provide every pupil with standards-aligned textbooks or instructional materials, as provided in Section 60119.

(c) This section does not relieve school districts of the obligation to hold a public hearing or hearings pursuant to subparagraphs (A) and (B) of paragraph (1) of subdivision (a) of Section 60119.

(d) This section shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

Instructional Materials

Frequently Asked Questions (FAQs).

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?**
Yes. *Education Code (EC)* Section 42605 (Section 15 of SBX3 4) stipulates that item 6110-189-0001 (IMFRP) of the Budget Act is included in the new flexibility provisions.
- 2. From what fiscal years may we use IMFRP funds for any educational purpose pursuant to the flexibility provisions?**
Pursuant to *EC* Section 42605 (Section 15 of SBX3 4) the flexibility provisions apply to fiscal years 2008-09 through 2012-13. Therefore, you may use IMFRP funds from any or all of these fiscal years for any educational purpose. (However, you should be aware that in July 2010 the IMFRP “24 month rule” is reinstated; see related questions below.)
- 3. Does SBX3 4 affect the 2010 implementation due date for new Reading/Language Arts—English-Language Development (RLA/ELD) instructional materials?**
No. There is no current language extending the RLA/ELD implementation timeline. RLA/ELD instructional materials were adopted by the SBE in November 2008, and if your district receives IMFRP funds then you are required to have new RLA/ELD textbooks or instructional materials in the hands of students, ready to implement, by the start of the school year 2010-11—unless you have requested and been granted a waiver from the SBE.
- 4. Do we need to implement both new mathematics and RLA/ELD instructional materials by the start of the fall 2010 academic term?**
Yes.
- 5. We have carryover IMFRP funds from fiscal year 2007-08; can we transfer these funds into our general fund pursuant to the flexibility provisions?**
No. Section 42 of SBX3 4 specifically excludes instructional materials fund balances existing as of June 30, 2008, from being included in any flexibility provisions. Any such balances must be utilized for their original intended purpose.
- 6. Are funds from AB 1802 Supplemental Materials for English Learners included in the flexibility provisions?**
No. AB 1802 funds must be used only for their original intended purpose and be fully expended by June 30, 2009.
- 7. Is the IMFRP “24 month rule” affected by the new laws?**
Yes. As background, *EC* Section 60422 (a) stipulates that districts receiving IMFRP funds must provide students in kindergarten through grade eight (K–8) with state adopted textbooks or 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 (SBE). Pursuant to *EC* Section 60422.1 (Section 19 of SBX3 4), the IMFRP “24 month rule” is not in effect for the 2008-09 and 2009-10 fiscal years.
- 8. Does SB3X 4 affect the fall 2009 implementation due date for new mathematics instructional materials?**
Yes. Pursuant to *EC* 60422.1 (Section 19 of SBX3 4), the IMFRP “24 month rule” is suspended for the 2008-09 and 2009-10 fiscal years and therefore nullifies the previous mathematics implementation due date of fall 2009.
However, the “24 month rule” is reestablished in July 2010. Therefore, every K–8 student should have textbooks or instructional materials from the 2007 mathematics adoption in their hands by the start of school year 2010-11.
- 9. We do not believe that we can fully implement both new mathematics and RLA/ELD instructional materials by the start of the fall 2010 academic term. Do we have any options?**

What about a waiver?

EC Section 60422 (c) provides that the SBE may grant school districts additional time to meet the implementation timeline.

However, pursuant to the statute (*EC* Section 60422(c)(1)(2)(3)) the governing board of the school district must successfully demonstrate that all of the following criteria apply to the district:

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

It is important for school districts to be mindful of their overall adoption plan timeline and how a waiver in one or two subject areas would affect other required local adoptions of instructional materials.

Traditionally, the SBE has granted extensions of twelve months.

Additional information, including waiver request forms, instructions, and timelines are available on the [CDE Waivers Web page](#).

10. We were already getting ready to submit a waiver request for math, should we continue with this request?

Districts were previously required to implement new mathematics textbooks or instructional materials by the beginning of the fall 2009 academic term (which was 24 months following the 2007 mathematics primary adoption). However, pursuant to *EC* Section 60422.1 (Section 19 of SBX3 4), the IMFRP “24 month rule” is not in effect for 2008-09 through 2009-10 which gives districts an additional year to initiate implementation of these instructional materials. If this extended timeline will be inadequate for your local adoption plan, you may request a waiver from the SBE.

11. Does the new *EC* Section 60422.1 (Section 19 of SBX3 4) or any other language in the new flexibility provisions mean there are no *Williams* requirements for the next 18 months?

No. IMFRP and *Williams* are separate issues. The “24 month rule” is a provision related exclusively to the IMFRP. *EC* Section 42605(e)(2) (Section 15 of SBX3 4) specifically states that *Williams* provisions regarding textbook sufficiency remain in full effect. Districts must still insure that every student has standards-aligned (state-adopted for the four core subjects in grades K–8) textbooks or instructional materials, or both, even though the purchasing requirement of the adoption cycle is suspended for 2008-09 and 2009-10. Additionally, compliance visits for *Williams* will continue as usual.

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. However, pursuant to *EC* Section 42605(e)(2), no funding included in the flexibility provisions may be used to purchase materials from a prior state adoption list.

12. 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?

Yes. *EC* Section 60119 has been amended (by Section 18 of SBX3 4). Regardless of the revenue limit, in order to be eligible to receive IMFRP funds, the governing board of a school district must hold a 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 frequently asked questions regarding these public hearings, is available on the [CDE Instructional Materials frequently asked questions Web page](#).

Questions: [Fiscal Policy](#) | FLEX@cde.ca.gov

Last Reviewed: Friday, June 12, 2009