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State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
Phone: (505) 986-4591 Fax: (505) 986-4338  
<http://www.nmlegis.gov/lcs/lesc/lescdefault.aspx>

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June 25, 2015

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Robin Shaya  
Ian Kleats

**RE: STAFF REPORT: INSTRUCTIONAL MATERIALS POLICY OVERVIEW**

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**INTRODUCTION**

At the May 2015 interim meeting of the Legislative Education Study Committee (LESC) meeting, the committee designated changes to statutory provisions and definitions for the *Instructional Material Law* as a topic of interest for the committee's interim work. The committee expressed specific interest in provisions allowing the use of instructional material allocations for digital material and the potential for even further flexibility in the use of those funds.

During the 2015 legislative session, two pieces of legislation were introduced that addressed those specific issues: House Bill (HB) 146aa, *Instructional Material Definitions & Changes* and its companion, Senate Bill (SB) 225. These bills would have amended the *Instructional Material Law* to:

- modify the definition of "instructional material" to include electronic media content but to exclude electronic devices and hardware;
- remove restrictions on the percentage of instructional material allocations that may be used for material not on the multiple list; and
- eliminate a provision requiring textbooks be available for each student to take home.

While SB 225 did not proceed out from its first committee referral, HB 146 was amended twice before passing both houses and reaching the Governor’s desk where it was vetoed. In the veto message, the Governor cited concerns that the bill’s provisions could “jeopardize the quality of quality of materials our children are provided in school and [eliminate] the guarantee that students will have regular and convenient access to those materials.”

This staff report includes:

- provisions of current law;
- instructional material appropriations and allocations;
- provisions of HB 146;
- previous instructional material program reviews; and
- selected chronology of LESC instructional material discussions.

This staff report also includes the following attachments:

- **Attachment 1, the *Instructional Material Law*;**
- **Attachment 2, *Timeline of Instructional Material Fund Allocations*;**
- **Attachment 3, *Instructional Material Initial Allocation 2015-2016*;**
- **Attachment 4, *House Bill 146, as amended, 2015 (Enrolled and Engrossed)*;**
- **Attachment 5, *House Executive Message No. 12*; and**
- **Attachment 6, *LFC Executive Summary: Oversight and Spending of Instructional Materials in Public Schools, January 20, 2014*.**

## PROVISIONS OF CURRENT LAW

Originally called the “Free Textbook Fund,” the Instructional Material Fund was first created 1967 in the *School Textbook Law*. The fund was to be used “for the purpose of paying for the cost of purchasing instructional material pursuant to the *School Textbook Law*, which was amended in 1975 to become the *Instructional Material Law*, and the Free Textbook Fund was renamed the Instructional Material Fund.

Administered by the Instructional Material Bureau at the Public Education Department (PED), the *Instructional Material Law* entitles any qualified student enrolled in an early childhood education program or in grades K through 12 in a public school, an accredited private school or a state supported school to the free use of instructional material.

The *Instructional Material Law* provides for the distribution of funds for the purchase of instructional material on a per-pupil basis. While a full copy of the *Instructional Material Law* is included as **Attachment 1**, among its provisions, the law:

- requires, on or before April 1 of each year, for PED to allocate to each school district, state institution, or private school not less than 90 percent of its estimated entitlement for the school year. On or before January 15 of each year, PED is required to re-compute each entitlement using the membership of the first reporting date (first Wednesday in October) and allocate the balance of the annual appropriation, adjusting for any over- or under-estimation made in the first allocation;

- allows a school district and state institution to expend at least 50 percent of their allocation to purchase instructional material from the state-adopted multiple list. The remaining 50 percent of the allocation may be used to purchase instructional material not included on the state-adopted multiple list and up to 25 percent of this portion of the allocation may be used to purchase “other classroom materials,” which are defined as materials other than textbooks that are used to support direct instruction to students;
- requires accredited private schools to receive the same amount of per-pupil funding as public schools. However, private schools are allowed to expend up to 50 percent of their instructional material allocation for items that are not on the multiple list provided that (1) no funds are expended for religious, sectarian, or nonsecular materials; and (2) all instructional material purchases are made through an in-state depository. Payments to an in-state depository for private schools are required to be paid by PED;
- allows any funds remaining at the end of a fiscal year to be retained by a school district, and state institution for expenditure in subsequent years. Private schools are not allowed to retain end of the fiscal year balances; however, any balance remains available for reimbursement by PED for the purchase of instructional material by the private school in subsequent years; and
- requires PED to establish an instructional material review process in rule. Part of this process, as established in PED rule, is a summer review institute that includes Level 2 and Level 3-A teachers as reviewers of record, in partnership with Level 1 teachers, students completing teacher preparation programs, parents, and community leaders as observers.

PED rule delineates certain other aspects of the instructional material process. Regarding the adoption of instructional material, rule requires PED to ensure that:

- there be one annual adoption;
- material be adopted for a six-year period; and
- the subject area at each annual adoption consist of those subject areas whose adoption period expires at the end of the year during which the adoption is conducted.

## **INSTRUCTIONAL MATERIAL APPROPRIATIONS AND ALLOCATIONS**

### ***Instructional Material Appropriations***

In the *General Appropriation Act (GAA)* of each year, the Legislature appropriates General Fund dollars to the Instructional Material Fund from a portion of the expected receipts of federal *Mineral Leasing Act* revenue in the forthcoming fiscal year, as required by the *Public School Finance Act*.

This appropriation forms the basis of providing instructional materials to eligible students statewide. That money is then allocated through a formula specified in the *Instructional Material Law* and distributed by PED. Every interim, the LESC requests and receives a report from PED on the allocation and distribution of the Instructional Material Fund appropriation.

Additionally, the LESC considers the appropriation request for instructional material each year through the PED public school support recommendations for the following fiscal year, which is due to the Department of Finance and Administration (DFA) on or before November 30, as required in the *Public School Finance Act*.

In total, over the three most recent GAAs, the Legislature has appropriated almost \$69.8 million for the purchase of instructional materials, including:

- categorical appropriations to the Instructional Material Fund of:
  - approximately \$20.98 million for FY 14;
  - approximately \$20.31 million for FY 15; and
  - \$21.90 million for FY 16; and
- special (nonrecurring) appropriations to PED of:
  - \$3.5 million for expenditure in FY 14 or FY 15 (*GAA of 2014*); and
  - \$3.1 million for expenditure in FY 15 or FY 16 (*GAA of 2015*).

### ***Instructional Material Allocations***

The process for allocating money from the Instructional Material Fund is detailed within the *Instructional Material Law* along with the rules promulgated by PED. A timeline of the allocation process as described in statute or rule is included in **Attachment 2**.

The allocation and distribution of funds could be interpreted as two distinct concepts within the context of the *Instructional Material Law*. The allocation describes how much money each public school, state institution, and nonpublic school is entitled to receive; the distribution is the actual receipt of the allocation by the public school, state institution, or nonpublic school. Neither law nor PED rule details a specific timeline for the distribution of funds.

Provisions of the *Instructional Material Law* define the instructional material entitlement for each eligible educational institution as:

- the portion of the total appropriation, less a deduction for a reasonable emergency reserve, that its 40-day membership bears to the 40-day membership of the entire state; where,
- additional pupils<sup>1</sup> shall be counted as six pupils; and
- the adult basic education entitlement is based on a full-time equivalent membership of 0.25 multiplied by the previous year's enrollment.

According to statute, the entitlement is then broken down between two separate allocations:

1. On or before April 1 of each year, PED shall allocate not less than 90 percent of the *estimated* entitlements;

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<sup>1</sup> The term "additional pupil" is defined in the *Instructional Material Law* as "a pupil in a school district's, state institution's, or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's, or private school's prior year's forty-day membership."

- the estimated entitlement is based on the estimated 40-day membership for the next school year.
2. On or before January 15 of each year, PED shall allocate the balance of the annual appropriation based on *actual* entitlements;
- the actual entitlement is re-computed based on the certified 40-day membership for that year, except for adult basic education; and
  - allocations are adjusted for any over- or under-estimation in the first allocation.

Compiled PED rule remains silent on the allocation process. However, the Manual of Procedures (incorporated by reference into PED rule), among its other provisions, refers to the allocation process at least nine separate times. Being generally consistent with other references in that document, provisions on pg. 26 of that document state:

- “On or before April 1 of each fiscal year, the PED shall allocate to each school district, charter district, charter school, non-public and state supported school, not less than 90% of the estimated entitlement based on the prior year forty-day membership”; and
- “On or before January 31 of each year, the PED shall re-compute each entitlement using the forty-day membership for the current year, and shall allocate the balance of the annual appropriation compensating for any over- or under-estimation made in the first allocation. Any additional pupil shall be counted as six pupils.”

**Attachment 3**, details the initial instructional material allocations for school districts, charter schools, and accredited private schools for school year 2015-2016.

### **PROVISIONS OF HOUSE BILL 146**

During the 2015 legislative session, House Bill (HB) 146aa, *Instructional Material Definitions & Changes*, was introduced to allow the expand the types of digital material included in the definition of instructional material and provide flexibility in the use of instructional material allocations. The bill was subsequently amended twice before passing both houses and reaching the Governor’s desk where it was vetoed; the final version of the bill has been included as **Attachment 4**.

Aside from making several technical changes in the use of terms, the provisions of HB 146, as amended, would have amended sections of the *Instructional Material Law* to:

- modify the definition of “instructional material” to include:
  - original source material from primary sources; and
  - resources that support digital learning formats and educational programs, whether or not they are on the multiple list;
- strike the modifier “state-chartered” before “charter school” in the definition of “school district,” which allows locally chartered charter schools to be treated as school districts;
- remove the restrictions on the percentage of each school district’s, charter school’s, and state institution’s allocation that may be used for material not on the multiple list and for

material that may not be included in the amended definition of “instructional material”;  
and

- remove the requirement that PED verify, prior to the final distribution of funds, that each school district or charter school has a policy that:
  - requires that every student has a textbook for each class conforming to curriculum requirements; and
  - allows students to take those textbooks home.

During the 2013 interim, the LESC received a staff report on selected components of the instructional material process that had been of interest to the LESC. Among other issues, the staff report noted:

- although current law defines entitlements and allocations for state-chartered charter schools and not locally chartered charter schools, in practice, PED has been making direct distributions to locally chartered charter schools rather than flowing the funds through its chartering authority;
- since 1999, the *Charter Schools Act* has required PED to waive for charter schools a number of provisions of the *Public School Code*, among them the purchase of instructional material, also detailing the following:
  - the Manual of Procedures (incorporated into PED rule) specifies that charter schools have 100 percent discretionary authority to purchase on or off the multiple list, and they have no limitations regarding whether the instructional material they purchase is core/basal or supplementary;
  - an Instructional Material Bureau contractor confirmed that any instructional material that charter schools purchase must still meet the statutory definition of the term; and
  - according to information from a small sample of charter school administrators, instructional material funds have been spent on online and internet-based instructional materials, including licenses to use certain web-based curriculum.

If legislation similar to HB 146 were enacted, it might address the issues identified above by:

- amending statute to conform to current practice in the distribution of funds to locally chartered charter schools by including those schools in the definition of “school district”;  
and
- granting state institutions and school districts the same discretionary authority with respect to instructional material purchases that charter schools currently possess.

However, these potential provisions raise a question with respect to the instructional material adoption process; namely, the Legislature might reconsider the role and purpose of the adoption process if school districts were no longer required to purchase any material from the multiple list.

### ***Governor’s Veto Message***

In **Attachment 5**, dated April 7, 2015, Governor Susana Martinez enunciates her reasons for vetoing HB 146. The Governor explains that HB 146:

- would allow school districts to use their entire annual distribution of funds to purchase instructional materials that have not been deemed to meet appropriate standards, which could result in:
  - lowering standards of learning; and
  - high costs to school districts to vet and review instructional materials; and
- eliminate the guarantee that students will have regular and convenient access to instructional materials at home.

The committee may wish to consider how the concerns raised within the Governor’s veto message could be addressed while still satisfying the original goals of the underlying legislation. To that end, the recommendations of previous instructional material program reviews from the 2013 interim may provide additional insight.

## **PREVIOUS INSTRUCTIONAL MATERIAL PROGRAM REVIEWS**

During the 2013 interim, the LESC staff was requested to meet with the Legislative Finance Committee (LFC) staff to coordinate activities related to a planned 2013 LFC program evaluation of the Instructional Material Fund and education technology in New Mexico. After discussing specific elements of the methodology that the LFC staff planned to use and the timeline for the project, LESC staff decided to work on a separate review guided by past LESC discussions regarding the instructional material process.

### ***LESC Review of Selected Components of the Instructional Material Process***

During the January 2014 interim meeting of the LESC, the committee received a presentation from LESC staff, which reviewed certain select components of the instructional material process. Each component was framed within the context of previous committee discussions, current provisions in statute and rule, and the current condition of the program as administered by PED. The program review examined the following selected components of the instructional material process:

- the administration of the instructional material adoption process;
- the distribution of instructional material allocations;
- special provisions for charter schools;
- oversight of the *Instructional Material Law*;
- the role of the in-state depository; and
- the use of state general obligation (G.O.) bonds for purchasing school books.

Based on the results of this review, LESC staff testimony listed three potential actions that the LESC and the LFC may wish to consider, based on the information presented:

- when considering legislation authorizing the issuance of G.O. bonds to provide distributions to public schools statewide, ensure that the language clarifies whether the proceeds are for all public schools or selected public schools;

- require PED to provide an annual report to the committees outlining the department’s administration of the *Instructional Material Law* and related PED rule, including certain requirements; and
- direct LESC and LFC staff to conduct a follow-up review of the instructional material process and to provide a report with potential policy considerations.

***LFC Evaluation: Oversight and Spending of Instructional Materials in Public Schools***

During the January 2014 interim meeting of the LESC, the committee received a presentation from LFC staff on the results of their program evaluation titled “Oversight and Spending of Instructional Materials in Public Schools”; the executive summary of this report is included as **Attachment 6**. Referring to the LFC evaluation report that was distributed to the members, LFC staff briefed the committee on several of the evaluation’s findings, specifically that:

- the instructional material process suffers from a lack of oversight, and school districts and charter schools sometimes expend funds in ways inconsistent with state law;
- the system for funding instructional material does not meet current needs, resulting in reports of inadequate resources while allocated money goes unspent; and
- New Mexico is unprepared for a transition to a personalized digital learning environment.

LFC staff also stated that:

- districts report insufficient dual credit instructional material funds and appear to be using instructional material allocations to purchase dual credit material;
- Instructional Material Fund distributions are potentially problematic (referring to the LESC review indicating that PED may not be including additional funding for new pupils in allocation adjustments as required by statute);
- required reporting by school districts, charter schools, and private schools is incomplete;
- internal controls surrounding inventory of purchased instructional material are lacking without sufficient staffing, leaving PED unable to actively verify whether New Mexico is receiving the best price for instructional material;
- in recent years, between 30 and 40 percent of districts have spent more than 50 percent of their funds on material not on the multiple list — not adhering to statutory limits on instructional material expenditures;
- several states have removed instructional material restrictions to allow school districts more flexibility in addressing school district needs and changes in technology; and
- states have also eliminated line-item instructional material appropriations and increasingly expect school districts to fund instructional material purchases with general operating funds.

Finally, LFC staff summarized the recommendations from the program evaluation. Among other items, they suggested that the Legislature should:

- amend the *Instructional Material Law* to require that instructional material funds be used on state-approved material on the multiple list, which includes both core/basal and supplemental material;

- direct PED to develop quality and accountability standards for all digital content, e-reader devices, and electronic courses, and other technologies used for instruction; and
- consider sweeping and re-appropriating the Education Technology Fund balance.

## **SELECTED CHRONOLOGY OF LESC INSTRUCTIONAL MATERIAL DISCUSSIONS**

### *Administration of the Instructional Materials Adoption Process*

In the 2005 interim, the LESC reviewed endorsed legislation that was enacted to amend the *Instructional Material Law* to:

- require PED, by rule, to establish a summer review process of core/basal instructional material in the content area under adoption that is facilitated by content area experts and that:
  - ensures instructional material purchased from the multiple list meets PED's standards and benchmarks;
  - utilizes Level 2 and Level 3-A teachers as reviewers; and
  - includes Level 1 teachers, students in teacher preparation programs, parents, and community representatives.

During the June 2005 LESC interim meeting, PED staff reported that, to implement the requirements of law, the department:

- developed a rule, effective June 1, 2005;
- held a workshop with private schools on May 13, 2005; and
- coordinated and conducted the first Instructional Materials Summer Review Institute from June 5-10, 2005 at the College of Santa Fe for the review and adoption of science, health, and physical education materials for school year 2006-2007.

PED staff also emphasized that teachers who participated in the summer review process indicated that the process was one of the best professional development activities of their career, primarily because of the opportunity to collaborate with highly qualified content experts from around the state.

More recently, during the June 2012 LESC interim meeting, the committee heard testimony from PED staff indicating that, while the FY 13 appropriation to the Instructional Material Fund was determined based on the adoption of science, health, and physical education materials that had been reviewed during the Summer Review Institute, the Public School Support recommendations of the department for FY 13 would be used for materials aligned with the Common Core State Standards.<sup>2</sup> Then, in testimony to the House Education Committee during the 2012 legislative session, PED staff indicated that the FY 13 materials would be focused on reading.

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<sup>2</sup> The 2012 Legislature appropriated \$1.5 million to address the need for science materials to be available for low-performing schools. During the September 2012 interim LESC meeting, PED staff were requested to update the committee on the distribution of this appropriations. LESC minutes to that meeting indicated that a distribution had not yet been determined.

### ***Distribution of Instructional Materials Allocations***

Historically, the LESC has examined the adequacy of appropriations for instructional material and the allocation calculation in statute. For instance, in 1999, the LESC endorsed a bill that changed the allocation calculation for additional pupils to a six-times multiplier to reflect the six-year adoption cycle, which was advocated by the State Board of Education.

### ***Special Provisions for Charter Schools***

The LESC has historically been interested in provisions related to charter schools. During every interim since the enactment of the *Charter Schools Act*, the committee has heard testimony on charter schools; and the committee has endorsed legislation related to charter schools during most legislative sessions since then.

The LESC has also maintained an interest in the relationship between charter schools and traditional public schools. For example, during the 2012 legislative session the committee endorsed successful legislation that extended for another school year a temporary waiver provision modeled on language in the *Charter Schools Act*. As a means of addressing fiscal constraints at that time, this legislation allowed the Secretary of Public Education to grant for school districts waivers of certain requirements in law and PED rule that are automatically granted to charter schools, one of which was the purchase of instructional material.

### ***Oversight of the Instructional Materials Law***

Oversight of the provisions of the *Instructional Material Law* by the IMB has been of interest to both the LESC and the LFC for many years. In November of 1999, a joint audit report of instructional material presented to a joint meeting of the LESC and LFC, focused on the “effectiveness of the Instructional Material Bureau Oversight.” At the time, the audit made 11 findings, including findings highlighting:

- confusing and contradictory regulations;
- a lack of oversight ensuring districts were receiving the lowest price offered in the country for particular materials on the multiple list; and
- that the bureau knew of instances of noncompliance, but did not withhold or withdraw instructional materials funds for those entities out of compliance.

At that time, an LESC committee member expressed concern about monitoring the prices of textbooks on the state adoption list and the Superintendent of Schools stated that it was the responsibility of the department to monitor textbook prices.

### ***The Role of the In-State Depository***

At least since 2005, the LESC has discussed the role of in-state depositories related to the purchase of instructional material by accredited private/nonpublic schools.

During the June 2005 interim LESC meeting, the committee discussed the amendments to the *Instructional Material Law* that required PED to make direct payments to book depositories or publishers on behalf of each accredited private/nonpublic school rather than distributing funds to these schools on a reimbursement basis.

In 2009, the committee heard testimony from LESC staff that the provisions of the *Instructional Material Law* relating to accredited private/nonpublic schools had been amended during the 2009 legislative session to require these schools to purchase all instructional materials from an in-state depository.

Then, in 2012, the committee discussed the provisions in law that require instructional material end-of-the-year balances for a private school to remain available for material purchases in subsequent years. Concerns were expressed that PED was unable to provide private schools with an accurate accounting of end-of-the-year balances for these schools. PED staff reported that the issues related to cash balances were caused by two situations:

- a \$4.0 million appropriation to PED for Assessment and Test Development that included a \$3.0 million funds sweep from instructional material fund balances; and
- one in-state depository ceasing operation without reconciling transactions with PED.

### ***The 2010 G.O. Bond for School Books and Instructional Materials***

In the November 2012 interim meeting of the LESC, the committee discussed the provisions of legislation that was enacted (Laws 2010, Ch. 3) authorizing the issuance of G.O. bonds upon voter approval for certain public school initiatives, including \$2.0 million to purchase school books and instructional materials statewide.

During the discussion, LESC staff reported that:

- in November of 2010, voters statewide approved the G.O. bonds for these purposes by a margin of 60.86 percent “For” and 39.14 percent “Against”; and
- in October of 2012, PED issued a memorandum stating that “awards to purchase books and instructional materials [would be given] to schools which received a letter grade of ‘A’ or [to those] recognized as a ‘Top Growth’ school.”

In response to a committee member’s question as to how the awards were funded, Ms. Hanna Skandera, Secretary of Public Education, stated that the 2010 G.O. bond proceeds were distributed for this purpose.

Minutes from that meeting indicate that committee members:

- commented that the language in the legislation authorizing those bonds specified that the funds were to be used in schools statewide, rather than a few, select schools; and
- questioned the legality of spending G.O. bond proceeds in order to reward “Top Growth” and “A” schools.

**ARTICLE 15**  
**Instructional Material**

## Section

22-15-1	Short title.
22-15-2	Definitions.
22-15-3	Bureau; chief.
22-15-4	Bureau; duties.
22-15-5	Instructional material fund.
22-15-6	Disbursements from the instructional material fund.
22-15-7	Students eligible; distribution.
22-15-8	Multiple list; selection; review process.
22-15-8.1	Instructional material adoption fund.
22-15-8.2	Reading materials fund; created; purpose; applications.
22-15-9	Distribution of funds for instructional material.
22-15-10	Sale or loss or return of instructional material.
22-15-11	Record of instructional material.
22-15-12	Annual report.
22-15-13	Contracts with publishers.
22-15-14	Reports; budgets.
22-15-15	Short title.
22-15-16	Purpose.
22-15-17	Funding.
22-15-18	Posting of copy.
22-15-19	Other funds prohibited.
22-15-20	Definition.
22-15-21	Repealed.
22-15-22	Repealed.
22-15-23	Repealed.
22-15-24	Repealed.
22-15-25	Repealed.
22-15-26	Short title.
22-15-27	Purposes.
22-15-28	Definitions.
22-15-29	Instructional materials.
22-15-30	Guidelines.
22-15-31	Private right of action.

**22-15-1. Short title.**

Sections 22-15-1 through 22-15-14 NMSA 1978 may be cited as the "Instructional Material Law".

History: 1953 Comp., § 77-13-1, enacted by Laws 1967, ch. 16, § 205; 1975, ch. 270, § 1; 2005, ch. 80, § 1.

**Cross references.** — For courses of instruction generally, see 22-13-1 NMSA 1978 et seq.

The 2005 amendment, effective April 4, 2005, made no changes to this section.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), Sections 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the Establishment Clause of the First Amendment of the United States Constitution; the United States Supreme Court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the Establishment Clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 68 Am. Jur. 2d Schools § 318 et seq.

Furnishing free textbooks to sectarian school or student therein, 93 A.L.R.2d 986.

### 22-15-2. Definitions.

As used in the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978]:

- A. "division" or "bureau" means the instructional material bureau of the department;
- B. "director" or "chief" means the chief of the bureau;

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C. "instructional material" means school textbooks and other educational media that are used as the basis for instruction, including combinations of textbooks, learning kits, supplementary material and electronic media;

D. "multiple list" means a written list of those instructional materials approved by the department;

E. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of instructional material pursuant to the Instructional Material Law;

F. "additional pupil" means a pupil in a school district's, state institution's or private school's current year's certified forty-day membership above the number certified in the school district's, state institution's or private school's prior year's forty-day membership;

G. "school district" includes state-chartered charter schools; and

H. "other classroom materials" means materials other than textbooks that are used to support direct instruction to students.

History: 1953 Comp., § 77-13-2, enacted by Laws 1967, ch. 16, § 206; 1975, ch. 270, § 2; 1993, ch. 226, § 35; 2005, ch. 80, § 2; 2006, ch. 94, § 47; 2007, ch. 285, § 1.

**The 2007 amendment**, effective June 15, 2007, added Subsection H.

**The 2006 amendment**, effective July 1, 2007, added Subsection G to define school district.

**The 2005 amendment**, effective April 4, 2005, changed the definition of "instructional material" to textbooks and media that are used as the basis for instruction, including combinations of textbooks, kits, supplementary material and electronic media.

**The 2003 amendment**, effective June 20, 2003, substituted "of" for "in" following "material bureau" in Subsection A; and added "including on-line resources, distance learning media and productivity software" at the end of Subsection C.

### **22-15-3. Bureau; chief.**

A. The "instructional material bureau" is created within the department of education [public education department].

B. With approval of the state board [department], the state superintendent [secretary] shall appoint a chief of the bureau.

**History:** 1953 Comp., § 77-13-3, enacted by Laws 1967, ch. 16, § 207; 1975, ch. 270, § 3; 1993, ch. 226, § 36.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall

be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline, which formerly read "Division director; surety bond"; substituted "instructional material bureau" for "state instructional material division" in Subsection A; substituted "chief of the bureau" for "director of the division to be known as the 'state instructional material director'"; and deleted former Subsection C, pertaining to the official bond of the director.

#### **22-15-4. Bureau; duties.**

Subject to the policies and rules of the department, the bureau shall:

A. administer the provisions of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978];

B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions and private schools pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process.

History: 1953 Comp., § 77-13-4, enacted by Laws 1967, ch. 16, § 208; 1975, ch. 270, § 4; 1993, ch. 226, § 37; 1997, ch. 100, § 1; 2005, ch. 80, § 3; 2009, ch. 221, § 3.

**The 2009 amendment**, effective July 1, 2010, in Subsection B, after "and private schools", deleted "and adult basic education centers".

**The 2005 amendment**, effective April 4, 2005, added Subsection E to require the bureau to enforce rules that require local school boards to implement a process that ensures parents and community members are involved in the instructional material review process.

**The 1997 amendment**, effective July 1, 1998, inserted "and instructional material funds" in Subsection B.

**The 1993 amendment**, effective July 1, 1993, substituted "Bureau" and "bureau" for "Division" and "division" in the catchline and introductory paragraph; inserted "and regulations" in the introductory paragraph; deleted "adopt and" at the beginning of Subsection B; and added Subsection D, making related grammatical changes.

#### **22-15-5. Instructional material fund.**

A. The state treasurer shall establish a nonreverting fund to be known as the "instructional material fund". The fund consists of appropriations, gifts, grants, donations and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the provisions of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978].

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law. Transportation charges for the delivery of instructional material to a school district, a state institution or a private school as agent and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional material that appears on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material.

History: 1953 Comp., § 77-13-5, enacted by Laws 1967, ch. 16, § 209; 1975, ch. 270, § 5; 1992, ch. 76, § 1; 1997, ch. 100, § 2; 2009, ch. 221, § 4.

**The 2009 amendment**, effective July 1, 2010, in Subsection A, added the last sentence; in Subsection B, after "a private school as agent", deleted "or an adult basic education center".

**The 1997 amendment**, effective July 1, 1998, made a stylistic change in Subsection B.

**The 1992 amendment**, effective May 20, 1992, inserted "a" preceding "state institution" in the second sentence of Subsection B and added the third sentence of that subsection.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts,

state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

### **22-15-6. Disbursements from the instructional material fund.**

Disbursements from the instructional material fund shall be by warrant of the department of finance and administration upon vouchers issued by the department of education [public education department].

**History:** 1953 Comp., § 77-13-6, enacted by Laws 1967, ch. 16, § 210; 1975, ch. 270, § 6; 1993, ch. 226, § 38.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "director".

## **ANNOTATIONS**

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is

neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

### **22-15-7. Students eligible; distribution.**

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the department in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a private early childhood education program approved by the department is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions and private schools as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution or private school as agent receiving instructional material pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978] is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material.

History: 1953 Comp., § 77-13-7, enacted by Laws 1967, ch. 16, § 211; 1975, ch. 270, § 7; 1977, ch. 99, § 1; 1993, ch. 226, § 39; 1997, ch. 100, § 3; 2003, ch. 394, § 5; 2009, ch. 221, § 5.

**Cross references.** — For transfer of usable materials, see 22-15-10 NMSA 1978.

For the transfer of powers and duties of the former state board of education, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsection A, deleted the last sentence which provided that any student in a basic education program approved by the commission on higher education

was entitled to the free use of instructional material from the instructional material bureau; in Subsection B, after "private schools", deleted "and adult basic education centers"; and in Subsection C, after "private school as agent", deleted "and adult basic education centers".

**The 2003 amendment**, effective April 8, 2003, in Subsection A, substituted "commission on higher education" for "state board" following "approved by the" and added "from the instructional material bureau of the department of education" at the end.

**The 1997 amendment**, effective July 1, 1998, in Subsection C, made a stylistic change and substituted "by" for "of".

**The 1993 amendment**, effective July 1, 1993, in Subsection A, substituted "22-13-3 NMSA 1978" for "77-11-2 NMSA 1953" and made a minor stylistic change in the second sentence.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No.88-37.

### **22-15-8. Multiple list; selection; review process.**

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978]. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution or private school as agent may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

History: 1953 Comp., § 77-13-8, enacted by Laws 1967, ch. 16, § 212; 1975, ch. 270, § 8; 1986, ch. 33, § 31; 1993, ch. 226, § 40; 1997, ch. 100, § 4; 2003, ch. 146, § 1; 2005, ch. 80, § 4; 2009, ch. 221, § 6.

**Cross references.** — For contracts with publishers for purchase and delivery of materials on list, see

22-15-13 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsection B, after "private school as agent", deleted "and adult basic education centers".

**The 2005 amendment**, effective April 4, 2005, added Subsection C to require the department to establish an instructional review process for the adoption of instructional material on a multiple list; provided in new Subsection D that participants in the summer review institute shall receive a stipend as determined by department rule; and in new Subsection E, required the department to charge a processing fee to vendors of instructional material.

**The 2003 amendment**, effective June 20, 2003, added the second sentence of Subsection A, pertaining to ten percent of instructional material on the multiple list concerning language arts and social studies.

**The 1997 amendment**, effective July 1, 1998, made a stylistic change in Subsection B.

**The 1993 amendment**, effective July 1, 1993, inserted "and other community members" in the second sentences of Subsections A and B.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Right to inspect instructional material.** — Local school boards have no authority to prohibit citizens

of the state from inspecting instructional material used in a public school within the district. 1988 Op. Att'y Gen. No. 88-37.

### **22-15-8.1. Instructional material adoption fund.**

The "instructional material adoption fund" is created in the state treasury. The fund consists of fees charged to publishers to review their instructional materials, income from investment of the fund, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department and money in the fund is appropriated to the department to pay expenses associated with adoption of instructional material for the multiple list.

History: Laws 2005, ch. 80, § 5.

**Emergency clauses.** — Laws 2005, ch. 80, § 8 contained an emergency clause and was approved April 4, 2005.

### **22-15-8.2. Reading materials fund; created; purpose; applications.**

A. The "reading materials fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the department, and money in the fund is appropriated to the department to assist public schools that want to change their reading programs from the current adoption. Money in the fund shall be disbursed on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public education or the secretary's authorized representative.

B. A school district that wants to use a scientific research-based core comprehensive, intervention or supplementary reading program may apply to the department for money from the reading materials fund to purchase the necessary instructional materials for the selected program. A school district may apply for funding for its reading program if:

- (1) core and supplemental materials are highly rated by either the Oregon reading first center or the Florida center for reading research or the materials are listed in the international dyslexia association's framework for informed reading and language instruction;
- (2) the district selects no more than two comprehensive published core reading programs; and
- (3) the district has established a professional development plan describing how it will provide teachers with professional development and ongoing support in the effective use of the selected instructional materials.

History: Laws 2006, ch. 58, § 1.

**Effective dates.** — Laws 2006, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 17, 2006, 90 days after adjournment of the legislature.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

### **22-15-9. Distribution of funds for instructional material.**

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school as agent not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic

education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25. The department shall transfer the amount of the allocation for adult basic education to the adult basic education fund.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district or state institution may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978, and up to twenty-five percent of this amount may be used for other classroom materials. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget adjustment request to the department. Private schools may expend up to fifty percent of their instructional material funds for items that are not on the multiple list; provided that no funds shall be expended for religious, sectarian or nonsecular materials; and provided further that all instructional material purchases shall be through an in-state depository.

D. The department shall establish procedures for the distribution of funds directly to school districts and state institutions. Prior to the final distribution of funds to any school district or charter school, the department shall verify that the local school board or governing body has adopted a policy that requires that every student have a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home.

E. The department shall provide payment to an in-state depository on behalf of a private school for instructional material.

F. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years.

History: 1953 Comp., § 77-13-9, enacted by Laws 1967, ch. 16, § 213; 1969, ch. 180, § 26; 1975, ch. 270, § 9; 1977, ch. 99, § 2; 1979, ch. 125, § 1; 1992, ch. 76, § 2; 1993, ch. 226, § 41; 1997, ch. 100, § 5; 1999, ch. 237, § 1; 2005, ch. 80, § 6; 2007, ch. 284, § 1.; 2007, ch. 285, § 2; 2009, ch. 221, § 7.

**Cross references.** — For annual reports, see 22-15-12 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsection A, added the last sentence; in Subsection C, after "state institution", deleted "or adult basic education center"; at the beginning of the fourth sentence, deleted "Adult basic education centers" and added "Private schools"; after "may expend up to", deleted "one hundred" and added "fifty"; and in the last sentence, after "multiple list", added the remainder of the sentence; in Subsection D, after "state institutions" deleted "and adult basic education

centers"; in Subsection E, after "provide payment to", deleted "a publisher or" and added "an in-state"; and at the end of the sentence, deleted "included on the multiple list provided for in Section 22-15-8 NMSA 1978"; and in Subsection F, after "state institution" deleted "or adult basic education center".

**The 2007 amendment**, effective June 15, 2007, in Subsection C provided that up to twenty-five percent of the funds appropriated by instructional materials to also be used for other classroom materials.

**The 2005 amendment**, effective April 4, 2005, in Subsection A, changed the deadline for allocations of entitlements from July 1 to April 1 of each year; in Subsection C, increased the amount of allocations that may be used for instructional material from thirty to fifty percent and provides for a waiver of the use of funds allocated for instructional material; in Subsection D, required the department make payment to the publisher or depository on behalf of a private school for instructional material on the multiple list; and in Subsection E, provided that funds remaining for the purchase of instructional material at the end of the fiscal year shall be retained and used in subsequent year.

**The 1999 amendment**, effective June 18, 1999, in Subsection A, added the third sentence and deleted the last sentence which read: "For the purpose of this allocation, additional pupils shall be counted as four pupils".

**The 1997 amendment**, effective July 1, 1998, added "Distribution of Funds for" in the section heading; deleted former Subsection A, relating to the establishment of separate instructional material accounts; redesignated the first paragraph of former Subsection B as Subsection A; in the first sentence of Subsection A, deleted "credit" following "allocate" and deleted "the instructional material account of" preceding "each", and deleted "transportation charges and" preceding "emergency" in the second sentence; redesignated the second paragraph of former Subsection B as Subsection B; in Subsection B, in the first sentence, substituted "adjusting" for "compensating" and deleted "of credit" following "under-estimation", and deleted the former second sentence, relating to disposition of funds remaining for the allocation; rewrote Subsection C; added Subsection D and redesignated former Subsection D as Subsection E; and rewrote Subsection E.

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "division" throughout the section; substituted "not less than ninety percent" for "equal to ninety percent" in the first sentence of the first paragraph of Subsection B; deleted the former third sentence of the first paragraph of Subsection B, which read "Kindergarten MEM shall be calculated on a .5 full-time equivalent basis"; rewrote Subsection C; and substituted "expenditure" for "requisitioning against" near the end of Subsection D.

**The 1992 amendment**, effective May 20, 1992, substituted "forty-day membership" for "forty-day average daily membership" several times throughout the section; in Subsection B made minor stylistic changes in the first and second sentences and substituted "MEM" for "ADM" in the third sentence; and, in Subsection C, inserted "including the rebinding of used instructional material" in the first and second sentences.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state

controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IV, § 31, because under the IML, no funds are appropriated to any private school; the mere indirect or incidental benefit to the private schools does not violate N.M. Const., art. IV, § 31. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

**Textbooks for student in private schools.** — The public education department's payment of public money for textbooks that are provided to students attending private schools, including sectarian and denominational schools, may violate Article IX, Section 14 and Article XII, Section 3 of the New Mexico Constitution. 2010 Op. Att'y Gen. No. 10-06.

## **22-15-10. Sale or loss or return of instructional material.**

A. With the approval of the chief, instructional material acquired by a school district, state institution or private school pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978] may be sold at a price determined by officials of the school district, state institution or private school. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution or private school may hold the parent or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent or student has paid for the damage or loss. When a parent or student is unable to pay for damage or loss, the school district shall work with the parent or student to develop an alternative

program in lieu of payment. Where a parent is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department.

E. Upon order of the chief, a school district, state institution or private school shall transfer to the department or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools.

History: 1953 Comp., § 77-13-10, enacted by Laws 1967, ch. 16, § 214; 1975, ch. 270, § 10; 1989, ch. 280, § 1; 1993, ch. 226, § 42; 1997, ch. 100, § 6; 2009, ch. 221, § 8.

**Cross references.** — For transfer of powers and duties of former chief of public school finance, see 9-6-3.1 NMSA 1978.

For transfer of the powers and duties of the former state board and department of education, see 9-24-15 NMSA 1978.

**The 2009 amendment**, effective July 1, 2010, in Subsections A, B and E, after "private school", deleted "or adult basic education center"; in Subsection C, after "state institution" deleted "or adult basic education center"; in Subsection B, in the first, second and third sentences, after "parent", deleted "guardian"; and in the last sentence, after "parent", deleted "or guardian".

**The 1997 amendment**, effective July 1, 1998, substituted "acquired by" for "distributed to" in Subsection A; in Subsection B, deleted "as agent" following "center" in the first sentence and deleted "of education" in the last sentence; added Subsection C and redesignated the remaining subsections accordingly; rewrote Subsection D; in Subsection E, deleted "as ordered" following "transfer" and substituted "purchased with" for "purchased from the"; and made stylistic changes throughout the section.

**The 1993 amendment**, effective July 1, 1993, substituted "chief" for "director" in Subsections A and D; substituted "department of education" and "department" for "division" in Subsections C and D; added the final sentence of Subsection C; and made a minor stylistic change in Subsection D.

**The 1989 amendment**, effective June 16, 1989, added the last three sentences in Subsection B and made minor stylistic changes.

## ANNOTATIONS

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to

provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

### **22-15-11. Record of instructional material.**

Each school district, state institution or private school shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the bureau.

History: 1953 Comp., § 77-13-11, enacted by Laws 1967, ch. 16, § 215; 1975, ch. 270, § 11; 1997, ch. 100, § 7; 2009, ch. 221, § 9.

**The 2009 amendment**, effective July 1, 2010, after "private school", deleted "or adult basic education center".

**The 1997 amendment**, effective July 1, 1998, deleted former Subsection A, which read: "The division shall keep accurate records of the cost of all instructional material distributed pursuant to the Instructional Material Law", deleted the Subsection B designation, and substituted "including cost records" for "distributed to it pursuant to the Instructional Material Law".

## **ANNOTATIONS**

**Constitutionality.** — The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. XII, § 3, because the focus of the IML is not to support private schools, but to provide instructional material for the benefit of students, the program is secular in nature, and the state controls the use and disposition of the instructional material; although the private schools receive some

benefit, N.M. Const., art. XII, § 3 will not be interpreted to prohibit indirect and incidental benefit when the legislative purpose of the IML does not focus on support of private schools. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. IX, § 14, because under the IML, there is no donation to a private school because there is neither a gift nor an allocation or appropriation of something of value without consideration; although private schools receive possession of the instructional material, as agents for the students, they never have an ownership interest in the instructional material. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

The Instructional Material Law (IML), 22-15-1 through 22-15-14 NMSA 1978, in which the New Mexico public education department purchases and distributes instructional material to school districts, state institutions, and private schools as agents for the benefit of eligible students, does not violate N.M. Const., art. II, § 11, which serves the same goals as the establishment clause of the first amendment of the United States constitution; the United States supreme court has made clear that textbook and instructional material programs that benefit all children, regardless of the school of their attendance, do not conflict with the establishment clause. *Moses v. Skandera*, 2015-NMCA-036, cert. granted, 2015-NMCERT-001.

### **22-15-12. Annual report.**

Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution or private school acquiring instructional material pursuant to the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978] shall file a report with the department that includes an itemized list of instructional material purchased by the eligible entity, by vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance.

History: 1953 Comp., § 77-13-12, enacted by Laws 1967, ch. 16, § 216; 1975, ch. 270, § 12; 1993, ch. 226, § 43; 1997, ch. 100, § 8; 2005, ch. 80, § 7; 2009, ch. 221, § 10.

**The 2009 amendment**, effective July 1, 2010, after "private school", deleted "or adult basic education center".

**The 2005 amendment**, effective April 4, 2005, required eligible entities to file a report that includes an itemized list of instructional material purchased by the entity by vendor, the total cost of the material, the average per-student cost and the year-end cash balance.

**The 1997 amendment**, effective July 1, 1998, substituted "acquiring" for "receiving".

**The 1993 amendment**, effective July 1, 1993, substituted "department of education" for "division" in two places and deleted former Subsections A to C, pertaining to contents of the annual report.

### **22-15-13. Contracts with publishers.**

A. The department may enter into a contract with a publisher or a publisher's authorized

agent for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

B. Payment for instructional material purchased by the department shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authorized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the department with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the department; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

D. Each contract executed for the acquisition of instructional material shall include the right of the department to transcribe and reproduce instructional material in media appropriate for the use of students with visual impairment who are unable to use instructional material in conventional print and form. Publishers of adopted textbooks also shall be required to provide those materials to the department or its designated agent in an electronic format specified by the department that is readily translatable into Braille and also can be used for large print or speech access within a time period specified by the department.

E. Beginning with instructional material for the 2013-2014 school year, publishers of instructional material on the multiple list shall be required to provide those materials in both written and electronic formats.

History: 1953 Comp., § 77-13-13, enacted by Laws 1967, ch. 16, § 217; 1975, ch. 270, § 13; 1993, ch. 156, § 6; 1993, ch. 226, § 44; 2011, ch. 114, § 1.

**Cross references.** — For transfer of the powers and duties of the former state board and department of education, see 9-24-15 NMSA 1978.

**The 2011 amendment**, effective June 17, 2011, added Subsection E to require publishers to provide instructional material in both written and electronic format beginning with the 2013-2014 school year.

**The 1993 amendment**, effective July 1, 1993, substituted "authorized agent" for "representative" in Subsections A and C.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 79 C.J.S. Schools and School Districts §§ 491, 492.

**22-15-14. Reports; budgets.**

A. Annually, the department of education [public education department] shall submit a budget for the ensuing fiscal year to the department of finance and administration showing the expenditures for instructional material to be paid out of the instructional material fund, including reasonable transportation charges and emergency expenses.

B. Upon request, the department of education [public education department] shall make reports to the state board [department] concerning the administration and execution of the Instructional Material Law [22-15-1 through 22-15-14 NMSA 1978].

**History:** 1953 Comp., § 77-13-14, enacted by Laws 1967, ch. 16, § 218; 1975, ch. 270, § 14; 1993, ch. 226, § 45.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2004, ch. 25, § 27, provided that all references to the superintendent of public instruction shall be deemed references to the secretary of public education and all references to the former state board of education or state department of education shall be deemed references to the public education department. See 9-24-15 NMSA 1978.

**Cross references.** — For instructional material fund generally, see 22-15-5 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "department of education" for "division" in Subsections A and B.

**Timeline of Instructional Material Fund Allocations**

Date	Action
Prior to April 1	Notwithstanding the possibility of a special session, the Legislature will have made an appropriation to the Instructional Material Fund for the next fiscal year.
April 1 (PED Rule)	Private/nonpublic schools must have submitted their applications for consideration of instructional material funding for the following school year.
On or before April 1 <sup>1</sup> (Statute and PED Rule)	PED shall allocate to each school district, state institution, or private school as agent not less than 90 percent of its estimated entitlement as determined from the estimated 40-day membership for the next school year.
July 1	At the start of the fiscal year, the initial allocation becomes available for use.
On or before January 15 (Statute and PED Rule <sup>2</sup> )	PED shall recompute each entitlement using the 40-day membership for that year, except for adult basic education, and shall allocate the remaining 10 percent balance of the annual appropriation, adjusting for any over- or under-estimation made in the first allocation.

<sup>1</sup> PED typically provides initial allocation information to schools at its Spring Budget Workshop.

<sup>2</sup> Manual of Procedures lists the date of this allocation as January 31.

**INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016**

DISTRICT/CHARTER/PRIVATE NAME	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED	Initial Allocation Calculated Enrollment	Total Approp. (inc. sanding)	\$
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015) ADJUSTMENT	ALLOCATION				Less: HED Portion	
					\$ 55.31607	(50%)	(50%)		Adjusted Approp.	\$
									Adjustment Factor	0.9000000000
									Base	\$19,477,452
									Student Pop Estimated from FINAL FY14-15	352,112.00
									Est Final Per Diem (inc ABE)	61.46
<b>PUBLIC SCHOOLS:</b>	FY 2013	FY 2014	FY2015							
Alamogordo Public Schools	6,016	5,948	5,797		319,927.25	\$159,964	\$159,963	5,784		
Albuquerque Public Schools	86,645	86,301	85,966		4,753,273.19	\$2,376,637	\$2,376,636	85,929		
Animas Public Schools	181	167	137	(590.53)	6,839.77	\$3,420	\$3,420	124		
Artesia Public Schools	3,578	3,711	3,818		211,890.75	\$105,945	\$105,946	3,831		
Aztec Municipal Schools	3,160	3,193	3,120		172,360.14	\$86,180	\$86,180	3,116		
Belen Consolidated Schools	4,308	4,163	4,104		226,491.15	\$113,246	\$113,245	4,094		
Bernalillo Public Schools	2,982	2,937	2,915		161,068.34	\$80,534	\$80,534	2,912		
Bloomfield Public Schools	2,954	2,956	2,992		165,653.68	\$82,827	\$82,827	2,995		
Capitan Public Schools	479	480	480		26,553.71	\$13,277	\$13,277	480		
Carlsbad Municipal Schools	5,926	6,101	6,286		348,806.81	\$174,403	\$174,404	6,306		
Carrizozo Municipal Schools	138	151	148		8,200.78	\$4,100	\$4,101	148		
Central Consolidated Schools	5,968	6,087	6,016		332,735.47	\$166,368	\$166,367	6,015		
Chama Valley Schools	376	396	388		21,470.63	\$10,735	\$10,736	388		
Cimarron Public Schools	344	356	369		20,487.63	\$10,244	\$10,244	370		
Clayton Municipal Schools	499	498	483		26,655.66	\$13,328	\$13,328	482		
Cloudcroft Municipal Schools	375	332	353		19,524.57	\$9,762	\$9,763	353		
Clovis Municipal Schools	8,410	8,382	8,214		453,638.19	\$226,819	\$226,819	8,201		
Cobre Consolidated Schools	1,231	1,235	1,237		68,441.98	\$34,221	\$34,221	1,237		
Corona Public Schools	75	63	70		3,876.12	\$1,938	\$1,938	70		
Cuba Independent Schools	550	536	549		30,392.52	\$15,196	\$15,197	549		
Deming Public Schools	5,175	5,126	5,206		288,197.46	\$144,099	\$144,098	5,210		
Des Moines Public Schools	85	88	83		4,577.23	\$2,289	\$2,288	83		
Dexter Public Schools	964	972	972		53,783.22	\$26,892	\$26,891	972		
Dora Public Schools	223	227	232		12,861.33	\$6,431	\$6,430	233		
Dulce Public Schools	701	658	684		37,854.19	\$18,927	\$18,927	684		
Elida Municipal Schools	128	124	119		6,554.61	\$3,277	\$3,278	118		
Espanola Public Schools	3,795	3,786	3,767		208,281.63	\$104,141	\$104,141	3,765		
Estancia Public Schools	808	783	731		40,178.05	\$20,089	\$20,089	726		
Eunice Public Schools	614	711	727		40,214.78	\$20,107	\$20,108	727		
Farmington Public Schools	10,571	10,853	10,942		606,188.43	\$303,094	\$303,094	10,959		
Floyd Municipal Schools	228	211	213		11,756.32	\$5,878	\$5,878	213		
Fort Sumner Public Schools	289	262	288		15,981.03	\$7,991	\$7,990	289		
Gadsden Independent Schools	13,606	13,673	13,368		738,379.21	\$369,190	\$369,189	13,348		
Gallup-McKinley County Schools	11,274	11,141	11,220		620,696.29	\$310,348	\$310,348	11,221		
Grady Public Schools	88	95	120		6,637.93	\$3,319	\$3,319	120		
Grants-Cibola County Schools	3,508	3,506	3,575		198,026.95	\$99,013	\$99,014	3,580		
Hagerman Public School	432	401	447		24,848.28	\$12,424	\$12,424	449		
Hatch Valley Schools	1,278	1,282	1,280		70,804.57	\$35,402	\$35,403	1,280		
Hobbs Public Schools	8,926	9,217	9,767		543,054.05	\$271,527	\$271,527	9,817		

ATTACHMENT 3

# INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED			Total Approp. (inc. sanding)	\$ 21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION					Less: HED Portion	(258,387.00)
				ADJUSTMENT						Adjusted Approp.	\$ 21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)			Adjustment Factor	0.9000000000
Hondo Valley Public Schools	146	137	132		7,263.72	\$3,632	\$3,632	131			
House Public Schools	63	78	66	(232.39)	3,400.47	\$1,700	\$1,700	61			
Jal Public Schools	403	446	459		25,390.08	\$12,695	\$12,695	459			
Jemez Mountain Schools	263	238	249		13,767.70	\$6,884	\$6,884	249			
Jemez Valley Public Schools	351	335	314		17,253.25	\$8,627	\$8,626	312			
Lake Arthur Public Schools	138	122	118		6,479.30	\$3,240	\$3,239	117			
Las Cruces Public Schools	24,050	23,963	23,999		1,327,500.34	\$663,750	\$663,750	23,998			
Las Vegas City Schools	1,804	1,762	1,690		93,112.16	\$46,556	\$46,556	1,683			
Las Vegas West Public School	1,494	1,479	1,433		79,053.93	\$39,527	\$39,527	1,429			
Logan Public Schools	264	264	291		16,096.98	\$8,048	\$8,049	291			
Lordsburg Public Schools	500	487	481		26,557.03	\$13,279	\$13,278	480			
Los Alamos Public Schools	3,481	3,475	3,467		191,736.81	\$95,868	\$95,869	3,466			
Los Lunas Public Schools	8,229	8,259	8,197		453,237.82	\$226,619	\$226,619	8,194			
Loving Public Schools	595	588	584		32,274.58	\$16,137	\$16,138	583			
Lovington Public Schools	3,388	3,540	3,594		199,325.95	\$99,663	\$99,663	3,603			
Magdalena Public Schools	344	341	340		18,797.46	\$9,399	\$9,398	340			
Maxwell Public Schools	106	111	108		5,972.14	\$2,986	\$2,986	108			
Melrose Public Schools	191	194	194		10,737.32	\$5,369	\$5,368	194			
Mesa Vista Cons. Schools	384	358	349		19,217.31	\$9,609	\$9,608	347			
Mora Public Schools	484	467	441		24,256.39	\$12,128	\$12,128	439			
Moriarty Public Schools	2,887	2,727	2,540		139,434.82	\$69,717	\$69,718	2,521			
Mosquero Public Schools	40	41	41		2,269.96	\$1,135	\$1,135	41			
Mountainair Public Schools	277	269	264		14,567.44	\$7,284	\$7,283	263			
Pecos Independent Schools	590	621	591		32,633.80	\$16,317	\$16,317	590			
Penasco Independent Schools	415	361	326		17,785.04	\$8,893	\$8,892	322			
Pojoaque Valley Schools	1,893	1,893	1,919		106,255.54	\$53,128	\$53,128	1,921			
Portales Public Schools	2,878	2,825	2,737		150,942.08	\$75,471	\$75,471	2,729			
Quemado Public Schools	157	153	123	(823.82)	5,852.06	\$2,926	\$2,926	106			
Questa Independent Schools	381	354	349		19,231.31	\$9,616	\$9,615	348			
Raton Public Schools	1,090	996	962		52,890.06	\$26,445	\$26,445	956			
Reserve Public Schools	154	144	123	(321.65)	6,378.23	\$3,189	\$3,189	115			
Rio Rancho	16,699	16,742	16,689		923,043.88	\$461,522	\$461,522	16,687			
Roswell Independent Schools	9,862	9,993	10,129		561,102.46	\$280,551	\$280,551	10,144			
Roy Public Schools	38	36	52		2,876.44	\$1,438	\$1,438	52			
Ruidoso Public Schools	2,081	2,044	2,025		111,865.04	\$55,933	\$55,932	2,022			
San Jon Public Schools	121	134	138		7,633.62	\$3,817	\$3,817	138			
Santa Fe City Schools	12,628	12,828	13,124		727,552.09	\$363,776	\$363,776	13,153			
Santa Rosa Consolidated Schools	630	630	626		34,611.86	\$17,306	\$17,306	626			
Silver City Consolidated Schools	2,998	2,960	2,880		158,914.28	\$79,457	\$79,457	2,873			
Socorro Public Schools	1,680	1,649	1,643		90,798.30	\$45,399	\$45,399	1,641			
Springer Municipal Schools	187	190	176		9,685.63	\$4,843	\$4,843	175			
Taos Municipal Schools	2,486	2,539	2,394		131,952.67	\$65,976	\$65,977	2,385			
Tatum Public Schools	317	343	372		20,577.58	\$10,289	\$10,289	372			
Texico Public Schools	547	561	557		30,823.05	\$15,412	\$15,411	557			

**INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016**

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		Total Approp. (inc. sanding)	\$ 21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				Less: HED Portion	(258,387.00)
				ADJUSTMENT					Adjusted Approp.	\$ 21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)		Adjustment Factor	0.9000000000
Truth or Consequences Public Schools	1,289	1,240	1,307		72,468.10	\$36,234	\$36,234	1,310		
Tucumcari Public Schools	1,003	958	926		51,004.68	\$25,502	\$25,503	922		
Tularosa Public Schools	868	917	930		51,593.94	\$25,797	\$25,797	933		
Vaughn Public Schools	105	101	88	(119.80)	4,688.01	\$2,344	\$2,344	85		
Wagon Mound Public Schools	66	59	65		3,605.54	\$1,803	\$1,803	65		
Zuni Public Schools	1,258	1,270	1,342		74,546.16	\$37,273	\$37,273	1,348		
<b>TOTAL PUBLIC SCHOOLS</b>	<b>309,191</b>	<b>309,331</b>	<b>309,127</b>	<b>(2,088.19)</b>	<b>17,096,178.29</b>	<b>8,548,091.00</b>	<b>8,548,087.29</b>	<b>309,064</b>		

## INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		Total Approp. (inc. sanding)	
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				\$	
				ADJUSTMENT					Less: HED Portion	
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)		Adjusted Approp.	\$ 21,641,613
									Adjustment Factor	0.9000000000
CHARTER SCHOOLS:	FY 2013	FY 2014						Initial Allocation Calculated Enrollment		
Academy for Tech & Classics	369	360	361		19,955.10	\$9,978	\$9,977	361		
Academy of Trades & Tech. (Youth Build)										
	88	114	114		6,306.03	\$3,153	\$3,153	114		
Alb. Inst. For Math (High Tech High)	312	340	369		20,411.63	\$10,206	\$10,206	369		
Albuquerque School of Excellence	316	300	309		17,096.67	\$8,548	\$8,549	309		
Alb. Talent Dev. Secondary	135	144	171		9,459.05	\$4,730	\$4,729	171		
Aldo Leopold	84	144	146		8,076.15	\$4,038	\$4,038	146		
Alma D' Arte	189	188	199		11,049.90	\$5,525	\$5,525	200		
Amy Biehl Charter High School	292	300	300		16,610.82	\$8,305	\$8,306	300		
Anansi Charter School	115	118	140		7,744.25	\$3,872	\$3,872	140		
Anthony Charter School	57	68	70		3,872.12	\$1,936	\$1,936	70		
Bataan Military Academy	130	104	75	(955.36)	3,025.35	\$1,513	\$1,512	55		
Cariños de los Ninos	219	219	125	(4,052.54)	2,485.96	\$1,243	\$1,243	45		
Cesar Chavez (Albq.)	202	201	203		11,235.16	\$5,618	\$5,617	203		
Cesar Chavez (Deming)	146	150	119	(926.17)	5,540.44	\$2,770	\$2,770	100		
Christine Duncan	115	181	229		12,667.38	\$6,334	\$6,333	229		
Cien Aguas International School	257	311	351		19,415.94	\$9,708	\$9,708	351		
Coral Community Center (ABQ)	45	94	144		7,965.51	\$3,983	\$3,983	144		
Corrales International School	220	217	254		14,050.28	\$7,025	\$7,025	254		
Cottonwood Charter School	170	170	169		9,344.42	\$4,672	\$4,672	169		
Cottonwood Classical Prep	542	614	664		36,729.87	\$18,365	\$18,365	664		
Creative Education Preparatory #1	173	168	176		9,757.63	\$4,879	\$4,879	176		
Gil H. Sena High School (Creative Prep #2)										
	178	177	185		10,263.47	\$5,132	\$5,131	186		
Digital Arts & Tech. (Alb. Charter Voc.)	295	309	312		17,298.61	\$8,649	\$8,650	313		
Dzit Dit Lool School of Empowerment & Perserverance (DEAP)	N/A	N/A	40		2,212.64	\$1,106	\$1,107	40		
Dream Dine'	N/A	45	15		739.74	\$370	\$370	13		
East Mountain Charter High School	366	371	366		20,235.68	\$10,118	\$10,118	366		
El Camino Rael (Horizon Academy South)	362	342	343		18,937.41	\$9,469	\$9,468	342		
Estancia Valley Classical Academy (Estancia/Moriarty)	293	343	405		22,403.01	\$11,202	\$11,201	405		
Explore Academy	N/A	250	149		7,939.09	\$3,970	\$3,969	144		
Gordon Bernal Charter	685	568	396	(6,523.38)	14,459.79	\$7,230	\$7,230	261		
Health and Leadership High School (APS)										
	110	72	87		4,796.50	\$2,398	\$2,398	87		
Health Sciences Academy	N/A	205	183		10,056.84	\$5,028	\$5,029	182		
Horizon Academy West	437	417	457		25,399.44	\$12,700	\$12,699	459		
International School Mesa Del Sol	261	310	226	(2,982.87)	9,280.56	\$4,640	\$4,641	168		
Jefferson Montessori	204	191	188		10,361.42	\$5,181	\$5,180	187		
J Paul Taylor Academy (Las Cruces-K-6)	175	186	190		10,548.05	\$5,274	\$5,274	191		
La Academia de Esperanza	351	346	364		20,197.05	\$10,099	\$10,098	365		
La Academia Dolores Huerta	133	151	165		9,127.15	\$4,564	\$4,563	165		
La Jicarita Community School (Penasco)	50	37	40		2,198.64	\$1,099	\$1,100	40		
La Luz del Monte (Southwest Intermediate Learning)										
	113	112	109		6,015.45	\$3,008	\$3,007	109		
La Promesa	303	375	375		20,743.53	\$10,372	\$10,372	375		

# INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED			Total Approp. (inc. sanding)	\$	21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION					Less: HED Portion		(258,387.00)
				ADJUSTMENT						Adjusted Approp.	\$	21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)			Adjustment Factor		0.9000000000
La Resolana Leadership	77	74	90		4,978.45	\$2,489	\$2,489	90				
La Tierra Montessori School of Arts & Sciences (Espanola)	74	74	95		5,255.03	\$2,628	\$2,627	95				
Las Montanas Charter	226	202	177	(6.66)	9,636.29	\$4,818	\$4,818	174				
Lindrieth Area Heritage	24	25	23		1,266.27	\$633	\$633	23				
Los Puentes	196	211	202		11,167.85	\$5,584	\$5,584	202				
McCurdy School (Espanola)	503	543	528		29,226.88	\$14,613	\$14,614	528				
Media Arts Collaborative	199	194	230		12,722.70	\$6,361	\$6,362	230				
Middle College	63	67	70		3,892.12	\$1,946	\$1,946	70				
Mission Achievement (ABQ)	107	294	392		21,683.90	\$10,842	\$10,842	392				
Monte del Sol	382	387	359		19,756.47	\$9,878	\$9,878	357				
Montessori Elementary	382	368	390		21,633.27	\$10,817	\$10,816	391				
Montessori of the Rio Grande	199	217	217		12,039.59	\$6,020	\$6,020	218				
Moreno Valley	92	69	75		4,126.71	\$2,063	\$2,064	75				
Mosaic Academy	180	179	180		9,958.89	\$4,979	\$4,980	180				
Mountain Mahogany	205	206	206		11,397.11	\$5,699	\$5,698	206				
Native American Community	381	378	377		20,844.16	\$10,422	\$10,422	377				
New Mexico International School	133	164	207		11,450.43	\$5,725	\$5,725	207				
New Mexico School for Architecture, Const. & Engineering (ACE Leadership High School )	285	308	336		18,586.20	\$9,293	\$9,293	336				
New Mexico Connections Academy (Santa Fe)	500	481	792		43,810.33	\$21,905	\$21,905	792				
New Mexico School for the Arts	191	201	196		10,841.95	\$5,421	\$5,421	196				
New Mexico Virtual Academy (Farmington)	489	496	529		29,408.20	\$14,704	\$14,704	532				
Alice King Community (North Alb. Comm. Co-op)	326	327	334		18,505.57	\$9,253	\$9,253	335				
North Valley Academy	454	473	482		26,736.35	\$13,368	\$13,368	483				
Nuestros Valores	109	115	122		6,748.56	\$3,374	\$3,375	122				
Pub. Acad. For Performing Arts	366	368	368		20,360.31	\$10,180	\$10,180	368				
Red River Valley	65	78	85		4,701.87	\$2,351	\$2,351	85				
Rio Gallinas Charter School	95	103	101		5,594.92	\$2,797	\$2,798	101				
Robert F. Kennedy	193	183	268		14,824.71	\$7,412	\$7,413	268				
Roots and Wings	50	43	42		2,305.27	\$1,153	\$1,152	42				
S.I.A. Tech (Abq Charter Academy)	297	201	271		14,990.65	\$7,495	\$7,496	271				
Sandoval Academy of Bilingual Education (SABE)	N/A	N/A	120		6,637.93	\$3,319	\$3,319	120				
Sage Montessori Charter School (ABQ)	149	199	243		13,441.80	\$6,721	\$6,721	243				
San Diego Riverside	92	92	91		5,029.76	\$2,515	\$2,515	91				
School of Dreams Academy	326	373	378		20,909.47	\$10,455	\$10,454	378				
Sidney Gutierrez	65	65	64		3,536.23	\$1,768	\$1,768	64				
South Valley Academy	253	338	460		25,445.39	\$12,723	\$12,722	460				
South Valley Preparatory School	147	154	154		8,532.67	\$4,266	\$4,267	154				
SW Aeronautics, Mathematics & Science (ABQ)	276	271	285		15,811.08	\$7,906	\$7,905	286				
Southwest Primary	104	105	105		5,810.19	\$2,905	\$2,905	105				
Southwest Secondary	280	279	263		14,482.13	\$7,241	\$7,241	262				
Taos Academy	162	182	208		11,505.74	\$5,753	\$5,753	208				
Taos Integrated School of the Arts	140	168	168		9,293.10	\$4,647	\$4,646	168				

**INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016**

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		Total Approp. (inc. sanding)	\$ 21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				Less: HED Portion	(258,387.00)
				ADJUSTMENT					Adjusted Approp.	\$ 21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55,31607	(50%)	(50%)		Adjustment Factor	0.9000000000
Taos International School	N/A	120	60		3,138.96	\$1,569	\$1,570	57		
Taos Municipal Charter	213	214	213		11,780.32	\$5,890	\$5,890	213		
Technology Leadership High School	N/A	N/A	90		4,978.45	\$2,489	\$2,489	90		
The Albuquerque Sign Language Academy	71	85	94		5,199.71	\$2,600	\$2,600	94		
The ASK Academy	170	230	287		15,875.71	\$7,938	\$7,938	287		
The Great Academy	227	144	179		9,875.58	\$4,938	\$4,938	179		
The Masters Program	156	181	199		11,007.90	\$5,504	\$5,504	199		
The New America School (ABQ)	425	398	404		22,317.69	\$11,159	\$11,159	403		
The New America School (Las Cruces)	235	313	326		18,033.04	\$9,017	\$9,016	326		
Tierra Adentro	205	231	238		13,165.22	\$6,583	\$6,582	238		
Tierra Encatada (Charter School 37)	220	244	269		14,880.02	\$7,440	\$7,440	269		
Turquoise Trail	463	463	462		25,552.02	\$12,776	\$12,776	462		
Twenty First Cent.	232	257	236		13,020.59	\$6,510	\$6,511	235		
Uplift Community (Gallup)	103	156	153		8,463.36	\$4,232	\$4,231	153		
Vista Grande	80	73	84		4,646.55	\$2,323	\$2,324	84		
Walatowa	59	64	56	(83.93)	2,991.77	\$1,496	\$1,496	54		
William W. & Joseph Dorn Community School	10	36	49		2,710.49	\$1,355	\$1,355	49		
<b>TOTAL CHARTER SCHOOLS</b>	<b>20,198</b>	<b>21,776</b>	<b>22,965</b>	<b>(15,530.90)</b>	<b>1,252,537.62</b>	<b>626,271.00</b>	<b>626,266.62</b>	<b>22,643</b>		

## INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				Total Approp. (inc. sanding)
				ADJUSTMENT					Less: HED Portion
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)		Adjusted Approp.
								Initial Allocation Calculated Enrollment	Adjustment Factor
<b>PRIVATE SCHOOLS</b>	<i>FY 2013</i>	<i>FY 2014</i>	<i>FY2015</i>						
Alamo Navajo Elem. & H.S.	Ineligible	292	274		15,102.60	\$7,551	\$7,552	273	
Albuquerque Academy	1,126	1,108	1,128		62,440.53	\$31,220	\$31,221	1,129	
Albuquerque Christian School	190	170	151		8,236.73	\$4,118	\$4,119	149	
All Saints Catholic School	57	71	65		3,599.54	\$1,800	\$1,800	65	
Annunciation Elementary	427	424	414		22,854.85	\$11,427	\$11,428	413	
Atsa Biyaazh Community	241	276	236		12,964.59	\$6,482	\$6,483	234	
Baca Community School	Ineligible	362	328		18,041.67	\$9,021	\$9,021	326	
Beclabito Day School	61	58	91		5,033.76	\$2,517	\$2,517	91	
Bosque Preparatory School	539	508	525		29,046.94	\$14,523	\$14,524	525	
Calvary Chapel Christian (Belen-AKA Canon	142	123	108		5,876.14	\$2,938	\$2,938	106	
Calvary Christian Academy (Albq)	132	116	136		7,522.99	\$3,761	\$3,762	136	
Calvary West Christian (La Union)	No App/ No AC	24	18		977.69	\$489	\$489	18	
Canyoncito Montessorri School	N/A	20	14		756.42	\$378	\$378	14	
Chi Chil Tah/Jones Ranch Community School	Ineligible	119	128		7,107.46	\$3,554	\$3,553	128	
Christ Lutheran School	112	124	121		6,705.24	\$3,353	\$3,352	121	
Chuska (Ch'oooshgai Comm.) School	Ineligible	425	423		23,392.70	\$11,696	\$11,697	423	
Clovis Christian Schools	219	205	217		12,023.59	\$6,012	\$6,012	217	
College Heights Kindergarten	No App/ No AC	0	0		0.00	\$0	\$0	0	
Congregation Albert Early Childhood	No App/ No AC	0	0		0.00	\$0	\$0	0	
Cottonwood Montessori School	120	126	115		6,329.35	\$3,165	\$3,164	114	
Cross of Hope Schools	Ineligible	84	0		0.00	\$0	\$0	0	
Desert Academy	178	197	201		11,172.53	\$5,586	\$5,587	202	
Desert Hills RTC	13	17	14	(45.53)	724.90	\$362	\$363	13	
Desert Montessori	No App/ No AC	58	0		0.00	\$0	\$0	0	
Dibe Yazhi Habitiin Olta', Inc.	123	132	167		9,237.78	\$4,619	\$4,619	167	
DZILTH-NA-O-DITH-HLE School	199	197	164		8,935.84	\$4,468	\$4,468	162	
Eastern Hills Christian Academy (aka Eastern Hills Baptist)	260	238	219		11,994.22	\$5,997	\$5,997	217	
Evangel Christian Academy	200	166	124		6,623.19	\$3,312	\$3,311	120	
Fr. James Hay Elementary School	30	27	29		1,606.17	\$803	\$803	29	
Gallup Catholic School	112	68	69		3,732.81	\$1,866	\$1,867	67	
Gallup Christian School	No App/ No AC	34	0		0.00	\$0	\$0	0	
Gateway Christian School	248	231	242		13,396.49	\$6,698	\$6,698	242	
Higher Ground Academy	No App/ No AC	9	0		0.00	\$0	\$0	0	
Holy Child Catholic School	Ineligible	42	56		3,097.70	\$1,549	\$1,549	56	
Holy Cross School (SANTA CRUZ)	96	96	84		4,598.55	\$2,299	\$2,300	83	
Holy Ghost School	201	187	194		10,731.32	\$5,366	\$5,365	194	
Hope Connection School	53	72	76		4,204.02	\$2,102	\$2,102	76	
Immanuel Lutheran	163	150	173		9,569.68	\$4,785	\$4,785	173	
Isleta Elementary School	191	169	0		0.00	\$0	\$0	0	
Jemez Day School	144	150	149		8,250.09	\$4,125	\$4,125	149	
Laguna Elementary School	Ineligible	209	166		9,053.47	\$4,527	\$4,526	164	
Laguna Middle School	95	95	93		5,136.39	\$2,568	\$2,568	93	
Las Cruces Academy	No App/ No AC	37	0		0.00	\$0	\$0	0	
Las Cruces Catholic Schools	211	225	226		12,533.43	\$6,267	\$6,266	227	
Legacy Academy (Albq)	172	184	178		9,846.26	\$4,923	\$4,923	178	
Legacy Christian Academy (Alamogordo-Formerly	124	103	82		4,409.92	\$2,205	\$2,205	80	
Manzano Christian School (T or C-Formerly	54	50	40		2,164.64	\$1,082	\$1,083	39	

## INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

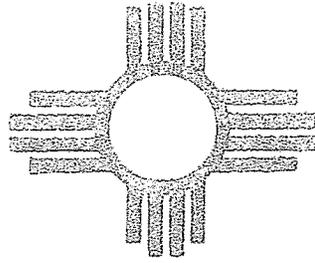
	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		Total Approp. (inc. sanding)	\$ 21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				Less: HED Portion	(258,387.00)
				ADJUSTMENT					Adjusted Approp.	\$ 21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)		Adjustment Factor	0.9000000000
Manzano Day School	430	433	434		24,017.17	\$12,009	\$12,008	434		
Mariano Lake Community	205	195	152		8,216.04	\$4,108	\$4,108	149		
Menaul School	184	173	185		10,259.47	\$5,130	\$5,129	185		
Mescalero Apache	Ineligible	600	486		26,541.61	\$13,271	\$13,271	480		
Mesilla Valley Christian Schools	340	288	299		16,479.50	\$8,240	\$8,240	298		
Mountain View West	46	32	50		2,765.80	\$1,383	\$1,383	50		
Na'Neelzhiin Ji Olta'	N/A	180	175		9,665.31	\$4,833	\$4,832	175		
Navajo Preparatory School	Ineligible	248	256		14,184.91	\$7,092	\$7,093	256		
Nenahnezad Community School (Bia) (B)	163	174	175		9,706.31	\$4,853	\$4,853	175		
New Sunrise Regional Treatment Center	Ineligible	6	11		608.48	\$304	\$304	11		
Ojo Encino Day School	173	160	163		9,002.52	\$4,501	\$4,502	163		
Our Lady of Assumption	162	173	152		8,346.04	\$4,173	\$4,173	151		
Our Lady of Fatima	144	134	136		7,510.99	\$3,755	\$3,756	136		
Pathways Academy	Ineligible	27	30		1,659.48	\$830	\$829	30		
Pinehill (Ramah Navajo)	264	269	266		14,712.07	\$7,356	\$7,356	266		
Prince of Peace Lutheran	No App/ No AC	30	26		1,426.22	\$713	\$713	26		
Pueblo Pintado Community School	Ineligible	279	227		12,400.75	\$6,200	\$6,201	224		
Queen of Heaven School	116	73	79		4,307.97	\$2,154	\$2,154	78		
Rehoboth Christian School	443	472	481		26,701.03	\$13,351	\$13,350	483		
Rio Grande School	134	123	126		6,959.82	\$3,480	\$3,480	126		
Rock Christian Academy	No App/ No AC	22	0		0.00	\$0	\$0	0		
Salam Academy	70	70	61		3,338.28	\$1,669	\$1,669	60		
San Felipe Catholic School(ALB)	203	207	176	(259.51)	9,360.11	\$4,680	\$4,680	169		
San Felipe Pueblo Elementary School	402	401	373		20,518.89	\$10,259	\$10,260	371		
San Ildelfonso	No Enrollment	25	24		1,324.59	\$662	\$663	24		
Sandia Preparatory School	625	614	597		32,933.69	\$16,467	\$16,467	595		
Sanostee Day School	66	51	60		3,324.96	\$1,662	\$1,663	60		
Santa Clara Day School	Ineligible	130	128		7,074.46	\$3,537	\$3,537	128		
Santa Fe Indian School	630	623	624		34,507.23	\$17,254	\$17,253	624		
Santa Fe Preparatory School	304	311	314		17,395.25	\$8,698	\$8,697	314		
Santa Fe School for the Arts and Sciences	Ineligible	109	0		0.00	\$0	\$0	0		
Santa Fe Waldorf School	189	206	197		10,895.27	\$5,448	\$5,447	197		
Santo Nino	261	260	241		13,253.17	\$6,627	\$6,626	240		
Shiprock Northwest High School	222	231	202		11,075.85	\$5,538	\$5,538	200		
Sky City Community School	205	205	212		11,755.01	\$5,878	\$5,877	213		
Soloman Schechter Day School (Jewish Academy)	43	39	32		1,734.11	\$867	\$867	31		
St. Anthony Indian School	114	107	115		6,379.35	\$3,190	\$3,189	115		
St. Bonaventure (Blessed Kateri)	154	162	156		8,621.31	\$4,311	\$4,310	156		
St. Charles Borromeo School	Ineligible	199	174		9,550.00	\$4,775	\$4,775	173		
St. Edward School	61	59	49		2,666.49	\$1,333	\$1,333	48		
St. Francis Elem. School (LUMBERTON)	96	101	95		5,241.03	\$2,621	\$2,620	95		
St. Francis of Assisi (GALLUP)	72	79	75		4,146.71	\$2,073	\$2,074	75		
St. Helena Elem. School	40	25	41		2,267.96	\$1,134	\$1,134	41		
St. Joseph School	48	42	44		2,429.91	\$1,215	\$1,215	44		
St. Mary's Elem & High School(ALB)	484	470	427		23,419.96	\$11,710	\$11,710	423		
St. Mary's Elementary School (BELEN)	108	112	126		6,969.82	\$3,485	\$3,485	126		
St. Michael's High School	658	660	590		32,360.48	\$16,180	\$16,180	585		
St. Pius X High School	737	724	723		39,963.52	\$19,982	\$19,982	722		
St. Theresa of Avila School	58	59	50		2,731.80	\$1,366	\$1,366	49		
St. Therese School (ALB)	122	150	158		8,739.94	\$4,370	\$4,370	158		

## INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY	40 DAY	40 DAY	PRIOR YEAR	INITIAL	ADOPTED	NON-ADOPTED		Total Approp. (inc. sanding)	\$ 21,900,000
	MEMBERSHIP	MEMBERSHIP	MEMBERSHIP	(FY2015)	ALLOCATION				Less: HED Portion	(258,387.00)
				ADJUSTMENT					Adjusted Approp.	\$ 21,641,613
DISTRICT/CHARTER/PRIVATE NAME					\$ 55.31607	(50%)	(50%)		Adjustment Factor	0.9000000000
St. Thomas Aquinas	401	418	421		23,334.07	\$11,667	\$11,667	422		
Sunset Mesa Schools, Inc.	288	268	236		12,886.59	\$6,443	\$6,444	233		
Taos Day School	161	171	152		8,352.04	\$4,176	\$4,176	151		
Te Tsu Geh Oweenge (Tesuque School)	Ineligible	17	27		1,493.53	\$747	\$747	27		
The Tutorial School	No App/ No AC	15	0		0.00	\$0	\$0	0		
T'iis Ts'ozí Bi' Olta' (Crownpoint)	Ineligible	391	344		18,887.73	\$9,444	\$9,444	341		
Tohaali' Community School	No Enrollment	169	160		8,823.57	\$4,412	\$4,412	160		
To'Hajille Community School	Ineligible	304	0		0.00	\$0	\$0	0		
Tse'ii'ahi' Community School	No Enrollment	91	97		5,383.66	\$2,692	\$2,692	97		
T'siya Day School	No Enrollment	75	82		4,556.92	\$2,278	\$2,279	82		
Wingate High School	479	488	459		25,292.08	\$12,646	\$12,646	457		
Zuni Christian Reform School	65	68	73		4,038.07	\$2,019	\$2,019	73		
<b>TOTAL PRIVATE SCHOOLS</b>	<b>16,403</b>	<b>20,775</b>	<b>19,262</b>	<b>(305.04)</b>	<b>1,061,531.08</b>	<b>530,765.00</b>	<b>530,766.08</b>	<b>19,190</b>		

## INSTRUCTIONAL MATERIAL INITIAL ALLOCATION 2015-2016

	40 DAY MEMBERSHIP	40 DAY MEMBERSHIP	40 DAY MEMBERSHIP	PRIOR YEAR (FY2015) ADJUSTMENT	INITIAL ALLOCATION	ADOPTED	NON-ADOPTED		
					\$ 55.31607	(50%)	(50%)		Total Approp. (inc. sanding) \$ 21,900,000 Less: HED Portion (258,387.00) Adjusted Approp. \$ 21,641,613 Adjustment Factor 0.9000000000
<b>DISTRICT/CHARTER/PRIVATE NAME</b>									
								Initial Allocation Calculated Enrollment	
<b>STATE SUPPORTED SCHOOLS</b>	<i>FY 2013</i>	<i>FY 2014</i>	<i>FY2015</i>						
Foothill High School-YDDC	139.0	116.0	113.0		6,192.72	\$3,096	\$3,097	112	
JP Taylor Center (Aztec Youth)	39.0	29.0	23.0		1,228.27	\$614	\$614	22	
Lincoln Pines	-	-	13.0		719.11			13	
Mimbres School (Child Psychiatrics)	15.0	25.0	37.0		2,046.69	\$1,023	\$1,024	37	
New Mexico School for the Deaf	91.0	103.0	108.0		5,974.14	\$2,987	\$2,987	108	
New Mexico Military Institute	420.0	434.0	414.0		22,848.85	\$11,424	\$11,425	413	
NM Sch. for Visually Handicapped	34.0	34.0	25.0	(321.03)	1,025.87	\$513	\$513	19	
Sequoyah Adolescent Center	30.0	10.0	25.0		1,382.90	\$691	\$692	25	
<b>TOTAL STATE SUPPORTED</b>	<b>768.0</b>	<b>751.0</b>	<b>758.0</b>	<b>(321.03)</b>	<b>41,418.55</b>	<b>20,348.00</b>	<b>20,351.44</b>	<b>748.8</b>	
<b>GRAND TOTAL</b>	<b>346,560</b>	<b>352,633</b>	<b>352,112</b>	<b>(18,245)</b>	<b>19,451,666</b>	<b>9,725,475</b>	<b>9,725,471</b>	<b>351,646</b>	
				19,469,910.70					



The Legislature  
of the  
State of New Mexico

52nd Legislature, 1st Session

LAWS 2015

CHAPTER \_\_\_\_\_

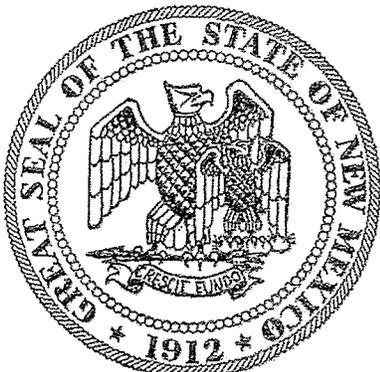
HOUSE BILL 146, as amended

RETOED

Introduced by

REPRESENTATIVE SHERYL WILLIAMS STAPLETON

- REPRESENTATIVE CHRISTINE TRUJILLO
- REPRESENTATIVE STEPHANIE MAEZ
- REPRESENTATIVE DOREEN Y. GALLEGOS
- REPRESENTATIVE DEBORAH A. ARMSTRONG
- REPRESENTATIVE BEALQUIN BILL GOMEZ
- REPRESENTATIVE PATRICIA ROYBAL CABALLERO



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AN ACT

RELATING TO INSTRUCTIONAL MATERIALS; BROADENING THE DEFINITION  
OF "INSTRUCTIONAL MATERIAL"; REQUIRING TIMELY ALLOCATIONS;  
LIMITING THE APPLICATION OF THE MULTIPLE LIST; ELIMINATING A  
PROVISION REQUIRING TEXTBOOKS FOR EACH STUDENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 22-15-2 NMSA 1978 (being Laws 1967,  
Chapter 16, Section 206, as amended) is amended to read:

"22-15-2. DEFINITIONS.--As used in the Instructional  
Material Law:

A. "division" or "bureau" means the instructional  
material bureau of the department;

B. "director" or "chief" means the chief of the  
bureau;

C. "instructional material" means school textbooks  
and other educational media that are used as the basis for  
instruction, including combinations of textbooks, learning  
kits, original source material from primary sources,  
supplementary material, electronic media and content  
resources, excluding electronic devices and hardware that  
support digital learning formats and educational programs,  
whether or not on the multiple list;

D. "multiple list" means a written list of those  
instructional materials approved by the department;

1           E. "membership" means the total enrollment of  
2 qualified students on the October reporting date of the school  
3 year entitled to the free use of instructional material  
4 pursuant to the Instructional Material Law;

5           F. "additional student" means a student in a  
6 school district's, state institution's or private school's  
7 current year's certified October reporting date membership  
8 above the number certified in the school district's, state  
9 institution's or private school's prior year's October  
10 reporting date membership;

11           G. "school district" includes charter schools; and

12           H. "other classroom materials" means materials  
13 other than textbooks that are used to support direct  
14 instruction to students."

15           SECTION 2. Section 22-15-9 NMSA 1978 (being Laws 1967,  
16 Chapter 16, Section 213, as amended) is amended to read:

17           "22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL  
18 MATERIAL.--

19           A. No later than April 1 of each year, the  
20 department shall allocate to each school district, state  
21 institution or private school as agent not less than ninety  
22 percent of its estimated entitlement as determined from the  
23 estimated October reporting date membership for the next  
24 school year. A school district's, state institution's or  
25 private school's entitlement is that portion of the total

1 amount of the annual appropriation less a deduction for a  
2 reasonable reserve for emergency expenses that its October  
3 reporting date membership bears to the October reporting date  
4 membership of the entire state. For the purpose of this  
5 allocation, additional students shall be counted as six  
6 students. The allocation for adult basic education shall be  
7 based on a full-time equivalency obtained by multiplying the  
8 total previous year's enrollment by .25. The department shall  
9 transfer the amount of the allocation for adult basic  
10 education to the adult basic education fund.

11 B. No later than January 15 of each year, the  
12 department shall recompute each entitlement using the October  
13 reporting date membership for that year, except for adult  
14 basic education, and shall allocate the balance of the annual  
15 appropriation adjusting for any over- or under-estimation made  
16 in the first allocation.

17 C. Each school district, charter school or state  
18 institution may choose instructional material not included on  
19 the multiple list provided for in Section 22-15-8 NMSA 1978.

20 D. Private schools may expend up to fifty percent  
21 of their instructional material funds for items that are not  
22 on the multiple list; provided that no funds shall be expended  
23 for religious, sectarian or nonsecular materials; and provided  
24 further that all instructional material purchases shall be  
25 through an in-state depository.



S/ DON TRIPP  
DON TRIPP, SPEAKER  
HOUSE OF REPRESENTATIVES

S/ DENISE RAMONAS  
DENISE RAMONAS, CHIEF CLERK  
HOUSE OF REPRESENTATIVES

S/ JOHN A. SANCHEZ  
JOHN A. SANCHEZ, PRESIDENT  
SENATE

S/ LENORE M. NARANJO  
LENORE M. NARANJO, CHIEF CLERK  
SENATE

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
SUSANA MARTINEZ, GOVERNOR  
STATE OF NEW MEXICO



ATTACHMENT 5

15 APR -7 PM 1:02

SECRETARY OF STATE

## State of New Mexico

Susana Martinez  
*Governor*

April 7, 2015

### HOUSE EXECUTIVE MESSAGE NO. 12

The Honorable Don L. Tripp, Speaker of the House and  
Members of the House of Representatives  
State Capitol Building  
Santa Fe, NM 87501

Honorable Speaker Tripp and Members of the House:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and return HOUSE BILL 146, as amended, enacted by the Fifty-Second Legislature, First Session, 2015.

House Bill 146 (HB 146) expands what qualifies as "instructional material" to include "original source material from primary sources" as well as "other content resources that support digital learning."

While I support the expansion of digital learning resources and teaching our students using original source material, HB 146 would also allow school districts to use their entire annual distribution of funds to purchase instructional materials that have not been deemed to meet the appropriate standards for our students. Thus, this bill would, at a maximum, lower standards of learning, which is completely unacceptable, and at a minimum, result in high costs to school districts to vet and review instructional materials. Currently, districts do not bear the lion's share of these costs.

Additionally, and more critically, this bill eliminates a key provision in law that requires the Public Education Department to verify that schools have a policy in place that every student has a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home. Eliminating these provisions jeopardizes the quality of the materials our children are provided in school and eliminates the guarantee that students will have regular and convenient access to those materials.

For these reasons, I hereby veto HB 146.

HOUSE EXECUTIVE MESSAGE NO. 12  
The Honorable Don L. Tripp  
April 7, 2015  
Page 2

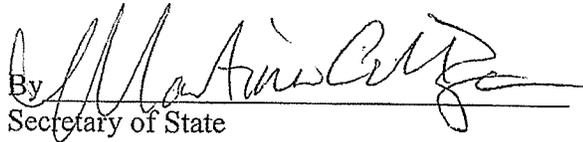
Respectfully yours,



Susana Martinez  
Governor

RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: 1:02 a.m. (p.m.)  
Date: 4/7, 2015

By   
Secretary of State

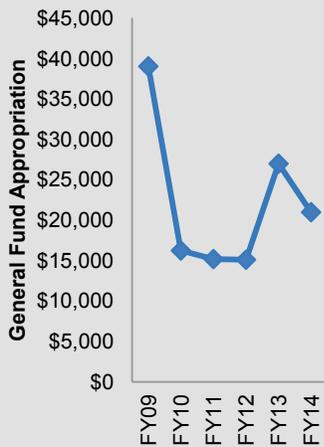
Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_, 2015

By \_\_\_\_\_  
Chief Clerk of the House

**EXECUTIVE SUMMARY**

***Instructional materials may impact student learning as significantly as teacher quality and are fundamental to student achievement.***

**Instructional Material Fund Appropriation**  
(in thousands)



Source: GAA

***Evaluation findings also suggest the current instructional materials process is not ensuring resources reach classrooms.***

***Many schools lack the infrastructure needed to support digital textbooks, and transitioning to digital instructional delivery will be expensive.***

Instructional materials may impact student learning as significantly as teacher quality and are fundamental to student achievement (Agodini et al, 2010). In FY14, New Mexico allocated \$21 million for the purchase of instructional materials. At the same time, New Mexico invests heavily in teacher compensation. Improvements to the process can result in better outcomes for students as well as savings to the state. This report highlights opportunities to modify the way New Mexico funds instructional materials to better align support with changes in instructional practice and delivery and eliminate barriers that prevent resources from flowing to classrooms.

New Mexico provides support for instructional materials through an appropriation to the instructional material fund, which is allocated to schools on a per-pupil basis. At least 50 percent of this allocation is intended to support the purchase of materials from the adopted multiple list, a list of materials approved by Public Education Department (PED). The Instructional Materials Bureau of PED is responsible for the distribution and oversight of the fund.

This evaluation assessed the administration and oversight of the instructional material fund and process, how districts are spending instructional material funds, and the state’s capacity to transition to digital instructional materials and the common core state standards.

For the past several years, lack of staff within the Instructional Materials Bureau has hindered the oversight and guidance functions mandated by statute. Correspondingly, several school districts and charter schools spent instructional materials money in ways inconsistent with state law.

Additionally, the instructional materials system is not currently operating as intended; several school districts report no longer purchasing materials according to the state’s adoption schedule, and many districts do not adhere to statute which requires 50 percent their annual allocation to purchase instructional materials from the state’s list of approved instructional materials, also called the multiple list. Evaluation findings also suggest the current instructional materials process is not ensuring resources reach classrooms. Both district leaders and teachers consistently report instructional material needs are not currently being met, yet private schools, school districts, and charter schools consistently maintain large carry-over balances in instructional material funds, resulting in a combined carry-over of roughly \$9 million in FY13, or 33 percent of the total FY13 instructional materials allocation.

Finally, New Mexico is not currently prepared to transition to a personalized digital learning environment. Many schools lack the infrastructure needed to support digital textbooks, and transitioning to digital instructional delivery will be expensive. If adopted, digital textbook use will be significantly more costly than traditional printed textbooks as a result of infrastructure and device costs in addition to digital content costs. Differing capacities for the transfer to technology exist throughout the state, and resources for educational technology vary by district.

**Total Instructional  
Materials Carry-Over  
Reported by Districts and  
Charters**  
(in thousands)

Fiscal Year	Carry-Over Reported
2013	\$8,826
2012 *	\$6,767
2011 *	\$4,908

\*excludes the carry-over of entities for which annual reports are unavailable

Source: IM Budget Reports

***The bureau has not been fully staffed since August of 2011, when two FTE positions existed in the bureau. A third position created in September of 2011 has never been filled.***

**School Districts Spending  
Instructional Materials  
Funds Inconsistent with  
Statute**

	Districts Expending Less than 50% on Core Adopted Materials	Districts Expending More than 25% of Supplemental Allocation on Other Classroom Materials
FY13	32	6
FY12	35	6
FY11	25	0

Source: PED Stat Books, Actual Expenditures

**KEY FINDINGS**

**The instructional materials process suffers from a lack of oversight, and school districts and charter schools sometimes expend funds in ways inconsistent with state law.**

The Instructional Materials Bureau is responsible for overseeing the distribution of the instructional materials fund, ensuring entities receive allocations, enforcing rules for inventory and accounting procedures, and developing and maintaining the state's multiple list of state-approved materials.

***Ongoing vacancies have affected the duties of the bureau, and between April 2013 and December 2013 all positions in the Instructional Materials Bureau were vacant.***

The bureau had one of three full time positions filled from November 2011 to March 2013. Two other vacant positions, including the bureau chief position, have remained unfilled since November 2011 in spite of recruitment efforts undertaken by the department to fill the positions. The bureau has not been fully staffed since August of 2011, when two FTE positions existed in the bureau. A third position created in September of 2011 has never been filled. In early 2013, PED hired a part-time contractor to oversee the instructional material program and began advertising to fill vacant positions. PED reports difficulty filling these positions and indicated that the department is considering temporarily assigning several instructional material oversight responsibilities to other agency bureaus. As a result of bureau vacancies, PED guidance and oversight regarding the instructional materials fund have dissipated in recent years. The department hired a bureau budget director in December 2013 and continues to use a contractor to conduct bureau responsibilities.

***Required reporting by school districts, charter schools, and private schools is incomplete.***

Statute specifies each school district, state institution, and private school acquiring instructional materials file a report with the department, including an itemized list of instructional materials purchased by vendor, the total costs of instructional material, average per-student costs, and year-end cash balances. The Instructional Materials Bureau annually collects a report from grantees that includes this information. In FY13, 14 districts and charters failed to turn in a report, and of those that did, 31 percent turned in reports with incomplete or inaccurate information.

***Several school districts do not comply with statutory requirements on the spending of instructional materials funding.***

PED does not track annual carry-over amounts by recipient and collects cash balance information via self-report. Additionally, PED lacks a mechanism to track statutorily mandated limits on non-adopted material expenditures when carry-over exists. Available data suggest many districts spend more than 50 percent of their funds on non-adopted material, not adhering to statutory limits on instructional material expenditures. By statute, school districts, private schools, and state-supported schools are required to spend a minimum of 50 percent of their annual allocation on instructional materials listed on the state's adopted multiple list, and these entities may spend no more than 25 percent of their remaining award on other classroom materials. Schools and districts may seek a waiver of these expenditure requirements from PED. A

***In FY13, 14 districts and charters failed to turn in annual instructional materials reports, and of those that did, 31 percent turned in reports with incomplete or inaccurate information.***

***Of the 1,600 teachers who responded to an LFC, only 50 percent reported having enough textbooks for each student to use in class.***

***PED does not collect annual instructional material fund carry-over in its annual report of actual revenues.***

LFC review of PED stat books and instructional material annual reports using the methodology employed by PED to calculate expenditure limits in the past suggests many school districts expend funds beyond statutory limits, though very few gain waivers. Between FY11 and FY13, 25 percent or more of all school districts may not have adhered to statutory funding restrictions annually, while only five school districts were granted waivers during this time.

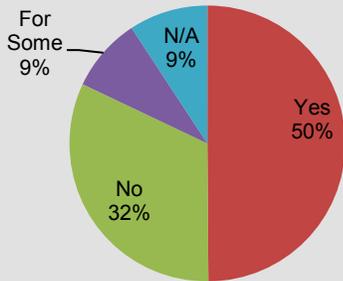
**The system for funding instructional materials does not meet current needs, resulting in reports of inadequate resources while allocated money goes unspent.** The current instructional material process assumes districts will use their annual allocation to purchase materials reviewed and adopted during the previous summer, and the annual instructional material fund appropriation is intended to support the purchase of these materials. School districts are encouraged, but not required, to use annual allocations to purchase materials for the subject adopted in the previous year, according to the schedule developed by the Instructional Materials Bureau. However, the annual instructional material appropriation does not reflect the cost of purchasing adopted instructional materials for all students, and districts report not following the adoption schedule, complicating the state's ability to anticipate instructional material needs.

***Though 92 percent of school districts report insufficient funding and teachers report needing more materials, school districts, charter schools, and private schools consistently carry over instructional material funds.*** School district leaders and classroom teachers report instructional material needs are not met through annual allocations, and both school districts and charter schools often report instructional material allocations are not meeting instructional needs, forcing districts to rely upon other funding sources to purchase instructional materials. Of the 1,600 teachers who responded to an LFC survey of instructional materials available in New Mexico classrooms, only 50 percent reported having enough textbooks for each student to use in class. Sixty-nine percent reported they do not have enough textbooks for each student to take a copy home.

***Of the \$26.6 million allocated to instructional materials in FY13, \$8.8 million went unspent by school districts and charter schools.*** Most school districts, charter schools, and private schools show consistent carry-over of funds from instructional materials, including an \$8.8 million in reported carry-over from FY13. Over 95 percent of school districts have had carry-over of instructional materials funding in the last three years. Districts report carry-over results from the need to "save up" for high-cost adoption years.

***Private school carry-over, maintained at PED, is consistently greater than \$1 million each year.*** Instructional materials money flows through PED to school districts and charters each year, but PED holds instructional material funds for private schools and issues purchase orders on their behalf. Between FY09 and FY13 fund balances ranged between \$1.2 million and \$3.9 million.

**In general, do you have enough state or district-adopted core instructional materials (textbooks) in your classroom for each student to use?**  
(n= 1,268)



Source: LFC survey

**Cost estimates associated with devices supporting digital textbook adoption range between \$250 and \$1,500 per device, depending on existing infrastructure, device add-ons, and associated training costs.**

**Costs associated with digital instructional content are not significantly less than printed materials if purchased from traditional publishers.**

**New Mexico is unprepared for a transition to a personalized digital learning environment.**

Both national and local educational leaders have called for transitions to digital delivery of instruction and assessment. In 2012, the Federal Communication Commission (FCC) and U.S. Secretary of Education called for all U.S. schools to transition to digital textbooks by 2017. In 2011, the Legislature passed the Electronic Instructional Materials for Schools Act, which amends the Instructional Materials Law to require publishers of instructional material included on the adopted multiple list to provide materials in both electronic and written format by school year 2014. More immediately, New Mexico will transition from the paper-based standards based assessment (SBA) to the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment, which will be administered online. In the longer-term, state and district leaders have expressed interest in transitioning to digital learning environments.

***In the near-term, PED survey data suggests that New Mexico’s schools are generally prepared to meet minimum PARCC administration requirements.***

PED survey results suggest that as of December 2013, 75 percent of schools have adequate numbers of devices meeting minimum specifications to provide for the recommended 5:1 student-device testing ratio, while 204 schools do not currently have adequate devices and will require 7,400 additional devices to meet PARCC minimal device-to-student ratios. Similarly, 85 percent of schools meet the minimal PARCC bandwidth recommendations as of November 2013, 5 kbps/test-taker if the school uses proctor caching and uploads student data after test administration. In FY14, the Legislature appropriated \$5.2 million to purchase devices needed to administer the PARCC. However, these funds were not entirely awarded as intended.

***Only two percent (17 schools) currently meet the U.S. Department of Education bandwidth target for digital textbook use.***

Data collected through the PED digital footprint survey have implications beyond the state’s readiness for test administration and should be used to inform digital learning transitions. While survey data suggest many schools currently meet minimal PARCC bandwidth requirements, 222 schools, or 27 percent, have sufficient bandwidth to directly connect all students to the internet during test administration (50 kbps for each test-taker), and only 17 schools (2 percent) meet the 250 kbps bandwidth target recommended by the FCC and U.S. Department of Education for universal digital textbook use.

***Transitioning to digital textbooks and content will be expensive, with cost estimates ranging between \$250 and \$1,500 per student.***

Start-up and technology and maintenance costs also vary widely depending on the device purchased, the school district’s existing infrastructure, and training provided. Costs associated with digital instructional content are not significantly less than printed materials if purchased from traditional publishers. States may experience reduced content costs if they rely on open education resources, which are non-copyrighted and distributed at a minimal cost. Several states, including Utah, California, and Tennessee have statutorily supported the use of open education resources to reduce the

costs associated with digital learning transitions in recent years. New Mexico teachers report planning to use open education resources to implement common core state standards, but New Mexico does not typically review open resources during the adoption process. Thus, low-cost, high-quality materials are not included on the multiple list from which school districts select materials.

### **KEY RECOMMENDATIONS**

The Legislature should

- Amend the Instructional Materials Law to require instructional materials funds be used on state approved materials on the multiple list, which includes both core/basal and supplemental materials
- Consider making the instructional materials fund a reverting fund or consider taking credit for unspent instructional materials allocations if substantial fund balances continue at school districts, charter schools, state funded schools, and private schools.
- Modify statute mandating adequate instructional materials be available to all students at school and at home from the current statute, which requires one textbook be available to each student to take home.
- Modify statute to require all districts have a plan in place to ensure all students have adequate access to instructional materials as defined by the Legislature.
- Clarify statute to make it the responsibility of the Public Education Department to determine whether districts and charters are meeting the definition of instructional material adequacy.
- Direct the Public Education Department to develop quality and accountability standards for all digital content, e-reader devices, and electronic courses, and other technologies used for instruction.

The Public Education Department should

- Enforce penalties for districts, state charter schools, and private schools, including withholding instructional materials funding in cases of non-compliance with statute and regulation.
- Update guidance for instructional material expenditures and inventory to ensure provided information accurately reflects statutory requirements, eliminating references to “core/basal” and “supplemental” expenditure limits not included in statute.
- Develop a system for tracking allocation expenditures and fund balances across years, including actual carry-over.
- Continue collecting education technology plans and report this information to the Legislature and public annually.