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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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July 21, 2015

MEMORANDUM

TO: Legislative Education Study Committee

FR: Robin Shaya

**RE: STAFF BRIEF: LESC AND LEGISLATIVE FINANCE COMMITTEE (LFC)
STAFF POLICY RECOMMENDATIONS/OPTIONS: INSTRUCTIONAL
MATERIALS**

INTRODUCTION

As a selected topic for review during the 2015 interim, the Legislative Education Study Committee (LESC) was provided with the first report relating to instructional material policy, which included:

- an overview of the provisions in current law;
- FY 14, FY 15, and FY 16 appropriations and allocations to public schools and eligible entities statewide;
- a review of a bill considered and passed by the 2015 Legislature: HB 146aa, *Instructional Material Definitions & Changes*, which, among its provisions, would have modified the definition of “instructional material” to include electronic media content; removed restrictions on the percentage of instructional material allocation used for material not on the multiple list; and eliminated the requirement that textbooks be available for each student to take home. The legislation, however, was vetoed; and
- a discussion by school district staff, including the Superintendent for the Las Cruces Public Schools; the Executive Director of Federal and Bilingual Programs at Rio Rancho

Public Schools (RRPS); and the Executive Director of Elementary Curriculum and Instruction, RRPS.

Testimony by the school district staff:

- focused on the strategic use of technology and digital media with the Common Core State Standards (CCSS);
- provided examples of CCSS-English Language Arts anchor standards to reiterate that there is no longer a need to memorize facts that are easily accessed through technology; and
- discussed the ways in which CCSS and the digital revolution impact instructional materials, noting that:
 - many publishers are developing a variety of resources that are fully aligned to the CCSS and incorporate 21st Century skills;
 - smaller publishers can now develop innovative resources that can be marketed to wider audiences; and
 - high quality, open educational resources offer opportunities for people everywhere to share, use, and reuse knowledge.

To conclude, the district staff stated that the use of multiple lists included in the current instructional material adoption process limits access to high quality instructional materials from:

- smaller publishers;
- open educational resources;
- primary sources; and
- emerging technology which supports academic standards.

For the July 2015 interim meeting, this staff report provides a summary of a 2014 interim review by LESC staff of selected components of the instructional material process, which complemented a review by the program evaluation staff of the Legislative Finance Committee (LFC).

This staff report also includes, as a committee resource document, the **Attachment, Fact Sheet: Instructional Material Law**.

2014 INTERIM REVIEW BY LESC STAFF

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 the Public Education Department (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.

FACT SHEET:
Instructional Material 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. 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.