

# Oregon State Board of Education

May 19, 2016

<p><b>SUBJECT:</b> Instructional Materials Contract Forms and Authority/OAR 581-011-0080</p>	<input type="checkbox"/> <b>Consent Agenda</b>
<p><b>STAFF NAME &amp; OFFICE:</b> Jennell Ives, Office of Teaching and Learning</p>	<input checked="" type="checkbox"/> <b>First Reading</b>
<p><b>SUMMARY:</b> This rule currently addresses the terms of the contract between publishers of adopted instructional materials and the State Board. ORS 337.090 (2) stipulates that the Board shall take a bond or an irrevocable letter of credit from publishers entering into this contract, and that the Board shall set the amount of the bond. The bond amount has historically been \$10,000, but this amount is a barrier for participation to publishers of Open Educational Resources with no revenue stream.</p>	<input type="checkbox"/> <b>Action (Adoption)</b>
<p><input type="checkbox"/> <b>New Rule</b>    <input checked="" type="checkbox"/> <b>Amend Existing Rule</b>    <input type="checkbox"/> <b>Repeal Rule</b></p>	<input type="checkbox"/> <b>Information</b>

## BACKGROUND

The State Board of Education has the responsibility of setting the amount of the bond or irrevocable letter of credit required for publishers of adopted instructional materials under ORS 337.090 (2). The bond or irrevocable letter of credit is intended to be a deterrent to publishers breaking the terms of the contract that they enter into with the Board when their materials are adopted during the State evaluations. Specifically, the terms require that the adopted materials remain available for sale during the six-year contract period, the materials do not increase in price over this time, the materials are not sold at a higher price in Oregon than in other areas of the country, and that the materials are made available for sale through the designated depository.

Open Educational Resources (OERs) are materials that reside in the public domain or have been released under an open license that permits their free use and re-purposing by others. Due to the nature of this license, the risks that a bond or an irrevocable letter of credit protects from are non-existent with instructional materials that are under an open license. OER materials will not disappear from the market, the cost of the content of OER materials will not change or be sold at a higher price in Oregon than in other parts of the nation, and OER materials may be distributed by a depository or any other entity without prior permission from the author/creator.

The recent #GoOpen Initiative from the US Department of Education has proposed a regulation that would require materials created and developed with competitive grant funds to be openly licensed. As teachers, school districts, and others compete for grant funding to write instructional materials, ODE has the opportunity to be ahead of the curve in creating opportunities to have these materials evaluated and vetted through the same statewide process that commercial materials are currently evaluated.

The content of OER materials is available publicly at no cost, by virtue of being OER. Certain open licenses allow the content to be remixed, repurposed, and redistributed by anyone. Depending on the specific license, this can even include selling the materials for a profit. In order to keep the adopted list free of the risk of materials being sold at prices higher than they were originally bid, or

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at prices higher in Oregon than in other areas of the nation, OER materials must be bid in their free (\$0 cost to obtain content) format in order to have the bond requirement waived.

ODE Staff collected and considered feedback from a variety of publishers, HECC staff, and nationwide OER specialists regarding the amendment to this rule.

### **SUMMARY OF PREVIOUS BOARD ACTION**

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This has not been before the Board previously.

### **POLICY ISSUE OR CONCERNS (IF APPLICABLE)**

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The main concern raised by publishers is that OER materials should be held to the same standards and requirements as commercial materials. There is no plan to exempt OER materials from the evaluation process that commercial materials go through – the same standards and evaluation tools will be used by reviewers to evaluate all basal instructional materials.

### **CHANGED SINCE LAST BOARD MEETING? (IF APPLICABLE)**

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- N/A; first read—hasn't been before board  
 No; same as last month  
 Yes – As follows:

### **EFFECT OF A “YES” OR “NO” VOTE (AS APPROPRIATE)**

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Approval of this rule change will allow OER materials submitted in their \$0 cost format to be adopted and added to the State Adopted List without the requirement for the submitting author/creator/publisher to obtain a \$10,000 bond or irrevocable letter of credit.

### **STAFF RECOMMENDATION**

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- Approve    Approve next month    No recommendation at this time

**Hearing Date:**

**Prompted by:**

- State law changes    Federal law changes    other

### **FISCAL ANALYSIS (AS APPROPRIATE)**

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No fiscal impact.

### **ATTACHMENTS (e.g., OAR with “track changes” ...)**

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Attachment 1: OAR with track changes