

STATE BOARD OF EDUCATION – TOPIC SUMMARY

Topic: First Reading—English Language Proficiency Instructional Materials: Removal of Publisher for Contract Breach/ OAR 581-011-0070, 581-011-0071, and 581-011-0080

Date: December 10, 2015

Staff/Office: Cindy Hunt/Government & Legal Affairs, David Bautista and Martha I. Martinez/Office of Education Equity

Action Requested: **First Reading** **Adoption** **Adoption/Consent Agenda**

ISSUE BEFORE THE BOARD: One of the publishers on the state-approved list of instructional materials for English Language Proficiency (ELP) is E.L. Achieve. Oregon Department of Education (ODE) staff propose that the state terminate the agreement with EL Achieve due to non-compliance with the contract agreement.

BACKGROUND:

Instructional Materials are adopted by the State Board of Education in a 7-year subject matter cycle that results in a 6-year contract with publishers (ORS 337.090 and OAR 581-011-0070, 581-011-0071, and 581-011-0080). In October, 2014, the State Board of Education adopted the state-approved list of instructional materials for ELP (see attached.) These materials were selected to be on the state-approved list in accordance with the procedures outlined in the OARs concerning Textbook Adoption (581-011-0050 - 581-011-0067.) Following adoption by the State Board of Education, school districts decide whether to select and adopt from the state-approved list (ORS 337.050 and OAR 581-022-1640), independently adopt instructional materials using the state criteria (OAR 581-022-1622), or postpone adoption for up to two years (OAR 581-022-1650).

After adoption of the state-approved list, ODE began to receive complaints from staff associated with the state’s textbook depository and from district staff that E.L. Achieve was not complying with certain contract provisions. These provisions concern housing the instructional materials at the state’s textbook depository and charging additional fees for items that were not included in the publisher’s original bid or in the final list of adopted materials. ODE staff then initiated contact with E.L. Achieve to investigate these complaints in January, 2015. ODE confirmed with E.L. Achieve that the publisher was unwilling to house their materials at the state’s textbook depository. The publisher was also unwilling to allow districts to purchase the materials on the state-approved list without also purchasing staff training that is not listed as a required component on the state-approved list.

Unfortunately, after several months of communication between ODE and E.L. Achieve, we have not been able to come to a resolution of these issues. On April 13, 2015, ODE emailed E.L. Achieve that, if they did not come into compliance with the contract, ODE would recommend removing them from the approved list and enforcing the provisions of the contract bond. On May 1, 2015, E.L. Achieve reiterated their reasons why they would not comply with these particular provisions of the contract.

Removing E.L. Achieve from the state-approved list does not prevent districts from adopting these materials, nor is it ODE’s intent to prevent this from happening. The dispute with E.L. Achieve is not over the quality of their ELP instructional materials and services, but rather with the contract provisions noted above. As a result of their failure to comply with the contract provisions, the costs indicated on the state-approved list for E.L. Achieve’s instructional materials are not accurate, the publisher’s materials

were not evaluated properly by the state review team (since costs are taken into consideration in the evaluation process) and districts are being required to pay much higher costs to access these materials.

POLICY QUESTIONS:

Whether the state removes E.L. Achieve from the list of state-approved instructional materials for ELP or leaves the publisher on it, there are implications for the board to consider:

- What message does either action convey to other publishers on the current list or on future state lists of instructional materials for ELP and other subjects?
- What message does either action convey to districts that rely on the state list to adopt their instructional materials?
- If the state chooses to remove E.L. Achieve from the list, is also advisable for the state to enforce the bond?

How can the state strengthen the language in our current communications with potential publishers prior to their inclusion in the state review of instructional materials to prevent similar situations from happening in the future?

STAFF RECOMMENDATION:

Remove E.L. Achieve from the state list of approved instructional materials for ELP.

Enforce the provisions of E.L. Achieve's bond for their contract with the state.

Strengthen state communication with publishers prior to their potential inclusion in the state's review of instructional materials.

EFFECT OF YES VOTE: (if applicable)

ODE would remove E.L. Achieve from the state list of approved instructional materials for ELP and would enforce E.L. Achieve's bond. State communication to publishers regarding inclusion in the review of instructional materials will be updated to clarify expectations regarding the state textbook depository and the need for any required trainings or services to be included in the original bids.

EFFECT OF NO VOTE: (if applicable)

E.L. Achieve would remain on the approved list and ODE would not enforce E.L. Achieve's bond. State communication to publishers regarding inclusion in the review of instructional materials will be updated to clarify expectations regarding the state textbook depository and the need for any required trainings or services to be included in the original bids.

Oregon
English Language Proficiency
INSTRUCTIONAL MATERIALS
CONTRACT YEARS 2015 to 2021

Category 1: English Language Proficiency Grades K-2

<u>Submission #</u>	<u>Publisher</u>	<u>Book Title</u>	<u>Copyright Date</u>
101	National Geographic/Cengage Learning	<i>Reach Level A/Kindergarten, Levels B-C</i>	c. 2011 c. 2011
102	Imagine Learning, Inc	<i>Imagine Learning (software)</i>	c. 2004-2014

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Category 2: English Language Proficiency Grades 3-5/6

<u>Submission #</u>	<u>Publisher</u>	<u>Book Title</u>	<u>Copyright Date</u>
202	National Geographic/Cengage Learning	<i>Reach Level D-F</i>	c. 2011
204	E.L. Achieve	<i>Systemic ELD Support</i>	c. 2013
200	Pearson Education Inc.	<i>Pearson Longman Cornerstone</i>	C. 2013

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CONTRACT YEARS 2015 to 2021

Category 3: English Language Proficiency Grades 6/7-12

<u>Submission #</u>	<u>Publisher</u>	<u>Book Title</u>	<u>Copyright Date</u>
303	National Geographic/Cengage Learning	<i>Inside Fundamentals, Levels A-C</i>	c 2014
		<i>Edge Fundamentals, Levels A-C</i>	c. 2014
300	Pearson Education Inc.	<i>Pearson Longman Keystone</i>	c. 2013