

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 75 INSTRUCTIONAL MATERIALS AND TECHNOLOGY
PART 2 RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL
MATERIAL BUREAU

6.75.2.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.75.2.1 NMAC - Rp, 6.75.2.1 NMAC, 12/11/2018]

6.75.2.2 SCOPE: This rule governs all public schools and eligible state education institutions pursuant to Section 22-15-7 NMSA 1978. If any part of application of this rule is held invalid, the remainder of the rule or its application in other situations shall not be affected.
[6.75.2.2 NMAC - Rp, 6.75.2.2 NMAC, 12/11/2018]

6.75.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-24-8, 22-2-1, 22-15-4, and 22-15-8 NMSA 1978.
[6.75.2.3 NMAC - Rp, 6.75.2.3 NMAC, 12/11/2018]

6.75.2.4 DURATION: Permanent.
[6.75.2.4 NMAC - Rp, 6.75.2.4 NMAC, 12/11/2018]

6.75.2.5 EFFECTIVE DATE: December 11, 2018, unless a later date is cited at the end of a section.
[6.75.2.5 NMAC - Rp, 6.75.2.5 NMAC, 12/11/2018]

6.75.2.6 OBJECTIVE: This rule governs the procedures for the adoption, purchase, and delivery of instructional material.
[6.75.2.6 NMAC - Rp, 6.75.2.6 NMAC, 12/11/2018]

6.75.2.7 DEFINITIONS:

- A. “Adoption”** means authorization by the department of core and supplementary instructional material for use in public school districts, charter schools, and state educational institutions.
- B. “Adoption cycle”** means the period during which instructional material adopted by the department shall be considered current.
- C. “Core instructional material”** means the comprehensive print or digital educational material, including basal material, which constitutes the necessary instructional components of a full academic course of study in those subjects for which the department has adopted content standards and benchmarks.
- D. “Core subject areas”** means those subject areas for which the department has adopted content standards and benchmarks.
- E. “Depository”** means an entity approved by the department that represents providers for the purpose of managing district or school instructional material orders. Responsibilities of the depository include:
 - (1) accounting;
 - (2) acquisition;
 - (3) storage;
 - (4) distribution; and
 - (5) disposition of adopted instructional material.
- F. “In-adoption”** means currently adopted instructional material that is approved by the department, and included on the multiple list.
- G. “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.
- H. “Instructional material manual”** means written guidance issued and updated by the department that outlines detailed requirements and procedures related to instructional material.
- I. “Interoperability standards”** means the current industry standards that measure the seamless sharing of data, content, and services among systems and applications.

- J.** “**Local education agency**” or “**LEA**” means a local school district, charter school, or state educational institution.
- K.** “**Multiple list**” means a written list of those instructional materials approved by the department.
- L.** “**Open educational resources**” or “**OER**” means teaching, learning, and research material that is freely available for use, adaptation, and sharing.
- M.** “**Open source curriculum**” or “**OSC**” means a planned sequence of instructional and educational material that covers a full academic course of study, and that may be freely accessed, distributed, and modified.
- N.** “**Other adoptions**” means an adoption of new material that is not conducted during the summer review institute.
- O.** “**Other classroom material**” means materials other than textbooks that are used to support direct instruction to students.
- P.** “**Out-of-adoption**” means previously adopted instructional material that is no longer considered current by the department and that is not included on the multiple list.
- Q.** “**Processing fee**” means the bid fees charged to vendors for each item of instructional material submitted for adoption, not to exceed the retail price.
- R.** “**Provider**” means an organization or individual, including publishers, who develops and submits instructional material.
- S.** “**Request for applications**” or “**RfA**” means the written notice issued by the department soliciting the submission of new instructional material in specified subject areas, and outlining the terms and conditions of the department’s review and adoption process.
- T.** “**Research-based effectiveness**” means the demonstrated effectiveness of instructional material in supporting students to meet or exceed grade-level goals according to New Mexico content standards, and as demonstrated by the best available evidence for curricula in the relevant grade and subject. For core instructional material, evidence shall include an independently conducted experimental or quasi-experimental research study or review by nationally-recognized, independent experts in curricula review. LEA-created core instructional materials may also demonstrate effectiveness using correlational evidence that students using the core instructional material meet or exceed grade-level proficiency as measured by the state assessment.
- U.** “**Reviewer of record**” means a reviewer who is a qualified teacher with a level 2 or 3-A license with experience in the content area being reviewed.
- V.** “**Substitution**” means the replacement of an adopted item under the provider’s agreement with a revised edition of the item.
- W.** “**Supplementary instructional material**” means supporting instructional material used to reinforce, enrich, or enhance instruction driven by core instructional material. Pursuant to Section 22-15-8 NMSA 1978, the department may choose not to review supplementary materials.
[6.75.2.7 NMAC - Rp, 6.75.2.7 NMAC, 12/11/2018]

6.75.2.8 INSTRUCTIONAL MATERIAL ELIGIBLE FOR ADOPTION:

- A.** The department shall review and adopt instructional material in core subject areas for use in public school districts, charter schools, and eligible state educational institutions. Providers that meet the criteria set forth in Subsection B of 6.75.2.9 NMAC may submit instructional material to the department for consideration through the process outlined in 6.75.2.9 NMAC. Providers may submit print format, digital format, or both of instructional material for consideration and shall certify whether their instructional materials are one of the following:
 - (1) core instructional material; or
 - (2) supplementary instructional material.
- B.** OER and OSC instructional material may be considered for adoption by the department as either core or supplementary instructional material.
- C.** OER and OSC instructional material may be:
 - (1) submitted by the department for adoption consideration;
 - (2) submitted by schools, districts, or providers for adoption consideration; or
 - (3) exempt from the processing fee associated with adoption.
- D.** LEAs may submit instructional material to the department for adoption consideration.
- E.** Pursuant to Section 22-23B NMSA 1978 and 22-23A NMSA 1978, the *Hispanic Education Advisory Council* and the *Indian Education Advisory Council* may submit instructional material to the department for adoption consideration.
 - (1) If the *Hispanic Education Advisory Council* or the *Indian Education Advisory Council* submits instructional material as a provider, there shall not be a fee associated with the adoption.

(2) If the *Hispanic Education Advisory Council* or the *Indian Education Advisory Council* submits instructional material created by a separate provider with the consent of the provider, there shall be a fee associated with the adoption as determined by the department.

F. Digital instructional material submitted for consideration shall comply with current interoperability standards, along with any other specifications deemed necessary by the department.

G. Providers shall incur any costs associated with the provision of hardware, software, or special equipment necessary for the review of instructional material.

H. The department shall not consider instructional material that requires proprietary equipment provided by or through the provider to view.

[6.75.2.8 NMAC - Rp, 6.75.2.8 NMAC, 12/11/2018]

6.75.2.9 INSTRUCTIONAL MATERIAL ADOPTION PROCESS:

A. Adoption cycle. The department shall conduct an annual summer review institute during which reviewers of record shall review instructional material for alignment with state content standards and benchmarks and other criteria deemed relevant by the department. The department's annual summer review institute shall serve as the primary opportunity for new instructional material to be reviewed and considered for adoption.

(1) Annual review and adoption of new instructional material shall cover those core subject areas with adoption periods expiring at the end of the year in which the review is being conducted.

(2) Instructional material shall be adopted by the department for a period of six years, unless the department determines a need to alter the adoption cycle.

(3) Off-cycle reviews and adoptions of new instructional material may occur at any time the department deems necessary, based on educational need.

(4) Providers submitting core instructional material for off-cycle review shall incur the costs associated with review, as determined by the department.

(5) The department shall notify LEAs of any cycle alterations no later than December 31 of the year prior to the summer review institute.

B. Request for applications.

(1) The department shall issue an RfA annually to solicit submissions of proposed new instructional material. The RfA shall include:

(a) the core subject area(s) for which new instructional material is being considered;

(b) timelines for adoption, requisition, and distribution of adopted instructional material;

(c) length of contracts between the department and approved providers;

(d) criteria for demonstrating research-based effectiveness of instructional material;

(e) instructional material review criteria which shall include but is not limited to the following:

(i) alignment with state standards;

(ii) grade level appropriateness;

(iii) cultural and linguistic relevance; and

(iv) full academic course of study;

(f) processing fee guidelines; and

(g) other terms, conditions, and forms deemed necessary by the department.

(2) Providers shall certify whether each submission is core or supplementary instructional material. The department shall determine whether or not the provider has appropriately categorized each submission and may reclassify material if necessary.

(3) Providers shall submit instructional material for consideration in the format and by the dates set forth by the department.

(4) The department may accept any applications that:

(a) satisfy all criteria outlined in the RfA;

(b) are determined to be advantageous to the state, considering the educational value of the instructional material submitted, cost to the state, and reliability of the provider; and

(c) meet all other factors deemed relevant by the department.

(5) The department may reject any applications that fail to satisfy criteria outlined in the RfA.

C. Review teams.

(1) Each review team shall be composed of reviewers of record and facilitated by department-selected facilitators.

(2) The department shall ensure that reviewers of record are compensated in accordance with Sections 22-15-8 NMSA 1978.

(3) The department shall ensure that reviewers of record receive adequate training and utilize the review forms developed by the department.

D. Review forms. The review forms utilized by reviewers of record shall include the scoring rubric which shall consist of a minimum of two sections.

(1) Section one shall focus on whether or not proposed instructional material aligns with department adopted content standards and shall include scorable performance indicators.

(2) Section two shall focus on the extent to which the proposed instructional material under review:

- (a) is culturally relevant, as outlined by the following:
 - (i) informs culturally and linguistically responsive pedagogy;
 - (ii) reflects the cultural diversity represented within the community, state, and nation;
 - (iii) reflects the cultures, languages, and lived experiences of a multicultural society;
 - (iv) addresses multiple ethnic descriptions, interpretations, or perspectives of events and experiences; and
 - (v) encourages critical pedagogy.
- (b) provides opportunities for both formative and summative assessment;
- (c) integrates opportunities for digital learning into the text; and
- (d) meets any other criteria deemed relevant by the department.

E. The department may send instructional material through a secondary review process, at its discretion, to ensure scores are valid.

F. The department shall ensure that collaboration occurs with New Mexico pueblos, tribes and designated tribal organizations, pursuant to Section 11-18-3 NMSA 1978 and shall ensure instructional materials for American Indian students enrolled in public schools are culturally relevant pursuant to Section 22-23A-2 NMSA 1978.

G. The department shall appoint community members, parents, level one teachers, and students preparing for careers as teachers to observe the reviewers of record during the review.

H. At the time of review, providers shall provide the department with any hardware, software, or special equipment necessary to review instructional material submitted.

I. Other adoptions.

(1) Other adoptions may be processed at the request of a provider with the approval of the instructional material bureau chief or for other reasons as determined by the instructional material bureau chief.

(2) Other adoptions may be for core instructional material which is reviewed or for supplementary material which may not be reviewed.

(3) Other adoptions shall require a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption.

J. Substitution.

(1) Providers may submit formal substitution requests to the department for in-adoption instructional material.

(2) Providers wishing to request substitutions shall submit to the department a written request along with justification for the proposed substitution. The department shall allow substitutions of instructional material when it determines:

- (a) the proposed substitution is in the best interest of students;
- (b) all terms and conditions of the original contract with the provider are still being met; and
- (c) the proposed substitution is limited to minor revisions and contains substantially the same material as the previous edition.

K. Pursuant to Sections 22-15-4 NMSA 1978 and 22-15-8 NMSA 1978 the department shall enforce rules that require local school boards to implement a process that ensures parental and community member involvement within the instructional material review process. A local school board shall give written and public

notice to families and community members to extend an invitation for participation in the adoption process at the district level.

[6.75.2.9 NMAC - Rp, 6.75.2.9 NMAC, 12/11/2018]

6.75.2.10 CLASSIFICATION AND ADOPTION OF INSTRUCTIONAL MATERIAL:

A. The department shall make adoption recommendations to the secretary using the following guidelines. Ranges of scores may vary and shall be determined and communicated by the department.

(1) Core instructional material:

(a) that meets or exceeds expectations on all identified criteria, including research-based effectiveness, may be designated as recommended and may also receive recognition for special features identified by the department;

(b) that approaches expectations on identified criteria, including research-based effectiveness, may be designated as recommended with reservations; or

(c) that is reviewed but does not meet the criteria shall not be recommended for adoption.

(2) Supplementary instructional material certified by providers and accepted by the department as such may not be reviewed.

B. The secretary shall consider recommendations from the reviewers of record and shall make final decisions regarding the adoption of core and supplementary instructional material.

(1) Instructional material selected for adoption shall:

(a) meet all requirements outlined in the RfA; and

(b) meet all requirements outlined in Subsection B of

6.75.2.9 NMAC.

(2) The secretary shall authorize adoption of instructional material no later than 90 calendar days after the conclusion of the instructional material review.

[6.75.2.10 NMAC - Rp, 6.75.2.10 NMAC, 12/11/2018]

6.75.2.11 CONTRACTS WITH PROVIDERS:

A. In accordance with law, the department may enter into contracts with providers that will provide for the purchase of adopted instructional material by LEAs.

B. Contracts with providers may last for a period of six years, unless the department determines that an amended contract is necessary.

C. The department shall only enter into a contract when the provider agrees to:

(1) facilitate the distribution of adopted instructional material to LEAs;

(2) keep sufficient stock of adopted instructional material at the designated depository;

(3) ensure timely delivery of instructional material according to the schedule determined by the department;

(4) pay late fees for any delays in delivery according to a schedule determined by the department;

(5) bill the appropriate LEA for instructional material ordered;

(6) ensure that all instructional material adopted and sold under the contract conforms to the requirements of the Federal Consumer Product Safety Improvement Act;

(7) submit adopted instructional material to the national instructional material accessibility center repository at the American printing house for the blind at no additional cost and in accordance with applicable law; and

(8) maintain copies of all billings generated under the contract for three years after the termination or expiration of the contract or after any court proceedings involving the contract.

D. The department may grant exemption from the contracting process or may approve an alternative contract for:

(1) OER, OSC, or any instructional material for which there is not a provider, vendor, or agent to fulfill the requirements outlined in the RfA; or

(2) instructional material developed by a school or LEA.

[6.75.2.11 NMAC - Rp, 6.75.2.10 NMAC, 12/11/2018]

6.75.2.12 DISTRIBUTION OF FUNDS:

A. The department shall oversee the administration of the instructional material law pursuant to Section 22-15-1 NMSA 1978 and shall issue guidance through the instructional material manual posted on the department's website to outline effective, efficient, and equitable processes related to the free use of instructional material for all entities subject to 6.75.2 NMAC.

B. The department may conduct periodic audits of instructional material accounts and textbook inventories of any entities receiving instructional material funds.
[6.75.2.12 NMAC - Rp, 6.75.2.11 NMAC, 12/11/2018]

6.75.2.13 SELECTION AND PURCHASE OF INSTRUCTIONAL MATERIAL:

A. Each local school board or governing body shall develop and implement a process for the review and adoption of instructional material which shall include:

- (1) family and community member involvement in the instructional material review and adoption process;
- (2) written notification to families and community members regarding the instructional material selection process;
- (3) public notification, which may include publication in a newspaper of general circulation in the school district; and
- (4) a review of material for cultural and linguistic relevance.

B. Each LEA purchasing instructional material through an authorized depository shall follow the timelines and requirements outlined in the instructional material manual.

C. Each public school district and eligible state educational institution:

- (1) may spend up to one hundred percent of its total instructional material allocations to purchase department-adopted instructional material posted on the department's website;
- (2) shall not spend more than fifty percent of its total instructional material allocations to purchase instructional material not adopted by the department; and
- (3) may spend up to twenty-five percent of the funds referenced in Paragraph (2) of Subsection C of 6.75.2.13 NMAC on other classroom materials.

D. Charter schools may spend up to one hundred percent of their total instructional material allocations to purchase adopted or non-adopted instructional material, and up to twenty-five percent of this amount may be spent on other classroom materials.

E. The department may consider waiver requests from school districts and state-supported schools to use instructional material funds for purchases that fall outside the spending limits enumerated in Paragraph (2) of Subsection C of 6.75.2.13 NMAC. Waiver requests shall be submitted on forms provided by the department.

F. Instructional material funds allocated to an LEA during any fiscal year that are not obligated or expended prior to the close of that fiscal year shall be available to that public school district, charter school, or state-supported school for expenditure in subsequent fiscal years, consistent with the requirements of Subsections C and F of Section 22-15-9 NMSA 1978.

G. Annually, at a time and in a format specified by the department, each LEA receiving instructional material allocations shall file a report with the department. The report shall include:

- (1) the total instructional material allocation received;
- (2) the average cost per pupil based on the instructional material allocation;
- (3) year-end cash balances of the instructional material fund;
- (4) documentation of effective professional learning aligned to purchased core instructional material;
- (5) documentation of parental and community involvement in the instructional material review process and parental involvement in the adoption process; and
- (6) other documentation specified by the department.

H. Each local school board or governing body shall keep an itemized list of instructional material purchased in a format prescribed by the department.

I. Guidance pertaining to obtaining funds, ordering instructional materials, receiving funds, returning funds for sold or lost materials, and completing the annual report shall be included in the instructional material manual.

[6.75.2.13 NMAC - Rp, 6.75.2.13 NMAC, 12/11/2018]

6.75.2.14 DISTRIBUTION OF INSTRUCTIONAL MATERIALS BY DEPOSITORIES: Depositories shall distribute instructional material to LEAs according to a schedule outlined by the department in the instructional material manual.

A. Depositories shall:

- (1) demonstrate that the financial viability is adequate to ensure performance of all obligations outlined in a contract between the provider and the depository for the purpose of distributing instructional material to LEAs;
- (2) maintain warehouse facilities, with location(s), equipment, and staffing adequate to ensure performance of all obligations under the contract between the provider and the depository for the purpose of distributing instructional material to LEAs;
- (3) demonstrate capacity to generate and electronically submit reports to the department;
- (4) provide training to all LEAs on the process for ordering instructional materials;
- (5) implement procedures and systems with the capacity to run department-approved online ordering systems, and inventory and reporting systems to receive and process instructional material orders; and
- (6) maintain sufficient inventory of instructional material to fill requisitions in accordance with the timelines set forth by the department.

B. The department may disapprove depositories that fail to meet requirements necessary for the successful and timely distribution of instructional material.

[6.75.2.14 NMAC - N, 12/11/2018]

6.75.2.15 DISPOSAL OF INSTRUCTIONAL MATERIAL:

A. Out-of-adoption instructional material deemed unusable or obsolete by LEAs may be disposed of at the LEA's discretion and shall not require department approval.

B. An LEA wishing to discard in-adoption instructional material listed on the current multiple list shall obtain prior department approval. Request for approval shall:

- (1) be in writing;
- (2) include justification for the request; and
- (3) include a list of the materials to which the request pertains.

C. An LEA wishing to sell in-adoption instructional material listed on the current multiple list shall obtain prior approval to do so from the department. The selling price may be determined by the LEA; however, it shall not exceed the original cost of the instructional material. All funds received from the sale of such instructional material shall be remitted to the department for redeposit into the LEA's instructional material account.

[6.75.2.14 NMAC - N, 12/11/2018]

HISTORY OF 6.75.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:

SDE 75-2, (Certificate No. 75-2) Regulation Relating to the State Department of Education Instructional Materials Division, filed 6/4/1975.

SDE 77-2, Regulation Relating to the State Department of Education Instructional Materials Division, filed 2/7/1977.

SBE 79-12, Relating to the State Department of Education Instructional Material Division, Procedures for the Adoption, Purchase and Delivery of Instructional Material, filed 9/21/1979.

SBE Regulation No. 83-5, Relating to the State Department of Education Instructional Material Division - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 8/31/1983.

SBE Regulation 93-20, Relating to the State Department of Education Instructional Materials Bureau - Procedures for the Adoption, Purchase, and Delivery of Instructional Material, filed 10/19/1993.

History of Repealed Material:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 11/1/2000, Repealed effective 1/31/2006.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 1-13-2006, Repealed effective 10/15/2010.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 9/28/2010, Repealed effective 12/15/2016.

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 12/15/2016, Repealed effective 12/11/2018.

Other History:

6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, filed 12/15/2016, was repealed and replaced by 6.75.2 NMAC, Relating to the Public Education Department Instructional Material Bureau, effective 12/11/2018.