



The Florida Senate

Interim Project Summary 98-17

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Committee on Education

Senator John Grant, Chairman

A REVIEW OF PUBLIC SCHOOL INSTRUCTIONAL MATERIALS INCLUDING TECHNOLOGY

SUMMARY

The purpose of this study was to examine one basic issue. Despite dramatic increases in funding, public school children in Florida do not always have access to the textbooks and other instructional materials essential for a quality education.

An in-depth study of the instructional materials acquisition process resulted in a number of conclusions and recommendations, some of which are likely to generate controversy. A small number of publishers tightly control the pricing and dissemination of instructional materials. This finding is the basis for a recommendation that the Attorney General be directed to investigate the business practices of publishers offering instructional materials for sale to Florida public schools. Other recommendations are designed to make the instructional materials process more streamlined, current and efficient, and to cast Florida school districts in the role they rightly should occupy as customers entitled to purchase what is needed and wanted at a reasonable and competitive price.

BACKGROUND

Florida is one of 22 states having adoption programs for instructional materials. The program, administered by the Florida Department of Education (DOE), is intended to solicit instructional materials that are suitable for Florida's specific educational needs and goals. Nine-member adoption committees are formed to review materials submitted by textbook publishers. Submissions must meet basic criteria prescribed by DOE, otherwise they are not eligible for adoption. Bids must include a "lowest wholesale bid price," which is guaranteed to remain in effect for the first three years of the adoption contract. After that, prices may be adjusted to the publisher's or manufacturer's then-current lowest wholesale price at which the materials are then being offered to any state or school

district in the United States, but the adjustment must not exceed the percentage by which the consumer price index has increased while the contract has been in force.

Those publishers whose materials are adopted achieve a so-called "hunting license" to do business in the state. Districts must spend at least fifty percent of their annual instructional materials allocation on state-adopted materials for grades 2 through 12. For grade K, all of the allocation may be spent on non-adopted materials, and for grade one, up to 75 percent may be so spent. Districts may apply for a waiver that allows them to spend the allocation with no restrictions. To date, 14 districts have applied for and received waivers: Okaloosa (4 schools), Orange, Charlotte, Indian River, Baker, Leon, Palm Beach, Hendry, Hillsborough, Polk, Osceola, Hardee, Suwannee, and P.K. Yonge (University of Florida demonstration research school).

The adoption cycle is 6 years for core areas including mathematics, science, social studies, reading, and literature. For other subjects it is 8 years, although the Commissioner of Education may approve terms of adoption of less than 8 years for materials in content areas that require more frequent revision.

Florida, like many other states, has a statutory provision known as the "Most Favored Nation (MFN)" clause. Sub-sections 233.25(6), (7) & (8), F.S., specify that publishers must

- Furnish the instructional materials offered by them at a price in the state which, including all costs of transportation to their depositories, shall not exceed the lowest price at which they offer such instructional materials for adoption or sale to any state or school district in the United States,

- Reduce automatically the price of such instructional materials to any governing board to the extent that reductions are made elsewhere in the United States, and
- Provide any instructional materials free of charge in the state to the same extent as that received by any state or school district in the United States.

The original intent of this rather old language was to assure that sparsely populated states and school districts had access to textbooks and other instructional materials at an affordable price. Unfortunately, it has been invoked as an impediment to volume and other discount pricing in those states and districts where population densities are high. It has also been used to avoid discounts for those states where school book depositories are not required.

According to DOE, five major publishers market textbooks in Florida: McGraw-Hill, Inc.; Harcourt Brace Company; Houghton Mifflin Company; the Pearson Companies which include Addison-Wesley, Scott Foresman, and several publishers which were formerly part of the Simon Schuster group; and Scholastic. Many remaining publishers are subsidiaries of these five companies. Publishers are required to maintain a depository in the state. There is one such depository operating in Florida. The Florida School Book Depository, Inc. (FSBD) is a family-owned business located in Jacksonville. It should be noted that FSBD does not limit its clientele to Florida public schools. Private schools may purchase instructional materials at the same prices charged to public schools. Individuals (e.g., parents) may purchase at FSBD as well, but they may be charged full retail price.

Instructional materials are funded as a categorical item in the General Appropriations Act. Since the 1994-95 fiscal year, a dramatic increase in instructional materials funding has been realized. Fund transfer to districts takes place on the following schedule: 50 percent on July 10th, 35 percent on October 9th, 10 percent on January 11th, and the balance on June 10th.

METHODOLOGY

This project was initiated in response to two concerns: reported parental complaints that children did not have textbooks to take home after school and the fact that some districts, in spite of such deficiencies, were carrying over their annual instructional materials allocation from one year to the next. It was determined

that a thorough examination of the instructional materials acquisition process was necessary.

After initial consultation with DOE representatives, a comprehensive instructional materials survey was developed and sent to each school district.

At approximately the same time as the districts were being surveyed, staff visited the Harcourt Brace School Publishers facility in Orlando. The visit was intended to include a tour of the facility in order to gain insight into the publishing process, but due to time constraints, it was limited to a presentation. Site visits to three Orange County schools were also accomplished.

A tour of the FSBD was accomplished during August 1998, just as school was starting in many districts. Meetings were held with FSBD representatives before and after the tour. A detailed questionnaire was presented to FSBD officials at that time.

After a majority of the instructional materials survey responses were received, a letter and detailed questionnaire were sent to the Association of American Publishers, Inc. (AAP) for reply on behalf of the publishing industry.

During the course of the study, numerous personal and telephone interviews were conducted with school district representatives, retail booksellers, a freight carrier (United Parcel Service, UPS), and Senate staff with specific professional knowledge related to management practices and finance. Basic research using the Internet and library resources was also accomplished. Price comparison data was gathered.

FINDINGS

Fifty-nine of sixty 67 districts (88 percent) responded to the survey. Not surprisingly, virtually all districts (97 percent) make their instructional materials purchases in support of the Sunshine State Standards and the Florida Comprehensive Assessment Test (FCAT). Districts are largely satisfied with the state instructional materials adoption procedure (84 percent) and the adoption cycle (80 percent). A smaller majority (61 percent) are satisfied with the funding procedure, both in terms of their allocation and the way it is disseminated.

Districts believe that the adoption cycle should vary according to subject area, but not according to grade level (78 percent).

A majority of districts (66 percent) say that publisher pricing methods are not reasonable but that they are competitive with respect to each other (72 percent). The latter result is somewhat surprising relative to other survey results. The intent of this question was to determine if districts believe that publishers make an effort to offer a range of pricing alternatives as part of the sales methodology. The question may not have been interpreted that way. Districts agree that the time and effort required to meet with publisher representatives is appropriate (88 percent). With regard to sales methods, most districts (93 percent) say that publisher sales methods are designed to attract their business by offering “complimentary” auxiliary materials rather than by competitive pricing. A majority (72 percent) think that textbook prices have increased a great deal over the last five years. Fifty-five percent report that prices for a given subject area show little or no variation. Only 5.4 percent say that there is substantial variation in publisher pricing. On the other hand, 45 percent report that prices are important when making a textbook selection.

Districts were asked to rate textbooks in terms of content and appeal to students and teachers. The question was designed to determine if districts feel that quality is in fact suffering as a result of broadening the appeal of textbooks. A majority of districts believe that the content of currently available textbooks is in fact quite high, and that they are appealing to both students and teachers.

Districts were asked to rate the adequacy of textbooks on the state-adopted list without the auxiliary materials that are often provided at “no charge.” The query was asked in two different ways: first to determine if the textbooks themselves could be considered as stand-alone teaching tools, and then to examine the necessity of the auxiliary materials as augmentary devices.

Not surprisingly, many respondents believe that elementary school textbooks are not as effective without ancillary materials. At all levels, a majority of districts believe that ancillary materials are necessary: 77 percent of districts believe them necessary for the elementary school level, 67 percent for the middle school level, and 63 percent for the high school level.

Districts often do not have the option of obtaining the “complimentary” items such as lesson plans, test question data banks, videos, and CD-ROMs separately. Such items may be furnished at a rate of one per 25 textbooks purchased, or as a “free” item the first year and at charge thereafter (e.g., consumable workbooks), or in some other form of package deal. Districts were asked if they would prefer to have the option of purchasing the auxiliary items separately, assuming that the cost of the textbook by itself was reduced accordingly. An overwhelming 90 percent reported that they would in fact prefer to purchase auxiliary items separately if the price of the textbook was correspondingly reduced. Furthermore, 84 percent reported that they would be more likely to buy only the textbook if DOE developed and provided auxiliary materials at no charge (61 percent would be more likely to do so if DOE provided them at cost).

Districts were asked if their current allocation is adequate to meet their needs. A majority (71 percent) reported that the current allocation is inadequate. Respondents cited a need for increased funding for technology support. They also stated that recent increases in funding levels have helped, but they are often “playing catch-up,” particularly during those years when large, expensive adoptions are taking place. Sometimes they are able to provide textbooks in the core areas but are unable to fund necessary auxiliary materials. Some districts save their annual allocations, particularly if they are nearing the end of an adoption cycle, in order to afford expensive adoptions that are perhaps 2 or 3 years away. One respondent reported saving up money starting at the beginning of a cycle to buy books 2 to 3 years later, well into the adoption cycle.

Districts were also asked if they are able to provide each student with a textbook in those courses where the textbook is the primary teaching tool; 59 percent reported that they were not able to do so. Staff conducted follow-up interviews with these districts. Respondents were asked to specify which subjects were problematic, and where they were in the adoption cycle for those subjects. Most reported that school-based management made it somewhat difficult to determine. However, commonly mentioned subjects included social studies, language arts, health, music, mathematics, and science. Subject-specific shortages varied according to school level as well. Districts

reported using local funds, block scheduling, and software to counteract the shortages. Others have extra books that are available for check-out as needed.

A majority of districts (65 percent) reported that they have their own district adoption procedure. In a typical case, the district will examine the state-adopted titles and select one (single adoption) or several (multiple adoption). Districts cite several advantages to this system. Student mobility is a common problem in Florida; the use of a single or limited number of titles eases the transition from school to school. Staff development activities and inventory control are said to be more efficiently accomplished with limited adoption.

Historically, book depositories have earned an 8 percent commission on state-adopted materials and 10 percent on non-adopted materials. Publishers charge what is said to be a “national wholesale price” for instructional materials, a price that presumably includes a commission for book depositories throughout the country (there are presently 15 depository states). The actual commission received by FSBD from the purchase of instructional materials is difficult to determine. According to FSBD, the “net effective commission rate they expect to receive on items processed” is 4.267 percent. This calculation is based on rebates granted to major publishing houses as a function of volume and of sales of “high-ticket items”(such as kits and technology), among other factors.

The FSBD contends that removing the requirement for a depository would not allow Florida to enjoy a reduction in prices charged by publishers. They argue that the nationally established publisher prices factor in a subsidy for all depositories and that all 50 states pay for the depositories, whether they have them or not. The FSBD also contends that a depository is economical because it is able to negotiate lower transportation costs for delivery from the depository (in Jacksonville) to various schools and districts.

It is clear that FSBD provides a service that is found to be attractive to many districts and to DOE. However, some districts would prefer to deal directly with publishers, vendors, and used booksellers more frequently. The AAP believes that Florida’s requirement for maintenance of inventory in a state depository is unnecessary and inefficient. However, by invoking MFN, it also contends that elimination of the depository requirement in Florida would not likely

result in any immediate savings. One might argue that with modern-day printing techniques and rapid transit options, textbook depositories are in fact no longer necessary. It could also be argued that those states that implement cost saving initiatives to reduce publisher overhead should be afforded reduced pricing schedules, MFN notwithstanding.

An attempt was made to compare publisher bid prices to those available through retail booksellers. A list of bid submissions was obtained from DOE, with no particular subject or grade level requested. DOE offered the list of advanced placement mathematics titles because it was the most current list available. The advanced placement text list simplified the study. Advanced placement mathematics textbooks are sometimes used in college courses, the likely reason for why they are made available to retailers. Other K-12 texts were difficult to find anywhere other than the FSBD catalog, thereby making a price comparison study virtually impossible.

Several retail on-line bookseller websites were consulted, including Amazon.com, Barnes&Noble.com, OPAMP, and others. Although there are many online booksellers, staff confined detailed price comparisons to the first two of these sites.

Several interesting results were discovered. As expected, some of the prices quoted by the online booksellers were well in excess of the corresponding publisher wholesale bid price. However, eight of nineteen (42 percent) of the titles had wholesale bid prices at or greater than the corresponding retail price. A ninth title had a retail price only 3.4 percent above the wholesale bid price. It should be noted that some of the retail prices fluctuated over the course of the study.

A qualitative examination of various “regular” mathematics textbooks appearing in the FSBD catalog revealed prices on the order of approximately \$26 - \$49, depending on grade level and discipline, with most in the range of \$35 to \$45. An attempt was made to obtain retail pricing data on these lower level texts by consulting Books In Print, or a similar data base. The effort proved largely unsuccessful as most of the titles randomly selected from the mathematics section of the 1998-99 FSBD catalog were either “not found” or were designated “out-of-print.” This result was

surprising since all of these titles must be “in-print” to be on the state-adopted list and to appear in the FSBD catalog.

Interviews were conducted with the manager and several sales representatives of a local retail bookseller. Schools, districts, and other educators, including home school instructors, are able to take advantage of significant discounts. For example, one local chain-type bookseller offers an automatic discount of 20 percent for any purchase, not including software, by a school or K-12 educator. For orders exceeding \$1000, the discount is 25 percent. The discount is based on the retail price assigned to the book, which is the price shown in Books In Print, or similar data bases. No shipping charge is assessed if the customer is willing to wait for the order. If the materials have to be ordered from the publisher, the time for delivery may be anywhere between four and six weeks. For rush shipments, the customer must pay for the special shipping.

With its large population, including some 2.5 million public school students, Florida agencies and affiliates (such as school districts) normally are able to negotiate discounts on a wide variety of goods and services. In the case of textbook acquisition, this has not been the case. According to AAP, publishers cannot offer discounts to populous states because of MFN restrictions. However, one can argue that the MFN clause does not prohibit publishers from including bid prices that offer volume and rapid payment discounts. Further, if Florida required that bids address such discounts, the clause would not be violated so long as the same discounts were offered elsewhere.

Section 233.14, F.S., requires that publishers submit sealed bids or proposals for the furnishing of instructional materials proposed for adoption. In practice, wholesale bid prices are widely known because they are nationally established and printed in publisher and depository catalogs. AAP was asked to respond the question of why there is a perception that there is little variation in prices among different publishers. They contend that, “Although instructional materials bids are sealed, because of the existence of MFN requirements around the country, there may be few surprises in the prices bid. The practical effect of so many states and jurisdictions demanding the ‘lowest price’ is that a publisher must consistently bid a single, national school wholesale price for each product. School wholesale prices are also listed in publishers’ national catalogs.”

According to AAP, 1997 was a banner year for textbook publishers. It estimated sales of K-12 book sales at \$2959.6 million; sales of higher education books at \$2669.7 million; and sales of standardized tests at \$191.4 million. Of the estimated \$21,277,400,000 total U.S. book sales in 1997 (a 2.4 percent increase over 1996), the K-12 and higher education segments registered the strongest gains, increasing by 13 percent and 7.4 percent, respectively. These segments reflected the industry’s third largest compound growth rate for the 1992-97 period, with a 7.3 percent increase. AAP reports that “the third largest gain in 1997 -- 7.1 percent -- was achieved by standardized tests, reflecting the overall vigor of the educational market, with combined sales of \$5.82 billion in 1997.”

An overwhelming majority of districts (90 percent) report that they would prefer to have the option of purchasing textbooks and auxiliary items separately, assuming that the cost of the textbook by itself would be correspondingly reduced. AAP contends that it would be contrary to Florida’s best interest to prohibit bidders from offering ancillary materials at no charge or to require publishers to charge districts for services that are now provided at “no cost.” They argue that there are several problems with the idea of requiring that publishers establish dual pricing systems, the current one, with “freebies” factored into the unit cost, and one with the basal text and each auxiliary item priced out individually. They claim that many districts would opt for the lower pupil edition price and continue to insist upon free materials and services, putting publishers in an untenable legal position.

They further claim that nothing Florida does legislatively or administratively would alter requirements in other states and jurisdictions that publishers provide certain materials and services at “no charge.” If entitlement to these materials and services required payment of a higher price for the pupil edition, then one could hardly maintain that the materials were being provided at “no charge.”

Finally, AAP is doubtful that MFN requirements of other states and jurisdictions would permit publishers to adopt such dual pricing plans. They state that there is “substantial risk” that publishers would be required to extend the lower pupil edition price to every other state and jurisdiction with MFN protection *and* still be required to provide free materials and services. According to AAP, due to MFN laws in other states, Florida probably cannot avoid paying the same prices

for pupil editions as the rest of the country and could end up forcing its schools to pay for materials and services provided at no cost elsewhere if a dual pricing system is mandated.

Florida currently has a state contract with UPS for the shipment of routine parcels. A meeting was held with UPS to determine if it or any other carrier might consider it feasible to bid on a contract for seasonal, high volume shipping as occurs when textbooks are ordered for the fall. Although no specific discounts could be quoted, it appears that such an arrangement is possible.

Recommendations

Sub-section 233.25(11), F.S., states that “publishers and manufacturers of instructional materials, or their representatives, shall not in any way, directly or indirectly, become associated or connected with any combination in restraint of trade in instructional materials, nor enter into any understanding, agreement, or combination to control prices or restrict competition in the sale of instructional materials for use in the state.” There is evidence to suggest that publishers may be violating this statute.

It is recommended that the Attorney General be directed to initiate a comprehensive investigation into the business practices of all publishers, manufacturers, and agents thereof, who offer textbooks for sale to public elementary schools, middle schools, and high schools in the state.

Florida is a major player in the instructional materials market. The elimination of the MFN clause will send a message to other states and jurisdictions that Florida intends to treat instructional materials as it does other goods and commodities purchased in large volume. That is, we will do whatever is necessary to assure that our schools and districts get the very best product they can at the very best price available. The elimination of MFN is not likely to result in higher prices being offered in any Florida district, size not withstanding. On the contrary, Florida will be one step closer to establishing healthy market competition with regard to instructional materials. Would the courts rule that the intent of MFN is violated by states and districts that demand lower prices in response to cost saving initiatives, as AAP contends? No rulings in this regard were offered in support of AAP’s position.

It is recommended that all MFN-related claims be vigorously challenged.

If precedent has been set, then it is incumbent upon the industry to demonstrate it.

It is recommended that the adoption process require that publishers offering materials for adoption specify dual pricing, one in which the package price for the basal tool and auxiliary items is expressed, and another in which each item, including consultation and staff development (not including basic customer service) is priced out individually.

Districts overwhelmingly (90 percent) desire the opportunity to design their purchases according to specific needs. Without question they should be afforded this opportunity. Dual pricing schemes should be closely monitored to assure that districts can in fact realize a savings. An itemized pricing schedule that escalates the cost of popular, relatively low-cost items in order to maintain overall sales figures could easily end up being more costly than the existing system. Safeguards must be in place to prevent such an outcome.

The sale of K-12 instructional materials is tightly controlled by four or five major players in the publishing industry.

It is recommended that publishers who offer instructional materials for sale in Florida public schools be required to make the materials available to any legitimate vendor who wants to buy and sell them in order to increase competition.

Florida districts and schools should be afforded the opportunity to take full advantage of being located in a populous state. Furthermore, they should be able to benefit from innovative statewide practices designed to reduce publisher overhead.

It is recommended that publishers be required to address super saver discounting, that is, discounting that goes beyond the national pricing structure dictated under MFN.

Assuming no collusion, it is expected that at least some publishers will offer such discounts in exchange for an individual state’s efforts to reduce overhead costs borne by publishers and their agents.

It is recommended that the adoption cycle vary according to subject matter, not according to whether the subject is or is not a core area.

Texts on relatively immutable subjects such as most mathematics and statistics courses, literature, foreign languages, and others should not be renewed as often as rapidly changing subjects such as history.

Publishers often develop new editions, sometimes annually, for subjects that are largely time invariant. It is difficult to understand why, for example, a calculus book or algebra book would undergo substantial change over a short time. Under the current scheme, it is to a publisher's advantage to develop new editions frequently since titles may come up for adoption at varying times in different states. A new edition means that a new wholesale price can be established. The feasibility of establishing a very long cycle of ten or more years for largely invariant subjects is advised. Over time, one would expect fewer new editions and stable, perhaps even lower, textbook prices.

The FSBD provides a highly regarded service. Clearly, districts should have the option of buying their instructional materials from this long standing source. However, FSBD's argument is equivocal that its statute-mandated exclusivity is a cost-effective means of furnishing instructional materials.

Mandating the existence of a state textbook depository is no longer warranted and should be discontinued.

Districts should be granted wide latitude to purchase state-adopted and non-state-adopted titles from whoever will give them the best deal, including online booksellers, retailers, wholesalers, used book dealers, or other legitimate businesses. It should be noted that this action would place FSBD on par with other vendors. Publisher contracts currently held by FSBD would likely not be renewed. It would be expected that FSBD would then be in a position to purchase materials wholesale and offer its highly regarded services as does any other vendor in the state, but without state subsidy. With its stellar customer service history, one would expect FSBD to successfully compete with other vendors.

The current fund allocation schedule can make it difficult for districts to make all purchases necessary for the start of a new school year.

It is suggested that 90 percent of a district's allocation be released in July, with the balance released the following June.

By reserving the remainder until the end of the year, the state can avoid overpayments to districts that overestimate their full-time-equivalent (FTE) enrollment counts. Otherwise, such districts would owe a refund to the state at the end of the year.

A majority of districts reported that they would consider purchasing co-developed textbooks if the price and quality met certain requirements. They also support the concept of state-developed auxiliary materials, particularly if furnished at no cost to the district.

It is recommended that DOE be encouraged and funded to develop high-quality textbooks and ancillary materials that can compete with their commercially produced counterparts.

Contracts with state-sponsored institutions such as the State University System should be strongly supported.

It is recommended that DOE investigate the feasibility of establishing a statewide instructional materials ordering, tracking, and electronic payment system for use by all districts choosing to participate.

With such a system, DOE could develop supersaver discounting protocols whereby districts could use their collective buying power to achieve discounts based on seasonal buying, very high volume ordering and rapid payment. This a system could be used to release and track allocations as well.

It is also recommended that the feasibility be examined of establishing a statewide contract with a commercial freight carrier, for use by schools and districts in their capacity as state affiliates, for the shipping of instructional materials to and among Florida public schools and districts.

Safeguards should be designed to forestall unexpected consequences of the recommendations cited in this report.

Smaller districts must be assured that they will suffer no negative consequences as an unintended outcome of retooling the existing process. In the unlikely event

that smaller districts were negatively impacted, subsidies should be made available to such districts to keep them fiscally on par with larger districts.

The evaluation segment of the state adoption process affords DOE the opportunity to monitor and control, at least to some extent, the instructional devices used in Florida public schools. DOE does not wish to abrogate this right. Furthermore, a majority of districts use the state-adopted list as a starting point for their own adoption process. DOE is concerned that the major changes recommended in this report may lead to a de facto elimination of the state adoption process. This concern is based on the idea that publishers will no longer be interested in offering materials for adoption since they will no longer have a guaranteed market. This is a valid concern.

In lieu of the existing bid process, it is recommended that bid specifications that DOE considers to be indispensable, such as the requirement that textbooks meet certain durability requirements (beyond those already prescribed in s. 6A-7.076, F.A.C.) and that they not consist of first printings (where errors are

more likely to be commonplace), be written into law or rule.

Publishers wishing to sell instructional materials in the state could be required to supply upon request (perhaps at wholesale or retail cost) a sufficient number of copies of their merchandise to DOE. The materials could then be reviewed via the same procedure as is now in place, with a state-adopted list published, but without reference to a guaranteed price. Alternatively, DOE could bid the approval and adoption procedure out to perhaps a state university or private contractor. The requirements of s. 233.34, F.S., relating to what percentage of a district’s allocation must be spent on state-adopted materials would remain valid.

Many districts cite the need for additional funding, or greater latitude in how they spend existing funds, for the purchase of the software and hardware necessary for maximum use of technology. It is suggested that DOE be directed to examine this issue and to recommend statutory and allocation changes it deems necessary.

COMMITTEE(S) INVOLVED IN REPORT *(Contact first committee for more information.)*

Committee on Education, 404 South Monroe Street, Tallahassee, FL 32399-1100, (850) 487-5213 SunCom 277-5213

MEMBER OVERSIGHT

Senator Cowin and Senator Meadows