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February 23, 2007

Debra Strain, Regulations Coordinator
Legal Division
California Department of Education
1430 N Street, Room 5319
Sacramento, CA 95814

Dear Ms. Strain:

The California Science Teachers Association (CSTA) has reviewed the proposed rulemaking amendment regarding instructional materials and submits the following comments for consideration by the State Board of Education. CSTA was actively involved in the recent science adoption, and we base our discussion here largely on our experiences with that adoption.

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§ 9513 Application Process for CFCC, IMRs, and CREs. We suggest adding language (in *italics* below) to subsection (b) as follows: The CDE shall assist the Curriculum Commission in reviewing applications of CFCC members, IMRs and CREs to ensure *only that* applications are complete before the Curriculum Commission makes its recommendations to the SBE. *CDE staff shall not pre-screen or disqualify applications for any reason other than incompleteness of information.*

§ 9514 Prohibited Communications. We applaud the inclusion of this section and feel it will go a long way toward reassuring the public that decisions are not made through behind-the-scenes communications. We suggest, however, that beyond disqualifying a curriculum commissioner from further participation in the subject adoption, that such a breach of public trust of this section is grounds for removal of the commissioner from the commission.

We are aware that neither the commission nor publishers agree with the prohibitions in the proposed regulations. However, the regulation specifies that communication between commissioners and publishers is prohibited only between the time materials are delivered to IMRs, CREs, and LRDCs and the time the state board adopts the materials. This seems to us to be reasonable, as the purpose for such commissioner communication, which is not allowed for IMRs and CREs, is for publishers to explain their materials to the commissioners, according to commissioners themselves, and not to lobby commissioners to recommend their materials. If such communication is really for the purpose of explaining publishers' materials, that information should be given first to the IMRs and CREs. Otherwise, the regulations would set up a scenario in which the commission feels warranted or even compelled to overrule the findings of the panels because it has information not provided to the IMRs and CREs.

We would, however, like to suggest that reasonable communication between publishers and IMRs, CREs, and commissioners be allowed outside the prescribed

public comment periods during deliberations. Observing the deliberations for the science adoption as we did, we are aware that on numerous occasions, panel members will have questions, such as where to find specific content in materials, which could be answered quickly and simply by publishers. However, publishers, who are in the room listening to the conversation, are not allowed to answer at that moment but must wait until the public comment period to answer all the questions that have arisen during the day. This seems an overly restrictive and unnatural means of controlling communication and doesn't address the real issue with publisher-commissioner communication.

§ 9515 Display of Curriculum Frameworks and Evaluation Criteria for Public Inspection and Comment. Subsection (a) should be augmented with the following sentence: "*The 45 day review period shall begin on the first date that the drafts are made available on the CDE website.*" This ensures that the public has access to the documents for the full inspection period.

We have concerns with the requirement in Subsection (c) of Section 9515 that written comments must be postmarked not later than 10 days prior to the date set for the public hearing. Rather than opening up the process, this is a further constraint on public input. Considering that the Curriculum Commission agendas are not available to the public more than seven days prior to a meeting, and in some cases, less than that, we don't think that the public should be held to a higher communication standard. One week seems sufficient to us.

§ 9517 Procedures for Submitting Instructional Materials for Adoption. Subsection (d) is not a procedure for submitting instructional materials but is a criterion, like many other criteria that will be promulgated by the commission and state board, and should therefore be eliminated from this document.

§ 9521 Written Comments Regarding Content of Instructional Materials. Similar to Section 9515 (c), above, Subsection (a) of this section requires written comments regarding instructional materials to be postmarked not later than 14 days prior to the date set for review panel deliberations. We find this allows an unreasonably restrictive time period for public comment and, for the reasons cited above in Section 9515, suggest that the postmark time period be one week prior to the deliberations date.

Subsection (e) of Section 9521 states that IMRs and CREs shall "evaluate the written comments that were received" pursuant to the above timeline. Evaluate how? Is there to be evaluation criteria for public comment? Perhaps the language should be "IMRs and CREs shall take into consideration all public comment received when making a recommendation." If not changed, this subsection should be eliminated.

§ 9523 Display of Instructional Materials for Public Inspection. There should be a time frame specified in the regulations for the minimum amount of time materials must be on display at LRDCs.

§ 9524 Public Hearings Held by the Curriculum Commission and the State Board of Education Regarding Instructional Materials. Subsection (a)(4) should specifically require that the IMR/CRE Reports of Findings be forwarded as written to the state board, along with the commission's report. Currently the subsection indicates that the Curriculum Commission may add to the report to include recommendations different than those of the review panels, even though it may not delete or alter the recommendations. We believe that the state board should have the benefit of seeing the unedited IMR/CRE reports, and this section should affirmatively state that such is the case.

§ 9527 Free or Gratis Items. We are unclear as to why only adopted materials may be given by a publisher to school districts. The Education Code specifies that only materials on the state adoption list may be purchased with state funds. If the materials are not being purchased, what is the authorizing statute that would prohibit a publisher from giving, or a school district from accepting, any materials it wishes as long as state funds are not being used (assuming the same offer is made to all districts)?

Beyond the specific regulations being promulgated in this document, we find that there are other areas of the current adoption process that are of concern. That these are not addressed in the proposed regulations leads us to fear that these issues will continue to occur. We respectfully draw your attention to the following areas:

Inconsistency of process among review panels during deliberations. Irrespective of the excellent training that IMRs and CREs go through prior to their review of materials and the deliberations meeting, our observations of the deliberations process demonstrate that there is great inconsistency among the panels in the process that is followed for reviewing, deliberating about, and recommending materials, to the point that it is highly possible for any given program not to be recommended by one panel when it would have been recommended by a different panel following that panel's procedure. Most of the discrepancy, we observed, was caused by different methods of facilitation by curriculum commissioners. We suggest that sincere consideration be given to having CDE professional staff, who can undergo more stringent training than commissioners, be the facilitators of the deliberation panels.

IMR and CRE application process, screening, and recommendation by Curriculum Commission. We strongly recommend that a regulation be promulgated which requires the Curriculum Commission to consider only the information contained in an individual CFCC, IMR, or CRE's application when determining which applicants will be recommended to the State Board of Education. We observed numerous cases where personal biases of commissioners entered into the conversation and decision as to which applicants to recommend. This practice should be specifically prohibited in the regulations, most appropriately in **Sections 9512 and 9513.**

Reasonable timeline for responding to questions from publishers and public.

The regulations should require a maximum time in which the CDE must respond to questions from publishers and the public. At a publishers briefing for the science adoption held in June 2004, commissioners and staff conducting the briefing did not take questions from the audience but requested any questions to be submitted in writing at the end of the meeting. Answers to those questions were not produced until February 2005, a significant and unacceptable incursion into the 30 month development time. The CDE should be responsive to the public, and a reasonable timeline for responding should be required in the regulations.

Respectfully submitted,

Christine Bertrand
Executive Director

c: State Board of Education