



OREGON STATE SENATE
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SALEM, OREGON 97301

February 15, 2024

Legislative Counsel Analysis re: SB 1583

On February 15, 2024, I received an analysis from Legislative Counsel regarding SB 1583, including a review of the -3 amendments. That analysis, which was received by email, is copied in whole below.

You have asked for more information about the consideration of age appropriateness in the selection of textbooks, instructional materials and school library materials. Additional information is provided below.

The review and selection of textbooks and instructional materials are governed by ORS chapter 337 and Division 11, Chapter 581 of the Oregon Administrative Rules. Neither source specifies the specific factors to be considered in the selection of textbooks and instructional materials, but both sources establish a process for establishing selection criteria. Based on my research, ODE has made available criteria for the selection of textbooks and instructional materials (available at <https://www.oregon.gov/ode/educator-resources/teachingcontent/instructional-materials/Pages/Adoption-Criteria.aspx>). Tables that present the criteria are available for use by school districts and are organized by subject matter and then by grade. Due to shortness of time, I am unsure if, in addition to being a tool for school districts, the charts also represent a formal summary of selection criteria or if more official documentation of selection criteria exists.

As mentioned above, after subject matter, the next consideration for the selection of textbooks and instructional materials is grade. A reoccurring requirement in all of the selection criteria tables was appropriateness for the grade level. I believe that the emphasis on grade-level appropriateness would continue, even after the enactment of Senate Bill 1583. I do not interpret any provision of SB 1583 as overriding that current evaluation structure. The -3 amendments would statutorily preserve the current evaluation structure, but I do not perceive any need for that statutory change because I do not believe SB 1583 changes the current evaluation structure.

In relation to school library materials, there are no statutory provisions related to the selection of school library materials. The State Board of Education has adopted the Oregon School Library Standards, which were developed by a committee of the Oregon Association of School Libraries (available at <https://www.olaweb.org/school-library-standards>). The first factor of consideration in each of the standards is grade level. As with textbooks and instructional materials, I do not believe any provision in SB 1583 would override the current structure for selecting school library materials and that structure's primary emphasis on grade level.

Determining age appropriateness or grade level suitability does require some subjective analysis. That analysis would be made primarily at the school district level. The initial analysis would be by the school district personnel that identify textbooks, instructional materials and school library materials to be used by, or made available at, the school district. Any concerns about that initial determination would be addressed through a complaints-driven process. If a person has concerns that materials are not age appropriate, the person may make a complaint with the school district. Similarly, if a person believes that materials are excluded for a

discriminatory purpose even when the school district states that the reason for the exclusion is age appropriateness, the person may make a complaint with the school district. ODE has produced a document for school districts to use when materials are challenged through complaints made with the school district (available at https://www.oregon.gov/ode/educator-resources/standards/ELA/Documents/Addressing%20Challenged%20Materials%20in%20K-12%20Education_%20Guidance%20to%20School%20Districts.pdf).

Determinations by ODE about whether materials were excluded for a discriminatory reason would occur only after the complaints process has been exhausted at the school-district level. If a person believes that materials were excluded for a discriminatory reason, the person may file a complaint with ODE as a discrimination complaint under ORS 659.850. According to ODE's complaint process website, ODE will accept the complaint only on appeal, which means the school district must have already made a decision on the complaint (see <https://www.oregon.gov/ode/about-us/pages/complaints.aspx>). ODE would review the facts of the exclusion to determine the "basis" of the decision. Based on Merriam-Webster's Dictionary, "basis" means the "principal component" of the decision. If ODE finds that the primary factor for the decision was discriminatory, ODE may impose sanctions under ORS 659.855. If ODE finds that discrimination was a factor but that another factor (e.g., financial resources) was the primary factor, ODE most likely would not impose sanctions under ORS 659.855.