



F. Andrew Fugitt
Laura L. Holmes

900 N. Broadway, Suite 300
Oklahoma City, OK 73102

Justin C. Cliburn
Jeffrey D. Scott
Belinda H. Tricinella

t 405.528.2800
f 405.528.5800

www.cfel.com

Of Counsel
Laura Holmgren-Ganz
David L. Kinney

TO: District Superintendents
RE: June 27, 2024 SDE Memo re: Bible
DATE: July 12, 2024

MEMORANDUM

We are writing in response to the State Department of Education’s (“SDE”) June 27, 2024 memorandum directing public school districts to incorporate the Bible into curriculum for grades 5–12. It is our opinion that the memo is without legal authority and invalid under Oklahoma law because the legislature requires school districts to develop and implement curriculum, courses, and instruction. Further, nothing in the School Code calls for, or allows the State Board of Education (“SBE”) to require, specific textbooks,¹ as textbooks are reviewed and approved (not required) by the State Textbook Committee without SBE involvement.² Textbooks are a tool to teach curriculum, and SDE regulations require curriculum to be assessed by principals, teachers, and parents or guardians.³

Agency action is governed by the Administrative Procedures Act (“APA”), which requires that rules be authorized by statute and passed by the agency’s governing board. Our Supreme Court recently held unanimously that SBE may not exercise power unless the legislature has specifically delegated it that authority.⁴ While SBE is exempt from the APA when adopting subject matter standards,⁵ the passage of subject matter standards requires SBE action and this was not an action taken by SBE but a memorandum by the State Superintendent of Instruction. Further, SDE’s website clearly states that its subject matter standards do not dictate curriculum or instructional materials,⁶ a conclusion supported by the School Code’s directive that “School districts shall *exclusively* determine . . . **curriculum** . . . and **textbooks**[.]”⁷ not the State Superintendent, SDE, or SBE.

It is likely that an organization, on behalf of parents or students, may file a lawsuit seeking an injunction to prohibit enforcement of the directive. We will keep you updated if one is filed. If your school district is interested in joining such a lawsuit, please let us know and, as always, please contact our office with any additional questions or concerns.

¹ 70 O.S. § 11-103.6(2).

² 70 O.S. § 16-101.

³ Okla. Admin. Code § 210:35-3-66 through 68.

⁴ *Indep. Sch. Dist. No. 12 of Okla. Cnty. v. State ex rel. State Dep’t of Educ.*, 2024 OK 39.

⁵ 75 O.S. § 250.4.

⁶ <https://sde.ok.gov/oklahoma-academic-standards>

⁷ 70 O.S. § 11-103.6a(F).