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January 4, 2002

Ronald Gandy
1415 SW Parkwood Drive
Portland, OR 97225

Re: *Petition for Public Records Disclosure Order: Oregon Department of Education Records*

Dear Mr. Gandy:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on December 18, 2001,[1] asks the Attorney General to "instruct the Oregon Department of Education and its employees to comply with [your] requests for information." Your requests are divisible into four categories. The descriptions set forth below are drawn verbatim from your requests.

Category #1

Information involved in the language/arts methods and materials adoption process:

- a copy of the last (1998) announcement sent to publishers and their representatives informing of the upcoming adoption – with an accompanying list of textbook publishers and/or their representatives where it was sent.
- a copy of the criterion for the expected content of the publisher's programs, and again, a list of the textbook publishers and/or their representatives who were supplied a copy. Category 1&2 only.
- ditto both of the above for the early 90's (1992) adoption process.

[1] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

Category #2

Information concerning the implementation of 1999 HB 3305 at the classroom level:

- a copy of the list of approved programs supplied to all Oregon schools, by the State Department of Education, to bring them into compliance with 1999 HB 3305.
- a copy of any direct instruction of any kind, from the State Department of Education to local schools, informing the schools they were expected to comply with 1999 HB 3305.
- if there was no list of approved programs --and/or-- no direct instruction from the State Department of Education to local schools, simply so state.

Category #3

Information concerning the implementation of 1999 HB 3305 at the classroom level:

- supply and specifically identify that portion of the criteria for category 1 that explicitly requires phonics for selection.

Category #4

Information concerning interpretation of 1999 HB 3305:

- define, in simple straightforward English, so an incoming freshman Legislator, who may not be familiar with the subject can understand, "***Explicit Phonics with decodable text".***
- provide a concise statement of the State Department of Education's official interpretation of the intent of, and the purpose for, the 1999 Legislature formulating and passing HB 3305.

In addition, on December 31, 2001, you sought to supplement your petition with a request for additional records. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. Any person who is denied the right to inspect or to receive a copy of any public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.450(1). The Attorney General may order a state agency to disclose records only when the agency has denied a request for the records. *See* ORS 192.450(1).

With regard to categories 1, 2 and 3, Russ Sweet, Oregon Department of Education's representative, has reviewed the content of your petition to the Attorney General and has determined that the Oregon Department of Education has previously provided you with some, but not all, of the records responsive to your requests. The Department of Education will, within the next five days, offer to either make the remaining documents available for your inspection or provide you copies of the records, at your election. The agency may charge you a fee to reimburse it for its photocopy costs and the time spent by agency personnel to review the records. *See* ORS 192.440(3). Because the Oregon Department of Education agrees to make these records available to you, your petition to order their disclosure is denied as moot.

With regard to category 4, the inquiries appear to be requests for information rather than for existing records. We have observed:

> The Public Records Law does not impose on public bodies the duty to *create* public records. Public bodies are not required to create a record disclosing the 'reasoning' behind their action, or other 'knowledge' their staff might have. Nor does the Public Records Law require public bodies to explain or to answer questions about their public records.

ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL at 5 (2001) (emphasis in original). To the extent that existing records contain information responsive to your requests, the Department of Education will make them available to you. To the extent that no existing record contains that information, however, the Attorney General is without jurisdiction under the Public Records Law to order the Oregon Department of Education to generate responsive records.

In your December 31, 2001 letter to AAG McKeever, you asked him to require the Oregon Department of Education to disclose "a list of the textbook publishers and/or their representatives that responded to that announcement" for the 1992 and 1998 educational materials adoption process. Russ Sweet has informed us that these materials have not previously been requested by you. Because you have not been denied access to the records, the Attorney General lacks authority to order disclosure. See ORS 192.450(1). Therefore, your petition to order disclosure of the records described in your December 31 letter is denied as premature.[2]

Sincerely,

PETER D. SHEPHERD
Deputy Attorney General

AGS09325
c: Russ Sweet, Oregon Department of Education
Dawn Billings, Oregon Department of Education

[2] Russ Sweet has informed us, however, that the Oregon Department of Education searched for these materials and will provide you with the records regarding most recent adoption process. Mr. Sweet further informs us that records responsive to your request do not exist for the 1992 adoption process.