

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 EDC 07610

TPS Publishing, Inc.)
Petitioner)
vs.)
NC State Board of Education)
Respondent)

FINAL DECISION

Pursuant to N.C. Gen. Stat. § 115C-85 *et seq* and N.C. Gen. Stat. § 150B-23, on October 7, 2014, Petitioner filed a petition for a contested case hearing at the Office of Administrative Hearings appealing Respondent’s decision not to recommend Petitioner’s textbook materials for Grades 6, 7, and Algebra I (Grade 9) for Adoption and Evaluation in North Carolina. On June 15, June 17-18, and August 17, 2015, Administrative Law Judge Melissa Owens Lassiter heard this contested case at the Office of Administrative Hearings in Raleigh, North Carolina.

On September 30, 2015, the undersigned issued an Order ruling that Respondent did not act erroneously in deciding not to include Petitioner’s textbook materials for Grades 6, 7, and Algebra I (Grade 9) on the 2014-2015 North Carolina’s approved textbook list. Respondent filed a proposed Final Decision with the Office of Administrative Hearings on October 14, 2015.

APPEARANCES

For Petitioner: Andrew Norris, TPS Publishing Inc., 24307 Magic Mtn Parkway #62, Valencia, CA 91355

For Respondent: Tiffany Lucas, Assistant Attorney General, NC Department of Justice, PO Box 629, Raleigh, NC 27602

APPLICABLE STATUTES

N.C. Gen. Stat. § 115C-85 *et seq*; N.C. Gen. Stat. § 150B-23 *et seq*
16 N.C.A.C. 6D.0205, .0206, .0207, and .0208.

FINDINGS OF FACT

Background

1. For more than 40 years, the North Carolina General Statutes have set forth very specific mandates and guidelines for the adoption of textbooks for use in North Carolina's public schools. N.C. Gen. Stat. § 115C-85 *et seq*. Pursuant to N.C. Gen. Stat. § 115C-85, adoption of

textbooks for use in North Carolina's public schools is under the general jurisdiction of the North Carolina State Board of Education.

2. The State Board of Education is charged with adopting standards for each subject taught in North Carolina's public schools. After the State Board of Education adopts a set of standards for a new subject, the State Board of Education selects textbooks that align with those standards. N.C. Gen. Stat. § 115C-85.

3. N.C. Gen. Stat. § 115C-87 & 88 provide that a Textbook Commission, a 23-member commission appointed by the Governor, is responsible for evaluating textbooks, and recommending to the State Board of Education which textbooks should be included on the State-approved textbook list. The members must represent various segments of the educational community, and serve four-year terms. Members of the North Carolina Department of Public Instruction ("DPI") who are well-versed in standards, curriculum, the bidding process, and the overall needs of the education community train Textbook Commission members.

4. The State Board of Education further defines a comprehensive, detailed process for requesting bids to ensure there are no conflicts of interest, that publishers comply with requirements, that the process adheres to stringent timelines, and that the review of textbooks is as impartial as possible. *See* N.C. Gen. Stat. § 115C-89.

5. In addition to Textbook Commission members, the Commission appoints Regional Advisory Committee evaluators ("evaluators") who are assigned the task of performing an in-depth review of each and every textbook that is submitted for bid. N.C. Gen. Stat. § 115C-88.

6. Before 2010, it was not unusual that multiple content areas were the focus of the textbook selection and adoption cycle during the same year. For example, the agency might be selecting and adopting Grades K-5 mathematics textbooks in the same year as Grades K-12 arts education textbooks, and then selecting and adopting Grades 6-12 science textbooks the next year. Approximately every five years thereafter, with the development and implementation of new standards in a specific content area, the selection and adoption cycle for textbooks aligned with the new standards for the content area would begin again.

7. In 2010, with the State's adoption of the Common Core State Standards in K-12 Mathematics and K-12 English Language Arts ("Common Core"), DPI began developing a new set of standards across the board for all content areas. After the adoption of Common Core, the content focus area for the 2010-2011 textbook adoption cycle was English/Language Arts.

8. DPI did not conduct a textbook adoption cycle in 2011 or 2012.

9. In 2013, career and technical education (CTE) was the content area focus of the textbook adoption cycle. In the midst of the CTE selection and adoption cycle, Governor McCrory took office. Since the terms of the Textbook Commission members were scheduled to expire, DPI obtained special permission from Governor McCrory to allow the sitting Textbook Commission members to remain seated until the agency completed the adoption cycle for CTE.

10. After the completion of the CTE selection and adoption cycle, and during the time DPI was developing a new invitation to bid for the State Board of Education's approval, the Governor's office was filling vacancies on the Textbook Commission for the 2014-2015 selection and adoption cycle. During this transition period, Charles Gaffigan, a longstanding member of the Commission, acted as the Commission chair. Dr. Dan Novey, Superintendent at the Carteret County Schools System, was appointed to the Commission, and elected chair in July 2014.

11. K-12 mathematics was the content area focus for the 2014-2015 textbook adoption cycle. On or about February 28, 2014, the Textbook Commission members participated in a planning meeting, and received initial training for the upcoming adoption cycle. (Respondent's Ex. 1, Bates 000221)

12. On or around March 7, 2014, DPI invited textbook publishers to submit textbooks/programs on a bid proposal in response to the *2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina* ("*Invitation to Submit*") that DPI had developed, and the State Board of Education had approved. (Respondent's Ex. 1, Bates 000221)

13. Petitioner TPS Publishing Inc. ("TPS Publishing") was one of several textbook publishers who received the *2014 Invitation to Submit* from DPI.

14. The *Invitation to Submit* included a page titled, "Tentative Schedule for 2014-2015 Adoption Process." Among other important things, the Tentative Schedule encouraged all publishers who were submitting bids in response to the *Invitation to Submit* to attend a preliminary publishers' meeting scheduled for March 13, 2014. (Respondent's Ex. 1, Bates 000221)

15. The *Invitation to Submit* further stated that "[a]ll bid submissions must be submitted on *Bid Proposal Forms* and received by 5:00 pm. (EST) in the Office of Textbook Adoption Services[]" on or before April 8, 2014. The *Invitation to Submit* required publishers to submit the bid proposal forms both electronically and by hard copy. In addition, the *Invitation to Submit* set forth that, "[i]t is the responsibility of the submitting publisher to assure accuracy and completeness of all information on the bid form." Pursuant to the *Invitation to Submit*, publishers were required to deliver bid submission samples and correlations identified on the bid proposal form to the North Carolina Textbook Warehouse and Textbook Commission selected sites no earlier than June 10, 2014, and no later than June 14, 2014. (Respondent's Ex. 1)

16. On or around March 13, 2014, DPI hosted a preliminary publishers' meeting, at which, publishers received additional information and explanations about the 2014-2015 adoption process. Publishers were given the opportunity to ask questions about the process, including about the instructions and information provided in the *Invitation to Submit*, before submitting their bid proposal forms and bid submission samples and correlations. (Respondent's Ex. 1, Bates 000221)

17. After the March 13, 2014 publishers' meeting, DPI e-mailed updated presentation materials from the meeting, including a "Frequently Asked Questions" ("FAQ") document, to the textbook publishers, including TPS Publishing. One of the questions in the FAQ document stated: "For evaluation purposes, does the material have to be in final format?" The answer provided in

response was: “Materials do not have to be in final format for the evaluations, but all print materials must be in a format where pages will not come apart.” (Petitioner’s Ex. 8)

18. On or around March 27, 2014, the members of the Textbook Commission attended a meeting where DPI curriculum consultants trained Commission members on K-12 mathematics content standards. In addition, before conducting the actual review and evaluation of textbooks, members of the Textbook Commission received comprehensive training on the textbook selection and adoption process, including specific training on how to use the evaluation instruments in evaluating the textbook materials submitted by publishers for consideration, the legal requirements for being a Textbook Commission member, and the ethics requirements imposed on all State commission or board members. (Respondent’s Ex. 1, Bates 000221-22)

19. April 8, 2015 was the deadline for textbook publishers to submit sealed bid proposals in response to the *Invitation to Submit*. The Office of Textbook Adoption Services staff opened the sealed bids on April 9, 2014. (Respondent’s Ex. 1, Bates 000221) Sylvia Moore, a DPI staff member, compiled the information submitted by all textbook publishers into a spreadsheet, and forwarded such information to the acting Chair of the Textbook Commission, Charles Gaffigan. Mr. Gaffigan assigned a Bid ID Number to each textbook or set of textbook materials identified by the publishers on the bid proposal forms.

20. Mr. Gaffigan, and the other Textbook Commission members began the process of hiring and assigning evaluators to review textbooks. In hiring evaluators to review textbooks, the Textbook Commission considered the credentials of the prospective evaluators, the total number of textbooks identified on the bid proposal forms submitted by the textbook publishers, the number of textbooks that had been designated for a particular grade or course on the bid proposal forms submitted by textbook publishers, and the content area expertise of the Textbook Commission members.

21. As part of the 2014-2015 textbook adoption cycle, TPS Publishing submitted a bid proposal form identifying the following ten sets of textbook materials for adoption by the State Board of Education for use at grade levels kindergarten through nine:

- (1) *Grade K Student and Teacher Print and Digital Kit with manipulatives;*
- (2) *Grade 1 Student and Teacher Print and Digital Kit with manipulatives;*
- (3) *Grade 2 Student and Teacher Print and Digital Kit with manipulatives;*
- (4) *Grade 3 Student and Teacher Print and Digital Kit with manipulatives;*
- (5) *Grade 4 Student and Teacher Print and Digital Kit with manipulatives;*
- (6) *Grade 5 Student and Teacher Print and Digital Kit with manipulatives;*
- (7) *Grade 6 Student and Teacher Print and Digital Kit with manipulatives;*
- (8) *Grade 7 Student and Teacher Print and Digital Kit with manipulatives;*
- (9) *Grade 8 Student and Teacher Print and Digital Kit with manipulatives; and*
- (10) *Algebra I/Math 1 Student and Teacher Print kit with manipulatives and Algebra I/Math 1 Student and Teacher digital kit with manipulatives (Grade 9).*

22. After submitting its sealed bid proposal, TPS Publishing timely submitted its textbook sample materials for review by the Textbook Commission and the evaluators. On or around July 20, 2014, TPS Publishing, along with all other submitting textbook publishers, was given the opportunity to present its textbook materials submissions to the Textbook Commission and the evaluators. (Respondent's Ex. 1, Bates No. 000221-000222) Thereafter, the evaluators assigned to review the publishers' textbook materials reviewed and considered those materials.

23. At issue in this contested case are the textbook materials TPS Publishing submitted for Grade 6, Grade 7, and Algebra I (Grade 9), which textbook materials were assigned Bid No.(s) 62, 63, and 72, respectively.

24. Four evaluators reviewed Petitioner's Grade 6 textbook materials submitted under Bid No. 62. Three of the four evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. Six evaluators reviewed Petitioner's Grade 7 textbook materials submitted under Bid No. 63. Four of the six evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. Eight evaluators reviewed Petitioner's Algebra I/Grade 9 textbook materials submitted under Bid No. 72. Seven of the eight evaluators voted not to recommend Petitioner's materials for inclusion on the State-approved textbook list. The evaluators documented their findings and concerns regarding Petitioner's materials on evaluation instruments. (Respondent's Ex. 3)

25. Textbook Commission members also reviewed the materials submitted by TPS Publishing. The "non-negotiable 2" criterion on the evaluation instruments required the publisher's "materials meaningfully connect the Standards for Mathematical Content and the Standards for Mathematical Practice." Several Textbook Commission members commented that Petitioner's Grade 6 textbook materials, submitted as Bid No. 62, lacked connections between content standards and mathematical practices. (*See e.g.* Respondent's Ex. 3, Bates No. 000070)

26. Several Textbook Commission members also remarked that while Petitioner's Grade 7 textbook materials, submitted as Bid No. 63, would be good or excellent as a "supplemental" resource, they ultimately voted against the materials being included on the State-approved textbook list. (Respondent's Ex. 2)

27. Dr. Jennifer Curtis is the K-12 Section Chief of Mathematics at DPI. As K-12 Section Chief, Mathematics, Dr. Curtis implements policies, supervises content consultants, and consults with various sections at DPI and school districts regarding math content knowledge. Before working for DPI, Dr. Curtis was a math supervisor for a large North Carolina school district, where she supervised over 100 secondary math teachers. Dr. Curtis was also a middle school math teacher and a high school math teacher earlier in her career. As Section Chief, Dr. Curtis is extremely knowledgeable about the content that North Carolina math teachers are required to teach in their classrooms.

28. At hearing, Dr. Curtis opined that although TPS Publishing's Grade 7 textbook materials may have been acceptable as a supplemental resource for teachers, such materials were nonetheless deficient in satisfying the non-negotiable evaluation criteria indicating alignment with the NC Standard Course of Study. As a result, Petitioner's Grade 7 textbook materials failed to

demonstrate that its materials were appropriate for use as a primary resources for a classroom teacher. (Respondent's Ex. 9-16)

29. Finally, many of the Textbook Commission members found that the content of Petitioner's Algebra I/Grade 9 textbook materials, submitted as Bid No. 72, did not sufficiently cover the major work of the grade/course for which it was offered, *i.e.*, less than 85% of the standards were sufficiently covered. (Respondent's Ex. 2) In addition, many of the Textbook Commission members noted that although the materials might be acceptable as a supplemental resource, they still should not be included on the State-approved textbook list. (*Id*) At hearing, Mr. Gaffigan and Dr. Curtis described the specific standards the evaluators determined were not sufficiently covered in Petitioner's materials, and about the detrimental effects on teachers and students because Petitioner had not sufficiently covered the standards in its materials.

30. In addition to documenting the foregoing concerns about the substance of the textbook materials submitted under Bid No.(s) 62, 63, and 72, some Textbook Commission members noted specific concerns about the quality of the print materials submitted by TPS as Bid No. 62. Specifically, several Textbook Commission members noted there were at least 11 pages in the print materials with jumbled text at the top of each page which made it difficult or impossible to read. (Respondent's Ex. 2, Bates No. 000008, 000013, 000014, 000016, 000017, 000018, 000021, 000023)

31. After reviewing the textbook materials, evaluators and Textbook Commission members discussed the merits and deficiencies of the textbooks that had been submitted for consideration. After such deliberation, a quorum of the Textbook Commission met to vote on whether to recommend the textbook materials associated with Bid No.(s) 62, 63 and 72 to the State Board of Education for inclusion on the "approved" textbooks list. (Respondent's Ex. 6) The Textbook Commission voted 11-4 not to recommend Bid No. 62 textbook materials for adoption. The Textbook Commission voted 11-3 not to recommend Bid No. 63 textbook materials for adoption. The Textbook Commission voted 12-3 not to recommend Bid No. 72 textbook materials for adoption. (Respondent's Ex. 6, Bates No. 000492)

32. All textbook publishers for whom the Textbook Commission voted not to recommend textbook materials for adoption were notified of the Textbook Commission's decision, and given the opportunity to participate in a "reconsideration" process as set forth in the *Invitation to Submit*. (Respondent's Ex. 4; Respondent's Ex. 1, Bates 000231)

33. After being notified that several of its textbooks materials were not going to be recommended to the State Board of Education for adoption, Petitioner participated in the reconsideration process. At the conclusion of the reconsideration process, the Textbook Commission moved some of TPS Publishing's textbook materials that the Textbook Commission had initially voted not to recommend for adoption, to the "recommended" list. (Respondent's Ex. 6, Bates No. 000486-000487) For example, initially, the Textbook Commission voted not to recommend Petitioner's Grade K Student and Teacher Print and Digital Kit with Manipulatives under Bid No. 33 to the State Board of Education for adoption. However, after TPS Publishing participated in the reconsideration process, the Textbook Commission voted again, and voted to recommend such materials for adoption. Ultimately, the SBE voted to include those materials on

the State-approved textbook list. (See Respondent's Ex. 6, Bates No. 000486 and Respondent's Ex. 8, Bates 000393)

34. Likewise, TPS Publishing participated in the reconsideration process for its textbook materials associated with Bid No.(s) 62, 63, and 72 – the textbooks at issue in this contested case. After reconsidering Petitioner's textbook materials, the Textbook Commission voted again on each set of textbook materials associated with Bid No.(s) 62, 63, and 72. The Textbook Commission voted 8-5 not to recommend Bid Nos. 62 and 63 textbook materials for adoption. The Textbook Commission voted 11-2 not to recommend Petitioner's Bid No. 72 textbook materials for adoption. (Respondent's Ex. 6, Bates 000492)

35. On or around September 2, 2014, the Textbook Commission compiled a list of recommended textbooks/instructional materials for Mathematics K-12 for adoption by the State Board of Education, and submitted such list to the State Board of Education as required by law. (Respondent's Ex. 8)

36. At its regularly scheduled meeting in September 2014, the State Board of Education heard a presentation by Textbook Commission members Charles Gaffigan and Dr. Dan Novey concerning the 2014-2015 textbook selection and adoption cycle. After the presentation, the State Board of Education voted to approve the list of textbooks and instructional materials recommended by the Textbook Commission. On or about September 5, 2014, the State Board notified all textbook publishers in writing of the list of approved materials. (Respondents' Ex. 8)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain Conclusions Of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to their given labels.

2. The relevant inquiry for the undersigned is to determine the applicability of N.C. Gen. Stat. § 150B-23 to the facts herein.

3. Petitioner bears the burden of proving by a preponderance of the evidence that Respondent deprived Petitioner of property, and Respondent acted erroneously when it voted not to recommend Petitioner's textbooks for Grades 6 and 7, and Algebra I (Grade 9) be placed on the State-approved textbook list. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health & Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-75 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015).

4. N.C. Gen. Stat. § 150B-34(a) provides that an Administrative Law Judge shall decide a contested case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency, with respect to facts and inferences within the specialized knowledge of the agency

5. Respondent is entitled to a presumption that it acted in good faith in not adopting the math textbook materials at issue for inclusion on the State-approved textbook list. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that:

public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.

(See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619)

6. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S.E. 2d 285, 289 (1995), *aff’d*, 343 N.C. 119, 468 S.E.2d 57 (1996); *Comm’r of Ins. V. Fire Ins. Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). “It is more than a scintilla or a permissible inference.” *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

7. In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983) (citations omitted).

8. N.C. Gen. Stat. § 115C-85 *et seq.* expressly authorizes the State Board of Education to select and adopt textbooks needed for instructional purposes at each instructional level, and on all subject matters required by law to be taught in elementary and secondary schools of North Carolina. The State Board of Education is also authorized by statute to prescribe criteria against which proposed textbooks shall be evaluated.

9. In this case, DPI invited textbook publishers to submit textbook materials on a bid proposal form in response to the State Board of Education’s approved *2014 Invitation to Submit Textbooks for Evaluation and Adoption in North Carolina*. DPI included the evaluation instrument, that evaluators of the submitted textbook materials would use, in the *Invitation to Submit* that DPI sent to all textbook publishers.

10. For all of the textbook materials at issue in this contested case, the evaluators and Textbook Commission members considered and evaluated the materials against the standards adopted in North Carolina for math in Grades 6 and 7, for the course Math I/Algebra I. The evaluators that reviewed the materials were certified in the content area of math. In addition, several members of the Textbook Commission that reviewed materials submitted by textbook publishers were certified in the content area of math, and had experience teaching math in North Carolina public schools. In addition, the evaluators and Textbook Commission members that reviewed and evaluated math textbook materials as part of the 2014-2015 textbook selection and adoption cycle were trained by Dr. Jennifer Curtis, K-12 Math Section Chief, or by her staff regarding the evaluation instrument to be used in evaluating textbook submissions. The majority of the evaluators and Textbook Commission members that reviewed the textbook materials associated with Bid No.(s), 62, 63, and 72 found substantive deficiencies in the materials, and

concluded that the materials did not sufficiently conform to the Standard Course of Study and approved objectives for the specific grades or courses for which they were offered.

12. The undersigned rejects TPS Publishing’s contention that Textbook Commission members improperly penalized it during the evaluation process because of “formatting” problems with the print materials, as opposed to basing their recommendations on substantive deficiencies in the materials. There was substantial evidence presented at the hearing in this matter that, as a general rule, evaluators and Textbook Commission members evaluated textbook materials with an eye toward determining whether the materials submitted conformed to the standards for the grade levels or courses for which they were offered. With respect to the materials submitted under Bid No.(s) 62, 63, and 72, the Textbook Commission found deficiencies and evidence that the materials did not conform to the Standard Course of Study and approved objectives for the grades and courses for which the materials were offered. Although some members of the Textbook Commission commented upon the misprints in the textbooks, there was substantial evidence presented at the hearing that the basis for the Textbook Commission’s recommendation not to adopt the materials, was the substantive deficiencies in the materials.

13. Moreover, in light of guidance provided by DPI to textbook publishers that “[m]aterials do not have to be in final format for the evaluations, but all print materials must be in a format where pages will not come apart[,]” it is evident that reviewers did not require textbook publishers to submit textbooks in the final, bound format in which they would be bound if ultimately adopted by the State Board of Education for inclusion on the State-approved list. However, that did not mean that textbook publishers could submit textbooks for review with misprints, and not expect reviewers to take such misprints into account as a factor when evaluating those materials.

14. The undersigned also rejects TPS Publishing’s contention that because the textbook materials at issue in this dispute were adopted in other states, the State Board of Education acted erroneously in not including those materials on the State-approved textbook list in North Carolina. Substantial evidence was presented at the hearing concerning the well-established and multi-layered textbook selection and adoption process in this State, and how it was applied in this case. Petitioner has failed to carry its burden of proving that the Respondent acted erroneously in considering Petitioner’s textbook materials at issue in this dispute.

15. It must be noted that the Textbook Commission’s decision not to recommend TPS Publishing’s Grade 6, Grade 7, and Algebra I (Grade 9) textbooks for adoption, and the State Board of Education’s decision not to adopt those textbooks do not preclude TPS Publishing from selling the textbooks at issue to schools and school districts in the state. Schools and school districts are free to purchase materials that are not on the State-approved textbook list, and they are free to do so with State dollars. It is true that a benefit of a textbook being on the State’s “adopted” list is that it is an endorsement by the State that the textbook was vetted by content area specialists in the field and education professionals, who ultimately concluded that the textbook was appropriate for teaching the Standard Course of Study for the particular subject and grade for which it was offered. However, for the materials at issue here, that did not happen.

16. Respondent in this case found that the textbook materials at issue did not sufficiently align with the standards for math in Grades 6, 7 and the course Algebra I, and as such, could not endorse them by putting them on the “approved” textbook list.

17. Respondent’s actions were not arbitrary or capricious. Nor did Respondent act erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

18. Petitioner has failed to carry the burden of proof assigned to it by law, and as such, Petitioner’s claims are hereby denied.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines that the Textbook Commission and the State Board of Education exercised their authority lawfully and with due deliberation in deciding not to adopt Petitioner’s Grade 6, Grade 7 and Algebra I (Grade 9) textbook materials for inclusion on the State Board of Education’s “approved” textbook list. Therefore, Respondent’s decision in that matter is hereby **AFFIRMED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party **must file the petition within 30 days after being served with a written copy of the Administrative Law Judge’s Final Decision**. In conformity with the Office of Administrative Hearings’ rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision**.

N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This 22nd day of October, 2015.

Melissa Owens Lassiter
Administrative Law Judge