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Memo

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Wesley Jacques, Executive Director, Academics and Instructional Innovation
Brenda Tuohy, Director, Science, Technology, Engineering, and Mathematics (STEM)

Board Meeting Date May 8, 2019

Subject (A) Curriculum Adoption: Full Option Science Systems (FOSS)
(B) Purchase Agreement for FOSS Middle School Materials, Supplies, and Equipment Services for: Middle School grades 6-8 science instructional materials

Action (A) Adoption by the Board of Education of Resolution No. 1819-0191 - Selection of Instructional Materials: Full Options Science Systems (FOSS), published by Delta Education for middle school grades 6-8 and (B) Agreement with Delta Education for the purchase of instructional curriculum materials related thereto, for the period of May 9, 2019 through June 30, 2022, in an amount not to exceed \$842,574.62.

Background The current textbooks were adopted in 2007 and are aligned to the 1998 standards. In 2013, California adopted the Next Generation Science Standards (NGSS). In 2014, the OUSD Science Department along with OUSD science teachers began the development of the OUSD NGSS-aligned curriculum for grades 6-8 and Bio9. The development and implementation of this transitional curriculum provided a critical professional learning opportunity to unpack the new standards as well as provide access to NGSS-aligned materials for all OUSD middle schools. Support for the development and implementation of this transitional NGSS-aligned curriculum came from a grant given by the Bechtel Foundation.

The middle school science selection process was based on the feedback from the 9 districts and 2 charter organizations in partnership with West Ed K-12 Alliance California NGSS Early Implementation Initiative. OUSD Science Teacher Leaders who were part of the Early Initiative reviewed the curricula in Spring 2017. The top 4 rated curricula were reviewed in open review sessions in Spring 2018. The top 2 curricula from the review sessions were implemented in Fall 2018 by pilot teachers from 11 different middle schools over the various networks (elementary, middle, high). Pilot teachers had various teaching experiences and backgrounds. They provided feedback on 6 features: NGSS alignment; Language, Literacy, and Common Core Connection; Equity; Student Materials; Assessment; and Usability. Overwhelming the teachers ranked FOSS high in each of the categories.

Discussion

Approve (A) Adoption by the Board of Education of Resolution No. 1819-0191 - Selection of Instructional Materials: Full Options Science Systems (FOSS), published by Delta Education for middle school grades 6-8 and (B) Agreement with Delta Education for the purchase of instructional curriculum materials related thereto, for the period of May 9, 2019 through June 30, 2022, in an amount not to exceed \$842,574.62.

Fiscal Impact

The complete purchase of FOSS science instructional materials for grades 6-8 in the amount to not exceed a total of \$842,574.62, with Delta Education agreeing that the District may make three installment payments for all the materials and purchase live organisms will not exceed \$50,000.00 each year. This estimate is based on the cost for refurbishment for grades K-5. This purchase assumes continued District investment in labor required to maintain, refurbish, and rotate the FOSS science instructional materials for the length of the adoption. Lottery Funds or General-Purpose Funds will be used to fund this expense for 2019-2020 fiscal budget.

Attachment

- [Resolution 1819-0191](#)
- [OUSD Science 6-8 Curriculum Adoption Proposal](#)
- [Purchase Agreement for FOSS Materials, Supplies, and Equipment](#)
- [Powerpoint Presentation](#)



**RESOLUTION OF THE BOARD OF EDUCATION OF THE
OAKLAND UNIFIED SCHOOL DISTRICT
RESOLUTION NO. 1819-0191**

Selection and Purchase of Instructional Materials: Full Options Science Systems (FOSS)

WHEREAS, pursuant to Board Policy 6161.1, the Governing Board is responsible for selecting textbooks and other instructional materials for use in District schools;

WHEREAS, the State Board of Education has adopted the Next Generation Science Standards, has finalized the California Framework for the Next Generation Standards, and will be assessing students on the Next Generation Science Standards beginning in 2018-19;

WHEREAS, the Governing Board shall select instructional materials for use in grades 6th through 8th or shall have otherwise determined which instructional materials align with the state academic content standards;

WHEREAS, the Governing Board shall select instructional materials for grades 6-8 upon determining that the materials are:

1. Aligned to applicable academic content standards;
2. Are provided by publishers that comply with legal requirements;
3. Do not reflect adversely upon persons because of their race or ethnicity, gender, religion, disability, nationality, sexual orientation, occupation, or other characteristic listed in Education Code 220, nor contain any sectarian or denominational doctrine or propaganda contrary to law;
4. Reflective of California's multicultural society, avoid stereotyping, and contribute to a positive learning environment;
5. Are accurate, objective, current, and suited to the needs and comprehension of district students at their respective grade levels;
6. With the exception of literature and trade books, use proper grammar and spelling;
7. Do not expose students to a commercial brand name, product, or corporate or company logo unless the Board makes a specific finding that the use is appropriate;
8. Support the district's adopted courses of study and curricular goals
9. Contribute to a comprehensive, balanced curriculum
10. Demonstrate reliable quality of scholarship as evidenced by:
 - a. Accurate, up-to-date, and well-documented information
 - b. Objective presentation of diverse viewpoints
 - c. Clear, concise writing and appropriate vocabulary
 - d. Thorough treatment of subject
11. Provide for a wide range of materials at all levels of difficulty, with appeal to students of varied interests, abilities and developmental levels
12. Include materials that stimulate discussion of contemporary issues and improve students' thinking and decision-making skills
13. Contribute to the proper articulation of instruction through grade levels
14. Have corresponding versions available in languages other than English as appropriate
15. Include high-quality teacher's guides

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16. Meet high publishing standards in terms of the quality, durability and appearance of paper, binding, text and graphics
17. Upon adoption of standards by the SBE, not exceed maximum textbook weight standards
18. Meet the standards for social content that portray in a realistic manner democratic values, cultural pluralism, and the diversity of the state's population, and emphasize people in varied, positive, and contributing roles;

WHEREAS, as summarized in Attachment A, instructional review committees comprised predominantly of teachers, teacher leaders and central office content coordinators, with the majority of the participants being teachers, reviewed middle school instructional materials for potential use in District schools and found the following to meet the standards for adoption. Therefore, the following instructional materials are recommended for adoption by the Governing Board: FOSS Next Generation published by Delta Education;

WHEREAS, expenditures, pursuant to an Agreement between the District and Delta Education, shall not exceed the total amount of \$842,574.62 for the period May 9, 2019 to June 30, 2022, for the purchase of middle school instructional materials related thereto:

NOW, THEREFORE, BE IT RESOLVED that the Board of Education hereby finds that the instructional materials listed in Exhibit A meet the standards for adoption and hereby selects the instructional materials listed in Exhibit A for use in District schools.

BE IT FURTHER RESOLVED that the Board approves the Agreement with Delta Education for the period May 9, 2019 - June 30, 2022 in an amount not to exceed a total of \$842,574.62 for the purchase of instructional materials related thereto, which Agreement is attached as Exhibit B. The price quote issued by Delta Education, as well as its pricing lists, are attached collectively as Exhibit B, with the stated costs of purchases of the materials pursuant to the quotes and the Agreement as follows:

Vendor	Description	Price
Delta Education	NGSS FOSS Modules	\$641,272.80
	Instructional Materials Subtotal	\$641,272.80
	Tax & Shipping	\$51,301.82
	Total for one-time purchase of NGSS FOSS curriculum	\$692,574.62
	2019-20 FOSS Refurbishment Supplies & Live Organisms	\$50,000
	2020-21 FOSS Refurbishment Supplies & Live Organisms	\$50,000
	2021-22 FOSS Refurbishment Supplies & Live Organisms	\$50,000
	Total for 2019-2022	\$842,574.62



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Passed by the following vote:

PREFERENTIAL AYE:

PREFERENTIAL NOE:

PREFERENTIAL ABSTENTION:

PREFERENTIAL RECUSE:

AYES:

NOES:

ABSTAINED:

RECUSE:

ABSENT:

CERTIFICATION

We hereby certify that the foregoing is a full, true and correct copy of a Resolution passed at a Regular Meeting of the Board of Education of the Oakland Unified School District, held on May 8, 2019.

OAKLAND UNIFIED SCHOOL DISTRICT

Aimee Eng
President, Board of Education

Kyla Johnson-Trammell
Superintendent and Secretary, Board of Education



6-8 NGSS Curriculum Adoption Proposal

Oakland Unified School District
May 2019

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Executive Summary

In September 2013, California adopted the Next Generation Science Standards (NGSS). The new science standards represent a major shift in science instruction that focuses on scientific sense-making, language used, and the scientific and engineering practices. These practices overlap with Common Core (CCSS) by placing significance on developing explanations and argumentation from evidence. In support, the OUSD Science Department has been actively preparing teachers since 2012 to make the necessary shifts in their classrooms to address the standards and the upcoming state test. As the California Science Test (CAST) becomes operational Spring 2019, it is vital to support OUSD students with high quality standards aligned science curriculum and instructional materials.

Selection of middle school science curriculum began in Spring 2018. 27 teachers from 14 middle schools attended open sessions and reviewed instructional materials from the top four middle schools science programs, rated by the nine lead districts (including Oakland Unified) in the statewide NGSS Early Implementation Initiative. From the four, OUSD science teachers selected two curricula to pilot in the Fall of 2018. 25 piloting teachers came from 11 different middle schools across the Networks and represent a spectrum of teaching experience, and multiple class load configurations. Teachers provided feedback on six features of each program: (1) NGSS Alignment; (2) Language, Literacy, and Common Core Connection; (3) Equity; (4) Student Materials; (5) Assessment; and (6) Usability. Full Option Science Systems (FOSS) was ranked highest in each category. Overall, 82% of the pilot teachers recommended we move forward with adopting FOSS for grades 6-8 in OUSD. The adoption of FOSS would provide students the high quality standards-aligned curriculum they deserve and need to develop a scientific understanding of our world in order to address personal, community, and global issues.

Background

In 2007, OUSD adopted Cambridge Physics Outlet (CPO) for middle school science. The curriculum was aligned to the 1998 standards. The adoption included a one time purchase of instructional materials. The materials were maintained by the school sites. Over the years, teachers have turnover and school configurations have changed. And with these changes, materials have become misplaced and never replaced.

In 2013, California adopted the NGSS. NGSS requires a fundamental shift in the purpose of science education from knowing facts to being able to understand and explain the world around you. The way the standards are design integrate disciplines that have normal been siloed. In California, NGSS calls for the Integrated Model, where earth science, life science, physical science, and engineering are taught every year. In OUSD, our current textbook still reflect disciplines being siloed. The NGSS has been thoughtfully created to integrate science disciplines as well as other content areas. The NGSS was adopted after CCSS and makes explicit connections to CCSS as well as the CA-ELD Standards. Both NGSS and the History and Social Science California Frameworks were adopted in 2016. Both frameworks address the Environmental Principles and Concept Standards (EPCs) which focus on environmental and climate change literacy.

In 2014, the OUSD Science Department joined West Ed's K-12 Alliance statewide NGSS Early Implementer Initiative. In partnership with this initiative, the Science Department along with OUSD science teachers began the development of the OUSD NGSS-aligned curriculum for grades 6, 7, 8, and Bio9. Reference Appendix A: OUSD Secondary Science NGSS Implementation Plan. The development and implementation of this transitional curriculum provided a critical professional learning opportunity to unpack the new standards. Science teachers and Science Teacher Leaders (STLs) were supported with additional professional development (PD) through summer institutes, lesson study, 2nd Wednesday PDs. In addition, all middle schools in Oakland were provided access to NGSS-aligned instructional materials. Reference Appendix B: Secondary Science Instructional Materials. One of the goals for the curriculum development project was to provide equity, which is highlighted in both the NGSS and the OUSD Values.





The theory of action around the curriculum development was that if teachers were provided training and instructional materials that aligned to the developed curriculum, teacher would have more time to focus on supporting their students with the instructional shifts necessary to meet the NGSS. Materials were again given to sites to maintain and the curriculum was and is still available on Google Drive. The OUSD Science Department opened up the curriculum online for any science teacher to use regardless if they are in OUSD. Many districts and teachers around the country and in some international schools use the OUSD NGSS-aligned curriculum.

Support for the development and implementation of this transitional NGSS-aligned curriculum came from the Bechtel Foundation. Funding from the Bechtel Foundation decreased each year and eventually ended at the end of the 2016-17 school year. The curriculum is still used by a handful of teachers in OUSD even though the curriculum is incomplete and there is not enough resources to maintain the online and instructional materials. The ongoing PD training that occurred during the year called 2nd Wednesday PDs were cancelled by the district for two years but has since resumed. Training teachers is vital to understanding the new standards and the implementation of a curriculum. This is especially true with a high teacher turnover rate like the one in OUSD. In the 2018 OUSD All Staff Retention Survey, the third reason why STEM teachers leave OUSD is the lack of adequate supplies and resources. The first and second reason is around cost of living and salary. Staff turnover and instructional materials availability continues to be a challenge in providing all students consistent access to high quality science learning.

Curriculum Selection Process

Selection of middle school science curriculum began in Spring 2018. 27 teachers from 14 middle schools attended 2 open sessions and reviewed instructional materials from the top four middle school science programs, rated by the nine lead districts (including Oakland) in the statewide NGSS Early Implementation Initiative. Reference Appendix C: Curriculum Review Roster. Teachers provided feedback on six features for each program (1) NGSS Alignment; (2) Language, Literacy, and Common Core Connections; (3) Equity; (4) Student Materials; (5) Assessment; and (6) Usability. Teachers rated the curricula on a scale of 1 to 5. 1 equals a low rating and 5 equals a high rating. Reference Appendix D: 2017-18 OUSD 6-8 NGSS Curriculum Review and Feedback Rubric. The top two rated programs would then be piloted in the Fall of 2018. Below are the average overall scores for each program.

Data 1: Average Scores for Curriculum Review

Middle School Science Programs	 Amplify	 FOSS	 STEMScopes	 SEPUP
Average Score	3.9	4.2	4.3	3.5

From these results, STEMScopes and FOSS were selected to be piloted in the Fall of 2018.

Pilot Process

Pilot applications were available during the Curriculum Review Sessions and emailed out to all middle school science teachers. Reference Appendix E: 6-8 NGSS Curriculum Pilot - Overview. A wide variety of teacher voices on the pilot team was needed. Every teacher who applied was able to pilot, no one was turned away. There was a total of 25 middle school science teachers that participated in the pilot and selection process. There were pilot teachers from each Network (Elementary School Networks 2, 3, 4; Middle School Network; High School Network). The pilot team had a spectrum of teaching experience (long term sub; first year teacher; first year teaching science; 2+ years of teaching science; teachers who helped write the OUSD NGSS-aligned curriculum). Pilot teachers had multiple class load configurations (math/science cored; 7th/8th; 6th/7th/8th) Reference Appendix F: Pilot Teacher Roster.

Pilot teachers had to commit to implementing one unit from STEMScopes and another unit from FOSS in the Fall of 2018. Both units were selected by the OUSD Science Department in collaboration with both publishers to align to the current OUSD middle school science scope & sequence. This would allow teachers to pick up where they normally would in the curriculum for second semester. Pilot teachers also had to commit to 1-2 classroom visits and share student work samples. At the end, teachers had to implement one summative assessment from either curriculum of their choosing.

To prepare for implementation, pilot teachers attended an initial training in the summer and additional trainings in the Fall. Pilot teachers also had check-in meetings throughout the Fall to connect with the pilot team to discuss the implementation thus far and provide feedback. Pilot teachers were paid for the Summer and Fall trainings and check-in meetings out of grant funding. Reference Appendix G: Sample Agenda. Online and instructional materials were provided by both publishers for the pilot teachers to utilize. The OUSD Data and Technology Departments worked in collaboration with both publishers to ensure online resources were available to students.

Selection Process

Throughout the process, teachers named areas of strength and concerns for both curricula that they and their students experienced throughout the pilot. Feedback focused around the six features (1) NGSS Alignment; (2) Language, Literacy, and Common Core Connections; (3) Equity; (4) Student Materials; (5) Assessment; and (6) Usability. Students were also surveyed after each unit to get their feedback. Analysis of the students survey responses indicate there should have been more quantifiable questions asked rather than open ended responses. This would have provided more usable data to identify patterns in this large data set. Reference Appendix I: Student Survey. Below is a table capturing general teacher feedback for both STEMScopes and FOSS.

Data Table 2. General Teacher Feedback for STEMScope



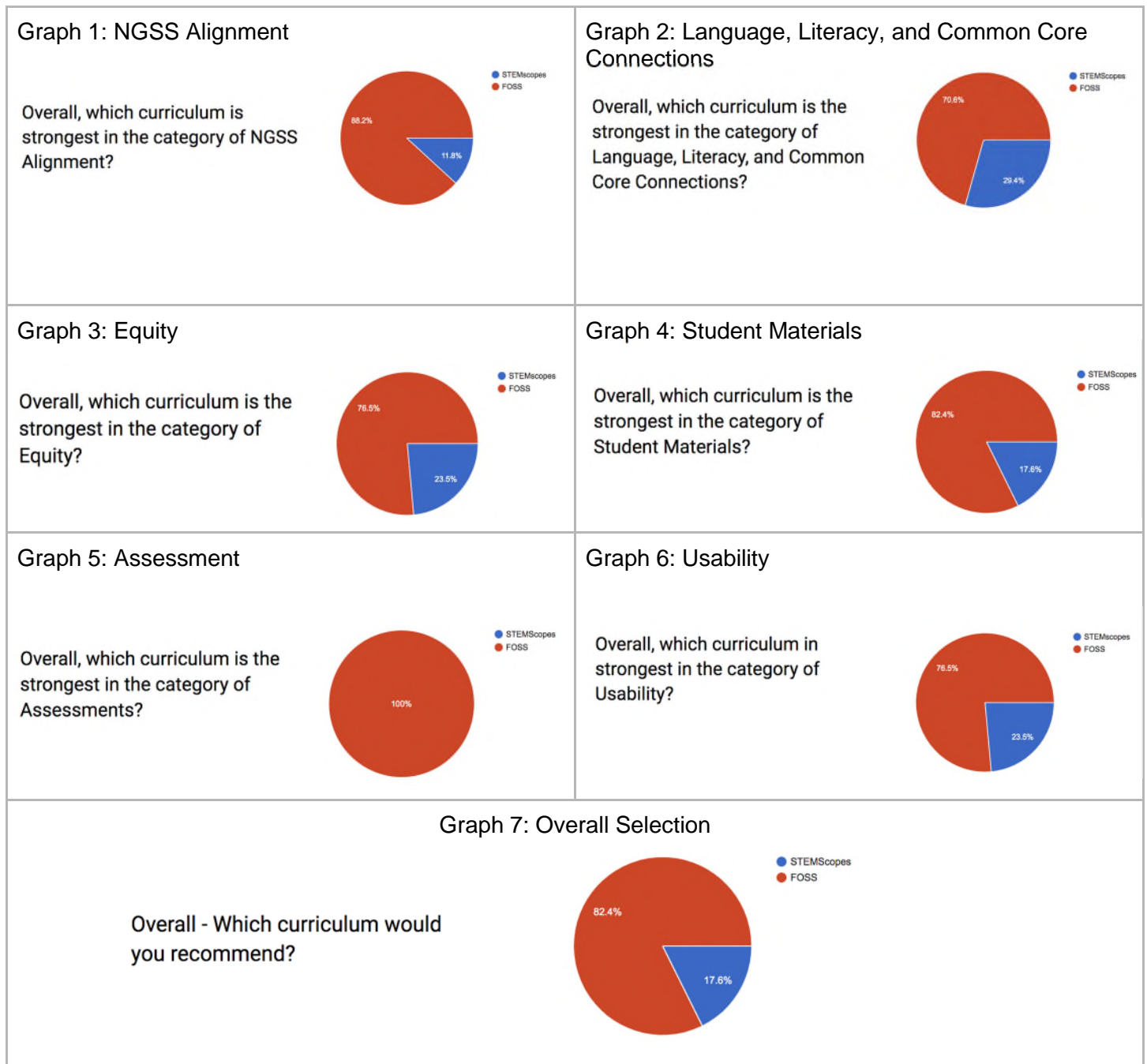
Areas of Strengths	Areas of Concern
<ul style="list-style-type: none"> - Strong 5E sequence - Vocabulary reviews - Easy access to language tools for ELL's - All materials available in Spanish - Materials are easy to reformat - Digital platform was easy to navigate for both student and teacher - Lots of features to play around with on the online platform - Provides teacher flexibility - Compatible with Google Classroom 	<ul style="list-style-type: none"> - Lack a scope & sequence - Focused on 1 of 3 dimensions - DCIs - Lack phenomenon-first, culturally relevant pedagogy - Reading is dense - CER is always the summative assessment - Does not work with notebooking - Engaging hands-on activities - Accessibility for new teachers - Assessments not completely aligned to the 3-dimensions or the unit

Data Table 3. General Teacher Feedback for FOSS



Areas of Strengths	Areas of Concern
<ul style="list-style-type: none"> - Students develop the SEPs and CCCs throughout the unit - Reading scaffolds & accessible readings - Frequent language development opportunities - More hands on activities - Complete set of quality materials provided - Well organized materials for teacher, student - physical and online materials. - Frequent assessments with I-Checks - Assessments aligned to all 3 dimensions - Assessment platform similar to CAST - Data tools for assessment - Easily accessible to a new teacher - Has a scope and sequence - Students materials ready for notebook use - Comprehensive curriculum 	<ul style="list-style-type: none"> - Lack phenomenon-first, culturally relevant pedagogy - Online platform had glitches - Digital resources need updating - Dense teacher materials - Logistics of materials management - Materials not easily modifiable - Ease of access to Spanish materials - Syncing with Clever

At the end of the pilot, teachers had to vote between the two programs regarding the six features. The following graphs show the results for the six features and the overall selection.



The following are quotes from pilot teachers.

- *FOSS is so well researched and designed. It works for new teachers, who teach it “out of the box” and experienced teachers who want [to] do more with the discussions and hands-on learning.*
- *The FOSS assessments made me teach at a higher level or rigor than I would have of my own accord.*
- *FOSS seemed to have many more opportunities for language development and had a more natural sequence of building language.*

Final Recommendation

Overall, 82% of the pilot teachers recommended adopting FOSS. Given this feedback, the OUSD Science Department urges the Board of Education to approve the adoption of FOSS for grades 6-8.

The adoption of FOSS would provide all middle school students in Oakland the high quality standards-aligned curriculum they deserve. The “new” standards for science (NGSS) are already six years old and required shifts in the way we teach and learn science. FOSS support students and teachers in those shifts throughout the curriculum.

Providing accessibility is at the core of FOSS. Originally FOSS was developed for visually and hearing impaired students. FOSS is a research-based, award-winning science curriculum that served children across the nation for over 40 years. It bridges research and practice by providing tools and strategies to engage students and teachers in enduring experiences that lead to deeper understanding of the natural and designed worlds.

FOSS offers an assessment system that can provide data that represents 3-dimensional NGSS learning and can be utilized by students, teachers, school sites, and at the district level. The FOSS summative assessment platform looks very similar to that of the California Science Test (CAST). The CAST is the new state science test that becomes operational this year.

FOSS has a proven record of being highly effective for students and teachers in Oakland at the elementary level for over a decade. Expanding that support to the middle school level will provide a coherent science program for the students and teachers in Oakland. OUSD Science currently has the operational capacity and infrastructure to support materials distribution and maintenance for elementary FOSS. Scaling up the support for the implementation of middle school FOSS is attainable.

Centrally housing and refurbishing materials will provide equitable access to high-quality standards-aligned science instructional materials across all OUSD middle schools. Staff and school configurations may change but what will remain constant is the curriculum used across the district and the access to both physical and online instructional materials. This will alleviate the need to develop curriculum and the financial bind placed upon science teachers and their school sites when trying to obtain instructional materials.

FOSS provides both physical and online teacher and student materials. Online materials include training videos for teachers on how to access curriculum, conduct activities, use assessments, and much more. Having training videos on the curriculum provide teachers the access they need to be successful in curriculum implementation.

Implementation Plan

Results of the pilot process have been shared with teachers, middle school principals, the SpEd Department, and the ELLMA Department during professional developments, meetings, and through emails. Reference Appendix J: Community Engagement Survey. More outreach needs to happen so that everyone in the community has a clear understanding of how the implementation of this science program will shift science teaching and learning for middle school students and teachers in OUSD. Community engagements are planned to take place at various middle school during the remainder of the 2018-19 school year. The purpose of these community engagements are to inform the community members of the curriculum selection process, the results, and what the science program will look like when we adopt FOSS for grades 6-8.

Teachers will receive foundational training at the June 2019 Institute. New teachers will receive their foundational training in the August 2019 Institute. During the institutes, teachers will develop an understanding around the curriculum design, receive teacher materials for their first unit, and practice teaching and planning for a lesson. Ongoing training will take place throughout the year during 2nd Wednesday Professional Developments and Buy Back Days. These professional developments will focus on unpacking the curriculum and analyzing student work. Online teacher preparation videos are online for every single lesson to provide additional support to teachers. The goal is to train 100% of the teachers in FOSS by December 2019.

Science Teacher Leaders (STLs) will play a pivotal role in the coordination of materials arriving and being picked up throughout the year. STLs will also lead their PLCs teams in focusing on ensuring students learn, promoting a culture of collaboration, and a focus on results as teachers utilize the FOSS curriculum and instructional materials. STLs will receive additional training during monthly STL meetings in material coordination and science leadership.

A big part of this adoption is housing and maintaining materials centrally. This is something that has never been done before for middle school science. Materials will be delivered and picked up throughout the year. OUSD Science Department has an online system for tracking boxes and materials through a partnership with Salesforce. The app can be used to request missing or broken materials during the year. In the summer, high school interns will refurbish kits so they are ready for the next school year.

Fiscal impact

Apart from quality, FOSS is the most economical option. See Data Table 4 and reference Appendix K: STEMScopes Price Model and Appendix M: Delta Educational Price Quote. When looking at implementation cost, there are both one-time cost for adoption materials (kits, books, teacher materials) and ongoing costs (materials refurbishment and online resources).

Data Table 4: Comparing Purchase Cost

Curricula	Price Quote for 8-year Adoption
STEMScopes	\$3,236,294.75
FOSS	\$692,574.62

The complete purchase of FOSS science instructional materials for grades 6-8 in the amount to not exceed a total of \$842,574.62 with Delta Education agreeing that the District may make 3 installment payments for all the materials ordered. Expected annual cost to refurbish FOSS kits of consumable materials and purchase of live organisms will not exceed \$50,000 each year. This estimate is based on the cost for refurbishment for grades K-5. This purchase assumes continued District investment in labor required to maintain the refurbishment and rotation the FOSS science instructional materials for the length of the adoption. See Data Table 5.

Data Table 5: Adoption of FOSS

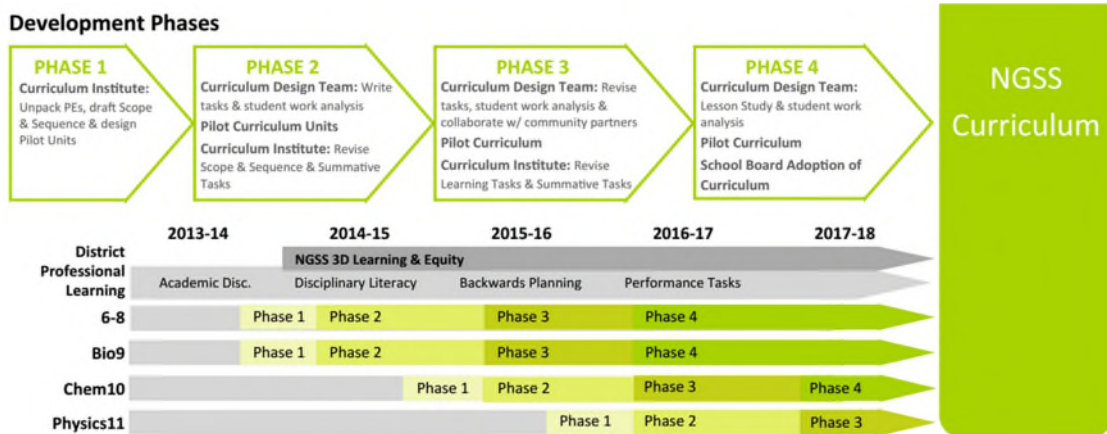
One-time cost:	\$692,574.62
3 installments	\$230,858.21/ year for 3 years
Annual cost of consumables	\$50,000/ year
Cost of 3 year purchase agreement	\$842,574.62
Cost of 8 year adoption	\$1,042,574.62

If we were to take the total purchase cost and divide that by the total number of middle school students in Oakland, the cost of the curriculum would be \$18.61 per middle school student, per year.

Lottery Funds or General-Purpose Funds will be used depending of the 2019-20 budget.

OUSD Secondary Science NGSS Implementation Plan

In September 2013, California adopted the Next Generation Science Standards (NGSS). The new science standards, represent a major shift in science instruction that focuses on scientific sense-making, language use, and scientific and engineering practices. These practices overlap with Common Core (CCSS) by placing significance on developing explanations and argumentation from evidence. In support, the OUSD Science Department has been actively preparing teachers to engage and utilize NGSS to make the necessary shifts in their classrooms since the adoption.



In order to implement a system-wide plan for this transition in OUSD, the Science Department has focused on three major areas of work:

1. The development of curriculum and instructional resources that align to NGSS

Teams of experienced teachers and science specialists work together to create a relevant, authentic, and engaging integrated NGSS curriculum. Summative tasks and formative assessments are embedded in the curriculum. All curriculum is accessible online and is linked to teaching resources. Essential equipment/materials are provided to sites using the curriculum. All OUSD teachers using the curriculum and receiving materials must share resources, samples of student work, and provide ongoing feedback for revisions.

2. Foster teacher expertise in content, skills, and practices to align with NGSS

The professional learning calendar begins in August with the Curriculum Institute. During this week long institute, teachers work to backwards designed 3D-NGSS-aligned lessons to build students' skills and content knowledge on a path to success on the OUSD summative assessments. Participants gained valuable skills and knowledge of NGSS implementation. Skills and knowledge building of NGSS implementation are continued throughout the year with monthly 2nd Wednesday PDs and two Buy Back Days.

3. Build science instructional leadership for science teacher leaders

Science teacher leaders participate in monthly workshops to develop leadership skills around NGSS advocacy and implementation. Through a grant and application process, some of the science teacher leaders participate in lesson study. During the summer, lesson study teachers participate in a week long institute to strengthen their pedagogical and content knowledge in implementing NGSS. For two cycles during the year, lesson study teachers collaboratively plan 3D-NGSS-aligned lessons, implement those lessons and reflect on student learning.

Appendix B: [Secondary Science Instructional Materials](#)

Secondary Science Instructional Materials

This guide details the implementation of OUSD's Secondary Science Program with regards to instructional materials. This guide includes the Secondary Science Curriculum and Benchmarks for teachers, support staff, along with principals. Please take a few minutes to carefully read this document so that you become familiar with the details of these resources. Additional information and resources can be found at the Science in Oakland website at <http://science.ousd.org>.

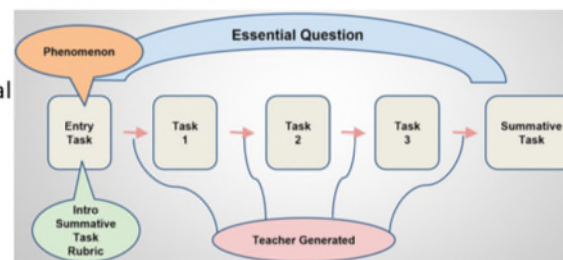
Sections:

- [Curriculum & Benchmarks](#)
- [Textbooks](#)
- [Materials](#)

OUSD NGSS-aligned Secondary Curriculum & Benchmarks

This curriculum & benchmarks represents concurrent shifts to the Next Generation Science Standards (NGSS), a concentration on disciplinary literacy skills outlined in the Common Core State Standards (CCSS), a focus on collaborative learning and other crucial social and emotional skills, problem and project-based learning, and content relevant to Oakland youth.

Units are backwards mapped from the summative task (see side figure). Units are driven by an essential question and anchor phenomenon. The unit ends with a summative task that captures 3-dimensional learning, collaboration and literacy skills. Students revisit the [curriculum features](#) (anchor phenomenon, anchor text, and unit rubric) throughout the unit.



The OUSD NGSS-aligned curriculum and benchmarks are located on [OUSD Science website](#). The Scope and Sequence should be used as the main navigation page for the curriculum as it will be updated regularly as tasks and resources are finalized and shared for implementation. Please reference OUSD Secondary Science NGSS Curriculum Instructions [document](#) for further explanation on nomenclature, organization, and features of the curriculum.

For courses that do not have a curriculum provided, teams of teachers are encouraged to look at the standards to develop their own scope and sequence. Reference these [resources](#).

Curriculum Adoption

OUSD Secondary Science is not currently adopting a middle school or high school curriculum. We do not have funding or infrastructure in place to support a curriculum other than the district created curriculum we already have. Sites may purchase curriculum to complement the OUSD curriculum. Sites will be informed of when there is a curriculum pilot opportunity.

Textbooks

Textbooks are supplemental to the OUSD NGSS-aligned Curriculum. The OUSD NGSS-aligned Curriculum is available on the [OUSD Science website](#).

For Middle School

The California NGSS Integrated Model for Middle Schools requires students learn Earth Science, Life Science, Physical Science, and Engineering every year for grades 6th, 7th, and 8th. CPO's *Focus on Earth, Life, and Physical Science* was adopted in 2007 as the middle school science curriculum for grades 6th-8th (Earth Science = 6th, Life Science = 7th, and Physical = 8th). As we transition to NGSS and the California NGSS Integrated Model, students and teachers will need access to all three textbooks throughout a school year. Sites can rotate textbooks and materials within a site when appropriate. For example, 7th grade might need to read a section from the the Earth Science book when 6th grade needs a section from the Life Science book. 7th and 8th grade might need to read two different sections from the Physical Science book at the same time. To avoid a double demand on a textbook, teachers must coordinate their curriculum implementation schedules.

In regards to the Williams Act, there is no updated information regarding science textbooks. However, we are transitioning to NGSS and there should be enough textbooks to have a class set of each textbook in each classroom teaching science. In addition to a class set, teachers may elect to have students take a textbook home. In that case, there needs to be enough textbooks for each student to take home.

For High School

The California NGSS Course Model selected for OUSD High Schools should be the one that best supports the science learning and future opportunities of our students and effectively addresses the criteria and constraints: A-G Course Approval, College & Career Readiness, OUSD Graduation Requirements, Current OUSD High School Science Course Sequences, Teacher Credentialing, Textbooks, Next Generation Science Standards (NGSS) and California Science Assessment (CAST) and California Alternative Assessment (CAA).

Based on a thoughtful analysis of various NGSS High School Course Models and the California Science Framework, the OUSD Science Department recommends a **NGSS 3 Course Model with Earth and Space Science (ESS) and Engineering, Technology, & Applications of Science (ETS) Standards integrated into the 3 courses.**

9th Grade	10th Grade	11th Grade	12th Grade
Biology _{ESS+ETS}	Chemistry _{ESS+ETS}	Physics _{ESS+ETS}	Student or Pathway Choice

The three course model combines all high school performance expectations (PEs) into three courses. The ESS and ETS standards must be integrated into the traditional high school disciplines of Biology, Chemistry, and Physics. Given the following textbooks were adopted in April 2007 for the various high school courses, supplementary materials will need to be obtain in order to integrate ESS and ETS standards into the 3-course model.

Textbooks and teacher materials can be found at each school site. The links below will take you to the publisher websites for each book.

Course	Title	Author	Publisher	ISBN
Biology	<i>Biology</i>	Nowicki	Houghton Mifflin (McDougal)	0618725105
Biotechnology	<i>Biotechnology: Science for a New Millennium</i>	Daugherty	Paradigm Publishing	0763822825
Chemistry	<i>Chemistry California Edition</i>	Wilbraham	Pearson Prentice Hall	0132013053
Conceptual Physics*	<i>Physics a First Course</i>	Hsu	CPO Science	1588921417

Earth Science	<i>Earth Science California Edition</i>	Tarbuck	Pearson Prentice Hall	131667556
Environmental Science*	<i>Environmental Science - A Study of Interrelationships (Hardcover)</i>	Enger	McGraw Hill	0073204803
Geology	<i>Earth Science (11th Ed)</i>	Tarbuck	Pearson Prentice Hall	013197212X
Physics*	<i>Conceptual Physics*</i>	Hewitt	Pearson Prentice Hall	131663011
Physiology	<i>Essentials of Anatomy and Physiology (HS binding)</i>	Martini	Pearson Prentice Hall	0805373039
AP Biology	<i>Biology</i>	Campbell	Pearson Prentice Hall	805367772
AP Chemistry	<i>Chemistry the Central Science</i>	Brown	Pearson Prentice Hall	0131937197
AP Env. Science	<i>Living in the Environment</i>	Miller	Thomson Brooks Cole	0495015989
AP Physics	<i>Physics</i>	Cutnell	Peoples Education	0471663157

*note that Physics is coincidentally using a book called *Conceptual Physics*, while *Conceptual Physics* is using a different book.

AP Courses need to adopt new textbooks and support materials in order to be in compliance. Students and teachers need daily access to a college-level textbook and support materials that have been published within the last 10 years.

Materials:

Middle Schools

During the 2007 OUSD Middle Schools adoption of CPO, supplementary materials and equipment were provided by CPO.

- Reference this textbook and kit [list](#) for sites who received materials and equipment in 2007.
- Reference this [folder](#) for the list of items in a CPO kit.

Middle school that were in existence in 2007 received CPO materials from CPO. In 2017, the OUSD Science Department purchased CPO kits for middle school that opened after 2007 and for sites that indicated they needed materials using the NGSS Curriculum Materials Site Inventory sheet (linked below).

High Schools

High schools historically have purchased their own materials and equipment based on recommendations from adopted textbooks.

Materials the District Provided

Through grant funding, OUSD has develop curriculum that is aligned to the Next Generation Science Standards (NGSS). To support the implementation of this curriculum, the OUSD Secondary Science Department has purchased and given sites materials/equipment. Supplying sites with materials began in 2014-15 for grades 6-9 and only to sites piloting the curriculum. Materials were returned at the end of the school year. However, in 2015-16, materials were given to all middle schools to keep. High schools piloting the Bio9 curriculum also given materials to keep. At the end of 2015-16 school year, OUSD worked with Science Teacher Leaders to take inventory of materials/equipment at each site. Reference this [protocol](#) for how Science Teacher Leaders engaged in completing their [NGSS Curriculum Materials Site Inventory sheet](#). These inventory sheets were used to purchase materials for the following year. Essential materials/equipment to support the OUSD NGSS-aligned Curriculum were delivered to sites at the beginning of 2016-17 by the OUSD Secondary Science Department. Additional materials and equipment were provided throughout 2016-17 as curriculum was revised and developed.

- For a complete list of materials provided by OUSD Science Department, reference the table below.
- For a complete list of consumable items for refurbishing and/or hard to obtain items, please see the [Consumable and Hard-to-Obtain Curriculum Materials list](#). The list is broken down by grade level on each tab of the sheet.

Materials Distributed by Year.

Site	2014-2015	2015-16 All materials were given at 2nd Wednesday PDs. If a site did not attend or make other arrangements, they may not have received materials. See lists below.	2016-2017 Materials were delivered at the beginning of the school year. Any additional materials provided, were picked up by Teacher Leaders. See lists below.
Alliance	Did not pilot the curriculum	Packaging slips	Packaging slips
Brete Harte	Piloted the curriculum	Packaging slips	Packaging slips
Bunche	Did not pilot curriculum	Packaging slips	Packaging slips
Castlemont	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	Packaging slips
CCPA	Did not pilot curriculum	Packaging slips	Packaging slips
Claremont	Did not pilot curriculum	Packaging slips	Packaging slips
Community Day	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	Did not pilot curriculum, therefore did not received materials
Dewey	Did not pilot curriculum	Packaging slips	Packaging slips
ECP	Did not pilot curriculum	Packaging slips	Packaging slips
Edna Brewer	Piloted the curriculum	Packaging slips	Packaging slips
Fremont	Piloted the curriculum	Packaging slips	Packaging slips
Frick	Piloted the curriculum	Packaging slips	Packaging slips

Greenleaf	Piloted the curriculum	Packaging slips	Packaging slips
Hillcrest	Did not pilot curriculum	Packaging slips	Packaging slips
Home & Hospital	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	N/A
ISP	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	N/A
La Escuelita	Piloted the curriculum	Packaging slips	Packaging slips
Life Academy	Did not pilot curriculum	Packaging slips	Packaging slips
Madison	Piloted the curriculum	Packaging slips	Packaging slips
McClymonds	Did not pilot curriculum	Packaging slips	Packaging slips
Melrose	Piloted the curriculum	Packaging slips	Packaging slips
MetWest	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	Packaging slips
Montera	Piloted the curriculum	Packaging slips	Packaging slips
Oakland High	Piloted the curriculum	Packaging slips	Packaging slips
Oakland International	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	Packaging slips
Oakland Tech	Piloted the curriculum	Packaging slips	Packaging slips
Parker	Piloted the curriculum	Packaging slips	Packaging slips
Roosevelt	Piloted the curriculum	Packaging slips	Packaging slips
Roots	Piloted the curriculum	Packaging slips	Packaging slips
Rudsdale	Did not pilot curriculum	Packaging slips	Packaging slips
Sankofa	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	Packaging slips

Skyline	Piloted the curriculum	Packaging slips	Packaging slips
Sojourner Truth IS	Did not pilot curriculum	Did not pilot curriculum, therefore did not received materials	N/A
Street Academy	Did not pilot curriculum	Packaging slips	Packaging slips
United for Success	Piloted the curriculum	Packaging slips	Packaging slips
UPA	Piloted the curriculum	Packaging slips	Packaging slips
Westlake	Piloted the curriculum	Packaging slips	Packaging slips
WOMS	Piloted the curriculum	Packaging slips	Packaging slips

Appendix C: Curriculum Review Roster

School Site	Network	Teacher	Session Attended April 11, 2018 2-3:30pm	Session Attended May 9, 2018 4-5:30pm
Alliance	Middle School Network	Bianca Shiu	x	
Bret Harte	Middle School Network	James Keeley	x	
Bret Harte	Middle School Network	Melissa Morales	x	
Bret Harte	Middle School Network	Jarah Magan	x	
Bret Harte	Middle School Network	Megan Fu	x	
Claremont	Middle School Network	Seth Maher	x	
Claremont	Middle School Network	Malia Lehman	x	
Edna Brewer	Middle School Network	Jeri Johnston	x	
Frick	Middle School Network	Charlotte Kishi		x
Greenleaf	Elementary Network 3	Brianna Jenkins	x	
La Escuelita	Elementary Network 4	Josh Johnson		x
Melrose Leadership	Elementary Network 2	Andrea Maoki		x
Montera	Middle School Network	Ty Bell	x	
Montera	Middle School Network	Monica Black	x	
Montera	Middle School Network	Dr. Gilyard-Shyne	x	
Montera	Middle School Network	Jennifer Riback	x	
Madison Park	High School Network	Colette West	x	
Madison Park	High School Network	Lauren Brown		
Madison Park	High School Network	Pearro Knight		
Roosevelt	Middle School Network	Kimberly Padua		x
Roosevelt	Middle School Network	Sophia Frank		x
UFSA	Middle School Network	Niharika Tyagi	x	
UFSA	Middle School Network	Paul Anthony-Levine	x	
UFSA	Middle School Network	Judy Greenspan	x	
UPA	Middle School Network	Leo Alvarado	x	
UPA	Middle School Network	Nora Hurb	x	
Westlake	Middle School Network	Joel Newton	x	

6-8 NGSS Curriculum Review Feedback Rubric

Thank you for participating in the OUSD 6-8 NGSS Curriculum Review process. Your feedback will inform the process for curriculum pilot and selection in the 2018-19 school year, with the goal of district-wide implementation in the 2019-20 school year.

You will hear presentations and review curricular materials from four different curriculum providers. The curricula selected was based on feedback from the nine districts and two charter organizations in partnership with WestEd K-12 Alliance California NGSS Early Implementation Initiative. OUSD Science Teacher Leaders who are apart of the Early Implementation Initiative reviewed the different curricula in Spring in 2017. These were the top rated curricula for middle school:



Amplify



FOSS



STEMscopes



SEPUP

Name:	Name of School:
Years of Teaching Experience:	Current Grade/Assignment:

Participant Information	1 Not at all	2 Not very	3 Neutral	4 Some- what	5 Very Much
How familiar are you with NGSS?					
How comfortable are you teaching hands-on science?					
How familiar are you with Common Core ELA Standards?					
How familiar are you with Common Core Math Standards?					
How familiar are you with CA-ELD Standards?					

Instructions

- The following forms are for you to take notes on and score the curricula. **At the end of this review session, you will turn in all forms for documentation.**
- We ask that you evaluate the **evidence** presented using your **expertise** as a science educator in Oakland Unified.
- If you were unable to gain information about individual items in the time allotted, you may leave individual items **blank**.

Schedule

Time	Agenda
1:45 - 2:00	<ul style="list-style-type: none"> - Settle in → Evenly distribute teachers among the four publishers. - Read over feedback materials
2:01 - 2:21	Round 1
2:22 - 2:42	Round 2
2:43 - 3:03	Round 3
3:04 - 3:24	Round 4
3:25 - 3:30	Finalize feedback and turn in feedback forms

Science community members will be rotating between publishers.

Curriculum: (Circle one)



NGSS Alignment	1 Not at all	2 Not very	3 Neutral	4 Some-what	5 Very Much
Does the curriculum provide experiences with phenomena that support deep conceptual learning?					
Does the curriculum have students discussing open-ended questions that focus on the strength of the evidence used to generate claims?					
Are Science & Engineering Practices (SEPs), Disciplinary Core Ideas (DCIs), and Crosscutting Concepts (CCCs) woven together so that student tasks reflect the ways that real scientists do and think about science?					
Is there a clear Scope and Sequence or Concept Map that shows NGSS learning progressions?					

Language, Literacy, and Common Core Connections	1 Not at all	2 Not very	3 Neutral	4 Some-what	5 Very Much
Does the curriculum include embedded supports for language development ?					
Are there frequent opportunities to write in Science Notebooks for a variety of purposes, such as collecting data, developing, using, and revising models, constructing explanations based on evidence, and reflecting on their learning?					
Does the curriculum include frequent opportunities for students to engage in discussion and argumentation to make sense of data and deepen their understanding?					
Will students read complex text after their investigations to deepen their understanding?					
Does the curriculum provide supports for mathematical thinking & data analysis?					

Equity	1 Not at all	2 Not very	3 Neutral	4 Some-what	5 Very Much
Do the learning experiences hook into students' prior knowledge?					
Do the learning experiences seem relevant to the lives of the students you teach?					
Do the print materials reflect the diversity of our school communities?					
Are student materials available in languages other than English?					

Student Materials	1	2	3	4 Some-	5

	Not at all	Not very	Neutral	what	Very Much
Will all students be able to access the materials?					
Does the curriculum include traditional tools of science (e.g. measuring devices) and common objects so that students can see opportunities for science in their everyday lives?					
Do the reading materials allow students to build on ideas from their hands-on experiences?					

Assessment	1 Not at all	2 Not very	3 Neutral	4 Some-what	5 Very Much
Do the assessments (formative and summative) provide information about both conceptual understanding and skills (e.g. Science and Engineering Practices)?					
Does the curriculum provide guidance for how to use the assessment data?					
Are the summative assessments easily administered (e.g. within one session)?					

Usability	1 Not at all	2 Not very	3 Neutral	4 Some-what	5 Very Much
Are the teacher materials user-friendly?					
Do you think you could use the teacher materials without having had any training?					
Are the teacher materials available in languages other than English?					

Overall	Do not recommend	Recommend with reservations	Recommend
Would you recommend this curriculum for adoption?			

Comments:

Thank you for participating in the OUSD 6-8 NGSS Curriculum Review process. For questions about this process or science in OUSD, contact the Secondary Science Coordinator Herberta.Zulueta@ousd.org.

Curriculum: (Circle one)



FOSS



Amplify



STEMscopes



SEPUP
Science-Oriented Education

6-8 NGSS Curriculum Pilot

Overview



Background:

Curriculum Adoption for the Next Generation Science Standards (NGSS) will occur across California in the 2018-2019 school year. In preparing for the transition to full implementation of NGSS, OUSD Science will pilot NGSS-aligned curricula in the 2018-2019 school year and adopt, pending budget approval, in 2019-20.

The curricula selected is based on feedback from the nine districts and two charter organizations in partnership with WestEd K-12 Alliance California NGSS Early Implementation Initiative. OUSD Science Teacher Leaders who are apart of the Early Implementation Initiative reviewed the different curricula in Spring of 2017. The top four rated curricula for grades 6-8 schools will be reviewed in the Spring of 2018. From the four, two will be selected to pilot in the Fall of 2018.

Piloting teachers will implement one unit from each of the two selected curricula. Final adoption recommendation of OUSD's new NGSS-aligned middle school curriculum will be determined in the Winter of 2019.

Outcomes:

- Pilot two NGSS-aligned curricula and an assessment to determine the best fit to support high-quality 3-dimensional science instruction for students in grades 6-8 in OUSD.

Participant Benefits:

- Use of NGSS-aligned curriculum at no cost to sites
- Alignment to NGSS, reflecting new state assessment: California Science Test (CAST)
- Access to new curriculum and potential "sneak peak" of district-wide 2019-20 selected curriculum
- Deepen your understanding of NGSS and 3-dimensional learning
- Improve teaching practice through metacognition of implemented pilot curriculum
- Check-in session support throughout implementation
- Leadership opportunities for teachers in district-wide implementation of NGSS and the middle school curriculum adoption process

Participant Commitments:

- Teach **two** units total (approximately **~6 weeks each** of class time) to **fidelity**
 - Curriculum Pilot 1 (~6 weeks)
 - Curriculum Pilot 2 (~6 weeks)
 - Start Curriculum Pilot 1 week of **Aug. 27**
 - Start Curriculum Pilot 2 week of **Oct. 1**
 - Implement one End-of-Semester Pilot Assessment by **Dec. 21**
- Approval and support of site administration throughout the piloting implementation (for at least 12 weeks - two full units).
- Be open to 1-2 non-evaluative classroom visits
- Attend the Curriculum Adoption Overview PD - **Jul. 27**
- Actively gather and share student work samples
- Provide digital feedback of each unit
- Provide an evaluation and recommendation for curriculum adoption

6-8 NGSS Curriculum Pilot

Overview



2018-19 Timeline for Middle School Curriculum Adoption Pilot

Dates	Actions
Apr. 11	6-8 NGSS Curriculum Pilot Application available
May 11	Applications due
May 14 - May 24	Site Interviews (includes principals and teacher)
Jun. 5	Pilot schools/teachers announced
Jul. 27	Curriculum Adoption Overview Professional Development & Materials Distribution
Aug. TBA	Check in meeting
Aug. 27	First week of Curriculum Piloting Cycle 1 - Teachers begin full implementation of assigned pilot curriculum
Sept. 12	Check in meeting
Sept. 21	Completion of Curriculum Pilot Cycle 1 Implementation
Oct. 1	First week of Curriculum Piloting Cycle 2 - Teachers begin full implementation of seconds assigned curriculum
Oct. 10	Check in meeting
Nov. 2	Completion of Curriculum Pilot Cycle 2 Implementation
Nov. 14	Check in meeting
Dec. 12	Check in meeting
By Dec. 21	Pilot End of Semester Curriculum Assessment
Jan. 2019	Final Middle School Curriculum Recommendation

Selection Process:

Interested teachers and/or school teams should complete the [Middle School Curriculum Adoption Pilot application](#) before **May 11, 2018**. Priority will be given to teachers that apply as a site team. Each member needs to complete a form.

A representative from the OUSD Secondary Science Department will conduct a short interview with you and your site leadership to ensure interest and commitment to the piloting process. Piloting teachers/school sites will be announced **June 5, 2018**.

For questions about this process or science in OUSD, contact the Secondary Science Coordinator Herberta.Zulueta@ousd.org.

Board Office Use: Legislative File Info.	
File ID Number	19-0818
Introduction Date	5/8/19
Enactment Number	
Enactment Date	



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

**Purchase Agreement for
FOSS Middle School Materials, Supplies and Equipment
between
Oakland Unified School District
and
Delta Education**

Purchase Agreement for FOSS Middle School Materials, Supplies and Equipment between Oakland Unified School District and Delta Education

This Agreement is made and effective May 9, 2019 together with the Exhibits attached hereto and incorporated herein which may be added hereto from time to time by mutual written agreement of the Parties (collectively, the "Agreement"), by and between Oakland Unified School District, a California public entity, having an office and place of business at 1000 Broadway, Oakland, CA 94607 ("District"), and Delta Education, having an office and place of business at 80 Northwest Boulevard, Nashua, NH 03063 ("Contractor") (hereinafter collectively referred to as "the Parties", or individually as a "Party").

WHEREAS, Contractor is in the business of, and has expertise in, providing Products and Services as hereinafter described; and

WHEREAS, District wishes to obtain through Contractor and Contractor wishes to provide to District such Products and Services.

NOW THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Parties agree as follows:

Article 1 - Definition of Terms

The following terms, wherever used in any documents which form part of this Agreement, shall have the meanings indicated below unless the context otherwise requires. Additional definitions may be contained elsewhere in this Agreement.

- A. "Affiliate" means any entity which controls, is controlled by or is under common control with one of the Parties to this Agreement. "Control" or "Controlled" means beneficial ownership (direct or indirect) of the subject entity.
- B. "Commercially Reasonable" means taking all such steps and performing in such a manner as a well-managed company would undertake where it was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.
- C. "Deliverables" means those products, reports, documentation, and schedules to be developed and provided by Contractor to District in regard to the Services provided by Contractor hereunder.
- D. "Products" means collectively FOSS Middle School curriculum and/or education materials, whether in hard copy or electronic format.
- E. "Services" means the services provided by Contractor under this Agreement; i.e. sourcing and fulfilling the Product and/or providing Deliverables identified in an Order.
- F. "Site" means the facility or office or other location, as designated in this Agreement or the Order, for which the Product and/or Deliverable is to be delivered.
- G. "Order" means the form of purchase order or other document used for the purpose of ordering Product and/or Deliverables pursuant to this Agreement. Order shall also include District's written or electronic form of purchase requisition.

Article 2 - Rules of Interpretation

- A. The term "including" means "including, but not limited to" and shall be interpreted as broadly as possible.
- B. All references to "days" shall be calendar days, not business days, unless otherwise explicitly stated.
- C. The captions and titles to articles and paragraphs of this Agreement are only provided for convenience/reference and have no effect on the nature, extent, construction and meaning of this Agreement.
- D. In the event of any inconsistency between the provisions of the following documents, (a) unless such inconsistency relates to modification to the Indemnification, Rights in Deliverables, Representations and Warranties, or Limitations of Liability Articles herein, in which case such modification must specifically state that it is amending this Agreement as so stated, (b) the inconsistency shall be resolved by giving precedence in the following order:
 - 1. The Order;
 - 2. Documents incorporated into the Order in the order in which they are listed;
 - 3. Amendments to this Agreement, if any;
 - 4. This Agreement; and
 - 5. Documents incorporated into this Agreement in the order in which they are listed.

Purchase Agreement for FOSS Middle School Materials, Supplies and Equipment between Oakland Unified School District and Delta Education

This Agreement shall govern and supersede any preprinted terms and conditions stated on or attached to any Order, which are null and void with respect to this Agreement.

- E. If copies of documents are referenced or incorporated in this Agreement, they shall be considered originals. Attachments, schedules, appendices and addenda shall be considered part of the documents in which they are referenced. Documents that are referenced shall have the same force and effect as if contained in their entirety.
- F. Notwithstanding the general rules of construction, both District and Contractor acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement, and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

Article 3 - Attachments

The following documents are attached and are hereby incorporated into this Agreement by reference:

- A. Exhibit B to the District's May 8, 2019 Board of Education Materials re Adoption of Curriculum (*i.e.*, Quote for Purchase of NextGen FOSS & NextGen FOSS Price List)

Article 4 - Term of Agreement and Not to Exceed Amount

This Agreement shall be effective from May 9, 2019 through June 30, 2022, unless otherwise mutually extended in writing by the Parties, or if terminated in accordance with this Agreement. Further, all purchases made by the District from Contractor under this Agreement (and related Orders) shall not exceed \$842,574.62 (representing the three installment payments totaling \$692,574.62 set forth below in Article 7, as well as up to \$50,000 in each of the three contract years for a total of \$150,000 for potential replacement materials purchases) during the term of the Agreement, including all fees and taxes. Contractor agrees and understands that any Orders that would be subject to this Agreement that are accepted and fulfilled by Contractor that cumulatively exceed the not to exceed amount of this Agreement are void as a matter of law and Contractor will not be entitled to any payment or remuneration whatsoever for accepting and fulfilling said Orders. Notwithstanding the foregoing, the District will make reasonable efforts to monitor their spend under this Agreement, and make reasonable efforts to not submit Orders, or related Orders, to the Contractor upon meeting the amount not to exceed.

Article 5 - Scope of Agreement, Order

This Agreement is a commitment on the part of the District to purchase Product from Contractor, as set forth in Exhibit B. Product will be purchased pursuant to the Order of the District in the form as attached hereto and incorporated herein and labeled Exhibit B. For the purpose of the Agreement the attached Exhibit B shall further define the term "Order."

The Product and any Deliverables to be provided are specified in the Order, including all attachments thereto. The Order shall be deemed a separate agreement that incorporates the terms and conditions of this Agreement by reference.

The Order issued hereunder shall, at a minimum, contain the following:

- a. The incorporation by reference of this Agreement;
- b. The locations where Product will be delivered are as follows:
 - i. All FOSS kits/modules are to be delivered to the Oakland Unified School District warehouse; and
 - ii. All print materials are to be directly to the school sites. The district will provide details such as specific addresses prior to shipment.
- c. A detailed description of the Product, including, but not limited to, SKU, Manufacturer's item number, and any applicable designation and/or specifications which will avoid confusion regarding the Product to be delivered;
- d. A detailed description of Deliverable(s) to be provided by Contractor;
- e. Price, including any applicable fees and sales tax, and payment terms;
- f. The scheduled delivery dates are as follows:

Purchase Agreement for FOSS Middle School Materials, Supplies and Equipment between Oakland Unified School District and Delta Education

- i. All FOSS kits/modules by July 31, 2019; and
 - ii. All print materials by August 7, 2019.
- g. Contractor shall not be required to deliver any Product and/or Deliverable unless and until an Order has been provided to Contractor.

If notice of rejection of an Order is not received by District within two (2) business days from the date of its receipt by Contractor, then such Order shall be deemed to have been accepted by Contractor. By the attachment of Exhibit B to the Agreement, the District hereby submits the Order to the Contractor and the Contractor hereby accepts said Order. The details of the Order along with the Agreement shall be binding upon the Parties.

Article 6 - Rights in Deliverables

- A. Unless otherwise specifically agreed to in an Order, any and all Deliverables created, developed, or prepared by Contractor, its employees or Subcontractors shall be deemed a "work for hire" for the sole benefit of and belonging exclusively to District. All other intellectual property rights and other proprietary rights in and to the Services, and information, know-how and processes developed by Contractor, or anyone acting on Contractor's behalf, arising from the Services performed hereunder shall be the sole and exclusive property of Contractor and shall not be claimed to be owned by District or their employees.
- B. To the extent any Deliverable is not deemed a "work for hire" by operation of law, Contractor hereby irrevocably assigns, transfers and conveys to District all of its right, title and interest in all Deliverables under the Order, including, but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such Deliverable.
- C. Contractor shall provide to District all Commercially Reasonable assistance, execute such documents, and take all such other actions, which may be reasonably required to perfect the foregoing rights to the Deliverable.
- D. Notwithstanding the foregoing, Contractor shall retain ownership rights to (1) all of its previously existing intellectual property, including any systems, derivatives, modifications and enhancements thereto, (2) Confidential Information of Contractor, and (3) any tools or scripting applications used, developed or created by Contractor or its third party licensors during the performance of this Agreement.

Article 7 - Invoicing, Terms of Payment, Price and Tax

All invoices shall be submitted to the remit-to address specified in an Order, submitted as specified in this Agreement, and shall reference the Order number.

Subject to reconciliation with the terms of this Agreement and the Order, including verification that the Product was delivered, and unless otherwise stated herein, the invoice shall be paid ("paid" being defined as "issuance of payment from District's Accounts Payable Department") net thirty (30) days after receipt of a valid invoice at the above referenced remit-to address.

The Parties hereby agree that the District shall pay Contractor an initial installment payment of \$230,858.21 no later than September 15, 2019; and shall pay Contractor a second installment payment of \$230,858.21 no later than August 15, 2020; and shall pay Contractor a third installment payment of the balance that remains of the total \$692,574.62 (i.e., the total less the initial two installment payments of \$230,858.21) no later than August 15, 2021 for the initial Order for Products that the District placed when it adopted the FOSS Middle School Curriculum.

- A. Any invoice or portion thereof that is subject to a good faith dispute will not be paid; in such case, District will promptly notify Contractor of any rejected invoice or portion thereof, with reasons for such rejection. The rejected costs, adjusted to the extent as mutually agreed to, shall then be re-invoiced on a separate invoice and paid net fifteen (15) days thereafter.

Invoices shall call for payments in U.S. Dollars, and shall accurately reflect the amount(s) of the Price set forth in the Order.

Price

The price specified in the Order for the Product shall consist of cost, including all other fees and sales tax that apply to said cost.

Purchase Agreement for FOSS Middle School Materials, Supplies and Equipment between Oakland Unified School District and Delta Education

Tax

At District's request, Contractor will, to a Commercially Reasonable extent, file any certificate or other document which may cause any tax to be avoided or reduced, and cooperate with District in contesting any such tax or in claiming, on District's behalf, refunds of any such taxes paid by or on behalf of District.

All other taxes, including, but not limited to a Party's operations, such as payroll or income taxes, federal, state, and local income taxes, franchise taxes, gross receipts taxes, federal, state, and local sales and use taxes, and property taxes shall be the responsibility of the Party that incurs the tax liability.

Article 8 - Title, Risk of Loss, Returns

A. Contractor shall transfer to District good and merchantable title to the Deliverables and Product, free from all liens, encumbrances and claims of others, upon delivery of the Deliverables and Product to and its receipt by District, at which time title and risk of loss shall vest fully in District, unless notice of rejection is provided to Contractor's authorized representative within fourteen (14) days after such delivery.

B. Returns

1. General

Subject to Sections 2, 3, 4, 5, and 6, below,

- a. For a Product to be eligible for return it must be in Resale Condition (one hundred percent complete, including all original boxes, packing materials, manuals, blank warranty cards, and other accessories provided by Contractor).
- b. Unless otherwise stated, shipping fees imposed by the Contractor shall be at District's cost.
- c. If return is due to Contractor's error, and the return request is made by District within thirty (30) days of receipt of Product, then Contractor will accept the return at no cost whatsoever to District.
- d. If District ordered the incorrect Product or has decided that it no longer wants the Product, then Contractor will accept the return from District if notice of such is provided to Contractor's authorized representative within fourteen (14) days after such delivery, and the Product is returned to Contractor within thirty (30) days of receipt of Product.

2. Non-Conforming Product

- a. If District determines, in its reasonable discretion, that any Product is not in conformance with the description in the Order (a "Non-Conforming Product"), then District may at its option, either:
 - 1) Request that Contractor promptly initiate an order to replace the Non-Conforming Product at no cost to District, in which case Contractor will order replacement(s) within one (1) business day of notice of nonconformance from District and District shall return the Product to Contractor, all at no cost to District; or
 - 2) Terminate the non-conforming portion of the applicable Order, in which case District shall return the Product to Contractor at no cost to District, and Contractor, upon receipt of the Product, shall promptly refund to District any payments made to Contractor therefor, provided that the request for such return was made within fourteen (14) days after such delivery.

3. Damage and/or Defects

If the Product has concealed damage (i.e., there is no evident damage to external packaging) or is defective, Contractor will accept the return from District. Contractor will order a replacement unit within one business day of notice of damage or defect from District for prompt delivery to District, all at no cost to District.

4. Shipping Damage

- a. If a package containing Product purchased from Contractor arrives at District Order's ship-to address with external damage, District should refuse to accept delivery from the carrier. If District does accept delivery of such a package, District must:
 - 1) note the damage on the carrier's delivery record so that Contractor may file a claim;
 - 2) save, as is, the Product and the original box and packaging it arrived in; and
 - 3) notify Contractor in writing within five days of delivery acceptance to arrange for carrier's inspection and pickup of the damaged merchandise.

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- b. If District does not comply with the above requirements, District will be deemed to have accepted the Product as if it had arrived undamaged, and Contractor's regular return policy, as described herein, will apply.

Article 9 - Packaging, Labeling, and Shipping

- A. Products shipped to District's facilities shall be packaged in such a manner as to preclude all reasonably anticipated in-transit damage and in accordance with commercial standards. All shipments of Products will be clearly labeled with the shipping address stated on the order, the applicable Order number, recipient's name and if applicable, building and room number.
- B. Contractor will deliver all Products FOB Destination to the ship to address designated in the Order, freight pre-paid and added, ground transportation.

Article 10 - Contractual Relationships, Relations

- A. District/Contractor Relationship: It is the intent of the Parties that the relationship of District and Contractor be that of the "District" and "independent contractor", respectively. As an independent contractor, Contractor shall not act as or be an agent or employee of District in performing the Services, and shall determine the means and methods for satisfactorily providing the Services.
- B. Any provision herein referring to Contractor's subcontractors shall not create privity of contract between District and such parties.

Article 11 - Indemnification

- A. Each Party (the "Indemnifying Party") shall, to the extent permitted by law, indemnify, defend and hold harmless the other Party and its respective employees, officers, directors, agents and representatives (the "Indemnified Party") from and against any and all third party liabilities, actual or alleged claims, actions, losses and damages (collectively, a "Claim") to the extent caused by or arising out of the negligence, breach of contract, willful misconduct, or violation of law of the Indemnifying Party or any agent of the Indemnifying Party in the course of its performance under this Agreement, including but not limited to personal injury, death, damage to property (tangible or intangible), infringement of intellectual property rights, and/or injury, sickness, or disease to persons (including death), infringement of civil rights or other tortious acts settlements, judgments, court costs, reasonable attorneys' fees, fines, penalties and other litigation expenses. This indemnity shall apply to all Claims against the Indemnified Party made or threatened by, or in the name of or on behalf of the Indemnifying Party's employees which arise in the course of their employment. The Indemnifying Party hereby waives any defense it may otherwise have under applicable workers compensation laws.
- B. The Indemnified Party shall provide timely written notice to the Indemnifying Party of any claim, loss, suit, demand or lien under this Article which it becomes aware of; but the Indemnified Party's failure to promptly notify the Indemnifying Party will only affect Indemnifying Party's obligations hereunder to the extent that such failure prejudices Indemnifying Party's ability to defend the Claim.
- C. The Indemnifying Party shall assume exclusive control of the Claim, and the Indemnified Party shall provide reasonable assistance in the defense of the Claim at the Indemnifying Party's expense. The Indemnifying Party may: (a) use counsel of Indemnifying Party's own choosing to defend against the Claim and (b) settle the Claim as the Indemnifying Party deems appropriate, provided that the Indemnifying Party obtains the Indemnified Party's prior written consent, which shall not be unreasonably withheld, before entering into any settlement which will impact the Indemnified Party's rights under this Agreement. The Indemnified Party may also, at its own expense, assume control of the defense and settlement of the Claim at any time.
- D. If the Indemnified Party is obligated to respond to a third party subpoena or other compulsory legal order or process as a result of a Claim, the Indemnifying Party will reimburse the Indemnified Party for reasonable attorneys' fees, as well as time and materials costs incurred in responding to such third party subpoena or other compulsory legal order or process.

Article 12 - Limitation of Liability

- A. NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF OR DAMAGE TO DATA, LOSS OF ANTICIPATED REVENUE OR PROFITS, WORK STOPPAGE OR IMPAIRMENT OF OTHER

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ASSETS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- B. EXCEPT IN THE CASE OF BREACH OF EACH PARTY'S LIABILITY FOR PERSONAL INJURY/PROPERTY DAMAGE UNDER ARTICLE ENTITLED, "INDEMNIFICATION", EITHER PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHER THEORY, WILL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR PAYABLE BY DISTRICT TO CONTRACTOR UNDER THIS AGREEMENT FOR THE YEAR PREVIOUS TO THE INCIDENT WHICH GAVE CAUSE FOR SUCH LIABILITY, OR THE CURRENT YEAR (IF NO SUCH DATA/RELATIONSHIP REGARDING THE PREVIOUS YEAR IS AVAILABLE).

Article 13 - Representations and Warranties

- A. Contractor hereby represents and warrants to District that for the term of this Agreement:
1. Contractor shall perform the Services in a timely manner and with a high degree of professional skill and care using customarily accepted good and sound professional practices and procedures in the industry.
 2. Contractor will maintain all necessary local, state, and federal licenses and certifications that may be required in order to legally deliver the Product and Deliverables described in the Order(s). Contractor understands and acknowledges that Contractor is wholly responsible for ensuring compliance with all federal, state, and local laws associated with the delivery of all Services associated with this Agreement and associated Order(s).
 3. Contractor has all rights, approvals, and/or authorizations necessary to perform the Services hereunder, and provide the Product and/or Deliverables.
 4. Contractor is authorized to execute this Agreement, is qualified to perform the Services, and has good title to the materials, supplies and equipment constituting the Services, free from all liens, encumbrances and claims of others.
 5. The Services and any Deliverables will not contain any computer instructions, circuitry or other technological means whose purpose is to disrupt, damage or interfere with District's use of the Services, Deliverables or its computer and telecommunications facilities.
- B. Remedy
If a defect occurs or appears in the Deliverables or Services provided hereunder, it shall be presumed that Contractor failed to meet such standards, and Contractor shall promptly and at its own expense, correct or re-perform any such Services which fail to meet such standards within a reasonable time frame acceptable to District at no additional cost.
- C. Warranty of Delivery
1. If the District orders Products by the 15th day of May in each calendar year, Contractor guarantees delivery of said Products prior to the opening of school in that same calendar year in which the textbooks and instructional materials are to be used.
 2. For all other Orders for Products placed by the District, Contractor guarantees delivery of said Products within thirty (30) days of the placement of said Order.
- D. Warranty of Product
1. The Products shall be covered by Contractor's standard warranty terms and provisions, provided, however, that the warranty coverage shall be no less than the following: (i) The warranty period set forth therein shall run for one (1) year following shipment of the Product to the District and (ii) Contractor warrants the Products against defects in material and workmanship under normal use.
 2. District has made and will make its own selection of the Products to be ordered hereunder based on its own evaluation of the character of such Product and its use needs.
 3. Contractor shall forward to District all associated documentation provided or made available relating to the Products at no additional cost, such as operator/user manuals, training materials, guides, and functional/technical specifications, whether in writing, electronic means or otherwise, (collectively "Documentation").

Article 14 - Publicity, Marks

- A. During or after the term of this Agreement, the Contractor shall not release any information (other than to its subcontractors on a need to know basis for purposes of performance under this Agreement and subject to the

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terms of this Agreement), including news releases, publicity, promotional, marketing, or other materials, media, or activities, any name, trade name, trademark, service mark, logo, or any other designation relating to the District, its Affiliates, or this Agreement, without the District's prior written approval and compliance with any terms and conditions related to such use which the owner of the mark provides to the other Party.

- B. Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest or imply any authority for one Party to use the name, trademarks, service marks or trade names of the other for any purpose whatsoever.

Article 15 - Insurance

Contractor represents that it now carries, and agrees it will continue during the term of the Order to carry, as a minimum, insurance as listed below:

Type of Coverage	Limits of Liability
1. Worker's Compensation	\$1,000,000 per Accident or Disease
2. Employers' Liability	\$1,000,000 Bodily Injury by Accident or Disease, per person
3. Commercial General Liability including:	\$1,000,000 Each Occurrence
• Damage to Rented Premises	\$1,000,000 Each Occurrence
• Medical Expenses	\$10,000 (any one person)
• Personal & ADV Injury, including sexual abuse and molestation	\$1,000,000
• General Aggregate	\$2,000,000
• Products/Completed Operations Aggregate	\$2,000,000
4. Automobile Liability Insurance (owned, hired, and non owned)	\$1,000,000 Combined Single Limit (each accident)
5. Excess/Umbrella Liability	\$15,000,000 Each Occurrence \$15,000,000 Aggregate
6. Commercial Crime Policy	\$1,000,000 / \$100,000 deductible
7. Errors & Omissions	\$5,000,000 Each Occurrence \$5,000,000 Aggregate
8. Cyber Liability	\$1,000,000 Aggregate

- B. Prior to the start of Services, at each subsequent policy renewal date, and each time a change is made in any insurance policy or insurance carrier, Contractor shall furnish one (1) insurance certificate to District for the foregoing coverages as proof of such insurance. The certificate shall include:
 - 1. Name of insurance carrier, policy number and expiration date;
 - 2. This Agreement number, or statement of blanket applicability;
 - 3. The coverages required, whether on the basis of claims made or per occurrence, and the limits on each, including the amount of deductibles or self-insured retentions (which shall be for the account of Contractor);
 - 4. A statement that District and their respective officers, directors, employees and agents are additional insureds on Commercial General Liability, including an Additional Insured endorsement naming the District as an additional insured; and
 - 5. All policies required by this Agreement shall be written by insurance carriers licensed to do business in the state of California.
- C. The coverage may not be canceled, altered or permitted to lapse or expire during the term of this Agreement.

Article 16 - Laws, Regulations and Permits

- A. Contractor shall at all times comply with all applicable federal, state and local laws, ordinances, statutes, rules and regulations, including but not limited to, those relating to wages, taxes, hours, environmental, fair employment practices, equal opportunity, antidiscrimination, safety, fire prevention and working conditions.

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Article 17 - Assignment and Subcontracting

- A. Neither Party may assign, subcontract, or transfer the Agreement or any part thereof without the other Party's prior written consent, and any such assignment or transfer without such consent shall be null and void.
- B. Notwithstanding District's written consent to a proposed subcontract, Contractor shall remain responsible for all subcontracted Services and the payment therefor, and Contractor shall be liable to District for the acts and omissions of any subcontracted entity, their agents, representatives and persons directly or indirectly employed by them.
- C. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, heirs, successors and assigns permitted by this Agreement.

Article 18 - Authorized Representatives and Notices

A. Contract Representatives, Notices

- 1. Any notice or demand required under the terms of this Agreement that must be made in writing shall be sent by facsimile, certified or registered mail, delivered by hand via a nationally recognized overnight carrier, or sent by Email with receipt confirmation addressed to the "Contract Representatives" named below. The effective date of any such notice shall be (1) upon evidence of successful facsimile or Email transmission, or (2) five days following the date mailed for certified or registered letters and two days following the date mailed for overnight letters, or (3) when delivered, if in person or by overnight carrier.
- 2. The Contract Representatives are designated as follows:

For District	For Contractor
Brenda Tuohy, STEM Director Oakland Unified School District 1000 Broadway, Suite 600 Oakland, CA 94607 Email: brenda.tuohy@ousd.org	W. Kent Walker Delta Education LLC 80 Northwest Boulevard Nashua, NH 03063 kent.walker@schoolspecialty.com

- 3. The Contractor's Contract Representative shall have the authority to make binding and enforceable decisions on behalf of their employer, and to accept service of commercial notices and other contractual correspondence which a Party desires to give or is required to be given under this Agreement. The District's Contract Representative shall have the authority to make binding and enforceable decisions on behalf of the District, and to accept service of commercial notices and other contractual correspondence which a Party desires to give or is required to be given under this Agreement, with the exception of amendments or modifications to this Agreement, which excepted amendments or modifications require the formal approval or ratification of the District's Board of Education. Either Party may change its Contract Representative designee by giving the other Party prior written notice thereof.

B. Account Representatives

- 1. Before commencing the Services, the Parties shall designate authorized Account Representatives to represent and act for them regarding the administration of the Services and all other aspects of the supply of Product and/or Deliverables. Such Account Representative shall have the authority to make binding and enforceable decisions regarding the Services to be performed.
- 2. The Account Representative is not authorized to terminate, suspend, change or waive any provision of, or amend this Agreement.
- 3. The Account Representatives are designated as follows:

For District	For Contractor
Brenda Tuohy, Brenda Tuohy, STEM Director Oakland Unified School District 1000 Broadway, Suite 600 Oakland, CA 94607 Email: brenda.tuohy@ousd.org	Richard Pacheco Delta Education LLC 14614 South 20th Place Phoenix, AZ 85048 richard.pacheco@schoolspecialty.com

Article 19 - Force Majeure

- A. Neither Party to this Agreement shall be liable to the other to the extent any failure or delay in performing its obligations hereunder, or for any loss or damage resulting therefrom, is due to: (1) acts of God or public enemy, acts of government, riots, terrorism, fires, floods, strikes, lock outs, epidemics, act or failure to act by

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the other Party, or unusually severe weather affecting District, Contractor or its subcontractors, or (2) causes beyond their reasonable control and which are not foreseeable (each a "Force Majeure Event"). In the event of any such Force Majeure Event, the date of delivery or performance shall be extended for a period equal to the time lost by reason of the delay.

- B. The Party experiencing the delay shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the event causing the failure or delay has ceased. Contractor shall notify District promptly of any such delay and shall specify the effect on the Product delivery as soon as practical.
- C. Notwithstanding any of the foregoing to the contrary, neither Party shall be excused from those obligations not directly affected by a Force Majeure Event, and if the Force Majeure Event is caused by a Party's failure to comply with any of its obligations under this Agreement or by such Party's negligence or omission, there shall be no relief for such Party from any of its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, if the delay or interruption of performance resulting from a Force Majeure Event exceeds thirty days, then the Party receiving the delayed performance may terminate this Agreement upon ten business days' notice to the other Party.

Article 20 - Termination

A. Termination for Convenience

- 1. Either Party may terminate this Agreement, without cause and for its own convenience, by giving the other Party a written "Notice of Termination for Convenience," specifying the extent to which this Agreement is terminated and the date upon which such termination becomes effective. Such notice shall provide a minimum of thirty (30) days' notification before the termination is effective.
- 2. After receiving such a "Notice of Termination for Convenience" and except as otherwise directed by District's Contract Representative, Contractor shall:
 - a. stop the Services on the date and to the extent specified in the termination notice; and
 - b. issue/place no further purchase orders for Products, except as may be necessary for completing such portions of the Orders which have not been terminated.
- 3. District's payment obligations shall be limited to the amounts owed up to the termination date.

B. Termination for Default

- 1. Either Party may terminate this Agreement in whole or in part by giving the defaulting Party a written "Notice of Termination for Default", specifying one or more of the following causes or circumstances:
 - a. if a Party becomes insolvent or makes a general assignment for the benefit of creditors; or
 - b. if a petition under the Bankruptcy Code is filed by or against a Party; or
 - c. if material and adverse developments affecting a Party's business come to the attention of the non defaulting Party, and it seeks but fails to receive from the Party in default reasonable assurances, in writing, as to its ability and intention to perform and complete its obligations under this Agreement; or
 - d. if a Party becomes involved in legal proceedings that in the non-defaulting Party's reasonable opinion materially interferes or will materially interfere with the defaulting Party's obligations under this Agreement; or
 - e. if the defaulting Party fails to perform any of the other material provisions of this Agreement and the Party in default does not cure such failure or substantially commence cure of such failure within ten (10) business days (or such longer period as the non-defaulting Party may authorize in writing) after delivery of notice from the non-defaulting Party specifying such failure.

C. An Order may be cancelled as follows:

- 1. District shall have the right to cancel or postpone, in whole or in part, any Order, without penalty, provided that notice of such cancellation or postponement is received by Contractor prior to shipment of the ordered Products; and
- 2. If District cancels an Order following shipment of the Products but prior to delivery, District shall pay all freight and handling charges for shipment and return shipment of such Products to Contractor. All returns shall be made in accordance with Contractor Return Policy.

D. Termination of this Agreement shall not affect the obligations of District or Contractor under any existing Order issued under this Agreement, and such Order shall continue in effect as though this Agreement had not been terminated, and was still in effect with respect to such Order.

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Article 21 - No Waiver

Any failure by either Party to insist upon observance or performance by the other of the provisions of this Agreement shall not be deemed a "course of dealing", waiver of any such provision, or a waiver of the right of the Parties to enforce any and all provisions in the future. No waiver shall be binding unless it is in writing and signed by the Parties' Contract Representative. Any written waiver shall apply only to the specific default or to the instance specified, and a waiver of any default shall not be deemed a waiver of any other default, whether or not similar to the default waived.

Article 22 - Severance

Should any term or condition of this Agreement be declared unenforceable in law for whatever reason, all other terms and conditions shall survive and nevertheless remain valid, legal and enforceable, and the unenforceable provision will be severed from this Agreement.

Article 23 - Claims/Disputes/Governing Laws

- A. This Agreement, any Order thereunder, and any claims or disputes arising out of or relating thereto shall be governed by the laws of California, without regard to: (1) conflict of law principles; (2) the United Nations Convention on Contracts for the International Sale of Goods; and, (3) the Uniform Computer Information Transactions Act ("UCITA"). The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
- B. Any claim or dispute which either Party may have against the other, arising out of this Agreement shall be presented by the claimant in writing to the other Party not later than thirty (30) days after circumstances which gave rise to the claim or dispute have taken place or become known to the claimant, whichever is later. The claim or dispute shall contain a concise statement of the question or dispute, together with relevant facts and data to fully support the claim.
- C. In the event of any such claim or dispute, the Parties' Contract Representatives shall use their best efforts to negotiate a resolution. Upon the failure of such negotiations, such claim or dispute shall be further negotiated between more senior officials from each of the Parties who shall have decision-making authority (but not direct responsibility for the administration of this Agreement); provided however, that nothing therein contained shall prohibit either Party from terminating its participation in the dispute during any stage of the process.
- D. If any claim or dispute arising hereunder is not resolved through such negotiations within thirty days following written presentment pursuant to paragraph B., above, either Party may, upon giving the other Party at least ten days' prior written notice, initiate litigation submitting such claims or disputes for decision by a court of competent jurisdiction within the venue stated in paragraph A., above, in accordance with the rules of that court and laws of that jurisdiction. Either Party may, at its option and at any time during the dispute resolution process, seek injunctive relief (including, but not limited to preliminary injunctive relief).
- E. The Parties acknowledge that the remedies available to them under this Agreement, or that would otherwise be available at law, will be inadequate in case of any default or threatened default in the performance of the Parties' respective obligations under this Article and that such obligations shall be enforceable by a decree for the specific performance or by an injunction against any actual or threatened violation thereof.

Except as expressly stated in this Agreement, the Parties' rights and remedies hereunder shall be cumulative and not exclusive of each other, shall be in addition to all other rights and remedies at law or in equity, and may be pursued separately or concurrently as the aggrieved Party determines.

- F. The prevailing Party in any litigation arising out of or relating to this Agreement shall be entitled to recover its expenses, costs of litigation (including, without limitation, clerk, paralegal, and expert witness costs), and reasonable attorneys' fees from the losing Party, whether or not otherwise specifically awardable under any law or court rule.

Article 24 - Notice of Changes to Documents

The Parties represent that neither Party has made any change to any documents constituting the Agreement that have not been brought to the attention of the other Party via a redlined document, e-mail correspondence nor other means reasonably calculated to put the other Party on notice of the change. Any such change shall render this Agreement terminable for breach by the other Party, at that Party's discretion, even if that Party has executed the Agreement.

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Article 25 - Survival of Obligations

The obligations of the Parties in the following Articles herein shall survive termination, cancellation or expiration of this Agreement:

Article 6 - Rights in Deliverables
Article 11 - Indemnification
Article 12 - Limitation of Liability

Article 13 - Representations and Warranties
Article 23 - Claims/Disputes/Governing Laws

Article 26 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion and Regarding Compliance with California Law

Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

Contractor also certifies that it has complied and its Products comply with California law, including but not limited to the laws governing school districts' consideration and adoption of curriculum and consideration and approval of contracts.

Article 27 - Execution/Counterparts/Electronic Transmission

This Agreement (and any Order) may be executed in two or more identical counterparts, each of which shall be deemed to be an original and all of which taken together will be deemed to constitute one and the same document when a duly authorized representative of each Party has signed a counterpart. The Parties may sign and deliver this Agreement (and any Order) by facsimile or other electronic transmission. Each Party acknowledges that the delivery hereof by facsimile or other electronic transmission will have the same force and effect as delivery of original signatures.

Article 28 - Signature Authority

Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been given the proper authority and empowered to enter into this Agreement.

Article 29 - Contract Contingent on Governing Board Approval

The District shall not be bound by the terms of this Agreement until it has been formally approved by the District's Governing Board, and no payment shall be owed or made to Contractor absent that formal approval. This Agreement shall be deemed approved when it has been signed by the Board of Education, and/or the Superintendent as its designee.

Article 30 - W-9 Form

If Contractor is doing business with the District for the first time, complete and return with the signed Agreement the W-9 form.

Article 31 - Contract Publicly Posted

This contract, its contents, and all incorporated documents (including Orders) are public documents and will be made available by the District to the public online via the Internet.

Article 32 - Entire Agreement

This Agreement, including all Orders issued by District and accepted by Contractor pursuant to this Agreement, shall constitute the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement and any Order shall not be modified or rescinded, except by a writing signed by Contractor and District. The provisions of this Agreement supersede all contemporaneous and prior oral and written communications, understandings and agreements of the Parties with respect to the subject matter of this Agreement.

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Authorization

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above written.

OAKLAND UNIFIED SCHOOL DISTRICT

DELTA EDUCATION

Aimee Eng
Board President

Date

K. P. Zund
Contractor Signature

4/16/19
Date

Kyla Johnson-Trammell
Superintendent & Board Secretary

Date

Kevin L. Baehler, Asst. Secy.
Print Name, Title

Form approved by OUSD General Counsel 4/16/19

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EXHIBIT B

PLEASE NOTE: YOU MUST INCLUDE A COPY OF THIS PROPOSAL WITH YOUR PURCHASE ORDER



Regional Sales Manager: Richard Pacheco



80 Northwest Blvd, Nashua, NH 03063
PO Box 3000, Nashua, NH 03061-3000
Phone: 800-338-5270 Fax: 800-282-9560

Prepared On: March 23, 2019

Valid Through: June 23, 2019

DELTA EDUCATION PRICE QUOTE: Year 1 Middle School Adoption without Live Materials

Prepared for:
Brenda Oakland Unified

Complete Kits	\$ 641,272.80		
Teacher Materials	\$ -		
Professional Development	\$ -		
Refill Kits	\$ -		
Reading Components	\$ -		
Living Materials	\$ -		
Conversion / Upgrade Kits	\$ -		
Miscellaneous	\$ -		
Online	\$ -		
Subtotal	\$ 641,272.80		
		Shipping & Handling is included in adoption price	
		Subtotal	\$ 641,272.80
		0% Shipping & Handling	\$ -
		Living Material Shipping	\$ -
		8.0% *Est. Sales Tax	\$ 51,301.82
		Total*	\$ 692,574.62
Customer Savings:			
Discounts are based on the order AS IS			
Discounted / Bonused Materials			
		Total Savings:	\$ 147,015.00

* Please add sales tax where applicable Exempt residents please provide Tax Exemption Certificate

Part Number	Item Description	Type	Unit Price	Qty	Extended Price	Bonus Value
1585758	PD FOSS/DELTA IMPLEMENTATION 6 HR	PD	\$ 2,200.00	32	\$ -	\$ 70,400.00
Sixth Grade						
1586482	KIT FOSS DIVERSITY OF LIFE NG 5 CLS FULL CA	Kit	\$ 2,328.48	35	\$ 81,496.80	
1586481	KIT FOSS WEATHER+WATER NEXT GEN CA	Kit	\$ 1,600.48	35	\$ 56,016.80	
1586473	KIT FOSS HUMAN SYSTEMS INTERACTIONS NG CA	Kit	\$ 883.68	35	\$ 30,928.80	
1574787	ONLINE FOSS DIV OF LIFE NG PREM PK 1 CLS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
1582802	ONLINE FOSS WEATHR+WATR NG PREM PK 1 CLS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
1553961	ONLINE FOSS HUMAN SYSTMS INT NG PREM ACS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00

Easy Ordering! Email to: customerservice.delta@schoolspecialty.com | Fax to: 800-282-9560

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PLEASE NOTE: YOU MUST INCLUDE A COPY OF THIS PROPOSAL WITH YOUR PURCHASE ORDER

Part Number	Item Description	Type	Unit Price	Qty	Extended Price	Bonus Value
Seventh Grade						
1586483	KIT FOSS POP+ECO NEXT GEN FULL CA	Kit	\$ 1,902.88	35	\$ 66,600.80	
1586480	KIT FOSS EARTH HISTORY NEXT GEN CA	Kit	\$ 2,345.28	35	\$ 82,084.80	
1586484	KIT FOSS CHEMICAL INTERACTIONS NG FULL CA	Kit	\$ 2,222.08	35	\$ 77,772.80	
1598555	ONLINE FOSS POP+ECO NG PREM PK 1 CLS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
1584917	ONLINE FOSS EARTH HISTORY NG PRM PK1 CLS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
1602475	ONLINE FOSS CHEMICAL INT NG PREMIUM ACS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
Eighth Grade						
1586474	KIT FOSS MS HEREDITY+ADAPTATION NG CA	Kit	\$ 1,118.88	35	\$ 39,160.80	
1586479	KIT FOSS PLANETARY SCIENCE NEXT GEN CA	Kit	\$ 1,947.68	35	\$ 68,168.80	
1586476	KIT FOSS ELECTROMAGNETIC FORCE MS NG CA	Kit	\$ 1,790.88	35	\$ 62,680.80	
1586477	KIT FOSS MS GRAVITY+KINETIC ENERGY NG CA	Kit	\$ 950.88	35	\$ 33,280.80	
1586475	KIT FOSS WAVES NEXT GEN CA	Kit	\$ 1,230.88	35	\$ 43,080.80	
1557049	ONLINE FOSS HEREDITY+ADAPT NG PREM ACS	Online	\$ 199.00	35	FREE with purchase	\$ 6,965.00
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