

1 **SENSITIVE MATERIAL REVIEW AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

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LONG TITLE**General Description:**

 This bill amends provisions regarding the evaluation of instructional material to identify and remove pornographic or indecent material.

Highlighted Provisions:

 This bill:

- defines terms;
- requires the prioritization of protecting children from illicit pornography over other considerations in evaluating instructional material;

- specifies individuals who may trigger a formal sensitive material review;
- establishes certain required processes for the evaluation and review of sensitive material allegations, including distinct requirements for objective sensitive material and subjective sensitive material;
- requires certain actions statewide if a certain threshold of local education agencies determine that the instructional material constitutes objective sensitive material, subject to a vote of the state board to overturn the statewide action in certain circumstances;
- provides indemnification for claims arising from sensitive materials requirements;
- requires the Office of the Legislative Auditor General to audit school district compliance with sensitive materials requirements; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53G-10-103, as enacted by Laws of Utah 2022, Chapter 377

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53G-10-103** is amended to read:

53G-10-103 . Sensitive instructional materials.

(1) As used in this section:

(a) (i) "Instructional material" means a material, regardless of format, used:

(A) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or

(B) to support a student's learning in ~~the~~ any school setting.

(ii) "Instructional material" includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.

(iii) "Instructional material" does not mean exclusively library materials.

(b) "LEA governing board" means:

(i) for a school district, the local school board;

(ii) for a charter school, the charter school governing board; or

(iii) for the Utah Schools for the Deaf and the Blind, the state board.

- (c) "Material" means the same as that term is defined in Section 76-10-1201.
- (d) "Minor" means any person less than 18 years old.
- (e) "Objective sensitive material" means an instructional material that constitutes pornographic or indecent material, as that term is defined in Section 76-10-1235, under the non-discretionary standards described in Subsection 76-10-1227(1)(a)(i), (ii), or (iii).
- ~~[(f)]~~ (f) "Public school" means:
- (i) a district school;
 - (ii) a charter school; or
 - (iii) the Utah Schools for the Deaf and the Blind.
- ~~[(g)]~~ (g) (i) "School setting" means, for a public school:
- (A) in a classroom;
 - (B) in a school library; or
 - (C) on school property.
- (ii) "School setting" includes the following activities that an organization or individual or organization outside of a public school conducts, if a public school or an LEA sponsors or requires the activity:
- (A) an assembly;
 - (B) a guest lecture;
 - (C) a live presentation; or
 - (D) an event.
- ~~[(h)]~~ (h) (i) "Sensitive material" means an instructional material that ~~[is pornographic or indecent material as that term is defined in Section 76-10-1235]~~ constitutes objective sensitive material or subjective sensitive material.
- (ii) "Sensitive material" does not include an instructional material:
- (A) that an LEA selects under Section 53G-10-402;
 - ~~(B)~~ (B) for a concurrent enrollment course that contains sensitive material and for which a parent receives notice from the course provider of the material before enrollment of the parent's child and gives the parent's consent by enrolling the parent's child;
 - ~~[(C)]~~ (C) for medical courses;
 - ~~[(D)]~~ (D) for family and consumer science courses; or
 - ~~[(E)]~~ (E) for another course the state board exempts in state board rule.
- (iii) "Subjective sensitive material" means an instructional material that constitutes

pornographic or indecent material, as that term is defined in Section 76-10-1235,
under the following factor-balancing standards:

(A) material that is harmful to minors under Section 76-10-1201;

(B) material that is pornographic under Section 76-10-1203; or

(C) material that includes certain fondling or other erotic touching under
Subsection 76-10-1227(1)(a)(iv).

(2) (a) Sensitive materials are prohibited in the school setting.

(b) A public school or an LEA may not:

(i) adopt, use, distribute, provide a student access to, or maintain in the school setting,
sensitive materials; or

(ii) permit a speaker or presenter in the school setting to display or distribute
sensitive materials.

(c) In evaluating, selecting, or otherwise considering action related to a given
instructional material under this section, each public school and each LEA shall
prioritize protecting children from the harmful effects of illicit pornography over
other considerations in evaluating instructional material.

(d) If an instructional material constitutes objective sensitive material:

(i) a public school or an LEA is not required to engage in a review under a subjective
sensitive material standard; and

(ii) the outcome of a subjective sensitive material evaluation has no bearing on the
non-discretionary objective sensitive material conclusion.

(3) (a) Except as provided in Subsection (3)(b), the following individuals may initiate a
sensitive material review under this section:

(i) an employee of the relevant LEA;

(ii) a student who is enrolled in the relevant LEA;

(iii) a parent of a child who is enrolled in the relevant LEA; or

(iv) a member of the relevant LEA governing board.

(b) (i) As used in this Subsection (3)(b), "unsuccessful challenge" means an
allegation that a given instructional material constitutes sensitive material that the
LEA concludes to be erroneous, either on direct review or on appeal to the LEA
governing board, resulting in the retention of the given instructional material.

(ii) Notwithstanding Subsection (3)(a), after an individual makes three unsuccessful
challenges during a given academic year, the individual may not trigger a
sensitive material review under this section during the remainder of the given

- 114 academic year.
- 115 [~~(3)~~ An LEA shall include]
- 116 (4) Upon receipt of an allegation from an individual described in Subsection (3)(a), an LEA
- 117 shall:
- 118 (a) (i) make an initial determination as to whether the allegation presents a plausible
- 119 claim that the challenged instructional material constitutes sensitive material,
- 120 including whether the allegation includes excerpts and other evidence to support
- 121 the allegation; and
- 122 (ii) if the LEA determines that the allegation presents a plausible claim that the
- 123 challenged instructional material constitutes sensitive material under Subsection
- 124 (4)(a)(i), immediately remove the challenged material from any school setting that
- 125 provides student access to the challenged material until the LEA completes the
- 126 LEA's full review of the challenged material under this section;
- 127 (b) (i) engage in a review of the allegations and the challenged instructional material
- 128 using the objective sensitive material standards; and
- 129 (ii) if the LEA makes a determination that the challenged instructional material
- 130 constitutes objective sensitive material, ensure that the material remains
- 131 inaccessible to students in any school setting;
- 132 (c) only if the LEA makes a determination that the challenged instructional material
- 133 does not constitute objective sensitive material:
- 134 (i) review the allegations and the challenged instructional material under the
- 135 subjective material standards, ensuring that the review includes parents who are
- 136 reflective of the members of the school's community when determining if an
- 137 instructional material is subjective sensitive material[-] ;
- 138 (ii) allow student access to the challenged instructional material during the LEA's
- 139 subjective sensitive material review if the student's parent gives consent regarding
- 140 the specific challenged instructional material; and
- 141 (iii) if the LEA makes a determination that the challenged instructional material
- 142 constitutes subjective sensitive material, ensure that the material is inaccessible to
- 143 students in any school setting, including the termination of the parent consent
- 144 option described in Subsection (4)(c)(ii); and
- 145 (d) communicate to the state board the allegation and the LEA's final determination
- 146 regarding the allegation and the challenged instructional material.
- 147 (5) (a) An individual described in Subsection (3)(a) may appeal an LEA's decision

148 regarding a sensitive material review, regardless of whether the LEA removed or
149 retained the challenged instructional material, to the LEA governing board.

150 (b) An LEA governing board shall vote in a public board meeting to decide the outcome
151 of a sensitive material review appeal, clearly identifying:

152 (i) the board's rationale for the decision; and

153 (ii) the board's determination on each component of the statutory and any additional
154 policy standards the board uses to reach the board's conclusions.

155 (6) An LEA governing board may not enact rules or policies that prevent the LEA
156 governing board from:

157 (a) revisiting a previous decision;

158 (b) reviewing a recommendation of LEA personnel or a parent-related committee
159 regarding a challenged instructional material; or

160 (c) reconsidering a challenged instructional material if the LEA governing board
161 receives additional information regarding the material.

162 (7) (a) Except as provided in Subsection (7)(d), if the threshold described in Subsection
163 (7)(b) is met, each LEA statewide shall remove the relevant instructional material
164 from student access.

165 (b) The requirement described in Subsection (7)(a) to remove a given material from
166 student access applies if the following number of LEAs makes a determination that a
167 given instructional material constitutes objective sensitive material:

168 (i) at least three school districts; or

169 (ii) at least two school districts and five charter schools.

170 (c) The state board shall:

171 (i) aggregate allegations and LEA determinations described in Subsection (4)(d); and

172 (ii) no later than 10 school days after the day on which the condition described in
173 Subsection (7)(b) occurs, communicate to all LEAs the application of the
174 requirement described in Subsection (7)(a) to remove the material from student
175 access.

176 (d) (i) When the threshold described in Subsection (7)(b) is met for a given
177 instructional material, in addition to making the communication described in
178 Subsection (7)(c), the state board may:

179 (A) place the material on the agenda of a public board meeting within 60 days
180 after the day on which the state board makes the communication to LEAs
181 under Subsection (7)(c); and

- 182 (B) at the specified state board meeting, vote to overturn the application of the
183 requirement described in Subsection (7)(a) to remove a given material from
184 student access statewide.
- 185 (ii) If the state board votes to overturn the application of the statewide removal
186 requirement described in Subsection (7)(a) under Subsection (7)(d)(i):
187 (A) the statewide removal requirement described in Subsection (7)(a) no longer
188 applies;
189 (B) an LEA may choose to return the given material to student access; and
190 (C) nothing affects the findings of an LEA governing board regarding removal of
191 the given material within the board's LEA.
- 192 (e) This Subsection (7) applies to sensitive materials that LEAs remove from student
193 access, regardless of whether:
194 (i) the sensitive material determinations occur in the same academic year; or
195 (ii) a sensitive material determination occurred before July 1, 2024.
- 196 ~~[(4)]~~ (8) The state board shall:
- 197 (a) in consultation with the Office of the Attorney General, provide guidance and
198 training to support public schools in identifying instructional materials that meet the
199 definition of sensitive materials under this section;~~[-and]~~
- 200 (b) establish a process through which an individual described in Subsection (3)(a) may
201 report to the state board an allegation that an LEA is out of compliance with this
202 section; and
- 203 ~~[(b)]~~ (c) annually report to the Education Interim Committee~~[-and the Government~~
204 ~~Operations Interim Committee]~~, at or before the November~~[-2022]~~ interim meeting,
205 on implementation and compliance with this section, including:
206 (i) any policy the state board or an LEA adopts to implement or comply with this
207 section;
208 (ii) any rule the state board makes to implement or comply with this section; and
209 (iii) any complaints an LEA or the state board receives regarding a violation of this
210 section, including:
211 (A) action taken in response to a complaint described in this Subsection ~~[(4)(b)(iii)]~~
212 (8)(c)(iii);~~[-and]~~
213 (B) if an LEA retains an instructional material for which the LEA or the state
214 board receives a complaint, the LEA's rationale for retaining the instructional
215 material~~[-]~~ ; and

216 (C) compliance failures that the state board identifies through the reporting
217 process described in Subsection (8)(b) and other investigations or research.
218 (9) The state shall defend, indemnify, and hold harmless a person acting under color of state
219 law to enforce this section for any claims or damages, including court costs and attorney
220 fees, that:
221 (a) a person brings or incurs as a result of this section; and
222 (b) is not covered by the person's insurance policies or any coverage agreement that the
223 State Risk Management Fund issues.
224 (10) Subject to prioritization of the Audit Subcommittee created in Section 36-12-8, the
225 Office of the Legislative Auditor General shall:
226 (a) conduct an audit of each school district's compliance with this section, ensuring the
227 completion of all school district audits before November 2028; and
228 (b) annually report to the Education Interim Committee regarding completed sensitive
229 material audits under this Subsection (10).
230 Section 2. **Effective date.**
231 This bill takes effect on July 1, 2024.