

**SENSITIVE MATERIAL REVIEW AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**Committee Note:**

The Education Interim Committee recommended this bill.

Legislative Vote: 10 voting for 4 voting against 6 absent

**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 the removal of certain instructional material statewide if a certain threshold of local education agencies determine that the instructional material constitutes objective sensitive material;
- ▶ provides indemnification for claims arising from sensitive materials requirements;
- ▶ requires the Office of the Legislative Auditor General to audit school district



28 compliance with sensitive materials requirements; and  
29       ▶ makes technical and conforming changes.

30 **Money Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       This bill provides a special effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377



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

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

40       **53G-10-103. Sensitive instructional materials.**

41       (1) As used in this section:

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

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

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

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

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

49       (b) "LEA governing board" means:

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

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

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

53       (c) "Material" means the same as that term is defined in Section **76-10-1201**.

54       (d) "Minor" means any person less than 18 years old.

55       (e) "Objective sensitive material" means an instructional material that constitutes  
56 pornographic or indecent material, as that term is defined in Section **76-10-1235**, under the  
57 non-discretionary standards described in Subsection **76-10-1227(1)(a)(i), (ii), or (iii)**.

58       [~~(e)~~] (f) "Public school" means:

- 59 (i) a district school;
- 60 (ii) a charter school; or
- 61 (iii) the Utah Schools for the Deaf and the Blind.
- 62 ~~[(f)]~~ (g) (i) "School setting" means, for a public school:
- 63 (A) in a classroom;
- 64 (B) in a school library; or
- 65 (C) on school property.
- 66 (ii) "School setting" includes the following activities that an organization or individual
- 67 or organization outside of a public school conducts, if a public school or an LEA sponsors or
- 68 requires the activity:
- 69 (A) an assembly;
- 70 (B) a guest lecture;
- 71 (C) a live presentation; or
- 72 (D) an event.
- 73 ~~[(g)]~~ (h) (i) "Sensitive material" means an instructional material that ~~[is pornographic~~
- 74 ~~or indecent material as that term is defined in Section 76-10-1235]~~ constitutes objective
- 75 sensitive material or subjective sensitive material.
- 76 (ii) "Sensitive material" does not include an instructional material:
- 77 (A) that an LEA selects under Section [53G-10-402](#);
- 78 (B) for medical courses;
- 79 (C) for family and consumer science courses; or
- 80 (D) for another course the state board exempts in state board rule.
- 81 (iii) "Subjective sensitive material" means an instructional material that constitutes
- 82 pornographic or indecent material, as that term is defined in Section [76-10-1235](#), under the
- 83 following factor-balancing standards:
- 84 (A) material that is harmful to minors under Section [76-10-1201](#);
- 85 (B) material that is pornographic under Section [76-10-1203](#); or
- 86 (C) material that includes certain fondling or other erotic touching under Subsection
- 87 [76-10-1227\(1\)\(a\)\(iv\)](#).
- 88 (2) (a) Sensitive materials are prohibited in the school setting.
- 89 (b) A public school or an LEA may not:

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

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

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

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

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

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

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

105 (i) an employee of the relevant LEA;

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

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

108 (iv) an elected official who represents an area that includes all or part of the relevant  
109 LEA.

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

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

117 ~~[(3) An LEA shall include]~~ (4) Upon receipt of an allegation from an individual  
118 described in Subsection (3)(a), an LEA shall:

119 (a) (i) make an initial determination as to whether the allegation presents a plausible  
120 claim that the challenged instructional material constitutes sensitive material, including

121 whether the allegation includes excerpts and other evidence to support 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 (4)(a)(i),  
124 immediately remove the challenged material from any school setting that provides student  
125 access to the challenged material until the LEA completes the LEA's full review of the  
126 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 inaccessible to  
131 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 review:

134 (i) review the allegations and the challenged instructional material under the subjective  
135 material standards, ensuring that the review includes parents who are reflective of the members  
136 of the school's community when determining if an instructional material is subjective sensitive  
137 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 the specific  
140 challenged instructional material; and

141 (iii) if the LEA makes a determination that the challenged instructional material  
142 constitutes objective sensitive material, ensure that the material is inaccessible to students in  
143 any school setting, including the termination of the parent consent option described in  
144 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 retained the  
149 challenged instructional material, to the LEA governing board.

150 (b) An LEA governing board shall vote in a public board meeting to decide the  
151 outcome 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) If the following number of LEAs makes a determination that a given  
 163 instructional material constitutes objective sensitive material, each LEA statewide shall remove  
 164 the relevant instructional material from student access within the LEA:

165 (i) at least three school districts; or  
 166 (ii) at least two school districts and five charter schools.

167 (b) The state board shall:  
 168 (i) aggregate allegations and LEA determinations described in Subsection (4)(d); and  
 169 (ii) no later than 10 school days after the day on which the condition described in  
 170 Subsection (7)(a) occurs, communicate to all LEAs the application of the requirement to  
 171 remove a given instructional material from student access under Subsection (7)(a).

172 (c) This Subsection (7) applies to sensitive materials that LEAs remove from student  
 173 access, regardless of whether:

174 (i) the sensitive material determinations occur in the same academic year; or  
 175 (ii) a sensitive material determination occurred before July 1, 2024.

176 ~~[(4)]~~ (8) The state board shall:  
 177 (a) in consultation with the Office of the Attorney General, provide guidance and  
 178 training to support public schools in identifying instructional materials that meet the definition  
 179 of sensitive materials under this section; ~~and~~

180 (b) establish a process through which an individual described in Subsection (3)(a) may  
 181 report to the state board an allegation that an LEA is out of compliance with this section; and

182 ~~[(b)]~~ (c) annually report to the Education Interim Committee ~~and the Government~~

183 ~~Operations Interim Committee~~, at or before the November [2022] interim meeting, on  
184 implementation and compliance with this section, including:

185 (i) any policy the state board or an LEA adopts to implement or comply with this  
186 section;

187 (ii) any rule the state board makes to implement or comply with this section; and

188 (iii) any complaints an LEA or the state board receives regarding a violation of this  
189 section, including:

190 (A) action taken in response to a complaint described in this Subsection [~~(4)(b)(iii)~~]  
191 (8)(c)(iii); ~~[and]~~

192 (B) if an LEA retains an instructional material for which the LEA or the state board  
193 receives a complaint, the LEA's rationale for retaining the instructional material[-]; and

194 (C) compliance failures that the state board identifies through the reporting process  
195 described in Subsection (8)(b) and other investigations or research.

196 (9) The state shall defend, indemnify, and hold harmless a person acting under color of  
197 state law to enforce this section for any claims or damages, including court costs and attorney  
198 fees, that:

199 (a) a person brings or incurs as a result of this section; and

200 (b) is not covered by the person's insurance policies or any coverage agreement that the  
201 State Risk Management Fund issues.

202 (10) Subject to prioritization of the Audit Subcommittee created in Section [36-12-8](#),  
203 the Office of the Legislative Auditor General shall:

204 (a) conduct an audit of each school district's compliance with this section, ensuring the  
205 completion of all school district audits before November 2028; and

206 (b) annually report to the Education Interim Committee regarding completed sensitive  
207 material audits under this Subsection (10).

208 Section 2. **Effective date.**

209 This bill takes effect on July 1, 2024.