

SENSITIVE MATERIAL REVIEW AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: Todd D. Weiler

LONG TITLE

H→ [Committee Note:

~~———— The Education Interim Committee recommended this bill.~~

~~———— Legislative Vote: 10 voting for 4 voting against 6 absent] ←H~~

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

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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](#);

77a **H→ (B) for a concurrent enrollment course that contains sensitive material and for which a**
77b **parent receives notice from the course provider of the material before enrolling and gives the**
77c **parent's consent by enrolling; ←H**

78 **H→ [(B)] (C) ←H** for medical courses;

79 **H→ [(C)] (D) ←H** for family and consumer science courses; or

80 **H→ [(D)] (E) ←H** 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 $\hat{H} \rightarrow$ [review] $\leftarrow \hat{H}$;

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 $\hat{H} \rightarrow$ [objective] subjective $\leftarrow \hat{H}$ sensitive material, ensure that the material is
 142a 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.