Summary of Utah Code § 53G-10-103 Sensitive Instructional Materials

(2022 H.B. 374 Sensitive Materials in Schools)

Mike Curtis

Managing Associate General Counsel

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Substantive Provisions

What does the law do?

Prohibitions

1. Sensitive materials can't be in schools.

    ("Sensitive materials are prohibited in the school setting.")

2. Schools can't have or allow access to sensitive materials.

    ("A public school may not . . . adopt, use, distribute, provide a student access to or maintain in the school setting, sensitive materials[.]")

3. Schools can't allow guests to provide sensitive materials in school.

    ("A public school may not . . . permit a speaker or presenter in the school setting to display or distribute sensitive materials.")

Affirmative Duties

1. Districts/charters must involve parents when deciding whether material is prohibited.

("An LEA shall include parents who are reflective of the members of the school's community when determining if an instructional material is sensitive material.")
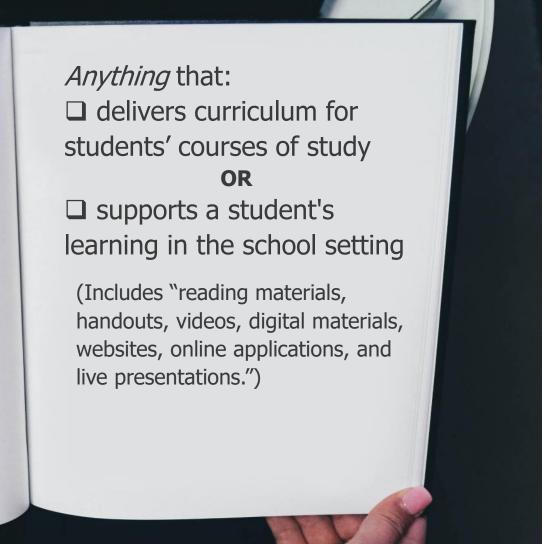
State Board Duties

Utah State Board of Education

1. Provide guidance and training, in consultation with the Attorney General, to public schools on identifying sensitive materials.

2. Report to Education Interim and Government Operations Interim Committees on:

   a. USBE and LEA implementation and compliance policies.

   b. USBE implementation and compliance rules.

   c. Any complaints of violations that an LEA or USBE receives, including actions taken and whether an LEA retained a material after a complaint and the underlying rationale.

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Definitions

What does the law cover?

"Instructional material"

Anything that:
❑ delivers curriculum for students' courses of study

OR

❑ supports a student's learning in the school setting

(Includes "reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.")

Material =
- anything printed or written
- any picture, drawing, photograph, motion picture, or pictorial representation
- any statue or other figure
- any recording or transcription
- any mechanical, chemical, or electrical reproduction

OR

- anything which is or may be used as a means of communication

Utah Code § 76-10-1201(7)

"School setting"

- ❑ in a public school classroom

OR

- ❑ in a public school library

OR

- ❑ on public school property

(Includes any assembly, guest lecture, live presentation, or event if sponsored or required by a public school or school district)

"Sensitive material"

"Sensitive material" means instructional material that fits any of three definitions of "pornographic or indecent material" in §76-10-1235

Defined as harmful to minors in §76-10-1201

A quality when nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, taken as a whole:
- ❏ Appeals to minors' prurient interest in sex
  AND
- ❏ Is patently offensive to prevailing adult community standards of what is suitable for minors
  AND
- ❏ Has no serious literary, artistic, political, or scientific value

Course exemptions:
- District/charter-selected sex ed materials
- Medical courses
- Family and consumer science courses
- Courses that USBE exempts in board rule

Described as pornographic in §76-10-1203

Any material or performance that:
- ❏ Taken as a whole, appeals to prurient interest in sex (to an average person, using contemporary community standards)
  AND
- ❏ Is patently offensive in description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion
  AND
- ❏ Taken as a whole, has no serious literary, artistic, political, or scientific value

Described in §76-10-1227

Description or depiction of:
- ❏ Human genitals in a state of sexual stimulation or arousal
  OR
- ❏ Acts of human masturbation, sexual intercourse, or sodomy
  OR
- ❏ Fondling or other erotic touching of human genitals or pubic region
  OR
- ❏ Fondling or other erotic touching of the human buttock or female breast that, when taken as a whole, has no serious literary, artistic, political, or scientific value for minors, considering ages of all minors who could be exposed to the material

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Legal Considerations

Which lawsuit does an LEA want to defend?

As applied (on a case-by-case basis)

Is LEA violating a right of access to free speech?

Is LEA violating clear state statute?

Questions from the committee?

LEGISLATIVE
RESEARCH &
GENERAL COUNSEL