

FREQUENTLY ASKED QUESTIONS--HB 464 (2023) School Materials Amendments

Representative Ken Kvory

Is the current process for removing sensitive materials insufficient?

Yes. The current process has created inequity in how LEAs address parent concerns about sensitive materials. This is not only because of different policies, but because of different interpretations of the current law. The average removal rate of bright line violations 76-10-1227(2)(c) from Nebo, Davis, Canyons, Park City, Alpine, and Jordan School Districts is only 14% after 18 months of parents trying to utilize the current process. Materials that are sexually explicit in Toole are still sexually explicit in Park City.

Does the current process differ from district to district?

Yes. The current process and policy right now varies drastically from district to district. But the implementation of this policy also varies drastically from school to school as each one gives different training and rubrics on how to address sensitive materials violations. This has created inequity in how different LEAs handle the exact same materials

Won't parents just use this bill as an excuse to get rid of ideas that differ from their own?

No. Only materials that violate 76-10-1227(2)(c) can be removed from schools with this bill. These materials must contain descriptions of explicit sex in order to be removed. Different ideas, even unpopular ideas in Utah (such as CRT, anti-capitalism, progressive, anti-religious, etc.) are not able to be removed under the criteria in this bill

How can parents and teachers ensure that a diversity of ideas is reflected in the books offered?

Parents and teachers can speak with their librarians to procure materials that fit withing their districts materials policies as well as the acceptable USBE determined materials ratings to provide materials and books that provide a diversity of ideas (without exposing children to sexually explicit content)

Isn't the standard for obscenity subjective?

No. Under Utah law 76-10-1235 there are three specifications that are used to determine if a material is "Pornographic or Indecent" which include 76-10-1201, 76-10-1203, and 76-10-1227. The standards in 76-10-1201, and 76-10-1203 are indeed subjective in that they reference area specific community standards. However 76-10-1227 is not subjective and is very clear about what is "Indecent". Because this standard is objective, it should be applied statewide equally, which this bill will help facilitate.

Will this bill remove materials/books that represent minority demographics (People of color, LGBTQ+, Religious minorities)?

That is not the intent of this bill. This bill does not mention these demographics. It only targets specific material that is sexually explicit. The website [RatedBooks.org](https://www.ratedbooks.org) has documented and rated 100s of sexually explicit books found in Utah schools and less than 15% of those have LGBTQ+, racial equity or religious minority themes. The overwhelming majority of material being challenged, or that has been removed thus far in Utah is entirely unrelated to these demographics

Will this make more work for teachers?

No. The LEAs will process notifications of sensitive materials. The only action required from school employees will be to remove sexually explicit materials that the LEA finds to be in violation of 76-10-1227(2)(c)

Will HB138 or HB465 address the concerns with the current functionality of the sensitive materials law?

No. HB138 does not change the current process for removing non-digital sensitive materials in any substantial way, and the current process inefficiencies would remain a concern. HB138 does substantially changes how digital curriculum and curriculum vendors are handled where sensitive materials are a concern and is a beneficial bill for that purpose. HB465 is a good bill that would notify parents of books that their children check out in a school library. While this is a complimentary effort to HB464, it is not a replacement. Children often browse and read books in libraries without checking books out and often read entire books or a substantial portion of a book during school allocated reading time before bringing a book home. We should make public school libraries a safe place for minors to find material to read with the assurance that the material will not be sexually explicit.

Can parents submit endless suprious material challenges?

No. This bill allows an LEA to not respond to a material challenge submitted by an individual that has already submitted 3 previous challenges found not to contain sensitive material.. The goal of this bill is also to help facilitate a timely conclusion to solving the issue of sensitive materials in schools, so that LEAs do not continue to receive sensitive material notifications forever.

Reference for School Materials Amendments HB 464 (2023)- Rep. Ken Ivory

<p>Concentrates only on the objective 76-10-1227 "Bright Line" violations and not on community specific subjective standards in 76-10-1201/1203</p>	<p>The materials LEAs determine violate 76-10-1227 will be removed statewide if their decision is ratified by the USBE</p>	<p>Makes litigation against an LEA less likely</p>	<p>Materials that violate the bright line rule in 76-10-1227 will be immediately removed from an LEA</p>
<p>Instructs the USBE to adopt a rating system that which would guide future acquisitions and prevent future materials challenges</p>	<p>Creates public schools where minors can read freely without the fear of sexually explicit material</p>	<p>Protects LEAs from excessive and spurious materials challenges</p>	<p>Exempts concurrent enrollment courses from Sensitive Materials restrictions (classes created for adults)</p>
<p>1</p>	<p>"Obscenity is not protected under First Amendment rights to free speech, and violations of federal obscenity laws are criminal offenses." -- The United States Department of Justice www.justice.gov/criminal-ceos/obscenity</p>		
<p>2</p>	<p>The Supreme Court has ruled that, "transmitting obscenity and child pornography, whether via the Internet or other means, is...illegal under federal law for both adults and juveniles." -Reno v. ACLU, 521 U.S. 844 (1998).</p>		
<p>3</p>	<p>"If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed...then petitioners have exercised their discretion in violation of the Constitution...On the other hand, respondents implicitly concede that an unconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar...And again, respondents concede that if it were demonstrated that the removal decision was based solely upon the "educational suitability" of the books in question, then their removal would be "perfectly permissible."...and thus would not violate respondents' First Amendment rights." -SCOTUS 457 U.S. 853, BOARD OF EDUCATION, ISLAND TREES SCHOOL DISTRICT v. Steven A. PICO</p>		
<p>4</p>	<p>Children should be able to explore the materials provided by their school or by their library without the fear of encountering sexually explicit material</p>		
<p>5</p>	<p>This bill provides LEAs the needed clarity and direction to help them follow through in identifying and removing sensitive materials</p>		
<p>6</p>	<p>Materials that meet the high evidentiary standard in 76-10-1227(2)(c) should be removed statewide.</p>		
<p>7</p>	<p>HB464 addresses current process inefficiencies that have led to slow and irregular removal of sensitive materials</p>		

12 Books (green) in Davis School District that wouldn't need to go through the challenge process, if ratified by the USBE

Title	Author	Rating 5 = worst	Link to Rated Report	Retained by...	Removed (66)	Challenged in DSD without results	Overdue
Angus, Thongs, and Full-Frontal Snogging (Confessions of Georgia Nicolson)	Louise Rennison	3	https://tinyurl.com/yhxt48a	ASD			4-1-22 over 272 days
I Am Not Your Perfect Mexican Daughter - Erika L Sanchez	Erika L. Sanchez	3	https://tinyurl.com/yok6y8a	ASD			4-15-22 over 272 days
Impulse	Ellen Hopkins	3	https://tinyurl.com/vf6vudf	ASD			4-15-22 over 272 days
Neanderthal Opens the Door to the Universe by Preston Norton	Preston Norton	3	https://tinyurl.com/y37xdzux	ASD, WSD			4-15-22 over 272 days
Fade - Lisa McMann	Lisa McMann	3	https://tinyurl.com/5n8xpnuf	ASD			5-25-22 over 272 days
A Court of frost and Starlight	Sarah J Maas	4	https://tinyurl.com/739q7m8			JSD Bingham Hi	9-21-22 over 147 days
From Blood and Ash	Jennifer L Armentrout	4	https://tinyurl.com/2s4xkiav				9-26-22 over 147 days
Half of a Yellow Sun	Chimamanda Ngozi Adichie	4	https://tinyurl.com/2o89nxy				10-18-22 over 100 days
Looking for Alaska	John Green	3	https://tinyurl.com/36ah9cxy				11-3-22 over 100 days
Last Night at the Telegraph Club - Malinda Lo	Malinda Lo	4	https://tinyurl.com/2h8prkkl	JSD Bingham High			11-3-22 over 100 days
The Kite Runner	Khaled Hosseini	4	https://tinyurl.com/hh2oqb7h	WSD			11-3-22 over 100 days
The Hatears - Jesse Andrews	Jesse Andrews	4	https://tinyurl.com/4y5lkrxi	WSD, ASD			11-4-22 over 100 days
OUT OF DARKNESS	Ashley Hope Pe Laurie H. Anderson	3	https://tinyurl.com/567ma2x2	WSD, ASD			11-4-22 over 100 days
Speak	Laurie H. Anderson	3	https://tinyurl.com/3bia7v7a				11-6-22 over 100 days
Beautiful Disaster	Jamie McGuire	4	https://tinyurl.com/2o85lfr5				11-6-22 over 100 days
Homegoing	Yaa Gyasi	4	https://tinyurl.com/4z8hwu7				11-27-22 over 60 days
It Ends With Us	Colleen Hoover	4	https://tinyurl.com/yv3y6anf	WSD			12-7-22 over 60 days
Water for Elephants	Sarah Gruen	4	https://tinyurl.com/bdd4cr6y				12/7/22 over 60 days
Beautiful	Amy Reed	4	https://tinyurl.com/mrx2k4w				12-7-22 over 60 days
Like a Love Story	Abdi Nazemian	4	https://tinyurl.com/mur8vvz7	WSD			12-14-22 over 60 days
The Handmaid's Tale: A Graphic Novel - Margaret Atwood	Margaret Atwood	4	https://tinyurl.com/etun8pax	WSD			12-14-22 over 60 days
Identical	Ellen Hopkins	4	https://tinyurl.com/ywv2n1m	WSD			12-14-22 over 60 days
The Gift	Danielle Steel	4	https://tinyurl.com/5n6msxwi				12-14-22 over 60 days
Red Hood	Eliana Arnold	4	https://tinyurl.com/27pswv22	WSD			12-14-22 over 60 days
Boy Toy	Barry Lyga	4	https://tinyurl.com/2c3d9s6c	WSD			12-19-22 over 60 days
Nineteen Minutes -	Jodi Picoult	4	https://tinyurl.com/yv2avkve	ASD			12-22-22 over 60 days
Wicked: The Life and Times of the Wicked Witch of the West	Gregory Maguire	4	https://tinyurl.com/bdasseer	WSD			1-30-23
			https://tinyurl.com/vrsnxb3z	WSD			1-30-23

Form for Statewide Book Removals for Violating 76-10-1227 (Sample)

School District(s) where removed	Book Title, Author & Publisher	Location	Excerpt	Violation 76-10-1227 (1)(a)	Notes
Removed in Washington School District	Push by Sapphire School District	p. 32	Daddy put his pee-pee smelling thing in my mouth, my pussy, but never hold me. I see me, first grade, pink dress dirty sperm stuffs on it. No one comb my hair.	<input checked="" type="checkbox"/> (i) Description or depiction of human genitals in a state of sexual stimulation or arousal <input checked="" type="checkbox"/> (ii) Description or depiction of acts of human masturbation, sexual intercourse, or sodomy; <input checked="" type="checkbox"/> (iii) Description or depiction of fondling or other erotic touching of human genitals or public region <input checked="" type="checkbox"/> (iv) Description or depiction of human genitals in a state of sexual stimulation or arousal	Retained in Alpine School District
Removed in Washington School District	Push by Sapphire School District	p. 37	I start to feel goo, stop being a video dancer and start coming. I try to go back to video but coming now, rocking under Carl now, my throat jumping juicy, it feel good. I feel stramed. "See, see," he slap my thigh like cowboys do horses on TV, then he squeeze my nipple, bit down on it. I come some more. "See, you LIKE it! You jus' like your mama, you die for it!" He pull his dick out, the white cum stuff pour out my hole wet up the sheets.	<input checked="" type="checkbox"/> (i) Description or depiction of human genitals in a state of sexual stimulation or arousal <input checked="" type="checkbox"/> (ii) Description or depiction of acts of human masturbation, sexual intercourse, or sodomy; <input checked="" type="checkbox"/> (iii) Description or depiction of fondling or other erotic touching of human genitals or public region	Retained in Jordan School District
Removed in Washington School District and Davis School District	Tit by Ellen Hopkins	p. 83	We are kissing. Licking. Moaning louder than the TV in the other room. He's ready. Wants inside me. But "Not yet. Where's the condom?" I forgot it. But it's okay. I'll pull out. Don't worry. Don't worry? We didn't use one last time. It was right after my last period. But now it's been a couple of weeks. "Dylan. This is dangerous. I can get pregnant." He rolls me onto my back. Strong. Sure of himself. Then he smiles down at me. I know what I'm doing. Promise. I won't get you pregnant. And I have to have you right now. He hesitates, waiting for my answer. Everything about me is shaking yes, so I nod and lose myself in the moment. Making love with him is so beautiful. We rock together, in rhythm. One. As he starts to tense. I remind him with a subtle lift of his hips. He withdraws just in time, slicking my belly. See? All good. I am happy for the towel beneath us. Happier to lie together, bathed in sweat and the sticky proof of our love.	<input checked="" type="checkbox"/> (i) Description or depiction of human genitals in a state of sexual stimulation or arousal <input checked="" type="checkbox"/> (ii) Description or depiction of acts of human masturbation, sexual intercourse, or sodomy; <input checked="" type="checkbox"/> (iii) Description or depiction of fondling or other erotic touching of human genitals or public region	Retained in Jordan School District
Removed in Washington School District and Davis School District	Tit by Ellen Hopkins	p. 396	He moves to kiss my nipples, and though I want to say no, I can't. It feels good. Great. Amazing. Beneath my skirt, I feel him grow hard against the thin barrier of my panties. I like how that feels, too. But I'm still not ready. "Stop." His mouth is around my nipple and he mumbles. Why? All innocent. Now his lips move an inch or so higher and he starts to suck softly at first, then harder. It is crazy good and it makes me moan but when he tries to slide down my panties I know I can't. Not yet. "I... I have my period." It's a lie, but he can't know that, and it's better than saying I'm too young. He stiffens. Stops. Then he says, We can do something else then. He lifts me up, undoes his zipper and this is no movie when he frees his erection and shows me exactly how to use my mouth to get him off. I wish I could say I don't like it. But somehow I do. Getting off is easy. You don't even need two to make it happen. The proper grip with a slippery fist, whoopee, there it goes. But man does not live by ejaculation alone. There's the whole pursue-and-conquer thing to consider, which is why loose girls aren't all that much fun. Okay, maybe I'm a bit warped that way, but hard-to-get turns me on. Besides, I kind of like playing teacher, which is why I'm so patient with this little girl, who will so be worth the wait. Oh yes, I plan on winning a major jackpot, taking her all the way for the very first time if that means patience, okay by me. It's only part of the game.	<input checked="" type="checkbox"/> (i) Description or depiction of human genitals in a state of sexual stimulation or arousal <input checked="" type="checkbox"/> (ii) Description or depiction of acts of human masturbation, sexual intercourse, or sodomy; <input checked="" type="checkbox"/> (iii) Description or depiction of fondling or other erotic touching of human genitals or public region	Retained in Jordan School District

CONTENT BASED RATING



0

For Everyone

Content is appropriate for all ages

- Mild/Inexplicit Violence
- No Hate
- No Nudity
- No Profanity
- No References to Sexuality, Gender Ideologies, nor Sexual Activities
- No Drug or Alcohol Use

1

Child Guidance

Some Content may not be appropriate for very young children

- Mild Violence
- Mild/Infrequent Profanity
- Mild/Infrequent Hate
- Near-Sexual Nudity
- No References to Sexual Activities
- No Drug or Alcohol Use
- Inexplicit Sexuality
- Inexplicit Gender Ideologies

2

Teen Guidance

Some content may not be appropriate for children under 13.

- Moderate Violence
- Moderate Hate
- Moderate Profanity
- Inexplicit Sexual Nudity/Sexual Activities
- Drug or Alcohol Use
- Explicit Sexuality
- Explicit Gender Ideologies

3

Minor Restricted

Under 18 requires guidance of parent or guardian

- Excessive/Explicit Violence
- Extreme/Frequent Hate
- Excessive/Frequent Profanity
- Sexual Nudity
- References to Sexual Activities (NOT involving penetration, cunnilingus, fellatio, or ejaculation)
- Drug or Alcohol Abuse

4

No Minors

Adult content. No child under 18.

- Explicit Sexual Nudity (depictions of sexual organs in a state of arousal)
- Obscene References to Sexual Activities (involving anal, oral, or vaginal intercourse; fingering, anilingus, or ejaculation)

5

Aberrant Content

Adult only.

- Explicit References to Aberrant Sexual Activities (sexual assault/battery, bestiality, or sadomasochistic abuse)

Age-appropriate Guidelines used by Keller ISD, Texas

Theme	Elementary	Intermediate	Middle	High*
Profanity	N	M	S	C
Kissing	N	S	S	C
Horror	N	M	S	C
Violence	M	S	S	C
Bullying	M	S	S	C
Drug or alcohol use by minors	N	N	S	C
Tobacco use by minors	N	S	S	C
Drug or alcohol use by adults	M	S	S	C
Glorification of suicide, self-harm, or mental illness	N	N	S	S
Brief description of non-sexual nudity	N	M	S	C
Sexually explicit conduct or descriptions of sexual abuse	N	N	N	N
Illustrations or description of nude intimate body parts	N	N	N	N
Passionate and/or extended kissing	N	N	M	P
Sex scenes or sexual activities	N	N	N	M

N = None

M = Minimal (infrequent) - the content rarely appears throughout the volume.

S = Some - the content occasionally appears throughout the volume.

C = Common - the content appears throughout the volume but is not a main theme of the volume.

P = Prevalent - the content is frequent enough to be a main theme of the volume.

Parents of students always have the authority to limit their own student's access to any and all materials in a library.

* Books recommended by College Board, universities, or TXVSN are separate and apart from general library materials available to all students and are selected independently.

TERMS AND DEFINITIONS

For purposes of this Content Guideline System, the following terms and definitions shall be used to interpret the content guidelines:

Profanity - Profane/obscene language that cannot be said on broadcast television or that would not be age-appropriate in a professional setting or for an educator to use in front of a classroom.

Intimate parts - The prurient description of naked genitals, pubic area, anus, buttocks, or female nipple of a person. Any material that is part of the approved curriculum is excluded from this definition.

Sexually explicit conduct - Descriptions of sexual activity, including sexual intercourse, genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the anus, genitals, or pubic area of any person.

Violence - Behavior involving physical force intended to hurt, abuse, damage, or kill someone or something to include glorification of use of weapons.

Horror - Descriptions of behavior arousing feelings of extreme fear, shock, or disgust.

Sexual abuse - Descriptions of rape, incest, molestation, and/or any sexual abuse of a minor or adult.

Kissing - platonic or familial kissing that does not include romantic or sexual kissing or oral physical contact that is intended to satisfy the romantic or sexual desire of any reasonable person based on prevailing community values.

Bullying - descriptions of behavior that seeks to harm, intimidate, or coerce another, especially someone perceived as vulnerable.

Non-sexual nudity - description or depiction of the human body for anatomical, scientific, or biological purposes to satisfy an educational need. This term specifically excludes any description or depiction of the human body intended to satisfy sexual desire of any reasonable person based on prevailing community values.

To Representative Chew,

I am writing to you for two reasons. The first is to thank you for your help

We are all grateful for your voice and the understanding that you bring to the people on the State level about the lifestyle and concerns of those in the rural communities.

The second reason I am writing to you is about an issue that is in my high school right now. I am a senior attending Uintah High School, and am an avid reader. I have noticed many books, mainly in the comic section, which contain pornography, explicit material, and profanity. What do I mean by explicit material? I have opened books with topless women, the F-word repeated, and two people having sex, to name a few of the more extreme cases. I know that everybody's standards are different, but I believe that we need to have higher and better standards in high school.

As I mentioned before, I am a senior. I have been going to Uintah since 2019 and every year it gets worse. On several occasions I have taken a list to our school librarian with suggestions of clean books that I would like in the library. Each time I was brushed off and my ideas disregarded. I have talked to other students about this issue, and they agree that we have some trashy novels in our library.

Recently I talked to the Vice Principal, he was sympathetic, but I got the impression that there was not much he could do in this kind of situation. Banning books has been a highly debated topic in history, and I want to make it clear that I do not believe that books should be banned, but I do believe that some books should not be in a high school library, or any school library. Books are supposed to bring knowledge, adventure and entertainment to young minds, not garbage. Pornography is adding and destructive, and not something that we want teenagers viewing, especially not in a school library.

Again I would like to state that I do not believe that books should be banned. While talking to the Vice Principal he suggested that I should avoid the comic section if I do not want to see material like that. I would do this, but again, I love reading and comics are one of my favorite genres. When we watch movies we have a rating system to let people know the content. The people then can decide whether or not they will watch that movie. However when I want to read a book there is not a rating system on it. I just pick up the book and flip through it to see if it is good or not. While reading a chapter book if it begins to get questionable, I can put down the book and stop reading. However with a graphic novel, I can not unsee something I might view.

I understand that this is a very hard topic to approach and there is no perfect solution to this problem. I'd like to make the suggestion to label these books. Books in the library are already labeled according to the genre; fantasy, romance, and so on. We need to add another label to these books, so students can know what is in the book. Then, just like with movies, they can decide if that's what they want to be reading.

Again thank you for your help sincerely,

