

SENSITIVE MATERIAL REVIEW AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

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 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 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

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

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

35 **53G-10-103. Sensitive instructional materials.**

36 (1) As used in this section:

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

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

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

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

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

44 (b) "LEA governing board" means:

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

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

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

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

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

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

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

54 (i) a district school;

55 (ii) a charter school; or

56 (iii) the Utah Schools for the Deaf and the Blind.

57 ~~[(f)]~~ (g) (i) "School setting" means, for a public school:

58 (A) in a classroom;

59 (B) in a school library; or

60 (C) on school property.

61 (ii) "School setting" includes the following activities that an organization or individual
62 or organization outside of a public school conducts, if a public school or an LEA sponsors or
63 requires the activity:

- (A) an assembly;
- (B) a guest lecture;
- (C) a live presentation; or
- (D) an event.

~~[(g)]~~ (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) for medical courses;
- (C) for family and consumer science courses; or
- (D) 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) an elected official who represents an area that includes all or part of the relevant LEA.

(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 academic year.

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

(a) (i) make an initial determination as to whether the allegation presents a plausible claim that the challenged instructional material constitutes sensitive material, including whether the allegation includes excerpts and other evidence to support the allegation; and

(ii) if the LEA determines that the allegation presents a plausible claim that the challenged instructional material constitutes sensitive material under Subsection (4)(a)(i), immediately remove the challenged material from any school setting that provides student access to the challenged material until the LEA completes the LEA's full review of the challenged material under this section;

(b) engage in a review of the allegations and the challenged instructional material using the objective sensitive material standards;

(c) only if the LEA makes a determination that the challenged instructional material does not constitute objective sensitive material review;

(i) review the allegations and the challenged instructional material under the subjective material standards, ensuring that the review includes parents who are reflective of the members of the school's community when determining if an instructional material is subjective sensitive material[-]; and

(ii) allow student access to the challenged instructional material during the LEA's subjective sensitive material review if the student's parent gives consent regarding the specific challenged instructional material;

(d) take direct action to remove sensitive material from student access upon a determination of objective or subjective sensitive material; and

(e) communicate to the state board the allegation and the LEA's final determination regarding the allegation and the challenged instructional material.

(5) (a) An individual may appeal an LEA's decision regarding a sensitive material review, regardless of whether the LEA removed or retained the challenged instructional material, to the LEA governing board.

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

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

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

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

(a) revisiting a previous decision;

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

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

(7) (a) If the following number of LEAs makes a determination that a given instructional material constitutes objective sensitive material, each LEA statewide shall remove the relevant instructional material from student access within the LEA:

(i) at least three school districts; or

(ii) at least one school district and five charter schools.

157 (b) The state board shall:

158 (i) aggregate allegations and LEA determinations described in Subsection (4)(e); and

159 (ii) no later than 10 school days after the day on which the condition described in

160 Subsection (7)(a) occurs, communicate to all LEAs the application of the requirement to

161 remove a given instructional material from student access under Subsection (7)(a).

162 (c) This Subsection (7) applies to sensitive materials that LEAs remove from student

163 access, regardless of whether:

164 (i) the sensitive material determinations occur in the same academic year; or

165 (ii) a sensitive material determination occurred before July 1, 2024.

166 ~~[(4)]~~ (8) The state board shall:

167 (a) in consultation with the Office of the Attorney General, provide guidance and

168 training to support public schools in identifying instructional materials that meet the definition

169 of sensitive materials under this section; and

170 (b) annually report to the Education Interim Committee and the Government

171 Operations Interim Committee, at or before the November ~~[2022]~~ interim meeting, on

172 implementation and compliance with this section, including:

173 (i) any policy the state board or an LEA adopts to implement or comply with this

174 section;

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

176 (iii) any complaints an LEA or the state board receives regarding a violation of this

177 section, including:

178 (A) action taken in response to a complaint described in this Subsection ~~[(4)(b)(iii)]~~

179 ~~(8)(b)(iii)~~; and

180 (B) if an LEA retains an instructional material for which the LEA or the state board

181 receives a complaint, the LEA's rationale for retaining the instructional material.

182 (9) The state shall defend, indemnify, and hold harmless a person acting under color of

183 state law to enforce this section for any claims or damages, including court costs and attorney

184 fees, that:

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

186 (b) is not covered by the person's insurance policies or any coverage agreement that the

187 State Risk Management Fund issues.

188 (10) Subject to prioritization of the Audit Subcommittee created in Section 36-12-8,
189 the Office of the Legislative Auditor General shall:
190 (a) conduct an audit of each school district's compliance with this section, ensuring the
191 completion of all school district audits before November 2028; and
192 (b) annually report to the Education Interim Committee regarding completed sensitive
193 material audits under this Subsection (10).
194 Section 2. **Effective date.**
195 This bill takes effect on July 1, 2024.