

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:

64 (A) an assembly;

65 (B) a guest lecture;

66 (C) a live presentation; or

67 (D) an event.

68 ~~[(g)]~~ [(h)] (i) "Sensitive material" means an instructional material that ~~[is pornographic~~
69 ~~or indecent material as that term is defined in Section 76-10-1235]~~ constitutes objective
70 sensitive material or subjective sensitive material.

71 (ii) "Sensitive material" does not include an instructional material:

72 (A) that an LEA selects under Section 53G-10-402;

73 (B) for medical courses;

74 (C) for family and consumer science courses; or

75 (D) for another course the state board exempts in state board rule.

76 (iii) "Subjective sensitive material" means an instructional material that constitutes
77 pornographic or indecent material, as that term is defined in Section 76-10-1235, under the
78 following factor-balancing standards:

79 (A) material that is harmful to minors under Section 76-10-1201;

80 (B) material that is pornographic under Section 76-10-1203; or

81 (C) material that includes certain fondling or other erotic touching under Subsection
82 76-10-1227(1)(a)(iv).

83 (2) (a) Sensitive materials are prohibited in the school setting.

84 (b) A public school or an LEA may not:

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

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

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

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

94 (i) a public school or an LEA is not required to engage in a review under a subjective

95 sensitive material standard; and

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

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

100 (i) an employee of the relevant LEA;

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

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

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

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

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

112 ~~[(3)]~~ (4) [An LEA shall include] Upon receipt of an allegation from an individual
113 described in Subsection (3)(a), an LEA shall:

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

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

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

124 (ii) if the LEA makes a determination that the challenged instructional material
125 constitutes objective sensitive material, ensure that the material remains inaccessible to

126 students in any school setting;

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

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

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

136 (iii) if the LEA makes a determination that the challenged instructional material
137 constitutes objective sensitive material, ensure that the material is inaccessible to students in
138 any school setting, including the termination of the parent consent option described in
139 Subsection (4)(c)(ii); and

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

142 (5) (a) An individual described in Subsection (3)(a) may appeal an LEA's decision
143 regarding a sensitive material review, regardless of whether the LEA removed or retained the
144 challenged instructional material, to the LEA governing board.

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

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

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

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

152 (a) revisiting a previous decision;

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

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

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

160 (i) at least three school districts; or

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

162 (b) The state board shall:

163 (i) aggregate allegations and LEA determinations described in Subsection (4)(d); and

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

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

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

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

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

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

171 ~~[(4)]~~ (8) The state board shall:

172 (a) in consultation with the Office of the Attorney General, provide guidance and
 173 training to support public schools in identifying instructional materials that meet the definition
 174 of sensitive materials under this section; ~~[and]~~

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

177 ~~[(b)]~~ (c) annually report to the Education Interim Committee ~~[and the Government~~
 178 ~~Operations Interim Committee]~~, at or before the November ~~[2022]~~ interim meeting, on
 179 implementation and compliance with this section, including:

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

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

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

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

186 (8)(c)(iii); [and]

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

188 receives a complaint, the LEA's rationale for retaining the instructional material[-]; and

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

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

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

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

197 (10) Subject to prioritization of the Audit Subcommittee created in Section 36-12-8,
198 the Office of the Legislative Auditor General shall:

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

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

203 **Section 2. Effective date.**

204 This bill takes effect on July 1, 2024.