



Committee Bill Summary: Sensitive Material Review Amendments

Prepared for the Education Interim Committee | Updated November 15, 2023

Sensitive Material Review Amendments

The Education Interim Committee opened this bill file on June 14, 2023, to address curriculum transparency and sensitive materials in public education. The committee reviewed an earlier version of the bill during the October 11, 2023 committee meeting.

Sensitive Materials Definition

This bill clarifies the definition of sensitive materials to include instructional materials that meet one of the following standards (with some exceptions outlined in statute). The definition of “pornographic or indecent material” found in [§ 76-10-1235](#) applies to both standards.

- **Objective sensitive materials:** Materials deemed pornographic or indecent under specified statutes, violating the “bright line.” (The “bright line” standards are in [§ 79-10-1227\(1\)\(a\)\(i\), \(ii\), or \(iii\)](#).)
- **Subjective sensitive materials:** Materials deemed pornographic or indecent under specified statutes. Do not violate the “bright line” but, when taken as a whole, are deemed to have no serious literary, artistic, political, or scientific value. (See: material harmful to minors in [§ 76-10-1201](#); pornographic material in [§ 76-10-1203](#); meets standard in [§ 79-10-1227\(1\)\(a\)\(iv\)](#).)

Sensitive Materials Review

Review Request

The following individuals connected to a local education agency (LEA), which includes both school districts and charter schools, may request a review of instructional materials as potential sensitive materials:

- State and local elected officials representing an area that includes all or part of the LEA
- Enrolled students
- LEA employees
- Parent of a student enrolled in the LEA

An individual who initiates three reviews that do not result in the removal of material are barred from additional challenges for the remainder of the school year.

Review Process

(See the flowchart on page 3)

Initial Review

1. After an LEA receives a review request, conduct an initial review of the materials.
2. If the LEA finds a plausible claim that the challenged materials may be sensitive materials, the LEA must remove the materials from student access and conduct a full review.

Full Review Under Objective Sensitive Materials Standards

1. Conduct a full review of the challenged materials under the **objective sensitive materials standards** (“bright line”) to determine if the materials are objective sensitive materials (violate the “bright line”).



2. If the LEA determines the materials are **objective sensitive materials**:
 - a. The LEA is not required to conduct further review under subjective sensitive materials standards.
 - b. The LEA keeps the materials out of student access.
3. If the following number of LEAs determine any instructional materials are objective sensitive materials, all LEAs statewide must remove the materials from student access.
 - a. At least three school districts, or
 - b. At least one school district and five charter schools.

Subjective Sensitive Materials Review

If the LEA determines the materials are not objective sensitive materials:

1. LEAs conduct further review under the **subjective sensitive materials** standard, including parents in the process.
2. Students may access materials with parent permission during a subjective sensitive materials review process.
3. If the LEA and parent review finds that the materials constitute sensitive materials, remove the materials from student access, even with parent approval.

The findings of a review under the subjective sensitive materials review have no bearing on the conclusions of an objective sensitive materials review.

Report to State Board of Education

LEAs must report to the State Board of Education (state board) on all sensitive materials allegations the LEA receives and the LEAs' final determinations.

Appeals Process and LEA Governing Board Policies

- Individuals allowed to request a sensitive materials review may appeal an LEA's decision to remove or retain challenged material to the LEA governing board.
 - LEA governing boards must vote in a public meeting to decide the outcome of the sensitive material review appeal.
 - LEA governing boards must identify their rationale and determination on each standard used to make a decision.
- An LEA's policies cannot prevent the LEA from:
 - Revisiting a prior decision.
 - Reviewing a recommendation from LEA staff or a parent-related committee on an instructional material.
 - Reconsidering instructional materials after receiving additional information.

State Board of Education

- The state board collects information from LEAs about findings from challenges to instructional materials and outcomes of the review process.
- If at least three school districts or at least one school district and five charter schools remove materials as objective sensitive materials, notify LEAs statewide within 10 school



days about the requirement that all LEAs remove the materials from student access. This includes LEAs' decisions prior to the effective date of the bill.

- Develop a process for reporting and investigating LEA compliance issues with the sensitive materials review process. The individuals allowed by statute to request a sensitive materials review may report allegations of LEA noncompliance to the state board.
- Annually report to the Education Interim Committee at or before the November interim meeting.

School District Audits

As prioritized by the Legislative Audit Subcommittee, the Office of the Legislative Auditor General must conduct an audit of each school district's compliance with this section before November 2028 and annually report audit findings to the Education Interim Committee.



Sensitive Materials Review Request and Initial Review

Specific individuals connected to a local education agency (LEA) may submit a request to initiate a sensitive materials review.

This triggers an initial review by the LEA.

Full Review Under Objective Sensitive Materials Standard

If the LEA's initial review finds a plausible claim, they must:

1. Immediately remove materials from student access.
2. Conduct a full review of challenged materials under the objective sensitive materials standard to determine if the materials violate the "bright line."

Do materials constitute objective sensitive materials?

No

Yes

Subjective Sensitive Materials

Review under the subjective sensitive materials standard and include parents in the process.

During the review process, students may access materials with parent permission.

If the LEA determines the materials are sensitive materials, remove from student access.

Objective Sensitive Materials

Materials are deemed sensitive materials and kept out of student access.

The LEA is not required to review these materials under the subjective sensitive materials standard.

Appeals

The individuals allowed to request a sensitive materials review may appeal an LEA's decision, either to retain or remove the materials, to the LEA governing board. The governing board must vote on the outcome of the appeal in a public meeting.

Report findings to USBE

If at least 3 school districts or at least 1 school district and 5 charter schools determine any materials are objective sensitive materials, all LEAs must remove from student access. This applies to materials removed by LEAs before the bill effective date.