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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:

30 AMENDS:

31 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

32

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

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

36 **53G-10-103. Sensitive instructional materials.**

37 (1) As used in this section:

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

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

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

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

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

45 (b) "LEA governing board" means:

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

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

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

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

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

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

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

55 (i) a district school;

56 (ii) a charter school; or

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

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

59 (A) in a classroom;

60 (B) in a school library; or

61 (C) on school property.

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

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

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

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

- 73 (A) that an LEA selects under Section 53G-10-402;
74 (B) for medical courses;
75 (C) for family and consumer science courses; or
76 (D) for another course the state board exempts in state board rule.

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

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

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

82 (C) material that includes certain fondling or other erotic touching under Subsection
83 76-10-1227(1)(a)(iv).

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

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

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

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

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

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

95 (i) a public school or an LEA is not required to engage in a review under a subjective
96 sensitive material standard; and

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

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

101 (i) an employee of the relevant LEA;

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

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

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

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

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

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

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

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

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

125 (ii) if the LEA makes a determination that the challenged instructional material
126 constitutes objective sensitive material, ensure that the material remains inaccessible to
127 students in any school setting;

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

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

133 subjective sensitive material[-];

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

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

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

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

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

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

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

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

153 (a) revisiting a previous decision;

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

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

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

161 (i) at least three school districts; or

162 (ii) at least two school districts and five charter schools.

163 (b) The state board shall:

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

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

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

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

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

169 access, regardless of whether:

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

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

172 ~~[(4)]~~ (8) The state board shall:

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

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

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

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

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

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

186 (A) action taken in response to a complaint described in this Subsection ~~[(4)(b)(iii)]~~
187 (8)(c)(iii); [and]

188 (B) if an LEA retains an instructional material for which the LEA or the state board
189 receives a complaint, the LEA's rationale for retaining the instructional material~~[-]; and~~

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

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

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

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

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

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

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

204 **Section 2. Effective date.**

205 This bill takes effect on July 1, 2024.