

**Representative Melissa G. Ballard** proposes the following substitute bill:

**SENSITIVE MATERIAL REQUIREMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Melissa G. Ballard**

Senate Sponsor: Lincoln Fillmore

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**LONG TITLE**

**General Description:**

This bill amends requirements and prohibitions regarding sensitive material within the public school system.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a local education agency (LEA) to:
  - complete the LEA's review of instructional material that is alleged to violate state law; and
  - report instructional material that violates state law to the State Board of Education (state board);
- ▶ requires the state board to engage in a review in certain circumstances involving statewide curriculum or program materials;
- ▶ provides for the the termination of contracts with vendors for instructional material if the material includes sensitive material; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 This bill provides a special effective date.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **53G-10-103**, as enacted by Laws of Utah 2022, Chapter 377

31 REPEALS:

32 **53G-10-101**, as enacted by Laws of Utah 2018, Chapter 3



34 *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 school setting.

42 (ii) "Instructional material" includes reading materials, handouts, videos, digital

43 materials, websites, online applications, and live presentations.

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) "Public school" means:

51 (i) a district school;

52 (ii) a charter school; or

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

54 (f) (i) "School setting" means, for a public school:

55 (A) in a classroom;

56 (B) in a school library; or

- 57 (C) on school property.
- 58 (ii) "School setting" includes the following activities that an organization or individual  
59 or organization outside of a public school conducts, if a public school or an LEA sponsors or  
60 requires the activity:
- 61 (A) an assembly;
- 62 (B) a guest lecture;
- 63 (C) a live presentation; or
- 64 (D) an event.
- 65 (g) (i) "Sensitive material" means an instructional material that is pornographic or  
66 indecent material as that term is defined in Section [76-10-1235](#).
- 67 (ii) "Sensitive material" does not include an instructional material:
- 68 (A) that an LEA selects under Section [53G-10-402](#);
- 69 (B) for a concurrent enrollment course for which a parent receives advance notice of  
70 the material;
- 71 [~~(B)~~] (C) for medical courses;
- 72 [~~(C)~~] (D) for family and consumer science courses; or
- 73 [~~(D)~~] (E) for another course the state board exempts in state board rule.
- 74 (h) "Vendor" means an entity with which the state board or an LEA contracts to  
75 provide instructional material to students.
- 76 (2) (a) Sensitive materials are prohibited in the school setting.
- 77 (b) A public school may not:
- 78 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,  
79 sensitive materials; or
- 80 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive  
81 materials.
- 82 (3) (a) A student, a student's parent, or an LEA employee may notify the relevant LEA  
83 regarding any content in instructional material:
- 84 (i) that the individual:
- 85 (A) encounters through the LEA's curriculum or otherwise through the LEA; and
- 86 (B) alleges to be sensitive material; and
- 87 (ii) for which the individual provides documentation or evidence of the alleged

88 sensitive material.

89 (b) Upon receipt of a notice described in Subsection (1)(a), an LEA shall make a  
90 determination of whether the documentation or evidence described in Subsection (3)(a)(ii)  
91 demonstrates a possibility that the material includes or constitutes sensitive material and, if the  
92 LEA determines that the documentation or evidence demonstrates a possibility of sensitive  
93 material:

94 (i) remove the instructional material from student access until the LEA completes the  
95 LEA's sensitive material review process in accordance with the LEA's policies and this section;

96 (ii) if the material constitutes sensitive material:

97 (A) eliminate the chapter or section of the instructional material containing the  
98 sensitive material from the LEA's curriculum or take other measures to mitigate the  
99 accessibility and impact of the sensitive material;

100 (B) provide notice to any relevant vendor that the material violates state law; and

101 (C) report to the state board regarding the material; and

102 (iii) communicate to the individual who made the notice that triggered the LEA's  
103 review, either directly or through the relevant principal, the outcome of the LEA's review,  
104 including an explanation of the LEA's determination that the material does not constitute  
105 sensitive material if the LEA chooses to maintain the availability of the material.

106 (c) No later than 60 school days after the day on which the state board receives an LEA  
107 report described in Subsection (3)(b), if the material that is the subject of the report is part of  
108 state curriculum or a program that the state board provides or oversees, the state board shall:

109 (i) complete a sensitive material review process in accordance with the state board's  
110 policies and this section;

111 (ii) if the material constitutes sensitive material:

112 (A) eliminate the chapter or section of the instructional material containing the  
113 sensitive material from the curriculum or program or take other measures to mitigate the  
114 accessibility and impact of the sensitive material;

115 (B) provide notice to any relevant vendor that the material violates state law; and

116 (C) provide notice to LEAs regarding the sensitive material and the state board's  
117 actions under this Subsection (3)(d); and

118 (iii) communicate to the individual who made the notice that triggered the underlying

119 LEA review, either directly or through the relevant LEA, the outcome of the state board's  
120 review, including an explanation of the state board's determination that the material does not  
121 constitute sensitive material if the state board chooses to maintain the availability of the  
122 material.

123 [~~(3)~~] (4) An LEA shall:

124 (a) first determine whether a challenged instructional material constitutes sensitive  
125 material as a description or depiction of illicit sex or immorality that has no serious value for  
126 minors as described in Section 76-10-1227;

127 (b) if the material does not constitute a violation described in Subsection (4)(a), include  
128 parents who are reflective of the members of the school's community [~~when determining~~] to  
129 determine if an instructional material is sensitive material using the standards described in  
130 Section 76-10-1201 for material harmful to minors or Section 76-10-1203 for material that is  
131 pornographic..

132 [~~(4)~~] (5) The state board shall:

133 (a) in consultation with the Office of the Attorney General, provide guidance and  
134 training to support public schools in identifying instructional materials that meet the definition  
135 of sensitive materials under this section; and

136 (b) report to the Education Interim Committee and the Government Operations Interim  
137 Committee, at or before the November 2022 interim meeting, on implementation and  
138 compliance with this section, including:

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

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

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

144 (A) action taken in response to a complaint described in this Subsection [~~(4)(b)(iii)]~~  
145 (5)(b)(iii); and

146 (B) if an LEA retains an instructional material for which the LEA or the state board  
147 receives a complaint, the LEA's rationale for retaining the instructional material.

148 (6) The state board may make rules, in accordance with Title 63G, Chapter 3, Utah  
149 Administrative Rulemaking Act, to establish procedures for the reporting of sensitive material

150 violations under Subsections (3)(b) through (d).

151 (7) (a) The state board or an LEA may, without any penalty or any further financial  
152 obligation, rescind or otherwise terminate a contract for a vendor to provide instructional  
153 material into which the LEA or the state board enters on or after July 1, 2023, if:

154 (i) the state board or LEA governing board determines that the version of the  
155 instructional material that is the subject of the notice described in Subsection (3)(a) is or  
156 contains sensitive material; and

157 (ii) within 30 school days after the day on which the state board or LEA governing  
158 board provide notice of the determination described in Subsection (7)(a)(i), the vendor fails to  
159 eliminate the chapter or section of the instructional material containing the sensitive material or  
160 otherwise remove access to the sensitive material.

161 (b) In any contract for a vendor to provide instructional material for which the parties  
162 negotiate terms and into which the state board or an LEA enters after July 1, 2023, the state  
163 board or relevant LEA shall ensure that the contract contains:

164 (i) notice provisions regarding the requirements and prohibitions regarding sensitive  
165 material in this section; and

166 (ii) provisions requiring the vendor to notify the contracting LEA or state board of any  
167 update, modification, or addition to the instructional material the vendor provides that may  
168 contain or constitute sensitive material, including links to other material or websites from  
169 within the instructional material.

170 (c) An LEA or the state board may remove a chapter or section of digital instructional  
171 material that is found, through the processes described in this section, to contain sensitive  
172 material from the relevant curriculum.

173 **Section 2. Repealer.**

174 This bill repeals:

175 Section **53G-10-101**, Title.

176 **Section 3. Effective date.**

177 This bill takes effect on July 1, 2023.