

**Representative Ken Ivory** proposes the following substitute bill:

**SCHOOL MATERIALS AMENDMENTS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ken Ivory**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill amends provisions regarding student access to pornographic or indecent materials within the public education system.

**Highlighted Provisions:**

This bill:

- ▶ requires local education agencies (LEAs) to:
  - engage in certain review processes when a parent communicates an allegation that an instructional material is prohibited by state law; and
  - publicly vote on and explain a determination to reinstate or preserve student access to challenged instructional material;
- ▶ establishes the precedential effect of LEA and state board determinations;
- ▶ requires the State Board of Education (state board) to:
  - review LEA determinations regarding certain sensitive material; and
  - make rules, including to establish an age-appropriateness rating system for instructional materials;
- ▶ amends a state board reporting requirement; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **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 (b) "LEA governing board" means:

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

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

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

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

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

49 (e) "Public school" means:

50 (i) a district school;

51 (ii) a charter school; or

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

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

54 (A) in a classroom;

55 (B) in a school library; or

56 (C) on school property.

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

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

64 (g) (i) "Sensitive material" means an instructional material that is educationally  
65 unsuitable because it is pornographic or indecent material as that term is defined in Section  
66 76-10-1235, and is therefore deemed pervasively vulgar.

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 that contains sensitive material and for which a  
70 parent receives notice from the course provider of the material and gives the parent's consent;

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

75 (b) A public school may not:

- 76 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting,  
77 sensitive materials; or
- 78 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive  
79 materials.

80 (3) An LEA shall:

81 (a) upon receipt of a notice from a teacher, LEA employee, student who is enrolled in  
82 the LEA, or a parent of a school-age child who resides within the boundaries of the LEA that  
83 an instructional material constitutes sensitive material:

84 (i) for a challenge under this section using the standards described in Subsection  
85 76-10-1227(2)(c), immediately remove the material from the library, classroom, or other  
86 location where students may access the material until the LEA completes the LEA's review;

87 (ii) review the allegations and the relevant material;

88 (iii) (A) if the LEA determines that the material does not constitute sensitive material  
89 under Subsection 76-10-1227(2)(c) and seeks to preserve student access to the material, make a  
90 written and publicly accessible determination, in accordance with a public vote of the local  
91 governing board, regarding the LEA's determination, including the LEA's reasoning and an  
92 explanation of why the material does not violate Subsection 76-10-1227(2)(c), is age  
93 appropriate, and has serious scientific, artistic, or literary value; and

94 (B) if the LEA determines that the material constitutes sensitive material using the  
95 standards described in Subsection 76-10-1227(2)(c), refer the material to the state board for  
96 review under Subsection (4), including each excerpt that the LEA determines violated  
97 Subsection 76-10-1227(2)(c) with the reference to or location of the excerpt; and

98 (iv) notify the individual who challenged the material regarding the outcome of the  
99 review, including any referral to the state board in accordance with this section;

100 (b) except for a challenge under this section using the standards described in  
101 Subsection 76-10-1227(2)(c), include parents who are reflective of the members of the school's  
102 community when [~~determining if an instructional material is sensitive material.~~] making the  
103 determinations described in Subsection (3)(a); and

104 (c) refer to the state board any material for which the LEA has a documented record of  
105 having removed the material using the standards described in Subsection 76-10-1227(2)(c).

106 (4) (a) No later than 75 days after the day on which the state board receives an LEA's  
107 determination that an instructional material constitutes sensitive material under this section  
108 using the standards described in Subsection 76-10-1227(2)(c), the state board shall:

109 (i) review the LEA's determination; and

110 (ii) (A) if the state board ratifies the LEA's determination, notify all LEAs to remove  
111 the sensitive material from student access; or

112 (B) if the state board does not ratify the LEA's determination, make a written and  
113 publicly accessible determination, in accordance with a public vote of the state board, as to  
114 why the material does not constitute sensitive material under this section, including the state  
115 board's reasoning.

116 (b) Notwithstanding the state board having not ratified an LEA's determination under  
117 Subsection 76-10-1227(2)(c), the LEA's determination that the material constitutes sensitive  
118 material under Section 76-10-1235 shall remain unaffected by the state board's determination.

119 (5) Notwithstanding Subsection (3), an LEA may choose to not engage in a review of  
120 an instructional material against which the same individual has triggered three reviews under  
121 Subsection (3) during the present school year for material that the LEA determined, through the  
122 review process, to not constitute sensitive material.

123 (6) (a) Before the 2024-2025 school year, each LEA shall ensure that before a student  
124 within the LEA has any library, classroom, or other access to any instructional material that  
125 does not conform to the state board's rating standard described in Subsection (7)(b)(i), the  
126 LEA:

127 (i) provides prior written notice to the parent of each student who may have access to  
128 the material regarding the student's potential access to the material; and

129 (ii) has express written consent from the parent of any student who may have access to  
130 the material.

131 [~~4~~] (7) The state board shall:

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

135 (b) before the 2024-2025 school year, make rules in accordance with Title 63G,  
136 Chapter 3, Utah Administrative Rulemaking Act:

137 (i) to review and adopt a rating system for age-appropriate instructional materials that  
138 includes at least language, criminal activity, self-harm, drug use, suicidal ideation, and sexual  
139 content, including sexuality and gender identity;

140 (ii) regarding the acquisition of instructional material by LEAs and schools in  
141 accordance with the rating system described in Subsection (7)(b)(i); and

142 [~~b~~] (c) report to the Education Interim Committee and the Government Operations  
143 Interim Committee, at or before the November [~~2022~~] interim meeting each year, on  
144 implementation and compliance with this section, including:

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

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

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

150 (A) action taken in response to a complaint described in this Subsection [~~(4)(b)~~(iii)]  
151 (7)(c)(iii); and

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

154 Section 2. **Effective date.**

155 This bill takes effect on July 1, 2023.