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Instructional Materials Guidance Document

This guidance document is intended to be a resource for LEAs as they update their instructional materials, library, and sensitive material policies. The guidance is not inclusive of all legal provisions in law or rule but gives an overview of the processes designed to address instructional materials in LEAs. See 53G-4-402, 53G-5-404, and R277-628.

I. Instructional materials:

An LEA governing board shall:

- a. establish an open process, involving educators and parents of students enrolled in the LEA, to review and recommend instructional materials for board approval.
- b. post the recommended learning material online to allow for public review or, for copyrighted material, makes the recommended learning material available at the LEA for public review prior to a public meeting where a vote will take place to approve the materials.
- c. hold at least two public meetings on the recommendation that provides an opportunity for educators whom the LEA employs and parents of students enrolled in the LEA to express views and opinions on the recommendation; and
- d. adopt or approves the recommended instructional materials in an open and regular board meeting.
- e. make instructional material that the school district uses readily accessible and available for a parent to view.
- f. annually notify parents on how to access the information including a post on their website.

II. Library materials:

- 1 The LEA governing board may establish and support school libraries and is responsible for the content within the library
- 2 The LEA governing board shall:
 - a. Develop a Library Collection Development Policy that includes:
 - i. A selection process for library materials, gifts, and donations.
 - ii. Support for Utah core standards and the interests of Utah students, staff, and families. For example: Materials that include a variety of formats and genres and meet multiple reading purposes (enjoyment, acquisition of knowledge, answering questions, different languages, emerging technologies, and personal growth).
 - iii. A process to deselect and remove materials to ensure that the library collection remains current, relevant, and in good condition and is consistent with Utah Code 53G-10-103.
 - iv. May use other criteria found harmful to minors like violence, pervasive vulgarity, self-harm, etc. to deselect and remove materials.

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- b. Provide an online platform for library materials as per 53G-4-402
 - i. Through which a parent is able to view the title, author, and a description of any material the parent's child borrows from the school library.
 - ii. That includes a history of borrowed materials for a parent's child.
 - iii. And shall be completed by August 1, 2024, if the LEA has more than a 1,000 enrolled students; or August 1, 2026, if the LEA has less than a 1,000 enrolled students.

III. Sensitive Instructional Materials:

1 General Provisions:

- a. Shall prioritize protecting children from the harmful effects of illicit pornography over other considerations in evaluating instructional materials.
- b. Instructional materials determined **objective sensitive materials** or **subjective sensitive materials** are removed from all school settings as defined in 53G-10-103.
- c. Instructional materials are not exclusively library materials.
- d. If an instructional material constitutes **objective sensitive material** no further review is necessary.
- e. Sensitive materials do not include:
 - i. Concurrent enrollment course that contains sensitive materials for which a parent receives notice and provides consent.
 - ii. Instructional materials for medical courses.
 - iii. Instructional materials for family and consumer science courses.
 - iv. Health Curriculum selected by an LEA under 53G-10-402.
- f. Individuals who may initiate a sensitive material review includes employees, students, parents, and governing board members of the relevant LEA.
- g. No limitation on submissions unless an individual makes three unsuccessful challenges, inclusive of a direct review or appeal, during a given school year.

2 Uses the definitions included in code and rule. (instructional materials, LEA governing board, materials, minor, objective sensitive materials, public school, school setting, sensitive material, subjective sensitive material, unsuccessful challenge, school community parent)

3 In Utah public education, Utah law supersedes any recommendations including professional organizations.

4 Exposing students to sensitive materials is prohibited in Board Rule R277-217.

5 An LEA shall develop a policy related to conflict of interest in association with membership on a review committee – ex. Those responsible for procurement or the individual who brought the challenge

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2. Sensitive materials review:

a. Initial review

- i. Reviewed by at least two LEA employees.
- ii. Makes an initial determination related to a plausible claim that the material constitutes sensitive materials.
- iii. May use excerpts and other evidence to support the allegation.
- iv. If a plausible claim is substantiated, then the instructional materials is immediately removed from student access in all school settings until the full review is completed.
- v. Full review is initiated after the completion of the initial review.

b. Full review

i. Objective Sensitive Material Review Process

- A. Determine a transparent process including a timeframe for evaluating the allegation, selection process, structure, training on the current legal requirement, and documentation for the review.
- B. Designate an LEA contact person for reporting and corresponding with the state library media specialist.
- C. Designate three or more members including one parent and may include the designees from the initial review, for the **Objective Sensitive materials** review using the **objective sensitive material** standards:
 - Section 76-10-1235, under the non-discretionary standards described in Subsection 76-10-1227(1)(a)(i), (ii), or (iii).
- D. May use excerpts and other evidence to support the allegation submitted during the initial review.
- E. If the instructional material constitutes **objective sensitive material** the review process is completed, and the instructional material is immediately removed from all school settings.
- F. Report the outcomes to the submitter and the public.
- G. The LEA designee reports the determination to the state library media specialist within 10 days after each final determination has been made.

ii. If the objective sensitive material standard is not upheld, initiate a **subjective sensitive material** review.

iii. The LEA shall facilitate the prompt return or disposal of the material identified for removal.

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3. Subjective sensitive material review

- a. Determine a transparent process including a timeframe for evaluating the allegation, selection process, structure, training on the current legal requirement, and documentation for the review.
- b. Allow student access with parent consent.
- c. Determine who will review the material, ensuring school community parents are included in the process.
- d. Use the subjective sensitive material standards:
 - constitutes pornographic or indecent material, as that term is defined in Section 76-10-1235, under the following factor-balancing standards:
 - material that is harmful to minors under Section 76-10-1201;
 - material that is pornographic under Section 76-10-1203; or
 - material that includes certain fondling or other erotic touching under Subsection 76-10-1227(1)(a)(iv).
- e. May use other criteria like violence, vulgarity, self-harm etc.
- f. If the instructional material is determined to be **subjective sensitive material**
 - ensure that the material is inaccessible to students in any school setting, including the termination of the parent consent.
 - The LEA designee reports the determination to the state library specialist within 10 days of the final determination.
 - Report the outcomes to the submitter and the public.
 - The LEA shall facilitate the prompt return or disposal of the material identified for removal. Sensitive materials removed from student access may not be sold or distributed to a minor.

IV. Appeals process

- a. Employees, students, parents, and governing board members of the relevant LEA may initiate an appeal regardless of whether the material was retained or removed.
- b. The LEA governing board reviews the appeal:
 - i. Shall vote in a public board meeting to decide the outcome of a sensitive material review appeal, clearly identifying:
 - A. the board's rationale for the decision; and
 - B. the board's determination on each component of the statutory and any additional policy standards the board uses to reach the board's conclusions.
 - C. The LEA designee reports the determination to the state library specialist within 10 days of the final determination.
- c. An LEA governing board may not enact rules or policies that prevent the LEA governing board from:
 - i. Revisiting a previous decision

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- ii. Reviewing a recommendation of LEA personnel or parent-related committee regarding a challenged instructional material
- iii. Reconsidering a challenged instructional material if the LEA governing board receives additional information regarding the material.

V. State-wide removal:

- a. The state Superintendent will notify local LEA's of a state-wide removal of sensitive material within 10 days of the threshold being met.
- b. LEA notification for a state-wide removal of sensitive materials applies to all LEAs and all school settings.
- c. If the statewide removal is overturned as outlined in 53G-10-103 and R277-628:
 - i. An LEA may choose to return the given material to student access.
 - ii. May choose to uphold their determination to remove a sensitive material from the school setting in their LEA.