

Sensitive Materials Process and Definitions

1. Initial Review Process

- **Objective:** Determine if the material presents a plausible claim that it is sensitive under [§53G-10-103](#).
- **Committee:** Must include two or more Local Education Agency (LEA) employees.
- **Action:** If the claim is plausible, the material is immediately removed from student access and proceeds to a full review.

2. Objective Sensitive Materials Review

- **Standard:** A full review using the "Objective Sensitive Material" standard ([§ 76-10-1227](#)).
- **Criteria:** Does the material contain a description or depiction of:
 - Human genitals in a state of sexual stimulation or arousal.
 - Acts of human masturbation, sexual intercourse, or sodomy.
 - Fondling or other erotic touching of human genitals or pubic region.
- **Committee Requirements:**
 - Three or more members.
 - Must include at least one parent.
 - May not include those responsible for procuring the material or the individual who brought the challenge.
- **Outcome:** If the material meets these objective criteria, it remains inaccessible to students in any school setting.

3. Subjective Sensitive Materials Review

- **Standard:** A full review using the "Subjective Sensitive Material" standard ([§ 76-10-1235](#)).
- **Criteria:** Does the material contain "pornographic or indecent material" and, when taken as a whole, has no serious literary, artistic, political, or scientific value?
- **Committee Requirements:** Must include parents who are reflective of the members of the school community.
- **Outcome:** If the material is deemed subjective sensitive material, it remains inaccessible. If it does not meet the standard, it may remain in the school, though student access may require parental consent.

4. Appeals and Reporting

- **Appeals:** Specific individuals may appeal a determination to the LEA governing board. The board must then vote in a public meeting.
- **Reporting to USBE:** The LEA-appointed representative must report the final determination to the Utah State Board of Education within 30 school days.
- **Required Report Data:** Title, Final Determination, Rationale, Statute Applied, Excerpts, and Documentation.

5. [R277-628 Policy Requirements](#)

- **Effective Date:** Passed June 7, 2024.
- **Key Provisions:**
 - Policies must include a review process and allow for immediate removal upon a plausible claim.
 - Individuals are limited to three unsuccessful sensitive material challenges per school year.
 - Removed materials must be physically disposed of legally and may not be sold or distributed.
 - LEAs must communicate with vendors and publishers regarding removal decisions.

6. Statutory Definitions and Examples

- **Sensitive Classification:** To be classified as sensitive, excerpts must be descriptive or depictive. A mere reference to an act does not qualify.
- **Description:** Discourse intended to give a mental image of something experienced (e.g., painting a picture with words).
- **Depiction:** A representation in words or images that makes an action or character easy to imagine.
- **Examples used for training:** Scenes from *The Lion, the Witch and the Wardrobe* (description) and *Charlotte's Web* (depiction) are provided to illustrate how authors bring scenes to life without meeting sensitive criteria.

7. Statewide Removal Threshold

- **Trigger:** Material is deemed "objective sensitive material" by at least three school districts, or at least two school districts and five charter schools.
- **Process:** Once the threshold is met, USBE notifies LEAs within 10 school days and publishes the title on the Library Media website.
- **Statewide Action:** Every LEA in the state must remove the material from student access.

- **Board Oversight:** The State Board may vote to overturn or uphold the statewide removal in a public meeting. If overturned, LEAs may choose to return the material to student access.

Legislative Comparison: H.B. 374 (2022) vs. H.B. 29 (2024)

1. Definitions of Instructional Materials

- **H.B. 374 (2022):** Defined "Sensitive Materials" as instructional material that is pornographic or indecent as defined in Section 76-10-1235.
- **H.B. 29 (2024):** Clarified that "Instructional Material" does not mean exclusively library materials. It introduced two distinct categories:
 - **Objective Sensitive Materials:** Any material deemed pornographic or indecent under statute § 76-10-1227(1)(a) (i), (ii), or (iii). This is referred to as the "bright line" standard.
 - **Subjective Sensitive Materials:** Any material deemed pornographic or indecent under statute § 76-10-1235 that does not violate the "bright line" but, when taken as a whole, is deemed to have no serious literary, artistic, political, or scientific value.

2. Local Education Agency (LEA) Requirements

- **H.B. 374 (2022):** Required the inclusion of parents reflective of the school community when determining if material is sensitive.
- **H.B. 29 (2024):** Mandated that LEAs revise policies to ensure the following:
 - **Review Process:** Policies must include a process to determine if material is objective or subjective and restrict access accordingly.
 - **Immediate Removal:** Materials must be removed immediately from student access if the LEA finds a plausible claim that the material may be sensitive.
 - **Initiation Rights:** Reviews can be initiated by an LEA employee, a student enrolled in the LEA, a parent of a student, or a member of the LEA governing board.
 - **Challenge Limits:** Policies must prevent an individual from initiating more than three unsuccessful sensitive material challenges in a single school year.
 - **Appeals:** LEAs must provide an appeal process to the governing board.
 - **Flexibility:** Policies should not prevent an LEA from revisiting a decision or reconsidering material if the board receives additional information.

3. Reporting and Compliance

- **H.B. 374 (2022):** Required LEAs to report challenges to the state board prior to the November 2022 Education Interim Committee.
- **H.B. 29 (2024):** Established comprehensive reporting and oversight duties:

- **LEA Reporting:** LEAs must report all sensitive material allegations, rationales, and determinations to the state board.
- **State Board Aggregation:** The state board must aggregate all LEA allegations and determinations.
- **Threshold Communication:** The state board must communicate within 10 days when a statewide removal threshold is met.
- **Public Agenda:** Titles meeting the threshold must be placed on a public board meeting agenda for a vote on retaining or removing the materials.
- **Annual Reporting:** The board must report annually to the Education Interim Committee and the Government Operations Interim Committee regarding implementation and compliance.

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