

# SENSITIVE MATERIALS FLOW CHART

## INITIAL REVIEW

1 Does material present a plausible claim that the material is sensitive? § 53G-10-103

\*include two or more LEA employees R277-628-3

**YES**

**REMOVE FROM STUDENT ACCESS**

## Objective Sensitive Materials Review

2 Does the material contain a description or depiction of:

i. human genitals in a state of sexual stimulation or arousal

**OR**

i.i. acts of human masturbation, sexual intercourse, or sodomy

**OR**

i.i.i. fondling or other erotic touching of human genitals or pubic region

§ 76-10-1227

\*include 3 or more members & at least 1 parent

\*may not include those responsible for procuring material or challenger

R277-628-3

**YES**

Does material constitute objective sensitive materials?

**NO**

## Subjective Sensitive Materials Review

3 Does the material contain "pornographic or indecent material" under UCA 76-10-1235 and when taken as a whole, has no serious literary, artistic, political, or scientific value?

- Include parents who are reflective of the members of the school's community
- Allow student access if the student's parent gives consent

**YES**

**MATERIAL REMAINS INACCESSIBLE TO STUDENTS**

4

## APPEAL

- Specific individuals may appeal to the LEA governing board.
- The governing board shall vote in a public board meeting.

## REPORT TO USBE

5 'LEA-appointed Representative' reports final determination using the designated form

R277-628-3

- Title
- Final Determination & Rational
- Statute Applied
- Excerpt
- Documentation



# SENSITIVE MATERIALS REVIEW CHECKLIST

<p><b>Step 1</b></p> <p><b>INITIAL REVIEW</b></p>	<p><input type="checkbox"/> <b>Receipt of Allegation</b></p> <p><input type="checkbox"/> Yes, the individual initiating allegation is</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> an employee of the relevant LEA</li> <li><input type="checkbox"/> a student who is enrolled in the relevant LEA;</li> <li><input type="checkbox"/> a parent of a child who is enrolled in the relevant LEA; or</li> <li><input type="checkbox"/> a member of the relevant LEA governing board.</li> </ul> <p><input type="checkbox"/> <b>Initial Determination</b></p> <p><input type="checkbox"/> includes 2 or more LEA employees <span style="border: 1px solid black; padding: 2px;">R277-628-3</span></p> <p><input type="checkbox"/> Does the allegation present a plausible claim that the material is sensitive</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> <b>YES</b>, remove immediately from student access, proceed to Step 2.</li> <li><input type="checkbox"/> No, LEA policy determines next steps.</li> </ul>
<p><b>Step 2</b></p> <p><b>REVIEW</b></p> <p>Objective Sensitive Materials</p>	<p><input type="checkbox"/> <b>Full Review using ‘Objective Sensitive Material’ Standard § 76-10-1227.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> includes three or more members &amp; at least one parent <span style="border: 1px solid black; padding: 2px;">R277-628-3</span></li> <li><input type="checkbox"/> does not include those responsible for procuring material or challenger</li> </ul> <p><input type="checkbox"/> <b>YES</b>, the material contain a description or depiction of:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> i. human genitals in a state of sexual stimulation or arousal OR</li> <li><input type="checkbox"/> i.i. acts of human masturbation, sexual intercourse, or sodomy OR</li> <li><input type="checkbox"/> i.i. fondling or other erotic touching of human genitals or pubic region</li> </ul> <p><b>If YES, ensure material remains inaccessible to students in any school setting.</b></p> <p><input type="checkbox"/> No, follow LEA policy</p>
<p><b>Step 3</b></p> <p><b>REVIEW</b></p> <p>Subjective Sensitive Materials</p>	<p><input type="checkbox"/> <b>Full Review using ‘Subjective Sensitive Material’ Standard § 76-10-1235.</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Include parents who are reflective of the members of the school’s community</li> <li><input type="checkbox"/> Allow student access if the student’s parent gives consent</li> </ul> <p><input type="checkbox"/> <b>Subjective Determination</b></p> <p><input type="checkbox"/> <b>YES</b>, the material taken as a whole has <b>no</b> serious, literary, artistic, political, or scientific value.</p> <p><b>If YES, ensure material remains inaccessible to students in any school setting.</b></p> <p><input type="checkbox"/> No, follow LEA policy</p>
<p><b>Step 4</b></p> <p><b>APPEAL</b></p>	<p><input type="checkbox"/> <b>Any individual in Step 1 may appeal a determination from Step 2 or 3 to the LEA governing board</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Follow LEA Policy</li> </ul> <p><input type="checkbox"/> <b>LEA governing board to vote in public board meeting, identifying:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> the board’s rationale for the decision</li> <li><input type="checkbox"/> the board’s determination on each component of the statutory and any additional policy standards used to reach the conclusion</li> </ul>
<p><b>Step 5</b></p> <p><b>REPORT TO USBE</b></p>	<p><input type="checkbox"/> <b>“LEA-appointed representative” reports FINAL determination to USBE within 30 school days</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Title of Material</li> <li><input type="checkbox"/> Determination</li> <li><input type="checkbox"/> Rationale</li> <li><input type="checkbox"/> Statute Applied</li> <li><input type="checkbox"/> Additional policy standards</li> <li><input type="checkbox"/> Documentation</li> </ul> <p><input type="checkbox"/> <b>Dispose of Sensitive Material according to LEA Policy</b> <span style="float: right;"><b>§ 53G-10-103</b></span></p>



# R277-628:SENSITIVE MATERIALS

This document details the specifics of board rule R277-628, renamed from School Libraries to Sensitive Materials and passed on June 7, 2024, by the Utah State Board of Education. Effective after Public Notice Period.

<p><b>R277-628-1</b> Authority, Purpose &amp; Oversight</p>	<p><b>Oversight Category 4 per R277-111</b></p> <ul style="list-style-type: none"> <li>annual and more frequent monitoring</li> <li>response from every LEA for materials removed prior to July 1, 2024</li> </ul>
<p><b>R277-628-2</b> Definitions</p>	<p><b>Definitions are consistent with 53G-10-103</b> <b>School Community Parent:</b> parent of a student currently attending or will enroll within one year where material is being reviewed.</p>
<p><b>R277-628-3</b> Policy &amp; Accompanying Procedures for School Instructional Material Selection &amp; Reconsideration</p>	<p style="text-align: center;"><b>INSTRUCTIONAL MATERIAL POLICIES MUST:</b></p> <p><b>HB29/53G-10-1023 Requirements</b></p> <ul style="list-style-type: none"> <li>include a review process to determine if material is objective or subjective sensitive material and restrict access accordingly.</li> <li>require immediate removal of material from student access if the LEA finds a plausible claim that material may be sensitive.</li> <li>allow the following individuals to initiate a Sensitive Materials review <ul style="list-style-type: none"> <li>employee of the relevant LEA</li> <li>student enrolled in the relevant LEA</li> <li>parent of a child enrolled in the relevant LEA</li> <li>member of the relevant LEA governing board</li> </ul> </li> <li>prevent an individual from initiating more than three unsuccessful sensitive material challenges in any given school year.</li> <li>include an appeal process to the LEA governing board</li> <li>not prevent the LEA from: <ul style="list-style-type: none"> <li>revisiting a previous decision</li> <li>reviewing a recommendation, or</li> <li>reconsidering material if LEA governing board receives additional information.</li> </ul> </li> <li>include a process for LEAs to report all sensitive material allegations, rationales, and determinations to the state board.</li> </ul> <p><b>R277-628 Additional Policy Requirements</b></p> <ul style="list-style-type: none"> <li>two or more LEA employees are responsible for making the 'initial <b>objective</b> sensitive material determination</li> <li>three or more members including at least one parent and may include the designees from the initial review, for the Objective Sensitive materials review</li> <li>prevents those responsible for procurement of the materials or the individual who brought the challenge from serving on the review committee</li> <li>a process for disposing of removed materials that requires <ul style="list-style-type: none"> <li>the physical removal of the material legally and are not to be sold or distributed</li> <li>communicating with vendors and publishers regarding the decision</li> </ul> </li> </ul>
<p><b>R277-628-4</b> LEA Reporting and Compliance</p>	<p><b>Consistent with HB29/53G-10-103</b></p> <ul style="list-style-type: none"> <li>Requires LEAs to report removal of material removed before July 1, 2024 using the final objective sensitive material determination of which the LEA has sufficient information.</li> <li>Report all final determinations to USBE within 30 school days or at the conclusion of an appeal.</li> </ul>
<p><b>R277-628-5</b> State Board Compliance Reporting Requirements</p>	<p><b>Consistent with HB29/53G-10-103</b></p> <ul style="list-style-type: none"> <li>A state board member may, within 30 days of notification of state-wide removal, place removed material on agenda of a full board meeting.</li> </ul>

# UTAH STATE STATUTE DEFINITIONS & EXAMPLES

To classify materials as sensitive, excerpts must fall within one of two categories: descriptive or depictive content. A mere reference to an act would not qualify as either a description or a depiction.

## § 76-10-1227. INDECENT PUBLIC DISPLAYS

**Description:** An act of describing; specifically, discourse intended to give a mental image of something experienced. [Merriam-Webster](#)

A description is like painting a picture with words. When authors use description, they're giving us details to help us imagine what's happening in the story. Description can tell us about characters, places, or objects in a way that brings them to life.

For example, in literature, in the book 'The Lion, the Witch and the Wardrobe' by C.S. Lewis, there's a scene where Lucy enters the magical world of Narnia for the first time. Here's how it's described:

'The entrance to the tunnel seemed like a black hole in the side of the mountain. Its edges were jagged and craggy, and the air that came out was damp and musty. Beyond, there was darkness, stretching into the unseen depths of the earth.'

**Depiction:** A representation in words or images of someone or something  
[Merriam-Webster](#)

A depiction is a way of showing or describing something in a way that makes it easy to imagine. When an author depicts an action, they use words to create a vivid picture in our minds.

For example, In literature, an author can depict a character through their description and actions. In the classic children's story, 'Charlotte's Web' by E.B. White, there's a scene where Wilbur, the pig, is learning to spin around to get some exercise. Here's how the author describes it:

'Wilbur ran to the other end of the pen. Then he turned and faced his audience, and he trotted back. He repeated this several times, raising his speed each time, and finally, he burst into a full gallop around the pen.'



# SENSITIVE MATERIALS REPORTING PROCESS

1

LEAs

## REPORT SENSITIVE MATERIALS

LEA-appointed representative reports to USBE within 30 school days after final determination using the designated form:

- any materials determined to be “objective sensitive materials” before July 1, 2024
- ALL sensitive material challenges including allegations and determinations after July 1, 2024

2



## DETERMINE IF STATEWIDE THRESHOLD MET

Criteria used:

- (i) At least three school districts; or
- (ii) at least two school districts and five charter schools have deemed a material “objective sensitive material.”

3



## COMMUNICATE STATEWIDE REMOVAL

If threshold in step 2 is met, USBE will, within 10 school days:

- publish title(s) to be removed from student access on the USBE Library Media website, and
- notify the LEA-appointed representative.

4

LEAs

## REMOVE MATERIAL FROM STUDENT ACCESS

Each LEA statewide must remove the material from student access. \*LEAs may retain the material until a vote by the state board.

5



## OPTION FOR STATE BOARD REVIEW

Within 30 days of making the statewide removal communication, the state board may place the matter on the agenda of a public board meeting.

6

LEAs

## OUTCOME OF STATE BOARD REVIEW

- If USBE votes to **overturn**:
  - (i) the statewide removal requirement is no longer applicable
  - (i) LEAs may choose to return the material to student access
  - (iii) does not affect the LEA governing board decisions.
- If USBE does **not overturn** the material remains removed from student access.

# SENSITIVE MATERIALS PROCESS FOR STATE BOARD PUBLIC VOTE

1



## THRESHOLD MET & STATE BOARD COMMUNICATION

Within 10 school days, USBE will address any titles removed by LEAs as “objective sensitive materials” and meeting the following threshold:

- (i) at least three school districts; or
- (ii) at least two school districts and five charter schools

by

- notifying the LEA-appointed representative,
- publishing the title(s) to be removed from student access on the USBE Library Media website, and
- may place the titles on a state board agenda.

2



## STATE BOARD VOTE

During the specified state board meeting, the state board may vote on any titles that have met the threshold.

3



## OUTCOME OF STATE BOARD VOTE

- If board votes to overturn the statewide removal, the statewide removal no longer applies.
  - LEAs may choose to return given material to student access
- If board votes to uphold the statewide removal, the statewide removal the statewide removal stays in effect.

# SENSITIVE MATERIALS LEGISLATIVE COMPARISON

## H.B. 374 (2022)

## H.B. 29 (2024)

### Definitions

#### Sensitive Materials

means an instructional material that is pornographic or indecent material as that term is defined in Section [76-10-1235](#). [\(147-148\)](#)

**Instructional Material** does not mean exclusively library materials. [\(35-41\)](#)

**Sensitive Materials** is instructional material that contain objective or subjective sensitive materials. [\(67-78\)](#)

#### Objective Sensitive Materials

any instructional material deemed pornographic or indecent under statute [§ 76-10-1227\(1\)\(a\)\(i\), \(ii\), or \(iii\)](#), violating the “bright line”. [\(65-67\)](#)

#### Subjective Sensitive Materials

any instructional material deemed pornographic or indecent under statute [§ 76-10-1235](#). Does not violate the “bright line” but, when taken as a whole, is deemed to have no serious literary, artistic, political, or scientific value. [\(94-100\)](#)

### LEA Requirements

Include parents who are reflective of the members of the school's community when determining if material is sensitive. [\(160-161\)](#)

Report to the state board any challenges prior to the November 2022 Education Interim Committee. [\(166-168\)](#)

#### Revise policies and processes to ensure compliance with statute:

- **The policy must:**
  - include a review process to determine if material is objective or subjective sensitive material and restrict access accordingly. [\(116-164\)](#)
  - require immediate removal of material from student access if the LEA finds a plausible claim that material may be sensitive. [\(122-126\)](#)
  - allow the following individuals to initiate a Sensitive Materials review
    - employee of the relevant LEA
    - student enrolled in the relevant LEA
    - parent of a child enrolled in the relevant LEA
    - member of the relevant LEA governing board [\(101-106\)](#)
  - prevent an individual from initiating more than three unsuccessful sensitive material challenges in any given school year. [\(107-114\)](#)
  - include an appeal process to the LEA governing board [\(147-154\)](#)
  - not prevent the LEA from:
    - revisiting a previous decision
    - reviewing a recommendation, or
    - reconsidering material if LEA governing board receives additional information. [\(155-161\)](#)
  - include a process for LEAs to report all sensitive material allegations, rationales, and determinations to the state board. [\(145-146\)](#)

### USBE Requirements

- Provide guidance and training. [\(163-165\)](#)
- Report any complaints an LEA or the state board receives regarding a violation [\(172-176\)](#)
- Report to the Education Interim Committee and the Government Operations Interim Committee, at or before the November 2022 interim meeting. [\(166-168\)](#)

- Provide guidance and training [\(196-199\)](#)
- Aggregate LEA allegations, determinations and rationale [\(170-171\)](#)
- Communicate, within 10 days, when threshold is met [\(172-175\)](#)
- Place titles on public board meeting agenda for state board to vote on retaining materials. [\(179-181\)](#)
- **Annually** report to the Education Interim Committee and the Government Operations Interim Committee, at or before the November interim meeting on implementation and compliance with this section [\(203-217\)](#)
- Establish a process (R277-123-6) through which an individual described may report to the state board an allegation that an LEA is out of compliance. [\(200-202\)](#)