I. Sensitive Materials Model Policy - Authorization, Purpose, Training, and Definitions

AUTHORIZATION

This model policy is authorized in part by and consistent with §53G-10-103, Sensitive Materials in Schools and is aligned with the Utah Attorney General Official Memorandum—Laws Surrounding School Libraries, which states “[t]he Board must create model policies consistent with such [state] statutes [and] in turn, LEAs must follow such policies to comply with state statutes.”

This model policy is also consistent with R277-217-2(16)(17)(18)(19) Educator Standards and LEA Reporting, stating an educator may not:

• Knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;
• Use school equipment to intentionally view, create, distribute, or store pornographic or indecent material in any form;
• Knowingly use, view, create, distribute, or store pornographic or indecent material involving children;
• Expose students to material the educator knows or should have known to be inappropriate given the age and maturity of the students.

PURPOSE

The purpose of this model policy is to specify the process of identifying materials to be disqualified from use in school settings based on §53G-10-103 Sensitive Materials in Schools and R277-217 Educator Standards and LEA Reporting. The State Board adopts this model policy in anticipation of a State Board Rule specific to Sensitive Materials which shall implement this model policy in compliance with §53G-10-103 and the Utah Attorney General Official Memorandum—Laws Surrounding School Libraries. Adoption of this model policy, per the Office of the Attorney General, “will help protect the LEAs from potential lawsuits brought by parents or groups alleging the school failed to comply with state laws.”

TRAINING

The State Board is responsible for providing guidance and training to support public schools in identifying sensitive materials. Administrators shall ensure that educators comply with this model policy and the appended documents, which shall serve as the focus of the training, vetting, and reviewing of sensitive materials:

• Appendix A: Sensitive Materials Rubric
• Appendix B: Definitions and References
• Appendix C: Sensitive Materials Complaint Form
• Appendix D: USBE Sensitive Materials Upload Tracker
DEFINITIONS

“Sensitive Material” means an instructional material that is pornographic or indecent material as that term is defined in Criminal Code Section §76-10-1235 (UT Code §53G-10-103).

“Educator” as used in this model policy means the same as defined in §53F-2-405.

“School setting” means for a public school: in a classroom; in a school library; or on school property. It includes the following activities that an organization or individual or organization outside of a public school conducts, if a public school or an LEA sponsors or requires the activity: an assembly; a guest lecture; a live presentation; or an event.

“Instructional material” means a material, regardless of format, used: as or in place of textbooks to deliver curriculum with in the state curriculum framework for courses of study by students; or to support a student’s learning in the school setting. It includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.

See Appendix B: Definitions and References for definitions specific to the vetting and reviewing of Sensitive Materials.

II. Communication

1. An LEA:
   a. Shall adopt this model policy and use the State Board-approved and included appendices.
   b. Shall communicate clearly on material policies and procedures with patrons.
   c. Shall inform teachers, staff, and parents through an easily accessible public LEA website as well as through email and printed mail prior to the beginning of each school year of the following:
      i. Materials shall be vetted and reviewed for compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19);
      ii. Materials shall be vetted prior to use and as needed per a sensitive materials complaint; and
      iii. Links to:
          1. This model policy;
          3. The USBE Sensitive Materials Upload Tracker;
          4. The Sensitive Materials in Schools Rule (pending rule creation);
          5. Appendix A: Sensitive Materials Rubric;
          6. Appendix B: Definitions and References; and
          7. Appendix C: Sensitive Materials Complaint Form.
   iv. Instructions on how to:
      1. Use the USBE Sensitive Materials Upload Tracker;
      2. Submit a complaint through the Tracker; and
      3. Volunteer to serve on a sensitive materials complaint hearing committee.
d. Shall require an educator, school or LEA employee, or LEA board member to take prompt and appropriate action to protect a student from any known condition detrimental to the student’s physical health, mental health, safety, or learning, in accordance with R277-217-3(4), if made aware of material that may be considered sensitive material as defined in §53G-10-103 and R277-217-2(16)(17)(18)(19). “Prompt and appropriate action” for the purposes of this model policy means the educator is required to file a sensitive materials complaint with the LEA.

e. Shall require, in the event of a student bringing potentially sensitive material to the attention of an educator, school or LEA employee, or LEA board member, that that individual promptly notify the student’s parent of the incident.

## III. Vetting

### 1. Existing materials

a. LEAs shall immediately develop a systematic process and timeframe for schools to review all existing materials, including when this model policy goes into effect. An LEA shall submit its process and timeframe to the State Board no later than September 15, 2022.

b. An employee of the school shall vet all existing materials, regardless of format, using this policy and Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References.

c. Existing materials deemed sensitive and designated for removal:

i. A record of all existing sensitive materials which have been vetted and designated for removal based on Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References and shall be promptly uploaded to the USBE Sensitive Materials Upload Tracker (see Appendix D).

ii. Hard copy sensitive materials shall be physically removed and blocked from being reintroduced into the school setting, and shall be returned to the vendor, publisher, or donor if possible.

iii. Non-returnable hard copy sensitive materials shall be delivered to the State Board.

iv. Schools shall promptly remove sensitive materials, in any form, including digital content, to be permanently removed, not to be reintroduced into the school setting.

### 2. Incoming materials

a. An employee of the school shall vet all incoming materials, regardless of format, using this policy and Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References.

b. Incoming materials deemed sensitive and designated for removal:

i. A record of all incoming sensitive materials which have been vetted and designated for removal shall be promptly uploaded to the USBE Sensitive Materials Upload Tracker (see Appendix D).
158  ii. Hard copy sensitive materials shall be physically removed and blocked from being 159 reintroduced into the school setting, and shall be returned to the vendor, publisher, 160 or donor if possible. 161  
i. Non-returnable hard copy sensitive materials shall be delivered to the State Board. 162  
iv. Schools shall promptly remove sensitive materials, in any form, including digital 163 content and live presentation, to be permanently removed, not to be reintroduced 164 into the school setting. 165  
v. A school is required to vet beforehand any live presentation for compliance with 166 this policy and Appendix A: Sensitive Materials Rubric and Appendix B: Definitions 167 and References. 168  
IV. Complaints 169  
1. An LEA shall, regarding students: 170 a. Require that an educator, school or LEA employee, or LEA board member take prompt 171 and appropriate action to protect a student from any known condition detrimental to 172 the student's physical health, mental health, safety, or learning, in accordance with 173 R277-217-3(4), if made aware of material that may be considered sensitive material as 174 defined in §53G-10-103 and R277-217-2(16)(17)(18)(19). “Prompt and appropriate 175 action” for the purposes of this model policy means the educator is required to file a 176 sensitive materials complaint with the LEA. 177 b. If a student brings potentially sensitive material to the attention of an educator, school 178 or LEA employee, or LEA board member, that individual shall notify the student’s parent 179 of the incident. 180 c. Permit students to bring the presence of sensitive material in schools to the attention of 181 parents, educators, administrators, and other school employees who shall submit a 182 complaint. 183 d. Not permit students to participate in sensitive materials vetting or the complaint 184 process, be a member of the hearing committee, or attend a hearing. 185 e. During a complaint process, students are restricted from viewing or obtaining materials. 186 
2. An LEA shall, upon the receipt of a sensitive materials complaint submission (hereafter referred 187 to as a “complaint”): 188 a. Respond to a USBE-generated notification of complaint by: 189 i. Honoring the confidentiality of the complaint submitter. 190 
ii. Withholding access to all available copies of the materials which are the 191 subject of a complaint in all schools within the LEA until resolution of the 192 complaint process, at which point the material is either retained or removed 193 from all schools in the LEA. 194 
iii. Prioritizing the review of any materials which are the subject of a complaint and 195 ensure the complaint process includes a hearing and decision. 196 
iv. Forming a hearing committee which includes parent or grandparent volunteers 197 who: 198 1. Have students in the district; 199 2. Who are not employees of the LEA; and
3. Who have no educational organizational affiliation beyond the school level.

   v. Notifying the submitter of a complaint by phone and email of the time, date, and location of a complaint hearing a minimum of 10 days in advance; and

   vi. Notifying all LEA parents by email of the time, date, and location of a complaint hearing a minimum of 7 days in advance.

b. Conduct a hearing open to the public in which:

   i. A recording of the hearing is made. "Recording" means an audio and video record of the hearing for the purpose of reviewing the proceedings of the hearing in the event of an appeal.

   ii. Any submitted public comment pertaining to the hearing shall be retained by the LEA as part of the permanent hearing record. Public comment must be submitted 48 hours in advance to be added to the hearing record.

   iii. Patrons and educators shall be given adequate time at the beginning of the hearing to provide examples of how the materials violate the intent and provisions of §53G-10-103 and R277-217-2(16)(17)(18)(19) (see Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References).

   iv. The public may remain until conclusion of the hearing to listen to and observe the hearing committee’s deliberations and decision.


c. Refer the complainant to the USBE Sensitive Materials appeals process (Section IV. Appeals) in the event of the hearing committee ruling to retain the material (see Appendix D: USBE Sensitive Materials Upload Tracker).

3. Sensitive materials designated for removal at the conclusion of an LEA complaint and hearing process:

   a. The LEA shall promptly record the sensitive material’s updated status to the USBE Sensitive Materials Upload Tracker (see Appendix D).

   b. Hard copy sensitive materials shall be physically removed and blocked from being reintroduced into the school setting throughout the LEA, and shall be returned to the vendor, publisher, or donor if possible.

   c. Non-returnable hard copy sensitive materials shall be delivered to the State Board.

   d. The LEA shall promptly report in the USBE Sensitive Materials Upload Tracker that those sensitive materials, in any form, including digital content or live presentation, have been removed throughout the LEA, not to be reintroduced into the school setting.

V. Appeals

1. A complainant, upon being informed by the LEA of the USBE Sensitive Materials appeals process, has 14 days to file an appeal of the decision of complaint hearing through the USBE Sensitive Materials Upload Tracker (see Appendix D).

2. The State Board shall accept an appeal of an LEA’s hearing decision.

3. The State Board shall meet within 45 days of receiving an appeal to issue a final decision on the appeal.
4. The State Board shall issue a final decision on retention or removal of a material deemed sensitive in strict compliance with §53G-10-103, R277-217-2(16)(17)(18)(19), Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References. Multiple appeals may be addressed at the same time by the State Board.

5. Sensitive materials designated for removal at the conclusion of a State Board appeal process:
   a. The USBE shall promptly record the material’s final status to the USBE Sensitive Materials Upload Tracker (see Appendix D).
   b. The USBE shall send an electronic notification to LEAs statewide of the final status of a sensitive materials appeal and required actions to take.
   c. Hard copy sensitive materials shall be physically removed and blocked from being reintroduced into school settings statewide, and shall be returned to the vendor, publisher, or donor if possible.
   d. Non-returnable hard copy sensitive materials shall be delivered to the State Board.
   e. The USBE shall require LEAs statewide to promptly report in the USBE Sensitive Materials Upload Tracker that those sensitive materials, in any form, including digital content or live presentation, have been removed throughout the LEA, not to be reintroduced into the school setting.

VI. Compliance

1. LEAs shall immediately develop a systematic process and timeframe for reviewing all existing and incoming school materials (hard copy and digital) using Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References to ensure prompt compliance with this model policy and §53G-10-103, and R277-217-2(16)(17)(18)(19).

2. An LEA shall submit this process and timeframe to the State Board for review and approval by September 15, 2022.

3. Vendors, providers, partnerships, volunteers, groups, individuals, etc., shall comply with the terms of this policy in any contracts, arrangements, programs, apps, or services with schools or LEAs.

4. In the event of an appeal, the State Board shall, or direct an LEA to, discontinue any contract, arrangement, program, app, or service with a vendor, provider, partnership, volunteer, group, individual, etc. who has been found by the Board to repeatedly facilitate or make available materials deemed sensitive within a school setting.

VII. Complainant Protection

1. A complainant or student involved in a complaint shall not be retaliated against, threatened, intimidated, or otherwise treated adversely for any involvement in a complaint.

2. An individual’s prerogative to submit complaints shall not be limited in number as long as the complainant submits specific examples of what could reasonably be deemed sensitive materials based on §53G-10-103, Appendix A: Sensitive Materials Rubric, and Appendix B: Definitions and References.

3. An individual’s sensitive materials complaint may additionally address specific concerns that correlate with a potential violation of R277-217-2(16)(17)(18)(19) or the complaint process.
APPENDIX A: SENSITIVE MATERIALS RUBRIC

UT CODES 53G-10-103 AND 76-10-1235
PROHIBIT ALL SENSITIVE MATERIAL IN THE SCHOOL SETTING

All materials in the school setting shall be vetted and reviewed using the Sensitive Materials Rubric to ensure compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19). The following processes, as applicable, shall be used if Sensitive Material is suspected by any administrator, educator, support/volunteer staff, or if a patron submits a Sensitive Materials complaint.

Determination Process

START HERE

Does the material contain “sensitive material” as defined by §53G-10-103 and §76-10-1235?

- Or -

Does the material, regardless of format, contain pornographic or indecent material as defined in §76-10-1235?

- Or -

Does the material, regardless of format, contain any *description or depiction of illicit sex, sexual immorality or nude or partially denuded figures? §76-10-1227

*A description or depiction of illicit sex or sexual immorality as defined in §76-10-1227 Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors. (§76-10-1227 (2)(c))

Exemptions shall adhere to §53G-10-402, §53G-10-403 and Board rule R277-474 including:
Opt-in parental consent for sex education instruction required in §53G-10-403;
Legal prohibitions §53G-10-402(b);
State or federal criminal law as provided in §53G-10-402;
Educator legal provisions in §53G-10-402(2)(a) and (5)

EXEMPTIONS
Is the material:
Selected under §53G-10-402;
For medical courses;
For Family & Consumer Science courses;
Or for another course exempted by State Board Rule (per §53G-10-103)

Submit findings to the USBE Sensitive Materials Upload Tracker for reference

Follow instructions for sensitive material removal in model policy Section V. Appeals (5)(a)(b)(c)(d)(e)

Follow instructions for sensitive material removal in model policy Section III. Vetting (1)(c)(i)(ii)(iii)(iv) and (2)(a)(b)(i)(ii)(iii)(iv)(v)

Follow instructions for sensitive material removal in model policy Section IV. Complaints (3)(a)(b)(c)(d)

No (school level)

NO (school level)

NO (LEA level)

NO (USBE level)

Retain material and document findings for reference
### APPENDIX A (CONTINUED):
#### COMPLAINT PROCESS

**LEAs shall:**

1. Communicate the intent and content of the Sensitive Materials policy, including instructions on filing complaints, with all patrons, teachers, staff, and parents via LEA website, email, and printed mail prior to the beginning of each school year.

2. Develop a systematic process and timeframe for vetting all school materials (physical and digital) using Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References to ensure compliance with §53G-10-103 and R277-217-3(4).

3. On the USBE Sensitive Materials Upload Tracker, upload records of all required information for all material complaints.

4. Create a hearing committee that includes parent or grandparent volunteers (not to include students).


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#### Sensitive Materials Review Process

**See Model Policy Sections III, IV, & V**

**Vetting Process**

- A school employee identifies materials that may be sensitive in nature
  - The employee vets the material in accordance with this model policy, Appendix A: Sensitive Materials Rubric, and Appendix B: Definitions and References
  - The school removes all available forms of the material deemed sensitive from the school setting

**Appeals Process**

- A complainant files an appeal in the USBE Sensitive Materials Upload Tracker within 14 days of an LEA complaint hearing decision
  - The State Board meets within 45 days of an appeal and issues a final decision on retention or removal of material in compliance with this policy and Appendix A: Sensitive Materials Rubric and Appendix B: Definitions and References
  - The Board’s final decision on the complaint is updated in the USBE Sensitive Materials Upload Tracker

If material is deemed sensitive by the Board, LEAs shall promptly remove all available forms of it from school settings statewide and report removal to the USBE Sensitive Materials Upload Tracker

**Complaint Process**

- Parent, educator, or other party in the LEA files a complaint through the USBE Sensitive Materials Upload Tracker
  - The LEA notifies LEA of complaint
  - The LEA withholds access to all available copies of the material until resolution process is completed
  - The LEA honours the confidentiality of the complainant
  - The LEA notifies the submitter of a complaint by phone and email with time, date, and location of a hearing a minimum of 10 days in advance, and the public 7 days in advance
  - The LEA assigns the complaint case number(s) to the hearing committee, which includes parents or grandparents (not students or minors)
  - The LEA conducts an open public hearing (no students present)

Patrons and educators shall be given adequate time at the beginning of the hearing to provide examples of how the materials violate the laws referenced in this policy, and the public may remain until the conclusion of the hearing

The hearing committee shall review the material in accordance with this policy, Appendix A: Sensitive Materials Rubric, Appendix B: Definitions and References and render a decision to retain or remove

The LEA refers the complainant to the USBE Sensitive Materials appeals process in the event the material is retained

The LEA updates the record of complaint with the decision of the hearing committee to retain or remove material in the USBE Sensitive Materials Upload Tracker, and include the recording and all other supporting documentation

The LEA shall remove all available forms of the material deemed sensitive from the school setting
<table>
<thead>
<tr>
<th>Section</th>
<th>Definition</th>
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<tbody>
<tr>
<td>76-10-1201(10)</td>
<td><strong>Nudity</strong>&lt;br&gt;Showing of male genitals with less than an opaque covering</td>
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<td></td>
<td>Showing of genitals with less than an opaque covering</td>
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<tr>
<td></td>
<td>Showing of pubic area with less than an opaque covering</td>
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<td>Showing of buttocks with less than an opaque covering</td>
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<td></td>
<td>Showing of female breast(s) with less than an opaque covering</td>
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<td>Showing of the female breast below the top of the areola</td>
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<td></td>
<td>the depiction of covered male genitals in a discernibly turgid state</td>
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<tr>
<td>76-10-1201(13)</td>
<td><strong>Sadomasochistic abuse</strong>&lt;br&gt;condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed</td>
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<tr>
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<td>flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume</td>
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<tr>
<td>76-10-1201(14)</td>
<td><strong>Sexual Conduct</strong>&lt;br&gt;sexual intercourse whether alone or between members of the same or opposite sex between humans and animals in an act of apparent or actual sexual stimulation or gratification</td>
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<td>touching a person’s clothes or unclothed genitals whether alone or between members of the same or opposite sex between humans and animals in an act of apparent or actual sexual stimulation or gratification</td>
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<td></td>
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<td>touching a person’s buttocks whether alone or between members of the same or opposite sex between humans and animals in an act of apparent or actual sexual stimulation or gratification</td>
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<td></td>
<td>touching a female breast whether alone or between members of the same or opposite sex between humans and animals in an act of apparent or actual sexual stimulation or gratification</td>
</tr>
<tr>
<td>76-10-1201(15)</td>
<td><strong>Sexual Excitement</strong>&lt;br&gt;no condition of human male or female genitals when in a state of sexual stimulation or arousal</td>
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<td>no sensual experience of humans engaging in or witnessing sexual conduct or nudity</td>
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<td>76-10-1203 (1)</td>
<td><strong>Pornographic</strong>&lt;br&gt;appeals to prurient interest in sex</td>
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<tr>
<td></td>
<td>description or depiction of nudity</td>
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<td>description or depiction of offensive sexual conduct</td>
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<td></td>
<td>description or depiction of sexual excitement</td>
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<td></td>
<td>description or depiction of sadomasochistic abuse</td>
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<tr>
<td></td>
<td>description or depiction of excretion</td>
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<tr>
<td>76-10-1203. 1 (c) &amp; US §1466A 2 (b)</td>
<td>Does not have serious literary, artistic, political, or scientific value *</td>
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</table>

*As defined in 76-10-1227 (2)(c), a description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i) human genitals in a state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals or pubic region, has no serious value for minors.*
<table>
<thead>
<tr>
<th>Section</th>
<th>Description or depiction of illicit sex or sexual immorality</th>
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<tbody>
<tr>
<td>76-10-1227.1</td>
<td>Indecent public display</td>
</tr>
<tr>
<td>76-10-1227.1 (a)</td>
<td>Illicit sex or sexual immorality</td>
</tr>
<tr>
<td>76-10-1227.1 (b)</td>
<td>Nude or partially denuded figure</td>
</tr>
<tr>
<td>76-10-1227.2 (b)</td>
<td>Serious value</td>
</tr>
</tbody>
</table>

*A description or depiction of illicit sex or sexual immorality has no serious value for minors. 76-10-1227.2(c)*

** A decisionmaker may consider...whether such material has serious value for minors under 1227(b). Serious value does not mean any value...taking into consideration the ages of all minors who could be exposed to material. (AGO Official Memo—Laws Surrounding School Libraries, p.7).

<table>
<thead>
<tr>
<th>Section</th>
<th>Sensitive Material</th>
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<tbody>
<tr>
<td>53G-10-103(1)(g)(i)</td>
<td>means an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235</td>
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<tr>
<th>Section</th>
<th>Educator Standards and LEA Reporting</th>
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<tbody>
<tr>
<td>R277-217-2 (16)(17)(18)(19)</td>
<td>An educator may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;</td>
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</tbody>
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<tr>
<td>R277-217-3(4)</td>
<td>[An educator shall] take prompt and appropriate action to protect a student from any known condition detrimental to the student’s physical health, mental health, safety, or learning.</td>
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<tr>
<th>Section</th>
<th>Book Removal From School Libraries</th>
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<tbody>
<tr>
<td>AGO Official Memo Laws Surrounding School Libraries</td>
<td>Immediately remove books from school libraries that are categorically defined as pornography under state statute.</td>
</tr>
</tbody>
</table>

AND

Further mitigate risk regarding removal decision by engaging in analysis as to any overall value the materials may have that might forestall removal...in good faith.

<table>
<thead>
<tr>
<th>Section</th>
<th>Removal of “pervasively vulgar” books</th>
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Utah Code 76-10-1201. Definitions. [referenced excerpts]
https://le.utah.gov/xcode/Title76/Chapter10/76-10-S1201.html

(10) "Nudity" means:
(a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;
(b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
(c) the depiction of covered male genitals in a discernibly turgid state.

(11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.

(13) "Sadomasochistic abuse" means:
(a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
(b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

(14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

(15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Utah Code 76-10-1203. Pornographic Material or performance.
https://le.utah.gov/xcode/Title76/Chapter10/76-10-S1203.html?v=C76-10-S1203_1800010118000101

(1) Any material or performance is pornographic if:
(a) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
(b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and
(c) Taken as a whole it does not have serious literary, artistic, political or scientific value.

*As defined in 76-10-1227 (2)(c), a description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i) human genitals in a state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals or pubic region, has no serious value for minors.

Complimentary U.S. Code: § 1466A (2)(A) - depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex (2)(B) - lacks serious literary, artistic, political, or scientific value (*Reference UT 76-10-1227 (2)(c))
Utah Code 76-10-1227. Indecent public displays -- Definitions.

(1) For purposes of this section and Section 76-10-1228:

(a) "Description or depiction of illicit sex or sexual immorality" means:

(i) human genitals in a state of sexual stimulation or arousal;

(ii) acts of human masturbation, sexual intercourse, or sodomy;

(iii) fondling or other erotic touching of human genitals or pubic region; or

(iv) fondling or other erotic touching of the human buttock or female breast.

(b) "Nude or partially denuded figure" means:

(i) less than completely and opaquely covering human:

(A) genitals;

(B) pubic regions;

(C) buttock; and

(D) female breast below a point immediately above the top of the areola; and

(ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2)(a) Subject to Subsection (2)(c), this section and Section 76-10-1228 do not apply to any material which, when taken as a whole, has serious value for minors.

(b) As used in Subsection (2)(a), "serious value" means having serious literary, artistic, political, or scientific value for minors, taking into consideration the ages of all minors who could be exposed to the material.

(c) A description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors.

UT Code 53G-10-103. Sensitive instructional materials

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

(A) in a classroom;

(B) in a school library; or

(C) on school property.

(g) (i) "Sensitive material" means an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235.

(ii) "Sensitive material" does not include an instructional material:

(A) that an LEA selects under Section 53G-10-402 (Health Curriculum Requirements - Instruction in health)

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

(b) A public school may not:

(i) adopt, use, distribute, provide a student access to, or maintain in the school setting, sensitive materials; or

(ii) permit a speaker or presenter in the school setting to display or distribute sensitive materials.


An educator may not:

• Knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;

• Use school equipment to intentionally view, create, distribute, or store pornographic or indecent material in any form;
• Knowingly use, view, create, distribute, or store pornographic or indecent material involving children;
• Expose students to material the educator knows or should have known to be inappropriate given the age and maturity of the students.

R277-217-3. Required Conduct for an Educator

(3) take prompt and appropriate action to prevent harassment or discriminatory conduct toward a student or school employee that the educator knew or should have known may result in a hostile, intimidating, abusive, offensive, or oppressive environment;

(4) take prompt and appropriate action to protect a student from any known condition detrimental to the student’s physical health, mental health, safety, or learning;


“In Pico, Justice Brennan emphasized that the constitutionality of removal decisions “depends upon the motivation behind” the library book removals. Id. “[U]nconstitutional motivation would not be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar,” nor if “the removal decision was based solely upon the ‘educational suitability’ of the books in question.” Id. Following this reasoning, decisionmakers motivated to remove a book under a HB 374 challenge in order to protect youth from the public health crisis of pornography likely satisfy Pico’s constitutional motivation analysis. (Bold emphasis added.)

AGO Official Memo—Laws Surrounding School Libraries, (p.9), Conclusion

HB 374 prohibits pornographic or indecent material as defined as harmful to minors in Section 76-10-1201, described as pornographic in Section 76-10-1203, or described in Section 76-10-1227. School library books that meet any of these statutory definitions are prohibited from school libraries. Analysis under these statutory definitions, or strict application of the categorical exclusions in 1227(I)(a)(i), (ii), and (iii), is the way to directly comply with HB 374. To mitigate the risk of legal challenge relating to decisions under Section 1227, LEAs may also analyze the materials as a whole and determine whether the materials have any serious literary, artistic, political, or scientific value. While these are important considerations, nothing should prevent the Board and LEAs from proactively complying with state law in removing pornographic books from library shelves. Any decision to retain books in libraries that meet the definition of pornography is contrary to state statute and significantly increases the likelihood of a lawsuit against the LEA for non-compliance. The AGO will continue to consult with the Board and LEAs regarding analysis and compliance with other facets of HB 374.
Appendix C: Sensitive Materials Complaint Form

Please submit this required information on the USBE Sensitive Materials Upload Tracker at this website address: ________________________________.*

Title:

Author:

School:

Request initiated by:

Telephone:

Address:

City:

Zip:

Email:

1) Are you a resident of the district? Yes No

2) Are you an employee of the district? Yes No

3) Do you have children or grandchildren in the district? Yes No

4) Was this material recommended, assigned, or made available in the school setting and/or by an educator? Please explain.

5) What concerns you about this material? Please provide examples, page numbers, links, images, or any other corroborating information to help in locating or identifying content of concern.

6) Based on Appendix A: Sensitive Materials Rubric or Appendix B: Definitions and References, which are based on UT Code §53G-10-103 and State Board Rule R277-217-2(16)(17)(18)(19), which provisions or definitions of the law does the material violate?

Signature:

Date:

*The status of a complaint may be tracked on USBE Sensitive Materials Upload Tracker. Instructions on how to use the Tracker can be found on the Tracker webpage.
Appendix D: USBE Sensitive Materials Upload Tracker

(TBD – Will include the form fields for the complaint submissions for the tracker as well as the portals for the LEAs and public to track current status of complaints.)