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**SECTION:** I – Instruction  
**POLICY TITLE:** Sensitive Instructional Materials  
**FILE NO.:** II  
**DATED:** September 11, 2024

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**1. PURPOSE AND PHILOSOPHY**

- 1.1. The Board of Education values and prioritizes protecting children from the harmful effects of illicit pornography.
- 1.2. This policy specifies the process and criteria for reviewing instructional materials alleged to be sensitive materials under [UTAH CODE ANN. §53G-10-103](#).

**2. DEFINITIONS**

- 2.1. "Instructional material" means the same as defined in [UTAH CODE ANN. §53G-10-103](#) and is a material, regardless of format, used (1) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or (2) to support a student's learning in the any school setting. Instructional material includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations. Instructional material includes "learning materials" as defined in [Nebo School District Policy IIA, \*Student Instruction and Materials\*](#), and "library materials," as defined in [Nebo School District Policy IIB, \*Library Materials\*](#).
- 2.2. "Objective sensitive material" means the same as defined in [UTAH CODE ANN. §53G-10-103](#) and is an instructional material that constitutes pornographic or indecent material, as that term is defined in [UTAH CODE ANN. § 76-10-1235](#), under the non-discretionary standards described in [UTAH CODE ANN. § 76-10-1227\(1\)\(a\)\(i\), \(ii\), or \(iii\)](#).
- 2.3. "Sensitive material" means the same as defined in [UTAH CODE ANN. §53G-10-103](#) and is an instructional material that constitutes objective sensitive material or subjective sensitive material. Sensitive material does not include an instructional material: (1) selected under [UTAH CODE ANN. § 53G-10-402](#); (2) for a concurrent enrollment course that contains sensitive material and for which a parent receives notice from the course provider of the material before enrollment of the parent's child and gives the parent's consent by enrolling the parent's child; (3) for medical courses; (4) for family and consumer science courses; or (5) for another course the Utah State Board of Education exempts in state board rule.
- 2.4. "Subjective sensitive material" means the same as defined in [UTAH CODE ANN. §53G-10-103](#) and is an instructional material that constitutes pornographic or indecent material, as that term is defined in [UTAH CODE ANN. § 76-10-1235](#), under the following factor-balancing standards: (1) material that is harmful to minors under [UTAH CODE ANN. § 76-10-1201](#); (2) material that is pornographic under [UTAH CODE ANN. § 76-10-1203](#); or (3) material that includes certain fondling or other erotic touching under [UTAH CODE ANN. § 76-10-1227\(1\)\(a\)\(iv\)](#).

### 3. SENSITIVE MATERIAL REVIEW

#### 3.1. Request

- 3.1.1. Except as provided in paragraph 3.1.2, the following individuals may request a sensitive material review.
  - 3.1.1.1. A District employee;
  - 3.1.1.2. A student currently enrolled in a District school or program;
  - 3.1.1.3. A parent of a student currently enrolled in a District school or program;
  - 3.1.1.4. A Board member.
- 3.1.2. Notwithstanding subsection 3.1.1, after an individual makes three unsuccessful challenges during a given academic year, the individual may not trigger a sensitive material review during the remainder of the academic year. An unsuccessful challenge means an allegation that a given instructional material constitutes sensitive material that the District concludes to be erroneous, either on direct review or on appeal to the Board, resulting in the retention of the given instructional material.
- 3.1.3. A request for review must be made using a [form provided by the District](#). If the District uses an electronic form, submitted forms must be accessible to the Associate Superintendent of Curriculum. The requester must provide all information requested on the form, including the requester's complaint or objection to the library material.

#### 3.2. Initial Determination

- 3.2.1. Upon receipt of a request for review, the Associate Superintendent of Curriculum, or designee, assigns at least two members of the Curriculum Department to make an initial determination as to whether the allegation presents a plausible claim that the challenged instructional material constitutes sensitive material, including whether the allegation includes excerpts and other evidence to support the allegation.
- 3.2.2. If the Curriculum Department determines that the allegation presents a plausible claim that the challenged instructional material constitutes sensitive material, the Associate Superintendent of Curriculum shall cause that the challenged material immediately be removed from any school setting that provides student access to it until the District completes a full review of the material.
- 3.2.3. If the Curriculum Department determines that the allegation does not present a plausible claim that the challenged material constitutes sensitive material, the material may be reviewed under applicable procedures outlined in [Nebo School District Policy IIB, Library Materials](#), or [IIA, Student Instruction and Materials](#).

#### 3.3. Objective Sensitive Material Review

- 3.3.1. If a request for review presents a plausible claim under paragraph 3.2.2, the Associate Superintendent of Curriculum shall convene a committee to review the allegations and the challenged instructional material using the objective sensitive material standards.
- 3.3.2. The committee conducting a review under the objective standards must include members of the curriculum department and at least one parent of a District student.
- 3.3.3. If the committee determines that the challenged instructional material constitutes objective sensitive material, the material must remain inaccessible to students in any school setting.

**3.4. Subjective Sensitive Material Review**

- 3.4.1.** If the committee in paragraph 3.3.1 determines that the challenged instructional material does not constitute objective sensitive material, the Associate Superintendent of Curriculum, or designee, shall cause that a committee review the allegations and the challenged instructional material under the subjective sensitive material standards.
- 3.4.2.** The committee conducting a review under the subjective standards must include members of the curriculum department and at least two parents of District students. It may also include employees from elementary and secondary schools such as teachers, counselors, school psychologists, school social workers, and librarians, consistent with the restrictions in subsection 3.5.
- 3.4.3.** During the subjective sensitive material review under paragraph 3.4.1, a school may allow student access to the challenged instructional material if the student's parent gives consent regarding the specific challenged instructional material.
- 3.4.4.** If the committee in 3.4.1 determines that the challenged instructional material constitutes subjective sensitive material, the Associate Superintendent of Curriculum, or designee, shall ensure that the material is inaccessible to students in any school setting, including the termination of the parent consent option described in paragraph 3.4.2.

**3.5. Committee**

- 3.5.1.** The following provisions apply to a committee organized under subsection 3.3 or 3.4.
- 3.5.2.** A committee cannot include a person responsible for the procurement of the challenged material.
- 3.5.3.** A committee cannot include the person who submitted the request for review.
- 3.5.4.** The names and identities of committee members are confidential and shall not appear on any committee report. Names of committee members are classified as private under the Government Records Access and Management Act (GRAMA).
- 3.5.5.** Members of the committee will receive materials to complete the review process, including the following:
  - 3.5.5.1.** access to the complete work;
  - 3.5.5.2.** a copy of the request;
  - 3.5.5.3.** access to this policy
- 3.5.6.** The committee's determination will be by majority vote. A split vote will be indicated on the form. Committee members who disagree with the committee recommendation may include their individual recommendations on the form.
- 3.5.7.** Employees who are required to serve on a committee under subsections 3.3 or 3.4 and who are required to perform committee assignments outside their contract hours shall be compensated for their time.

**4. DISPOSAL OF REMOVED MATERIALS**

- 4.1.** Materials removed under this policy must be disposed of as follows.
  - 4.1.1.** Physical copies of materials must be destroyed. They cannot be sold or distributed.
  - 4.1.2.** Electronic copies of materials must be deleted from servers and databases.

- 4.1.3. The vendor or publisher who provided the materials must be notified that the materials are prohibited

## 5. REPORTING AND STATE THRESHOLDS

- 5.1. The Associate Superintendent of Curriculum shall cause that each allegation under this policy, and the District’s final determination of each allegation, are communicated to the Utah State Board of Education (USBE), in the manner prescribed by the USBE.
- 5.2. Sensitive instructional materials must be removed from student access if statewide thresholds are met and communicated to the District. If the following number of school districts or charter schools determine that a particular instructional material constitutes objective sensitive material, the material must be removed from all student access.
  - 5.2.1. At least three school districts; or
  - 5.2.2. At least two school districts and five charter schools.

## 6. APPEAL

- 6.1. An individual described in subsection 3.1.1 may appeal a committee’s decision regarding a sensitive material review, regardless of whether the District removed or retained the challenged instructional material, to the Board.
- 6.2. The Board shall vote in a public board meeting to decide the outcome of a sensitive material review appeal, clearly identifying the following:
  - 6.2.1. The Board’s rationale for the decision; and
  - 6.2.2. The Board’s determination on each component of the statutory and any additional policy standards the Board uses to reach the board’s conclusions.

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### **EXHIBITS**

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### **REFERENCES**

[Miller v. California, 413 US 15 \(1973\)](#)  
[UTAH CODE ANN. § 53G-4-402](#)  
[UTAH CODE ANN. § 53G-10-103](#)  
[UTAH CODE ANN. § 76-10-1201](#)  
[UTAH CODE ANN. § 76-10-1203](#)  
[UTAH CODE ANN. § 76-10- 1227](#)  
[UTAH CODE ANN. § 76-10-1235](#)  
[UTAH ADMIN. CODE R277-628](#)

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### **FORMS**

[Request for Review of Instruction or Materials \(Online\)](#)

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### **HISTORY**

**Adopted 11 September 2024** – adopted in response to HB 29 (2024); certain provisions moved from policies IIA and IIB.

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