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

4 **AUTHORIZATION**

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

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

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

19 **PURPOSE**

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

28

29 **TRAINING**

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

- 34 • *Appendix A: Sensitive Materials Rubric*
- 35 • *Appendix B: Definitions and References*
- 36 • *Appendix C: Sensitive Materials Complaint Form*
- 37 • *Appendix D: USBE Sensitive Materials Upload Tracker*

38

39 **DEFINITIONS**

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

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

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

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

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

53 **II. Communication**

54 1. An LEA:

- 55 a. Shall adopt this model policy and use the State Board-approved and included
56 appendices.
- 57 b. Shall communicate clearly on material policies and procedures with patrons.
- 58 c. Shall inform teachers, staff, and parents through an easily accessible public LEA website
59 as well as through email and printed mail prior to the beginning of each school year of
60 the following:
- 61 i. Materials shall be vetted and reviewed for compliance with §53G-10-103 and
62 R277-217-2(16)(17)(18)(19);
- 63 ii. Materials shall be vetted prior to use and as needed per a sensitive materials
64 complaint; and
- 65 iii. Links to:
- 66 1. This model policy;
- 67 2. The reference to and text of R277-217-2(16)(17)(18)(19) Educator
68 Standards and LEA Reporting;
- 69 3. The *USBE Sensitive Materials Upload Tracker*;
- 70 4. The Sensitive Materials in Schools Rule (pending rule creation);
- 71 5. *Appendix A: Sensitive Materials Rubric*;
- 72 6. *Appendix B: Definitions and References*; and
- 73 7. *Appendix C: Sensitive Materials Complaint Form*.
- 74 iv. Instructions on how to:
- 75 1. Use the *USBE Sensitive Materials Upload Tracker*;
- 76 2. Submit a complaint through the Tracker; and
- 77 3. Volunteer to serve on a sensitive materials complaint hearing
78 committee.

- 79 d. Shall require an educator, school or LEA employee, or LEA board member to take
80 prompt and appropriate action to protect a student from any known condition
81 detrimental to the student's physical health, mental health, safety, or learning, in
82 accordance with R277-217-3(4), if made aware of material that may be considered
83 sensitive material as defined in §53G-10-103 and R277-217-2(16)(17)(18)(19). "Prompt
84 and appropriate action" for the purposes of this model policy means the educator is
85 required to file a sensitive materials complaint with the LEA.
- 86 e. Shall require, in the event of a student bringing potentially sensitive material to the
87 attention of an educator, school or LEA employee, or LEA board member, that that
88 individual promptly notify the student's parent of the incident.
89

90 III. Vetting

91 1. Existing materials

- 92 a. LEAs shall immediately develop a systematic process and timeframe for schools to review
93 all existing materials, including when this model policy goes into effect. An LEA shall submit
94 its process and timeframe to the State Board no later than September 15, 2022.
- 95 b. An employee of the school shall vet all existing materials, regardless of format, using this
96 policy and *Appendix A: Sensitive Materials Rubric* and *Appendix B: Definitions and*
97 *References*.
- 98 c. Existing materials deemed sensitive and designated for removal:
- 99 i. A record of all existing sensitive materials which have been vetted and designated
100 for removal based on *Appendix A: Sensitive Materials Rubric* and *Appendix B:*
101 *Definitions and References* and shall be promptly uploaded to the *USB E Sensitive*
102 *Materials Upload Tracker* (see *Appendix D*).
- 103 ii. Hard copy sensitive materials shall be physically removed and blocked from being
104 reintroduced into the school setting, and shall be returned to the vendor, publisher,
105 or donor if possible.
- 106 iii. Non-returnable hard copy sensitive materials shall be delivered to the State Board.
- 107 iv. Schools shall promptly remove sensitive materials, in any form, including digital
108 content, to be permanently removed, not to be reintroduced into the school setting.
109

110 2. Incoming materials

- 111 a. An employee of the school shall vet all incoming materials, regardless of format, using this
112 policy and *Appendix A: Sensitive Materials Rubric* and *Appendix B: Definitions and*
113 *References*.
- 114 b. Incoming materials deemed sensitive and designated for removal:
- 115 i. A record of all incoming sensitive materials which have been vetted and designated
116 for removal shall be promptly uploaded to the *USB E Sensitive Materials Upload*
117 *Tracker* (see *Appendix D*).

- 118 ii. Hard copy sensitive materials shall be physically removed and blocked from being
119 reintroduced into the school setting, and shall be returned to the vendor, publisher,
120 or donor if possible.
- 121 iii. Non-returnable hard copy sensitive materials shall be delivered to the State Board.
- 122 iv. Schools shall promptly remove sensitive materials, in any form, including digital
123 content and live presentation, to be permanently removed, not to be reintroduced
124 into the school setting.
- 125 v. A school is required to vet beforehand any live presentation for compliance with
126 this policy and *Appendix A: Sensitive Materials Rubric* and *Appendix B: Definitions*
127 *and References*.

128 IV. Complaints

- 129 1. An LEA shall, regarding students:
- 130 a. Require that an educator, school or LEA employee, or LEA board member take prompt
131 and appropriate action to protect a student from any known condition detrimental to
132 the student's physical health, mental health, safety, or learning, in accordance with
133 R277-217-3(4), if made aware of material that may be considered sensitive material as
134 defined in §53G-10-103 and R277-217-2(16)(17)(18)(19). "Prompt and appropriate
135 action" for the purposes of this model policy means the educator is required to file a
136 sensitive materials complaint with the LEA.
- 137 b. If a student brings potentially sensitive material to the attention of an educator, school
138 or LEA employee, or LEA board member, that individual shall notify the student's parent
139 of the incident.
- 140 c. Permit students to bring the presence of sensitive material in schools to the attention of
141 parents, educators, administrators, and other school employees who shall submit a
142 complaint.
- 143 d. Not permit students to participate in sensitive materials vetting or the complaint
144 process, be a member of the hearing committee, or attend a hearing.
- 145 e. During a complaint process, students are restricted from viewing or obtaining materials.
- 146 2. An LEA shall, upon the receipt of a sensitive materials complaint submission (hereafter referred
147 to as a "complaint"):
- 148 a. Respond to a USBE-generated notification of complaint by:
- 149 i. Honoring the confidentiality of the complaint submitter.
- 150 ii. **Withholding access to all available copies of the materials which are the**
151 **subject of a complaint in all schools within the LEA until resolution of the**
152 **complaint process, at which point the material is either retained or removed**
153 **from all schools in the LEA.**
- 154 iii. Prioritizing the review of any materials which are the subject of a complaint and
155 ensure the complaint process includes a hearing and decision.
- 156 iv. Forming a hearing committee which includes parent or grandparent volunteers
157 who:
- 158 1. Have students in the district;
- 159 2. Who are not employees of the LEA; and

- 160 3. Who have no educational organizational affiliation beyond the school
161 level.
- 162 v. Notifying the submitter of a complaint by phone and email of the time, date,
163 and location of a complaint hearing a minimum of 10 days in advance; and
164 vi. Notifying all LEA parents by email of the time, date, and location of a complaint
165 hearing a minimum of 7 days in advance.
- 166 b. Conduct a hearing open to the public in which:
- 167 i. A recording of the hearing is made. "Recording" means an audio and video
168 record of the hearing for the purpose of reviewing the proceedings of the
169 hearing in the event of an appeal.
- 170 ii. Any submitted public comment pertaining to the hearing shall be retained by
171 the LEA as part of the permanent hearing record. Public comment must be
172 submitted 48 hours in advance to be added to the hearing record.
- 173 iii. Patrons and educators shall be given adequate time at the beginning of the
174 hearing to provide examples of how the materials violate the intent and
175 provisions of §53G-10-103 and R277-217-2(16)(17)(18)(19) (see *Appendix A:*
176 *Sensitive Materials Rubric* and *Appendix B: Definitions and References*).
- 177 iv. The public may remain until conclusion of the hearing to listen to and observe
178 the hearing committee's deliberations and decision.
- 179 v. The hearing committee's decision shall comply with §53G-10-103 and R277-217-
180 2(16)(17)(18)(19) (see *Appendix A: Sensitive Materials Rubric* and *Appendix B:*
181 *Definitions and References*).
- 182 c. Refer the complainant to the USBE Sensitive Materials appeals process (**Section IV.**
183 **Appeals**) in the event of the hearing committee ruling to retain the material (see
184 *Appendix D: USBE Sensitive Materials Upload Tracker*).
- 185 3. Sensitive materials designated for removal at the conclusion of an **LEA complaint and hearing**
186 **process:**
- 187 a. The LEA shall promptly record the sensitive material's updated status to the *USBE*
188 *Sensitive Materials Upload Tracker* (see *Appendix D*).
- 189 b. Hard copy sensitive materials shall be physically removed and blocked from being
190 reintroduced into the school setting throughout the LEA, and shall be returned to the
191 vendor, publisher, or donor if possible.
- 192 c. Non-returnable hard copy sensitive materials shall be delivered to the State Board.
- 193 d. The LEA shall promptly report in the *USBE Sensitive Materials Upload Tracker* that those
194 sensitive materials, in any form, including digital content or live presentation, have been
195 removed throughout the LEA, not to be reintroduced into the school setting.

196 V. Appeals

- 197 1. A complainant, upon being informed by the LEA of the USBE Sensitive Materials appeals process,
198 has 14 days to file an appeal of the decision of complaint hearing through the USBE Sensitive
199 Materials Upload Tracker (see Appendix D).
- 200 2. The State Board shall accept an appeal of an LEA's hearing decision.
- 201 3. The State Board shall meet within 45 days of receiving an appeal to issue a final decision on the
202 appeal.

- 203 4. The State Board shall issue a final decision on retention or removal of a material deemed
204 sensitive in strict compliance with §53G-10-103, R277-217-2(16)(17)(18)(19), *Appendix A:*
205 *Sensitive Materials Rubric* and *Appendix B: Definitions and References*. Multiple appeals may be
206 addressed at the same time by the State Board.
- 207 5. Sensitive materials designated for removal at the conclusion of a **State Board appeal process**:
208 a. The USBE shall promptly record the material’s final status to the *USBE Sensitive*
209 *Materials Upload Tracker* (see *Appendix D*).
- 210 b. The USBE shall send an electronic notification to LEAs statewide of the final status of a
211 sensitive materials appeal and required actions to take.
- 212 c. Hard copy sensitive materials shall be physically removed and blocked from being
213 reintroduced into school settings statewide, and shall be returned to the vendor,
214 publisher, or donor if possible.
- 215 d. Non-returnable hard copy sensitive materials shall be delivered to the State Board.
- 216 e. The USBE shall require LEAs statewide to promptly report in the *USBE Sensitive*
217 *Materials Upload Tracker* that those sensitive materials, in any form, including digital
218 content or live presentation, have been removed throughout the LEA, not to be
219 reintroduced into the school setting.

220 VI. Compliance

- 221 1. LEAs shall immediately develop a systematic process and timeframe for reviewing all existing
222 and incoming school materials (hard copy and digital) using *Appendix A: Sensitive Materials*
223 *Rubric* and *Appendix B: Definitions and References* to ensure prompt compliance with this model
224 policy and §53G-10-103, and R277-217-2(16)(17)(18)(19).
- 225 2. An LEA shall submit this process and timeframe to the State Board for review and approval by
226 September 15, 2022.
- 227 3. Vendors, providers, partnerships, volunteers, groups, individuals, etc., shall comply with the
228 terms of this policy in any contracts, arrangements, programs, apps, or services with schools or
229 LEAs.
- 230 4. In the event of an appeal, the State Board shall, or direct an LEA to, discontinue any contract,
231 arrangement, program, app, or service with a vendor, provider, partnership, volunteer, group,
232 individual, etc. who has been found by the Board to repeatedly facilitate or make available
233 materials deemed sensitive within a school setting.

234 VII. Complainant Protection

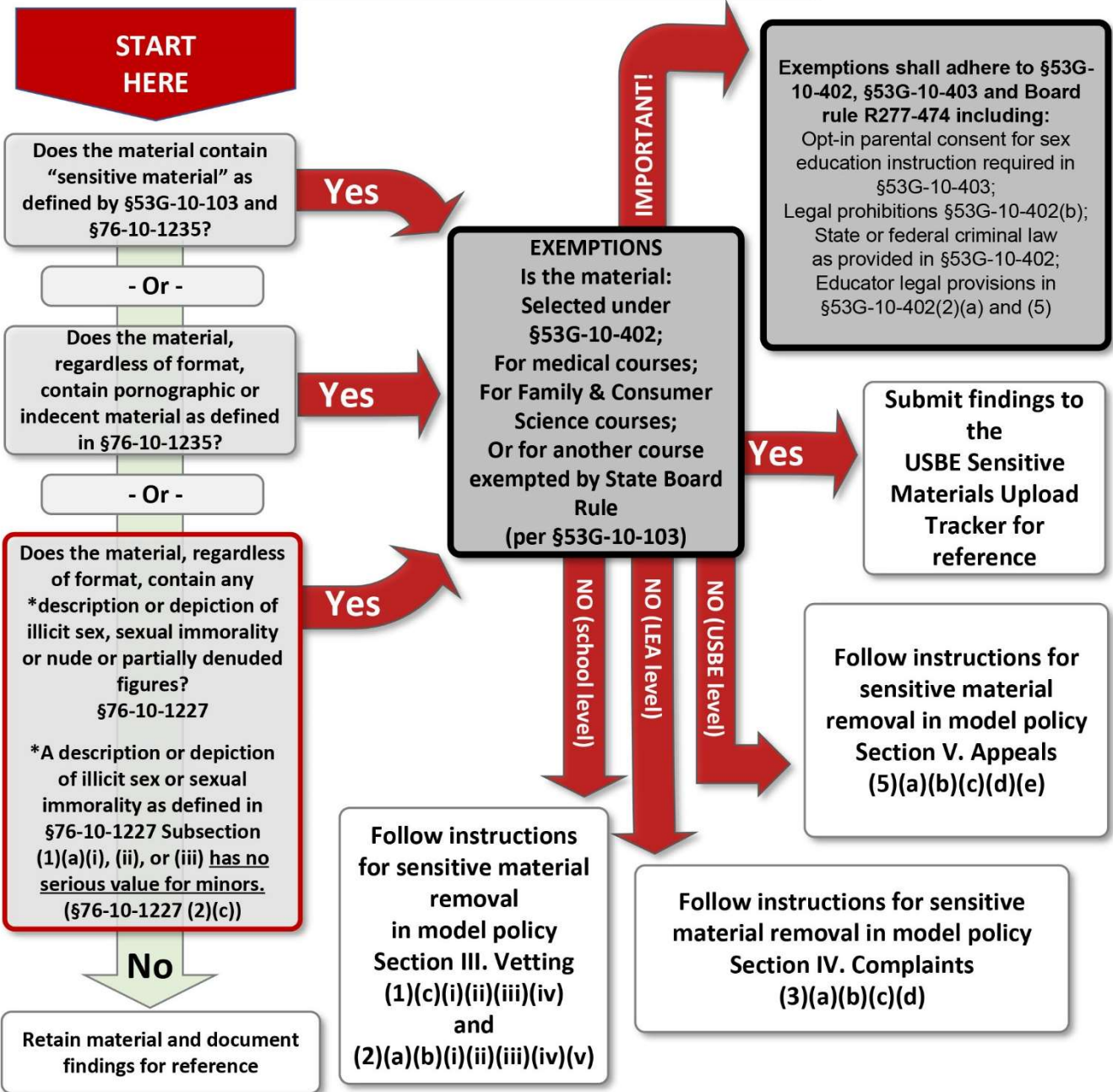
- 235 1. A complainant or student involved in a complaint shall not be retaliated against, threatened,
236 intimidated, or otherwise treated adversely for any involvement in a complaint.
- 237 2. An individual’s prerogative to submit complaints shall not be limited in number as long as the
238 complainant submits specific examples of what could reasonably be deemed sensitive materials
239 based on §53G-10-103, *Appendix A: Sensitive Materials Rubric*, and *Appendix B: Definitions and*
240 *References*.
- 241 3. An individual’s sensitive materials complaint may additionally address specific concerns that
242 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



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).
5. Continue to vet materials in compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19).

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

Upload record of any removed materials to the USBE Sensitive Materials Upload Tracker

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

USBE notifies LEA of complaint

The LEA withholds access to all available copies of the material until resolution process is completed

The LEA honors 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

Appendix B: Definitions and References

76-10-1201(10)	Nudity	Showing of male genitals with less than an opaque covering
		Showing of genitals with less than an opaque covering
		Showing of pubic area with less than an opaque covering
		Showing of buttocks with less than an opaque covering
		Showing of female breast(s) with less than an opaque covering
		Showing of the female breast below the top of the areola
76-10-1201(13)	Sadomasochistic abuse	condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed
		flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume
76-10-1201(14)	Sexual Conduct	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
		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
		touching a person's pubic area 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
		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
		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
76-10-1201(15)	Sexual Excitement	no condition of human male or female genitals when in a state of sexual stimulation or arousal
		no sensual experience of humans engaging in or witnessing sexual conduct or nudity
76-10-1203 (1)	Pornographic	appeals to prurient interest in sex
		description or depiction of nudity
		description or depiction of offensive sexual conduct
		description or depiction of sexual excitement
		description or depiction of sadomasochistic abuse
		description or depiction of excretion
76-10-1203. 1 (c) & US §1466A 2 (b)		Does not have serious literary, artistic, political, or scientific value *
<p>*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.</p>		

76-10-1227. 1	Indecent public display	Description or depiction of illicit sex or sexual immorality
		Nude or partially denuded figure
76-10-1227. 1 (a)	Illicit sex or sexual immorality	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*
		fondling or other erotic touching of the human buttock or female breast
*A description or depiction of illicit sex or sexual immorality has no serious value for minors. 76-10-1227.2(c)		
76-10-1227. 1 (b)	Nude or partially denuded figure	a less than completely covering human genitals, pubic regions, buttock, female breast below a point immediately above the top of the areola
		human male genitals in a discernibly turgid state, even if completely and opaquely covered
76-10-1227. 2 (b)	Serious value	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 (Subject to 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).		
53G-10-103(1)(g)(i)	Sensitive Material	means an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235
R277-217-2 (16)(17)(18)(19)	Educator Standards and LEA Reporting	An educator may not knowingly possess, while at school or any school-related activity, any pornographic or indecent material in any form;
		An educator may not use school equipment to intentionally view, create, distribute, or store pornographic or indecent material in any form;
		An educator may not knowingly use, view, create, distribute, or store pornographic or indecent material involving children; or
		An educator may not 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(4)	Educator Standards and LEA Reporting	[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.
AGO Official Memo Laws Surrounding School Libraries	Book Removal From School Libraries	Immediately remove books from school libraries that are categorically defined as pornography under state statute. 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.
Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 U.S. 853 (1982)	Removal of "pervasively vulgar" books	"All members of the [Pico] Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar." <i>Bethel Sch. Dist. No. 403 v. Fraser</i> , 478 U.S. 675, 684 (1986).

247 **Utah Code 76-10-1201. Definitions.** [referenced excerpts]

248 <https://le.utah.gov/xcode/Title76/Chapter10/76-10-S1201.html>

249 (10) "Nudity" means:

250 (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an
251 opaque covering;

252 (b) the showing of a female breast with less than an opaque covering, or any portion of the female
253 breast below the top of the areola; or

254 (c) the depiction of covered male genitals in a discernibly turgid state.

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

257 (13) "Sadomasochistic abuse" means:

258 (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a
259 revealing or bizarre costume; or

260 (b) the condition of being fettered, bound, or otherwise physically restrained on the part of a
261 person clothed as described in Subsection (13)(a).

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

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

269

270 **Utah Code 76-10-1203. Pornographic Material or performance.**

271 https://le.utah.gov/xcode/Title76/Chapter10/76-10-S1203.html?v=C76-10-S1203_1800010118000101

272 (1) Any material or performance is pornographic if:

273 (a) The average person, applying contemporary community standards, finds that, taken as a whole,
274 it appeals to prurient interest in sex;

275 (b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual
276 excitement, sadomasochistic abuse, or excretion; and

277 (c) Taken as a whole it does not have serious literary, artistic, political or scientific value.

278 *As defined in 76-10-1227 (2)(c), a description or depiction of illicit sex or sexual immorality as defined
279 in Subsection (1)(a)(i) human genitals in a state of sexual stimulation or arousal; (ii) acts of human
280 masturbation, sexual intercourse, or sodomy; or (iii) fondling or other erotic touching of human genitals
281 or pubic region, has no serious value for minors.
282

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

287

288

289 **Utah Code 76-10-1227. Indecent public displays -- Definitions.**

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

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

- 292 (i) human genitals in a state of sexual stimulation or arousal;
- 293 (ii) acts of human masturbation, sexual intercourse, or sodomy;
- 294 (iii) fondling or other erotic touching of human genitals or pubic region; or
- 295 (iv) fondling or other erotic touching of the human buttock or female breast.

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

297 (i) less than completely and opaquely covering human:

- 298 (A) genitals;
- 299 (B) pubic regions;
- 300 (C) buttock; and
- 301 (D) female breast below a point immediately above the top of the areola; and
- 302 (ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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

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

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

310

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

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

- 313 (A) in a classroom;
- 314 (B) in a school library; or
- 315 (C) on school property.

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

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

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

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

322 (b) A public school may not:

- 323 (i) adopt, use, distribute, provide a student access to, or maintain in the school setting, sensitive
324 materials; or
- 325 (ii) permit a speaker or presenter in the school setting to display or distribute sensitive
326 materials.

327

328 **R277-217-2(16)(17)(18)(19). Educator Standards and LEA Reporting**

329 An educator may not:

- 330 • Knowingly possess, while at school or any school-related activity, any pornographic or indecent
331 material in any form;
- 332 • Use school equipment to intentionally view, create, distribute, or store pornographic or
333 indecent material in any form;

- 334 • Knowingly use, view, create, distribute, or store pornographic or indecent material involving
335 children;
336 • Expose students to material the educator knows or should have known to be inappropriate
337 given the age and maturity of the students.
338
-

339 **R277-217-3. Required Conduct for an Educator**

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

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

345

346 **AGO Official Memo—Laws Surrounding School Libraries, (p.8), re: *Constitutionality of Removal***
347 ***Decisions***

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

355

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

357 HB 374 prohibits pornographic or indecent material as defined as harmful to minors in
358 Section 76-10-120I, described as pornographic in Section 76-10-1203, or described in Section
359 76-10-1227. School library books that meet any of these statutory definitions are prohibited from
360 school libraries. Analysis under these statutory definitions, or strict application of the categorical
361 exclusions in 1227(I)(a)(i), (ii), and (iii), is the way to directly comply with HB 374. To mitigate
362 the risk of legal challenge relating to decisions under Section 1227, LEAs may also analyze the
363 materials as a whole and determine whether the materials have any serious literary, artistic,
364 political, or scientific value. While these are important considerations, nothing should prevent
365 the Board and LEAs from proactively complying with state law in removing pornographic books
366 from library shelves. Any decision to retain books in libraries that meet the definition of
367 pornography is contrary to state statute and significantly increases the likelihood of a lawsuit
368 against the LEA for non-compliance. The AGO will continue to consult with the Board and
369 LEAs regarding analysis and compliance with other facets of HB 374.

370 **Appendix C: Sensitive Materials Complaint Form**

371 **Please submit this required information on the USBE Sensitive Materials Upload Tracker at this**
372 **website address: _____.***
373

374 Title:

375 Author:

376 School:

377

378 Request initiated by:

379 Telephone:

380 Address:

381 City:

382 Zip:

383 Email:

384

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

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

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

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

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

393 6) Based on *Appendix A: Sensitive Materials Rubric* or *Appendix B: Definitions and*
394 *References*, which are based on UT Code §53G-10-103 and State Board Rule R277-217-
395 2(16)(17)(18)(19), which provisions or definitions of the law does the material violate?
396

397 Signature:

398 Date:

399

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

402
403
404
405

Appendix D: *USB E 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.)