

1 DRAFT 2 Board Member Cline 5-4-2022

2

3 I. Library Model Policy Guidance & Training

4 This model policy constitutes the guidance and training required by §53G-10-103, Sensitive Materials in
5 Schools. The purpose of this model policy is to specify the process of identifying materials to be
6 disqualified from use in schools based on 53G-10-103 Sensitive Materials in Schools and R277-217
7 Educator Standards and LEA Reporting. The USBE is responsible for providing guidance and training to
8 support public schools in identifying sensitive materials.

9 Administrators shall ensure that educators comply with this model policy or an LEA created policy that
10 complies with this model policy, and the appended documents:

- 11 • Appendix A: Sensitive Materials Rubric and LEA Requirement Flowsheet
- 12 • Appendix B: Sensitive Materials Rubric – Chart of Definitions and References
- 13 • Appendix C: Sensitive Materials Complaint Form

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

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

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

26 "Indecent Public Displays" means description or depiction of illicit sex or sexual immorality -or- nude or
27 partially denuded figure as defined in UT Code 76-10-1227 (1)(a) and (b).

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

29 II. Communication

30 An LEA:

- 31 1. Shall create a policy in compliance with this model policy.
- 32 2. Shall communicate clearly on material policies and procedures with patrons.
- 33 3. Shall inform teachers, staff, and parents through an easily accessible public LEA website as well
34 as through email and printed mail prior to the beginning of each school year of the following:
 - 35 a. Materials shall be ~~procured~~ vetted and reviewed for compliance with §53G-10-103 and
36 R277-217-2(16)(17)(18)(19).
 - 37 b. Materials shall be subject to review annually, or as needed per a sensitive materials
38 complaint.

- 39 c. The LEA website link to:
- 40 i. The School Libraries rule (R277-628),
- 41 ii. This model policy,
- 42 iii. The reference to and text of R277-217-2(16)(17)(18)(19) Educator Standards
- 43 and LEA Reporting,
- 44 iv. The Sensitive Materials in Schools rule (pending rule creation),
- 45 v. The LEA policy complying with this model policy, and
- 46 vi. The Sensitive Materials Rubric and Sensitive Materials Complaint Form.
- 47 d. Parents may:
- 48 i. Submit a sensitive materials complaint.
- 49 ii. Request a list of past and present sensitive materials complaints from the LEA
- 50 and review the accompanying documentation for each sensitive materials
- 51 complaint.
- 52 iii. Volunteer to serve on a sensitive materials complaint hearing committee.
- 53 ~~iv. Submit recommendations for appropriate materials.~~
- 54 e. An educator, school or LEA employee, or LEA board member shall take prompt and
- 55 appropriate action to protect a student from any known condition detrimental to
- 56 the student's physical health, mental health, safety, or learning, in accordance with
- 57 R277-217-3(4), if made aware of material that may be considered sensitive material
- 58 as defined in §53G-10-103 and R277-217-2(16)(17)(18)(19). "Prompt and appropriate
- 59 action" for the purposes of this model policy means the educator is required to file a
- 60 sensitive materials complaint with the LEA.
- 61

62 III. Complaints

- 63 1. An LEA shall:
- 64 a. Create a least-restrictive, transparent process for parents/grandparents, residents of the
- 65 district (hereafter referred to as "patrons"), employees of the LEA or school, school
- 66 board members, and educators to submit a sensitive materials complaint (hereafter
- 67 referred to as "complaint") which allows submission of complaints via written or
- 68 electronic means.
- 69 b. Provide the submitter of a complaint with the link to the LEA website with the following
- 70 information:
- 71 i. The public record on the LEA website of the current status of all complaints,
- 72 ii. The School Libraries rule (R277-628),
- 73 iii. This model policy,
- 74 iv. The reference to and text of R277-217-2(16)(17)(18)(19) Educator Standards
- 75 and LEA Reporting,
- 76 v. The Sensitive Materials in Schools rule (pending rule creation),
- 77 vi. The LEA policy complying with this model policy, and
- 78 vii. The Sensitive Materials Rubric and Sensitive Materials Complaint Form.
- 79 c. Require schools to forward all complaints to the LEA the same day a complaint is
- 80 received.
- 81 d. Protect the confidentiality of the complaint submitter.

- 82 e. Withhold access to all available copies of the material in all schools within the LEA until
83 resolution of the complaint process, at which point the material is either retained or
84 removed from all schools in the LEA.
- 85 f. Assign the complaint a case number.
- 86 g. Submit a copy of the initial complaint with its assigned case number to the USBE upon
87 receipt of the complaint.
- 88 h. Provide a public-record on the LEA website of the current status of all complaints, which
89 shall include:
- 90 i. The title and author of the material.
- 91 ii. School of complaint origin.
- 92 iii. Location of the origin of the material.
- 93 iv. Date complaint submitted.
- 94 v. Date, time, and location of hearing.
- 95 vi. Date of decision and resolution.
- 96 vii. Date of appeal to the USBE (if applicable).
- 97 viii. Instructions on how to obtain all documentation relevant to a ~~challenge~~
98 complaint.
- 99 i. Prioritize the review of any materials which are the subject of a complaint and ensure
100 the complaint process includes a hearing and decision.
- 101 j. Create a hearing committee which includes parent or grandparent volunteers who:
- 102 i. Have students in the district,
- 103 ii. Who are not employees of the LEA, and
- 104 iii. Who have no educational organizational affiliation beyond the school level.
- 105 k. Notify all LEA parents directly of the time, date, and location of a complaint hearing a
106 minimum of 72 hours in advance.
- 107 l. Conduct a hearing open to the public during which:
- 108 i. The hearing is recorded. "Recording" means an audio and video record of the
109 proceedings of a meeting to be used to review the proceedings of the meeting
110 in the event of an appeal.
- 111 ii. ~~Parents are~~ Patrons and educators shall be given adequate time at the
112 beginning of the hearing to provide examples of how the materials violate
113 §53G-10-103 and R277-217-2(16)(17)(18)(19) (see Sensitive Materials Rubric) ~~to~~
114 comment on the materials which are the subject of the complaint.
- 115 iii. ~~Parents~~ The public may remain until conclusion of the hearing to listen to and
116 observe the hearing committee's deliberations and decision.
- 117 iv. The hearing committee's decision shall comply with §53G-10-103 and R277-217-
118 2(16)(17)(18)(19) (see Sensitive Materials Rubric).
- 119 m. Create a least-restrictive, transparent, expedited process for the submitter of a
120 complaint to appeal a hearing decision, or submit concerns about the complaint process
121 itself, to the ~~USBE Sensitive Materials Advisory Committee~~ state Board, which shall
122 review the appeal and forward its recommendation to the Board, which within 45 days
123 at a meeting of the full board shall issue a final decision in compliance with §53G-10-103
124 and R277-217-2(16)(17)(18)(19) (see Sensitive Materials Rubric).

- 125 n. Publish a comprehensive list of the removed or retained materials on the LEA website
126 and date of removal.
- 127 o. Students shall not be allowed to participate in materials ~~procurement~~ vetting or the
128 complaint process, be a member of the hearing committee, or attend a hearing.
- 129 p. Students may bring sensitive material in schools to the attention of parents, educators,
130 administrators, and other school employees who shall submit a complaint.
- 131 2. Required educator conduct:
- 132 a. An educator, school or LEA employee, or LEA board member shall take prompt and
133 appropriate action to protect a student from any known condition detrimental to
134 the student's physical health, mental health, safety, or learning, in accordance with
135 R277-217-3(4), if made aware of material that may be considered sensitive material
136 as defined in §53G-10-103 and R277-217-2(16)(17)(18)(19).
- 137 b. “Prompt and appropriate action” for the purposes of this model policy means the
138 educator is required to file a sensitive materials complaint with the LEA.
- 139

140 **IV. ~~Procurement~~ Vetting**

- 141 1. All materials, regardless of format, shall be ~~procured and~~ vetted using the Sensitive Materials
142 Rubric by an employee of the school to ensure compliance with §53G-10-103 and R277-217-
143 2(16)(17)(18)(19).
- 144 2. A record of ~~procured~~ vetted materials shall be published and readily accessible to the public
145 through the LEA’s website and shall include:
- 146 a. The employee who ~~procured~~ vetted the material.
- 147 b. The name of the school.
- 148 c. The title and author of the material.
- 149 d. All available formats of the material (digital/hard copy/etc.).
- 150 e. The intended use of the material.
- 151 f. The date ~~of procurement~~ the material was vetted.
- 152 g. Materials undergoing a complaint, which shall be temporarily flagged.
- 153 h. Materials removed due to a complaint, which shall be permanently flagged.
- 154 i. A hyperlink to the LEA sensitive material complaint record, if any.
- 155

156 **V. ~~Extant material review~~ Compliance**

- 157 1. LEAs shall immediately develop a systematic process and timeframe for reviewing all school
158 materials (physical and digital) using the Sensitive Materials Rubric to ensure compliance with
159 §53G-10-103 and R277-217-2(16)(17)(18)(19).
- 160 2. An LEA shall submit this process and timeframe to the state Board for review and approval by
161 August 31, 2022.
- 162 3. An LEA shall submit its policy complying with this model policy to the state Board for review and
163 approval by August 31, 2022.

164 **VI. Complainant Protection**

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

Appendix A. Sensitive Materials Rubric and LEA Requirement Flowsheet

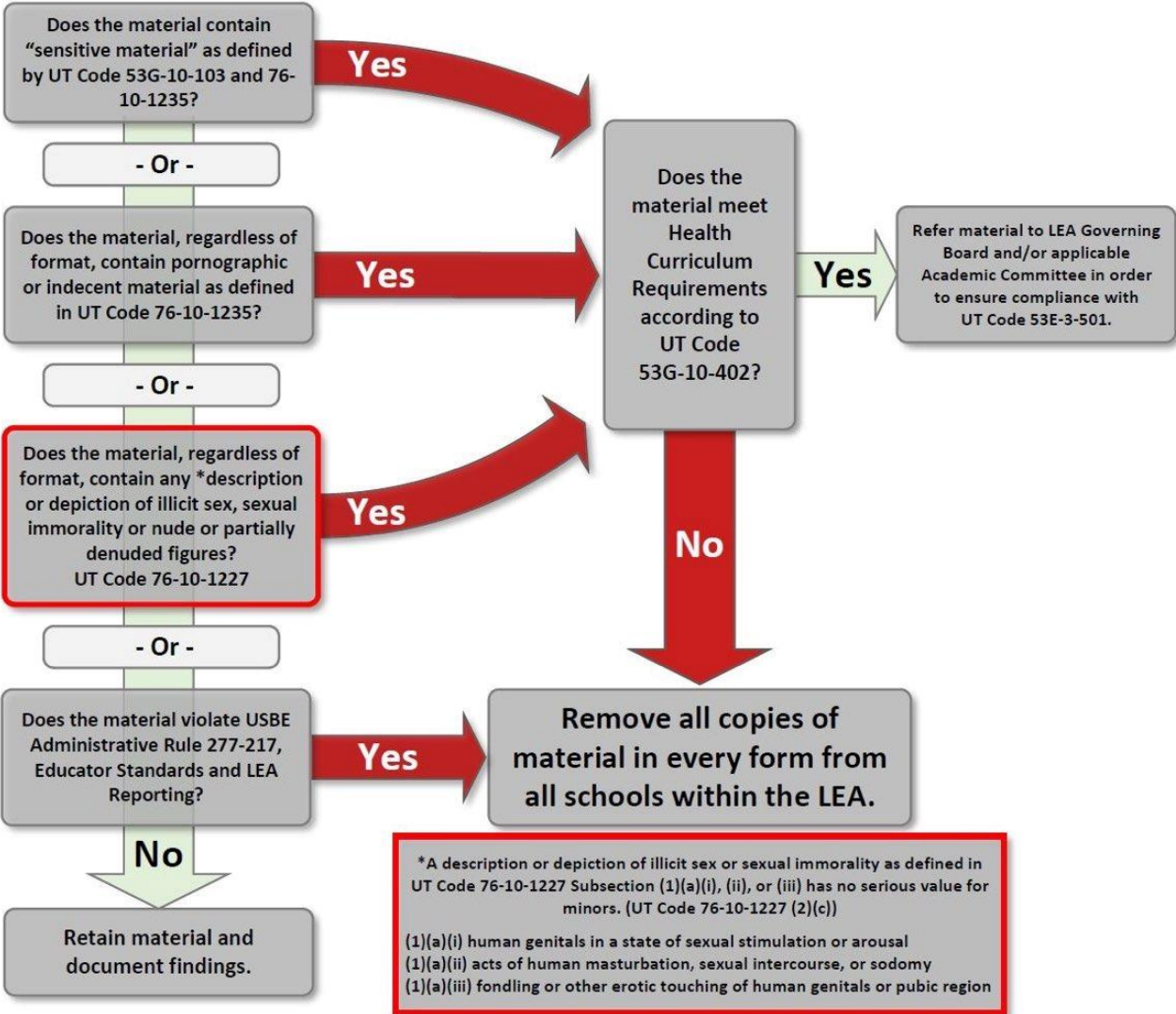
SENSITIVE MATERIALS RUBRIC
To be used in conjunction with the Library Model Policy Guidance and Training

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

All materials shall be vetted using the Sensitive Materials Rubric by an employee of the school to ensure compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19).
If Sensitive Material is suspected by any Administrator, Educator, support/volunteer staff, or if a patron submits a complaint in regards to suspected sensitive material, the following procedure shall be followed.

Sensitive Material Determination Process

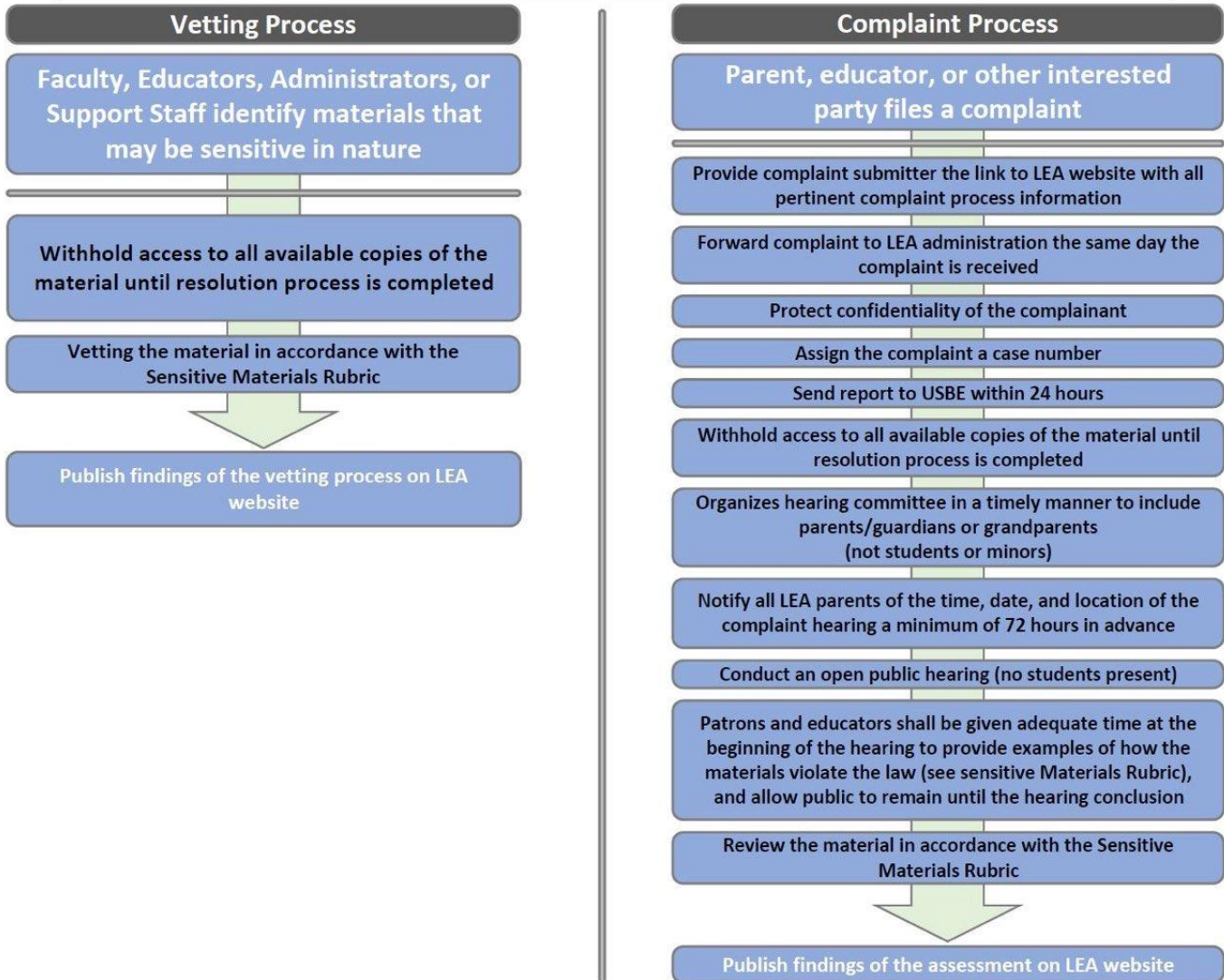
If the material in question was identified through the complaint process, begin necessary LEA action steps within 24 hours of the reported complaint and proceed with established LEA Requirements Flow Sheet and Assessment.



Prior to August 31, 2022, LEAs shall:

1. Create a policy in compliance with the USBE Model Policy.
2. Establish a “least-restrictive,” transparent process for patrons to submit a sensitive materials complaint as well as a process for appeal of hearing decisions to the Utah State Board of Education.
3. Communicate clearly the intent of the LEA policy with all patrons, teachers, staff, and parents via LEA website, email, and printed mail prior to the beginning of each school year.
4. Create a hearing committee that includes parent or grandparent volunteers (not to include students).
5. On the LEA website, publish a historical, comprehensive record of all removed materials (including the date of removal) as well as any other material that was addressed in the complaint process.
6. Develop a systematic process and timeframe for review of all school materials (physical and digital) using the sensitive Materials Rubric to ensure compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19).
7. Continue to procure material in compliance with §53G-10-103 and R277-217-2(16)(17)(18)(19).

Sensitive Material Review Process



Appendix B: Sensitive Materials Rubric – Chart of 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, <u>has no serious value for minors.</u></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))
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.

171

172

Sensitive Materials Rubric – References

173

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

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

176 (10) "Nudity" means:

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

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

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

182

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

185 (13) "Sadomasochistic abuse" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

228 (A) genitals;

229 (B) pubic regions;

230 (C) buttock; and

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

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

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

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

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

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

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

243 (A) in a classroom;

244 (B) in a school library; or

245 (C) on school property.

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

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

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

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

252 (b) A public school may not:

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

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

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

259 An educator may not:

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

262 • Use school equipment to intentionally view, create, distribute, or store pornographic or
263 indecent material in any form;

264 • Knowingly use, view, create, distribute, or store pornographic or indecent material involving
265 children;

266 • Expose students to material the educator knows or should have known to be inappropriate
267 given the age and maturity of the students.

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

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

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

275

276 **Appendix C: Sensitive Materials Complaint Form**
277 **(Please see the Sensitive Materials Rubric for Prohibited Materials Content)**
278

279 Title:

280 Author:

281 School:

282

283 Request initiated by:

284 Telephone:

285 Address:

286 City:

287 Zip:

288 Email:

289

290 1) Does your child attend this school? Yes No

291

292

293 2) Was this material recommended, assigned, or made available by an educator? If so,
294 who?

295

296

297

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

301

302

303

304

305 4) What action are you requesting the committee to consider?

306

307 Signature:

308 Date: