

PROCEDURES FOR REVIEW OF INSTRUCTIONAL MATERIALS

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Revised

Constitutional and Statutory Provisions:

S.C. Code Ann. Sections:

1-23-310 *et seq.* Administrative procedures
59-5-60 General powers of [State] Board

24 S.C. Code Ann. Regulations:

R 43-170 Uniform Procedure for Selection or Reconsideration
of Instructional Materials

The Constitution, South Carolina law, and court precedent uniformly and clearly permit the State Board of Education to review and determine the appropriateness of books and other instructional materials for use or availability in South Carolina's public educational system. *See, e.g.,* S.C. Code Ann. § 59-5-60(1), (3), (6), and (7); *see also Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) (holding that a public school's governing body may dictate the school's curricula and school sponsored expression without violating the First Amendment); *Am. Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Bd.*, 557 F.3d 1177 (11th Cir. 2009) (holding that a school district did not violate the First Amendment when it voted to remove certain books from its public school libraries); *Boring v. Buncombe County Bd. of Educ.*, 136 F.3d 364 (4th Cir. 1998) (holding a teacher's selection of a particular play for a public school dramatic performance was not protected speech and, therefore, the school administration could constitutionally proscribe its performance).

The State Board of Education's authority to review and approve or disapprove books or other instructional materials for use or availability in the public school system is not limited to the factual veracity of the materials, *e.g., ACLU of Fla.*, 557 F.3d at 1202, but also includes the constitutionally-permissible authority to limit or remove material containing content that is not appropriate for minors, including but not limited to inappropriate sexual content, *see, e.g., GLBT Youth in Iowa Sch. Task Force v. Reynolds*, __F.4th __, 2024 WL 3736785, at *5 (8th Cir., Aug. 9, 2024) (analyzing a "viewpoint-neutral, content-based, age-appropriate restriction on the content of public school libraries" and noting that the "purpose of public school libraries is to advance the school curriculum—that is, to facilitate the pedagogical mission of the school, which may involve some limitation of expression"); *see also United States v. Am. Library Ass'n*, 539 US 194 (2003) (holding that Congress did not violate the First Amendment by enacting a statute requiring public libraries to filter their computers' internet access to ensure minors were not exposed to inappropriate sexual materials); *id.* at 215 (Kennedy, J., concurring) ("The interest in protecting young library users from material inappropriate for minors is legitimate, and even compelling, as all Members of the Court appear to agree."); *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853 (1982) (reflecting a consensus among the plurality, concurrences, and

dissents that even if the Justices could agree on nothing else, they agreed that a school board could permissibly remove from public school libraries books that are “pervasively vulgar” or “educationally unsuitable”).

State Board Rule:

Procedures for Reconsideration of Instructional Materials

Application of S.C. Code Ann. § 1-23-310 *et seq.*, Administrative Procedures Act (“APA”)

-The APA will govern all proceedings conducted in accordance with this Rule of Governance.

Any Complainant who is aggrieved by a decision of the district board may file a written appeal to the State Board of Education (“State Board”) within 30 days after the district board announces its decision in a public meeting. The Complainant shall file the appeal by completing and submitting a Notice of Appeal of Instructional Material promulgated by the State Board and made available on the State Board’s webpage. The Complaint shall submit the completed Notice of Appeal of Instructional Material to the committee’s scheduling coordinator through email or mail.

In addition, the State Board may, of its own volition and on its own initiative, make determinations in the first instance regarding the educational suitability or the Age or Developmental Appropriateness of specific Instructional Materials pursuant to the criteria and requirements set out in Regulation 43-170. The procedures set out in this procedural document govern appeals of a district board’s decision and decisions made in the original jurisdiction of the State Board.

I. Pre-Hearing Procedures

1. Public notice of hearing. Upon receipt of a written appeal or upon its own determination to evaluate instructional material in its original jurisdiction, the State Board or, in its discretion, the Instructional Materials Review Committee shall issue a public notice of the date, time, and location of the public meeting and the name and contact information of the scheduling coordinator. In the case of an appeal, such meetings will be scheduled prior to the second regularly scheduled meeting of the State Board after the Notice of Appeal was received.
2. Notice to district boards; stay of parallel proceedings. Upon receipt of the appeal or upon its determination to evaluate material in its original jurisdiction, the State Board shall notify all district boards in the State of any instructional materials at issue in the appeal or the original jurisdiction action and issue a written stay order to ensure any district board that is concurrently deliberating

on that same material will abstain from any further review or decision on the material while awaiting the State Board's decision.

3. Delivery of the district board's written decision, if any. At least 10 calendar days prior to the hearing in an appeal, the Complainant must deliver to the Instructional Materials Review Committee (or to the State Board, if the appeal is being heard by the entire Board rather than the committee) a copy of the district board's written explanation, if any, of its decision if that document was not attached to the Notice of Appeal of Instructional Material. That document shall be submitted via the committee's scheduling coordinator (or, if to the State Board, via the State Board liaison).

4. Requests to appear and present information. Any interested parties wishing to present information at the hearing in support of or in opposition to the relief requested in the complaint must submit a request to testify at least 5 calendar days prior to the hearing by notifying the scheduling coordinator. The State Board or the Instructional Materials Review Committee may request and receive testimony or comment at the hearing from agency staff and/or counsel without advance request or notice to the scheduling coordinator.

II. Conduct of the Hearing

1. Standard of review. The committee (and the State Board, as applicable) may evaluate and decide an appeal based solely on the committee's (or Board's) own review and analysis of the challenged instructional material itself and the text of Regulation 43-170 and the statutory subsection incorporated by reference therein. The committee (or Board, as applicable) may, in its discretion, also review and assess the complaint filed below and the decision and reasoning of the district board; however, the committee (or Board) need not give any deference to the decision or reasoning below.

2. Testimony. The Complainant and other interested parties must be allowed to appear at the hearing and present information before the committee in support of or in opposition to the relief requested in the complaint. Because such testimony is supplementary to the primary bases of the committee's or Board's analysis and decision—namely, the contents of the challenged material and the text of Regulation 43-170 and the law incorporated therein—the testimony will be constrained by time limits to ensure efficient and succinct presentations and conduct of the hearing. Unless granted additional time by a majority vote of the committee, the Complainant shall be given 3 minutes to present their appeal. Any interested parties speaking in opposition to the Complainant's requested relief shall collectively have 3 minutes to present any information. Any interested parties speaking in favor of the Complainant's appeal shall collectively be granted 3 minutes to present any information. The 3 minutes for interested parties speaking in favor of and in

opposition to the Complainant's requested relief shall be equally divided between requesting parties. Any testimony presented by agency staff or counsel shall not be subject to these time limits but, instead, is limited only by the discretion of the committee (or Board).

3. Vote and decision. In a hearing conducted by a committee, the committee need not vote on or announce its decision regarding the instructional material during or at the conclusion of the hearing. In contrast, in a hearing conducted by the State Board, the State Board shall, at that public meeting, vote to grant or deny, in whole or in part, the relief requested by the Complainant.

III. **Committee reports; Board decisions**

1. Committee's Report and Decision of the Board. Following a hearing conducted by the Instructional Material Review Committee, the committee will formulate a written report and recommended action and will submit the report to the State Board for consideration. The State Board shall, at its next regularly scheduled board meeting, vote to either adopt or reject the Committee's recommendation. A regularly scheduled meeting of the State Board in which the State Board reviews and votes to adopt or reject the committee's recommendation is not itself a public hearing at which the State Board must hear comment or testimony from the Complainant or other interested parties. The State Board may, however, in its discretion, hear comments or testimony from such parties or from agency staff or counsel.

2. Final Decision and Notice of Board Action. If the State Board finds that Existing Instructional Materials identified in an appeal or considered in its original jurisdiction do not satisfy the requirements of Regulation 43-170, the State Board shall instruct the district board(s) from which the appeal arose to remove entirely or discontinue use of said materials for any grade level or age group for which such use is inappropriate or unsuitable, or to make such materials available to a student only upon receipt of the consent of the student's parent or legal guardian.

The State Board shall, at the time it communicates its decision to the district board, provide a written explanation for its conclusion and decision that is publicly available and that includes an explanation of how the State Board applied and complied with the decisional criteria and requirements of Regulation 43-170. The State Board shall also notify all South Carolina school districts of any such determinations by disseminating a monthly memorandum addressed to all districts.

In no event shall the State Board's decision in a matter arising under subsection IV.D. and IV.E of Regulation 43-170 be based primarily on or motivated primarily by disagreement with or opposition to the viewpoints expressed within the challenged material.

VII. Appeals

Either party may appeal the final decision of the State Board by filing a petition with the Administrative Law Court within 30 days of the receipt of the final order, pursuant to S.C. Code Ann. § 1-23-600 (2020).