

In Re: *To Kill a Mockingbird* by Harper Lee
Order No. 2024-0008
February 10, 2025

STATE OF SOUTH CAROLINA
BEFORE THE SOUTH CAROLINA STATE BOARD OF EDUCATION

IN RE: *TO KILL A MOCKINGBIRD* BY
HARPER LEE

**FINAL ORDER AND
OPINION REGARDING
INSTRUCTIONAL MATERIAL**

No. 2024-0008

SUMMARY OF ACTION REQUIRED

This Order of the South Carolina State Board of Education (“State Board”) is the final agency decision regarding the following Instructional Material (the “Subject Material”).

Title of Instructional Material:
Author:

To Kill a Mockingbird
Harper Lee

For the reasons stated below, the Subject Material *does not* contain descriptions of “sexual conduct” as that term is defined in Regulation 43-170 and South Carolina Code Section 16-15-305(C)(1). Accordingly, **the Subject Material is Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170 and may be used in South Carolina public schools.** The continued use of the Subject Material is permitted subject to local districts’ determination that the Subject Material is being used in a way that is educationally suitable and aligned with the districts’ Instructional Programs.¹ This Order is limited to the work originally written by the author listed above and does not extend to any other versions or adaptations that are not the original.

BACKGROUND AND PROCEDURAL HISTORY

This matter was addressed in the first instance by the State Board’s Instructional Material Review Committee (“IMRC”) and later by the full State Board. The Subject Material was reviewed by the IMRC “of its own volition and on its own initiative” to “make determinations regarding the educational suitability or the Age or Developmental Appropriateness of specific

¹ To be clear, this Order and Opinion does not *compel* public schools to use the Subject Material. The Order and Opinion is binding and conclusive as to the determination that the Subject Material does not contain descriptions or depictions of “sexual conduct,” *see* S.C. Code Regs. 43-170(VI)(B); however, local districts retain the discretion to decide whether, when, and how the Subject Material should be used based on the cognitive, emotional, and behavioral capacity of various age groups and the context-specific prudential factors outlined in the Regulation, *id.* at 43-170(I)(C) and -170(III)(C).

Instructional Materials pursuant to the criteria and requirements of” Regulation 43-170(VI)(B). The IMRC took this step because the Subject Material had been repeatedly discussed during prior public comment periods and was likely to be the subject of future district-level challenges. Accordingly, the IMRC and, later, the State Board, exercised its authority to review the Subject Material in the first instance to alleviate the burden on multiple individual district boards and to provide guidance to districts and their employees as they evaluate materials under the Regulation.

On October 24, 2024, the South Carolina Department of Education (Department) notified the public of the IMRC’s upcoming review of the Subject Material by posting the hearing information and the hearing agenda on its website. Consistent with governing requirements, the public was invited to sign up in advance of the hearing to provide comment regarding the Subject Material. At 1:00 PM on October 31, 2024, the IMRC’s hearing of this matter occurred via Webex and was conducted in accordance with Procedures for Review of Instructional Material, State Board Rule of Governance IFC, last revised October 1, 2024, and the South Carolina Administrative Procedures Act, S.C. Code § 1-23-310, et seq. During this hearing, the IMRC received public comment regarding the Subject Material, and the Department provided analysis and recommended retaining the Subject Material in South Carolina’s public schools.

The IMRC reviewed and considered the Subject Material, excerpts from same, all public comments (written and in-person), and all documentation and testimony provided by the Department. Based on that review and consideration, the IMRC unanimously found that the Subject Material does not contain descriptions of “sexual conduct” as that term is defined by S.C. Code § 16-15-305(C)(1). Therefore, the IMRC found the Subject Material is Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170 and recommended it be retained as permissible material for appropriate use in public schools in South Carolina. On November 1, 2024, the IMRC issued a Report and Recommendation (attached as Exhibit 1 and incorporated by reference herein), which was provided to all members of the State Board and subsequently placed on State Board’s website and made available to the public.

On October 30, 2024, the Department notified the public that this matter would come before the full State Board by posting the State Board’s agenda and hearing information on its website. At 1:00 PM on November 5, 2024, the State Board held its regularly scheduled meeting, received public comment, and received reports from its various committees, including the IMRC. This matter is properly before the State Board pursuant to S.C. Code Reg. § 43-170.

Having carefully considered all public comments (in person and written), the Subject Material, all documentation provided by the Department and interested parties, the IMRC’s written Report and Recommendation, the IMRC Chair’s Report, and the Department’s report, we make the following findings of fact and conclusions of law.²

² Excerpts from and an explanation of the applicable sections and definitions of Regulation 43-170 are found in the IMRC’s Report and Recommendation, which is attached as Exhibit 1, and, for the sake of space, will not be duplicated herein.

FINDINGS OF FACT

1. The Subject Material was discussed and questioned during the Public Comment period of the promulgation of Regulation 43-170. In addition, the Subject Material was brought to the State Board's attention as a book likely to be subject to future challenges in districts across the state.
2. The Subject Material is available to students in public schools in South Carolina.
3. The Subject Material contains the content listed and described in Exhibit A of the IMRC's Report and Recommendation and in Exhibit 2 to this Final Order and Opinion.³

CONCLUSIONS OF LAW

The Constitution, South Carolina law, and precedent uniformly permit the State Board to review and determine the appropriateness of books and other instructional materials for use or availability in South Carolina's public schools. *See* SBE Final Order and Opinion No. 2024-0001 (In re: *Damsel* by Elena Arnold) at page 3 (collecting and citing statutes and cases). That authority arises, at least in part, from the fact that the selection, curation, purchase, use, and management of public-school curricula and library materials is government speech that the Free Speech Clause does not regulate. *See id.* at 3–4 (citing cases). The state's authority in this context is particularly robust when, as here, the state seeks to shield minors from access to or use of inappropriate sexual content. *See id.* at 3–4 (citing *United States v. Am. Library Ass'n*, 539 U.S. 194 (2003)).

Under Regulation 43-170, "Instructional Material is not 'Age and Developmentally Appropriate' for any age or age group of children if it includes descriptions or visual depictions of 'sexual conduct,' as that term is defined by Section 16-15-305(C)(1)." S.C. Code Reg. 43-170(I)(A). The interpretation and application of this standard requires a clear understanding of what constitutes a "description" and what constitutes "sexual conduct." The latter is defined in Code Section 16-15-305(C)(1). The former is defined and understood by reference to dictionaries and common usage.

As the State Board has previously held, a "description" of something is more than merely mentioning it or acknowledging that it exists or that an event happened. *See* SBE Final Order and Opinion No. 2024-0003 (In Re: *1984* by George Orwell) at page 3-4. Rather, a description of something necessarily includes some degree of *detail and explanation* about it that is expressly and squarely set before the reader. *See Id.* at 4. The thing described is occurring "on-stage" plainly before the audience, not "off-stage" or in a prequel the reader has not been provided. *See Id.* at 4.

³ Exhibit 2 to this Final Order and Opinion contains excerpts which are representative of questionable material contained in the Subject Material. The State Board's review and Order is not limited to the excerpts contained therein.

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When this standard is applied here, the Subject Material does not contain any impermissible descriptions of sexual conduct. While the Subject Material acknowledges allegations and the existence of sexual assault and/or rape, those acknowledgments are too brief, too generic, and too non-specific to constitute “descriptions” of sexual conduct. A list of excerpts is attached as Exhibit 2.

At one point in the Subject Material, a conversation about rape occurs between a father and his daughter:

‘What's rape?’ I asked him that night. Atticus looked around from behind his paper. He was in his chair by the window. As we grew older, Jem and I thought it generous to allow Atticus thirty minutes to himself after supper. He sighed, and said rape was carnal knowledge of a female by force and without consent.

At another point in the Subject Material, when addressing claims of rape and/or sexual assault, a character is questioned: "...He choked you, he hit you, then he raped you, that right?"

These excerpts do not contain the degree of detail and explanation that expressly and squarely sets sexual conduct before the reader. While the Subject Material describes scenes that one could infer lead to sexual activity, the reader is not exposed to descriptions of sexual conduct itself. The Subject Material’s mere mention of rape, of carnal knowledge of another, and of physical assault do not rise to the level of being “descriptions or visual depictions of ‘sexual conduct,’ as that term is defined by Section 16–15–305(C)(1).”

The State Board finds that the Subject Material *does not* rise to the level of including descriptions of “sexual conduct” as that term is defined by S.C. Code § 16-15-305(C)(1). Therefore, the Subject Material does not inherently fall outside of the definition of Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170, and the continued use of the Subject Material is permitted subject to local district standards.⁴

The State Board finds that the continued use of the Subject Material is permitted subject to local district standards. This Order is limited to the work originally written by Harper Lee and does not extend to any other versions or adaptations that are not the original.

s/Rita Allison

Chair

South Carolina State Board of Education

February 10, 2025

⁴ As noted in footnote 1 of this Order and Opinion, the State Board encourages districts to take appropriate steps in their approach to deciding whether, when, and how to use the Subject Material (and all Instructional Material with mature themes) with the appropriate age group of students in ways consistent with their cognitive, emotional, and behavioral capacity and in alignment with the districts’ Instructional Programs.