

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

IN RE: LAST NIGHT AT THE
TELEGRAPH CLUB BY MALINDA LO

**FINAL ORDER AND
OPINION REGARDING
INSTRUCTIONAL MATERIAL**

No. 2025-0013

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:

Last Night at the Telegraph Club
Malinda Lo

As explained more fully below, the Subject Material includes 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 not Age and Developmentally Appropriate and must be removed from all public-school classrooms, libraries, media centers, programs, reading lists, and school-controlled extracurricular activities in South Carolina. **All public schools, public school districts, public-school employees, and district boards in this State shall take immediate action to comply with this Order by removing the Subject Material. Additionally, public schools, public school districts, and district boards shall not acquire, obtain, or purchase the Subject Material, nor shall any public-school employee acquire, obtain, or purchase the Subject Material for use in or with any public-school program, classroom, activity, or instruction.**

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 Instructional Materials pursuant to the criteria and requirements of” Regulation 43-170(VI)(B). The IMRC took this step because a Complainant filed a Complaint Form with the Beaufort County School District Board of Education (“District”) on January 17, 2025. (Exhibit A). Subsequently, the Chairman of the District submitted a letter requesting that the State Board take these materials up for consideration because the District’s board had previously reviewed this material in 2023, prior to the enactment of Regulation 43-170. (Exhibit B). Accordingly, the IMRC and, later, the State Board, exercised its authority to review the Subject Material in the first instance consistent with the District’s request and the State Board’s authority.

On March 6, 2025, the South Carolina Department of Education (Department) notified the public of its upcoming review of the Subject Material by posting the IMRC hearing information and 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 March 13, 2025, the IMRC's hearing of this matter occurred via Microsoft Teams 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 Sec. 1-23-310, et seq. During this hearing, the IMRC received public comment regarding the Subject Material and the Department provided analysis and recommended removing the Subject Material entirely from 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 includes 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 not Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170 and recommended it be removed entirely from all public schools in South Carolina. On January 31, 2025, the IMRC issued a Report and Recommendation (attached as Exhibit C 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 March 25, 2025, 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 April 1, 2025, the State Board held its regularly scheduled meeting, received public comment, and received reports from its various committees, including the IMRC.

At its April 2025 meeting, the State Board postponed consideration of this matter and nine others from the IMRC.¹ On March 25, 2025, 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 May 6, 2025, 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.

Based on a review of 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

¹ The April State Board agenda contained ten items from the IMRC for consideration. All ten were postponed to allow for the State Board to receive legal counsel on implementation of Regulation 43-170. The ten items were placed on the State Board's May agenda. The State Board received legal counsel on implementation of Regulation 43-170. Subsequently, during its May meeting, the State Board considered all ten items.

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 C, and, for the sake of space, will not be duplicated herein.

FINDINGS OF FACT

1. The Subject Material was challenged by a parent or legal guardian of a student in the District. The Chairman of the District board submitted a letter requesting that the State Board take these materials up for consideration.
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.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 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 IMRC's Report and Recommendation includes passages from the Subject Material. The excerpts from the Subject Material, which are included in Exhibit C, constitute clear violations of Regulation 43-170 by presenting plainly before the reader express, detailed descriptions of "sexual conduct" as specifically defined in Code sections 16-15-305 (C)(1).

Having carefully considered the Subject Material, all public comments (in person and written), 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 find that the Subject Material includes descriptions of "sexual conduct" as that term is defined by S.C. Code § 16-15-305(C)(1). While our review of the Subject Material is not limited to the excerpts provided by the Department, those excerpts establish a clear violation of the regulation. Therefore, the Subject Material is not Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170 and must be removed immediately from all public-school classrooms, libraries, media centers, programs, reading lists, and school-controlled extracurricular activities in South Carolina.

(Signature on following page)

³ Exhibit A to the Report and Recommendation, which is attached to this Final Order and Opinion for ease of reference, contains excerpts which are representative of questionable or violative material contained in the Subject Material. The State Board's review and Order is not limited to the excerpts contained therein.

In Re: *Last Night at the Telegraph Club* by Malinda Lo
Order No. 2025-0013
May 30, 2025

s/Rita Allison
Rita Allison
Chair
South Carolina State Board of Education
May 30, 2025



South Carolina Instructional Materials Uniform Parent Complaint Form

Your Name: Elizabeth Szalai

Title & Author of Contested Material *(one per form)*: _____

Last night at the Telegraph Club by Malinda Lo

School Where Contested Material is Located: Please see below

Location of Contested Material *(library, classroom, etc...)*: Library

Contested Material is *(select one)*: ☒ **Printed** ☐ **Audio/Visual** ☐ **Online Resource**

☐ **Other** *(please describe)*: _____

I request that this Contested Material be *(choose one of the following)*:

- ☒ Removed from all schools/facilities in this District.
- ☐ Restricted to the following grade levels in this District: _____
- ☐ Restricted to a student whose parent/legal guardian provides consent and is enrolled in the following grade levels in this District: _____

Describe Your Reason for Contesting This Material *(attach additional pages as needed)*:

This book contains explicit sexual activities in violation of Regulation 43-170 specifically touching of breast and masturbation. Please refer to specific passages below with associated page numbers.

Available at the following schools:
 Beaufort High School
 Bluffton High School
 Hilton Head Island High School
 May River High School

January 2/5

I, Elizabeth Szalai *(insert your name)*, hereby certify that:

- I am a parent or legal guardian of a student who attends a school within this District.
- I have read, watched, or otherwise reviewed the material I am contesting.
- I have made a good faith effort to address my concerns with School or District staff.
- I have not filed more than five (5) instructional material complaints (including this complaint) in this calendar month.
- I believe that this Contested Material is not suitable for use, availability, and/or unrestricted access in this District, pursuant to the requirements and definitions in Regulation 43-170, which are summarized on the following instruction page.

Signature: _____

Date: 1/17/25

This form is produced by the South Carolina Department of Education in compliance with Regulation 43-170 and may not be altered by any other party. It is effective beginning August 1, 2024 until further notice.

Last Night at the Telegraph Club

by Malinda Lo

Available at the following schools:

Beaufort High School
Bluffton High School
Hilton Head Island High School
May River High School

Summary of Concerns:

This book contains sexual activities.

Page 41

(Violates Regulation with touching of breast.)

Maxine pushed Patrice back against the velvet cushions, lowering her mouth to the girl's creamy skin. "You're like me, Patrice. Stop fighting the possibility." Patrice whimpered as Maxine pressed her lips to her neck.

"Max, what are you doing?" Patrice gasped. "This is shameful."

"You know what I'm doing," Maxine whispered. She unbuttoned Patrice's blouse and slid the fabric over Patrice's shoulder, stroking her breasts. Patrice let out a sigh of pure pleasure.

"Kiss me now," Patrice whispered.

Maxine obeyed, and the sensation of Patrice's mouth against hers was a delight far beyond shame.

Page 42

(Violates Regulation with masturbation.)

She went to bed imagining Maxine's hand on the buttons of Patrice's blouse, unbuttoning it.

She slid her own hand beneath the placket of her nightgown; she felt her own warm skin beneath her fingertips. In the quiet darkness of her bedroom she felt the faint but insistent beating of her heart, and she felt its quickening. She imagined the blouse sliding off Patrice's shoulders, the pale swell of her breasts. Lily's whole body went hot. She felt the need to cross her legs against the hungry ache at the center of her body. She imagined them kissing the way Marlon Brando had kissed Mary Murphy in *The Wild One*, which she and Shirley had snuck into last February. ("Don't be such a square," Shirley had said when Lily had worried about getting caught.) But now, in Lily's imagination, Marlon Brando became Max, crushing Patrice bonelessly in her arms. And then their lips pressed together, and Lily tugged up the hem of her nightgown and pressed her fingers between her thighs, and pressed, and pressed.

(Violates the Regulation with cupping of breast, stroking of nipple, and description of masturbating another person.)

She brushed her nose against Kath's neck, and she wanted to bottle up the fragrance of her. She felt Kath's pulse beneath her lips, and Kath's hand cupping the back of her head, and at last, Kath's mouth touching hers.

It was still a shock to feel it: the connection between their bodies, as if it had risen from the marrow of her bones, thick and charged and sweet. Before, she had been afraid of being discovered and afraid of discovering herself, but the more they kissed, the less afraid she felt, until her fear was subsumed beneath much more powerful feelings.

She wanted to touch Kath's skin. She tugged the hem of Kath's blouse out from her skirt and slid her hands beneath it, and finally she felt the warm skin of her back, and the quiver of Kath's body as she touched her. Kath drew back briefly and reached for the buttons of Lily's blouse, asking, "Can I?" Lily helped her unbutton it, and then Kath put her hand on the bare skin of Lily's waist, and Lily closed her eyes. Kath's hand slid up over her ribs and cupped the curve of her breast, and her thumb trailed electrically over the outline of Lily's nipple through her bra. And then she pushed her leg between Lily's thighs, and Lily gasped at how it felt—the pressure and the movement there—and it was exactly what she wanted. She was astonished by the way this worked between them so instinctively, as if they had been made to do this together.

But Lily felt as if there were no time. She couldn't entirely forget that they only had an hour together. A desire for something more was rising inside her as Kath moved against her, their skirts riding up as their bodies rubbed together. It felt urgent, as if they were counting down the seconds till a bomb would explode. There was no time; they had to do this right now.

And she reached for the hem of her skirt and tugged it up to her hips, and she took Kath's hand and moved it to the cleft of her body.

Kath hesitated. "Are you sure?" she whispered.

"Please," Lily said, overcome.

So Kath put her hand between Lily's legs, and Lily helped her, fumbling with her underwear.

It was awkward, but when Kath's fingers touched her, they both gasped.

"Am I in the right place?" Kath asked.

"Yes," Lily whispered.

It all felt like the right place. Kath's fingers rubbed and rubbed, and it was so marvelous, so intoxicating—she'd never even really touched herself like this before—and now she was pinned against the side of the filing cabinet, and it made a dull metallic thud as her hand slapped against it.

"I'm sorry," she gasped, but she couldn't really be sorry because it was all happening so quickly, so unexpectedly, and she clutched Kath close to her as the sensations took over, her body shuddering, and she pressed her face into Kath's neck until it was over.

There was a minute in which she breathed in and out, in and out, and Kath held her gently, her head resting against the filing cabinet. Then Kath kissed her neck and shifted herself over Lily's thigh and whispered, "Can I—is this all right?"

"Yes," Lily said, and she leaned into Kath, holding her as she moved, feeling Kath's wetness slide against her leg.

...How different this was from when Lily was alone in her room. How different, and how much more: an overflowing amount of more. Kath kept rocking against her thigh, her breath ragged against Lily's cheek, and Lily stroked her hand over Kath's hair tenderly, feeling impossibly close to her. How precious she was, and how miraculous.

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

INSTRUCTIONAL MATERIAL
REVIEW COMMITTEE

IN RE: LAST NIGHT AT THE
TELEGRAPH CLUB BY MALINDA LO

REPORT AND RECOMMENDATION

This is a matter in which Instructional Material is being addressed by the Instructional Material Review Committee (“IMRC”) of the S.C. State Board of Education (“State Board”) pursuant to S.C. Code Reg. 43-170. The hearing of this matter occurred via Microsoft Teams on March 13th, 2025 at 1:00 PM.

Title of Instructional Material:
Author:

Last Night at the Telegraph Club
Malinda Lo

BACKGROUND AND PROCEDURAL HISTORY

The “Subject Material” listed above is reviewed by the IMRC pursuant to its authority to review materials that have been appealed from a local district board. In this case, Complainant filed the South Carolina Instructional Materials Uniform Parent Complaint Form (Exhibit A) with the Beaufort School District Board of Education on January 17th, 2025. The Chairman of the Beaufort Board requested that the State Board of Education take these materials up for consideration, pursuant to Regulation 43-170 VI.C., as the Beaufort Board had previously reviewed this material in 2023, prior to the enactment of Regulation 43-170. As further described below, this Regulation authorizes the State Board to take certain actions related to Instructional Material. The Complainant requested that the State Board remove the Subject Material entirely from South Carolina’s public schools.

The Department notified the public of this matter via posting hearing information and the hearing agenda on its website on March 6th, 2025. Consistent with governing requirements, the public was invited to sign up in advance of the hearing in order to provide comment regarding the Subject Material. The Hearing 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 Section 1-23-310 et. seq. The State Board’s Rule of Governance was designed and adopted to provide a full and fair process for Instructional Material reviews under Reg. 43-170.

Based on a review of all public comments (in person and written), the Subject Material, all documentation provided by the Complainant and interested parties, the IMRC makes the following findings of fact and conclusions of law.

APPEARANCES

Report and Recommendation
Last Night at the Telegraph Club

Complainant providing testimony in favor of removing the Subject Material:

Elizabeth “Ivie” Szalai

Providing public comment in favor of retaining the Subject Material:

Valerie Byrd Fort

On Behalf of South Carolina Department of Education:

Robert D. Cathcart, III, Esq., Policy and Legal Advisor

FINDINGS OF FACT

1. The Subject Material was challenged by the Complainant in the Beaufort County School District on January 17th, 2025.
2. Beaufort County School District Officials informed Complainant that the Board had previously considered the Subject Material and returned the material to its shelves. The Chairman of the Beaufort County School District Board of Education requested the State Board of Education to review the material without the Beaufort Board reviewing the Subject Material under the Regulation.
3. The Subject Material is available to students in the Beaufort County School District.
4. The Subject Material contains the content listed and described in Exhibit A¹.

APPLICABLE LAW

1. Regulation 43-170 authorizes the State Board to take certain actions related to Instructional Material. The State Board can (1) remove the Subject Material entirely, (2) discontinue use of the Subject Material for any grade level or age group for which such use is inappropriate or unsuitable, (3) limit the Subject Material’s availability to a student where the school district has received the consent of the student’s parent, or (4) permit the continued use of the Subject Material for all grade levels or age groups.

2. Regulation 43-170 defines “Instructional Material(s)”:

“Instructional Material(s)” means materials used in a South Carolina K-12 public school classroom, made available in a public school library/media center, or included on a public school’s reading list, whether adopted and/or purchased from the state-adopted instructional materials list, adopted and/or purchased through a district instructional materials program, or otherwise purchased, donated to the school, or made available to students through other means, including but not limited to digital platforms. See S.C. Code Ann. Section 59–19–10. The term “Instructional Materials” as used herein includes any collection of books or materials purchased, acquired, or kept on public school grounds by any teacher or other public-school employee and made available to students, regardless of how or by whom such materials are acquired or purchased. S.C. Code Reg. 43-170(I)(A).

¹ Exhibit A contains excerpts which are representative of questionable or violative material contained in the Subject Material. The IMRC’s review, report, and recommendation is not limited to the excerpts listed on Exhibit A.

Report and Recommendation
Last Night at the Telegraph Club

3. Regulation 43-170 defines “Age and Developmentally Appropriate”:
“Age and Developmentally Appropriate” means topics, messages, materials, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. 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).
4. Regulation 43-170 authorizes the State Board to establish “a committee comprised of at least five of the State Board’s members... [and to] conduct a public meeting” consistent with the Regulation’s requirements. Reg. 43-170(IV)(E). Furthermore, it requires the committee to “provide a report and recommendation to the full State Board to be considered and either adopted or rejected by the State Board at its next regularly scheduled meeting.” *Id.*

RECOMMENDATION

The State Board has established that, when Instructional Material “present[s] plainly before the reader express, detailed... descriptions of ‘sexual conduct’ as specifically defined in S.C. Code Ann. § 16-15-305 (C)(1)(b), (d), and (e),” it is a clear violation of Regulation 43-170 and the Subject Material must be removed entirely from all public school in South Carolina. *See* SBE Final Order and Opinion No. 2024-0001 (In re: Damsel by Elena Arnold) at page 3. Having carefully considered all public comments (in person and written), the Subject Material and/or excerpts in question from the Subject Material, all documentation provided by the Department, and all comments made by those appearing before the IMRC, we unanimously find that the Subject Material includes descriptions of “sexual conduct” as that term is defined by S.C. Code § 16-15-305(C)(1).

While the IMRC’s review of the Subject Material is not limited to Exhibit A, the excerpts contained therein establish a clear violation of the regulation. Therefore, the Subject Material is not Age and Developmentally Appropriate as defined by S.C. Code Reg. 43-170 and must be removed entirely from all public schools in South Carolina.

The IMRC recommends that, considering all the circumstances *Last Night at the Telegraph Club* by Malinda Lo be removed entirely from all public schools in South Carolina, beginning on the date of the signing of any Final Order by the South Carolina State Board of Education.

/s/Dr. Christian T. Hanley, Jr.

Christian T. Hanley, Jr.

Chairman

Instructional Material Review Committee

January 25, 2025