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

IN RE: A COURT OF FROST AND STARLIGHT BY SARAH J. MAAS	**FINAL ORDER AND OPINION REGARDING INSTRUCTIONAL MATERIAL** No. 2024-0004

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:	**A Court of Frost and Starlight**
Author:	**Sarah J. Maas**

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 employe 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 the Subject Material (1) had been repeatedly discussed during prior public comment periods, (2) had been the subject of district-level challenges prior to the promulgation of Regulation 43-170, and (3) 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 its 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 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 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.

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.[1]

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 the source of a number of district-level challenges prior to the adoption of Regulation 43-170, or was otherwise 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.

[1] 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.

3. The Subject Material contains the content listed and described in Exhibit A of the IMRC's Report and Recommendation.[2]

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 1, constitute clear violations of Regulation 43-170 by presenting plainly before the reader express, detailed, and, at times, extensive descriptions of "sexual conduct" as specifically defined in Code sections 16-15-305 (C)(1)(b), (d), and (e).

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.

s/David O'Shields
David O'Shields
Chairman
South Carolina State Board of Education
November 26, 2024

[2] 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.