



Uniform Procedure for Selection or Reconsideration of Instructional Materials (Regulation 43-170): Educator Guidance & Frequently Asked Questions

Background

Across the State—and nation—parents, educators, administrators, and communities are grappling with questions and concerns about the selection and use of age-appropriate, educationally suitable materials for K-12 students in public schools.

In South Carolina, the vast majority of educators seek to make responsible choices, use common sense, and be responsive to parent and community stakeholder concerns. Increasingly, however, disagreements have arisen regarding the appropriateness and suitability of various materials.

Previously, those discussions and decisions were not governed by any consistent definitions, clear standards, or statewide process. Rather, under a patchwork of district policies and practices, stakeholders were afforded an uneven opportunity to have their concerns addressed in a uniform, transparent manner. The result was concern and frustration for parents, and for educators fear, uncertainty, and distraction from the paramount academic mission of South Carolina schools.

To address this challenge, South Carolina has now established a clear, transparent, and uniform process that provides certainty for local educators, respects the legitimate prerogatives of parents, and protects students from materials that are not age or developmentally appropriate.

State Board of Education [Regulation 43-170](#) establishes consistent definitions and a two-prong threshold test for local educators and boards to determine if materials available to students in public schools are (1) age and developmentally appropriate and (2) educationally suitable and aligned with the purpose of South Carolina's instructional program. It also creates a uniform process for local school boards to review and hold public hearings on complaints raised within their districts and establishes an appellate process to the State Board of Education. The State Board of Education's authority to promulgate this regulation is established in SC Code Ann. §§ [59-5-60](#) and [60-9-30](#).

This regulation sets clear expectations that, once fully implemented, will lessen anxiety, uncertainty, and conflict as all districts comply with a uniform standard. This document provides helpful guidelines and addresses questions raised by South Carolina educators.

Guidance

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Our mutual objective in every classroom is to provide a high-quality education that promotes positive student achievement and growth while using age-appropriate materials in instructional practices. You can do your part to help ensure compliance with Regulation 43-170 by following these steps.

1. **Review your materials.** Hopefully, you are familiar with the books and other materials already used in your lessons and available in your classroom. Evaluate whether they are [age and developmentally appropriate](#) under the standards set out in the regulation. You should also evaluate any new material before you add it to your classroom. For example, if you receive materials from a publisher, please review them before adding them to your classroom library. Ensure that all materials are free from inappropriate sexual content, including graphic images. The Department of Education is also working to provide access to tools for districts to help support teachers to catalog classroom materials.
2. **Apply these evaluation criteria.** When assessing materials for your classroom, ask yourself the following questions:
 - a) Does the material contain sexually explicit content [as defined in the regulation](#)?
 - b) Is it age appropriate for the grade that you teach?
 - c) A common sense litmus test: **would you feel comfortable having a student read the content aloud or displaying the images in a public setting like a school board meeting?**

The guidelines listed above are shortened and simplified explanations of the regulation's requirements. For more detail, you can review the regulation itself, which is available [here](#).

Frequently Asked Questions

1. **Does this regulation change the implementation of South Carolina's laws regarding sex education, sexual abuse reporting, or online safety?**

No. This regulation expressly states that it does not impact South Carolina's Comprehensive Health Education Act (which includes existing safeguards regarding parental notification and consent), Erin's Law, Gavin's Law, or any other law relating to educating children about how to identify and report sexual abuse.
2. **Does this regulation risk viewpoint discrimination?**

No. The regulation clearly, expressly, and repeatedly states that decisions to retain or remove a book cannot be made based on the decision-maker's disagreement with or opposition to the viewpoints expressed in the book. Rather, the regulation provides objective, viewpoint-neutral criteria on which to evaluate materials.
3. **How does the regulation define "age and developmentally appropriate?"**

The regulation defines age and developmentally appropriate materials as “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.” The regulation further states that 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. Does the regulation prohibit materials dealing with race, racism, slavery, or the Civil Rights Movement?

No. The regulation restricts only materials that contain descriptions or depictions of “sexual conduct” as that term is defined by [Section 16-15-305\(C\)\(1\)](#) or that are not age and developmentally appropriate.

5. Does the regulation automatically prohibit materials containing romantic relationships or characters in a book kissing?

No. Descriptions or depictions of romantic relationships or kissing are permissible so long as they do not include or evolve into “sexual conduct” as described above and are age and developmentally appropriate. A litmus test of common sense could be to consider if you would be comfortable with a student in your class reading a passage out loud in a public forum.

6. Does this regulation create a new risk to an educator’s certificate?

No. This regulation does not establish a new pathway for taking action against an educator’s certificate and does not change the State Board of Education’s long-established scope, definitions, or processes associated with disciplinary action. Rather, it puts responsibility for materials in local schools squarely on the shoulders of the locally elected board. [Please read this important and helpful memo for clarification on the issue.](#)

7. Does this regulation equate to “book banning” or “censorship?”

No. A book ban is when the government seeks to prevent the public from buying, selling, owning, or reading a book. This regulation doesn’t do that. Students are still free to buy, own, and read any book that they or their parents choose, and there’s no penalty to prevent or discourage them from doing so. Regulation 43-170 doesn’t control private actions. Rather, this regulation deals only with the government’s *own* conduct—government employees acting in their government roles to select and buy materials that will be owned by the government, kept in government buildings, and/or used by government officials to administer a government program. This regulation says nothing about what children or parents can buy and read on their own time and dime.

8. Does this regulation infringe on “academic/intellectual freedom” of K-12 educators?

No. While academic freedom exists as a legal concept in higher education, it does not apply in the context of K-12 education and minor children. Rather, this regulation establishes permissible guardrails around government “speech”—which includes curricula and supplemental instructional materials—as delivered within a public institution by public

employees. Case law is clear: the State has the right to remove obscene materials from public school libraries and classrooms.

9. Does this regulation improperly override “local control”?

No. State law provides the State Board of Education explicit and unambiguous authority over this issue. Furthermore, it is carefully crafted to clarify that the primary responsibility for adjudicating contested materials within a district resides with the locally elected board. In fact, it clarifies that each district school board is and remains responsible to manage the ongoing selection and continued use of all instructional materials and any other materials made available in its schools, whether adopted and purchased through a district instructional materials program, or otherwise purchased, donated to the school, or made available to students through other means.