

Model Policies Concerning Instructional Materials with Sexually Explicit Content



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I. Acknowledgements

The Virginia Department of Education (the “**Department**”) would like to extend appreciation to Senator Siobhan S. Dunnavant, sponsor of Senate Bill 656, the bi-partisan support of the Virginia General Assembly, and Governor Glenn Youngkin for their leadership in support of parental rights and the development of these **Model Policies Concerning Instructional Materials with Sexually Explicit Content (“Model Policies”)** .

II. Introduction

- A. These Model Policies have been developed as required by [Senate Bill 656](#), enacted by the 2022 Virginia General Assembly, which reads as follows:
- B. “VIRGINIA ACTS OF ASSEMBLY -- 2022 SESSION CHAPTER 100

An Act to amend the Code of Virginia by adding a section numbered 22.1-16.8, relating to the Department of Education; model policies; instructional material; sexually explicit content; parental notification.

[S 656]

Approved April 6, 2022

Be it enacted by the General Assembly of Virginia:

- 1. That the Code of Virginia is amended by adding a section numbered 22.1-16.8 as follows: § 22.1-16.8. Instructional material; sexually explicit content; parental notification.
 - A. As used in this section, "sexually explicit content" has the same meaning as provided in subsection A of § 2.2-2827.
 - B. The Department shall develop and make available to each school board model policies for ensuring parental notification of any instructional material that includes sexually explicit content and include information, guidance, procedures, and standards relating to:

1. Ensuring parental notification;
 2. Directly identifying the specific instructional material and sexually explicit subjects; and
 3. Permitting the parent of any student to review instructional material that includes sexually explicit content and provide, as an alternative, nonexplicit instructional material and related academic activities to any student whose parent so requests.
- C. Each school board shall adopt policies that are consistent with but may be more comprehensive than the model policies developed by the Department pursuant to subsection B.
2. That the Department of Education shall develop and make available to each school board model policies pursuant to subsection B of § 22.1-16.8 of the Code of Virginia, as created by this act, no later than July 31, 2022.
 3. That each school board shall adopt policies pursuant to subsection C of § 22.1-16.8 of the Code of Virginia, as created by this act, no later than January 1, 2023.
 4. That the provisions of this act shall not be construed as requiring or providing for the censoring of books in public elementary and secondary schools.”

III. Development

- A. In April 2022, pursuant to requirements in the recently enacted Code of Virginia Section 22.1-16.8 (the “Act”), the Department began the process of developing model policies that:
1. Ensure advance parental notification of the intended use of any instructional materials with sexually explicit content in their child’s education;
 2. Ensure parents have the ability to inspect and review instructional materials that are identified as including sexually explicit content; and

3. Ensure parents have the opportunity to select for their child the option of alternative instructional materials and related academic activities that do not contain sexually explicit content.
- B. The process for developing these Model Policies in accordance with the Act included a review of similar policies in other states and prior work completed by the Board of Education on the rights of Virginia parents with respect to sexually explicit instructional materials. The process is also the result of consultation and collaboration with the educational leaders within the Department and various stakeholders throughout the Commonwealth, including parents of children in our public schools.

IV. Terminology

- A. The phrase “**Model Policies**” means the entirety of this document, including Appendix I to this document.
- B. Terms and phrases used in the Act:
1. Section [2.2-2827](#) of the Virginia Code, which pertains to restrictions on accessing sexually explicit content via agency owned or leased computer equipment, states that “**Sexually explicit content**” “means (i) any description of or (ii) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity, as nudity is defined in Section [18.2-390](#), sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in Section [18.2-390](#), coprophilia, urophilia, or fetishism.”
 2. The Code of Virginia [Section 22.1-1](#) defines “**parent**” or “**parents**” as “any parent, guardian, legal custodian, or other person having control or charge of a child.”
 3. For the purposes of these Model Policies, the phrases “**instructional material**” and “**instructional materials**” mean any content used by one or more students for an educational purpose, regardless of (a) its format, whether printed, representational, audiovisual, electronic, or digital (such as materials and software applications accessible through the internet), or (b) the time, place and manner in which the content is used. Library materials are considered instructional materials when used (i) for

completion of an assignment, or (ii) as part of an academic or extracurricular educational program. This includes any division, school, and/or classroom purchased or created assessments. However, the phrases “instructional material” and “instructional materials” do not include standardized national or state assessments, such as ACT, SAT, NAEP, and AP or SOL exams.

V. Guiding Principles

- A. **Parental Right to Make Decisions with Respect to Their Child:** Policies should be drafted which empower parents to exercise their right to decide whether the use of sexually explicit content in instructional materials is appropriate for their child. Policies shall reflect:
1. **Confidence in parents:** The Act reflects legislative confidence in parents to make appropriate decisions with respect to whether their child should be allowed access to instructional material containing sexually explicit content;
 2. **Respect for parent decision-making:** Each parent has the right to make decisions concerning their child’s education in accordance with their customs, faith, and values. Additionally, local school boards should develop policies that provide parents the opportunity to change their decision by providing notice to the school; and
 3. **Respect parents' rights to protect their children’s innocence:** Parents have the responsibility to protect their minor children’s innocence at every age and stage of maturity. As such, the Act directs the creation of Model Policies “ensuring parental notification of any instructional materials that includes sexually explicit content” and the right of a parent to choose “nonexplicit instructional content and related academic activities” for their child.
- B. **Non-punitive Implementation:** The Department remains committed to working with school divisions to ensure a positive, safe, and nurturing learning environment for all students. To this end, local school division policies shall implement the requirements of the Act in a manner that is not punitive in any way for children whose parents request alternative instructional material.

- C. **Compliance:** To comply with the Act, local school boards shall adopt policies that are, at a minimum, consistent with these Model Policies no later than January 1, 2023. School boards may adopt policies that are more comprehensive than these Model Policies. A school board’s compliance with the Act shall not be construed to require or provide for the censoring of books in public elementary and secondary schools.

VI. Related Laws

- A. The following federal and state laws are described below for informational purposes only and to aid local school boards in the development of local policies. The summaries provided in this section do not constitute legal interpretation or advice.
1. The federal Protection of Pupil Rights Amendment, [20 USC § 1232H](#), provides for the right of a parent of a student to inspect, upon the request of the parent, any instructional material used as part of the educational curriculum for the student.
 2. The Code of Virginia, [§ 1-240.1](#), provides that “A parent has a fundamental right to make decisions concerning the upbringing, education, and care of the parent's child.”
- B. The Virginia Board of Education’s regulations governing instructional materials, [8VAC20-720-160](#), provide that local school board policies and criteria for the selection of instructional materials shall include “The rights of parents to inspect, upon request, any instructional materials used as part of the educational curriculum for students, and the procedure for granting a request by a parent for such access, in accordance with the Protection of Pupil Rights Amendment, 20 USC § 1232H, and its implementing regulation, [34 CFR Part 9](#).”
- C. The Code of Virginia, [§ 22.1-207.2](#), provides that parents have the right to review the complete family life curricula, including all supplemental materials used in any family life education program.

VII. Publication Information

Questions or inquiries about this document should be directed to:

Virginia Department of Education
Office of Policy: Department of Policy and Communications
Office of the Superintendent: Executive Director, Parental Engagement
P.O. Box 2120
Richmond, Virginia 23218-2120
(804) 225-2092

Appendix 1

Sample Policy

The following Sample Policy is provided for consideration or use by local school boards as they develop and implement their policies in compliance with the Act.

I. Purpose

To establish clear procedures for schools to (i) identify all instructional materials with sexually explicit content, (ii) ensure parental notification of any instructional materials with sexually explicit content, (iii) permit parents to review all instructional materials with sexually explicit content, and (iv) ensure alternative instructional materials, that do not include sexually explicit content, are provided in a non-punitive manner for any student whose parent so requests.

II. Definitions

- A. Section [2.2-2827](#) of the Virginia Code states that “**Sexually explicit content**” “means (i) any description of or (ii) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity, as nudity is defined in Section [18.2-390](#), sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in Section [18.2-390](#), coprophilia, urophilia, or fetishism.”
- B. The Code of Virginia [Section 22.1-1](#) defines “**parent**” or “**parents**” as “any parent, guardian, legal custodian, or other person having control or charge of a child.”
- C. For the purposes of these Model Policies, the phrases “**instructional material**” and “**instructional materials**” mean any content used by one or more students for an educational purpose, regardless of (a) its format, whether printed, representational, audiovisual, electronic, or digital (such as materials and software applications accessible through the internet), or (b) the time, place and manner in which the content is used. Library materials are considered instructional materials when used (i) for completion of an assignment, or (ii) as part of an academic or extracurricular educational program. This includes any division, school, and/or classroom purchased or created assessments. However, the phrases “instructional

material” and “instructional materials” do not include standardized national or state assessments, such ACT, SAT, NAEP, and AP or SOL exams.

III. Identification of Instructional Materials with Sexually Explicit Content

- A. Leadership at each school shall establish a process for identifying instructional materials with sexually explicit content.
- B. Prior to the start of the academic year, schools shall identify the specific instructional materials that include sexually explicit content which may be used during upcoming school year. When determining whether instructional materials contain sexually explicit content, teachers, principals, and division staff should consider student age and maturity, and whether a parent might reasonably consider the instructional content harmful to their child.
- C. In concert with the definitions and terminology provided herein, teachers, principals and division staff should consider the following when determining whether parent notification is required:
 - 1. Parents of children in any grade should be notified in advance when any portion of instruction materials to be used are rated Mature Audience (MA) or R will be used;
 - 2. Parents of children in grades K-8 should be notified in advance when any portion of instruction materials to be used are rated PG-13 or TV-14;
 - 3. Parents of children in grades K-5 should be notified in advance when any portion of instruction materials to be used are rated PG or TV-PG; and
 - 4. With respect to unrated instructional materials, parents should be notified if any portion contains sexually explicit content.

IV. Notice to Parents

- A. At least thirty (30) days prior to the use of any instructional materials with sexually explicit content, principals shall provide written notice to parents that (i) specifically identifies the instructional materials with sexually explicit content, (ii) informs parents of their right to review such instructional materials, and (iii) informs parents of their right to have their child use, in a non-punitive manner, alternative, instructional materials that do not include sexually explicit content.

- B. Such notice should be provided in writing to parents by U.S. mail, e-mail, and/or in person at a parent-teacher meeting.

V. **Parental Right to Review of Instructional Materials with Sexually Explicit Content and Right to Alternative Instructional Materials**

- A. Principals shall maintain a current list of instructional materials with sexually explicit content by grade and subject on the school's public website.
- B. Principals shall provide online access for parental review of instructional materials that include sexually explicit content, unless not technically feasible or prohibited by copyright protection. Schools shall also have available at the school for parent review all instructional materials that include sexually explicit content.
- C. Schools shall defer to parents to determine whether the use of sexually explicit content in instructional materials, if any, is appropriate for their child.
- D. Upon a parent's request, schools shall provide, in a manner that is not punitive, alternative instructional materials for the student that do not include sexually explicit content.
- E. Parents may change their decision with respect to the use of alternative instructional materials by providing notice to the school.