



PO BOX 8453, COLUMBIA, SC, 29202, (803) 606-0431, WWW.LWVSC.ORG

To: Members of the South Carolina State Board of Education

From: Janelle L. Rivers, Ph.D., Education Advocacy Specialist

Date: January 6, 2024

Re: Proposed R.43-170. Uniform Procedure for Selection or Reconsideration of Instructional Materials

The League of Women Voters of South Carolina recognizes the authority of the State Board of Education to make policy for the public schools, which includes the responsibility for providing approved options for curriculum materials and for reviewing appeals of local school board decisions in response to objections to books that have been included in library collections in any of the public schools in the state; however, we believe the current draft policy R.43-170 includes provisions that will lead to unintended detrimental consequences.

The following statement in the Definitions section under item C is especially problematic:

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 defined by Section 16-15-305(C)(1).

Despite what might have been said in oral testimony, it is important to note that this is a stand-alone provision, not dependent for enforcement on any other consideration. The statement relies on the text for Section 15-16-305(C)(1) of the South Carolina Code of Laws, which is copied here for your convenience:

(C) As used in this article:

(1) "sexual conduct" means:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted, whether between human beings, animals, or a combination thereof;

(b) masturbation, excretory functions, or lewd exhibition, actual or simulated, of the genitals, pubic hair, anus, vulva, or female breast nipples including male or female genitals in a state of sexual stimulation or arousal or covered male genitals in a discernably turgid state;

(c) an act or condition that depicts actual or simulated bestiality, sado-masochistic abuse, meaning flagellation or torture by or upon a person who is nude or clad in undergarments or in a costume which reveals the pubic hair, anus, vulva, genitals, or female breast nipples, or the condition of being fettered, bound, or otherwise physically restrained on the part of the one so clothed;

(d) an act or condition that depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification; or

(e) an act or condition that depicts the insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.

Therefore, under Section 15-16-(C)(1)(a), no age group of public-school students would be permitted access to materials with descriptions or visual depictions of vaginal intercourse. Consequently, instruction in biology, psychology, or health education that describes or illustrates normal sexual intercourse would be prohibited. Likewise, this stipulation would deny students access to information about methods of birth control that involve condoms or diaphragms, which are more easily accessible than many other methods for preventing conception.

Under Section 15-16-(C)(1)(d), prohibiting any material that “depicts actual or simulated touching, caressing, or fondling of, or other similar physical contact with, the covered or exposed genitals, pubic or anal regions, or female breast nipple, whether alone or between humans, animals, or a human and an animal, of the same or opposite sex, in an act of actual or apparent sexual stimulation or gratification” could be grounds for excluding many works of literature that have long been considered classics, including the Bible (e.g., Ezekiel 23:1-49 and Song of Solomon 7:2-10). Many well-known poems and novels describe behaviors that could be described as sexually stimulating or gratifying for one or both parties in contexts that range from displays of affection to violent criminal acts.

We urge you to revise this provision to allow for language and images that are needed for education at middle and high school levels, especially in courses such as biology, health education, psychology, and criminal justice. Education policy, especially for high school students, should allow for responsible instruction in reproductive functions and information that will help students to understand themselves and the society in which they live.

Over thirty years ago, I worked in a middle school counseling program in a rural county in South Carolina. Some of our students--both boys and girls--were sexually active eighth graders. I learned quickly that even within small communities in South Carolina, cultures differ in important ways. One way that subcultures differ is in attitudes toward human sexuality. Young people are curious, and today they have much more access to information about sex through electronic sources than they did thirty years ago. Parents cannot reliably shield students from all references to sexual conduct. They will find and share information, as well as misinformation.

Eliminating secular sex education from public schools leads to ignorance that can have life-altering consequences for young people. Withholding information about human relationships and the biological processes of reproduction will lead to uninformed or misinformed students and eventually to increased teen pregnancies. No matter how strongly churches advocate for abstinence, some young people, including some young people in their congregations, are going to experiment with sexual activities. That has been true for generations, and now television, movies, internet sites, and social media platforms reference sex in so many ways that parents cannot reasonably expect to shield their children from information about sex once they have access to sources of entertainment and information outside their own homes.

Sexuality is an important part of human experience. As such, it should not be a completely prohibited topic for literature that is accessible to middle and high school students. Responsible descriptions or depictions of human sexual conduct are appropriate for inclusion in materials used for instruction in health education, biology, and psychology, as well as in materials selected as examples of literature for high school students and even in some materials for middle school students. In truth, students deserve to know how their bodies function, and they deserve access to accurate information. They deserve access to literature that can help them understand themselves and the importance of managing sexual feelings responsibly.

No responsible person would advocate making pornography accessible to students; but there are myriad examples of literary works that describe “sexual conduct” without being pornographic. Applying the existing definition of “sexual conduct” as a criterion for prohibition of instructional materials and library resources is a regrettable short-cut around the important and necessary work of crafting an appropriate regulation.

The South Carolina State Board of Education has been an reliable and responsible policy-making body for many years, and the League of Women Voters of South Carolina believes that you can be trusted to craft a policy that is balanced and fair, a policy that will allow for meaningful sex education, as well as appropriate instruction in courses that include topics related to human sexuality and access to a wide range of literature that can help students understand the world in which they live—a world that depends on some aspects of “sexual conduct” for the very survival of human beings.

The recent and dramatic increase in complaints about inappropriate instructional materials and access to library books has been associated with extremist political interest groups (Baeta, 2024, Friedman, 2022; Pendharkar, 2022). Public schools continue to be underfunded, while various political groups work to divert public funds to unaccountable private and religious schools. Trusting the judgment of committees of responsible educators, including librarians, as well as licensed teachers and administrators to curate instructional materials and resolve complaints about instructional materials has been a successful strategy that has worked well over time. Our public schools deserve support and protection from the State Board of Education.

Years of casual criticism of teachers, administrators, and public schools have damaged the reputation of the education profession. As a result, most of today’s brightest and most capable college and university students are unwilling to enter a profession where salaries are not commensurate with the amount of training required, where lawmakers add new responsibilities without adequate regard for existing workloads, and where public respect for educators is minimal. The teacher shortage has become critical, as South Carolina schools began the current academic year with over 1,600 vacant teaching positions—more than in any previous year (CERRA, 2023). The State Board of Education has a responsibility to create and enforce policies that improve our public schools by supporting and enhancing the education profession.

We urge you to seek careful legal review from supporters of public education and revise this draft regulation to prevent negative consequences.

Baeta, S., & Meehan, K. (2024). *Spineless Shelves*. Retrieved January 2024, from PEN America:
<https://pen.org/spineless-shelves/>

CERRA. (2023). *2023-24 Educator Supply and Demand Report*. Retrieved January 2024, from Center for Educator Recruitment, Retention, & Advancement: <https://www.cerra.org/supply-and-demand.html>

Friedman, J., & Johnson, N.F. (2022, September 19). *Banned in the USA: The growing movement to censor books in schools*. Retrieved January 2024, from PEN America:
<https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

Pendharkar, E. (2022, September 19, updated 28). Who's behind the escalating push to ban books? A new report has answers. *Education Week*.

Contact: Janelle Rivers, Ph.D., Education Advocacy Specialist, League of Women Voters of South Carolina, rivers12@bellsouth.net, 803-667-6610