

EDUCATION CODE

TITLE 2. PUBLIC EDUCATION

SUBTITLE F. CURRICULUM, PROGRAMS, AND SERVICES

CHAPTER 35. REGULATION OF CERTAIN LIBRARY MATERIAL

Sec. 35.001. DEFINITIONS. In this chapter:

(1) "Library material vendor" includes any entity that sells library material to a public primary or secondary school in this state.

(2) "Sexually explicit material" has the meaning assigned by Section 33.021.

(3) "Sexually relevant material" means any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to the curriculum required under Section 28.002(a), that describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.002. RATINGS REQUIRED. (a) A library material vendor may not sell library materials to a school district or open-enrollment charter school unless the vendor has issued appropriate ratings regarding sexually explicit material and sexually relevant material previously sold to a district or school.

(b) A library material vendor may not sell library material rated sexually explicit material and shall issue a recall for all copies of library material sold to a district or school that is:

- (1) rated sexually explicit material; and
- (2) in active use by the district or school.

(c) Not later than April 1, 2024, each library material vendor shall develop and submit to the agency a list of library material rated as sexually explicit material or sexually relevant material sold by the vendor to a school district or open-enrollment charter school before that date and still in active use by the district or school.

(d) Not later than September 1 of each year, each library material vendor shall submit to the agency an updated list of library material rated as sexually explicit material or sexually relevant material sold by the vendor to a school district or open-enrollment charter school during the preceding year and still in active use by the district or school.

(e) The agency shall post each list submitted under Subsection (c) or (d) in a conspicuous place on the agency's Internet website as soon as practicable.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.0021. RATING GUIDELINES. (a) For purposes of determining whether a library material is sexually explicit as required by Section 35.002, a library material vendor must perform a contextual analysis of the material to determine whether the material describes, depicts, or portrays sexual conduct in a way that is patently offensive.

(b) In performing the contextual analysis of a library material, a library material vendor must consider the following three principal factors with respect to the material:

(1) the explicitness or graphic nature of a description or depiction of sexual conduct contained in the material;

(2) whether the material consists predominantly of or contains multiple repetitions of depictions of sexual or excretory organs or activities; and

(3) whether a reasonable person would find that the material intentionally panders to, titillates, or shocks the reader.

(c) In examining the three factors listed under Subsection (b), a vendor must weigh and balance each factor and conclude whether the library material is patently offensive, recognizing that because each instance of a description, depiction, or portrayal of sexual conduct contained in a material may present a unique mix of factors.

(d) To determine whether a description, depiction, or

portrayal of sexual conduct contained in a material is patently offensive, a library material vendor must consider the full context in which the description, depiction, or portrayal of sexual conduct appears, to the extent possible, recognizing that contextual determinations are necessarily highly fact-specific and require the consideration of contextual characteristics that may exacerbate or mitigate the offensiveness of the material.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.003. AGENCY REVIEW. (a) The agency may review library material sold by a library material vendor that is not rated or incorrectly rated by the vendor as sexually explicit material, sexually relevant material, or no rating in accordance with Section 35.002(a). If the agency determines that the library material is required to be rated as sexually explicit material or sexually relevant material or to receive no rating at all under that subsection, the agency shall provide written notice to the vendor. The notice must include information regarding the vendor's duty under this section and provide the corrected rating required for the library material.

(b) Not later than the 60th day after the date on which a library material vendor receives notice regarding library material under Subsection (a), the vendor shall:

(1) rate the library material according to the agency's corrected rating; and

(2) notify the agency of the action taken under Subdivision (1).

(c) The agency shall post and maintain in a conspicuous place on the agency's Internet website a list of library material vendors who fail to comply with Subsection (b).

(d) A school district or open-enrollment charter school may not purchase library material from a library material vendor on the list described by Subsection (c).

(e) A library material vendor placed on the list described by Subsection (c) may petition the agency for removal from the list. The agency may remove a vendor from the list only if the

agency is satisfied that the vendor has taken appropriate action under Subsection (b).

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.004. LIABILITY. A school district or open-enrollment charter school or a teacher, librarian, or other staff member employed by a district or school is not liable for any claim or damage resulting from a library material vendor's violation of this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.005. PARENTAL CONSENT REQUIRED FOR USE OF CERTAIN LIBRARY MATERIALS. A school district or open-enrollment charter school may not allow a student enrolled in the district or school to reserve, check out, or otherwise use outside the school library library material the library material vendor has rated as sexually relevant material under Section 35.002(a) unless the district or school first obtains written consent from the student's parent or person standing in parental relation.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.006. REVIEW AND REPORTING OF CERTAIN LIBRARY MATERIALS. (a) Not later than January 1 of every odd-numbered year, each school district and open-enrollment charter school shall:

(1) review the content of each library material in the catalog of a district or school library that is rated as sexually relevant material under Section 35.002(a) by the library material vendor;

(2) determine in accordance with the district's or school's policies regarding the approval, review, and reconsideration of school library materials whether to retain each library material reviewed under Subdivision (1) in the school library catalog; and

(3) either:

(A) post in a conspicuous place on the Internet website maintained by the district or school a report; or

(B) provide physical copies of the report at the central administrative building for the district or school.

(b) The report required under Subsection (a)(3) must include:

(1) the title of each library material reviewed under Subsection (a)(1);

(2) the district's or school's decision regarding the library material under Subsection (a)(2); and

(3) the school or campus where the library material is currently located.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.007. RULES. The commissioner may adopt rules as necessary to administer this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.

Sec. 35.008. ASSISTANCE OF AGENCY. The agency may provide assistance to school districts and open-enrollment charter schools in complying with this chapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 808 (H.B. 900), Sec. 3, eff. September 1, 2023.