



STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MEMORANDUM

TO: District Superintendents

FROM: John E. Tyler, Esq.
Deputy Superintendent, Legal Affairs

DATE: June 27, 2024

RE: Update on Uniform Procedure for Selection or Reconsideration of Instructional Materials (Regulation 43-170)

As of June 25, 2024, the State Board of Education's unanimously passed [Uniform Procedure for Selection or Reconsideration of Instructional Materials \(Regulation 43-170\)](#) has tolled the required 120 days under the South Carolina Administrative Procedures Act and will take effect upon publication in July's State Register. It will allow for material challenges brought by a parent or legal guardian of a student within a respective district beginning August 1, 2024.

Historically, the handling of concerns or complaints related to instructional materials other than those adopted by the State Board of Education (SBE) through the statewide textbook adoption process (S.C. Code Ann. § 59-31-550) has been governed by a patchwork quilt of local processes across the 80+ school districts in the state.¹

Regulation 43-170 aims to bring uniformity, transparency, and consistency to this process, ensuring it is pedagogically sound, legally defensible, and logistically feasible. This Regulation aligns with Supreme Court precedent and state law, focusing on the removal of inappropriate sexual material, [as clearly defined in longstanding state law](#), from public school classrooms and libraries. You may read more about the background, key provisions, adoption process, and FAQs [in this brief executive summary](#).

¹ This Regulation in no way alters, diminishes, or supersedes the state's textbook adoption process (see R. 43-170(VIII)(B)). Therefore, instructional materials affirmatively adopted by the SBE are not subject to challenge at the local level and may only be brought to the SBE in its original jurisdiction.

Understanding that closing out the current school year and ramping up for the coming one is a labor-intensive undertaking for you and your staff, the SC Department of Education (SCDE) team is hard at work to provide districts with timely, user-friendly tools and information that will be available in short order to assist in compliance with the provisions of Regulation 43-170.

This includes the uniform, SCDE-created complaint form, which the Regulation requires districts to make readily available on their website. We will develop a one-stop-shop on our website as a home for these resources, and we will stay in regular communication to update you as those materials come online.

Of note, districts and their elected boards must take the following steps prior to August 1, 2024:

1. Maintain a complete and current list or catalog of all books and other materials available to students through any of the district's school libraries or media centers.

We are aware that districts are typically already doing this using a tool such as Destiny Discover. The Regulation requires that this information be current, regularly updated, prominently displayed on each district website, and accessible to the public (see R. 43-170(II)(C)). Going forward, the SCDE will annually inventory the online link for each district's portal. For questions or technical assistance regarding this provision, please contact Mark Herring (mherring@ed.sc.gov, 803-734-2322).

2. Review and, if necessary, harmonize existing district instructional material review and challenge policies that the district wishes to maintain.

Upon its effective date, this Regulation preempts, supersedes, and replaces any district, local, or school policy or practice to the extent that such policy or program is inconsistent with this Regulation (see R. 43-170(VIII)(A)). If you or your board have specific questions regarding existing policies, please SCDE's Office of General Counsel for technical assistance. You may reach out directly to John Tyler (jetyler@ed.sc.gov, 803-734-8218).

Additionally, districts should:

1. Identify a designee(s) and/or process to ensure that all new locally-approved instructional materials comply with the definition of "Age and Developmentally Appropriate" prior to being made available to students (see R. 43-170(V)). The Regulation provides that while the district board may delegate this task to staff and may request a report or recommendation from staff regarding the educational suitability and compliance of new instructional materials if deemed advisable, the final responsibility for

compliance with this obligation rests with the district board itself (see R. 43-170(III)(E)).

- 2. Consider to what extent a preemptive review of existing instructional materials is prudent.** While no district or school board is required to review existing instructional materials preemptively, the Regulation allows for affirmative steps to ensure materials currently available to students comply with the Regulation, should the district choose to do so (see R. 43-170(II)(B)).
- 3. Develop a district-wide uniform process for a parent or legal guardian to review a complete list of instructional materials in any given class, course, or program, upon reasonable request** (see R. 43-170(II)(C)).

The SCDE and SBE are grateful for the constructive feedback and collaboration from district partners to-date in revising the Regulation for practicality and precision. Our team is committed to continuous quality improvement and welcomes questions and ideas to help us create useful tools, helpful resources, and practical guidance for teachers and administrators as we move through the implementation process together.

Please contact Robert Cathcart (rdcathcart@ed.sc.gov, 803-734-2230) with additional questions or requests for technical assistance.