

CHAPTER 2017-177

Committee Substitute for Committee Substitute for House Bill No. 989

An act relating to instructional materials; amending s. 1006.28, F.S.; providing definitions; revising provisions relating to a district school board's responsibilities relating to instructional materials; requiring a school district to maintain certain information on its website; allowing a resident of a county to challenge the use or adoption of instructional materials; revising the requirements relating to the district school board process for objecting to or appealing the use or adoption of instructional materials; requiring a school district to discontinue use of materials under certain circumstances; requiring sufficient procedural protections for a public hearing relating to a challenge to the adoption of instructional materials; requiring a school district to provide access to school library materials upon written request; conforming a cross-reference; amending s. 1006.283, F.S.; revising the requirements for an instructional materials adoption public hearing; amending s. 1006.31, F.S.; revising the requirements for evaluation of instructional materials to conform to changes made by the act; amending s. 1006.40, F.S.; revising provisions relating to the use of the instructional materials allocation to conform to changes made by the act; amending ss. 1002.20 and 1006.42, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (b) and (c) of subsection (19) of section 1002.20, Florida Statutes, are amended to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory rights including, but not limited to, the following:

(19) INSTRUCTIONAL MATERIALS.—

(b) Curricular objectives.—The parent of each public school student has the right to receive effective communication from the school principal as to the manner in which instructional materials are used to implement the school's curricular objectives, in accordance with the provisions of s. 1006.28(4)(a) ~~1006.28(3)(a)~~.

(c) Sale of instructional materials.—Upon request of the parent of a public school student, the school principal must sell to the parent any instructional materials used in the school, in accordance with the provisions of s. 1006.28(4)(c) ~~1006.28(3)(e)~~.

Section 2. Subsections (1), (2), and (3) of section 1006.28, Florida Statutes, are renumbered as subsections (2), (3), and (4), respectively, present subsection (1) and paragraph (a) of subsection (2) are amended, and a new subsection (1) is added to that section, to read:

1006.28 Duties of district school board, district school superintendent; and school principal regarding K-12 instructional materials.—

(1) DEFINITIONS.—

(a) As used in this section, the term:

1. “Adequate instructional materials” means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core subject areas of mathematics, language arts, social studies, science, reading, and literature.

2. “Instructional materials” has the same meaning as in s. 1006.29(2).

(b) As used in this section and s. 1006.283, the term “resident” means a person who has maintained his or her residence in this state for the preceding year, has purchased a home that is occupied by him or her as his or her residence, or has established a domicile in this state pursuant to s. 222.17.

(c) As used in this section and ss. 1006.283, 1006.32, 1006.35, 1006.37, 1006.38, 1006.40, and 1006.42, the term “purchase” includes purchase, lease, license, and acquire.

(2)(1) DISTRICT SCHOOL BOARD.—The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students in accordance with the requirements of this part. The term “adequate instructional materials” means a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software that serve as the basis for instruction for each student in the core subject areas of mathematics, language arts, social studies, science, reading, and literature. The district school board also has the following specific duties and responsibilities:

(a) Courses of study; adoption.—Adopt courses of study, including instructional materials, for use in the schools of the district.

1. Each district school board is responsible for the content of all instructional materials and any other materials used in a classroom, made available in a school library, or included on a reading list, whether

adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available ~~in the classroom~~. Each district school board shall maintain on its website a current list of instructional materials, by grade level, purchased by the district.

2. Each district school board must adopt a policy regarding ~~an a parent's objection by a parent or a resident of the county to the his or her child's use of a specific instructional material, which clearly describes a process to handle all objections and provides for resolution. The process must provide the parent or resident the opportunity to proffer evidence to the district school board that:~~

a. An instructional material does not meet the criteria of s. 1006.31(2) or s. 1006.40(3)(d) if it was selected for use in a course or otherwise made available to students in the school district but was not subject to the public notice, review, comment, and hearing procedures under s. 1006.283(2)(b)8., 9., and 11.

b. Any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or prohibited under s. 847.012, is not suited to student needs and their ability to comprehend the material presented, or is inappropriate for the grade level and age group for which the material is used.

If the district school board finds that an instructional material does not meet the criteria under sub-subparagraph a. or that any other material contains prohibited content under sub-subparagraph b., the school district shall discontinue use of the material for any grade level or age group for which such use is inappropriate or unsuitable.

3. Each district school board must establish a process by which the parent of a public school student ~~or a resident of the county may contest the district school board's adoption of a specific instructional material. The parent or resident must file a petition, on a form provided by the school board, within 30 calendar days after the adoption of the material by the school board. The school board must make the form available to the public and publish the form on the school district's website. The form must be signed by the parent or resident, include the required contact information, and state the objection to the instructional material based on the criteria of s. 1006.31(2) or s. 1006.40(3)(d). Within 30 days after the 30-day period has expired, the school board must, for all petitions timely received, conduct at least one open public hearing before an unbiased and qualified hearing officer. The hearing officer may not be an employee or agent of the school district. The hearing is not subject to the provisions of chapter 120; however, the hearing must provide sufficient procedural protections to allow each petitioner an adequate and fair opportunity to be heard and present evidence to the hearing officer on all petitions timely received and provide the petitioner written notification of the date and time of the hearing at least~~

~~7 days before the hearing. All instructional materials contested must be made accessible online to the public at least 7 days before a public hearing.~~

The school board's decision after convening a hearing is final and not subject to further petition or review.

(b) *Instructional materials.*—Provide for proper requisitioning, distribution, accounting, storage, care, and use of all instructional materials and furnish such other instructional materials as may be needed. Instructional materials used must be consistent with the district goals and objectives and the course descriptions established in rule of the State Board of Education, as well as with the applicable Next Generation Sunshine State Standards provided for in s. 1003.41.

(c) *Other instructional materials.*—Provide such other teaching accessories and aids as are needed for the school district's educational program.

(d) *School library media services; establishment and maintenance.*—Establish and maintain a program of school library media services for all public schools in the district, including school library media centers, or school library media centers open to the public, and, in addition such traveling or circulating libraries as may be needed for the proper operation of the district school system. Upon written request, a school district shall provide access to any material or book specified in the request that is maintained in a district school system library and is available for review.

~~(3)~~(2) DISTRICT SCHOOL SUPERINTENDENT.—

(a) The district school superintendent has the duty to recommend such plans for improving, providing, distributing, accounting for, and caring for instructional materials and other instructional aids as will result in general improvement of the district school system, as prescribed in this part, in accordance with adopted district school board rules prescribing the duties and responsibilities of the district school superintendent regarding the requisition, purchase, receipt, storage, distribution, use, conservation, records, and reports of, and management practices and property accountability concerning, instructional materials, and providing for an evaluation of any instructional materials to be requisitioned that have not been used previously in the district's schools. The district school superintendent must keep adequate records and accounts for all financial transactions for funds collected pursuant to subsection ~~(4)~~ (3).

Section 3. Paragraph (b) of subsection (2) of section 1006.283, Florida Statutes, is amended to read:

1006.283 District school board instructional materials review process.

(2)

(b) District school board rules must also:

1. Identify, by subject area, a review cycle for instructional materials.
2. Specify the qualifications for an instructional materials reviewer and the process for selecting reviewers; list a reviewer's duties and responsibilities, including compliance with the requirements of s. 1006.31; and provide that all instructional materials recommended by a reviewer be accompanied by the reviewer's statement that the materials align with the state standards pursuant to s. 1003.41 and the requirements of s. 1006.31.
3. State the requirements for an affidavit to be made by each district instructional materials reviewer which substantially meet the requirements of s. 1006.30.
4. Comply with s. 1006.32, relating to prohibited acts.
5. Establish a process that certifies the accuracy of instructional materials.
6. Incorporate applicable requirements of s. 1006.31, which relates to the duties of instructional materials reviewers.
7. Incorporate applicable requirements of s. 1006.38, relating to the duties, responsibilities, and requirements of publishers of instructional materials.
8. Establish the process by which instructional materials are adopted by the district school board, which must include:
 - a. A process to allow student editions of recommended instructional materials to be accessed and viewed online by the public at least 20 calendar days before the school board hearing and public meeting as specified in this subparagraph. This process must include reasonable safeguards against the unauthorized use, reproduction, and distribution of instructional materials considered for adoption.
 - b. An open, noticed school board hearing to receive public comment on the recommended instructional materials.
 - c. An open, noticed public meeting to approve an annual instructional materials plan to identify any instructional materials that will be purchased through the district school board instructional materials review process pursuant to this section. This public meeting must be held on a different date than the school board hearing.
 - d. Notice requirements for the school board hearing and the public meeting that must specifically state which instructional materials are being reviewed and the manner in which the instructional materials can be accessed for public review. The hearing must allow the parent of a public school student or a resident of the county to proffer evidence that a recommended instructional material does not meet the criteria provided in s. 1006.31(2), taking into consideration course expectations based on the

district's comprehensive plan for student progression under s. 1008.25(2) and course descriptions in the course code directory.

9. Establish the process by which the district school board shall receive public comment on, and review, the recommended instructional materials.

10. Establish the process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.

11. Establish the process by which the school district will notify parents of their ability to access their children's instructional materials through the district's local instructional improvement system and by which the school district will encourage parents to access the system. This notification must be displayed prominently on the school district's website and provided annually in written format to all parents of enrolled students.

Section 4. Subsection (2) of section 1006.31, Florida Statutes, is amended to read:

1006.31 Duties of the Department of Education and school district instructional materials reviewer.—The duties of the instructional materials reviewer are:

(2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To use the selection criteria listed in s. 1006.34(2)(b) and recommend for adoption only those instructional materials aligned with the Next Generation Sunshine State Standards provided for in s. 1003.41. Instructional materials recommended by each reviewer shall be, to the satisfaction of each reviewer, accurate, objective, balanced, noninflammatory, current, free of pornography and material prohibited under s. 847.012, and suited to student needs and their ability to comprehend the material presented. Reviewers shall consider for recommendation materials developed for academically talented students, such as students enrolled in advanced placement courses. When recommending instructional materials, each reviewer shall:

(a) Include only instructional materials that accurately portray the ethnic, socioeconomic, cultural, religious, physical, and racial diversity of our society, including men and women in professional, career, and executive roles, and the role and contributions of the entrepreneur and labor in the total development of this state and the United States.

(b) Include only materials that accurately portray, whenever appropriate, humankind's place in ecological systems, including the necessity for the protection of our environment and conservation of our natural resources and the effects on the human system of the use of tobacco, alcohol, controlled substances, and other dangerous substances.

(c) Include materials that encourage thrift, fire prevention, and humane treatment of people and animals.

(d) Require, when appropriate to the comprehension of students, that materials for social science, history, or civics classes contain the Declaration of Independence and the Constitution of the United States. A reviewer may not recommend any instructional materials that contain any matter reflecting unfairly upon persons because of their race, color, creed, national origin, ancestry, gender, religion, disability, socioeconomic status, or occupation.

Section 5. Subsections (3) through (8) of section 1006.40, Florida Statutes, are amended to read:

1006.40 Use of instructional materials allocation; instructional materials, library books, and reference books; repair of books.—

(3)(a) Except for a school district or a consortium of school districts that implements an instructional materials program pursuant to s. 1006.283 Beginning with the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation only for the purchase of digital or electronic instructional materials that align with state standards and are included on the state-adopted list, except as otherwise authorized in paragraphs (b) and (c).

(b) Up to 50 percent of the annual allocation may be used for:

1. The purchase of instructional materials, including library and reference books and nonprint materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.

2. The purchase of other materials having intellectual content which assist in the instruction of a subject or course. These materials may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, novels, electronic content, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.

3. The repair and renovation of textbooks and library books and replacements for items which were part of previously purchased instructional materials.

(c) District school boards may use 100 percent of that portion of the annual allocation designated for the purchase of instructional materials for kindergarten, and 75 percent of that portion of the annual allocation designated for the purchase of instructional materials for first grade, to purchase materials not on the state-adopted list.

(d) Any materials purchased pursuant to this section must be:

1. Free of pornography and material prohibited under s. 847.012.

2. Suited to student needs and their ability to comprehend the material presented.

3. Appropriate for the grade level and age group for which the materials are used or made available.

~~(4) The funds described in subsection (3) which district school boards may use to purchase materials not on the state-adopted list shall be used for the purchase of instructional materials or other items having intellectual content which assist in the instruction of a subject or course. These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.~~

~~(4)(5) Each district school board is responsible for the content of all instructional materials used in a classroom or otherwise made available to students, whether purchased through an adoption process or otherwise purchased or made available in the classroom. Each district school board shall adopt rules, and each district school superintendent shall implement procedures, that:~~

~~(a) Maximize student use of the district-approved instructional materials.~~

~~(b) Provide a process for public review of, public comment on, and the adoption of instructional materials that satisfies the requirements of s. 1006.283(2)(b)8., 9., and 11.~~

~~(5)(6) District school boards may issue purchase orders subsequent to February 1 in an aggregate amount which does not exceed 20 percent of the current year's allocation, and subsequent to April 1 in an aggregate amount which does not exceed 90 percent of the current year's allocation, for the purpose of expediting the delivery of instructional materials which are to be paid for from the ensuing year's allocation. This subsection does not apply to a district school board or a consortium of school districts that implements an instructional materials program pursuant to s. 1006.283.~~

~~(6)(7) In any year in which the total instructional materials allocation for a school district has not been expended or obligated prior to June 30, the district school board shall carry forward the unobligated amount and shall add it to the next year's allocation.~~

~~(7)(8) Subsections (3), (4), and (6) do not apply to~~ A district school board or a consortium of school districts that implements an instructional materials program pursuant to s. 1006.283 may use the annual allocation to purchase instructional materials not on the state-adopted list. However, except that, by the 2015-2016 fiscal year, each district school board shall use

at least 50 percent of the annual instructional materials allocation for the purchase of digital or electronic instructional materials purchased pursuant to this section which are not included on the state-adopted list must meet the criteria of s. 1006.31(2), that align with state standards adopted by the State Board of Education pursuant to s. 1003.41, and be consistent with course expectations based on the district's comprehensive plan for student progression and course descriptions adopted in state board rule.

Section 6. Section 1006.42, Florida Statutes, is amended to read:

1006.42 Responsibility of students and parents for instructional materials.—All instructional materials purchased under the provisions of this part are the property of the district school board. When distributed to the students, these instructional materials are on loan to the students while they are pursuing their courses of study and are to be returned at the direction of the school principal or the teacher in charge. Each parent of a student to whom or for whom instructional materials have been issued, is liable for any loss or destruction of, or unnecessary damage to, the instructional materials or for failure of the student to return the instructional materials when directed by the school principal or the teacher in charge, and shall pay for such loss, destruction, or unnecessary damage as provided under s. 1006.28(4) ~~1006.28(3)~~.

Section 7. This act shall take effect July 1, 2017.

Approved by the Governor June 26, 2017.

Filed in Office Secretary of State June 26, 2017.