



**Texas Association of School Boards**

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## Instructional Materials and Library Books in Texas Public Schools— What You Need to Know

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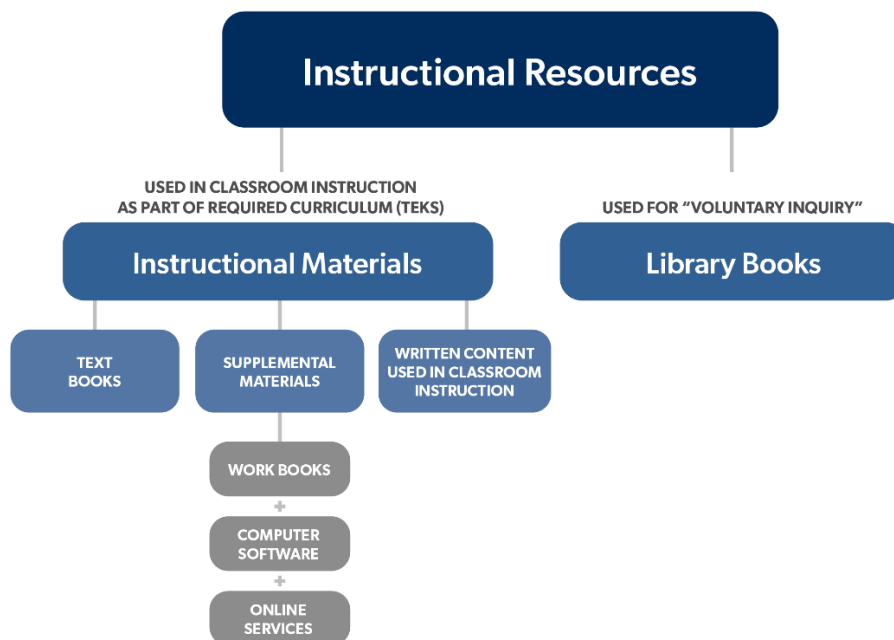
This FAQ document has been developed to help Texas school board trustees and district administrators better understand, and speak to, some key differences between instructional materials used in the classroom as part of required curriculum and library books used for voluntary inquiry.

The document will also outline what has traditionally been the practice in Texas for the review, selection, and approval of instructional resources and the rights of parents to challenge those chosen resources.

### Understanding Key Terms:

**Can you explain the difference between instructional resources, instructional materials, and library books?**

Here is a high-level overview outlining some key differences between instructional resources, instructional materials, and library books:



**Are instructional materials and library books the same thing?**

No, as outlined above, while instructional materials and library books are both considered instructional resources, they are not the same and the terms should not be used interchangeably.

Since school and classroom libraries are viewed as places for voluntary inquiry, library books are treated differently from instructional materials used in classroom instruction. This distinction has legal significance as explained below at “Additional Considerations.”

**Is the selection and approval process for instructional materials and library books generally the same?**

Yes and no. The selection processes for instructional materials and library books have some things in common, but they are not the same. Here’s how and why:

How are the selection processes the same?	How?	School boards delegate instruction, including the selection of instructional resources (instructional materials and library books), to certified educators in the district.  For example, longstanding TASB Policy EF(LOCAL), which was developed as the local complement to state procedures, notes that “The Board shall rely on District professional staff to select and acquire instructional resources that: 1. Enrich and support the curriculum based on [articulated criteria] . . . .”).
	Why?	Certified educators—with their professional training and continuing education requirements—have traditionally been viewed as the best resource for instructional decisions.

How are the selection processes different?	How?	The selection and approval process for instructional materials is set out with specificity in state law and is driven by the state’s adoption process. School districts have more flexibility in selecting library materials, but they still must consider state guidelines when making selections.
	Why?	Since instructional materials are used in the classroom and must align with and support the TEKS, the process of selecting and approving these materials has a more defined process than the selection and approval process for library books, which students are not required to read.

## Understanding How Instructional Materials Are Chosen in Texas:

### *What's considered an instructional material?*

**Instructional materials are generally defined to include more than books and refer to content being used for classroom instruction.** For instance, under the Texas Education Code, *instructional material* means content that conveys the essential knowledge and skills of a subject in the public school curriculum through a medium or a combination of media for conveying information to students.

The term includes books, but also supplementary materials, workbooks, computer software, online services, or other means of conveying information to students or otherwise contributing to the learning process through electronic means, including open education resource instructional material. Tex. Educ. Code § 31.002.

### *How do school districts decide what instructional materials to use?*

**First, the state approves a list of instructional materials.** The State Board of Education (SBOE) creates an [adoption cycle](#) for the subjects in the foundation curriculum, which are English and Spanish language arts and reading, math, science, and social studies. These subjects are reviewed at least once every eight years. Materials for the enrichment curriculum are reviewed less often. Enrichment subjects include languages other than English, health, physical education, fine arts, career and technology education, technology applications, religious literature, and personal financial literacy.

**Then local school districts choose approved materials for the foundation curriculum and certify that enrichment materials comply with the TEKS.** At the local level, each year during a period established by the SBOE, a local school board must notify the SBOE of instructional material it has selected in accordance with Texas Education Code section 31.101. For subjects in the foundation curriculum, the board must notify the SBOE of instructional material it selects from the state-approved instructional materials list, including the commissioner's instructional materials list. For a subject in the enrichment curriculum, the board must notify the SBOE of instructional material it selects from on or off the state-approved list. If the board selects materials not on the approved list, the board must certify to the Texas Education Agency (TEA) that the supplemental instructional materials, in combination with any other instructional materials used by the district, cover the Texas Essential Knowledge and Skills (TEKS) for the course. Tex. Educ. Code § 31.035(d), (f).

**Selections are made in public.** School boards must vote to select instructional materials in an open meeting as required by the Texas Open Meetings Act (OMA). In accordance with the OMA, the meeting must be posted in advance and allow an opportunity for public comment. 19 Tex. Admin. Code § 66.104(a). See TASB Policy EFA(LEGAL).

***How do school districts buy instructional materials?***

**Instructional materials are requisitioned through TEA.** Districts receive an instructional material allotment from the state, as determined by the commissioner, based on the number of students attending the district. Each school board may requisition supplementary instructional materials adopted by the SBOE, as set forth at Texas Education Code section 31.035. See TASB Policy CMD(LEGAL) and TEA’s [instructional materials website](#).

***How have school boards traditionally managed the selection of instructional materials?***

As previously noted, Texas school boards have traditionally delegated instruction, including materials selection, to certified educators.

In local policy, most school boards delegate the selection and acquisition of instructional resources to certified educators. Instructional resources include both instructional materials for classroom use and library materials. See TASB Policy EF(LOCAL) (“The Board shall rely on District professional staff to select and acquire instructional resources that: 1. Enrich and support the curriculum based on [articulated criteria] . . .”).

While ultimately authority for determining the curriculum and instructional program of the district lies with the school board in accordance with state law, boards generally direct district professional staff to select the means. Board policy often directs staff to provide a wide range of instructional resources for students and faculty that present varying levels of difficulty, diversity of appeal, and a variety of points of view. In other words, the school board maintains authority over curriculum (*what* is taught) in compliance with state law but delegates the selection of instructional materials (*how* curriculum is taught) to educators.

***What direction do boards give to district staff in selecting materials on controversial topics?***

**Board policy typically calls for a balanced collection that offers objective views of historical and contemporary conflict.** In board policy EF(LOCAL), most school boards encourage the recommendation of instructional resources from a variety of sources, including administrators, teachers, library media specialists, other personnel, parents, and community members, as appropriate. Boards also provide that the selection of resources is an ongoing process that includes the removal of resources no longer appropriate. A common local policy provision states:

District professional staff shall endeavor to maintain a balanced collection representing various views when selecting instructional resources on controversial issues. Resources shall be chosen to clarify historical and contemporary forces by presenting and analyzing intergroup tension and conflict objectively, placing emphasis on recognizing and understanding social and economic problems.

See also TASB Policy EMB(LOCAL) regarding teaching on controversial topics, which requires teachers to address controversial topics in an impartial and objective manner.

## Understanding How Library Book Are Chosen in Texas:

### *How do school districts decide what books to put in the school library?*

**School districts look to state standards.** The Texas State Library and Archives Commission (TSLAC), in consultation with the SBOE, adopts [standards](#) for school library services. Tex. Educ. Code § 33.021. School districts must consider the standards in developing, implementing, or expanding library services. 13 Tex. Admin. Code § 4.1.

Regarding material selection, state standards emphasize the intellectual development of students, community collaboration, and privacy interests. For example, the state standards include the following dimensions:

Strand 1. Information Literacy: School library programs offer information literacy instruction that enables students to efficiently locate, accurately evaluate, ethically use, and clearly communicate information in various formats.

Dimension 2. Learners and educators practice the ethical and legal use of information; including transformative fair use, intellectual freedom, information access, privacy, proprietary rights, and validation of information as approval in local policy EFA, federal law (1st Amendment), and best library practice (Library Bill of Rights).

Strand 6. Leadership - School library program activities show evidence of best practices when modeled by a full-time, certified school librarian in every school supported by trained paraprofessionals.

Dimension 1. The school library program incorporates leadership activities, best practices, and professional development across campus, district, and professional communities. The program includes opportunities for collaboration among members of the learning community and opportunities to help learners become independent users and producers of ideas and information.

Dimension 9. The library advocates for and protects each user's right to privacy, confidentiality, and age-appropriate principles of intellectual freedom. Student privacy is protected as indicated by best library practices (ALA Privacy) and federal FERPA law.

## Understanding Parents' Rights Regarding Instructional Resources:

### *What rights do parents have to review instructional materials?*

**Basically, if a child sees materials at school, the child's parent can see them, too.**

Parents are entitled to:

1. Review all teaching materials, instructional materials, including while the child is participating in virtual or remote learning, and other teaching aids used in the classroom of the parent's child;
2. Review each test administered to the child after the test is administered; and
3. Observe virtual instruction while the parent's child is participating in virtual or remote learning to the same extent the parent would be entitled to observe in-person instruction of the child.

School districts are required to make teaching materials and tests readily available for parental review and may specify reasonable hours for such review. A student's parent is entitled to request that a district allow the student to take home any instructional materials used by the student, and the district must honor the request, subject to the availability of the materials. A student who takes home instructional materials must return the instructional materials to school at the beginning of the next school day if requested to do so by the student's teacher.

A district must provide the instructional materials to the student in printed format if the student does not have reliable access to technology at the student's home. This requirement does not require a district to purchase printed copies of instructional materials that the district would not otherwise purchase. A district may comply with this requirement by providing the student a printout of relevant electronic instructional materials. Tex. Educ. Code § 26.006. See TASB Policy EF(LEGAL).

***What happens if a parent or other concerned person thinks an instructional material used in required classroom instruction is not appropriate?***

A parent may ask that the student be temporarily excused from the assignment. By law, parents are entitled to remove their student temporarily from a class or other school activity that conflicts with the parents' religious or moral beliefs by presenting or delivering to the student's teacher a written statement authorizing the removal. Parents are not entitled to remove their student from a class or other school activity to avoid a test or to prevent the child from taking a subject for an entire semester. Tex. Educ. Code § 26.010.

A parent may also pursue a challenge or complaint under district policy.

***What happens if a parent or other concerned person thinks a resource found in the library is not appropriate?***

**Every school district should have a local process for fielding complaints.** All school districts have complaint policies that allow anyone to present a grievance to the school district.

**Most districts have a special process to review library resources after a parent complaint or concern is received.** In addition, most school districts have a special policy regarding the reconsideration of instructional resources, including library books. See TASB Policy EF(LOCAL). The policy encourages informal resolution of a concern by allowing the appropriate administrator to explore the parent’s concern, offer explanatory information, and offer an alternative resource for the parent’s child.

Most local policies also have a process for formal reconsideration of an instructional resource. Commonly, a parent is asked to fill out a complaint form, then the appropriate administrator calls together a reconsideration committee, including a member of the instructional staff who is familiar with the resource or has experience using the resource with students, as well as others such as district-level staff, library staff, secondary-level students, and parents, as needed. The committee then reviews the challenged material in its entirety, considers the material in light of specified criteria, and makes a recommendation to the administration. If the parent is unhappy with the outcome, the parent may appeal.

Typical board policy establishes the following principles for the committee:

1. A complainant may raise an objection to an instructional resource used in a school’s educational program, despite the fact that the professional staff selecting the resources were qualified to make the selection, followed the proper procedure, and adhered to the objectives and criteria for instructional resources set out in policy.
2. A parent’s ability to exercise control over reading, listening, or viewing matter extends only to his or her own child.
3. Access to a challenged resource shall not be restricted during the reconsideration process, except the district may deny access to a child if requested by the child’s parent.
4. The major criterion for the final decision on challenged resources is the appropriateness of the resource for its intended educational use. No challenged instructional resource shall be removed solely because of the ideas expressed therein.

#### **Additional Considerations:**

#### ***Why have a special procedure for reconsidering library resources?***

**Once a resource has been made available in a school library, removal of the resource implicates students’ First Amendment rights.** According to the U.S. Supreme Court in a landmark 1982 decision, the First Amendment rights of students may be “directly and sharply” implicated by the removal of books from the shelves of a school library. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853 (1982).

**School districts have significant local control over instruction and the selection of materials.**

Local school boards have broad discretion in the management of school affairs, including guiding curriculum in accordance with state law. The U.S. Supreme Court has acknowledged that public schools are vitally important in the preparation of individuals for participation as citizens, and local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values. For this reason, school districts have significant local control over the selection of materials used for classroom instruction and regarding what content to place in school libraries. *Pico*, 457 U.S. 853.

**The removal, rather than the selection, of library books raises constitutional concerns.** The Court’s decision suggests there is a meaningful difference between curriculum conveyed in a compulsory setting and the school library, which is a place for “voluntary inquiry.” Although school officials retain significant discretion over the contents of the school library, state and local discretion may not be exercised in a way that violates students’ free speech rights by removing books for partisan or political reasons: “In brief, we hold that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to ‘prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’” *Pico*, 457 U.S. at 872.

***Can school officials remove content that is vulgar, obscene, or pornographic?***

**In accordance with the advice of legal counsel, a school district could determine that a resource should be removed because it lacks educational value or contains vulgar content (but not because of a viewpoint expressed in the resource).** In joining the Court’s plurality opinion, the justice casting the tie-breaking vote added that school officials could still, consistent with the First Amendment, exercise discretion to remove books that lack educational value or contain vulgar content inappropriate for school-aged readers. *Pico*, 457 U.S. at 883 (J. White, concurring). The power to determine what is vulgar, lewd, and plainly offensive lies first with the administrators and ultimately with the school board. In making its determination, the district may consider the age, maturity, and impressionability of the student audience. E.g., *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675 (1986) (holding the suspension of a student for offensive language during an election speech to be constitutional). These determinations are complex and case specific. We note that the popularity of graphic novels and other highly visual media add an additional complicating factor to this analysis. Districts should work closely with their school attorney and proceed with caution given the significant risk of a First Amendment challenge.

***If a book in the library has graphic or vulgar content, could school officials be charged with a criminal offense?***

**A school official could not be prosecuted absent intentional distribution or display of harmful material to a minor.** Courts have struggled for years to draw the line between content that is offensive but protected by the First Amendment and content that is obscene and lacks protection. Understandably, the standard for what is harmful to minors may differ from the standard applicable to adults. Harmful materials for minors include any communication



consisting of nudity, sex, or excretion that: (1) appeals to the prurient interest of minors, (2) is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and (3) lacks serious literary, artistic, political, or scientific value for minors. For more information, please see the U.S. Department of Justice's [Citizen's Guide to U.S. Federal Law on Obscenity](#).

Texas laws prohibiting obscenity reflect these federal constitutional standards. Perhaps of highest interest for educators is Texas Penal Code section 43.24 on the distribution of harmful material to minors. Again, the statute defines *harmful material* as material whose dominant theme taken as a whole: (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion; (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and (C) is utterly without redeeming social value for minors. A person commits an offense if, knowing that the material is harmful and knowing the person is a minor, the person sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material; or the person displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display. It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification. Both the definition of *harmful material* and the affirmative defense would potentially shield a well-meaning educator who thought challenged materials served an educational purpose.

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