

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education Pre-K -12

BILL: CS/SB 1320

INTRODUCER: Education Pre-K – 12 Committee and Senators Yarborough and Perry

SUBJECT: Child Protection in Public Schools

DATE: March 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1320 includes provisions designed to protect children in public schools. The bill includes requirements for age-appropriate and developmentally appropriate instruction for all students in prekindergarten through grade 12. The bill:

- Includes requirements for specific terminology and instruction relative to health and reproductive education in schools.
- Extends the prohibition on classroom instruction on sexual orientation or gender identity to prekindergarten through grade 8.

The bill enhances the process for transparency and review of library and classroom materials available to students in public schools and the process for parents to make objections to materials. The bill requires the suspension of materials alleged to contain pornography or materials harmful to minors as identified in current law pending resolution of an objection to the material.

The bill takes effect on July 1, 2023.

II. Present Situation:

The Florida Early Learning-20 Education Code includes definitions of terms to be applied throughout the code.¹

¹ Section 1000.21, F.S.

Classroom Instruction

Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in public schools in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students in accordance with state standards.²

Each district school board is required to adopt procedures for a parent to notify the principal, or his or her designee, regarding concerns about the procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student at his or her student's school, and the process for resolving those concerns within seven calendar days after notification by the parent.³

The procedures must require that within 30 days after notification by the parent that the concern remains unresolved, the district school board must either resolve the concern or provide a statement of the reasons for not resolving the concern.⁴ If a concern is not resolved by the district school board, a parent may request the Commissioner of Education to appoint a special magistrate who is a member of The Florida Bar in good standing and who has at least five years' experience in administrative law. The special magistrate must determine facts relating to the dispute over the district school board procedure or practice, consider information provided by the district school board, and render a recommended decision for resolution to the State Board of Education within 30 days after receipt of the request by the parent.⁵

The State Board of Education must approve or reject the recommended decision at its next regularly scheduled meeting that is more than 7 calendar days and no more than 30 days after the date the recommended decision is transmitted. The costs of the special magistrate must be borne by the district school board.⁶ District school boards are required to develop procedures for applying this process to complaints related to classroom instruction on sexual orientation or gender identity in charter schools.⁷

A parent may also bring an action against the district school board to obtain a declaratory judgment that the district school board procedure includes inappropriate instruction on sexual orientation or gender identity and seek injunctive relief. A court may award damages, and is required to award reasonable attorney fees and court costs, to a parent who receives declaratory or injunctive relief.⁸

² Section 1001.42(8)(c)3., F.S.

³ Section 1001.42(8)(c)7., F.S.

⁴ Section 1001.42(8)(c)7.a., F.S.

⁵ Section 1001.42(8)(c)7.b., F.S.

⁶ Section 1001.42(8)(c)7.b., F.S.

⁷ Rule 6A-6.0791, F.A.C.

⁸ Section 1001.42(8)(c)7.b., F.S.

Reproductive and Health Education

Public school teachers are required to teach comprehensive age-appropriate and developmentally appropriate instruction in health education in:⁹

- Kindergarten through grade 12 that addresses concepts of community health, consumer health, environmental health, and family life.
- Grades 6 through 12 that provides awareness of the benefits of sexual abstinence as the expected standard and the consequences of teen pregnancy.
- Grades 7 through 12 that addresses teen dating violence and abuse.
- Grades 9 through 12 that provides life skills that build confidence, support mental and emotional health, and enable students to overcome challenges.

Course standards for instruction concerning reproductive health begin in grade 3, when students are expected to be able to recognize how the circulatory system, digestive system, nervous system, reproductive system, and other body systems work together to form human body systems.¹⁰ Standards for instruction concerning sexual behavior begin in grade 6, when students are expected to predict the potential outcomes of a health-related decision, including prescription drug use or abuse, eating disorders, depression, and sexual behavior.¹¹ Course standards for health instruction in grade 7 include articulating the possible causes of conflict among youth in schools and communities, including ethnic prejudice and diversity, substance use, group dynamics, relationship issues and dating violence, gossip and rumors, and sexual identity.¹²

When instruction in acquired immune deficiency syndrome, sexually transmitted diseases, or health education contains instruction in human sexuality, a school must:¹³

- Teach abstinence from sexual activity outside of marriage as the expected standard for all school-age students while teaching the benefits of monogamous heterosexual marriage.
- Emphasize that abstinence from sexual activity is a certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, including acquired immune deficiency syndrome, and other associated health problems.
- Teach that each student has the power to control personal behavior and encourage students to base actions on reasoning, self-esteem, and respect for others.
- Provide instruction and material that is appropriate for the grade and age of the student.

All instructional materials used to teach reproductive health or any disease must be annually approved by a district school board in an open, noticed public meeting.¹⁴

⁹ Section 1003.42(2)(n), F.S.

¹⁰ Department of Education, *Health Education: HE.3.C.1.5*, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-13679>, at 30, incorporated by reference in Rule 6A-1.09412(2)(i), F.A.C.

¹¹ Department of Education, *Health Education: HE.6.B.5.5*, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-13679>, at 51, incorporated by reference in Rule 6A-1.09412(2)(i), F.A.C.

¹² Department of Education, *Health Education: HE.7.B.4.3*, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-13679>, at 71, incorporated by reference in Rule 6A-1.09412(2)(i), F.A.C.

¹³ Section 1003.46(2)(a), F.S.

¹⁴ Section 1003.42(1)(b), F.S.

Review of Materials Available to Students

The district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students. The district school board also has the specific duty and responsibility to adopt courses of study, including instructional materials, for use in the schools of the district.¹⁵

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, or otherwise purchased or made available.¹⁶

Each school principal is required to assure that instructional materials are used to provide instruction to students enrolled at the grade level or levels for which the materials are designed. The school principal is required to communicate to parents the manner in which instructional materials are used to implement the curricular objectives of the school.¹⁷

Prohibited Content

If the district school board finds that an instructional material 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 or that any material contains prohibited pornographic content or material harmful to minors, the district school board is required to discontinue use of the material for any grade level or age group for which such use is inappropriate or unsuitable.¹⁸

Materials that are harmful to minors are identified in the criminal law. Except for the distribution or posting of school-approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by certain school personnel, a person commits a felony of the third degree by knowingly providing to a minor:¹⁹

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording that contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and that is harmful to minors.

Materials that are harmful to minors also include any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:²⁰

¹⁵ Section 1006.28(2), F.S.

¹⁶ Section 1006.28(2)(a)1., F.S.

¹⁷ Section 1006.28(4)(a), F.S.

¹⁸ Section 1006.28(2)(a), F.S.

¹⁹ Section 847.012(3) and (6), F.S.

²⁰ Section 847.001(7), F.S. The Florida Supreme Court has upheld this definition as it relates to the prohibition on the distribution to minors of materials that are harmful. *See Simmons v. State*, 944 So. 2d 317, 329 (Fla. 2006).

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Prohibited content includes depictions of sexual conduct, as defined in law,²¹ in the form of:²²

- Actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse.
- Actual or simulated lewd exhibition of the genitals.
- Actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party.
- Any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.

A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

Process for Objections

Each district school board must adopt a policy regarding an objection by a parent or a resident of the county to the use of a specific 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 any material used in a classroom, made available in a school library, or included on a reading list contains content that is pornographic or harmful to minors,²³ 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.²⁴

Transparency of Materials Available to Students

Meetings of committees convened for the purpose of ranking, eliminating, or selecting instructional materials for recommendation to the district school board must be noticed and open to the public. Any committees convened for such purposes must include parents of district students.²⁵

Each district school board is required to adopt procedures for developing library media center collections and post the procedures on the website for each school within the district. The procedures must:²⁶

²¹ Section 847.012, F.S., incorporates in prohibited content any matter defined in s. 847.001, F.S., which includes this definition of sexual conduct, as well as the other terms used in the definition.

²² Section 847.001(19), F.S.

²³ Materials prohibited as harmful to minors are identified in s. 847.012, F.S.

²⁴ Section 1006.28(2)(a)2., F.S.

²⁵ Section 1006.28(2)(a)4., F.S.

²⁶ Section 1006.28(2)(d)2., F.S.

- Require that book selections are free from pornography and specified material identified as harmful to minors.²⁷
- Require consultation of reputable, professionally recognized reviewing periodicals and school community stakeholders.
- Provide for library media center collections based on reader interest, support of state academic standards and aligned curriculum, and the academic needs of students and faculty.
- Provide for the regular removal or discontinuance of books based on, at a minimum, physical condition, rate of recent circulation, alignment to state academic standards and relevancy to curriculum, out-of-date content, and prohibited content.

School principals are responsible for overseeing compliance with district school board procedures for selecting school library media center materials at the school to which they are assigned.²⁸

Each elementary school must publish on its website, in a searchable format prescribed by the Department of Education (DOE), a list of all materials maintained in the school library media center or required as part of a school or grade-level reading list.²⁹

Each district school board is required to publish on its website, in a searchable format prescribed by the DOE, a list of all instructional materials. Each district school board must annually, beginning June 30, 2023, submit to the Commissioner of Education a report that identifies:³⁰

- Each material for which the district school board received an objection for containing pornographic content or content harmful to minors for the school year and the specific objections thereto.
- Each material that was removed or discontinued as a result of an objection.
- The grade level and course for which a removed or discontinued material was used, as applicable.

The DOE is required to publish and regularly update the list of materials that were removed or discontinued as a result of an objection and disseminate the list to district school boards for consideration in their selection procedures.³¹

III. Effect of Proposed Changes:

Terminology

CS/SB 1320 modifies s. 1000.21, F.S., to define “sex” as the classification of a human person as either male or female based on the organization of the body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

²⁷ Section 1006.28(2)(d)1., F.S. Materials harmful to minors are identified in s. 847.012, F.S.

²⁸ Section 1006.28(4)(f), F.S.

²⁹ Section 1006.28(2)(d)3., F.S.

³⁰ Section 1006.28(2)(e), F.S.

³¹ Section 1006.28(2)(e), F.S.

The bill creates s. 1001.07, F.S., to require every public K-12 educational institution to have a policy that a person's sex is an immutable, or unchanging, biological trait and that it is false to ascribe to a person a pronoun that does not correspond to such person's sex. The bill authorizes the State Board of Education to adopt rules to implement the policy, which specifically provides that:

- No employee, contractor, or student of a public K-12 educational institution may be required, as a condition of employment, enrollment, or participation in any program, to refer to another person using a preferred personal title or pronoun that does not correspond to that person's sex.
- No employee or contractor at a public K-12 educational institution may provide to students his or her preferred personal title or pronouns if such personal title or pronouns do not correspond to his or her sex.
- No student may be asked for his or her preferred personal titles or pronouns, or penalized or subjected to adverse or discriminatory treatment for not providing preferred personal titles or pronouns.

Classroom Instruction

The bill amends s. 1001.42, F.S., to modify the prohibition on classroom instruction by school personnel or third parties on sexual orientation or gender identity in kindergarten through grade 3. The bill extends the prohibition on such instruction to prekindergarten through grade 8. The bill clarifies that such instruction in grades 9-12 must be age-appropriate or developmentally appropriate for students in accordance with state standards. The bill clarifies that the prohibition applies to charter schools.

The bill maintains the procedure for administrative review through a special magistrate but removes the provision authorizing a parent who is unable to resolve a concern with the district school board to bring an action against the district school board to obtain a declaratory judgment that the district school board procedure or practice includes prohibited instruction on sexual orientation or gender identity and to seek injunctive relief and damages, attorney fees, and court costs.

Reproductive and Health Education

The bill modifies s. 1003.42, F.S., regarding requirements for instructional materials used to teach reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment to be annually approved by a district school board in an open, noticed, public meeting. The bill requires that all materials, regardless of whether they fall within the definition in law of an instructional material, that are used for such instruction must be approved by the Department of Education.

The bill modifies s. 1003.46, F.S., regarding instruction in acquired immune deficiency syndrome, sexually transmitted diseases, or health education, when such instruction and course material contains instruction in human sexuality. The bill requires materials used for such instruction to be approved by the DOE. When providing such instruction, the bill requires a school to classify males and females in accordance with the definition of sex and teach that biological males impregnate biological females by fertilizing the female's egg with the male's

sperm; the female then gestates the offspring; and these reproductive roles are binary, stable, and unchangeable.

Review of Classroom Materials

Prohibited Content

The bill modifies s. 1006.28, F.S., to specifically identify the prohibition on materials that depict sexual conduct, as defined in the law regarding materials that are harmful to minors.

The bill provides exceptions for material that is for a required health education or AIDS course, required comprehensive age-appropriate and developmentally appropriate K-12 instruction on the prevention of child sexual abuse, exploitation, and human trafficking, or identified by State Board of Education rule.

Process for Objections

The bill clarifies that a classroom library is included in the list of materials for which each district school board is responsible and is subject to objection by a parent or resident of the county if the material contains content prohibited in current law and in the bill. The bill requires the form, which must be prescribed by State Board of Education rule, and the district school board's process for a parent to object to a specific material, be easy to read and understand, and be easily accessible on the homepage of the district school board's website.

The bill specifies that any material that is subject to an objection for containing prohibited content that is pornographic or harmful to minors must be made unavailable to students until the objection is resolved. The bill provides that parents have the right to read aloud at public meetings passages from material that is subject to an objection.

The bill also provides that meetings of committees convened for the purpose of resolving an objection by a parent or resident to specific materials must be noticed and open to the public. The bill specifies that any committees convened for such purposes must include parents of students who will have access to such materials.

The bill requires school principals to communicate to parents the procedures for contesting the adoption and use of instructional materials and the process for objecting to the use of specific materials.

Transparency of Materials Available to Students

The bill specifies that the parents required to be included in committees convened for the purpose of ranking, eliminating, or selecting instructional materials for recommendation to the district school board must be parents of students who will have access to such materials.

The bill includes classroom libraries in the current requirements for school library media centers regarding:

- Posting on the website for each school in the district the procedures for developing not only the library media center collections, but also classroom libraries.

- Publication on the website of each elementary school in the district all materials maintained in the library. The bill adds that this publication must also include any materials accessible to students.

The bill requires each district school board to adopt and publish on its website the process for a parent to limit the books and media materials his or her student can access in the school's library.

The bill modifies the annual report regarding potentially inappropriate materials that each district school board must submit to the Commissioner of Education. The bill expands the required information concerning each material that was:

- Objected to, which must include the grade level and course the material was used in.
- Removed or discontinued as a result of an objection, to include each material that was removed or discontinued even if no objection was made.
- Not removed or discontinued, and the rationale for not removing or discontinuing the material.

The bill provides a severability clause to specify that, if a provision of the bill is held invalid, that does not affect the validity of the other provisions of the bill.

The bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 1000.21, 1001.07, 1001.42, 1003.42, 1003.46, and 1006.28.

This bill creates section 1001.07 of the Florida Statutes.

This bill re-enacts the following sections of the Florida Statutes: 1000.05(2), (3), (4)(a), and (5); 1001.453(2)(c); 1002.42(3)(a); 1003.27(2)(b) and (c); 1003.42(3)(a), (c), (e), and (f); 1004.43(2); 1006.205(2)(b) and (3); 1009.23(7); 1009.24(10)(b); 1009.983(6); 1009.986(3)(e); and 1014.05(1)(c), (d), and (f).

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS in Education Pre-K – 12 Committee on March 20, 2023:

The committee substitute clarifies that the prohibition of classroom instruction on sexual orientation and gender identity in grades prekindergarten through grade 8 applies to charter schools.

B. Amendments:

None.