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SB 226: Amendments to the Quality Basic Education Act

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EDUCATION

Elementary and Secondary Education: Amend Part 15 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Miscellaneous Provisions of the “Quality Basic Education Act,” so as to Require Each Local Board of Education to Adopt a Policy Providing for a Complaint Resolution Process to be Used by its Local School System to Address Complaints Submitted by Parents or Permanent Guardians Alleging that Material that is Harmful to Minors has been Provided or is Currently Available to a Student; Provide for Policy Requirements; Require the Department of Education to Develop a Model Policy for Use by Local School Systems; Provide for Public Review; Provide for a Definition; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION:	O.C.G.A. § 20-2-324.6 (new)
BILL NUMBER:	SB 226
ACT NUMBER:	720
GEORGIA LAWS:	2022 Ga. Laws 146
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act requires each local board of education to adopt a complaint resolution process to be used by its local school system to address parents’ or permanent guardians’ complaints alleging that harmful material has been provided or is currently available to a minor student.

History

Increasing External Involvement in Curriculum Development

School librarians—trained in library book selection—normally have discretion when choosing which books to shelve in school

libraries.¹ But across the United States, adults are pushing to increase their involvement in selecting the materials available to the nation's children, from textbooks to novels.² For example, several jurisdictions have developed legislation banning race- or LGBTQ+-related topics from the classroom.³ Other jurisdictions have introduced legislation establishing a "Parental Bill of Rights" aiming for curriculum transparency.⁴ In the past year alone, the American Library Association tracked nearly 1,600 book challenges or removals nationwide—the most since the organization began tracking more than twenty years ago.⁵ Senate Bill (SB) 226 reflects parents' successful push to have more visibility and control over the instructional materials of local schools.⁶

Reversing the "Rights Revolution"

Legal analysts have referred to the previous sixty years in United States history as the "rights revolution."⁷ During this period, Congress and the Supreme Court generally expanded the basic civil liberties

1. Peyton Lewis, *Senate Bill 226 Would Remove 'Obscene Items' from School Libraries*, 41NBC (Feb. 2, 2022), <https://www.41nbc.com/senate-bill-226-would-remove-obscene-items-from-school-libraries/> [<https://perma.cc/G7WM-QD2Q>].

2. See Dave Eggers, *Anatomy of a Book Banning*, WASH. POST (June 24, 2022, 3:51 PM), <https://www.washingtonpost.com/outlook/2022/06/24/dave-eggers-book-bans-south-dakota/> [<https://perma.cc/7ZV6-MYKB>]; Press Release, Florida Dep't of Educ., Florida Rejects Publishers' Attempts to Indoctrinate Students (Apr. 15, 2022), <https://www.fldoe.org/newsroom/latest-news/florida-rejects-publishers-attempts-to-indoctrinate-students.html?fbclid=IwAR3VmsKzNvJawEfuD5t5k315p0An9SLOs7TcBgkokQ9P8Iw31Ka1IPnl6CI> [<https://perma.cc/L359-ME2B>].

3. Sarah Schwartz, *Map: Where Critical Race Theory Is Under Attack*, EDUCATIONWEEK, <https://www.edweek.org/policy-politics/map-where-critical-race-theory-is-under-attack/2021/06> [<https://perma.cc/2K9Q-DXB9>] (July 15, 2022); Stephen Sawchuk, *Beyond 'Don't Say Gay': Other States Seek to Limit LGBTQ Youth Teaching*, EDUCATIONWEEK (Apr. 6, 2022), <https://www.edweek.org/policy-politics/beyond-dont-say-gay-other-states-seek-to-limit-lgbtq-youth-teaching/2022/04> [<https://perma.cc/TWR2-NRKP>].

4. Nadra Nittle, *Parental Rights Bills Have Been Introduced in Most States. Teachers Are Pushing Back*, THE74 (Apr. 2, 2022), <https://www.the74million.org/article/parental-rights-bills-have-been-introduced-in-most-states-teachers-are-pushing-back/> [<https://perma.cc/3AZZ-NA6C>].

5. Molly Oak, *Law Signed by Gov. Kemp Limits Who Can File Complaints on School Library Books*, 11ALIVE, <https://www.11alive.com/article/news/politics/changes-to-book-banning-process-georgia/85-3f1ee436-03a0-4264-96b4-c4d1f31f0479> [<https://perma.cc/L2NV-D5W9>] (Apr. 28, 2022, 12:35 PM).

6. Ronald Brownstein, *Book Bans Move to Center Stage in the Red-State Education Wars*, CNNPOLITICS (Apr. 5, 2022, 12:04 AM), <https://www.cnn.com/2022/04/05/politics/republican-states-book-ban-race-lgbtq/index.html> [<https://perma.cc/3RB3-QZSC>].

7. *Id.*

granted to all Americans and reduced states' ability to intervene with these rights.⁸ But, since the 2020 election, the twenty-three Republican-controlled states have approved various legislation restricting rights relating to education, abortion, voting, sexuality, and public protest.⁹ Though this legislation is occurring at the individual state level, the uniformity of language and overlap in many of these bills establishes this movement as a national campaign against traditionally liberal agenda points.¹⁰

Now that Democrats control the White House and Congress, many conservative activists have shifted their focus to state and local governments.¹¹ The COVID-19 pandemic encouraged local advocacy by illuminating the impact local decisions, as opposed to federal policies, have on our daily lives.¹² There has also been a shift in internal dynamics amongst the Republican party.¹³ President Trump created demand for “hardline policies on race and culture” as White voters, who are used to controlling most societal institutions, began witnessing a demographic shift where no single racial group is the majority.¹⁴ Gerrymandering of state legislative districts has magnified White voters' influence while media nationalization has created a “powerful transmission belt” exposing conservative voters to similar talking points and cultural grievances.¹⁵ Republican-controlled legislatures believe that the Supreme Court is unlikely to resist these initiatives because of the current justices' political leanings.¹⁶ Asserting control over what schools are teaching is another way for uneasy Conservatives to push back against what they believe to be an impending “cultural war.”¹⁷

8. *Id.*

9. *Id.* States are considered “Republican-controlled” if Republicans hold both the governorship and the state legislature. *State Partisan Composition*, NAT'L CONF. OF STATE LEGISLATURES (June 1, 2022), <https://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx> [<https://perma.cc/48CQ-KDCH>].

10. Brownstein, *supra* note 6.

11. Ronald Brownstein, *Red States Are Remaking the Civil Liberties Landscape*, CNNPOLITICS (Feb. 22, 2022, 12:01AM), <https://www.cnn.com/2022/02/22/politics/republicans-civil-liberties-abortion-voting-race/index.html> [<https://perma.cc/8V6Y-62W8>].

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Brownstein, *supra* note 11.

Complaint Resolution Process Prior to SB 226

Before SB 226, “counties were required to have reconsideration policies in place” to address complaints regarding school materials.¹⁸ Without a uniform process, schools maintained “locally-determined mechanisms” for complaint-filing processes when parents found school materials objectionable.¹⁹ Typically, the process began with an informal discussion between the school’s principal or designee and the individual who raised concerns about the content of the school’s material.²⁰ If an individual and a school principal or designee could not reach a resolution, the complainant could file a formal complaint with the school’s media committee.²¹ Depending on the school, the media committee members may include school representatives, the library media specialist, teacher representatives from each grade level, and community and student representatives.²² If the complainant was not satisfied with the committee’s decision, the complainant could then file an appeal with the local school district.²³ Nevertheless, there was no guaranteed method for the complainant to force a school district to determine whether the school material was objectionable.²⁴

18. Electronic Mail Interview with Amanda Lee, President-Elect, Georgia Library Media Association (May 9, 2022) [hereinafter Lee Interview] (on file with the Georgia State University Law Review).

19. Letter from Christopher Bruce, Pol. Dir., Am. C.L. Union (ACLU) of Ga., to Brian Kemp, Gov., David Ralston, Speaker of the House Members, Ga. House of Reps. (Mar. 26, 2021) [hereinafter Letter from Christopher Bruce], https://acluga.org/wp-content/uploads/2021/04/acluga_letter-to-governor_house_speaker_and_members_to_oppose_sb226.pdf [https://perma.cc/N8C8-W8Q9].

20. See COBB CNTY. SCH. DIST., RULE IFBC-R: MEDIA PROGRAMS (May 5, 2017) [hereinafter RULE IFBC-R],

<https://sbcobbstor.blob.core.windows.net/media/WWWCobb/assets/cobbk12/documents/IFBC-R.pdf> [https://perma.cc/VD7Z-VRY6]; ATLANTA PUB. SCHS., MEDIA POLICY AND PROCEDURES [hereinafter MEDIA POLICY AND PROCEDURES], <https://www.atlantapublicschools.us/cms/lib/GA01000924/Centricity/Domain/2628/APSSlectionpolicymaterialsandmedia.pdf> [https://perma.cc/R4BQ-A4GT].

21. Letter from Christopher Bruce, *supra* note 19. See also RULE IFBC-R, *supra* note 20; MEDIA POLICY AND PROCEDURES, *supra* note 20.

22. See 2023 School Representatives for School Media Committee, COLLINS HILL HIGH SCH., <https://www.gcpsk12.org/Page/27944> [https://perma.cc/B45T-KZLS]; Media Committee, DURHAM LIBR. LEARNING COMMONS (LLC), <https://www.cobblearning.net/durhammediacenter/media-committee/> [https://perma.cc/KLT6-WEGW]; School Media Committee, N. JACKSON ELEMENTARY SCH., <https://www.jacksonschools.ga.org/Page/1655> [https://perma.cc/T2ZK-L3XS].

23. See RULE IFBC-R, *supra* note 20; MEDIA POLICY AND PROCEDURES, *supra* note 20.

24. Jeff Amy, *Bill: Give Georgia Parents Way to Quash School Materials*, ATLANTA J.-CONST. (Jan. 28, 2022), <https://www.ajc.com/partner/fresh-take-georgia/bill-give-georgia-parents-way-to-quash-school-materials/OL15D22HFBFCXMEP343TWUFMC4/> [https://perma.cc/52NZ-896W].

Legislative Movement to Restrict Material that is Harmful to Minors

Republican lawmakers in numerous Republican-led states are proposing legislation that restricts classroom digital and print materials that are harmful to minors.²⁵ Specifically, the legislation considers materials that are obscene, pornographic, or sexually exploitative of minors to be harmful.²⁶ Conservative activists argue that formal controls are required to eradicate harmful material from libraries and online school databases.²⁷ Educators and librarians believe that new laws are unnecessary because decades-old federal child protection and internet privacy laws already restrict the material available to minors through online school databases.²⁸ For example, since 1998, it has been a federal crime to distribute obscene material to a minor.²⁹ Additionally, the Children’s Internet Protection Act (CIPA) requires schools and libraries subject to the CIPA to have an internet safety policy to protect minors from accessing material that is obscene, contains child pornography, or is considered harmful to minors.³⁰ Critics are concerned that the true purpose of the new law is to censor

25. Hannah Natanson, *The Next Book Ban: States Aim to Limit Titles Students Can Search For*, WASH. POST (May 10, 2022, 7:26 AM), <https://www.washingtonpost.com/education/2022/05/10/school-library-database-book-ban/> [https://perma.cc/PY2Z-65QS]; see, e.g., SB 2292, 112th Gen. Assemb. Reg. Sess. (Tenn. 2022), available at <https://www.capitol.tn.gov/Bills/112/Bill/SB2292.pdf> [https://perma.cc/SY6Y-EHE6] (requiring providers of digital or online resources to “filter, block, or otherwise prevent access to pornography or obscenity through online resources to the respective school”); HB 3702, 58th Gen. Assemb., Reg. Sess. (Okla. 2022), available at http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB3702%20ENR.PDF [https://perma.cc/NH5L-YTVW] (restricting material available to students through digital or online library database resources that is deemed to be child pornography or obscene materials); HB 38, 63rd Leg., Gen. Sess. (Utah 2021), available at <https://le.utah.gov/~2021/bills/static/HB0038.html> [https://perma.cc/VV8E-2K6F] (requires digital resources provided by the Utah Education and Telehealth Network (UETN) to Utah’s public schools to “block obscene or pornographic material”).

26. Natanson, *supra* note 25; see, e.g., SB 2292, 112th Gen. Assemb. Reg. Sess. (Tenn. 2022), available at <https://www.capitol.tn.gov/Bills/112/Bill/SB2292.pdf> [https://perma.cc/SY6Y-EHE6]; HB 3702, 58th Gen. Assemb., Reg. Sess. (Okla. 2021), available at http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB3702%20ENR.PDF [https://perma.cc/NH5L-YTVW]; HB 38, 63rd Leg., Gen. Sess. (Utah 2021), available at <https://le.utah.gov/~2021/bills/static/HB0038.html> [https://perma.cc/VV8E-2K6F].

27. See Amy, *supra* note 24.

28. *Id.*

29. 18 U.S.C. § 1470.

30. 47 U.S.C. § 254(h)(5); 20 U.S.C. § 9134(f); *Children’s Internet Protection Act (CIPA)*, FED. COMM’NS COMM’N, <https://www.fcc.gov/consumers/guides/childrens-internet-protection-act> [https://perma.cc/E3BM-TNL3] (Dec. 30, 2019).

material that contains gay, transgender, or other sexuality-related content.³¹

Bill Tracking of SB 226

Consideration and Passage by the Senate

Senator Jason Anavitarte (R-31st) sponsored SB 226 in the Georgia State Senate with Senator Jeff Mullis (R-53rd), Senator Butch Miller (R-49th), Senator Steve Gooch (R-51st), Senator Bruce Thompson (R-14th), Senator Burt Jones (R-25th), Senator Chuck Payne (R-54th), Senator Randy Robertson (R-29th), and Senator Greg Dolezal (R-27th) cosponsoring.³² The bill was placed in the Senate hopper on February 22, 2021.³³ On February 23, 2021, the Senate read SB 226 for the first time.³⁴ The bill originally sought to “amend Part 3 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated.”³⁵ The General Assembly passed this Code section to eliminate the “sale, loan, and exhibition of harmful materials to minors,” which were of “increasingly grave concern to the people of this state.”³⁶ Under Code section 16-12-103 and Code section 16-12-105, furnishing, disseminating, or displaying sexually explicit materials to minors is a misdemeanor of a high and aggravated nature.³⁷ A person convicted of a misdemeanor of a high and aggravated nature in Georgia may be punished by a fine of up to \$5,000 and a prison term of up to twelve months.³⁸ But public libraries that operated as a part of a school, college, or university were exempt from these provisions.³⁹ The purpose of SB 226, as introduced, was to close a portion of this library loophole and prevent public school libraries from distributing harmful materials to minors.⁴⁰ The Senate referred

31. Natanson, *supra* note 25.

32. Georgia General Assembly, SB 226 Bill Tracking [hereinafter SB 226 Bill Tracking], <https://www.legis.ga.gov/legislation/59932> [<https://perma.cc/5355-S7SW>].

33. *Id.*

34. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022.

35. *See* SB 226, as introduced, 2021 Ga. Gen. Assemb.

36. 1983 Ga. Laws 1437 (codified at O.C.G.A. § 16-12-101 (1983 & 2000 Supp.)).

37. O.C.G.A. §§ 16-12-103, -105 (2022).

38. § 17-10-4.

39. § 16-12-104.

40. *See* SB 226, as introduced, 2021 Ga. Gen. Assemb.

this bill to the Senate Committee on Judiciary because of its initial criminal component.⁴¹

The Senate Judiciary Committee favorably reported the bill by substitute on March 3, 2021.⁴² The substitute made four key changes to the bill. First, the substitute added a new Code section under Title 20 of the Official Code of Georgia Annotated.⁴³ Second, the substitute included new language that defined “harmful to minors” as a depiction of “nudity, sexual conduct, sexual excitement, or sadomasochistic abuse” in any form.⁴⁴ Third, the substitute created a complaint resolution process to address complaints by parents or guardians alleging that harmful materials have been provided or are currently available to students.⁴⁵ Lastly, the substitute required the Georgia Department of Education to create a model policy for a complaint resolution process for all school districts to use to determine whether material is harmful to minors.⁴⁶

The Senate read SB 226 for the second time on March 5, 2021, and for the third time on March 8, 2021.⁴⁷ On March 8, 2021, the Senate called SB 226 to the floor for consideration and adopted the bill by a vote of 35 to 16, almost entirely along party lines.⁴⁸

Consideration and Passage by the House of Representatives

Representative James Burchett (R-176th) sponsored SB 226 in the House.⁴⁹ The House read the bill for the first time on March 9, 2021, and for the second time on March 10, 2021.⁵⁰ On March 22, 2021, the

41. Video Recording of House Proceedings at 2 hr., 7 min., 40 sec. (Mar. 25, 2022) (remarks by Rep. Josh McLaurin (D-51st)), <http://youtu.be/Q7TAHThNnEk> [<https://perma.cc/64QS-QH4S>].

42. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022; SB 226 Bill Tracking, *supra* note 32.

43. See SB 226 (SCS), § 1, pp. 1, ll. 12–14, 2021 Ga. Gen. Assemb. The first version of SB 226 amended Part 3 of Article 3 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated so that the provisions of Code Section 16-12-103 applied to school-operated libraries. SB 226, as introduced, 2021 Ga. Gen. Assemb.

44. SB 226 (SCS), § 1, p. 2, ll. 16–24, 2021 Ga. Gen. Assemb.

45. *Id.* § 1, pp. 2–3, ll. 25–52.

46. *Id.* § 1, p. 3, ll. 53–59.

47. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022.

48. *Id.*; SB 226 Bill Tracking, *supra* note 32.

49. SB 226 Bill Tracking, *supra* note 32.

50. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022.

House Judiciary Non-Civil Committee amended the bill in several ways and favorably reported a substitute.⁵¹

First, the substitute extended the initial roll-out period and gave local boards of education until January 1, 2022, to adopt a complaint resolution policy.⁵² Second, the substitute allowed for a principal to assign a designee to manage the complaint resolution process.⁵³ Third, the substitute subjected the principal or designee's determinations to full administrative and substantive review by the local board of education within thirty calendar days of receiving a written appeal, unless another time frame was mutually agreed upon.⁵⁴ Fourth, the substitute required that any material the local board of education determined not to be harmful to minors be made available for electronic review on the local board of education's website within fifteen business days of the determination date.⁵⁵ The material must be available for review for at least forty-eight months, and the local board of education is required to make accommodations in its licensing agreements to allow for public access and electronic review of the material.⁵⁶ Fifth, the substitute required the department of education to develop a model policy for a complaint resolution process by September 1, 2021, and dropped the requirement for the department of education to provide guidance on how to determine whether material is harmful for minors.⁵⁷

The House withdrew and recommitted the bill on March 31, 2021.⁵⁸ On March 25, 2022, the House issued a notice to reconsider reading the bill for a third time and voted to pass the bill by substitute by a vote of 97 to 61.⁵⁹ This substitute made five key changes to the bill. First, the substitute updated the term "guardian" to include only "permanent guardians."⁶⁰ Second, the substitute pushed back all date requirements

51. SB 226 Bill Tracking, *supra* note 32. See generally SB 226 (LC 41 3138S), 2021 Ga. Gen. Assemb.

52. See SB 226 (LC 41 3138S), § 1, p. 2, ll. 25–29, 2021 Ga. Gen. Assemb.

53. *Id.* § 1, p. 2, ll. 34–35.

54. *Id.* § 1, p. 3, ll. 48–50.

55. *Id.* § 1, p. 3, ll. 54–58.

56. *Id.* § 1, p. 3, ll. 54–61.

57. *Id.* § 1, p. 3, ll. 62–64.

58. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022; SB 226 Bill Tracking, *supra* note 32.

59. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022; SB 226 Bill Tracking, *supra* note 32.

60. See SB 226 (LC 48 0514S), § 1, p. 2, ll. 27–29, 2022 Ga. Gen. Assemb.

by a year to accommodate for the delay in passage.⁶¹ Third, the substitute amended the appeals process to allow the complaining parent or permanent guardian to provide input during public comment at a regularly scheduled board meeting.⁶² Fourth, the substitute amended the publication requirement following a local board of education's determination that a material is not harmful to minors.⁶³ After the determination, the local board of education must publish the title of the material within fifteen days for at least twelve months.⁶⁴ Fifth, the substitute allowed a parent or permanent guardian to request access to appealed materials that are accessible to students.⁶⁵

On March 28, 2022, a vote to reconsider in the House failed by a vote of 59 to 91.⁶⁶

Final Passage and the Governor's Signature

On March 30, 2022, the bill, as amended by the House, returned to the Senate for a vote.⁶⁷ Senator Anavitarte moved that the Senate agree to SB 226 as amended by the House because the amendment “include[d] an upgraded complaint resolution process and also that the title of the material in question that is appealed through the local school district be posted on a website for fifteen days by the local school district.”⁶⁸ On that same day, the Senate passed the House amendment by a vote of 29 to 21.⁶⁹

The Senate sent the bill to Governor Brian Kemp (R) on April 7, 2022.⁷⁰ Governor Kemp signed the bill into law on April 28, 2022.⁷¹ The Act took effect on July 1, 2022.⁷²

61. *Id.* § 1, p. 2, ll. 25; *id.* § 1, p. 3, ll. 65.

62. *Id.* § 1, p. 3, ll. 49–53.

63. *Id.* § 1, p. 2, ll. 57–61.

64. *Id.*

65. *Id.* § 1, p. 2, ll. 61–64.

66. Georgia House of Representatives Voting Record, SB 226, #780 (Mar. 28, 2022).

67. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022.

68. Video Recording of Senate Proceedings at 3 hr., 26 min., 30 sec. (Mar. 30, 2022) (remarks by Sen. Jason Anavitarte (R-31st)), <https://www.youtube.com/watch?v=IxqMXeu4g2I> [<https://perma.cc/FND6-X5XQ>].

69. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022; SB 226 Bill Tracking, *supra* note 32.

70. State of Georgia Final Composite Status Sheet, SB 226, May 19, 2022.

71. *Id.*

72. SB 226 Bill Tracking, *supra* note 32; O.C.G.A. § 20-2-324.6 (2022).

The Act

The Act amends “Part 15 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, relating to miscellaneous provisions of the ‘Quality Basic Education Act.’”⁷³ The Act’s overall purpose is to provide local school systems with a complaint resolution process to address complaints submitted by parents or permanent guardians alleging that material that is harmful to minors has been provided or is currently available to a student.⁷⁴

Section 1

Subsection (a) defines a description or representation of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse as “harmful to minors” when it “(1) [t]aken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors; (2) [i]s patently offensive to prevailing standards in the adult community as a whole . . . ; and (3) [i]s . . . lacking in serious literary, artistic, political, or scientific value for minors.”⁷⁵ Subsection (b) requires each local board of education to adopt a complaint resolution process by January 1, 2023, “to address complaints submitted by parents or permanent guardians alleging that material that is harmful to minors has been provided or is currently available to a student enrolled in the local school system who is a child of such parent or permanent guardian.”⁷⁶

Subsection (b) also details requirements for the complaint resolution process.⁷⁷ Complaints must be in writing and submitted to the principal where the child is enrolled.⁷⁸ The complaints must include a “reasonably detailed description” of the alleged material that is harmful to minors.⁷⁹ The school principal, or his or her designee, must review the written complaint within seven business days of receiving the complaint and take reasonable steps to investigate.⁸⁰ The principal

73. 2022 Ga. Laws 146, § 1, at 146.

74. 2022 Ga. Laws 146.

75. § 20-2-324.6(a).

76. § 20-2-324.6(b).

77. *Id.*

78. § 20-2-324.6(b)(1).

79. § 20-2-324.6(b)(2).

80. § 20-2-324.6(b)(3).

or designee will determine if the material is harmful to minors and whether student access to the material should be removed or restricted.⁸¹ The school principal or designee must inform the complaining parent or permanent guardian of the determination within ten business days of receiving the complaint, unless they have arranged for another mutually agreed upon schedule.⁸²

The parent or permanent guardian may appeal the principal or designee’s decision.⁸³ The appeal is “subject to full administrative and substantive review by the local board of education.”⁸⁴ The parent or permanent guardian can make a public comment during a regularly scheduled board meeting.⁸⁵ This appeal process must be completed within thirty calendar days of the local board of education receiving the written appeal unless they have mutually agreed upon another schedule.⁸⁶

After the appeal process, if the local board of education determines that a material is not harmful to minors, the local board of education must publish the title of the material on their website within fifteen business days of the determination.⁸⁷ The title must be published on the website for at least twelve months.⁸⁸ “A parent or permanent guardian may request access to these appealed materials that are physical in nature and accessible to their student in the student’s school media center.”⁸⁹

Subsection (c) requires the department of education to develop a model policy for a complaint resolution process that meets the requirements in subsection (b) by September 1, 2022.⁹⁰

81. § 20-2-324.6(b)(4)–(5).

82. § 20-2-324.6(b)(6).

83. § 20-2-324.6(b)(7).

84. *Id.*

85. *Id.*

86. *Id.*

87. § 20-2-324.6(b)(8).

88. *Id.*

89. *Id.*

90. § 20-2-324.6(c).

*Analysis**First Amendment Concerns*

The First Amendment protects United States citizens from the government “abridging the freedom of speech, or of the press,” and the Fourteenth Amendment requires state and local governments to observe these protections.⁹¹ The Supreme Court has repeatedly found that the right to receive information is corollary to the freedom of speech.⁹² In *Board of Education v. Pico*, the Supreme Court addressed whether a school board violated the Constitution by removing books from the school’s library.⁹³ The Court held that “the right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom,” and rejected the petitioners’ decision to remove books in order to impose a “political orthodoxy” upon the students.⁹⁴ But the Court also reserved that there may be “constitutionally valid concerns” that would properly permit a school board to prohibit certain reading materials.⁹⁵ Additionally, there are certain categories of unprotected speech, including “obscenity, child pornography, defamatory speech, false advertising, true threats, and fighting words.”⁹⁶ Drafters of this Georgia legislation were careful to limit potential “harmful materials” to representations of “nudity, sexual conduct sexual excitement or sadomasochistic abuse.”⁹⁷ If challenged, legislators could likely argue that the Act aims to restrict obscene materials in schools, which is not protected speech.⁹⁸

91. U.S. CONST. amend. I; U.S. CONST. amend. XIV, § 1.

92. Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868 (1982); *Epperson v. Arkansas*, 393 U.S. 97, 105 (1968); *Griswold v. Connecticut*, 381 U.S. 479, 482–83 (1965).

93. *Bd. of Educ.*, 457 U.S. at 855–56.

94. *Id.* at 867–75.

95. *Id.* at 875.

96. *First Amendment and Censorship*, AM. LIBR. ASS’N, <https://www.ala.org/advocacy/intfreedom/censorship> [<https://perma.cc/AC56-7AZA>] (Oct. 2021).

97. O.C.G.A. § 20-2-324.6(a) (2022).

98. *See Reno v. Am. C.L. Union*, 521 U.S. 844, 895 (1997).

Restricting the Actors

SB 226 prevents anyone other than the parents or permanent guardians of a student enrolled in the local school system to file a complaint. Before SB 226, some school districts allowed residents of that school district, school employees, or even representatives of political organizations to initiate complaints.⁹⁹ SB 226 limits the right to object to available material to parents or permanent guardians with children in the affected school.¹⁰⁰

SB 226 also restricts who may deem material as harmful.¹⁰¹ The principal or principal's designee has initial sole discretion to decide if a complaint has merit and if the corresponding material is harmful to children.¹⁰² This authority is only challenged if a concerned party raises an appeal.¹⁰³ If appealed, the local board of education reviews the content of the allegedly harmful material.¹⁰⁴ Amanda Lee, president-elect of the Georgia Library Media Association, believes the principal's sole discretion "makes the process more political."¹⁰⁵ Lee also believes that the "very tight" time limits compound the political nature of this legislation.¹⁰⁶

Senator Michelle Au (D-50th) is worried that SB 226 will eventually restrict Georgia children's education.¹⁰⁷ Senator Au worries that an unintended consequence of this legislation will be that "any books depicting nudity may be removed, including art history books" and similar educational materials.¹⁰⁸ As a mother of three school-aged children, Senator Au believes the prior system was sufficient and that "schools and their libraries already offer[ed] a level of control over the material that is available."¹⁰⁹ With this new bill, schools and teachers

99. Rebecca Leftwich, *New Law Would Tighten Policy on 'Objectionable Materials'*, NEWNAN TIMES-HERALD (Apr. 16, 2022, 6:58 PM), <https://times-herald.com/news/2022/04/new-school-law-would-tighten-existing-policy-on-objectionable-materials> [<https://perma.cc/9HJP-HDPF>].

100. 2022 Ga. Laws 146, § 1(b), at 147 (codified at § 20-2-324.6(b)).

101. *Id.*

102. § 20-2-324.6(b)(4).

103. § 20-2-324.6(b)(7).

104. *Id.*

105. Lee Interview, *supra* note 18.

106. *Id.*

107. Virtual Interview with Sen. Michelle Au (D-50th) (May 12, 2022) (on file with the Georgia State University Law Review).

108. *Id.*

109. *Id.*

may “err on the side of caution” and not use any material that has a chance of raising complaints; if not, they run the risk of being “overwhelmed with paperwork.”¹¹⁰ Ultimately, SB 226 may limit the material available to children and restrict their access to information.

Comparison to Tennessee’s Act

Tennessee recently adopted similar legislation that prevents school computers from “sending, receiving, viewing, or downloading materials that are deemed to be harmful to minors.”¹¹¹ Tennessee’s definition of “harmful to minors” matches the exact language included in SB 226, with one exception—in Tennessee, material can also be considered harmful to minors if it represents “excess violence.”¹¹² The Tennessee legislation also requires Local Education Agencies that contract for digital or online materials for kindergarten-through-twelfth-grade students to implement a complaint-filing process.¹¹³ This process must allow third parties to file a complaint if the digital or online tools do not prevent access to materials that are considered obscene or harmful to minors.¹¹⁴ There are a few key differences between the Tennessee legislation and the Georgia legislation. Tennessee limits the complaint process to contracted digital or online materials, whereas Georgia allows complaints for materials available to students in *any* format.¹¹⁵ While Tennessee allows *any* individual to file a complaint, Georgia allows only parents and permanent guardians of an active student to file a complaint.¹¹⁶ This difference exposes the Tennessee Local Education Agencies to input from outside parties. Finally, the Georgia legislation more thoroughly sets requirements for the complaint, review, and appeals processes.¹¹⁷ Tennessee does not require such standardization for the process and only requires that complaints be allowed and reviewed.¹¹⁸

110. *Id.*

111. TENN. CODE ANN. § 49-1-221(a)(1)(C) (2022).

112. TENN. CODE ANN. § 39-17-901(6) (2022); O.C.G.A. § 20-2-324.6(a) (2022).

113. TENN. CODE ANN. § 49-1-221(c)(2) (2022).

114. *Id.*

115. *Id.*; O.C.G.A. § 20-2-324.6(b) (2022).

116. TENN. CODE ANN. § 49-1-221(c)(2) (2022); O.C.G.A. § 20-2-324.6(b) (2022).

117. 2022 Ga. Laws 146, § 1(b), at 147–48 (codified at O.C.G.A. § 20-2-324.6(b) (2022)).

118. TENN. CODE ANN. § 49-1-221(c)(2) (2022).

Comparison to Utah's Act

SB 226 defines material “harmful to minors” similarly to how Utah defines “obscene or pornographic material” in its recently passed legislation.¹¹⁹ In Utah, “obscene or pornographic material” is material that “(a) an average person, applying contemporary community standards” would find “appeals to prurient interest in sex; (b) is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and (c) taken as a whole does not have serious literary, artistic, political, or scientific value.”¹²⁰ Utah, like Tennessee, limits its legislation to contracted digital resources.¹²¹ Utah allows the Utah Education and Telehealth Network (UETN), which purchases digital resources, to withhold payments from providers that do not block access to obscene or pornographic material.¹²² UETN must include provisions in its contracts with digital resource providers that make the ability of a public school student to access obscene or pornographic material a breach of contract.¹²³ Though there is no public complaint process in Utah, UETN must report all instances of provider failure to comply with this legislation to the Education Interim Committee.¹²⁴ While Georgia allows parents and permanent guardians to object to harmful material to minors, Utah only allows UETN to monitor for and report on obscene materials available to students.¹²⁵ By tasking one party—UETN—with reviewing all available digital materials, Utah may have created a model that reduces the impact of outside influence and could lead to more consistent content determinations.

119. UTAH CODE ANN. § 53B-17-101.5(5) (West, Westlaw through 2022 Sess.); O.C.G.A. § 20-2-324.6(a) (2022).

120. UTAH CODE ANN. § 53B-17-101.5(5) (West, Westlaw through 2022 Sess.).

121. § 53B-17-109(1) (Westlaw).

122. § 53B-17-109(2)(a)(ii) (Westlaw).

123. § 53B-17-109(2)(b) (Westlaw).

124. § 53B-17-109(3) (Westlaw).

125. § 53B-17-109 (Westlaw); O.C.G.A. § 20-2-324.6(b) (2022).

Comparison to Nebraska's Proposed Legislation

In 2022, Nebraska proposed similar legislation to restrict students' access to "materials obscene as to minors or harmful to minors" through digital or online resources.¹²⁶ Unlike Georgia, Nebraska proposed language providing for a civil cause of action to any minor or parent or guardian of a minor attending school where a violation occurs to recover damages sustained by the minor, parent or guardian, or both.¹²⁷ Separate violations would occur every time students have access to obscene or harmful materials, and the injured party may recover up to \$10,000 per violation.¹²⁸

Additionally, Nebraska's proposed legislation creates an irrebuttable presumption that the digital or online resource provider knows the content of the resources that is provided to minors.¹²⁹ This provision shifts the burden of blocking or filtering material to the provider in lieu of requiring a complaint to be filed, like the process in Georgia.¹³⁰

Conclusion

In passing SB 226, Georgia joined a wave of Republican-controlled states that have proposed legislation to restrict material in school libraries that is harmful to minors.¹³¹ Although some states have taken a broad approach by defining material that is harmful to minors as obscene, pornographic, or sexually exploitative to minors, Georgia limited the definition to material that is sexual in nature.¹³² Due to this limited definition, the Act's opponents view its passage as an

126. LB 1213, p. 1, ll. 1-5, 107th Gen. Assemb., 2d Sess. (Neb. 2022), *available at* <https://nebraskalegislature.gov/FloorDocs/107/PDF/Intro/LB1213.pdf> [<https://perma.cc/952X-5U4K>].

127. *Id.* § 1(6), p. 3, ll. 12-23.

128. *Id.*

129. *Id.* § 1(7), p. 3, ll. 24-27.

130. *Id.*; O.C.G.A. § 20-2-324.6(b) (2022).

131. 2022 Ga. Laws 146, § 1, at 146 (codified at § 20-2-324.6(a)); Natanson, *supra* note 25; *see, e.g.*, SB 2292, 112th Gen. Assemb. Reg. Sess. (Tenn. 2022), *available at* <https://www.capitol.tn.gov/Bills/112/Bill/SB2292.pdf>

[<https://perma.cc/SY6Y-EHE6>]; HB 3702, 58th Gen. Assemb., Reg. Sess. (Okla. 2021), *available at* http://webserver1.lsb.state.ok.us/cf_pdf/2021-22%20ENR/hB/HB3702%20ENR.PDF

[<https://perma.cc/NH5L-YTVW>]; HB 38, 63rd Leg., Gen. Sess. (Utah 2021), *available at* <https://le.utah.gov/~2021/bills/static/HB0038.html> [<https://perma.cc/VV8E-2K6F>].

132. 2022 Ga. Laws 146, § 1, at 146 (codified at § 20-2-324.6(a)).

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unnecessary political move because of the preexisting controls that already restrict material available to minors in school libraries.¹³³

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133. See Letter from Christopher Bruce, *supra* note 19.