

Subject: <i>Objectionable Material Policy</i>	Legal Reference –RSA 186:11, IX-c; RSA 193-E:2-a, (IV)(c)
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This Technical Advisory provides guidance to schools relative to curriculum course material related to human sexuality.

RSA 186:11, IX-c, requires the State Board of Education to “[r]equire school districts to adopt a policy allowing an exception to specific course material based on a parent’s or legal guardian’s determination that the material is objectionable.” Such a policy:

Shall also require the school district or classroom teacher to provide parents and legal guardians not less than two weeks advance notice of curriculum course material used for instruction of human sexuality or human sexual education. The policy shall address the method of delivering notification to a parent or legal guardian. To the extent practicable, a school district shall make curriculum course materials available to parents or legal guardians for review upon request. The name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the material shall not be public information and shall be excluded from access under RSA 91-A. RSA 186:11, IX-c.

The term “human sexuality” is not defined in the statute, and as such, the department understands the statute to invoke the plain-language meaning of that term. The Encyclopedia of Evolutionary Psychological Science, for example, defines the term as follows:

“Human sexuality is most broadly defined as the totality of experiences, systems, attributes, and behavior that characterize the sexual sensation, reproduction, and intimacy of Homo sapiens.

Scientific perspectives of human sexuality encompass, variously, its reproductive, social, cultural, emotional, and biological aspects.¹”

In addition to reminding schools of their obligation to maintain a policy in compliance with the notice requirements of RSA 186:11, IX-c, this technical advisory also clarifies the contexts in which this notice requirement applies.

As noted, RSA 186:11, IX-c requires not less than two weeks advance notice to parents of curriculum course material used for instruction of human sexuality or human sexual

¹ Grebe, N.M., Drea, C.M. (2018). Human Sexuality. In: Shackelford, T., Weekes-Shackelford, V. (eds) Encyclopedia of Evolutionary Psychological Science. Springer, Cham. https://doi.org/10.1007/978-3-319-16999-6_3360-1

education. RSA 193-E:2-a (VI)(c) in turn defines “curriculum” as meaning “the lessons and academic content taught in school or in a specific course or program.”

The applicable definition of “curriculum” means that the notification requirements of RSA 186:11, IX-c, apply to human sexuality or human sexual education that are part of *any* course, even if that course is not specific to health and sex education. For example, curriculum content that includes information about “human sexuality” in an English Language Arts Class or a Social Studies class would invoke the notice requirement of RSA 186:11, IX-c. The notice requirement, as noted above, similarly applies to instruction of human sexuality and human sexual education to the extent it takes place in any other school programming. In short, the notice provisions of RSA 186:11, IX-c, are not limited to “health and sex education” class materials. Rather, the notice provision of the statute is triggered by the nature of the curriculum course material itself and not by the specific instructional setting.

The notification requirements to parents are not intended to prevent educators from sharing incidental personal information such as marital status or to share, for example, that they attended an event with a spouse or partner. Incidental sharing of such personal information would not extend to or be viewed as human sexuality or human sexual education.

In addition to the notice requirements detailed in RSA 186:11, IX-c, schools and educators should also be mindful of the obligations imposed by Ed 306.08 in assessing curriculum regarding human sexuality or human sexual education.

ED 306.08, “Instructional Resources” states that the local school board shall require that each school:

“Provides a *developmentally appropriate* collection of instructional resources, including online and print materials, equipment, and instructional technologies, that shall be current, comprehensive, and necessary to support the curriculum as well as the instructional needs of the total school population. Ed 306.08(a)(1) (emphasis added).

As such, based on Ed 306.08, schools should take steps to ensure that all curriculum course material used for instruction of human sexuality or human sexual education are developmentally appropriate.

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