Ala. Code 1975, § 13A-6-82.1(a)(1)*

SCHOOL EMPLOYEE DISTRIBUTING OBSCENE MATERIAL TO A STUDENT

*** [These instructions apply only to offenses committed on or after 08/01/2021]**

The defendant is charged with being a school employee distributing obscene materials to a student.

A person commits the crime of being a school employee distributing obscene material to a student if he/she distributes, by any means, obscene matter that depicts sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct to a student.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

(1) The defendant was a school employee;

(2) **[Insert Name of Victim]** was a student;

(3) The defendant distributed, by any means obscene material that depicted:

(a) Sexual intercourse;

(b) Sexual excitement;

(c) Masturbation;

(d) Breast nudity;

(e) Genital nudity **[OR]**

(f) Other sexual conduct.

(4) The defendant acted **[Insert Appropriate Mens Rea Element – See Use Notes]**.

A *school employee* includes a teacher, school administrator, student teacher, safety or resources officer, coach, and other school employee. [13A-6-80(a)]

A *student* is any person under the age of 19 years enrolled or

attending classes in a licensed or accredited public, private, or church school that offers instruction in grades K-12, regardless of whether school is in session. [13A-6-80(b)]

Distribute means to import, export, sell, rent, lend, transfer possession of or title to, display, exhibit, show, present, provide, broadcast, transmit, retransmit, communicate by telephone, play, orally communicate or perform. [13A-12-200.1(7)]

Material means any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound recording, article, device, equipment, matter, oral communication, live performance, or dance. [13A-12-200.1(15)]

Obscene means that:

(1) The average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest;

(2) The material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; **[AND]**

(3) A reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value.

[13A-12-190(13); 13A-12-200.1(17)]

Sexual Intercourse means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital or oral-anal, whether between persons of the same or opposite sex or between a human and an animal and has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [13A-6-60(4); 13A-12-190(7); 13A-12-200.1(23)]

Sexual Excitement is the condition of human male or female genitals when in a state of stimulation. [13A-12-190(12)]

Masturbation is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(7)]

Breast Nudity is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola. [13A-12-190(1); 13A-12-200.1(4)]

Genital Nudity is the lewd showing of the genitals or pubic area. [13A-12-190(5); 13A-12-200.1(10)]

Sexual Conduct means:

(1) Any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; **[OR]**

(2) Any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion.

[13A-12-190(8); 13A-12-200.1(22)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the elements of being a school employee distributing obscene materials to a student, then you shall find the defendant guilty of being a school employee distributing obscene materials to a student.

If you find that the State has failed to prove beyond a reasonable doubt any one or more of the elements of being a school employee distributing obscene materials to a student, then you cannot find the defendant guilty of being a school employee distributing obscene materials to a student.

[If there are lesser-included offenses, the Court should instruct on those offenses at this point.]

Use Notes

Other than for “school employee” and “student,” there are no definitions defined in Article 4A of Chapter 6. There are definitions in 13A-12-190 Obscene Matter Containing Visual Depiction of Children and in 13A-12-200.1 Alabama Anti-Obscenity Enforcement Act for use in each division. These definitions are provided herein for your convenience only.

The statute does not state a specific mens rea element. Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly, and with criminal negligence. See 13A-2-2.

(1) A person acts *intentionally* with respect to a result or to conduct

described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

(2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is that of a nature or that the circumstance exists. [13A-2-2(2)]

(3) A person acts *recklessly* with respect to a result or to a circumstance when he/ she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]

(4) A person acts with criminal negligence with respect to a result or to a circumstance which is defined by statute as an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

[Approved 5/29/26]