



LIBRARY MEDIA PROGRAM

LAW AND PRACTICAL GUIDANCE FOR BOOK CHALLENGES/BANS



Arlington Heights School District No. 25 ▪ March 14, 2023
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TRENDS FOR BOOK CHALLENGES

- 2010: Religious viewpoint, violence, “unsuited to age group”
- 2020: Race, profanity and anti-police messaging
- 2021: LGBTQ+ or sexually explicit
- According to the American Library Association (ALA), the 2021-2022 school year had a record number of book ban requests and the present school year is on track to break that record.
- Per the ALA, the majority of the books being banned are in the young adult category and contain storylines featuring LGBTQ+ issues (674 titles), protagonists or secondary characters of color (659 titles), or directly address issues of race or racism (338 titles).



TERMINOLOGY

- School Book Challenge: An attempt to remove or restrict materials, based upon the objections of a person or group.
- School Book Ban: The actual removal of materials as a result of parent or community challenges, administrative decisions, or in response to direct or threatened action by lawmakers or other governmental officials, that leads to a previously accessible book being either completely removed from availability to students, or where access to a book is restricted or diminished.



BOARD POLICIES & ALA PRINCIPLES



6:230 LIBRARY MEDIA PROGRAM

The Superintendent or designee shall manage the District's library media program to comply with, (1) State law and Ill. State Board of Education (ISBE) rule, and (2) the following standards:

1. The program includes an organized collection of resources available to students and staff to supplement classroom instruction, foster reading for pleasure, enhance information literacy, and support research, as appropriate to students of all abilities in the grade levels served;
2. Financial resources for the program's resources and supplies are allocated to meet students' needs;
3. Students in all grades served have equitable access to library media resources;
4. The advice of an individual who is qualified according to ISBE rule is sought regarding the overall direction of the program, including the selection and organization of materials, provision of instruction in information and technology literacy, and structuring the work of library paraprofessionals;
5. Staff members are invited to recommend additions to the collection; and
6. Students may freely select resource center materials as well as receive guided selection of materials appropriate to specific, planned learning experiences.

■ 6:260 COMPLAINTS ABOUT CURRICULUM, ■ INSTRUCTIONAL MATERIALS, AND PROGRAMS

Parents/guardians have the right to inspect any instructional material used as part of their child's educational curriculum pursuant to Board of Education policy 7:15, Student and Family Privacy Rights. Persons who believe that curriculum, instructional materials, or programs violate rights guaranteed by any law or Board policy should file a complaint using Board policy 2:260, Uniform Grievance Procedure. Persons with all other suggestions or complaints about curriculum, instructional materials, or programs should complete a Curriculum Objection form. A parent/guardian may request that their child be exempt from using a particular instructional material or program, if allowed by law, by completing a Curriculum Objection form.



LIBRARY BILL OF RIGHTS (ALA)

The American Library Association (ALA) affirms certain basic principles should guide their services including, but not limited to:

- Materials should not be excluded because of the origin, background, or views of those contributing to their creation;
- Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval; and
- Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.



APPLICABLE LAW



FEDERAL LAW

- First Amendment may be violated by book bans because they deprive students of the right to receive information and ideas. To avoid violating the 1st amendment, the school board must demonstrate that the restriction is necessary to achieve a compelling government interest and is narrowly tailored to serve the interest.
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in federally funded education programs and activities.



STATE LAW

- The *Illinois Human Rights Act* prohibits discrimination on the basis of sexual orientation and gender identity.
- The *Illinois Human Rights Act* defines sexual orientation as the “actual or perceived heterosexuality, homosexuality, bisexuality, or gender related identity, whether or not traditionally associated with the person’s designated sex at birth”.
- Gender identity is specifically included in the definition of sexual orientation.



STATE LAW

2019: House Bill 246 (Public Act 101-0227)

- Illinois Inclusive Curriculum law
- Requires public schools to include instruction on and adopt instructional materials to include the historical contributions of lesbian, gay, bisexual, and transgender individuals.
- Effective July 1, 2020



STATE LAW

Sec. 10-20.20 of Illinois School Code. Protection from suit.

To indemnify and protect school districts, members of school boards, employees.... against civil rights damage claims and suits, constitutional rights damage claims and suits and death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for ***negligent or wrongful acts alleged to have been committed in the scope of employment or under the direction of the board*** or related to any mentoring services provided to certified staff of the school district.



NEW ILLINOIS LEGISLATION PROPOSED

The legislation, which has the backing of Democratic Gov. J.B. Pritzker, would allow the secretary of state's office to deny state grants to public libraries, including those in schools, that don't adhere to the American Library Association's Library Bill of Rights, which holds, among other things, that "materials should not be proscribed or removed because of partisan or doctrinal disapproval."

As an alternative, libraries could develop a written policy to "prohibit the practice of banning specific books or resources," the bill states.



CHRONOLOGY OF SIGNIFICANT CASES & EMPLOYEE PROTECTIONS



UNITED STATES SUPREME COURT

1982: *Island Trees Union Free School District No. 26 v. Pico*

- A local school board deemed a number of books "anti-American, anti-Christian, anti-Semitic, and just plain filthy" and directed their removal from junior high school and high school libraries.
- 4 Students challenged the decision.
- Court held, "[l]ocal 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."



FLORIDA

1989: *Vigil v. School Board of Columbia County, Florida*

- Parents filed complaint with the school board concerning an approved textbook that included excerpts of larger, “literary classics” containing sexually explicit and vulgar material, despite these excerpts being optional reading, as opposed to required reading, for the course. The school board voted to discontinue use of the book in the curriculum. Notably, the book remained in the school library available for student use.
- Court held the board’s actions in removing the book from the curriculum were “reasonably related to its legitimate concerns regarding the appropriateness of the sexuality and vulgarity in these works” and thus did not violate the First Amendment. However, the Court explicitly stated it “do[es] not endorse the Board’s decision” and “seriously question[s] how young persons just below the age of majority can be harmed by these masterpieces of Western literature.”



KANSAS

1995: *Case v. United School District No. 233*

- Students challenged a Kansas school board's decision to remove a book which depicts a romantic relationship between two teenage girls, from the school district's secondary school libraries.
- The court found that the school board's actual motivation for removing the book from the library was disapproval of the ideas contained therein, and thus the removal violated the First Amendment.



TEXAS

2000: *Sund v. City of Wichita Falls*

- Local residents objected to the inclusion of books which depict children with gay and lesbian parents, in the children's section of the public library. City of Wichita Falls passed a resolution providing that residents could remove books from the children's section by gathering 300 signatures of library card holders.
- The District Court granted an injunction against the enforcement of the resolution on the grounds that it violated the constitutional right to receive information, the City could not demonstrate that the restriction was necessary to achieve a compelling government interest, and that allowing 300 citizens to remove any books they find objectionable amounted to a heckler's veto.



ARKANSAS

2003: *Counts v. Cedarville School District*

- A parent objected to the inclusion of a Harry Potter book in school libraries.
- Thereafter, the school board voted to restrict access to the book, as well as the rest of the Harry Potter series, by shelving them out of view and requiring parental permission to check them out. School boards reasoning was that the book encouraged disobedience and witchcraft.
- Court rejected the reasoning and held the school can't have parents sign permission slip to allow students to check out certain books without justification for the restriction.



TEXAS ACLU & OFFICE FOR CIVIL RIGHTS

- 2022 claim filed
- In Texas, the ACLU of Texas filed a complaint with the U.S. Education Department's Office for Civil Rights claiming Texas school district violated Title IX's prohibition on the basis of sex when it removed 130 books, at least a quarter of which featured LGBTQ+ themes of characters.
- Decision pending



EMPLOYEE PROTECTIONS

- Protection from Suit:
 - Indemnification under Sec. 10-20.20 of Illinois *School Code*.
- Protection from Discipline:
 - Board may discipline employee for policy violation or insubordination, but must provide due process.



QUESTIONS



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It is not legal advice or a substitute for legal counsel.
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