

## BOOK AND MATERIAL SELECTION POLICY

The Sunapee School Board is legally responsible for all matters relating to the operation of the Sunapee schools. The responsibility for the selection of instructional materials is delegated to the professionally trained personnel employed by the school system.

### Objectives

The primary objective of a school library or resource center is to implement, enrich and support the educational program of the school. Needs of the individual school based on knowledge of the curriculum, teacher and student needs, and of the existing collection are given first consideration.

### Criteria for Selection

1. Books and other instructional materials shall be selected on the basis of:
  - a. overall purpose
  - b. timeliness or permanence
  - c. importance of subject matter
  - d. quality of the writing/production
  - e. readability and popular appeal
  - f. authoritativeness
  - g. reputation of the publisher/producer
  - h. reputation and significance of the author/artist composer/producer
  - i. format and price
2. Consideration shall be given to:
  - a. needs of the individual school based on knowledge of the curriculum and requests from administrators and teachers
  - b. needs of the individual student based on knowledge of children and youth and requests of parents and students
  - c. provision of materials of high artistic quality
  - d. provision of materials with superior format
  - e. choosing materials for values of interest and the enlightenment of all students of the community.

A book shall not be excluded because of the race, nationality or the political or religious views of the writer.

  - f. providing materials presenting all points of view concerning international, national, and local problems and issues of our times; books or other materials of sound factual authority shall not be prescribed or removed from library shelves because of partisan or doctrinal disapproval.
3. Controversial materials
  - a. Religion--factual, unbiased material which represents all major religions should be included in the library collection.
  - b. Ideologies--the library should make available basic factual information on the level of its reading public, on any ideology or philosophy which exerts strong force, either favorably or unfavorably in government, current events, politics, education, or any other phase of life.

- c. Sex and profanity--Materials presenting accents on sex should be subjected to a stem test of literary merit and reality, taking into consideration the reading public. The fact of sexual incidents or profanity appearing should not automatically disqualify a book. The decision should be made on the basis of whether the book presents life in its true proportions, whether circumstances are realistically dealt with, and whether the book is of literary value. Factual material of an educational nature on the level of the reading public should be included in the school collection.
- d. Science--Medical and scientific knowledge should be made available without any biased selection of facts.

#### 4. Third-Party Digital Content Providers

In order to expand access to educational materials and focus on meeting the objectives outlined in this policy, content from digital content providers will be included in the collection. This content includes material such as scholarly articles in research databases, nonfiction and fiction books, audiobooks, and video. Entering into a contract with a content provider will be governed by the aforementioned Criteria for Selection. Such agreements include recognition that some materials will be managed directly by the provider as part of a broad package of educational content offered to elementary and secondary schools. In any agreement, the library agrees to the content provider's collection development practices.

#### **Challenged Materials**

If a complaint is made, the procedures will be as follows:

1. Criticisms of books or other instructional materials in the library or classroom should be submitted in writing to the Principal. A form for the criticism is available in the School Office.
2. Allegations thus submitted will be considered by a committee of three appointed by the principal. The challenged book or material will be judged by the committee within thirty (30) days as to its conformity to the above stated principles.
3. The books or materials involved will be suspended pending a decision in writing by the above committee. A copy of the committee's report will be made available to all concerned.
4. Appeals from this decision may be made through the Superintendent to the School Board.
5. In the event an individual wishes to challenge the inclusion of a particular resource made available by one of the school district's digital content providers, the procedures outlined above will be followed. If the challenge concerns a particular resource made available by the New Hampshire Downloadable Books (NHDB) Consortium, the individual will be directed to the Consortium's Collection Development Policy and the NHDB Consortium Request for Reconsideration of Digital Materials form.
6. All decisions concerning content made available by the school district will be effective for one year from the time of the decision.

1<sup>st</sup> Reading: 10/4/2023

2<sup>nd</sup> Reading/Approval: 11/1/2023

## PARENTAL OBJECTIONS TO SPECIFIC COURSE MATERIAL

The Board recognizes that there may be specific course materials which some parents/guardians find objectionable.

In the event a parent/guardian finds specific course material objectionable, the parent/guardian may notify the building Principal of the specific material to which they object and request that the student receive alternative instruction, sufficient to enable the child to meet state requirements for education in the particular subject area. This notification and request shall be in writing.

The building Principal and the parent/guardian must mutually agree to the alternative instruction. The alternative instruction agreed upon must meet state requirements for education in the particular subject area.

School District staff will make reasonable efforts, within the scope of existing time, schedules, resources and other duties, to accommodate alternative instruction for the student. Alternative instruction may be provided by the school through approved independent study, or through another method agreed to by the parent/guardian and the building Principal. Any cost associated with the alternative instruction shall be borne by the parent/guardian.

Nothing in this policy shall be construed as giving parents/guardians the right to appeal to the School Board.

In accordance with the federal Protection of Pupil Rights statute, as a School District that receives federal Department of Education funds, the Superintendent shall develop procedures to allow parent/guardian of a student to inspect any instructional material used as part of the educational curriculum for the student. The procedures will provide reasonable access to instructional material within a reasonable period of time after the request is received.

**NOTE regarding human sexuality and human sexual education:** In addition to the protections under this policy, per RSA 186:11-c and Board policy IHAM, parents/guardians are afforded additional affirmative rights with respect to instruction of human sexuality or human sex education, including, among other things, the right to receive a minimum of 2 weeks advance notice of all materials to be used with respect to such instruction.

---

### **Legal References:**

RSA 186:11, IX-b & IX-c State Board of Education; Duties.  
20 U.S.C §1232h, (c)(1)(C), Protection of pupil rights  
RSA 193:40, Prohibition on Teaching Discrimination

---

First Reading: October 6, 2021  
Second Reading & Approval: November 3, 2021



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



December 4, 2023

**Re: Implications of Calls to Remove School Library Books**

Dear Superintendents, School Committees, and Community Members:

In this open letter to all school superintendents and school boards in New Hampshire, the American Civil Liberties Union of New Hampshire (“ACLU-NH”) and GLBTQ Legal Advocates & Defenders (“GLAD”) write in response to the recent uptick in demands by a vocal minority of individuals that schools remove certain books from school libraries, including in Bow,<sup>1</sup> Milford,<sup>2</sup> Bedford,<sup>3</sup> and Dover.<sup>4</sup> These demands fray the bonds of trust and cooperation among parents, schools, and students. They track politicized and partisan narratives in the larger culture, and regularly target books that discuss or depict the experiences and history of members of the LGBTQ+ community and/or communities of color. Concessions to these demands—including removal of books and other measures (such as relocating requested titles to segregated

---

<sup>1</sup> See Mark Hayward, “Bow High School rejects parental challenges to graphic novel with sex images,” *Union Leader* (Mar. 24, 2023) (noting that Bow educators have rejected a request to remove *Gender Queer*), [https://news.yahoo.com/bow-high-school-rejects-parental-225700952.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce\\_referrer\\_sig=AQAAAC6VWmaGbhYeDcWMKHiKf1cF7SYH\\_ioenS119eOZbBWBtBDKGby84E9e1kFruFIn0Evwnf\\_vfXWe7ZdO4JbRcaV8OFmKY4Qn\\_qh5H56QqAfo7YA8nBeVmwN981mHg7sn7rGlaKavoqRo1yc0H66Ymrmol3MouFv\\_BWECukGICYNk](https://news.yahoo.com/bow-high-school-rejects-parental-225700952.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xILmNvbS8&guce_referrer_sig=AQAAAC6VWmaGbhYeDcWMKHiKf1cF7SYH_ioenS119eOZbBWBtBDKGby84E9e1kFruFIn0Evwnf_vfXWe7ZdO4JbRcaV8OFmKY4Qn_qh5H56QqAfo7YA8nBeVmwN981mHg7sn7rGlaKavoqRo1yc0H66Ymrmol3MouFv_BWECukGICYNk).

<sup>2</sup> See Ethan Dewitt, “How one N.H. school district is rethinking its response to book challenges,” *N.H. Bulletin* (Sept. 24, 2022) (“Last school year [at the Milford School District], a parent raised a complaint about the book ‘*Gender Queer*,’ a memoir by Maia Kobabe about their journey toward identifying as nonbinary. The complainant did not submit a formal request to challenge the book, but amid uncertainty over what the procedures were, Superintendent Christi Michaud removed the book from circulation for ‘less than 30 days,’ she said in an interview. The challenge was later dropped and the book restored.”), <https://www.nhpr.org/nh-news/2022-09-24/milford-new-hampshire-school-district-banned-book-challenges>.

<sup>3</sup> See Seneca Baldi, “Bedford’s Experiences with Book Challenges,” *Bedford High School Unleashed* (Oct. 11, 2023) (“At the high school, *Lawn Boy* was challenged. This book is a coming-of-age novel about a man reflecting on his self-discovery that investigates stereotypes about race, class, and LGBTQ relationships. The committee decided to keep the book on the shelves, but the same parent appealed the decision to the School Board. On January 26th, they met with Mrs. Gilcreast and the school board members voted 2-1 to keep the book, agreeing with the committee’s decision, although the School Board members were not required to read the book prior to this determination. One member abstained and one was absent during the vote.”), <https://unleashedmedia.net/2022/02/22/bedfords-experiences-with-book-challenges/>.

<sup>4</sup> See Ian Lenehan, “8 books in Dover schools challenged. Here are the titles targeted for bans,” *Foster’s Daily Democrat* (Apr. 27, 2023) (“Eight books currently offered to students in the city’s school district have been challenged by a community member and will be reviewed to determine whether they’ll stay on the shelves.”; “The first book to be reviewed will be “Boy Toy” by Barry Lyga, a title that has recently been banned from classrooms and school libraries in Florida, Texas and Virginia school districts, according to New York City nonprofit PEN America.”; “Porter has asked the district and book review committee to also investigate the following seven books: ‘It’s Perfectly Normal: Changing Bodies, Growing Up, Sex and Sexual Health’ by Robie Harris; ‘Identical’ by Ellen Hopkins; ‘Girl in Pieces’ by Kathleen Glasgow; ‘Extremely Loud and Incredibly Close’ by Jonathan Foer; ‘All Boys Aren’t Blue’ by George M. Johnson; ‘Allegedly a Novel’ by Tiffany D. Jackson; and ‘Breathless’ by Jennifer Niven.”), <https://www.fosters.com/story/news/local/2023/04/27/dover-nh-schools-to-review-8-book-ban-requests/70041253007/>; Ian Lenehan, “‘Boy Toy,’ book at Dover High School library, targeted for removal. Board to vote Nov. 1.”, *Portsmouth Herald* (Oct. 31, 2023), <https://www.seacoastonline.com/story/news/local/2023/10/31/boy-toy-book-at-dover-nh-high-school-library-targeted-for-removal/71386092007/>.



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



locations or making them available behind a librarian’s desk<sup>5</sup>)—raise serious legal questions and undermine the obligation of our public schools to provide every student with the opportunity to learn.

We applaud the New Hampshire schools and communities that have resisted these demands, have stood with students who deserve to have their experiences represented, and have preserved our National tradition of libraries as places for all young people to learn, imagine, grow, and explore. For those who may be considering future challenges, we urge such districts, in light of the issues detailed below, to reject these politicized efforts and allow age-appropriate and enriching reading materials to remain accessible on library shelves.

Finally, also attached to this letter is our response to the Department of Education’s (“DOE”) September 6, 2023 Technical Advisory entitled “Objectionable Material Policy,” as well as our concerns with the DOE’s recent suggestion that one school district should consider whether or not to ban certain books from a high school library.

### **Legal Issues**

Library book removals are often contrary to an appropriate educational mission, as well as raise serious legal issues of discrimination in education and violation of the right to receive information, which is protected by constitutional and statutory free speech guarantees.

It is also important that schools establish and adhere to uniform, thoughtful, and transparent procedures for evaluating calls to remove books. Such procedures generally include the establishment of a review committee to carefully evaluate the materials at issue, the receipt and consideration of input from stakeholders, and the issuance of written findings. They also ensure that books are not removed until the process is complete. *See, e.g.,* American Library Association Selection and Reconsideration Toolkit, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.

#### **I. Robust educational opportunities as a bedrock of democracy.**

Debates over whether to allow students access to specific books often lose sight of the overarching function of our schools—namely, to train young people to think for themselves. Many parents recognize this and have spoken out eloquently at school committee and other public meetings in favor of leaving books in school libraries so that their children can access a full range of viewpoints and perspectives.

Many years ago, the Supreme Court explained the essential role our schools play in helping young people develop into the reflective citizens that a democracy needs to survive and flourish:

---

<sup>5</sup> *See Virden v. Crawford Cnty.*, No. 2:23-cv-2071, 2023 U.S. Dist. LEXIS 161533 (W.D. Ark. Sept. 13, 2023) (allowing claims to proceed against a public library process that separated out LGBTQ-related materials).



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



The Nation’s future depends upon leaders trained through wide exposure to [a] robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.

*Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (cleaned up). And as one federal court said in the 1978 case about book bans:

The fundamental notion underlying the First Amendment is that citizens, free to speak and hear, will be able to form judgments concerning matters affecting their lives, independent of any governmental suasion or propaganda. Consistent with that noble purpose, a school should be a readily accessible warehouse of ideas.

*Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 710 (D. Mass. 1978). More recently, the Supreme Court emphasized that, in our schools, “learning how to tolerate speech . . . of all kinds is ‘part of learning how to live in a pluralistic society,’ a trait of character essential to ‘a tolerant citizenry.’” *Kennedy v. Bremerton School District*, 142 S. Ct. 2407, 2430 (2022); *see also Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (public education is “the very foundation of good citizenship” and “a principal instrument in awakening the child to cultural values”).

These principles too have been enshrined in New Hampshire law. The New Hampshire Supreme Court noted the following:

Given the complexities of our society today, the State’s constitutional duty [to provide a constitutionally adequate education] extends beyond mere reading, writing and arithmetic. It also includes broad educational opportunities needed in today’s society *to prepare citizens for their role as participants and as potential competitors in today’s marketplace of ideas.*

*Claremont Sch. Dist. v. Governor*, 138 N.H. 183, 192 (1993) (emphasis added). Consistent with this principle, the legislature has noted that New Hampshire has an overarching policy to provide all public school “students with the opportunity to acquire the knowledge and skills necessary to prepare them for successful participation in the social, economic, scientific, technological, and political systems of a free government, now and in the years to come.” *See* RSA 193–E:1, I. The legislature views “[a] well-educated populace [a]s essential for the maintenance of democracy, the continued growth of our economy, and the encouragement of personal enrichment and development.” RSA 193–C:1.

Furthermore, relevant education administrative rules mandate that social studies programs should give students an opportunity “to acquire the knowledge, skills, and attitudes necessary for effective participation in the life of the community, the state, the nation, and the world.” *See* Ed. 306.46(a)(4). Middle schoolers must also receive “[s]ystemic instruction and activities designed to enable students to . . . [a]cquire and use information to clarify issues and seek solutions to societal problems. . . .” *See* Ed. 306.46(b)(4)(a). And high schoolers must “acquire knowledge and modes of inquiry in the areas of civics, economics, geography, world history, and United States and New Hampshire history. . . .” *See* Ed. 306.46(c)(1). In other words,



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



schools cannot do the job that they must do—namely, preparing students to live and thrive in this diverse and ever-changing world—if they are restricting access to ideas.

In sum, students in our diverse society are better prepared to enter and lead in that society when they are able to access a diverse array of literature and informational material—from literature by and about LGBTQ+ people, to examinations of the role of race in society, to religious texts of all faiths, to books about science and art, to comprehensive works of history written from traditional as well as non-traditional perspectives. By contrast, when school officials attempt to “sanitize” the learning space, they undermine students’ ability to critically assess and understand the world around them and to form independent views. And when books can be removed based on community members’ disagreement with the author’s message or point of view, it paves the way for an unending series of attempts to purge a school based on subjective views about what is objectionable. *See Right To Read*, 454 F. Supp. at 714. Our schools are too important to our children’s development and the very future of our country to become another arena for political warfare and intolerance.

## II. Equality based on race, national origin, sex, gender identity and sexual orientation.

Removing books that reflect the experiences of LGBTQ+ people or people of color is inconsistent with our state and federal legal protections and may constitute unlawful discrimination. New Hampshire law protects the right to equality in the educational experience. Effective September 17, 2019, state law expressly prohibits discrimination in public schools on account of “age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, [and] religion or national origin.” *See* RSA 354-A:27; *see also* RSA 193:38 (“No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A.”). In addition, federal law, including Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, prohibit discrimination in schools on the basis of race, national origin, or sex, including sexual orientation and gender identity.<sup>6</sup>

Books being targeted for removal are often those that reflect experiences by LGBTQ+ people, of which (of course) students themselves, their family members, and others in their communities are a part. In New Hampshire, these books have included, for example, Jonathan Evison’s 2018 book *Lawn Boy* (in Bedford)<sup>7</sup>

---

<sup>6</sup> *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731 (2020) (under federal law, discrimination on basis of sexual orientation or transgender status constitutes sex discrimination); *see also* Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021) (to be codified at 34 CFR 1.00).

<sup>7</sup> This book was honored in 2019 by the American Library Association with an “Alex Award” as a text with “special appeal to young adults, ages 12 through 18.” *See* <https://www.ala.org/awardsgrants/lawn-boy>; [https://www.ala.org/awardsgrants/awards/231/all\\_years](https://www.ala.org/awardsgrants/awards/231/all_years). The *Washington Post*’s reviewer also states that the author “takes a battering ram to stereotypes about race and class.” The reviewer further comments on how the novel deals with racism in the United States, citing a section of the book to exemplify how the protagonist, Michael Muñoz, is “constantly reminded of what it means to be brown in America.” *See* Carol Memmott, “This lawn boy asks, ‘Where’s my part of the American Dream,’” *Washington Post* (Apr. 10, 2018), [https://www.washingtonpost.com/entertainment/books/this-lawn-boy-asks-wheres-my-part-of-the-american-dream/2018/04/10/ed03e7de-3cf9-11e8-a7d1-e4fec6389f0\\_story.html](https://www.washingtonpost.com/entertainment/books/this-lawn-boy-asks-wheres-my-part-of-the-american-dream/2018/04/10/ed03e7de-3cf9-11e8-a7d1-e4fec6389f0_story.html).





18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



and Maia Kobabe’s 2019 book *Gender Queer* (in Milford and Bow).<sup>8</sup> Having access to these books not only helps educate all students about the experiences of others, but also creates a more inclusive and supportive environment for students whose history and experiences are reflected. Nationally, LGBTQ+ youth are far more likely to be bullied and harassed at school, alienated from their families and communities, and suffer from depression and suicidal ideation than their non-LGBTQ+ peers.<sup>9</sup> For LGBTQ+ youth who are isolated at home, in school, or in their community, access to LGBTQ+ representation or information in books and literature can be a refuge.

Similarly, removal of books documenting the experiences of people of color exacerbates the unacceptable situation in which students of color are already disproportionately subject to ostracism,<sup>10</sup> and it deprives them of the right to an equal educational experience. Removing books that reflect students’ experiences not only removes a form of support, but it also tells a student that they and their community are not accepted by their teachers and peers.

We also ask that schools be mindful that the debates about these books and their subject matter may add to incidents of bullying of children who are members of (or whose family members are part of) the communities discussed in the books. This is particularly the case when proponents of censorship describe the books’ content as obscene, pornographic, disgusting, or otherwise unacceptable as “developmentally inappropriate.” Questioning the inherent morality of LGBTQ+ people leverages a prejudice—a prejudice that was government-sanctioned until recently—to further isolate and alienate LGBTQ+ people from their broader communities. Indeed, our nation has a long history of characterizing the sexuality of LGBTQ+ people as deviant and even criminal. Only in 2003 did the Supreme Court finally rule that state laws

---

<sup>8</sup> *Gender Queer* is a 2020 American Library Association Alex Award Winner, as well as a Stonewall Honor Book in Non-Fiction. See <https://www.ala.org/yalsa/2020-alex-awards>; <https://www.ala.org/rt/rrt/award/stonewall/honored>. The School Library Journal, in a starred review, stated that this book is “a great resource for those who identify as nonbinary or asexual as well as for those who know someone who identifies that way and wish to better understand.” See <https://www.slj.com/review/gender-queer-a-memoir>.

<sup>9</sup> Based on a 2022 survey, 39% of LGBTQ youth in New Hampshire seriously considered suicide in the past year, 10% of LGBTQ youth in New Hampshire attempted 39% suicide in the past year, 72% of LGBTQ youth in New Hampshire reported experiencing symptoms of anxiety, and 55% of LGBTQ youth in New Hampshire reported experiencing symptoms of depression. See Trevor Project, “2022 National Survey on LGBTQ Youth Mental Health: New Hampshire” (2022), <https://www.thetrevorproject.org/wp-content/uploads/2022/12/The-Trevor-Project-2022-National-Survey-on-LGBTQ-Youth-Mental-Health-by-State-New-Hampshire.pdf>. In addition, a 2019 survey showed that more than half of LGBTQ students report feeling unsafe at school because of their sexual orientation, leading to increased likelihood of missing school, lower grade point averages, increased likelihood of discipline at school, and higher levels of depression, with even greater disparities among LGBTQ youth of color. See GLSEN, The 2019 National School Climate Survey (2020), [https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web\\_0.pdf](https://www.glsen.org/sites/default/files/2021-04/NSCS19-FullReport-032421-Web_0.pdf).

<sup>10</sup> As one study has explained, “In New Hampshire, students attending larger urban schools, male students, students of color, students eligible for free and reduced-price lunch, students with disabilities, and homeless students are more likely to experience exclusionary school discipline, although racial disparities appear to stem largely from the greater racial diversity at the urban schools that use this type of discipline at higher rates with all students.” See Douglas J. Gagnon, et al., “Exclusionary Discipline Highest in New Hampshire’s Urban Schools Suspension and Expulsion Found to Disproportionately Affect Disadvantaged Students,” *Carsey Research* (Winter 2016), <https://files.eric.ed.gov/fulltext/ED573170.pdf>.



criminalizing sex between men are unconstitutional. *See Lawrence v. Texas*, 539 U.S. 558 (2003).<sup>11</sup> As recently as 1986, the Supreme Court upheld a Georgia law criminalizing sex between men, describing the idea that the Constitution protects the right to consensual private intimacy between two adult men as, “at best, facetious.” *Bowers v. Hardwick*, 478 U.S. 186, 194 (1986); *but see Lawrence*, 539 U.S. at 578 (“*Bowers* was not correct when it was decided, and it is not correct today.”).

Fortunately, we no longer tolerate laws expressly criminalizing the sexual expression of LGBTQ+ people. But the harmful trope that LGBTQ+ people are sexual predators has had a devastating impact on LGBTQ+ people, with gay men and transgender women in particular experiencing the worst effects. For example, research shows that transgender women are especially likely to be victims of police profiling: “Law enforcement officers regularly stop, harass, and demand identification from transgender women, regularly subject them to commands to disperse, and regularly arrest them for low-level offenses tied to suspicions of prostitution.”<sup>12</sup> Today, we are seeing that harm play out in a new way because of the politically motivated characterizations of LGBTQ+ people as “groomers,” which has led to increased harassment and threats against LGBTQ+ people nationally.<sup>13</sup> We must not allow harmful political rhetoric to seep into our schools and compound the harm to LGBTQ+ students.

In short, while respecting the right of opponents to speak and be heard, schools must take steps to affirm and protect the equality of the experiences of their students and to fulfill their legal duties to ensure a safe, supportive, and equitable educational experience.<sup>14</sup>

### III. Free speech rights, including the right to receive information.

In addition to protecting the right to equality, our laws protect freedom of speech and the related right of students to receive information. Unreasonable censorship of students’ access to information and to a range of ideas presents profound issues of free expression.

The Supreme Court recognized that students’ freedom of speech incorporates a right to receive information and ideas, which “is a necessary predicate to the recipient’s meaningful exercise of his own rights of speech, press, and political freedom.” *Bd. of Educ., Island Trees Free School Dist. v. Pico*, 457 U.S. 853, 866-67

---

<sup>11</sup>Yet even then one Supreme Court justice declared that any legislature’s “belief that certain sexual behavior is ‘immoral and unacceptable’ constitutes a rational basis for regulation” and that a constitutional right to same-sex intimacy amounts to “a massive disruption of the current social order.” *Id.* at 589, 591 (Scalia, J., dissenting).

<sup>12</sup> Leonore F. Carpenter & R. Barrett Marshall, *Walking While Trans: Profiling of Transgender Women by Law Enforcement, and the Problem of Proof*, 24 Wm & M. J. Women L. 5, 6 (2017). Moreover, a 2022 study showed that the criminal justice system treats LGBTQ+ people more harshly with respect to sexual offenses. *See* The Williams Institute, *LGBTQ People on Sex Offender Registries in the US* (May 2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SORS-LGBTQ-May-2022.pdf>.

<sup>13</sup> Anti-Defamation League, Center for Extremism, *What is “Grooming?” The Truth Behind the Dangerous, Bigoted Lie Targeting the LGBTQ+ Community* (Sept. 16, 2022), <https://www.adl.org/resources/blog/what-grooming-truth-behind-dangerous-bigoted-lie-targeting-lgbtq-community>.

<sup>14</sup> *See* RSA 193-F:2, I (“All pupils have the right to attend public schools, including chartered public schools, that are safe, secure, and peaceful environments. One of the legislature’s highest priorities is to protect our children from physical, emotional, and psychological violence by addressing the harm caused by bullying and cyberbullying in our public schools.”).



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



(1982) (plurality opinion). In the words of the Court’s plurality, “just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Id.* at 868.

This right to receive information free of censorship holds special importance in the context of school libraries. The Supreme Court has recognized that “the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students.” *Id.* at 868. “A school library, no less than any other public library, is a place dedicated to quiet, to knowledge, and to beauty,” where “students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.” *Id.* (internal marks and citations omitted). It is a place where a student may “test or expand upon ideas presented to him, in or out of the classroom.” *Id.* at 869 (quoting *Right To Read Def. Comm. of Chelsea v. Sch. Comm. of City of Chelsea*, 454 F. Supp. 703, 715 (D. Mass. 1978)). In light of the special role of the school library, a school district’s “non-curricular decision to remove a book . . . evokes the question whether that action might not be an unconstitutional attempt to ‘strangle the free mind at its source.’” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *West Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 637 (1943)).

Based on these principles, a plurality of the Supreme Court in *Pico* held that the free speech rights of students are violated when a local school board removes books “from school library shelves simply because they dislike the ideas contained in those books.” 457 U.S. at 872 (hearing challenge to a school’s removal of books by Kurt Vonnegut and Langston Hughes on grounds that books were considered by some to be, for instance, “anti-American” and “just plain filthy”). Other courts have more specifically ruled that censoring materials because they express support for LGBTQ+ people is a form of viewpoint-based discrimination prohibited by free speech principles. *See Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to *Heather Has Two Mommies* in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal of book depicting romance between two women from school libraries violated First Amendment). The same principles apply to viewpoints on matters of racial justice or history. *See generally Arce v. Douglas*, 793 F.3d 968 (9th Cir. 2015).

Courts too have recognized that the fact that some parents do not want their children to read certain books cannot justify depriving other students of their rights of access. It is a broadly accepted principle embedded in the First Amendment that “[s]peech cannot be . . . punished or banned, simply because it might offend a hostile mob.” *Forsyth Cty. v. Nationalist Movement*, 505 U.S., 123, 134-35 (1992). The Supreme Court is clear that this principle applies to public schools: “Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our constitution says we must take this risk . . . .” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969). *Cf. Parker v. Hurley*, 514 F.3d 87, 102 (1st Cir. 2008) (“Public schools are not obliged to shield individual students from ideas” that parents may find “religiously offensive, particularly when the school imposes no requirement that the student agree with or affirm those ideas, or even participate in

discussions about them”); *Tinker*, 393 U.S. at 509 (“In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”).<sup>15</sup>

Notwithstanding efforts by opponents to characterize their objections to certain books as rooted in age or “developmental appropriateness” or protection from obscenity or vulgarity, the current calls to remove books that center the experiences of LGBTQ+ people and people of color run parallel to a nationwide political effort to censor more inclusive representations from the marketplace of ideas. Such political and partisan intrusions into the school system run afoul of our constitutions. *See Pico*, 457 U.S. at 870-71 (discretion to control content of school libraries “may not be exercised in a narrowly partisan or political manner” or “to deny [students] access to ideas with which [some] disagree[ ]”); *id.* at 907 (Rehnquist, J. dissenting) (restrictions motivated by “partisan or political” interests, as well as those based on “racial animus,” are unconstitutional).

Notably, the fact that a book discusses sexuality or sexual conduct does not make it “developmentally inappropriate,” “obscene” or “pervasively vulgar” (in the words of *Pico*), or otherwise justify its removal for that reason alone.<sup>16</sup> In 1978, a Massachusetts federal district court heard a challenge to a decision by the Chelsea School Committee to bar from its high school library an anthology because it featured a poem written by a fifteen-year-old New York City high school student entitled “The City to a Young Girl” and contained graphic descriptions of sexuality. *Right To Read*, 454 F. Supp. at 704–05. The Court enjoined the removal of the book on free speech grounds, finding that “[w]hat is at stake here is the right to read and be exposed to controversial thoughts and language a valuable right subject to First Amendment protection.” *Id.* at 714- 15. As the court explained, the danger is not in the exposure to “a broad sweep of ideas and philosophies,” but instead “[t]he danger is in mind control.” *Id.* at 715.

## Process

Many school districts in New Hampshire have policies governing the reconsideration of library materials based on complaints from community members. The New Hampshire School Boards Association has a model policy (KEC) that many school districts have adapted and approved,<sup>17</sup> while other school boards

---

<sup>15</sup> Parents who do not want their children to have access to these materials can of course instruct their children not to access them. But these parents have no right to cause library resources to be unavailable to other students. *See Parker*, 514 F.3d at 105 (“[T]he mere fact that a child is exposed on occasion in public school to a concept offensive to a parent’s religious [or any other] belief does not inhibit the parent from instructing the child differently.”).

<sup>16</sup> The Supreme Court has held that materials are not “obscene” (so as to fall outside constitutional protection) unless the works “taken as a whole, appeal to the prurient interest in sex [and] portray sexual conduct in a patently offensive way, and [ ] taken as a whole, do not have serious literary, artistic, political, or scientific value.” *Miller v. California*, 413 U.S. 15, 24, (1973). Nobody can seriously argue that the award-winning literature that is being challenged in schools today lacks any literary merit according to “contemporary community standards” in New Hampshire. *See id.* at 33-34.

<sup>17</sup> *See, e.g.*, Allentown School District, KEC Reconsideration of Instructional Materials (Oct. 2020), <https://sau53org.sharepoint.com/sites/boards/Shared%20Documents/Forms/AllItems.aspx?ga=1&id=%2Fsites%2Fboards%2FShared%20Documents%2FAllentown%2FPolicies%2FKEC%20Reconsideration%20of%20Instructional%20Materials%2Epdf&parent=%2Fsites%2Fboards%2FShared%20Documents%2FAllentown%2FPolicies>.



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



have designed more individualized policies.<sup>18</sup> Adhering carefully to written policies can help insulate school districts from legal challenges. Conversely, “disregard of established policy and procedure [is] important evidence of [a school district’s] improper motivation in removing books. *See Case*, 908 F. Supp. at 876.

The American Library Association (“ALA”) provides a robust set of recommendations for reconsidering whether a book should be retained in a school library when there has been a complaint.<sup>19</sup> The ALA sets forth guidelines that include that no passages or parts of a work should be pulled out of context and, during the pendency of a reconsideration process, challenged materials should remain on the shelves. The guidelines also endorse a committee review process, with members of the committee of stakeholders each fully reviewing the material and providing written findings in support of the majority decision and, if any, the minority position of committee members about whether the book should be removed. The ALA also provides a detailed sample process that school districts may readily adopt to ensure that formal complaints are reviewed fairly, quickly, and with attention to the school library’s mission.<sup>20</sup> We strongly encourage all school districts to adopt and adhere to rigorous protocols for ensuring that complaints are reviewed through a fair process that meets the constitutional and educational objectives of New Hampshire’s public schools.

## Conclusion

The removal of books from school libraries—particularly those that focus on the experiences of historically marginalized communities—often equates to unlawful censorship. Such removals also strike at the very heart of the purpose of a public education in our pluralistic society.

For all these reasons, we ask school-related personnel to take a stand against censorship and protect student access to an equal and safe educational environment by resisting calls to remove books from school libraries.

We stand ready as a resource in this fight for the rights and interests of your students and to protect the role of our public schools as “the nurseries of democracy” where the “free exchange” of ideas, particularly those that may be unpopular among some, “facilitates an informed public opinion.” *See Mahanoy Area School District v. B.L.*, 141 S. Ct. 2038, 2046 (2021). Feel free to contact us if our offices can be of assistance.

Thank you for your consideration.

---

<sup>18</sup> *See, e.g.*, ConVal School District, KEC—Instructional and Educational Media (Mar. 7, 2023), <https://schoolboard.convalsd.net/district-policies/klb-public-complaints-curriculum-instructional-materials/>.

<sup>19</sup> *See* American Library Association, *Selection & Reconsideration Policy Toolkit for Public, School, & Academic Libraries* (last visited Nov. 13, 2023), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit>.

<sup>20</sup> ALA, *Formal Reconsideration* (last visited Nov. 13, 2023), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.



18 Low Avenue  
Concord NH 03301  
(603) 224-5591  
aclu-nh.org



Best,

A handwritten signature in black ink, appearing to read "Gilles Bissonnette".

Gilles Bissonnette  
Legal Director  
ACLU of New Hampshire

A handwritten signature in black ink, appearing to read "Chris Erchull".

Chris Erchull  
Attorney  
GLBTQ Legal Advocates & Defenders

cc: Frank Edelblut, Commissioner of Education ([Louis.F.Edelblut@doe.nh.gov](mailto:Louis.F.Edelblut@doe.nh.gov))  
Diana Fenton, Esq., DOE Office of Governance ([Diana.Fenton@doe.nh.gov](mailto:Diana.Fenton@doe.nh.gov))  
Richard Farrell, DOE Investigator ([Richard.J.Farrell@doe.nh.gov](mailto:Richard.J.Farrell@doe.nh.gov))

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



SEAN D. REYES  
ATTORNEY GENERAL

Spencer E. Austin  
Chief Criminal Deputy

Daniel Burton  
General Counsel

Ric Cantrell  
Chief of Staff

Melissa A. Holyoak  
Solicitor General

Brian L. Tarbet  
Chief Civil Deputy

MEMORANDUM TO LEAs

TO: LEAs  
FROM: Ashley Biehl, Assistant Attorney General, Education Division  
RE: Laws surrounding school libraries  
DATE: 05/04/2022

The document outlines the law as it pertains to school library books in Utah. The intent is to provide LEAs with legal guidance. The Utah State Board of Education (USBE) will be releasing a model library policy before the 2022-2023 school year that LEAs may utilize in addition to these principles.

**1. Do students have legal rights regarding access to school library materials?**

Yes. The United States Supreme Court (“SCOTUS”) has an extremely long history of recognizing that students have their own First Amendment rights in school. The removal of books from a school library can constitute an official suppression of ideas, in violation of the First Amendment. In *Tinker v. Des Moines*, SCOTUS held that “School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. They are possessed of fundamental rights which the State must respect.”<sup>1</sup> “The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.”<sup>2</sup>

In *Island Trees v. Pico*, SCOTUS noted that “[l]ocal school boards have broad discretion in the management of school affairs, but such discretion must be exercised in a manner that

<sup>1</sup> *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 511, 89 S. Ct. 733, 739, 21 L. Ed. 2d 731 (1969)

<sup>2</sup> *Shelton v. Tucker*, (364 U.S. 479), at 487 (81 S.Ct. 247, 5 L.Ed.2d 231) (1960)

comports with the transcendent imperatives of the First Amendment. ... [T]he special characteristics of the school *library* make that environment especially appropriate for the recognition of such rights.”<sup>3</sup>

Finally, SCOTUS has stated that “students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.”<sup>4</sup> “The school library is the principal locus of such freedom.”<sup>5</sup>

## **2. What is the legal standard for assessing what is harmful to minors?**

Utah Code Annotated (UCA) 76-10-1201<sup>6</sup> defines materials that are harmful to minors. It is important to note that to be defined as harmful to minors, a book **must meet all three factors** outlined below.

(5)(a) “Harmful to minors” means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

- (i) taken as a whole, appeals to the prurient interest in sex of minors;
  - (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (iii) taken as a whole, does not have serious value for minors.
- (b) Serious value includes only serious literary, artistic, political or scientific value for minors.

This means that a work that contains nudity, sexual conduct, sexual excitement, or sadomasochistic abuse is not harmful to minors on its face. If a work contains one of those things (as defined below), it **MUST** then be considered under this three-factor test. In order to be harmful to minors, the work must contain nudity, sexual conduct, sexual excitement or sadomasochistic abuse **AND** appeal to the prurient interest in sex of minors, be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors, **AND** lack serious literary, artistic, political, or scientific value.

**EXAMPLE:** A book on anatomy contains depiction of nudity. This book is not harmful to minors because it does not appeal to the prurient interest in sex of minors, and has serious scientific value for minors.

**EXAMPLE:** Bram Stoker’s *Dracula* contains a scene of sexual conduct. This book is not harmful to minors because it does not appeal to the prurient interest of minors, is not patently

---

<sup>3</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 853, 102 S. Ct. 2799, 2801, 73 L. Ed. 2d 435 (1982)

<sup>4</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, quoting *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603, 87 S. Ct. 675, 683, 17 L. Ed. 2d 629 (1967)

<sup>5</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868–69, 102 S. Ct. 2799, 2809, 73 L. Ed. 2d 435 (1982)

<sup>6</sup> Utah Code Ann. § 76-10-1201



offensive to prevailing standards in the adult community when taken as a whole with respect to what is suitable to minors, and it has serious literary value.

EXAMPLE: *Penthouse Magazine* is likely to be considered harmful to minors as it appeals to the prurient interests in sex, would likely be deemed to be patently offensive to prevailing standards in the adult community with respect to what is suitable for minors, and arguably lacks serious literary, artistic, political and scientific value.

i. *How is nudity defined?*

UCA 76-10-1201

(10) “Nudity” means:

- (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;
- (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or
- (c) the depiction of covered male genitals in a discernibly turgid state.

ii. *How is sexual conduct defined?*

UCA 76-10-1201

(14) “Sexual conduct” means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

iii. *How is sexual excitement defined?*

UCA 76-10-1201

(15) “Sexual excitement” means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

iv. *How is sadomasochistic abuse defined?*

UCA 76-10-1201

(13) “Sadomasochistic abuse” means:

- (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or
- (b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

v. *What does “prurient interest” mean?*

SCOTUS has defined prurient interest as: “Material appeals to the prurient interest, for instance, only if it is in some sense erotic.”<sup>7</sup>

The Utah Supreme Court has also clarified that “Material does not evoke a prurient interest unless it has the capacity to provoke ‘sexual responses over and beyond those that would be characterized as normal.’”<sup>8</sup> “An expression or depiction must at least be erotic in some significant way to the average person”.<sup>9</sup>

vi. *What standards must be used to determine if an item has scientific, literary, political or artistic value?*

To determine whether a book has scientific, literary, political or artistic value, the determining factor is whether a reasonable person would find value in the material when taken as a whole. This factor utilizes a national floor for what constitutes value. Thus, the work must be considered as a whole, and must be looked at through the lens of whether a reasonable person in America would think it has redeeming value.

In *Ashcroft v. ACLU*, SCOTUS laid out this standard as follows: “[T]he value of [a] work [does not] vary from community to community based on the degree of local acceptance it has won.”<sup>10</sup> Rather, the relevant question is “whether a reasonable person would find ... value in the material, taken as a whole.”<sup>11</sup> Thus, the serious value requirement “allows appellate courts to impose some limitations and regularity on the definition by setting, *as a matter of law*, a national floor for socially redeeming value.”

UCA 76-10-1227 (c) provides that “(c) A description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors.” Subsection (1)(a)(i-iii) reads: “) "Description or depiction of illicit sex or sexual immorality" means: (i) human genitals in a state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse, or sodomy; (iii) fondling or other erotic touching of human genitals or pubic region”. However, it is important to remember that 76-10-1201 requires all three prongs of the test to be met. Therefore, even if a book does not have literary, scientific,

---

<sup>7</sup> *Ashcroft v. Am. C.L. Union*, 535 U.S. 564, 579, 122 S. Ct. 1700, 1710, 152 L. Ed. 2d 771 (2002).

<sup>8</sup> *City of St. George v. Turner*, 860 P.2d 929, 934 (Utah 1993), citing *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 498, 105 S.Ct. 2794, 2799, 86 L.Ed.2d 394 (1985).

<sup>9</sup> *City of St. George v. Turner*, 860 P.2d 929, 934 (Utah 1993), citing *Cohen v. California*, 403 U.S. 15, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971)

<sup>10</sup> *Ashcroft v. Am. C.L. Union*, citing *Pope v. Illinois*, 481 U.S. 497, 500, 107 S. Ct. 1918, 1921, 95 L. Ed. 2d 439 (1987)

<sup>11</sup> *Id.*, at 501, 107 S.Ct. 1918.

political or artistic value for the above reasons, it must also patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and appeal to the prurient interests in sex of minors, in order to be harmful to minors.

vii. *Does this require a book to be considered as a whole when assessing suitability?*

Yes. The third prong of “harmful to minors” requires a book to lack serious artistic, scientific, political, or literary value. SCOTUS has defined this criteria as “whether a reasonable person would find ... value in the material, taken as a whole.”<sup>12</sup> Therefore, the book must be considered in its entirety when determining whether it has scientific, literary, artistic, or political value.

Additionally, UCA 76-10-1227(2)(a) provides that: “Subject to Subsection (2)(c), this section and Section 76-10-1228 do not apply to any material which, when taken as a whole, has serious value for minors.”

Finally, the Utah Supreme Court has held that “under Supreme Court caselaw, an obscenity analysis must focus on the work ‘taken as a whole’”.<sup>13</sup>

viii. *Can books be banned if, taken as a whole, they are vulgar or educationally unsuitable?*

Yes. SCOTUS has held that “an unconstitutional motivation would *not* be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar. ...[I]f it were demonstrated that the removal decision was based solely upon the “educational suitability” of the books in question, then their removal would be “perfectly permissible.”<sup>14</sup>

### **3. Are library books and books assigned as apart of classroom curricula subject to the same constitutional standard?**

No. Library Books are given significantly wider protection under the First Amendment than books that are assigned as a part of school curriculum.

“Petitioners might well defend their claim of absolute discretion in matters of *curriculum* by reliance upon their duty to inculcate community values. But we think that petitioners' reliance upon that duty is misplaced where, as here, they attempt to extend their claim of absolute discretion beyond the compulsory environment of the classroom, into the

---

<sup>12</sup> *Id.*

<sup>13</sup> *State v. Watts*, 498 P.3d 365, 374-75 (Utah 2021), citing *Miller v. California*, 413 U.S. 15, 18 (1973)

<sup>14</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 871, 102 S. Ct. 2799, 2810, 73 L. Ed. 2d 435 (1982)

school library and the regime of voluntary inquiry that there holds sway.”<sup>15</sup>

#### **4. What factors may NOT go into a book removal?**

Books may not be removed because they contain ideas that local school boards disagree with based upon: politics, nationalism, religion, or other matters of opinion.

“In brief, we hold that local 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.” Such purposes stand inescapably condemned by our precedents.”<sup>16</sup>

“Petitioners rightly possess discretion to determine the content of their school libraries. But that discretion may not be exercised in a narrowly partisan or political manner.”<sup>17</sup>

#### **5. Does HB 374 change the standard for school library books?**

No. HB 374 prohibits sensitive materials in the school setting. HB 374 defines sensitive material as “an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235.” Section 76-10-1235 defines pornographic or indecent material as: “i) defined as harmful to minors in Section 76-10-1201; ii) described as pornographic in Section 76-10-1203; or (iii) described in Section 76-10-1217.”

This section references back to 76-10-1201, which, as noted above in question 2, requires the three prong test under 76-10-1201(5)(a) to be utilized in determining whether a material is harmful to minors. Therefore, this three-prong test under 76-10-1201(5)(a) must always be utilized when assessing whether a library book is ‘sensitive material’. It also references UCA 76-10-1203, which provides the same test as 76-10-1201(5), with the difference that the first two prongs assess what appeals to the prurient interests in sex or is patently offensive to adults, rather than minors. UCA 76-10-1203 essentially repeats the same three-prong test, but focuses on adults, rather than minors.

#### **6. Are library books included in HB 374?**

Yes, though HB 374 does not change the standard that is used to assess school library books, which is noted above in question 2, and can be found under UCA 76-10-1201.

HB 374 defines instructional materials as:

---

<sup>15</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 869, 102 S. Ct. 2799, 2809, 73 L. Ed. 2d 435 (1982)

<sup>16</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872, 102 S. Ct. 2799, 2810, 73 L. Ed. 2d 435 (1982) citing *West Virginia Board of Education v. Barnette*, 319 U.S., at 642, 63 S.Ct., at 1187.

<sup>17</sup> *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 870, 102 S. Ct. 2799, 2810, 73 L. Ed. 2d 435 (1982)

53G-10-103(1)(a)

(i) "Instructional material" means a material, regardless of format, used:

(A) as or in place of textbooks to deliver curriculum within the state curriculum framework for courses of study by students; or

(B) to support a student's learning in the school setting.

(ii) "Instructional material" includes reading materials, handouts, videos, digital materials, websites, online applications, and live presentations.

...

53G-10-103(f) (i) "School setting" means, for a public school:

(A) in a classroom;

(B) in a school library; or

(C) on school property

53G-10-103(g)

(i) "Sensitive material" means an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235.

(ii) "Sensitive material" does not include an instructional material:

(A) that an LEA selects under Section 53G-10-402;

(B) for medical courses;

(C) for family and consumer science courses; or

(D) for another course the state board exempts in state board rule.

As noted in question 5, HB 374 defines sensitive material as “an instructional material that is pornographic or indecent material as that term is defined in Section 76-10-1235.” Section 76-10-1235 defines pornographic or indecent material as: “i) defined as harmful to minors in Section 76-10-1201; ii) described as pornographic in Section 76-10-1203; or (iii) described in Section 76-10-1217.”

Section 76-10-1201, requires the three prong test under 76-10-1201(5)(a) to be utilized in determining whether a material is harmful to children, and section 76-10-1203 essentially provides the same test. Therefore, this three-prong test under 76-10-1201(5)(a) must be utilized when assessing whether a library book is ‘sensitive material’.

## **7. What should be done with a book while it is pending review?**

There is no specific law stating whether books must be left in the library when facing a challenge. However, leaving books on the shelves while pending review helps to ensure that schools are not engaging in prior restraint. As noted in question 1, students have extensive first amendment rights in school, and the removal of a book from a school library can constitute a suppression of ideas, in violation of their first amendment rights. Prior restraint is a legal doctrine in first amendment law that is violated when the government prevents speech before it occurs. In this case, removing books before a determination is made as to whether they meet the definition of “harmful to children” runs the risk of violating students’ first amendment rights to study and inquire, via prior restraint.

SCOTUS has a long history of disfavoring prior restraints. “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights,” wrote then-Chief Justice Warren Burger. SCOTUS has held that “[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”<sup>18</sup> They further noted that “[t]he special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment.”<sup>19</sup> Nothing in this section prohibits a book’s immediate removal from circulation if the book meets all three prongs of the ‘harmful to minors’ test under 76-10-1201.

---

<sup>18</sup> *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70, 83 S.Ct. 631, 639, 9 L.Ed.2d 584 (1963)

<sup>19</sup> *Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels.*, 413 U.S. 376, 390, 93 S. Ct. 2553, 2561, 37 L. Ed. 2d 669 (1973)



# Book Challenges

NHSAA CONFERENCE

JUNE 25, 2024



# Presenters

- ▶ Russ Holden, Superintendent  
Sunapee School District
- ▶ Mindy Atwood, Assistant State Librarian  
New Hampshire State Library


## RSA 202-A:1

**202-A:1 Declaration of Policy.** – Mindful that, as the constitution declares, "knowledge and learning, generally diffused through a community" are "essential to the preservation of a free government" the legislature recognizes its duty to encourage the people of New Hampshire to extend their education during and beyond the years of formal education. To this end, it hereby declares that the public library is a valuable supplement to the formal system of free public education and as such deserves adequate financial support from government at all levels.

**Source.** 1963, 46:1, eff. July 1, 1963.

# The intersection of schools & libraries

Locally elected boards that set policies  
Recent increase of proposed legislation  
that could impact schools and public  
libraries



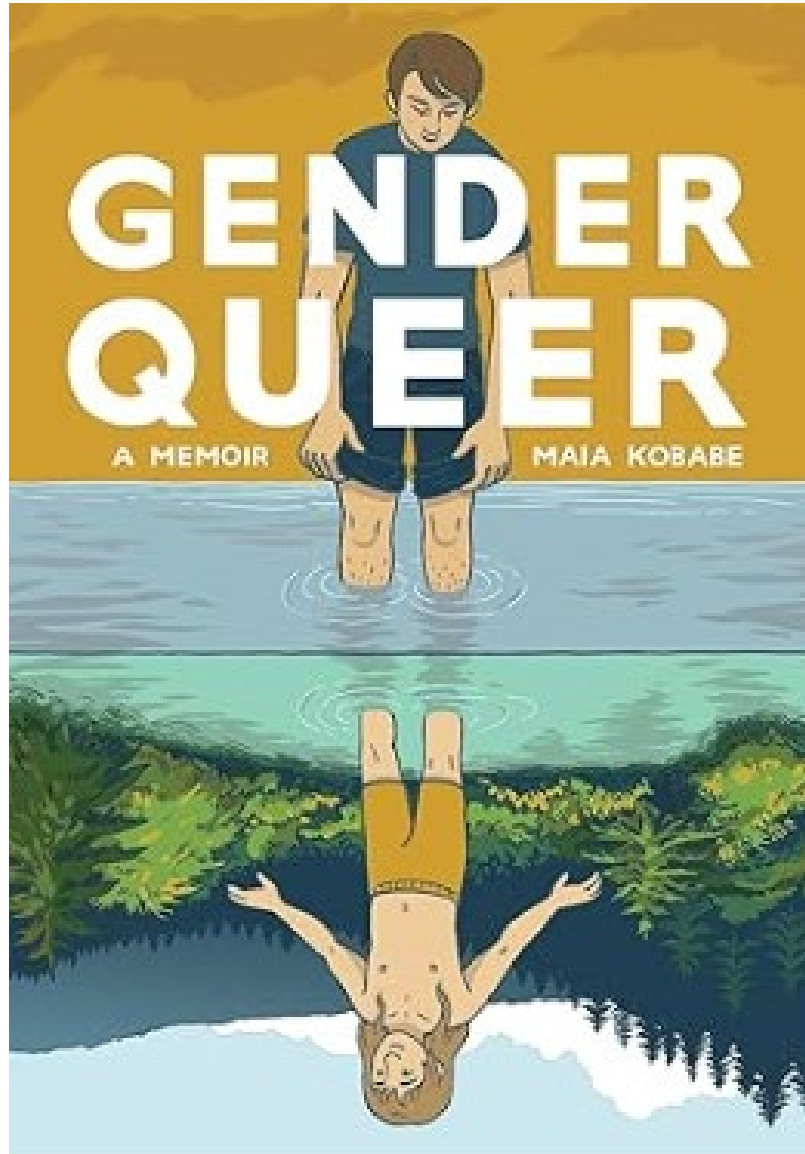
Consistency when appropriate  
Collaborate when possible  
Communicate always!



# What's Going On?

From 2022 to 2023, ALA's Office for Intellectual Freedom (OIF) reported 1247 attempts to censor library materials and services.

This represents an increase of 65% from 2022 to 2023.



# The Middle Road

A parent calls to ask for a list of all the books their seventh grader has checked out of the school library over the last school year. Should you provide the parent with this information?

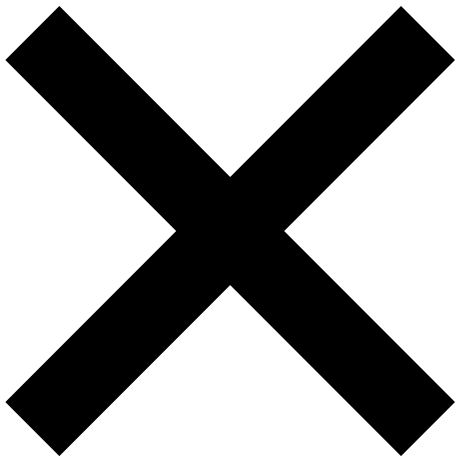




No.

- ▶ **201-D:11 Library User Records; Confidentiality.** –  
I. Library records which contain the names or other personal identifying information regarding the users of public or other than public libraries shall be confidential and shall not be disclosed except as provided in paragraph II. Such records include, but are not limited to, library, information system, and archival records related to the circulation and use of library materials or services, including records of materials that have been viewed or stored in electronic form.





# Top 100 Most Challenged Books in the Last Decade

# Top 15

The Absolutely  
True Diary of a  
Part-Time Indian

Captain  
Underpants  
(series)

Thirteen  
Reasons Why

Looking for  
Alaska

George

And Tango  
Makes Three

Drama

Fifty Shades of  
Grey

Internet Girls

The Bluest Eye

The Kite Runner

Hunger Games

I am Jazz

The Perks of  
Being a  
Wallflower

To Kill a  
Mockingbird

# Other Notable Titles

A Brave New  
World

Of Mice and  
Men

The Hate U  
Give

Bad Kitty

Goosebumps  
(series)

The Catcher  
in the Rye

The Color  
Purple

Holy Bible

Anne Frank:  
Diary of a  
Young Girl

1984

I Know Why  
the Caged  
Bird Sings

Skippy Jon  
Jones



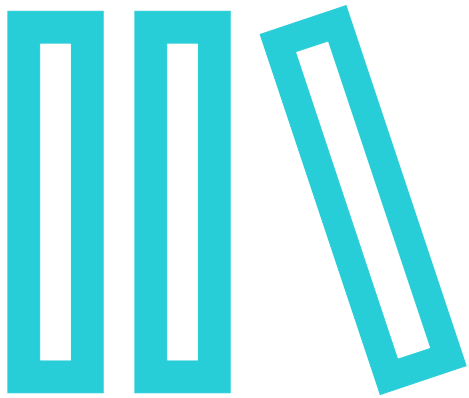
---

Thoughts and  
Reactions?

---

Any titles that  
surprise you?





“A truly great library  
contains something in it  
to offend everyone.”

~librarian Jo Godwin

**True or  
False?**

The standards for materials in the school library are the same as material included in the curriculum.

False

In *Bd. Of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, the Supreme Court held that library books are given significantly wider protection under the First Amendment than books that are assigned as part of the curriculum.



**Yes or  
No?**

It is the school board that makes the decision about what can be in the school library collection.

# Yes... and no

School boards set the policy for a Request for Reconsideration just as they set all other policies. The board, as a body, is the final decision-maker but depending on your policy, there can be interim steps.



# Things to consider about your policy

In the event of a challenge, does the material remain available for use?

Do you want to set a timeline for reconsideration?

Do you want to limit who can submit a request for reconsideration?

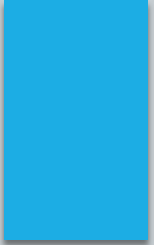
Best practice is to have an appeal process

Do you want to limit the number of times material can be challenged?

[L]ocal school boards have broad discretion in the management of school affairs, but such discretion must be exercised in a manner that comports with the transcendent imperatives of the First Amendment.

... [T]he special characteristics of the school library make that environment especially appropriate for the recognition of such rights.

*Island Trees SD v. Pico*

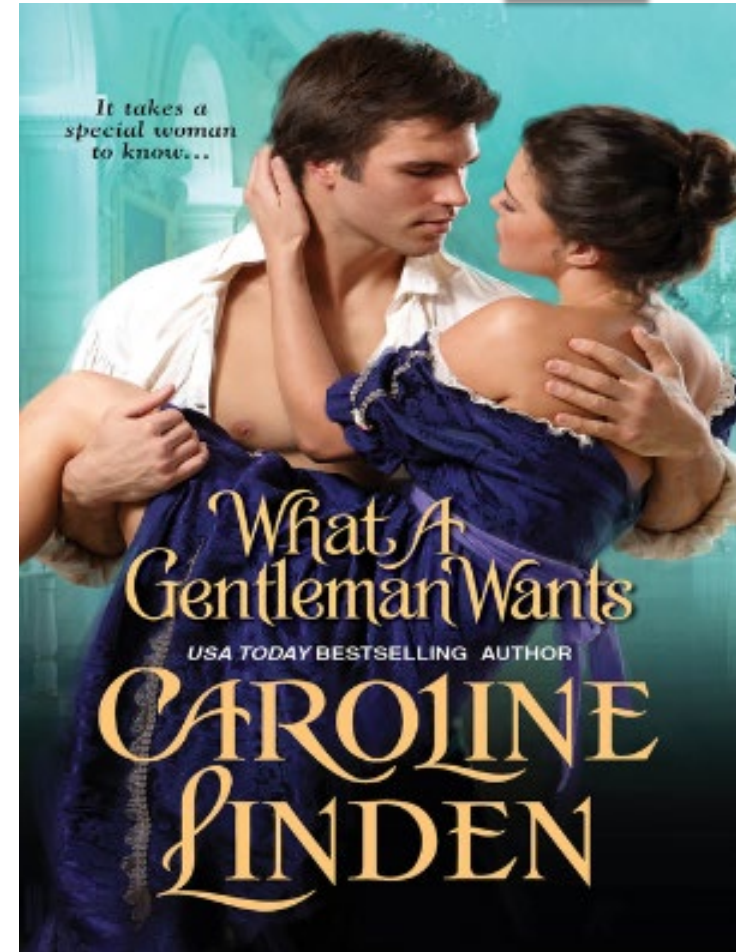


IMPORTANT  
TO NOTE



# What if?

You receive an angry email from a parent because they found their child reading this book on the Sora app on their school device. What's going on?



# Policy Language to Consider

## Third-Party Digital Content Providers

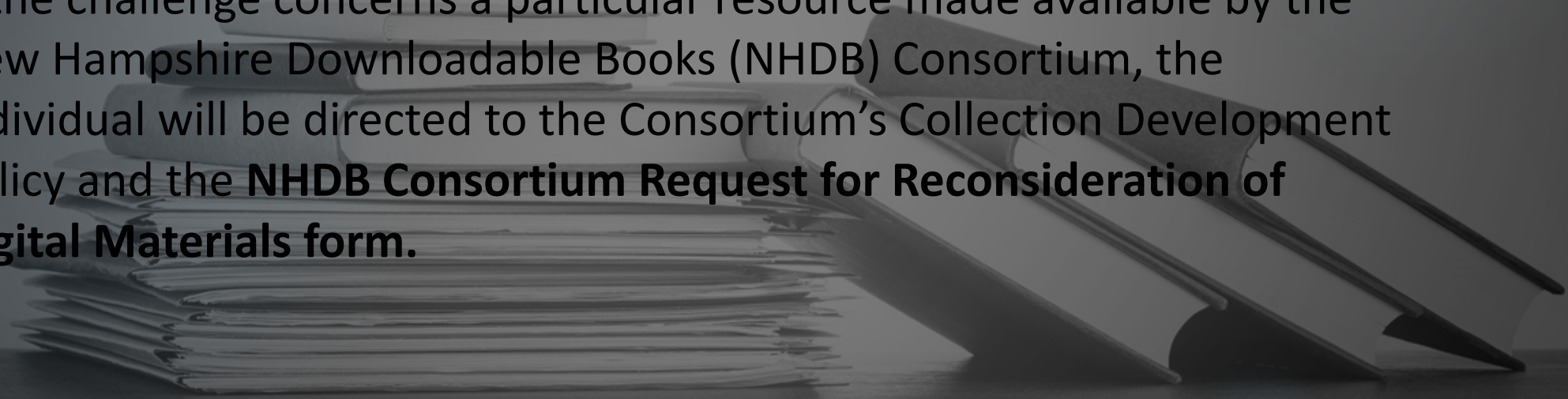
In order to expand access to educational materials and focus on meeting the objectives outlined in this policy, content from digital content providers will be included in the collection. This content includes material such as scholarly articles in research databases, nonfiction and fiction books, audiobooks, and video. Entering into a contract with a content provider will be governed by the aforementioned Criteria for Selection. Such agreements include recognition that some materials will be managed directly by the provider as part of a broad package of educational content offered to elementary and secondary schools. In any agreement, the library agrees to the content provider's collection development practices.



# Good to Know...

In the event an individual wishes to challenge the inclusion of a particular resource made available by one of the school district's digital content providers, the procedures outlined above will be followed.

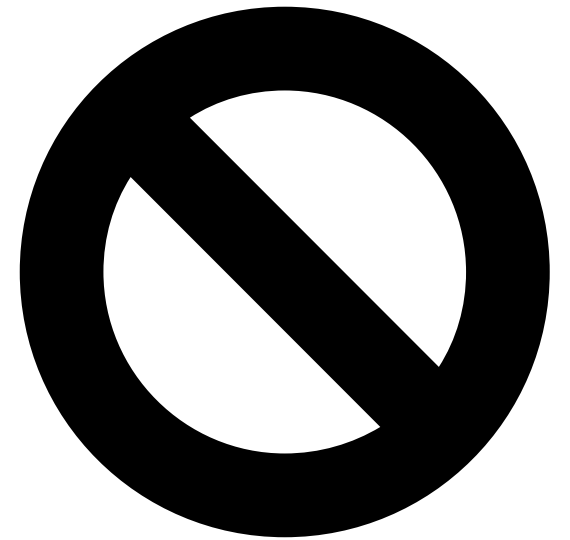
If the challenge concerns a particular resource made available by the New Hampshire Downloadable Books (NHDB) Consortium, the individual will be directed to the Consortium's Collection Development Policy and the **NHDB Consortium Request for Reconsideration of Digital Materials form**.





# What if?

A school board member asks if the Board can set a collection development policy that includes the criteria that books with transgender characters will not be added to the collection. Can that be done?



Not really.

354-A:27 Opportunity for Public Education Without Discrimination a Civil Right No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion or national origin, all as defined in this chapter.

# How many?

The percentage of parents who say they know how school librarians decide what books should be in a collection— over or under 50%?

Source: Parent Perceptions of Book Bans, Materials Selection, and Reading in School Libraries and Public Libraries 2024 Survey Report

# How many?

The percentage of parents who agree that “school libraries should have ratings systems”? Over or under 50%?



# True or False?

More than 90% of respondents endorsed having a school librarian in every school.

# Closing Thoughts

# Contact Information

Russ Holden

[rholden@sunapeeschools.org](mailto:rholden@sunapeeschools.org)

603-763-4627

Mindy Atwood

[mindy.atwood@dcnr.nh.gov](mailto:mindy.atwood@dcnr.nh.gov)

603-573-6402