

ASSEMBLY COMMITTEE SUBSTITUTE FOR
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SYNOPSIS
"Freedom to Read Act"; establishes requirements for library material in public school libraries and public libraries; protects school library staff members and librarians.

CURRENT VERSION OF TEXT
Substitute as adopted by the Assembly Education Committee.

AN ACT concerning public school libraries and public libraries and supplementing Title 18A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*:

1. This act shall be known and may be cited as the "Freedom to Read Act."

2. The Legislature finds and declares that:

a. The freedom to read is a human right, constitutionally protected by the First Amendment of the United States Constitution, and individuals have the right to free inquiry and the right to form their own opinions.

b. The freedom to read does not require a person to agree with topics or themes within a material, but instead allows a reader to explore and engage with differing perspectives to form and inform their own views.

c. Since Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969), it has been well established that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate[.]" and, as such, students have a right to access a diverse range of developmentally relevant information, stories, perspectives, and ideas.

d. In Bd. of Ed. v. Pico, 457 U.S. 853 (1982), the United States Supreme Court opined 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.'"

e. School libraries and public libraries, as centers for voluntary inquiry, play a unique role in promoting intellectual freedom, providing equitable access to learning resources, and promoting democracy by providing service to all regardless of race, ethnicity, creed, age, ability, gender, or socio-economic status.

f. School library staff members and librarians are essential members of the community; as trained professionals, they help young people of all backgrounds find and interpret the information they need to succeed in school and prepare for college, careers, and life.

g. School library staff members and librarians receive extensive professional training that prepares them to develop and curate collections designed to meet the broad and varied interests and needs of their communities and students, which is based on a

variety of factors, including pedagogical value, student interest, and the appropriateness of the material.

h. Despite this, school library staff members and librarians have been targeted and harassed for providing young people access to library material.

i. Therefore, it is necessary and proper for the Legislature to protect the freedom of New Jersey's residents to read, for school libraries and public libraries to acquire and maintain materials without external limitations, to recognize that school library staff members and librarians are trained to curate and develop collections, and to ensure school library staff members and librarians are able to perform their duties.

3. As used in sections 4 through 7 of this act:

"Board of education" means a board of education as defined in N.J.S.18A:18A-2, the board of directors of an educational services commission, a board of trustees of a charter school, a board of trustees of a renaissance school project, or any other local education agency.

"Censorship" means to block, suppress, or remove library material based on disagreement with a viewpoint, idea, or concept, or solely because an individual finds certain content offensive, but does not include limiting or restricting access to any library material deemed developmentally inappropriate for certain students.

"Diverse and inclusive material" means any material that reflects any protected class as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); material produced by an author who is a member of a protected class as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); and material that contains the author's points of view concerning contemporary problems and issues, whether international, national, or local; but excludes content that is inappropriate for grades served by the school library.

"Individual with a vested interest" means any teaching staff member employed by the board of education, any parent or guardian of a student enrolled in the school district at the time the removal form required pursuant to section 5 of this act is filed, and any student enrolled in the district at the time the removal form required pursuant to section 5 of this act is filed.

"Library material" means any material including, but not limited to, nonfiction and fiction books; magazines; reference books; supplementary titles; multimedia and digital material; software and instructional material and other material not required as part of classroom instruction, belonging to, on loan to, or otherwise in the custody of a school library.

"School library staff member" means a school library media specialist, school librarian, any certificated or non-certificated staff member assigned to duties in a school library, or any individual carrying out or assisting with the functions of a school library media specialist or school librarian.

4. a. A board of education shall adopt a policy on the curation of library material within a school library. The purpose of the curation policy is to: provide standards for the curation of library material; establish criteria for the removal of existing school library material or library material selected for inclusion in the school library; and provide protection against attempts to censor library material.

b. When developing the policy, the board shall review the model policy established by the Commissioner of Education pursuant to subsection d. of this section. The board shall have control over the content of the policy, except that the policy shall, at a minimum:

(1) recognize that library material should be provided for the interest, information, and enlightenment of all students and should present diverse points of view in the collection as a whole;

(2) acknowledge that library material shall not be removed from a school library because of the origin, background, or views of the library material or those contributing to its creation;

(3) recognize the importance of school libraries as centers for voluntary inquiry and the dissemination of information and ideas;

(4) promote the free expression and free access to ideas by students by prohibiting the censorship of library material;

(5) acknowledge that a school library media specialist is professionally trained to curate and develop the school library collection that provides students with access to the widest array of developmentally appropriate library material available to schools; and

(6) establish a procedure for a school library staff member to review library material within a school library on an ongoing basis, which shall include, but not be limited to: the library material's relevance; the condition of the library material; the availability of duplicates; the availability of more recent developmentally appropriate material; and the continued demand for the library material.

c. In the event a board of education has a policy that complies with the requirements of subsection b. of this section as of the effective date of this act, the board shall not be required to take further action.

d. To assist boards of education in developing a policy on the curation of library material within a school library, the

commissioner shall develop a model policy. In developing the model policy, the commissioner shall consult with the State Librarian, the New Jersey Association of School Librarians, and the New Jersey School Boards Association. The model policy shall be updated as the commissioner deems necessary.

e. A board of education, in consultation with school library staff members, shall have discretion in selecting, purchasing, or acquiring library material for inclusion in the school library. Nothing in this section shall be construed to require a board of education to purchase, or otherwise acquire, library material for a school library.

f. Nothing in this section shall be construed to restrict a board of education's authority to select textbooks and school supplies related to the curriculum.

5. a. A board of education shall adopt a policy establishing a procedure regarding a request for removal of library material within a school library. When developing the policy, the board shall review the model policy established by the Commissioner of Education pursuant to subsection d. of this section.

b. The board shall have control over the policy, except that the policy shall, at a minimum:

(1) provide for the creation of a request for removal form, based on the model removal form developed by the commissioner pursuant to subsection d. of this section, that may be submitted by an individual with a vested interest to the principal of the school in which the library material is challenged to initiate a review of the material. The form shall require the individual with the vested interest to specify which sections of the library material the individual objects to and an explanation of the reasons for the objection;

(2) require the principal or principal's designee to promptly forward the request for removal to the superintendent of the school district. The superintendent or the superintendent's designee shall appoint a review committee, consisting of:

- (a) the superintendent or the superintendent's designee;
- (b) the principal of the school in which the library material is challenged or the principal's designee;
- (c) the school library media specialist or a school library staff member;
- (d) a representative selected by the board of education;
- (e) at least one grade-appropriate teacher familiar with the library material, provided the teacher selected is not the individual who submitted the form;
- (f) a parent or guardian of a student enrolled in the school district, provided the parent or guardian selected is not the individual who submitted the form;

(g) if appropriate, and at the discretion of the superintendent, in cases where a student enrolled in the district in grades nine through 12 filed the removal form, a student enrolled in the district in grades nine through 12 may volunteer to serve on the review committee, if that student did not file the removal form.

The superintendent shall consult with the principal of the school involved in the removal request in making this determination; and

(h) any additional members the superintendent deems necessary;

(3) require that a challenged library material remain within the school library and available for a student to reserve, check out, or access until there is a final decision reached by the board of education pursuant to paragraph (5) of this subsection;

(4) require the review committee to evaluate the request for removal form, review the challenged library material, and report in writing its recommendations on whether to remove the library material to the board of education no later than 60 school days from the date of the next regularly scheduled board of education meeting after receipt of the form. A copy of the committee's report shall also be provided to the individual with a vested interest who filed the form and the principal;

(5) require the board of education to review the committee's report and make a final determination on whether the library material is to be removed from the school library, or limited in use. The board shall provide a written statement of reasons for:

(a) the removal, limitation, or non-removal of a library material; and

(b) any final determination that is contrary to the recommendations of the review committee.

The written statement of reasons shall be posted on the board's Internet website in a prominent and easily accessible location within 30 days of the determination.

(6) provide that a library material that has been challenged pursuant to paragraphs (1) through (5) of this subsection shall not be subject to a subsequent challenge for at least one year; and

(7) permit a school district to consolidate requests for removal of the same challenged library material.

c. If a board of education has a policy that complies with the requirements of subsection b. of this section as of the effective date of this act, the board shall not be required to take further action.

d. To assist boards of education in developing a policy on the procedure regarding a request for removal of library material within a school library, the commissioner shall develop a model policy and model removal form. In developing the model policy and model removal form, the commissioner shall consult with the State Librarian, the New Jersey Association of School Librarians,

and the New Jersey School Boards Association. The model policy and model removal form shall be updated as the commissioner deems necessary.

e. A board of education determination issued in accordance with the policy established in subsection b. of this section which denies a request for removal shall not constitute a controversy or dispute pursuant to N.J.S.18A:6-9.

f. An individual with a vested interest may file a petition of appeal of the board's final determination to the commissioner through the Office of Controversies and Disputes in accordance with N.J.S.18A:6-9 and the procedures set forth in State Board of Education regulations.

g. Nothing in this section shall be construed as creating a separate legal cause of action regarding any determination issued pursuant to the policy established pursuant to subsection a. of this section.

6. a. A board of education shall not remove library material from a school library in the district because of the origin, background, or views of the library material or those contributing to its creation, and shall not engage in censorship of library material.

b. A board of education shall allow a student to reserve or check out any developmentally appropriate library material, including diverse and inclusive material.

7. A school library staff member who engages in activities as required by sections 4 through 6 of this act shall be immune from civil and criminal liability arising from good faith actions performed pursuant to the provisions of those sections.

8. As used in sections 9 through 12 of this act:

"Censorship" means to block, suppress, or remove library material based on disagreement with a viewpoint, idea, or concept, or solely because an individual finds certain content offensive, but does not include limiting or restricting access to any library material deemed developmentally inappropriate for certain age groups.

"Diverse and inclusive material" means material that reflects any protected class as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); material produced by an author who is a member of a protected class as enumerated in the "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.); and material that contains the author's points of view concerning contemporary problems and issues, whether international, national or local.

"Governing body" means a board of trustees, director or other chief administrative officer, a county library commission, or board of county commissioners of a public library.

"Individual with a vested interest" means any resident who is served by the public library or resides in a county or municipality where the library is situated.

"Library material" means any material including, but not limited to, nonfiction and fiction books; magazines; reference books; supplementary titles; multimedia and digital material; software and instructional material, belonging to, on loan to, or otherwise in the custody of a public library.

"Public library" means a library that serves, free of charge, all residents of an area as established pursuant to chapter 33 or chapter 54 of Title 40 of the Revised Statutes, and receives financial support, in whole or in part, from public funds; or a library established pursuant to N.J.S.15A:1-1 et seq. and receiving public funds pursuant to R.S.40:54-35.

9. a. In addition to the duties prescribed in section 18 of P.L.1969, c.158 (C.18A:73-33), the State Librarian, in consultation with the New Jersey Library Association, shall establish a model policy on the curation of library material within a public library. The purpose of the curation policy is to: provide standards for the curation of library material; establish criteria for the removal of existing library material or library material selected for inclusion in the public library; and provide protection against attempts to censor library material.

b. The model policy shall, at a minimum:

(1) recognize that public libraries serve as centers for voluntary inquiry and the dissemination of information and ideas;

(2) promote the free expression and free access to ideas by residents by prohibiting the censorship of library material;

(3) acknowledge that library material shall not be removed from a public library because of the origin, background, or views of the library material or those contributing to its creation;

(4) recognize that library material should be provided for the interest, information, and enlightenment of all people, and should present diverse points of view in the collection as a whole;

(5) acknowledge that a librarian is professionally trained to curate and develop collections that provide residents with access to the widest array of library material available to the public library; and

(6) establish a procedure for a librarian to review library material within a public library on an ongoing basis, which shall include, but not be limited to: the library material's relevance; the condition of the library material; the availability of duplicates; the availability of more recent material; and the continued demand for the library material.

c. The model policy shall be updated as the State Librarian and New Jersey Library Association deem necessary.

d. A governing body of a public library shall adopt the model policy established pursuant to this section. If a public library has a policy that complies with the requirements of subsection b. of this section as of the effective date of this act, the library shall not be required to take further action.

e. The governing body of a public library, in consultation with staff members of a public library, including a librarian employed by a public library, shall have discretion in selecting, purchasing, or acquiring library material for inclusion in the public library. Nothing in this section shall be construed to require a governing body of a public library to purchase, or otherwise acquire, library material for a public library.

10. a. In addition to the duties prescribed in section 18 of P.L.1969, c.158 (C.18A:73-33), the State Librarian, in consultation with the New Jersey Library Association, shall establish a model policy creating a procedure regarding a request for removal of library material within a public library.

b. The model policy shall, at a minimum, require:

(1) the creation of a request for removal form, based on the model removal form established by the State Librarian, that may be submitted by an individual with a vested interest to the governing body of the public library in which the library material is challenged to initiate a review of the material. The form shall require the individual with the vested interest to specify which sections of the library material the individual objects to and an explanation of the reasons for the objection;

(2) the governing body appoint a review committee, consisting of:

(a) at least one member of the governing body;

(b) a librarian employed by the public library;

(c) a staff member, who is not a librarian, of the public library that is familiar with the library material;

(d) a representative selected by the governing body;

(e) a resident serviced by the public library, provided the resident selected is not the individual who submitted the form; and

(f) any additional members the governing body deems necessary;

(3) a challenged library material remain within the public library and available for a resident to reserve, check out, or access until there is a final decision by the review committee;

(4) the review committee to evaluate the request for removal form, review the challenged library material, and report in

writing its recommendations to the governing body on whether to remove the library material within 30 business days from the date of receiving the form. A copy of the committee's report shall also be provided to the individual with a vested interest who filed the form; and

(5) require the governing body to review the committee's report and make a final determination on whether the library material is to be removed from the public library, or limited in use. The governing body shall provide a written statement of reasons for:

(a) the removal, limitation, or non-removal of a library material; and

(b) any final determination that is contrary to the recommendations of the review committee; and

(6) provide that a library material that has been challenged pursuant to paragraphs (1) through (5) of this subsection shall not be subject to a subsequent challenge for at least one year.

c. The model policy shall be updated as the State Librarian and New Jersey Library Association deem necessary.

d. A governing body of a public library shall adopt the model policy established pursuant to this section. In the event a public library has a policy that complies with the requirements of subsection b. of this section as of the effective date of this act, the library shall not be required to take further action.

e. A governing body determination issued in accordance with the policy established in subsection b. of this section shall be final and binding for a period of five years.

f. Nothing in this section shall be construed as creating a separate legal cause of action regarding any determination issued pursuant to the policy established pursuant to subsection b. of this section.

11. a. A governing body of a public library shall not remove library material from a public library because of the origin, background, or views of the library material or those contributing to its creation, and shall not engage in censorship of library material.

b. The governing body of a public library shall allow a resident to reserve or check out any library material, including diverse and inclusive material.

12. Any staff member of a public library, including a librarian employed by a public library, shall be immune from civil and criminal liability arising from good faith actions performed pursuant to the provisions of sections 9 through 11 of this act.

13. This act shall take effect one year next following the date of enactment, but the Commissioner of Education and State Librarian may take such anticipatory action as may be necessary for the implementation of the act.