

MODEL POLICY FOR THE RECONSIDERATION OF CURRICULAR, INSTRUCTIONAL, OR LIBRARY MATERIALS

INTRODUCTION

Everyone should want public schools where ideas are openly disseminated, discussed, and debated. Our democracy depends on students becoming fully informed people able to make up their own minds, and to do so they need a wealth of information at their fingertips.

The following model policies are intended to assist school boards and district personnel in establishing a sound, workable, and constitutionally justified policy for selecting and considering challenges to curricula. The Freedom to Read Act, which has passed the Senate and is currently pending in the Assembly, would require the Commissioner of Education and school library systems to develop regulations and policies to ensure that librarians “are empowered to curate and develop collections that provide students with access to the widest array of developmentally appropriate materials.”¹ Similarly, this model policy aims to give librarians wide latitude to curate library collections reflecting a wide range of diverse viewpoints and experiences.

The policies use, as a starting point, the New York State School Boards Association (NYSSBA) sample policies on library materials selection and complaints about curricula or instructional materials and expand upon them in two important respects. First, they establish a review process that protects the rights of teachers and students and respects the professional judgment of school personnel. Second, they set out procedures and standards that maintain the fundamental values and principles of the First Amendment when controversies over educational materials arise. Districts should adopt all three policies.

BACKGROUND & CONTEXT

Public education must provide students not only with “basic literacy, calculating, and verbal skills” but also with “knowledge, understanding, and attitudes necessary” for “meaningful civic participation.”² Public education, therefore, bears a responsibility to impart basic knowledge and the analytic skills to employ that knowledge productively and in ways that enhance the pursuit of truth and rational decision-making by future voters and leaders. Beyond the need to cultivate self-sufficiency and self-government, public education must prepare students with the capacity to function in our diverse and pluralistic society. Doing so requires exposing students to a broad range of information and viewpoints. Diversity and pluralism are core democratic values which are protected within our public schools by the First Amendment. These are values that public education must live up to.

Demands by members of the public to remove books from school libraries and censor curricula test the capacity of public schools to perform this fundamental mission. The argument

¹ S. 6350B, 2023-2024 Sess. (N.Y. 2023).

² *Campaign for Fiscal Equity, Inc. v. State (CFE I)*, 86 N.Y.2d 307, 316–19 (1995); *Campaign for Fiscal Equity, Inc. v. State (CFE II)*, 100 N.Y.2d 893, 905 (2003).

for restricting educational materials is often the product of a political agenda that seeks to narrow the breadth of education and that is incompatible with cultural diversity and ideological pluralism. Such demands are often presented in the name of “parental control.” But yielding to the demands of one parent, or even a group of parents, risks allowing those individuals to dictate the content of the education for everyone’s children.

In public schools, the First Amendment limits the excesses of democracy where majoritarian institutions – like school boards – try to impose censorship. It does so by insisting on diversity and pluralism in public education. When the State compels a diverse student population to attend school by force of law it must accommodate and respect that diversity. As elected bodies, school boards have an obligation of accountability to voters, but as an arm of government, they must also respect and protect the rights of minority communities in their districts.

CONSTITUTIONAL VALUES AND PRINCIPLES

Under the First Amendment, parents and school boards do not have unfettered authority over library book collections or the content of curricula. Three First Amendment principles can help guide school boards when controversies over books or curricular materials arise.

First, pursuant to the Supreme Court case *Board of Education, Island Trees Union Free School District No. 26 v. Pico*,³ school boards and state officials cannot ban books or prohibit curricular materials with the intent of imposing a narrow orthodoxy of viewpoints and values or in ways that are incompatible with the commitment to pluralism and diversity.⁴

Second, when governmental entities seek to regulate expressive materials, procedural regularity is important. Fair procedures must be developed and followed before government officials undertake to censor expression on the basis of content.⁵

Finally, the history and principles of “academic freedom” teach that decisions regarding the content of educational materials should, in most cases, be left to professional educators. The content of a school’s library collection should be determined by the school’s librarian and the content of a school’s curriculum should be developed and approved by professional educators (for example, the superintendent, subject-matter chairs, teacher committees, etc.). Such decisions are entitled to deference and a strong presumption of reasonableness.

³ 457 U.S. 853 (1982).

⁴ *Id.* at 870–71.

⁵ See *Campbell v. St. Tammany Parish Sch. Bd.*, 64 F.3d 184, 190–91 (5th Cir. 1995) (reasoning that school board’s rejection of committee recommendations in disregard of its own policy “raise[d] questions regarding the constitutional validity of its decision”); *Case v. Unified Sch. Dist. No. 233, Johnson Cty., Kan.*, 908 F. Supp. 864, 876 (D. Kan. 1995) (“The highly irregular and erratic manner in which defendants removed *Annie on My Mind* from the District’s libraries and their disregard of established policy and procedure are important evidence of their improper motivation.”).

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While a school board has the authority to decide on the course of study in district schools⁶ and make budgetary allocations, it should respect the professional judgment of academic leaders and staff when it comes to questions of curriculum and library selection.

⁶ *Appeal of J.P.M.*, 39 Educ. Dept. Rep. Decision No. 14311, 2000 WL 35921449 at *2 (citing N.Y. EDUC. LAW §§ 1709(3), 2503(4)).

I. LIBRARY MATERIALS SELECTION MODEL POLICY

The Board of Education (the “Board”) supports the establishment and maintenance in each building of library-media centers that provide services to students and staff. The Board delegates the responsibility to the Superintendent or his/her designee for the selection and purchase of materials and equipment, who in turn delegates that responsibility to professionally trained librarians.⁷ The Board subscribes to the principles expressed in the American Library Association’s Library Bill of Rights.⁸

Although they are encouraged to consult with students, staff, community members, board members, and administrators,⁹ librarians are ultimately responsible for selecting materials for the library. In doing so, librarians will use professional judgment, placing principle above personal opinion in order to assure a comprehensive collection appropriate for all users of the library. Librarians will endeavor to choose materials that:

1. provide information that will enrich and support the curriculum, taking into consideration the varied interests, abilities, languages spoken and read, and maturity levels of the students;
2. provide a range of levels of difficulty and different points of view;
3. provide information that will stimulate growth in factual knowledge, literary appreciation, aesthetic values, and ethical standards;
4. provide information that will enable students to make intelligent judgments in their daily lives;
5. provide information representing various points of view, especially regarding controversial issues, so that students may develop critical reading and thinking skills;
6. provide information representative of the country’s many religious, ethnic, and cultural groups and their contributions to our shared heritage;
7. include, in the body of works as a whole, characters and settings that reflect the racial, ethnic, cultural, religious, and gender and sexual identities of the student body and the country as a whole;
8. promote the understanding and appreciation of culture, class, language, race, ethnicity, and other differences that contribute to the diversity of life in the United States;
9. reflect students’ individual interests and motivate students to read recreationally; and
10. are regarded as high-quality among educators and academics.

Each material selected need not satisfy all criteria, and materials should be assessed and selected in light of the library’s broader collection.

⁷ New York Education Law provides that “[i]n a school district maintaining an academic department or high school the board of education may employ, and fix the compensation of, a person to act as school librarian.” NY EDUC. LAW § 275. State regulation requires that every district hire a “certified school library media specialist,” although the amount of time the library media specialist must devote to school library work depends on the size of the secondary school. 8 NYCRR 91.2. Certification requirements for library media specialists are established by the Commissioner of Education. 8 NYCRR 80-3.7(a)(3)(xii). In districts without academic departments or high schools, either teachers or some other “competent person” may serve as librarian. NY EDUC. LAW § 275.

⁸ *Library Bill of Rights*, AM. LIBR. ASS’N (Jan. 29, 2019), <https://www.ala.org/advocacy/intfreedom/librarybill/>.

⁹ See N.Y. ST. BD. OF REGENTS, CULTURALLY RESPONSIVE-SUSTAINING EDUC. FRAMEWORK 23 (2021), <https://www.nysed.gov/sites/default/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf>.

In selecting materials, the librarian will evaluate available resources and curriculum needs and will consult reputable aids to selection, and other appropriate sources. The librarian will examine the material itself whenever possible. Gift materials shall be judged by the same selection criteria. Selection is an ongoing process that should include removing materials that are no longer used or needed and replacing lost and worn materials that still serve an educational purpose.¹⁰

Although the Superintendent is ultimately responsible for approving book purchases¹¹, the librarian's decisions are entitled to a presumption of reasonableness. If the Superintendent declines to approve acquisition of a requested material, the Superintendent shall explain the decision in writing.

To respond to any complaints about, or challenges to, the selection of library materials, the district has adopted regulations establishing a complaint procedure and providing for an Instructional Review Committee to review such complaints or challenges. (See "Complaints About Curricula or Instructional Materials" and "Complaints About Library Materials.")

If any person seeks to permanently remove any item(s) from a school library, they must seek the formal approval of the Board through the reconsideration process. The Board may determine that such materials should be removed. Such determination must be based upon the educational suitability of the materials in question and may not yield only to public demands or impede the obligation of school officials to promote pluralism and diversity. Only the Board may authorize permanent removal of instructional materials and only after the proper procedure has been followed.

II. COMPLAINTS ABOUT CURRICULAR OR INSTRUCTIONAL MATERIALS¹²

Challenges to textbooks and other instructional materials may occur even where they have been carefully selected by qualified personnel in accordance with guidelines established by the Board of Education (the "Board").¹³ The Board recognizes that parents have an interest in the education of their children. But a parent's right to direct their children's education does not allow them to dictate the curriculum for *all* students, and school boards may not remove materials solely because of disagreement with the ideas they present or distaste for the identity of the author. School

¹⁰ This language is drawn from sample language created by the American Library Association (ALA). *Acquisitions Procedures*, AM. LIBR. ASS'N (Jan. 2018), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/acquisitions>.

¹¹ The Education Law identifies the "supervision and direction" of "matters pertaining to . . . libraries" as one of the powers and duties of superintendents. N.Y. EDUC. LAW §§ 1711(2)(f), 2508(6), 2566(7).

¹² While the policy envisions a single committee considering both challenges to library and curricular materials, there are slight differences between the two processes to account for the different legal rights at issue in each context.

¹³ NAT'L COALITION AGAINST CENSORSHIP, RESPONDING TO CHALLENGES TO INSTRUCTIONAL AND LIBRARY MATERIALS 10, <https://ncac.org/news/blog/guidelines-school-officials> (Dubuque Community Schools Reconsideration Policy: "A decision to sustain a challenge shall not be interpreted as a judgment of irresponsibility on the part of the professionals involved in the original selection or use of the material.").

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staff must carefully comply with the following procedures, which shall apply to any complaint concerning a textbook or other instructional material.

1. At the beginning of each academic year, the Superintendent shall establish an Instructional Review Committee (the “Committee”) to investigate and judge any challenged material. The Committee shall consist of an administrator, a librarian, two teachers, a reading or other content specialist, two parents of students enrolled in the district, and two current high school students. All parents and students in the district may apply to serve as representatives on the Committee for the duration of the academic year, regardless of immigration status. If the district receives a greater number of applications than available slots, the Superintendent will select the parent and student representatives. Each member of the Committee will have one vote and decisions will be made by majority vote of the Committee. The Committee shall only convene at such times as challenges occur.
2. Within two weeks after a complaint is received, the building principal shall hold an informal meeting with the complainant and the teacher or other staff member who is using or providing the book or material. At this meeting, the complainant will be asked to clearly articulate their objection to the material. The building principal and teacher will listen attentively and explain the curriculum creation process, the criteria employed to make the selection, and the educational purpose of the challenged material.
3. If the complainant still has concerns following the informal meeting, they may file with the Superintendent a Request for Reconsideration (the “Request”) using the form provided below.¹⁴ A separate form must be completed for each challenged material. The complainant must submit the Request within ten business days of the informal meeting, or the matter will be considered closed.¹⁵ Incomplete or partially completed forms will not be considered. The Superintendent shall convey the Request to the Committee and ensure compliance with the requirements of this policy.
4. The challenged material will remain available until the Board has made a final decision. No material will be removed from the curriculum without being reviewed by the Committee.
5. Members of the public may submit comments on the challenged material to the Superintendent or the Board within 30 days of the filing of the Request. To facilitate public comment, the filing of a Request challenging curricular materials shall be announced at the first Board meeting after the filing.
6. The Committee shall schedule a formal reconsideration meeting within 30 days of the receipt of the Request. In the case of simultaneous challenges to multiple instructional materials, the Committee may extend this timeline by establishing a reasonable meeting schedule of at least 30 days per material that allows for comprehensive review of each challenged material.

¹⁴ See *infra* p. 11.

¹⁵ This language is drawn from sample language created by the ALA. *Formal Reconsideration*, AM. LIBR. ASS'N (Jan. 2018), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/formalreconsideration>.

7. Committee meetings shall be closed to the public.¹⁶ While the Committee's report may identify the roles of the committee members (e.g., teacher, librarian, community member, administration, parent, etc.), the personal identification of each member should remain anonymous to protect the objectivity of the deliberation.¹⁷
8. Each time a material is challenged, members of the Committee will compile and distribute a packet containing the completed Request form, reviews of the resource being reconsidered, a list of awards or honors, if any, and any supplementary materials necessary to assess the educational purpose of the material. If necessary, the Superintendent will obtain additional copies of the material for Committee members. The Committee shall:
 - a. read and examine the challenged materials in their entirety;
 - b. consider the specific objections to the material voiced by the complainant;
 - c. weigh these objections against the value of the material in light of the district's curriculum guidelines;
 - d. consider public comments submitted to the Superintendent or Board, if any;
 - e. where appropriate, solicit advice or opinion from other district faculty and/or relevant professional organizations such as the American Library Association, the National Council of Teachers of English, or the National Council for the Social Studies; and
 - f. issue a public report to the Board containing its recommendation to retain the material or to remove the material from the curriculum. If necessary, the Committee's report shall present both majority and minority opinions. The report will be provided to the Superintendent within five business days of the Committee's decision, and the Superintendent will inform both the Board and the complainant of the Committee's recommendation.
9. In the reconsideration process, the educator's selection of a curricular or instructional material is entitled to a strong presumption of reasonableness, which may be overcome only if the Committee concludes that the inclusion of the material does not serve an educational purpose in accordance with the district's curriculum guidelines and instructional goals.
10. Within 30 days of receiving the Committee's report and recommendation, the Board will vote to retain the material or sustain the challenge. The Board shall reject the committee's recommendation only if the Committee disregarded or misinterpreted the district's curriculum guidelines. The final decision shall be made by the Board, and any "person considering themselves aggrieved" may appeal its determination to the Commissioner of Education pursuant to state law.¹⁸

¹⁶ The Open Meetings Law does not apply to committees that do not include "a majority of the membership of any particular entity, . . . consist wholly of members of a larger public body, and . . . [have] no authority to take final and binding action." Comm. on Open Govt. OML-AO-o2673 (1996) (Note: Open Meetings Law Advisory Opinion).

¹⁷ This language is drawn from guidelines developed by the ALA. *Reconsideration Committees*, AM. LIBR. ASS'N (Jan. 2018), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/committees>.

¹⁸ See N.Y. EDUC. LAW § 310.

11. A decision to sustain a challenge shall not be interpreted as a judgment of irresponsibility on the part of the professionals involved in the original selection or use of material.¹⁹
12. If the challenged material is retained, no new challenges to that item will be considered for five years after the resolution of the Request by the Board.

III. COMPLAINTS ABOUT LIBRARY MATERIALS

Challenges to library books or material may occur even where they have been carefully selected by qualified personnel in accordance with the selection policy established by the Board of Education (the “Board”).²⁰ The Board recognizes that parents have an interest in the education of their children but a parent’s right to direct their children’s education does not allow them to dictate what books are available to *all* students. Further, school boards may not remove materials solely because of disagreement with the ideas they present or distaste for the identity of the author. School staff must comply with the following procedures, which apply to any complaint concerning a library material.

1. At the beginning of each academic year, the Superintendent shall establish an Instructional Review Committee (the “Committee”) to investigate any challenged material. The Committee shall consist of an administrator, a librarian, two teachers, a reading or other content specialist, two parents of students enrolled in the district, and two current high school students. All parents and students in the district may apply to serve as representatives on the Committee for the duration of the academic year, regardless of immigration status. If the district receives a greater number of applications than available slots, the Superintendent will select the parent and student representatives. Each member of the Committee will have one vote. The Committee shall only convene at such times as challenges occur.
2. The Committee may only recommend removal if two-thirds of committee members vote in favor of removal.
3. Each academic year, the librarian will provide the Committee, the Board, and the Superintendent with a formal training regarding the library selection policy and the American Library Association’s Library Bill of Rights.
4. Within two weeks after a complaint is received, the building principal shall hold an informal meeting with the complainant and the librarian or other staff member responsible for maintaining the library collection. At this meeting, the complainant will be asked to clearly articulate their objection to the material. The building principal and the librarian will listen attentively and explain the library selection process and the educational purpose of any challenged material.
5. If the complainant still has concerns following the informal meeting, they shall file with the Superintendent a Request for Reconsideration (the “Request”) using the form

¹⁹ NAT’L COALITION AGAINST CENSORSHIP, *supra* note 13.

²⁰ *Id.*

provided below.²¹ A separate form must be completed for each challenged material. The complainant must submit the Request within ten business days of the informal meeting, or the matter will be considered closed.²² Incomplete or partially completed forms will not be considered. The Superintendent shall convey the Request to the Committee and ensure compliance with the requirements of this policy.

6. The challenged material will remain in circulation until the Board has made a final decision. No material will be removed from circulation without being reviewed by the Committee.
7. Members of the public may submit comments on the challenged material to the Superintendent or the Board within 30 days of the filing of the Request. To facilitate public comment, the filing of a Request challenging library materials shall be announced at the first Board meeting after the filing.
8. The Committee should schedule a formal reconsideration meeting within 30 days of the receipt of the Request. In the case of simultaneous challenges to multiple library materials, the Committee may extend this timeline by establishing a reasonable meeting schedule of at least 30 days per material that allows for comprehensive review of each challenged material.
9. Committee meetings shall be closed to the public.²³ While the Committee's report may identify the roles of the committee members (e.g., teacher, librarian, community member, administration, parent, etc.), the personal identification of each member should remain anonymous to protect the objectivity of the deliberation.²⁴
10. For each challenged material, the librarian will compile and distribute a packet containing the completed Request form, academic or professional reviews of the material being reconsidered, and awards or honors given to the material, if any. Where appropriate, the librarian shall solicit input from relevant professional organizations such as the American Library Association, the National Council of Teachers of English, and the National Council for the Social Studies. If necessary, the Superintendent will obtain additional copies of the material for Committee members. The Committee shall:
 - a. read and examine the challenged materials in their entirety;
 - b. consider the specific objections to the material voiced by the complainant;
 - c. weigh these objections against the value of the material in light of the district's library selection policy and supplemental materials provided by the librarian;
 - d. consider public comments, if any; and
 - e. issue a public report to the Board containing its recommendation for one of the following actions: retain the material in its original location, relocate the material, or remove the material. If necessary, the Committee's report shall present both majority and minority opinions. The report will be provided to the Superintendent

²¹ See *infra* p. 11.

²² *Formal Reconsideration*, *supra* note 15.

²³ *Comm. on Open Govt.*, *supra* note 16.

²⁴ *Reconsideration Committees*, *supra* note 17.

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within five business days of the Committee's decision, and the Superintendent will inform both the Board and the complainant of the Committee's recommendation.

11. In the reconsideration process, the librarian's selection of library materials is entitled to a strong presumption of reasonableness, which may be overcome only if the Committee concludes that the material does not serve an educational purpose in accordance with the district's library selection policy.
12. Within 30 days of receiving the Committee's report and recommendation, the Board will vote to retain the material or sustain the challenge. The Board shall reject the Committee's recommendation only if the Committee disregarded or misinterpreted the district's library selection guidelines. The final decision shall be made by the Board, and any "person considering themselves aggrieved" may appeal its determination to the Commissioner of Education pursuant to state law.²⁵
13. A decision to sustain a challenge shall not be interpreted as a judgment of irresponsibility on the part of the professionals involved in the original selection or use of the material.²⁶
14. No new challenges to the material in question will be considered for five years after the resolution of the Request by the Board.

²⁵ See N.Y. EDUC. LAW § 310.

²⁶ NAT'L COALITION AGAINST CENSORSHIP, *supra* note 13.

Appendix A:
REQUEST FOR RECONSIDERATION OF CURRICULAR, INSTRUCTIONAL, OR LIBRARY MATERIALS FORM²⁷

The Board of Education has established policies for the creation of curriculum and the selection of instructional or library materials. If you wish to request that the Board reconsider a particular curricular or library material, please return the completed form to the Superintendent. Incomplete or partially completed forms will not be considered. If you are seeking reconsideration of multiple materials, please complete a separate form for each.

Date: _____
Name: _____
Address: _____
City: _____ State/Zip: _____
Phone: _____ Email: _____

Relationship to the District: Parent or guardian _____ Community Member _____
If you are a parent or guardian, please provide your child's school and grade.

Do you represent yourself? ___ Or an organization? _____
If yes, please provide the organization's contact information and your position in the organization.
Organization Name: _____
Address: _____
City: _____ State/Zip: _____
Phone: _____ Email: _____
Position in the Organization: _____

1. Material for which you are seeking reconsideration:

- Book (e-book) _____
- Movie _____
- Magazine _____
- Audio Recording _____
- Digital Resource _____
- Game _____
- Periodical _____
- Other _____

Title: _____

Author/Artist/Producer: _____

2. What brought this material to your attention?

²⁷ This Sample Request for Reconsideration form is based on the template created by the ALA. *Sample Reconsideration Form*, AM. LIBR. ASS'N (Jan. 2018), <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/sampleforms>.

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3. Have you examined the entire material? If not, what sections did you review?

4. What concerns you about the material? Please cite specific passages, pages, etc.

5. Are there resource(s) you suggest that would provide additional information and/or viewpoints on this topic?

6. What action are you requesting the committee consider?

