

Challenge to Library Materials

Libraries support Intellectual Freedom. An important part of this is providing access to materials even if they are controversial or offensive to some. Once selected, library material cannot be removed when challenged, or even have their access status altered, except under narrow circumstances.

Challenge - A formal written complaint requesting that library materials be removed or restricted.

Censorship - A change in the access status of material, based on the content of the work and made by a governing authority...includes exclusion, restriction, removal, or age-grade-level access limitations.

[from the ALA Intellectual Freedom Manual]

A Challenge to Library Materials Policy should first affirm that library material is protected from censorship and can only be removed under very slim circumstances. When creating your policy:

- Affirm that the library does not censor offensive material unless deemed obscene by a court of law*
- Ground the policy in the context of the library's collection development policy.*
- Identify who can make a challenge*
- Point to a separate procedure for challenging material*
- Identify how often can the material in question be challenged*
- Include an appeals process*

Procedure Consideration Questions:

- *What steps should staff take if there is a complaint?*
- *Do you have a form for patrons to fill out?*
- *What are the steps after the form is submitted?*
- *Who makes the decision, and how is it conveyed?*
- *Include an appeals process.*

CASE LAW

Challenges to juvenile material

Minors' First Amendment liberties include the right to receive information, including in school. In *Board of Education v. Pico*, 457 U.S. 853 (1982) (plurality opinion), a school board had attempted to remove from a school library controversial titles such as *Slaughterhouse Five* and *Soul on Ice*, an action which the Supreme Court found unconstitutional. The Court stated that "the right to receive ideas is a necessary predicate to the recipient's meaningful exercise of his own rights of speech, press, and political freedom," *id.* at 867, and made clear that "students too are beneficiaries of this principle." [from Freedom to Read Foundation 2004 Memo on Minors' Rights to Receive Information]

Summary

Definitions

Policy Considerations

Procedure Questions

Case Law

Loewen v. Turnipseed, 488 F. Supp. 1138 (N.D. Miss. 1980): The authors of *Mississippi: Conflict and Change* filed a suit against the Mississippi Textbook Purchasing Board when it refused to approve the textbook for use in Mississippi public schools based on the book's concern with race and exploration of controversial topics. "U.S. District Judge Orma R. Smith ruled that the criteria used were not justifiable grounds for rejecting the book. He held that the controversial racial matter was a factor leading to its rejection, and thus the authors had been denied their constitutionally guaranteed rights of freedom of speech and the press."

[<http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/courtcases>]

Counts v. Cedarville School District, 295 F.Supp.2d 996 (W.D. Ark. 2003): This case deals with permission slips from parents in order for a minor to check out materials. The Cedarville School District, not wanting unabridged access to Harry Potter books, which they felt would have a negative impact on students, thought a parental permission slip would be a compromise between student wishes and adult concerns. "The District Court overturned the Board's decision and ordered the books returned to unrestricted circulation, on the grounds that the restrictions violated students' First Amendment right to read and receive information. In so doing, the Court noted that while the Board necessarily performed highly discretionary functions related to the operation of the schools, it was still bound by the Bill of Rights and could not abridge students' First Amendment right to read a book on the basis of an undifferentiated fear of disturbance or because the Board disagreed with the ideas contained in the book."

[<http://www.ala.org/advocacy/intfreedom/censorshipfirstamendmentissues/courtcases>]

ALA GUIDANCE (Excerpts)

ALA

Challenged Materials: An Interpretation of the Library Bill of Rights

Challenged materials that meet the criteria for selection in the materials selection policy of the library should not be removed under any legal or extra-legal pressure. The Library Bill of Rights states in Article I that "Materials should not be excluded because of the origin, background, or views of those contributing to their creation," and in Article II, that "Materials should not be proscribed or removed because of partisan or doctrinal disapproval." Freedom of expression is protected by the Constitution of the United States, but constitutionally protected expression is often separated from unprotected expression only by a dim and uncertain line. The Constitution requires a procedure designed to focus searchingly on challenged expression before it can be suppressed. An adversary hearing is a part of this procedure.

The Freedom to Read Statement

Private groups and public authorities in various parts of the country are working to remove or limit access to reading materials, to censor content in schools, to label "controversial" views, to distribute lists of "objectionable" books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to counter threats to safety or national security, as well as to avoid the subversion of politics and the corruption of morals. We, as individuals devoted to reading and as librarians and publishers responsible for disseminating ideas, wish to assert the public interest in the preservation of the freedom to read.

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures toward conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and to circulate, in order to preserve its own freedom to read. We

believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the readers to choose freely from a variety of offerings.

We therefore affirm these propositions:

1. *It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those that are unorthodox, unpopular, or considered dangerous by the majority.*
2. Creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until that idea is refined and tested. Totalitarian systems attempt to maintain themselves in power by the ruthless suppression of any concept that challenges the established orthodoxy. The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them. To stifle every nonconformist idea at birth would mark the end of the democratic process. Furthermore, only through the constant activity of weighing and selecting can the democratic mind attain the strength demanded by times like these. We need to know not only what we believe but why we believe it.
3. *Publishers, librarians, and booksellers do not need to endorse every idea or presentation they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as a standard for determining what should be published or circulated.*
4. Publishers and librarians serve the educational process by helping to make available knowledge and ideas required for the growth of the mind and the increase of learning. They do not foster education by imposing as mentors the patterns of their own thought. The people should have the freedom to read and consider a broader range of ideas than those that may be held by any single librarian or publisher or government or church. It is wrong that what one can read should be confined to what another thinks proper.
5. *It is contrary to the public interest for publishers or librarians to bar access to writings on the basis of the personal history or political affiliations of the author.*
6. No art or literature can flourish if it is to be measured by the political views or private lives of its creators. No society of free people can flourish that draws up lists of writers to whom it will not listen, whatever they may have to say.
7. *There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.*
8. To some, much of modern expression is shocking. But is not much of life itself shocking? We cut off literature at the source if we prevent writers from dealing with the stuff of life. Parents and teachers have a responsibility to prepare the young to meet the diversity of experiences in life to which they will be exposed, as they have a responsibility to help them learn to think critically for themselves. These are affirmative responsibilities, not to be discharged simply by preventing them from reading works for which they are not yet prepared. In these matters values differ, and values cannot be legislated; nor can machinery be devised that will suit the demands of one group without limiting the freedom of others.
9. *It is not in the public interest to force a reader to accept the prejudgment of a label characterizing any expression or its author as subversive or dangerous.*
10. The ideal of labeling presupposes the existence of individuals or groups with wisdom to determine by authority what is good or bad for others. It presupposes that individuals must be directed in making up their minds about the ideas they examine. But Americans do not need others to do their thinking for them.
11. *It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large; and by the government whenever it seeks to reduce or deny public access to public information.*

12. It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society individuals are free to determine for themselves what they wish to read, and each group is free to determine what it will recommend to its freely associated members. But no group has the right to take the law into its own hands, and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is no freedom if it is accorded only to the accepted and the inoffensive. Further, democratic societies are more safe, free, and creative when the free flow of public information is not restricted by governmental prerogative or self-censorship.
13. *It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, they can demonstrate that the answer to a "bad" book is a good one, the answer to a "bad" idea is a good one.*
14. The freedom to read is of little consequence when the reader cannot obtain matter fit for that reader's purpose. What is needed is not only the absence of restraint, but the positive provision of opportunity for the people to read the best that has been thought and said. Books are the major channel by which the intellectual inheritance is handed down, and the principal means of its testing and growth. The defense of the freedom to read requires of all publishers and librarians the utmost of their faculties, and deserves of all Americans the fullest of their support.

ALA's Strategies and Tips for Dealing with Challenges to Library Materials (excerpt)

Tips for directors

- Make sure you have an up-to-date selection policy, reviewed regularly by your library board, which includes a request for reconsideration form.
- As a public institution, the library must develop and implement all policies within the legal framework that applies to it. Have your policies reviewed regularly by the library's legal counsel for compliance with federal and state constitutional requirements, federal and state civil rights legislation, other applicable federal and state legislation, including confidentiality legislation and applicable case law.
- Have the request for reconsideration form available at your major service desks and at all your branch facilities.
- Work with your trustees to ensure that they know and understand the library's policies. Institute formal education procedures so all library trustees have the same information.
- Model the behavior you want your staff to practice. When confronted by an individual or representative of an organization that wants an item or items removed or reclassified, listen closely and carefully to what is being said (and what is not). Respect that person's right to have an opinion, and empathize. Keep the lines of communication open to the greatest possible extent.
- Work with your frontline staff (children's librarians, reference librarians, circulation, branch, bookmobile and support staff) to make sure they understand the library's policies. Help them to understand that they are responsible for implementing the library's policy, not their personal beliefs, while they are on duty. Make this a part of customer service training for your staff.
- Have an ongoing public relations program to communicate the many ways your library serves all members of the community, especially families.
- Build a solid working relationship with your local media before controversy arises. Provide them with upbeat, positive stories about what the library is doing, especially in the area of children's services.
- Put key contacts on your library mailing list. The time to build these relationships is before you need them.
- Hit the talk circuit. Every social, fraternal and religious organization that meets regularly needs speakers for its meetings. This is your opportunity to reach leaders and opinion makers in your community and to build a support network.

SAMPLE POLICY

Starr Library: *Collection Development Policy* Adopted by Starr Library Board of Trustees, May 17, 2004

Goals

The library's primary responsibility is to assist patrons in their pursuit of information, education, and entertainment, and to inspire and stimulate children's interest in and appreciation of learning and reading. It selects materials in a variety of formats to satisfy the expressed and anticipated interests, tastes, needs, and reading abilities of the diverse community it serves.

Principles of Selection

The library recognizes that its patrons have diverse interests, backgrounds, cultural heritages, social values, political views, and needs. All patrons are free to reject for themselves any materials which do not meet their approval. This freedom does not include the right to restrict the freedom of others to read and inquire.

The library does not exclude or remove materials from its collection on the basis of the author's race, national origin, religious beliefs, sexual orientation, political views, or social values.

As long as materials meet our accepted standards of selection and are deemed to contribute to the goals of the library's collection development, the library does not exclude materials that present extreme points of view; that offer a one-sided representation of opinions, ideas, or events; or that may offend some patrons because of frankness of vocabulary or description.

The library excludes materials that present derogatory stereotypes as valid representations. However, it may include materials that authentically portray a period or way of life characterized by stereotypical thinking and materials that present the prejudices of real or fictional characters. Materials recognized as classics are considered acceptable even if they contain passages that are widely viewed as objectionable by current standards.

The library does not select, retain, or remove materials on the basis of anticipated approval or disapproval of any group of patrons, but solely on the basis of the standards stated in this policy. Library materials will not be marked or identified to show approval or disapproval of their contents. All patrons will have free access to all materials, and no materials will be sequestered (except items that need protection because of rarity, cost, susceptibility to loss, fragility, or unsuitability of format for heavy use).

The library does not restrict the selection of materials because of the possibility that some minors may obtain materials that their parents or guardians consider inappropriate nor does it deny minors access to any materials in the collection. The library does not stand in loco parentis; if parents or guardians do not want their children to have access to certain library materials or services, it is their responsibility so to advise their children. The library has a professional obligation to provide equal access to all library resources for all library users.

The library has adopted and declared that it will adhere to and support the American Library Association's Library Bill of Rights, Free Access to Libraries for Minors, and the Freedom to Read Statement. The content of these documents is understood to be part of this policy.

Standards for Selection

The Library evaluates an item being considered for inclusion in the collection in terms of the following standards. Not all the standards will apply to each item. The evaluation is made with regard to the work as a whole and not

necessarily to its individual parts. Each item is evaluated in terms of its own merits, its intended audience, and its relation to the collection.

1. Timeliness: current general interest on international, national, and local levels, importance as a document of the times, relevance to contemporary issues
2. Permanent value as a standard work
3. Suitability of subject, style, format, and content for the intended audience
4. Relevance to community needs and interests
5. Proven or potential interest or demand
6. Reputation, authority, and qualifications of the author, editor, artist-producer, or publisher
7. Artistic merit
8. Scholarly merit; accuracy and accessibility of content
9. Evaluation by staff, local experts, and the public, and by reviewers in professional journals and popular media
10. Availability of the subject in the existing collection
11. Importance in relation to materials on the same subject in the existing collection
12. Importance in relation to existing areas of coverage in order to maintain a well-balanced collection
13. Importance in order to provide a wide range of points of view on a subject, including points of view that are unique, alternative, experimental, or controversial
14. Availability of the same or similar material in the local area and through the interlibrary loan system
15. Cost in relation to the significance of the material according to the above factors

Collection Maintenance

The library maintains the quality of the collection by retaining or replacing essential materials and by removing items that are outdated, damaged or worn out, no longer in demand, or unneeded duplicates. The library does not automatically replace all items that are removed because of loss or damage. Prime considerations in the decision to replace items include the number of duplicate copies needed to meet circulation demand, availability of newer or more authoritative material, presence of similar material in the collection, and community interest. Some older or worn material may be retained, such as classics, one-of-a-kind or irreplaceable items, collectors' items, award-winning children's books, items in the local history collection, items that provide special coverage of a field, and items that are consistently in demand.

Items removed from the collection may be sold, given away, recycled, discarded, or otherwise disposed of at the discretion of the library.

Requests for the Acquisition of Items

Patrons may request that the library acquire specific items. The library will consider the request in terms of whether the items conform to the goals, principles, and standards outlined in this policy; the availability and cost of the items; and the likelihood of general interest in them.

Materials for Temporary Use or Display

The library sometimes accepts collections, works of art, exhibits, and other items for temporary use or display. The library accepts material offered for loan based on the goals, principles, and standards it applies to its permanent collection and its judgment that the material is of current or general interest to its patrons.

The library will make reasonable efforts to preserve and protect borrowed materials, but all items are placed in the library at the lender's own risk. The library assumes no liability for the loss, damage, or theft of any item on loan. The lender may be asked to sign a loan release before the library will accept any item for use or display.

(FORM) Library Loan Release**Challenge of Library Materials**

This policy defends the freedom to read, view, and hear. No material shall be removed from the collection except under the procedure given here.

Patrons who object to the presence of certain materials in the collection and who are unwilling to accept that the inclusion of these materials conforms to the goals, principles, and standards outlined in this policy may submit a Challenge of Library Materials form to the library Board of Trustees.

For a challenge to be considered,

1. the complainant must be properly identified on the form,
2. the complainant must be a resident of the library's chartered jurisdiction and hold a valid borrower's card, and
3. the form must be completed in full.

No action shall be taken before the challenge is brought before the board. Challenged material shall not be removed until a final decision is made by the board.

The library will not consider the removal of an item on grounds of obscenity or for any other reason covered by law unless a court of competent jurisdiction has ruled against it. An item will be considered for removal only once in a twelve-month period.

The board will consider the challenge at the meeting of the board following the receipt of the form. The board will read and examine the challenged material, consider the specific objections voiced by the complainant, weigh the values and faults of the material as a whole in itself and in relation to the collection, and, if necessary or desired, solicit advice and opinion from other library directors and boards, the Mid-Hudson Library System, the American Library Association Office for Intellectual Freedom, and the New York State Intellectual Freedom Committee. The board will issue a written report within ninety days of the receipt of the challenge containing its decision and recommended action regarding the challenged material.

(FORM) Challenge of Materials