

STUDENTS' CIVIL RIGHTS ENFORCEMENT INITIATIVE

Protections from Censorship in Education

Section 1. Legislative Findings and Purpose

Findings. The Legislature finds that—

- (a) Public schools and libraries play a central role in preparing students for participation in a democratic society;
- (b) Access to a broad range of viewpoints, histories, and perspectives is essential to the development of critical thinking, informed civic engagement, and democratic participation for our nation's youth;
- (c) Students possess a constitutionally significant interest in receiving information and ideas within the public school environment;
- (d) Recent years have seen a significant increase in efforts to restrict access to instructional and library materials in public schools, including laws and policies limiting discussion of certain topics in school curriculum and a rise in challenges to books and educational materials in school libraries. National data reflects a marked increase in such challenges and restrictions across multiple jurisdictions;
- (e) Such restrictions are frequently based on disagreement with viewpoints expressed, identities represented, or the inclusion of historically marginalized perspectives, rather than legitimate pedagogical concerns;
- (f) Censorship may occur through the removal, restriction, relocation, or redaction of instructional or library materials, which function to limit access to information, particularly materials reflecting diverse perspectives or the experiences of historically marginalized groups. Effective protections should apply equally to each form of restricting student access;
- (g) The First Amendment of the United States Constitution [AND RELEVANT STATE PROTECTIONS] protects not only the right to speak, but also the right to receive

information and ideas, and students do not forfeit their constitutional rights within the school environment. As the classroom is the “marketplace of ideas,” access to information in that setting remains constitutionally significant.

- (h) Vague and overbroad standards governing instructional and library materials create uncertainty, invite arbitrary enforcement, and chill protected expression;
- (i) Such uncertainty burdens educators and librarians by discouraging the exercise of professional judgment and limiting students’ access to information and ideas;
- (j) Age-appropriate limitations on instructional and library materials should be consistent with established constitutional standards governing obscenity and the rights of minors.
- (k) Educators and school librarians are trained professionals whose selection, maintenance, and use of instructional and library materials should be guided by professional standards and educational suitability rather than ideological or political disagreement.

Purpose. The purpose of this Act is to protect students’ access to information and ideas, prohibit viewpoint-based censorship, preserve the professional judgment of educators and librarians, ensure transparent and objective review processes of instructional materials and library materials, and promote public education as a place of inquiry, learning, and democratic participation.

Section 2. Definitions

For purposes of this Act—

- (a) “Censorship” means the removal, restriction, relocation, or redaction of instructional material or library material based on disagreement with the material’s content, viewpoint, ideas, or the identity or perspectives of its author, creator, or subject matter.
- (b) “Covered entity” means any public elementary, secondary, or post-secondary educational institution, charter school, school district, governing body, the libraries of any of the listed public educational institutions, or other public educational institution subject to [THIS ACT].
- (c) “Instructional material” means any textbook, curricular resource, supplemental material, digital resource, audiovisual material, software, or other material selected or used by an educator for classroom instruction.
- (d) “Library material” means any book, periodical, database, digital resource, audio-visual material, or other resource maintained in or made available through a library at any public institution listed under subsection (b) of this Section.

- (e) “Obscenity” means material that satisfies the constitutional standard established in *Miller v. California*, 413 U.S. 15 (1973), as applied to minors in accordance with *Ginsberg v. New York*, 390 U.S. 629 (1968).
- (f) “Redaction” means the removal, obscuring, or alteration of any portion of instructional material or library material in a manner that limits access to the original content.
- (g) “Relocation” means moving instructional material or library material to a different location or classification that materially limits or impedes student access.
- (h) “Removal” means eliminating instructional material or library material from a classroom, curriculum, or library collection.
- (i) “Request for reconsideration” means a written request seeking the removal, restriction, relocation, or redaction of instructional material or library material.
- (j) “Restriction” means limiting or denying student access to instructional material or library material through physical, procedural, or administrative means.
- (k) “Retaliation” has the meaning as set forth in subsection (k) of Section 3 of the Students’ Civil Rights Act.

Section 3. Professional Judgment

- (a) Covered entities shall respect the professional judgment of educators and librarians in the selection, maintenance, review, and use of instructional materials and library materials, consistent with applicable professional standards.
- (b) Nothing in [THIS ACT] shall prohibit routine material or library collection maintenance based on objective criteria, consistent with applicable professional standards, including the removal, replacement, or withdrawal of instructional materials or library materials that are outdated, factually inaccurate, damaged beyond reasonable repair, duplicated, superseded, or no longer educationally relevant.
- (c) Nothing in [THIS ACT] shall be construed to require a covered entity to acquire or retain any particular instructional material or library material.

Section 4. Prohibition on Viewpoint Discrimination

- (a) A covered entity shall not remove, restrict, relocate, redact, or otherwise deny access to instructional materials or library materials on the basis of—
 - (1) The viewpoints, ideas, or opinions expressed in the material;

- (2) The identities, backgrounds, or perspectives of the author(s), creator(s), or subject(s) of the materials; or
 - (3) Disagreement with the material's content.
- (b) Instructional materials and library materials shall not be excluded in a manner that results in discrimination[, as defined in Section 4 of the Students' Civil Rights Act,] or the exclusion of particular viewpoints, perspectives, histories, or contributions reflected therein.

Section 5. Constitutional Standard for Obscenity

- (a) A covered entity may restrict access to instructional material or library material on the basis of content only if the material is obscene under the standard established in *Miller v. California*, 413 U.S. 15 (1973), as applied to minors in accordance with *Ginsberg v. New York*, 390 U.S. 629 (1968).
- (b) In determining whether instructional material or library material is obscene for minors, the instructional material or library material shall, taken as a whole:
 - (1) Appeal to the prurient interest of minors;
 - (2) Depict or describe sexual conduct in a patently offensive way; and
 - (3) Lack serious literary, artistic, political, or scientific value.
- (c) The determination of whether material lacks serious literary, artistic, political, or scientific value shall be based on an objective, reasonable person standard and shall not be determined solely by reference to community disagreement or disapproval.
- (d) Instructional material or library material shall not be restricted, removed, relocated, redacted, or otherwise limited solely because it is described as "sexually explicit," "harmful to minors," or otherwise inappropriate, absent satisfaction of the obscenity standard set forth in subsection (b) of this Section.
- (e) No instructional material or library material shall be evaluated in isolation from the work as a whole. Any determination under this section shall consider the work as a whole and its educational, literary, or informational context.
- (f) Determinations regarding the restriction of access to and reconsideration of instructional materials or library materials that are challenged for obscenity shall include review by qualified library professionals and educators, pursuant to Section 6 of [THIS ACT].

Section 6. Review and Reconsideration Process

- (a) Each covered entity shall adopt written policies governing the requests for reconsideration of instructional materials and library materials. Such policies shall be posted in language that is age-appropriate, accessible to those with disabilities, accessible to students, parents, or guardians with limited English proficiency, and in a prominent and accessible location, including, but not limited to, the covered entity's website.
- (b) Requests for reconsideration shall—
 - (1) Be submitted in writing;
 - (2) Identify the instructional material or library material challenged for reconsideration;
 - (3) Identify whether the relief requested is removal, restriction, relocation, or redaction; and
 - (4) Specify the basis for the objection to the identified instructional material or library material.
- (c) Only currently enrolled students, parents or guardians of currently enrolled students, and employees of the covered entity may submit requests for reconsideration.
- (d) Instructional material and library material subject to reconsideration shall remain available during the review process.
- (e) A review committee, including educators, a certified librarian, and a diverse collective of currently enrolled students and their parents or guardians shall evaluate the material in its entirety and issue a written decision.
- (f) Decisions shall be based on the material as a whole, consistent with applicable professional standards and the requirements of [THIS ACT].
- (g) Instructional material or library material shall not be subject to reconsideration more than once within a period of three years, absent a material change in circumstances, as determined by the covered entity.

Section 7. Protection Against Retaliation

- (a) A covered entity shall not retaliate against or otherwise subject an educator, librarian, or other employee of the covered entity to adverse action because the individual—
 - (1) Selected or retained materials in accordance with applicable professional standards;

- (2) Declined to remove, restrict, relocate, or redact instructional or library materials before completion of the reconsideration process, pursuant to Section 6 of [THIS ACT]; or
 - (3) Otherwise selected or retained materials in accordance with [THIS ACT].
- (b) An educator, librarian, or other employee of the covered entity acting in good faith and in accordance with [THIS ACT] shall not be subject to civil or criminal liability solely for actions taken pursuant to [THIS ACT].

Section 8. Enforcement and Funding

- (a) A state governmental entity shall not reduce or withhold funding from a covered entity for compliance with [THIS ACT].
- (b) Any person aggrieved by a violation of [THIS ACT] may bring a civil action.
 - (1) This action must be brought no later than 2 years after the violation of [THIS ACT].
 - (2) If the court finds that a willful violation of [THIS ACT] has occurred, the court may award actual damages. The court, as it deems appropriate, may grant, as relief, any permanent or preliminary negative or mandatory injunction, temporary restraining order, or other order.
 - (3) Upon a motion, a court shall award reasonable attorney's fees and costs, including expert witness fees and other litigation expenses, to a plaintiff who is a prevailing party in any action brought under subsection (b) of this Section. In awarding reasonable attorney's fees, the court shall consider the degree to which the relief obtained relates to the relief sought.
 - (4) Nothing in this Section may be construed to require an exhaustion of an administrative complaint process before civil law remedies may be pursued.

While reviewing this template, check out the **Part 6: Protections from Censorship in Education** toolkit document to learn more about additional considerations and strategies for drafting.