

# Access to Online Subscription Content in K-12 Schools through the School Library

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## ABSTRACT

Among the many resources purchased within school libraries is subscription online content. School librarians purchase this material to support classroom curriculum and student inquiry thus providing reading materials to foster literacy, research skills, and encourage critical thinking. This content, aggregated by vendors who purchase from a wide variety of subscription-based resources such as magazines, journals, video and other media, and primary source depositories, allows students to access material that otherwise might be prohibitively expensive. Educational materials such as these have lately been targeted by politically-motivated parents' rights groups as being harmful to minors. This paper explores how limiting access to these resources affects students' ability to become critical thinkers who can identify perspectives, evaluate sources, and integrate new information into their research. It investigates how limiting access to subscription online content through legislation encourages pre-restriction by vendors and school librarians as a response to these complaints. The authors also cover strategies on how to protect school libraries against these threats.

## Introduction\*

Online subscription content provides access to news, academic research, and other published materials often not accessible without a personal or institutional subscription. Subscription content is an important avenue of information access, particularly for academic and educational purposes. Restricting access to this content inhibits teachers, librarians, and students' ability to engage with information and develop necessary life and academic skills to manage and evaluate information, misinformation, and disinformation.

Since 2021, several states have considered legislation limiting student access to information. These proposals, written under the guise of "parents' rights" have centered on a false claim that student access to online database information includes materials that are harmful to minors and places students in danger. The purpose of this white paper is to explore how limiting access to online subscription content through state level legislation is detrimental, how it can affect access more universally, and how school libraries and online subscription content vendors, by being overly restrictive in response to these complaints, could unnecessarily restrict access, as well as how to protect libraries against these threats.

In recent policy debates, concerns have been raised by special interest organizations about the content available in school library databases. These groups assert that such content

\* Hyperlinks to sources in the text are contained in the endnotes

may be inappropriate, claiming it includes pornographic material, and have advocated for tighter controls. This push for restrictions can manifest in efforts to remove specific publications or indexes or by implementing stop words (defined below) and excessive filtering within database search functionalities. The intention behind these actions is often to prevent student access to information related to gender or sexuality, issues related to race and ethnicity such as the historical contribution of different ethnic groups, and the implications of laws that were based in racial identity, etc., without considering its relevance to the curriculum or whether it is suitable for the student's age and grade level.

Across the nation, various political figures seek to curtail students' access to print and digital resources. This movement poses a significant challenge to fostering critical thinking skills in students, which are essential in our rapidly evolving world. School librarians share concerns about the transparency of curricular materials, especially about online subscription content, while recognizing the value of the resources. Given the vast amount of resources provided through state-funded online content, individually assessing each piece of material (be it a news article, journal article, or comprehensive entry) is daunting.

An example was reported in *School Library Journal*. In September 2023 Fulton County (GA) Schools banned the social sciences online subscription product BrainPOP due to some content being thought objectionable by parts of the school community, including videos and blog posts about LGBTQ inclusivity, the Black Lives Matter movement, and the biology of the menstrual cycle (Bauld). This incident is part of a broader trend of censorship targeting digital resources in schools across the U.S., often led by conservative parent groups and political activists aiming to restrict access to materials related to LGBTQIA+ themes, race, racism, and sexual health.

This trend is part of a nationwide push led by certain parent groups and political activists to limit access to online subscription resources, framing it as a protection against "obscene" materials. This activism has led to lawsuits, state legislation requiring the removal of such materials, and significant debates over what constitutes appropriate educational content. School library advocates argue that such legislation and actions against educational resources hinder students' ability to research, develop critical thinking skills, and access diverse viewpoints. Established online content vendors offer tools for content control, but the overarching issue is seen as a political agenda driving censorship rather than genuine concern for student welfare.

Over-filtering, using stop words, and content censorship in school databases ultimately reduce students' access to resources aligned with educational standards and support the curriculum. Such measures limit the scope of available information and impede the development of critical thinking and informed citizenship among students.

## Definition of Terms

The following terms are helpful in understanding the role of online subscription content in K-12 schools and the concern related to censorship or possible removal of such content.

- **Local Community Standards:** In determining what area constitutes a "local community," the *First Amendment Encyclopedia* states that: "courts have permitted consideration of a community as ranging from statewide — including nation-state-sized states, such as California, Texas, and Illinois — to a division of the federal district court or a three-county metropolitan region" (Steiner).

- **Local Education Agency (LEA):** Section 300.28<sup>1</sup> of the Individuals with Disabilities Act defines an LEA as “a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools” (“Sec. 300.28”). The term LEA is used by states as well.
- **Open web:** For the purposes of this discussion the open web refers to public Internet sites, viewable by anyone and without a subscription or having to pay to access. The open web is searchable by search engines such as Google with a simple search.
- **Online subscription content:** Online subscription Content is a collection of media materials (that can include newspapers, magazines, academic journals, and other resources) acquired by aggregators (such as EBSCO, GALE, and ProQuest) to be sold by subscription to schools and libraries to support educational standards and classroom curriculum. This definition describes more effectively the kind of collected materials found in the K-12 environment than the more commonly used “database.” While both are often used to refer to the same product, for this paper we are utilizing the term online subscription content to better describe the many variants of products offered to schools. For the purposes of this paper we use online subscription content to include databases (as defined below) and other tools and resources that provide educational materials and learning activities created particularly for that purpose. While there is other online subscription content such as Netflix we are primarily referencing educational content marketed to the K-12 educational community and considered for purchase by state organizations.
- **Databases:** Educational databases are collections of media materials (that can include newspapers, magazines, academic journals, and other resources) acquired by aggregators (such as the online database companies EBSCO, GALE, and ProQuest) to be sold by subscription to schools and libraries to support educational standards and classroom curriculum.

Media included in these collections can range from everyday and popular material such as *The New York Times* and *Reason* magazine to peer-reviewed academic journals such as the *New England Journal of Medicine*. It may also include videos, images, and other media. The aggregator or online database company indexes this media to make it searchable and accessible to its users.

Schools purchase subscriptions to this material. With such a subscription, schools and school librarians provide access for patrons to a variety of materials that would be prohibitively expensive if they were purchased separately, and students have access to materials not available on the open web that can be used for research.

- **Curation:** Curation seeks to select the best or most appropriate materials for presentation, distribution, or publication. Art galleries, for example, curate (or choose) the paintings that they want to highlight for their upcoming exhibit.

Publishers, aggregators, reviewers, and librarians all participate in the curation process for school library materials.

- Reputable publishers and licensed educational publishers use State and National Guidelines to write textbooks and produce fact-based materials designed for the K-12 market. They are often the first line of curation as they choose authors, topics, and other materials to create their offerings.
- Aggregators, such as online subscription database companies, purchase from a wide swath of materials to create separate K-12 offerings that can be purchased by grade level, subject, or other criteria. Indexing provides access to the material via keywords or other search terms.
- Professional reviewers provide information and reviews that are less biased than descriptions that the publisher might provide thus allowing schools and certified school librarians to make decisions and curate electronic resources that fit their patrons.
- **Information:** “knowledge gained through study, communication, research, instruction, etc.; factual data” (“Information”).
- **Misinformation:** “false information that is spread, regardless of whether there is intent to mislead” (“Misinformation”).
- **Disinformation:** “deliberately misleading or biased information; manipulated narrative or facts; propaganda” (“Disinformation”).
- **Filter:** “software that screens and blocks online content that include particular words or images” (Clark).
- **Over filtering:** Over-filtering is a common way to discuss the ways software filters may restrict access to materials not deemed pornographic, obscene, or harmful to minors and that are supportive of children’s information needs including school curriculum. Filters can be controlled by district policies approved and directed by school boards; and if the mechanism for filtering the content (see definition of “stop words” below) or the filtering setting is not reflective of curricular standards, legitimate resources will not be accessible to students.
- **Least restrictive:** Least restrictive access refers to filters installed as a requirement of CIPA. Filters should be set so that students may access curricular material related to standards including Health. Under CIPA guidelines communities can determine the level of filtering, but CIPA requires a filter be installed and good faith effort on the part of schools receiving e-rate to filter for material (a) obscene; (b) child pornography; or (c) harmful to minors (Children’s Internet Protection Act (CIPA)).
- **Obscenity:** The Miller Test,<sup>2</sup> which is the legal test from which one can determine whether an expression constitutes an obscenity, defines obscenity by applying the answers to these questions:
  - “whether the average person applying contemporary community standards<sup>3</sup> would find the work, taken as a whole, appeals to the prurient interest;
  - whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law;

- whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value” (Hudson).
- **Harmful to minors:** The term “harmful to minors” refers to any picture, image, graphic image file, or other visual depiction that
  - “taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;
  - depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals;
  - and taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors” (“47 USC § 254”)⁴.

The U.S. Dept of Justice also notes that⁵: “Federal law strictly prohibits the distribution of obscene matter to minors. Any transfer or attempt to transfer such material to a minor under the age of 16, including over the Internet, is punishable under federal law” (“Obscenity”).

- **Stop words:** an industry term for words such as articles, prepositions, and pronouns, that when typed into the search bar, are not searched by the database or search engine. The search engine has been programmed to ignore this word or phrase. A comparable example can be shown in the way that Google does not search the word “the” within search phrases. Doing so, brings up far too many possible results (“hits”) with that word. Ebsco Connect explains that “the primary reason for not indexing stop words is to allow for the most precise Result List” (“What Are Stop”). In K-12 educational databases “stop words” might include words and phrases that could be considered obscene under the Miller Test, or with other criteria as determined by vendors. For example: a search on <sexual harassment> may only search for <harassment>.

For the purposes of this paper there are three levels of stop words:

- Search efficiency stop words - words such as articles, pronouns, and prepositions that impede the efficiency of a search such as “the,” “a,” or “however.”
- Obscenities such as slang words that would not be appropriate in a business or school setting.
- Informationally appropriate terms that are scientifically accurate or common terms recognized by community standards such as “sexual” in the example above, or appropriate scientific terms for body parts such as “breast.” **This paper concerns itself with how to recognize the problem of using the technology reserved for removing stop words to filter out informationally appropriate words that could impede a student’s research.**
- **Policies**

**Collection development policies** outline the scope and intent of the collection to be created. In a school library, this includes materials designed for curricular support as well as recreational and personal interest reading.

**Challenge policies** include the steps necessary to ask for reconsideration and/or removal of material from a school library.

- **Voluntary Inquiry:** School libraries are generally considered places of *voluntary inquiry*. Pico v. Island Trees<sup>6</sup> makes the distinction between “the compulsory environment of the classroom” and “the school library and the regime of voluntary inquiry that there holds sway” (“Board of Education”). Voluntary Inquiry means that the school library can and must contain broader materials that speak to their students’ interests so students may pursue their own paths of inquiry into topics such as the women’s rights movement and sexual harassment laws in a history course, or the impact of redlining in an economics class.
- **Request for Proposal (RFP):** *Library Technology Reports* explains that “the request for proposal (RFP) is the heart of a library system purchase and represents a coordinated effort between members of the library staff to develop a coherent statement of the library’s mission, needs, and expectations” (Waller). Purchasing products using an RFP encourages competition among vendors. It also acts as a guide for the library and vendor to work together under the same agreed-upon requirements and timeframe as outlined by the RFP.

## Background

School librarians purchase materials that support ongoing curriculum and content growth as well as provide reading materials to foster literacy, research skills, and encourage critical thinking. Historically, these have been encyclopedias, books, manuscripts, and other printed materials. As technology increased, libraries included media in the form of images, movies, audiotapes, and more, into their collections. Today, this content is increasingly provided through online subscription content and most often through aggregated resources that increase the amount of information crossing media boundaries and bringing content in from an increasingly smaller world.

Three providers of online subscription material available to K-12 school libraries: EBSCO, Gale Cengage and ProQuest are examples of large aggregators who provide materials across grade levels. Their resources are available as ‘leveled’ in that they compile grade-identified materials targeted to specific elementary, middle, or high school audiences. Students can move between the levels to gain more specific information as well as locating a comfortable reading level for understanding. There are many more companies providing subscription collections, for instance, some targeting specific elementary audiences while others provide more academic materials for high school.

Even as schools build collections for faculty and students, the reality is that students can access a wide-ranging array of information venues both within and outside of the school environment. This ability drives the educational imperative to teach research skills that instruct in locating, accessing, critically evaluating, and ethically creating information. In the K-12 educational environment, professional school librarians are the best-placed educators to provide this instruction in collaboration with their classroom colleagues.

Throughout this paper, the term: “library” refers to K-12 school libraries and the materials they provide to their site’s students, faculty, staff, and administration. School libraries include materials that meet the information needs of students whether that need is for schoolwork or personal interest. Students completing classroom assignments such as History Day or Science Fair projects, or other research topics within the curriculum where there is student choice, need to access a wide variety of topics often requiring deep dives across varying perspectives, historical investigations and new ideas. As educational standards encourage developing research skills within disciplines, school libraries provide the materials necessary to support developmentally appropriate student information needs. Personal inquiry, which includes both curricular and extracurricular information needs, requires a large body of informational resources to satisfy those student information needs. The materials available through online content referenced in this paper may be accessed through public libraries; however, the scope of this paper focuses on online content intentionally created for and provided to K-12 students and provided through school libraries.

### Existing Federal Laws Apply to School Libraries

The following federal laws are relevant to school libraries and any discussion related to online subscription content.

- **CIPA**<sup>7</sup>: “The Children’s Internet Protection Act (CIPA) was enacted by Congress in 2000 to address concerns about children’s access to obscene or harmful content over the Internet. CIPA imposes certain requirements on schools and libraries that receive discounts for Internet access or internal connections through the E-rate program – a program that makes certain communications services and products more affordable for eligible schools and libraries. In early 2001, the FCC issued rules implementing CIPA and provided updates to those rules in 2011” (“Children’s Internet Protection Act (CIPA).” *FCC*).
- **COPPA**<sup>8</sup>: While the Children’s Online Privacy Protection Act (COPPA) is not particularly significant to online subscription content, it should be noted that in regards to the open web COPPA “imposes certain requirements on operators of websites or online services directed to children under 13 years of age, and on operators of other websites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age” (“Children’s Online Privacy Protection Rule”). Schools should be abiding by COPPA restrictions in how students engage with online materials.
- **FERPA**<sup>9</sup>: Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. Parents and students have the right to view and request correction of educational records. It is unclear if browsing history, library circulation, and database search records would be an educational record as they are transitory; however, records that are collected would be considered an educational record and subject to FERPA. In regard to concerns about content of online subscription material FERPA has limited applicability but in regard to state’s parents’ rights bills and access to students’ records it has some applicability (“Family Educational Rights and Privacy Act (FERPA)”).
- **ESSA**<sup>10</sup>: Every Student Succeeds Act (ESSA<sup>11</sup>), signed into law in 2015, replaced the No Child Left Behind Act (NCLB) of 2002. Some of the provisions for stu-

dent success that it includes are: high academic standards for states to ensure that students are prepared to be successful in college and careers; assessments to track that progress; an expectation for interventions for low performing schools; and English language proficiency standards. This framework allows states more flexibility in setting their goals for student performance ("Every Student Succeeds Act (ESSA)").

- **Parents Rights:** U.S. Code 1232H<sup>12</sup> allows parents to inspect instructional materials. "The term "instructional material" means "instructional content that is provided to a student, regardless of its format, including printed or representational materials, audiovisual materials, and materials in electronic or digital formats (such as materials accessible through the Internet)" ("20 U.S. Code § 1232h").
- **Title VI<sup>13</sup>:** The Civil Rights Act of 1964 states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" ("Title VI"). Restricting access to information that addresses content related to race, color or national origin suggests exclusion from participation
- **Title IX<sup>14</sup>:** Title IX states "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance" ("Title IX"). Restricting access to information related to sex or gender specific concerns may indicate exclusion.

## Relevant Court Decisions

- *Tinker v. Des Moines*<sup>15</sup>
- *Pico v. Island Trees*

In 1969 the Supreme Court ruled that students did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker*). Students could engage in free speech activities if they did not cause a significant disruption or impinge on the rights of others. Through a number of other cases, the Court has provided further guidance related to school newspapers, assemblies, school-sponsored but off-campus events, and social media, and therefore public speech related to school activities and the school community. However, as Catherine E. Ferri points out that "while the Supreme Court has offered a number of interpretations of the public school student's right to speech, the Court has offered only one interpretation of a student's right to read."

In 1982 *Pico v. Island Trees* was decided with a plurality. The essential ruling was that schools could not remove books from the school library because they did not like the ideas or to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" ("Board of Education"). As a plurality decision the Court left unclear what is meant by educational suitability (*Ferri*). Thus, an argument regarding what is suitable for youth is inherent in all attempts to control and manage student's right to information including through online subscription content.

Justice White's concurrence remanded the case without addressing the First Amendment merits, leaving the plurality opinion without binding authority. This lack of clar-

ity opened the door for further debate on the extent of students' rights to access library materials, particularly when decisions are framed as curricular or related to age appropriateness.

Subsequent cases have referenced *Pico*, but its plurality opinion has often been treated as persuasive rather than binding. For instance, in *ACLU v. Miami-Dade County School Board* (2009), the 11th Circuit rejected the use of *Pico* as precedent, arguing that school boards should have broad discretion in both selecting and removing library materials, citing Justice O'Connor's dissent in *Pico* ("Supreme Court"). Likewise, the 5th Circuit acknowledged the persuasive authority of *Pico* in *Campbell v. St. Tammany Parish School Board* (1995), though it did not apply the plurality opinion to the book removal in question. Both cases underscore the challenges of relying on legal avenues to protect students' access to information ("Notable").

These cases highlight the complexity of book removal processes, often involving lengthy reconsideration and appeal structures. Final decisions are often made by politically driven rather than expert bodies.

To date, there has never been a case that directly applies the rulings in *Pico* or *Tinker* to the removal or restriction of access to online databases in school libraries. As digital resources have become more integral to modern education, the question of how these rulings might apply to online collections remains unresolved. The legal framework for students' First Amendment rights and access to information has yet to fully address the unique challenges posed by digital platforms, subscription-based content, and online databases used in school libraries. This evolving area of concern leaves important gaps in the legal protections for students' right to access information in the digital age.

Ultimately, while *Pico* suggests limits on the ability of schools to remove books based solely on ideology, the decision's lack of precedential weight has left room for varying interpretations across the country. The result is that students' right to read and receive information remains subject to ongoing legal and political challenges, with significant variations in outcomes based on local contexts. *Tinker*, on the other hand, established a clear precedent affirming students' rights to free speech within schools, but it primarily focuses on students' ability to express themselves rather than their right to access information. *Tinker* does not directly address the availability of content in school libraries or the digital realm, leaving a gap in how the decision is applied to the evolving ways students seek and receive information today. While *Tinker* empowers students to voice their views without undue interference, it does not fully resolve the broader issues of censorship, access, and control over educational resources, particularly in school libraries and online databases.

## Federal Frameworks in Education

Standards, Frameworks, and Curriculum guidelines are the scaffolds upon which teachers design lessons, activities, and units of instruction. These guidelines assist teachers by providing the ideas, skills, and learning goals that students should meet by the end of each school year. It is important to note that the materials chosen for school libraries, be they print, e-books, databases, or other online content, are deeply woven into the texture of the classroom curriculum and the standards they cover.

All State and National Content Standards and Frameworks encourage teachers to provide a learning environment that allows students to access and evaluate information, integrate that information using critical thinking and analysis, and then display their new knowledge in a way that demonstrates understanding. Reading widely, across many genres, from many perspectives supports student growth so that upon graduation, they are college and career ready.

Library materials (including online subscription content), with library instruction, provide students with the skills necessary to complete these tasks.

## Problem Statement

Despite generally held cultural beliefs that anything can be found via Google, this is not exactly the case. The open web does not allow access to a wide variety of material that supports learning and inquiry. For instance, many news agencies have restricted access to their articles behind a subscription paywall, academic articles from peer-reviewed journals have never been freely accessible to students, and historical documents may often be digitized only in a subscription digital collection.

To provide students and teachers with access to information that supports their teaching and learning, libraries provide online content through databases that have access to materials that may not be available freely online or discoverable in simple searches. This material is at the core of information access that supports personal and academic inquiry. Several states have standards or requirements in the curriculum to teach digital, media, and/or information literacy skills to address misinformation and disinformation and to provide equitable and inclusive access to materials. Restricting access or requiring that vendors participate in creating content suppression through the use of stop words, over-filtering, or other methods is a form of censorship that impacts the capacity of teachers to teach the digital, media or information literacy standards that are required through state standards and curriculum. If online subscription content vendors overly restrict their content based on legislation for one state, it could have repercussions in another state by limiting access to the information they need to teach to their standards.

Censorship is defined as “to suppress or delete as objectionable” (“Censor”). Censorship has been a part of human history for centuries. While in the past, it was possible to physically remove printed or artistic materials from view, it is less so today. The Internet is ubiquitous, flowing into all aspects of life and providing a consistent source of information across a wide span of venues. Librarians work to curate effective, inclusive collections across a wide variety of media and print materials that meet the needs of their diverse clientele.

An online subscription vendor’s primary role involves compiling collections of educationally suitable sources and publications for our teachers and our students. The wide variety of materials available is beyond what a single school library collection can offer and maximizes access to information for students. In some online content subscription services vendors have decided on a collection of materials that meet a curricular or subject area focus, highlighting resources that speak directly to this focus. Materials in online subscription resources cover a wide swath of perspectives, authority, reliability and sourcing, following their educational guidelines, and goals. By capturing this wide array of materials, students have access to these differing perspectives and authority. In the process of using them, students learn how to critically analyze the material for usefulness to their task.

Moreover, the digital age, amplified by the COVID-19 pandemic, underscores the essential role of school librarians in teaching students to navigate a complex information environment. In order to be effective teachers, school librarians enrich the digital landscape for educational purposes. Ethical content curation involves attributing sources correctly, respecting copyright, evaluating the source of the information, and ensuring our collections offer a wide range of perspectives. By adhering to these principles, we not only uphold the integrity of our profession but also enrich the educational experience with diverse and mean-

ingful content. As experts in information management, including curation, school librarians use online subscription content to teach students how to navigate digital landscapes so that they are independent curators and users of information.

In 2022, Oklahoma passed a significant piece of legislation that exemplifies the challenges and potential dangers facing educators and librarians in the context of curating educational content. This act, known as H3702 (2022), mandates the implementation of technology protection measures for digital or online library databases accessible to K-12th grade students. These measures are mandated to block access to obscene material. Notably, the act stipulates that if a provider of online library resources fails to comply with these requirements, the state entity is obligated to withhold payment to the provider. Furthermore, the legislation removes certain exemptions from prosecution under specific indecent exposure laws, potentially subjecting educators and librarians to legal consequences for what might be considered willful violations (Oklahoma).

The bill's sponsor argued that the legislation is aimed at protecting young people from exposure to inappropriate materials. However, during testimony before the Judiciary and Education committees, the sponsor notably omitted any discussion on how the bill could lead to the criminalization of educators and librarians. Despite the significant implications of H3702, it received scant media attention. The provisions that could lead to the prosecution of educators and librarians for exposing students to what might be deemed obscene materials were largely overlooked.

During the Education Committee hearing, three senators voiced their opposition to the bill, yet their concerns, especially regarding the prosecution aspect for exposure to obscene materials, didn't garner much attention. The public's inability to testify publicly at committee hearings in Oklahoma, and the fact that the Education Committee received no written testimony opposing the bill suggested a lack of public engagement and awareness about the legislation's potential impact.

Legislation passed or currently in the middle of the process across the country has highlighted the precarious situation that educators and librarians find themselves in, caught between the necessity of providing comprehensive, diverse educational resources and the increasing legislative efforts to restrict access to content under the guise of protecting minors. It underscores the broader implications of such legislative actions on educational freedom, intellectual freedom, and the essential role of school libraries as centers of free exploration and voluntary inquiry. Several of these bills also remove provisions protecting librarians and other educators from prosecution. These bills put librarians in a perilous position. If passed, they would criminalize librarians for allowing materials that certain people view as obscene, but that law and Constitutional standards would not consider obscene.

The fact is that publishers in the United States are not publishing K-12 educational content that is obscene or harmful. Subscription based online content aggregators do not seek harmful or obscene materials to supplement their offering. School librarians and educators

are not imposing harmful materials on students. Yet even with strict laws in place to prevent children from being exposed to harmful materials, lawmakers across the country are filing bills that ban books that they are labeling as obscene.

In light of these challenges, a profound concern arises regarding the broader implications of legislative actions that restrict or impede access to school library online subscription content. The potential for censorship extends far beyond the confines of educational institutions. It threatens the core of free speech principles and the exchange of ideas. By equating discomfort with obscenity, these bills risk creating a culture of fear among educators and librarians. The role of libraries as sanctuaries of free exploration and knowledge is jeopardized, casting a chilling effect on the presence of diverse voices and perspectives in our collections. It is important to recognize the slippery slope that these legislative actions represent and to consider the long-term consequences for educational freedom and intellectual diversity. The need for dialogue and understanding in addressing concerns about content is more crucial than ever to ensure that the pursuit of safeguarding minors does not inadvertently undermine the foundational principles of a democratic society.

As stated in the Library Bill of Rights<sup>16</sup>: “Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.” A diverse collection should contain content by and about a wide array of people and cultures to authentically reflect a variety of ideas, information, stories, and experiences. This statement is consistent with educational standards and the basis of any democracy: an informed citizenry.

Furthermore, while U.S. Code 1232H provides parents the right to review instructional materials; what the code does not do is allow a parent to demand material be restricted from all students. Additionally, the school library has a different mission than the classroom as acknowledged by the Supreme Court. In *Pico v. Island Trees* the Court ruled that School Boards “might rightfully claim absolute discretion in matters of curriculum by reliance upon their duty to inculcate community values in schools, petitioners' reliance upon that duty is misplaced where they attempt to extend their claim of absolute discretion beyond the compulsory environment of the classroom into **the school library and the regime of voluntary inquiry** [emphasis added by authors] that there holds sway” (“Board of Education”). In other words, while parents have the right to restrict their own child from access, that right does not extend to restricting access for all children at the school.

Efforts to curtail or prevent access to subscription services that provide a collection of media resources have two specific impacts; one is practical in that school libraries would be unable to provide the sheer number of resources from local and national newspapers, to the *Economist*, to the *Journal of American Medical Association* without prohibitive cost, and one more theoretical in that student ability to engage in the democratic endeavor of learning, voluntary inquiry and critical thinking would be severely compromised.

While the above are actions designed to limit information access to all students through their access to print and/or online materials, it is important to note that more and more schools do not have credentialed librarians—professionals specifically educated to teach the critical skills of inquiry, research, online safety, and information literacy—in their schools. While this White Paper is not directed to solving staffing concerns, it is noted that curation of library collections is best completed by professionals who understand the pedagogy and developmental readiness that underscores collection development. Additionally, professional school librarians can instruct students in learning to use online resources to meet information

needs in a safe and ethical manner that meets the curricular standards of the state, which can also be more effective than technical tools such as those employed to stop words in search in preventing accidental or unwanted exposure to materials that are obscene and harmful to minors.

### Literacy, Access, Information, and Privacy

As the Court ruled in *Pico v. Island Trees*, school libraries are places for voluntary inquiry and students have first amendment right to read, resting on the court's *Tinker v. Des Moines* decision that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Removal, or censorship, of material cannot be based on a desire to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" as decided in *West Virginia Board of Education v. Barnett*.<sup>17</sup>

Censorship, by restricting access, distorts students' knowledge and preparedness by directly filtering out information that rounds out an idea, provides needed data, or gives an alternative perspective or theory. This impacts a student's college and career readiness as well as their role as democratic citizens. When censorship occurs at the statewide level through restricting access to databases or materials therein it creates inequities between states and the young people who are citizens of the states, both singular and United. Additionally online subscription content supports curriculum and state educational standards. Reducing access to this content inhibits teachers' capacity to fully engage educational standards, and students' capacity for deep understanding of core content, including social science, science, arts, health, and the skills required in English Language Arts standards related to reading and writing.

Intellectual freedom should be the standard for all students. Preventing schools from having and providing access to online subscription content harms the most vulnerable students. Students served by the public school system who are socioeconomically disadvantaged, underrepresented in school materials and staffing, and whose parents have not had the higher education opportunities as others are most impacted by content suppression, which can inhibit their capacity to prepare for college and therefore their success rates.

Censorship is often a reflection of fears and/or political ideologies rather than actual student behaviors and teaching methods. Evidence does not support fears related to accessing pornography within databases as vendors have worked with school librarians and parents to close potential loopholes and remain compliant with both state laws and CIPA. Furthermore, evidence does not indicate students are accessing online subscription content to engage in material that is harmful to minors or radicalizing in political ideology (LaRue; "EBSCO Monitoring"). Suggestions that the principles of access to information have led to unrestricted access or pornography are misleading at best. The role of the federal e-rate in school funding means schools do not have unrestricted access to the open web, which would be a violation of CIPA. Schools have filtering technology installed on computers and require student and parent signatures onto an Acceptable Use Policy document that outlines the safe, acceptable and responsible online behavior by students. Schools and teachers are conscious of their responsibility to avoid the use and promotion of material deemed harmful to minors and obscenity under the Miller Test. They do not intentionally provide obscene materials. Searches that have allegedly led to sites that were considered to be obscene have not been successfully replicated by expert searchers. Furthermore, online subscription content vendors have been quick to respond technically to unintended loopholes that allowed access on

school computers to websites that bypassed filters (“EBSCO Monitoring”). In limiting further access, students are unable to reach resources that meet content standards.

A more productive route to literacy skills related to research is through professional school librarians. While School Librarians provide instruction in media literacy and information skills, they are also the experts in developing collections that support the curricular as well as independent reading needs of their school communities. Collection development in the school library is the professional practice of curating information-rich materials that are fact-based and authoritative, and includes consideration of curriculum and content standards and frameworks approved by State Boards of Education. The purpose of these materials is to provide engaging resources that support student ability to construct knowledge, develop critical thinking skills, and share their new knowledge with others.

By developing relationships with vendors to ensure the best and most ethical use of funds that will support the diverse community they serve, professional librarians include purchasing decisions that are based on curricular needs and community standards, with a goal of developing a wide-ranging array of resources that serve ALL students' information needs. In doing so, collection development practices center inclusive information sources across wide ranging topics and subject areas.

School librarians recognize the balance in supporting student information needs, intellectual growth, and right to privacy while also supporting parental concerns and rights regarding their own children. They are beholden to upholding laws and policies such as CIPA, FERPA, and state laws, and are cognizant of those laws. Therefore, they work with district personnel, community members and parents to create a rich, ongoing dialog that encourages information exploration and engaging reading. The foundational value of information access emphasizes that all students and faculty have equal and ease of access to all materials in the library. These values and responsibilities guide professional practice to ensure students are well-prepared for college and careers.

The amount of available resources provided through the state purchases of online content makes singular assessment of each independent element (news article, journal article, encyclopedic entry) difficult. Databases and other online subscription content do not make political or pejorative judgments in negotiating contracts for media inclusion. They also take into account state standards and age appropriateness, which is why you can find a variety of viewpoints within any database. This is necessary when serving public school populations of diverse families. However, any required content suppression limits the capacity of professionals and families to meet the information needs of families and is not representative of a whole community. It limits students' capacity to prepare on a national level for college or to engage in the debates of an informed citizenry, a foundational democratic principle.

## Conclusion

All students in the United States K-12 schools should have access to high-quality materials and instruction that are based on strong educational pedagogy and led by the school librarian in partnership with the classroom teacher in a manner that supports effective use.

Some of the values that are expected from K-12 schools include graduating students who:

- care about democracy and are able to make informed choices.
- care about factual evidence and will search for reliable sources to obtain it.

- enter the workforce informed, able to work with others, and able to collect, decode, and use information.

As a diverse culture with many perspectives, equity is an important factor in creating a school library collection. It is important to respect and value the diversity of our communities by inclusion of materials that represent a wide range of ideas, locations, characters, histories, viewpoints and stories. While some may cover topics that offend or otherwise make a reader uncomfortable, it is a part of the wider conversation that allows students to not only choose which material to read, but which material to not read.

## Policy Suggestions

### **Response to current policy**

- Recognize that these legislative proposals are based on false claims and are a threat to modern American education. Take action with librarians, to build strong policies (such as collection development and materials challenge policies) at the state level to protect against these threats.
- Create transparency in State Requests for Proposal (RFPs) from vendors. Requests for proposal should be available for review by parents, School Boards, and School Personnel. Transparency allows for stakeholders to gain awareness of potential content control measures which allows local education agencies to meet community needs and provide the widest range of curricular and standards aligned resources to a diverse community.
- Advocate that selection of material committees at the local level should be made up of a variety of community and education members and include professional school librarian(s). The RFPs and selection of statewide online subscription content should include input from certified experts in curricular and inquiry materials that are aligned to research standards. Professional school librarians have insight into all grades and subject area needs as well as search expertise that will contribute to selecting the highest quality materials. District and School administration must commit to supporting a range of resources that are educational-standards compliant and respect wide ranging diverse perspectives.
- Provide transparency in the decisions that Local Education Agencies (LEA) make regarding local content control measures by providing a public accounting of those decisions and the processes used to make them.
- Create a diverse Challenge Committee made up of librarians, teachers, parents, community members, administrators and students in order to avoid having challenges addressed only by administrators.

### **Establishing proactive policy**

- Establish policies with state and local education agencies, along with vendor input, that guard against over-filtering at all points of filter (ie: at vendor, district, school level) and that provide the least restrictive filters necessary to provide both safety and educational information.

- Organize legislative and local commitment to a range of accessible resources across all grade levels and subject areas. Reliable and consistent funding is needed to develop and maintain diverse, equitable, and engaging library resources.
- Commit to a range of resources that are educational-standards compliant and respect wide ranging diverse perspectives.
- Hire full time school librarians and support staff to instruct students in media and information literacy, collaborate with classroom colleagues, and develop programs that encourage critical thinking and active citizenry.
- Partner with national organizations such EveryLibrary and ALA to create legislation using a cohesive voice that supports the efforts to provide online database resources to all schools using a committee approach that includes professional librarians and other experts in curriculum and inquiry materials (Blair, et al).

## Endnotes

- 1 <https://sites.ed.gov/idea/regs/b/a/300.28#:~:text=Local%20educational%20agency%20or%20LEA,school%20district%2C%20or%20other%20political>
- 2 <https://www.mtsu.edu/first-amendment/article/401/miller-v-california>
- 3 <https://mtsu.edu/first-amendment/article/901/community-standards>
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