



Policy Brief

Weathering the Attacks on State Library Database Contracts

A Review of Anti-Access Legislation Targeting School Library Databases During the 2021–2022 Legislative Session

by Megan Blair, Peter Bromberg,
and John Chrastka – October 2022



**EVERYLIBRARY
INSTITUTE NFP**

Table of Contents

01	—	Introduction
03	—	Characteristics of Legislation Against School Library Databases
05	—	Round-Up of 2021-2022 Legislation Against School Library Databases
08	—	A History of Attacks on School Library Databases
12	—	Arguments Against This Type of Legislation
13	—	Policy Considerations When Opposing Anti-Access Legislation
17	—	Policy Recommendations for State Libraries and Education Agencies
19	—	Writing Proactive Legislation to Support Access to School Library Databases

Introduction

State Library Agencies provide a variety of educational resources to school libraries and public libraries in many states through state-level contracts for library databases, e-book libraries, and other educational resources. Often, these state library database collections form the core offerings for schools that cannot otherwise afford a locally funded library resource. Likewise, public library collections are sometimes supplemented in certain places by these state-acquired educational library databases and e-book collections.

These school library databases include, but are not limited to, research databases, encyclopedias, e-books and audiobooks, magazines, newspapers, periodicals, and scholarly journals. The offerings are curated and aggregated in age-relevant and topic-specific collections by publishers and IP holders by vendors such as EBSCO, Gale, JSTOR, and ProQuest. These vendors employ professional editors, content experts, and librarians along with their technical staff. Some library databases can be accessed online when authenticated by a defined IP address range, while others require a password or other validation (like a library card number) for use. State libraries likewise employ professional librarians to evaluate further offerings based on grade level, topic, and relevance and to maintain the integrity of the contracts between the state agency and the vendor(s).

Librarians, editors, and content curators are most capable of determining what content should be offered in educational databases and made available to students and library patrons. Librarians have a Master of Library Science degree or a Master of Library and Information Science degree. School librarians require a library certification in addition to their teaching credentials and are most in touch with curriculum standards. They, therefore, have the skills and knowledge to serve best patrons seeking library materials.

In recent years, school library databases acquired by State Libraries have been under attack by anti-access parental rights groups around the country. These anti-access groups focus on school library databases because they claim that these educational resources contain “harmful materials” such as pornography, obscenity, or content about sex and sexuality. The attacks have escalated from attempts to censor or shut off access to content in local school districts to lawsuits against statewide library consortia to proposing and enacting regressive legislation that over-regulates or curtails access for students and their families.

The central claim that school library databases and e-book collections contain information that is harmful to minors has no basis in fact. Databases and e-book libraries consist mainly of information from mainstream educational and trade publishers. This content is selected and curated to support academic standards and student research and learning needs. Finally, these databases are selected by professional librarians at the state library and local school districts who have direct knowledge of state and local education standards. At every point in the curation, selection, and procurement process, all parties strictly follow existing federal and state laws that prohibit obscenity and provide robust internet and search protections. The result is high-quality, vetted content that supports educational standards and curricula with age-relevant and subject-specific content.

Allegations that a school library database or e-book collection is a source of harm or peril to students are false. Legislative and legal attacks against school library databases are tactics to undermine our libraries and our public education system. In recent years, parental rights in education and parental concerns over education have become important political topics. Parents should, of course, be involved in their child’s education. That said, individual parents should not be able to ban materials for all students simply because these materials go against their personal views. These so-called parental rights watchdogs and sexual morality groups are seeking to impose their beliefs on public school students by limiting the educational materials available to them through their state libraries and educational agencies.

When proposing anti-access legislation or making allegations against school library databases and e-book collection, groups often claim that materials are inappropriate for an age range or inappropriate for all students, usually because the content deals with sex, sexuality, or gender. There is a significant difference between one parent's perspective that certain content may be inappropriate for their own child and a sweeping assertion that content is inappropriate for all students. It is troubling to note that the sponsors of anti-access legislation, other legislative champions, watchdogs and advocates, and so-called concerned parents often hold anti-LGBTQ+ views. Their biases are evident in their testimony and public statements.

Characteristics of Legislation Against School Library Databases

To this point, the 2021-2022 legislative season has seen six bills and one resolution filed in state legislatures around the country that are intended to limit access to school library databases and other educational materials and resources. Some bills refer to “digital and online library databases,” and others refer to “digital and online library resources.” Many of these bills use similar language, and there is little doubt that more copycat bills will continue to crop up. In every case, there appears to be an assumption or allegation that school library databases contain content that is harmful to minors and that this content is easily found.

Common themes across the seven legislative initiatives include:

- Database vendors must filter and block access to obscene materials.
- Failure to prevent access to harmful materials will lead to a termination of the contract with the vendor.
- Individuals may file civil action if violations occur.

Libraries subscribe to databases so they can provide a wide range of information to students and patrons. Libraries and schools typically provide access to databases for grade levels or age groups. For example, a third-grade student will not have access to the same materials as a junior in high school would. Database aggregators provide materials that represent multiple perspectives but do not promote or endorse any viewpoint over another. Database providers such as EBSCO, Gale, JSTOR, and ProQuest distribute materials that have been published by mainstream publishers, and these publishing companies simply do not publish obscene materials.

At first glance, bills that seek to safeguard students and protect them from harmful materials in school library databases may appear reasonable. No one wants children accessing obscene materials. Yet, the fact of the matter is that obscene materials do not exist in school library databases. State libraries and state education agencies are not contracting with database aggregators to put pornographic, obscene, or harmful materials in front of students. At best, these attacks on school library databases are misleading and disingenuous. At worst, they intentionally seek to criminalize the content and the librarians who curate.

Legitimate complaints or concerns about the appropriateness or relevance of content should be taken seriously. Almost all Libraries or school boards already have effective policies and systems in place to handle complaints or challenges. Libraries have formal review processes in place to allow for public input and challenges regarding the age-appropriateness of content while also protecting intellectual freedom and the rights of all patrons and students to access constitutionally protected information. Database providers also have systems in place to ensure their materials are age appropriate. For example, EBSCO audited its own content selection processes beginning in 2017 and has implemented policy and process improvements restricting content that is not educationally and/or developmentally appropriate in resources intended for schools. All of EBSCO's content that is available in its database is openly listed on its website to ensure complete transparency.

Round-Up of 2021-2022 Legislation Against School Library Databases

During the 2021-2022 legislative season, EveryLibrary identified and tracked bills and resolutions in seven states that would limit access to educational databases, encourage over-filtering, impose new restrictive search practices, and provide penalties on vendors for non-compliance. Four actions died at the end of the session, and three were passed and signed into law.

Minnesota – Died at End of Session

HF467/SF1016 (2021) – Relating to education; establishing provisions for digital and online library database resources for students; requiring a report; proposing coding for new law in

Minnesota Statutes, Chapter 134.

Introduced 1/28/21 and referred to the Education Policy Committee.

Nebraska – Died at End of Session

LB1213 (2022) – Create requirements regarding access to digital and online resources provided by school districts, schools, and the Nebraska Library Commission for students.

1/20/22 Introduced

1/24/22 Referred to Judiciary Committee

2/9/22 Public Hearing

3/16/22 Amendment discussed but not moved

4/20/22 Indefinitely Postponed

Oklahoma – Passed

HB3702 (2022) – An Act providing for digital or online library database resources to be offered to certain students under certain conditions; requiring safety policies and technology protection measures for resources; directing withholding of payments to noncompliant vendor; providing for breach of contract based on noncompliance; requiring submission of certain annual report; prohibiting certain employees from being exempt from prosecution for willful violations of certain indecent exposure law.

1/20/22 Introduced

2/8/22 Referred to Judiciary – Criminal

3/4/22 Passed in the House 87-0

3/29/22 Referred to Education Committee

4/27/22 Amended, Passed in the Senate 41-5

5/18/22 Signed by the Governor

Round-Up of 2021-2022 Legislation Against School Library Databases

Tennessee – Passed

HB2454/SB2292 (2022) – AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17 and Title 49, Chapter 1, relative to children. HB2454/SB2292 redefines "obscene" to include material that has educational value; makes various changes to the internet acceptable use policy LEAs are required to adopt; enacts requirements governing providers of digital and online resources; enacts and revises other related provisions.

2/1/22 Introduced

2/3/22 Referred to Education Administration

4/18/22 Passed in the House 74-17

4/21/22 Passed in the Senate 23-4

5/5/22 Signed by the Governor

Texas – Died at End of Session

HB1811 (2021) – An Act relating to the purchase of online library resources for primary and secondary schools by the Texas State Library and Archives Commission. HB1811 would end contracts with database providers that watchdog groups claim are distributing harmful materials.

03/11/2021 Referred to Culture, Recreation & Tourism

Utah – Passed

HB38 (2021) – School Technology Amendments that requires digital resources, provided by UETN to Utah's public schools, to block obscene or pornographic material. . Testimony for HB38 was mostly in support of the bill. However, a representative from the Utah Educational Library Media Association and from Utah Library Association spoke in opposition. There was some local media attention after the bill's passing.

1/19/21 Introduced

1/28/21 Referred to Judiciary Committee

2/17/21 Passed in the House

3/5/21 Passed in the Senate

3/16/21 Signed by the Governor

Continued: Round-Up of 2021-2022 Legislation Against School Library Databases

Hawaii - Legislative Resolution - Died at End of Session

In Hawaii, Rep. Gene Ward, the Republican Minority Leader state House of Representatives, introduced a resolution rather than a bill. He offered HR 109 (2021), "Urging the legislature to create a task force that will ensure the protection of child exploitation from online research database". This Resolution alleges that online research databases, including EBSCO, ProQuest, Gale, Explora, Academic OneFile, MAS Ultra, and MasterFile have "facilitated and attributed to the rapid ascent of online sexual exploitation in K-12 schools and libraries".

HR 109 called for the creation of a task force that will ensure that Hawaii a) Complies with the federal laws relating to the protection of child exploitation "from online research database companies such as EBSCO and Gale," b) "Establish guidelines for online research database companies used by K-12 schools to require removal of harmful sexual content and accessibility to pornographic websites"; And c) "ensure[s] these databases do not bypass Internet filters subject to CIPA and Section 230 (c)(1) of the CDA."

There do not appear to be publicly available statements from Rep. Ward regarding HR109. However, in a June 19, 2022, interview on KALO-TV "Faith in Politics" program, Rep. Ward discusses his concerns with another bill, HB 2125 (2022), that would protect school boards and school teachers from harassment (Rep. Ward was opposed). "Right now," he says, "We've got a bill that people need to know about that's HB 2125... if that passes, which I think it's gonna pass, it's gonna be extremely disappointing to me. It's really all those who are the mama bears watching out for the kids who don't wanna see critical race theory and who don't wanna see sex in other positions taught in school. They've got to show up so right now. HB 2125 is really a call for [our] community to participate."

The aim and intent of HR 109 appear to be consistent with his religious and social perspective that schools and libraries are sexualizing children, and that teaching about sexual health and identity places children in peril. The specific language used in HR 109 also appears to be unique to this resolution, especially the detailed listing of database providers and particular phrasings about federal laws. The resolution did not advance out of committee.



A History of Attacks on School Library Databases

This effort to limit or curtail access to school library databases was not new during the 2021-2022 legislative season, though it has increased in cadence and intensity. In 2018, the Utah Education Technology Network was forced to turn off access to the entire school library database collection it maintains because of unfounded complaints by anti-access activists. In this case, a self-described “concerned parent” made an unsubstantiated complaint that pornography was available in the database. Later reporting by local media uncovered the fact that the concerned parent was, in fact, a conservative blogger who had been writing about “the international database scandal,” saying, “Schools and libraries have been categorized by the United States as ‘safe places’ for children. Sadly, the majority of these safe places are exploiting children by spoon feeding them pornographic images, videos, and illicit sexual articles through databases.” She implored her readers to not only look at school library databases, but also investigate public libraries and colleges because it is “a lie” that the databases are safe.

Also in 2018, the Colorado Library Consortium (CLiC) and EBSCO were sued by the Thomas More Society, a national non-profit law firm [JC1] “dedicated to restoring respect in law for life, family, and religious liberty.” The suit was brought on behalf of a Colorado-based organization called Pornography is Not Education (PINES). The lawsuit claimed that EBSCO had content that was not just “pornographic” but also “obscene” and “harmful to minors” and that CLiC was actively disseminating this content to schools and libraries while knowing it to be inappropriate for minors. Before the lawsuit, PINES activists had threatened legal action against Cherry Creek (CO) School District. They forced a decision there to remove educational material from its schools, including several thousand magazines, newspapers, and other forms of electronic research resources. The judge dismissed the lawsuit in March 2019 with prejudice because the allegations against the library groups were unfounded and unproven.

In 2020, efforts to criminalize school library databases took an unfortunate step forward during the legislative session in Idaho. HB522 established new restrictive digital and online library resources provisions and was signed into law.

HB522 requires that school districts and public charter schools that offer digital or online library resources must have safety policies and technology protection measures that “Prohibit and prevent a user of the resource from sending, receiving, viewing, or downloading materials that are deemed to be harmful to minors, as defined by section 18-1514, Idaho Code”, and “Filter or block access to obscene materials, materials harmful to minors, and materials that depict the sexual exploitation of a minor, as defined in chapter 15, title 18, Idaho Code.” Section 18-1514 is the portion of the Idaho criminal code that defines obscenity, including the definition of “material” as “anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.” HB522 also created penalties for digital and online library resource vendors who fail to comply with the requirements to prohibit access to obscene materials. Penalties include withholding payment and voiding contracts.

For at least a decade, the State of Idaho has required local schools to have an Internet Use Policy (see 31-132), which requires substantially the same protections, filters, and restrictions as HB522 instituted in 2020. The statewide online database, called Libraries Linking Idaho (LILI.org), includes K-12 age-relevant educational materials like World Book, Consumer Reports, and Explora. So, what has changed in the last ten years that compelled the legislature to act? What changed – and what compelled the legislature to act – was that an emerging, active, and empowered social and political movement focused on parental concerns and parental control chose a new target for its political activities.

The minutes from the Idaho House Education Committee meeting in which the bill was discussed provide some insight into how the bill came about. The bill sponsor indicated that the databases are not on the web and therefore need protections beyond 31-132. This statement was made despite the witness’s example of the state library’s educational database being entirely online. During the hearing, a Protect Child Health Coalition member claimed that numerous articles found on library databases contained obscene materials. The PCHC is an Idaho-based so-called parents’ rights organization aimed at “Stopping the indoctrination and sexualization of children of all ages through widespread school- and community-based Comprehensive Sexuality Education programs.”

The PCHC is also committed to repealing obscenity exemption laws that currently protect educators – including school librarians – from prosecution over obscenity. A member of an organization called Citizens for Decency, an Idaho non-profit that “inform, educate, and advocate against pornographic materials”, also spoke in support of the bill. No one from the library sector spoke in opposition, and no one else present spoke in opposition.

In 2020, HB522 was a solution in search of a problem. It is important to note that HB522 requires that the state library file a report to the Governor, the Senate, and the House Education Committees “on any issues related to provider compliance with technology protection measures required” by HB522. These reporting provisions in the law create a kind of legislative allegation or statutory assumption that nefarious, illegal, or harmful materials are present in digital or online library resources or that educational vendors are attempting to circumvent existing statutes about internet safety, or that the librarians are somehow negligent in allowing harmful materials to be put in front of children. Unfortunately, this legislation has inspired and guided the development of other socially charged legislation targeting school library and state library databases in subsequent sessions.

In the 2021–2022 session in Nebraska, LB1213 was a stark example of a bill that seeks to scare parents and enact state-sponsored censorship. LB1213, which, as noted above, failed on April 20, 2022, is substantially like those filed in other states that attack library databases. LB1213 would require education research database providers to filter and block obscene materials to minors as defined by Nebraska statute. It gives a school and/or the Nebraska Library Commission the legal authority to end a contract if the provider does not remove the inappropriate content in sufficient time and in a sufficient way. And it establishes an annual reporting mechanism where all schools in Nebraska submit all non-compliant incidents to the governor and the Legislative Education Committee.

Its sponsor, Sen. Joni Albrecht, claimed that children have access to obscene materials and sought to end contracts with database vendors that provide such materials. The bill, as introduced, is duplicative of the anti-obscenity laws and protections on internet access that are already effective in the state of Nebraska.

The Nebraska Library Commission, the state library agency, licenses EBSCO's several educational research databases for public libraries and school libraries. The databases are free to all state residents online through the NebraskAccess portal. The content in these databases is from well-known, professionally curated educational and academic publishers and is intended to supplement school and public library offerings. At the time, K-12 resources include Funk & Wagnalls New Encyclopedia, Explora, and the Points of View reference center.

The bill sponsor has a different perspective on these resources. In one Weekly Update to constituents and donors, she shared that unnamed "Researchers have found the most vile and graphic obscenity on K-12 school databases, including many that encourage violence." In another Update, her staff shared that "[S]chools and parents are all but helpless to protect their children from illegal obscenity that is so graphic it can truly warp minds. It is easy for a child innocently to stumble into graphic obscenity on these databases, without looking for it." In this worldview, educational resources like Funk & Wagnalls are fraught with peril. "There is no possible way for schools or parents to catch all such obscene entries in an ever-changing database of 100,000s publications."

LB 1213 was authored, in part, by Matt Heffron, Senior Counsel for the Thomas More Society. In 2018, Heffron had represented the PINES parents in Colorado who filed the failed lawsuit against CLIC and EBSCO alleging that EBSCO knowingly provided children access to pornography. Heffron is quoted as saying that "the measure, if passed, would be a model for other states, particularly for giving people the right to sue and collect damages." Legislative advocates for LB1213 include Marilyn Asher, co-executive director of Nebraskans for Founders Values, an organization dedicated to "awaken the silent majority and then channel the hearts and minds of our fellow citizens back to the Word of God and our Founders' Values".

At the February 2022 LB1213 hearing, Asher testified in support of the bill. In her testimony, Asher said she started with search terms such as "toys for mom" and "toys for dad," then moved on to terms such as "nude women," "sexual intercourse," and "wanna see porn." She went on to say, "If a 70-year-old grandma can find this material online in school libraries, think of what a 12-year-old child can find. It just made me sick."

As reported in the Omaha Herald Tribune, “Neither Albrecht nor Asher said she knew of cases where Nebraska students have found obscene materials while using the databases available on school library sites. Rather, their concern is based on what Asher and a network of volunteer researchers nationally have found when searching the databases. When she found problematic material, it often was a few clicks away from the home page, sometimes through a link in an article.”

State Senator Albrecht has admitted that no known cases exist of students accessing obscene materials from library databases. “Sometimes, you have to go quite a ways to find it,” Asher said in the article. Yet, the intent of the bill is clear: to create fear among parents who will challenge materials and push library databases offline. Without access to databases, students will have limited access to information.

Arguments Against This Type of Legislation

Several federal laws prohibit the distribution of obscene materials to minors. Likewise, every state has statutes that protect minors from exposure to materials that are harmful to minors. Taken together, existing state and federal laws already make it illegal to distribute harmful materials to minors. Federal law prohibits the possession with intent to sell or distribute obscenity, to send, ship, or receive obscenity, to import obscenity, and to transport obscenity across state borders for purposes of distribution. Most states have statutes that define obscenity within their criminal code.

It is important to note that the term obscenity is defined by law, whereas pornography is generally not a legal term, but it is invoked as if it were by groups with an agenda. As we have seen, anti-access groups regularly talk about pornography when advancing an anti-access bill. They also regularly conflate the terms obscenity and pornography without regard to state or federal laws. Bills like the ones introduced and passed in the 2021–2022 session generally employ vague language about potentially harmful materials because supporters seek to categorize any materials that they find personally troubling or offensive as obscene.

A central concern for anti-access watchdogs is content that includes or acknowledges the existence of sex, sexuality, sexual orientation, or gender identity. However, content about health and well-being that includes information on sexual development may be of educational value to a 13-year-old who is going through puberty. Such information is clearly relevant to individuals in that age group who are experiencing a biological milestone. Content describing or explaining human sexual development is relevant to that age group. While individual families may wish to exclude or limit access to developmentally-relevant material because they do not believe it is appropriate for their particular child, the information should not be removed from the curriculum or school library collection for all students based on the personally restrictive beliefs of a few.

Policy Considerations When Opposing Anti-Access Legislation

It is critically important that state-level library stakeholders identify this type of anti-access legislation as a significant threat. There was an unfortunate reluctance in the 2021-22 legislative cycle on the part of many state library associations and national partners to engage in active campaigns to oppose bad bills. As a sector, we must move beyond professional complacency and directly address gaps in state legislative and policy frameworks that safeguard school library and public library databases and contracts. Students, teachers, and parents all benefit from access to authoritative information in school library databases.

- The goal for any state-level school library database is that the content is relevant to specific audiences, academic requirements, developmental levels, and age groups.
- The databases have been developed to work in compliance with CIPA filtering requirements and in compliance with other state and federal laws.
- Publishers and database aggregators follow existing federal and state laws prohibiting the publishing and distribution of obscene materials. It is in their best interests to follow these laws.

- Materials in school library databases are professionally curated and managed by publishers, aggregators, and librarians to support state education standards and school curricula.
- Content about sex and sexuality is relevant to students by age. Content is relevant to students because it is part of the approved curriculum.
- Neither discomfort with content nor individual family choices about whether the content is appropriate for a particular child, nor religious beliefs about sexual orientation or gender, should influence or determine the overall makeup of age-relevant and subject-relevant educational offerings in school library databases.
- As part of state procurement processes, state libraries and state education agencies employ professional librarians to evaluate the quality of school library databases and their value in supporting state educational standards.
- School library databases are tailored to groups of students based on their grade level. Access to databases is generally restricted to students at the appropriate grade levels through a password-protected login or in an IP-specific location and are therefore not accessible on the open web.
- Schools that use federal e-rate funding are required by the Children's Internet Protection Act of 2000 (CIPA) to filter internet searches, further protecting students from searches on the open web. Schools employ a variety of commercially available filters and safeguards to accomplish the filtering protections required by CIPA.
- For stakeholders who are concerned about students having access to inappropriate information and images on the Internet, school library databases offer a solution by providing age-relevant search environments for students that are much safer than the open web.

- Reputable school library database aggregators and vendors provide technology solutions that empower both local control of the content and customization of the content to fit local needs that align with state education standards.
 - School districts are responsible for maintaining local challenge policies and opt-out procedures that safeguard the rights of parents to manage their own student's access to certain materials.
 - Librarians help kids develop digital citizenship and safety skills while learning research skills in a safe, curated, and age-relevant content environment.
-

Policy Recommendations for State Libraries and Education Agencies

State libraries and education agencies are often contracting agencies for school and public library databases. The RFP process for these state agencies should include a thorough review process to ensure that content offered by aggregators and publishers meets the needs of students in a manner that is relevant and appropriate to the educational and developmental needs of students. Despite these best practices in education, state libraries and educational agencies need to anticipate that parents may have legitimate concerns about content and wish to challenge its presence in a database or ask for a professional review of the content.

Content that is not relevant to the research/educational needs of younger students should not be included in the databases curated for their use. Elementary school students should have access to a limited and curated set of journals/magazines that are relevant to their age and grade-level curriculum. Middle and high students, as well as public library patrons, should have access to different sets of curated materials that are relevant to their age levels and research needs.

Core Tenets of a State Library Agency Challenge and Review Policy

It is important for every state library agency and state education agency to create and support a materials challenge and review policy akin to those maintained by local school districts and public libraries across the United States. State agencies are responsible for the RFP process that identifies, acquires, and maintains access to school and public library databases and ebook libraries. These agencies must have a policy framework that supports the rights of parents to raise concerns about materials without compromising access to the entire collection or imposing individual family choices on the entire student body. In general, the policy should affirm the aims, goals, and purposes of school library programs as being two-fold: support for the curriculum and support for student reading, research, and learning. The policy should reference state education standards in noticeable and affirmable ways.

The materials challenge and review policy should include provisions that describe a process by which a parent or guardian of any student (or an employee of any school district or school) may formally challenge and request a review of directly accessible digital or online resources. Materials should not be removed from access during the formal review process. The policy should describe the process and timeline by which a formal request is made and adjudicated. It should describe the qualifications of reviewers and the criteria by which a review is made. The policy should include a description of how a challenge is rendered final and complete, including the removal or retention of an item.

Policy Review Committee Model

A materials challenge and review policy should impanel a review committee or working group that is composed of education professionals, including certified school librarians, state library representatives, department of education representatives, and other educational stakeholders. The review committee should be charged with reviewing materials in a fair, open, transparent way to ensure that content is relevant to state standards as well as relevant to the age or grade level of students. The policy should ensure that challenges must be limited in scope to the materials that are part of the school library database and are not materials available on the open web.

Every consideration should be given to guarantee and provide due process to a parent or guardian (or employee of a school or school district) making a formal request for review. The panel or working group of the state library agency or state education agency would make any order to remove digital or online materials and conduct the removal in a timely way using technology management methods.

Contract and RFP Considerations

An operational challenge and review policy should be designed to safeguard the due process rights of both challengers and the vendors/publishers themselves. The state library challenge and review policy should support the ability of the state library agency to purchase materials for school libraries in an apolitical and transparent manner. The policy must be a component of state procurement practices because the policy must be operational and administrable by vendors.

It is important to recognize in the policy that vendors should have certain rights, including a right to “cure” any alleged identified issues with the content, a right to demonstrate that no violation of law or policy has occurred, and a right to have detailed evidence of an alleged violation (e.g., the URL(s) accessed, time/date, browser history).

State library contracts should include, in effect, a severability clause that protects the integrity of the whole database should any item in the database be removed. Likewise, successful bidders need to demonstrate that they can use reasonable technological methods to curate content (i.e., remove access or prevent access or discovery of an item) in the database without degrading the integrity of the entire database. A materials review policy is a reasonable component of due process for buyers, vendors, and challengers. In general, database contracts should be non-cancellable without a material violation of state or federal law that has been legally adjudicated.



Writing Proactive Legislation to Support Access to School Library Databases

State library agencies and state education agencies contract and license with mainstream education and trade publishers, academic journals, and database aggregators. Any claims that they are adding or allowing pornography or obscenity into school library databases is demonstrably false. Any law passed based on such clear falsehood would create problematic barriers to both the integrity of education and the free exercise of trade in states. Several elements could focus on and strengthen state statutes or regulations to provide confidence in the safety of school databases, preserve a fair and accessible marketplace, and ensure that student success is supported through high-quality, properly vetted, safe, age-relevant, and curated databases that can be easily used to meet standards and support the curriculum.

Bill language could require pre-certification or pre-qualification of databases by vendors demonstrating that the vendors meet library standards in order to be eligible to respond to an RFP, including requiring the provider can filter or block material consistent with age-relevant and topic-relevant standards;

Bill language could be included that protects the right to free trade of database providers by ensuring that they are given a reasonable right to cure any alleged violations of age-inappropriate content; a right to demonstrate no violation; and a right to have detailed evidence of any alleged violation (in this case, URL accessed, time/date, browser history).

Bill language could be included that preserves a fair and free marketplace where a database contract is non-cancellable without a material violation of state or federal law, which has been adjudicated. Or, put another way, it could be stated that any materials lawfully adjudicated to be obscene or harmful to minors under state or federal law would lead to the cancellation of the contract.

Bill language should employ a standard set of definitions across states. This practice will help ensure interoperability for vendors and create a best practices environment between states. These definitions and terms should include the following:

“Database aggregator” means a company whose business is to curate and make available through technology items for sale or subscription to libraries generally, and in school libraries and other educational settings in particular;

“Electronic library materials” means digital audiobooks, electronic books, electronic textbooks, electronic journals, electronic magazines and periodicals, databases, test preparation resources, vocational and career resources, reference sources, readers advisory sources, streaming, and/or academic software;

“Publisher” means a company whose business is the manufacture, promulgation, license, and/ or sale of books, electronic books, digital audiobooks, journals, magazines, newspapers, or other literary productions, including those in digital form of “electronic literary materials” consisting of text, audio recording, imagery or any combination of text, audio recording, and imagery;

“School Library database” means a searchable electronic index of published, reliable resources for general reference (such as an encyclopedia or full-text periodicals) or for specific areas of academic interest, including art, biography, health, history, literary criticism, news, and current events, and/or science available by subscription or purchase.

“Other online materials” are websites (e.g., Wikipedia, Google search results) that may be available for free on the open web and subjected to local education authority (LEA) filtering policies but that are not curated or procured through a contract.

“Curation” is a process by which database aggregators review and vet licensed and indexed materials across age and content criteria and administer access and discoverability of content through the life of the contract.

Conclusions

In the 2023-2024 legislative season, there will be states facing a legislative or rules-making crisis, states needing policy inoculation, as well as states where a favorable proactive policy can be instituted. Taken together, the policy positions and affirmative legislative language we suggest will help our sector oppose bad legislation and create stronger bills that reinforce access to educational resources through school library databases

While the challenges we are facing are unprecedented and represent an existential threat to publicly funded school libraries and public libraries, this may also be the wake-up call that libraries and public institutions need to realize that public funding means we exist in a political sphere. For too long, we have been the beneficiary of public funding, expecting public support and money to continue to flow to us because we believed our value was self-evident. For too long, we have received funding without having to develop the requisite political awareness, skills, and relationships necessary to safeguard our institutions, our values, and our profession.



Next Steps

The legislative playbook for anti-access and anti-library organizations was developed and tested in 2021-2022 in an unprecedented way. Our sector was generally unprepared to address the policy issues and, at times, unwilling to conduct the public outreach necessary to secure its position. EveryLibrary and the EveryLibrary Institute are working proactively across the country to cultivate and empower library stakeholders to successfully defend both the marketplace of ideas and the marketplace for libraries and information providers.

We will continue to focus on legislative and regulatory issues concerning state databases to help ensure a sound policy framework and low barriers for state libraries and education agencies to host school library databases. We are engaged with Georgetown University's IP Law Clinic for pro-bono support to create model legislation. We will conduct limited public opinion polling to understand and refine messaging about access. EveryLibrary will continue to cultivate and deepen media contacts with regional and national press and opinion-makers.

SUGGESTED CITATION

BLAIR, MEGAN, BROMBERG, PETER & CHRASTKA, JOHN. (2022, OCTOBER) EVERYLIBRARY INSTITUTE. "WEATHERING THE ATTACKS ON STATE LIBRARY DATABASE CONTRACTS."

[HTTPS://WWW.EVERYLIBRARYINSTITUTE.ORG/
STATE_LIB_DB_CONTRACTS_REPORT_2022](https://www.everylibraryinstitute.org/state_lib_db_contracts_report_2022)

OCTOBER 2022 - EVERYLIBRARY INSTITUTE, NFP

[EVERYLIBRARYINSTITUTE.ORG/RESEARCH_AND_REPORTS](https://www.everylibraryinstitute.org/research_and_reports)