

By: Toth

H.B. No. 5251

A BILL TO BE ENTITLED

AN ACT

relating to a school district's library materials and catalog, the creation of local school library advisory councils, and parental rights regarding public school library catalogs and access by the parent's child to library materials and to affirmative defenses to prosecution for certain offenses involving material or conduct that is obscene or otherwise harmful to children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 26.004(b), Education Code, is amended to read as follows:

(b) A parent is entitled to access to all written records of a school district concerning the parent's child, including:

- (1) attendance records;
- (2) test scores;
- (3) grades;
- (4) disciplinary records;
- (5) counseling records;
- (6) psychological records;
- (7) applications for admission;
- (8) health and immunization information;
- (9) teacher and school counselor evaluations;
- (10) reports of behavioral patterns; ~~and~~
- (11) records relating to assistance provided for learning difficulties, including information collected regarding

1 any intervention strategies used with the child; and

2 (12) records relating to school library materials the  
3 child obtains from a school library.

4 SECTION 2. Chapter 26, Education Code, is amended by adding  
5 Section 26.017 to read as follows:

6 Sec. 26.017. NOTICE REGARDING SCHOOL LIBRARY MATERIALS.

7 (a) Before each school year, a school district shall provide  
8 written notice to a parent of each child enrolled in the district  
9 regarding the option to receive notice each time the child obtains a  
10 school library material from a school library in the district.

11 (b) For each parent who elects to receive notice under  
12 Subsection (a), the school district shall notify the parent by  
13 e-mail each time the parent's child obtains a school library  
14 material from a school library in the district. The notice must  
15 include, as applicable, the title, author, genre, and return date  
16 of the school library material.

17 SECTION 3. Subchapter B, Chapter 33, Education Code, is  
18 amended by adding Section 33.020 to read as follows:

19 Sec. 33.020. DEFINITIONS. In this subchapter:

20 (1) "Harmful material" has the meaning assigned by  
21 Section 43.24, Penal Code.

22 (2) "Library material" means any book, record, file,  
23 or other instrument or document in a school district's library  
24 catalog. The term does not include instructional material, as  
25 defined by Section 31.002.

26 SECTION 4. Section 33.021, Education Code, is amended to  
27 read as follows:

1           Sec. 33.021. LIBRARY STANDARDS. (a) The Texas State  
2 Library and Archives Commission~~[, in consultation with the State~~  
3 ~~Board of Education,~~] shall submit proposed [adopt] standards for  
4 school library services to the State Board of Education for  
5 approval or disapproval.

6           (b) The standards approved under Subsection (a) must  
7 include a collection development policy that:

8                 (1) prohibits the acquisition or retention of harmful  
9 material; and

10                (2) demonstrates a commitment to compliance with the  
11 Children's Internet Protection Act (Pub. L. No. 106-554),  
12 including through the use of technology protection measures, as  
13 defined by that Act.

14           (c) A school district shall adhere to ~~[consider]~~ the  
15 standards approved under Subsection (a) in developing,  
16 implementing, or expanding library services.

17           SECTION 5. Subchapter B, Chapter 33, Education Code, is  
18 amended by adding Sections 33.026, 33.027, and 33.028 to read as  
19 follows:

20           Sec. 33.026. LOCAL SCHOOL LIBRARY ADVISORY COUNCIL. (a)  
21 The board of trustees of each school district shall establish a  
22 local school library advisory council to assist the district in  
23 ensuring that local community values are reflected in each school  
24 library catalog in the district.

25           (b) A school district must consider the recommendations of  
26 the local school library advisory council before making changes to  
27 a school library catalog.

1        (c) The local school library advisory council's duties  
2 include recommending:

3            (1) policies and procedures for the procurement of  
4 library materials consistent with local community values;

5            (2) library materials appropriate for each grade  
6 level;

7            (3) if feasible, joint use agreements or strategies  
8 for collaboration between the school district and local public  
9 libraries and community organizations;

10           (4) the removal of any library materials that the  
11 council determines to be:

12                    (A) harmful material; or

13                    (B) inconsistent with local community values;

14 and

15            (5) the action to be taken by the district in response  
16 to a challenge received under Section 33.028.

17        (d) Any recommendation made by the local school library  
18 advisory council must adhere to the library standards approved  
19 under Section [33.021](#).

20        (e) The board of trustees shall appoint at least five  
21 members to the local school library advisory council. A majority of  
22 the members must be persons who are parents of students enrolled in  
23 the district and who are not employed by the district. One of those  
24 members shall serve as chair of the council. The board of trustees  
25 may also appoint one or more persons to serve as nonvoting members  
26 of the council from each of the following groups:

27            (1) classroom teachers employed by the district;

1           (2) librarians employed by the district;

2           (3) school counselors certified under Subchapter B,  
3 Chapter 21, employed by the district;

4           (4) school administrators employed by the district;

5           (5) district students;

6           (6) the business community; and

7           (7) the clergy.

8           (f) The local school library advisory council shall meet at  
9 least two times each year. For each meeting, the council shall:

10           (1) at least 72 hours before the meeting:

11               (A) post notice of the date, hour, place, and  
12 subject of the meeting on a bulletin board in the central  
13 administrative office of each campus in the school district; and

14               (B) ensure that the notice required under  
15 Paragraph (A) is posted on the district's Internet website, if the  
16 district has an Internet website;

17           (2) prepare and maintain minutes of the meeting that  
18 state the subject and content of each deliberation and each vote,  
19 order, decision, or other action taken by the council during the  
20 meeting;

21           (3) make an audio or video recording of the meeting;  
22 and

23           (4) not later than the 10th day after the meeting,  
24 submit the minutes and audio or video recording of the meeting to  
25 the district.

26           (g) As soon as practicable after receipt of the minutes and  
27 audio or video recording under Subsection (f)(4), the school

1 district shall post the minutes and audio or video recording on the  
2 district's Internet website, if the district has an Internet  
3 website.

4 Sec. 33.027. PROCUREMENT OF LIBRARY MATERIALS. (a) The  
5 board of trustees of a school district shall adopt a policy for the  
6 procurement of library materials. The policy must require the  
7 board to:

8 (1) approve all library materials to be procured by a  
9 school library in the district, with the advice and recommendations  
10 of the district's local school library advisory council established  
11 under Section 33.026;

12 (2) make the list of library materials proposed to be  
13 procured accessible for review by the public for at least 30 days  
14 before final approval;

15 (3) approve or reject the list of library materials  
16 proposed to be procured in an open meeting; and

17 (4) ensure compliance with the library standards  
18 approved under Section 33.021.

19 (b) Each member of the board of trustees of a school  
20 district is entitled to:

21 (1) review each list of library materials proposed to  
22 be procured for a school library in the district; and

23 (2) propose changes to each list described by  
24 Subdivision (1) before the board votes to approve or reject the  
25 list.

26 Sec. 33.028. CHALLENGE OR APPEAL REGARDING LIBRARY  
27 MATERIALS; LOCAL SCHOOL LIBRARY ADVISORY COUNCIL RECOMMENDATIONS.

1 (a) A parent of or person standing in parental relation to a  
2 student enrolled in a school district or a person residing in the  
3 district may submit:

4 (1) to the district a written challenge to any library  
5 material in the catalog of a school library in the district using  
6 the form adopted under Subsection (c); or

7 (2) to the district's board of trustees an appeal of an  
8 action taken by the district in response to a written challenge  
9 received under Subdivision (1).

10 (b) Not later than the fifth day after the date on which a  
11 school district receives a written challenge under Subsection  
12 (a)(1), the district shall provide a copy of the challenge to the  
13 district's local school library advisory council established under  
14 Section 33.026. The council shall make a recommendation for action  
15 by the district not later than the 90th day after the date on which  
16 the council receives the copy.

17 (c) The agency shall adopt and post on the agency's Internet  
18 website a form to be used in making a written challenge under  
19 Subsection (a)(1). Each school district shall post the form on the  
20 district's Internet website, if the district has an Internet  
21 website. The form shall require the person submitting the form to  
22 identify how the challenged library material violates the library  
23 standards approved under Section [33.021](#).

24 (d) In taking action on a written challenge submitted under  
25 Subsection (a)(1) or an appeal under Subsection (a)(2), the board  
26 of trustees of a school district shall consider:

27 (1) the advice of the district's local school library

1 advisory council; and

2 (2) whether the library material challenged under  
3 Subsection (a)(1) or appealed under Subsection (a)(2) is suitable  
4 for the subject and grade level for which the library material is  
5 intended, including by considering:

6 (A) whether the material adheres to the library  
7 standards approved under Section 33.021; and

8 (B) reviews, if any, of the material conducted by  
9 academic experts specializing in the subject covered by the library  
10 material or in the education of students in the subject and grade  
11 level for which the library material is intended.

12 SECTION 6. Section 43.24(c), Penal Code, is amended to read  
13 as follows:

14 (c) It is an affirmative defense to prosecution under this  
15 section that the sale, distribution, or exhibition was by a person  
16 having a bona fide judicial, law enforcement, or legislative  
17 ~~[scientific, educational, governmental, or other similar]~~  
18 justification.

19 SECTION 7. The changes in law made by this Act apply only to  
20 an offense committed on or after the effective date of this Act. An  
21 offense committed before the effective date of this Act is governed  
22 by the law in effect on the date the offense was committed, and the  
23 former law is continued in effect for that purpose. For purposes of  
24 this section, an offense was committed before the effective date of  
25 this Act if any element of the offense occurred before that date.

26 SECTION 8. Before the first day of the 2023-2024 school  
27 year, the board of trustees of each school district shall:



1           (1) establish and appoint members of the local school  
2 library advisory council as required by Section 33.026, Education  
3 Code, as added by this Act; and

4           (2) adopt a policy for the procurement of library  
5 materials as required by Section 33.027, Education Code, as added  
6 by this Act.

7       SECTION 9. This Act applies beginning with the 2023-2024  
8 school year.

9       SECTION 10. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2023.