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RECONSIDERATION OF MATERIALS

The Boise Public Library is committed to upholding the rights of library users to freely access quality materials that inform, educate, enlighten, and encourage critical thinking. Boise Public Library’s Collection Development and Maintenance Policy 5.01, the Library Bill of Rights Exhibit 5.01a, the Freedom to Read Statement Exhibit 5.01b, and the Nature and Quality of Materials Regulation 5.01c all embody this commitment.

Only narrowly defined categories of speech are not protected by the First Amendment. For example, obscenity is not protected speech, and neither is “material harmful to minors,” which is a subset of obscenity. If materials do not meet one of the narrowly defined categories of unprotected speech, they are speech protected by the First Amendment.

In April 2024, the Idaho legislature passed House Bill 710, which established Idaho Code § 18-1517B, which refers to itself as the “Children’s School and Library Protection Act.” The Act provides a private cause of action for any parent or legal guardian of a minor to sue the library if the minor obtains material from the library that the minor, parent, or legal guardian considers to be “material harmful to minors.” Additionally, the Act provides an opportunity for the Idaho Attorney General or county prosecuting attorneys to sue libraries if they make available “material harmful to minors.”

The Boise Public Library and libraries across the state of Idaho have steadfastly maintained that they do not have materials in their collections that are harmful to minors. Libraries seek to provide educational, informational, and recreational resources to kids and adults that help them better understand themselves and the world, not to cause harm.

The “Children’s School and Library Protection Act” asks libraries to restrict access to materials based on the complaint of a single person despite the Constitutional analysis applying community and reasonable person standards to determine whether the material really is harmful to minors. While the “Children’s School and Library Protection Act” asks libraries to restrict access to materials based on a single complaint, the library must also comply with First Amendment requirements. In addition to the community and reasonable person standards, the First Amendment strongly disfavors government discrimination of materials based on content or viewpoint.

The burden is on the censor to prove that specific material meets the definition of “material harmful to minors.” The Library Board will fairly and impartially adjudicate claims that materials in the collection meet the statutory definition of “material harmful to minors” but will apply the statutory definition closely to ensure access to protected speech is not

illegitimately restricted. Adequate procedural safeguards, including judicial determinations, are necessary to ensure protected speech is not infringed.

The Boise Public Library is very mindful of First Amendment rights to free speech guaranteed to persons in the United States of America, including the right to access information. The Boise Public Library acknowledges and appreciates the fundamental role this right plays in upholding the democratic system of government in America by helping to inform and provide critical thinking skills to the electorate, and to educate minors that are yet to reach voting age but must be informed and capable of critical thinking when they reach voting age.

With the foregoing in mind, this policy details who can request the reconsideration of materials the Boise Public Library makes available, the options for doing so, and the procedures the Library Board will take to review such requests. In addition to requests for reconsideration of materials based on the allegation that such materials are harmful to minors, library users may submit a request for reconsideration of materials that they do not believe meet the criteria in the Library Collection Development and Maintenance Policy for other reasons as well.

- a. Definitions. The following terms, as used in this policy, have the following definitions.
 - i. Library Board – The Boise Public Library Board of Trustees as established and defined by Idaho Code Title 33, Chapter 26 and Boise City Code Title 2, Chapter 7.
 - ii. Material – As defined in Idaho Code § 18-1514(7) means anything tangible which is harmful to minors, whether derived through the medium of reading, observation or sound.
 - iii. Material Harmful to Minors – As defined in Idaho Code § 18-1514(6) and read in conjunction with U.S. Supreme Court caselaw, means material that contains nudity, sexual conduct, sexual excitement, or sado-masochistic abuse that a) appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards; b) depicts or describes nudity, sexual conduct, sexual excitement, or sado-masochistic abuse that is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors including patently offensive representations or descriptions of intimate sexual acts, normal or perverted, actual or simulated or masturbation, excretory functions or lewd exhibition of the genitals or genital area; and c) when considered as a whole, and in context in which it is used, does not possess serious literary, artistic, political or scientific value for a legitimate minority of normal, older minors. “Nudity,” “sexual conduct,” “sexual excitement,” and “sado-masochistic abuse” as used herein are as defined in Idaho Code § 18-1514.
 - iv. Prurient Interest – As defined by the U.S. Supreme Court, prurient interest means a shameful or morbid interest in nudity, sex, or excretion, and goes substantially beyond customary limits of candor in description or representation of such matters, and does not include a normal, healthy interest in sex.

- v. Request for Reconsideration of Materials – A request for the Library Board to reconsider whether material in the Boise Public Library collection meets the standards of the Collection Development and Maintenance Policy 5.01 and related exhibits and regulations or whether the material meets the definition of Material Harmful to Minors. The request should be made using the form available as Exhibit 5.02. Any person may submit a Request for Reconsideration of Materials.
 - vi. Written Notice – No specific form is required, but the notice must be in writing and must request the relocation of material the complainant considers to be Material Harmful to Minors to a section designated for adults only within sixty (60) days of the library’s receipt of the written notice. Completing and submitting Sections 1 and 2 of Exhibit 5.02 will constitute Written Notice, but use of Exhibit 5.02 is not required. Only a minor who obtained Material Harmful to Minors from the Boise Public Library or their parent or legal guardian can submit a Written Notice.
- b. Procedure for submitting a Request for Reconsideration of Materials or a Written Notice.
- i. The Request for Reconsideration of Materials form will be available at each Boise Public Library branch location and on the Boise Public Library’s website.
 - ii. A completed Request for Reconsideration of Materials or Written Notice can be submitted by the following means. Only one means of submission is required.
 - A. Physical mail to:

Boise Public Library
ATTN: Acquisitions Manager – Material Challenge
715 S. Capitol Blvd.
Boise, ID 83702
 - B. E-mail to:

materialchallenge@cityofboise.org
 - C. Facsimile to:

1 (208) 384-4025
 - D. To submit in-person, the completed Request for Reconsideration of Materials or Written Notice can be given to a Library staff member at any service desk at all Boise Public Library locations.

- iii. It is the responsibility of the person submitting the Written Notice or Request for Reconsideration of Materials to comply with all requirements of the “Children’s School and Library Protection Act,” the Idaho Tort Claims Act, and any other applicable laws or court rules to maintain their ability to seek judicial review.

c. Procedure for Library Board review of a Request for Reconsideration of Materials or a Written Notice.

Book challenges are time-consuming endeavors. The material must be considered as a whole and individual passages cannot be taken out of context. Supporting materials should also inform the analysis. Library Board deliberation must be done openly on the record at noticed meetings, which are additional time pressures that must be accommodated within the 60 day window provided by the “Children’s School and Library Protection Act.” Given the limited library resources available, and the potentially unlimited challenges authorized by the “Children’s School and Library Protection Act,” it may not be feasible for the Library Board to review all material challenges within 60 days of receipt of the challenge.

The Library Board will aim to respond to every challenge, but a complainant can appeal a Library Board decision regardless of how thoughtful or adequate the Library Board’s response is, and whether there is any Library Board decision at all. Further, the “Children’s School and Library Protection Act” does not direct judges to review or give the Library Board’s decision any deference. Given the review framework of the “Children’s School and Library Protection Act” and library resource constraints, the Board President, in consultation with the Library Board as practicable, shall prioritize responding to good faith requests that present potentially meritorious claims.

- i. All Library Board procedures to review a Request for Reconsideration of Materials or a Written Notice shall comply with all applicable provisions of the Idaho Public Records Act, Idaho Open Meetings Law, and all other applicable laws necessary to ensure a fair and open deliberative process and an impartial decision based on the evidence submitted.
- ii. If the Library Board does not issue a final written decision within sixty (60) days of receipt of a Request for Reconsideration of Materials or a Written Notice, the submission is denied.
- iii. The Library Board shall endeavor to issue a written decision within sixty (60) days of receipt of the submission explaining the Library Board’s rationale for approving or denying the submission.
 - A. The Library Director shall endeavor to submit a written response to the submission and a recommended Library Board decision within twenty-eight (28) days of receipt.

- B. The Library Board shall give the Library Director’s written response and recommended decision substantial deference.
- iv. The Library Board can adopt the Library Director’s written response and recommended decision as its own, with or without modification, or the Library Board can issue its own decision.
 - A. The Library Board shall always take the most narrowly tailored action necessary.
 - B. If the Library Board decides to remove material from the collection, or move the material to an adult access only area, or restrict access in any way, there is no right of appeal to the courts under the “Children’s School and Library Protection Act.” Being that the decision to censor materials is unappealable and the decision not to censor materials is appealable, the Library Board will exercise due restraint when limiting or removing access to materials.
- v. The Library Board President has discretion to:
 - A. determine whether and when to call a special meeting for the Library Board to deliberate on and decide, or adopt findings on, a Request for Reconsideration of Materials or a Written Notice.
 - B. determine whether additional procedures beyond the written filings specified herein are necessary to adequately review a Request for Reconsideration of Materials or a Written Notice, and if so, order such additional procedures.
 - i. Examples of additional procedures the Board President may require include oral presentations by the complainant and the Library Director, or public testimony.
 - C. determine the order of deliberation on any Request for Reconsideration of Materials or Written Notice and its placement on the Library Board agenda.
- vi. Library administration shall maintain a case file for each Request for Reconsideration of Materials or Written Notice submitted. The case file will be publicly available via the library’s website. The Boise Public Library will evaluate if any redactions to personal information contained in a written filing are required by Idaho law prior to making the document publicly available. The case file shall include, as applicable:
 - A. the Request for Reconsideration,
 - B. the Written Notice,

- C. the library director's written response and proposed Board decision,
- D. any public comments received on the submission within sixty (60) days of receipt of the submission,
- E. any adopted minutes of a meeting that reflect Library Board deliberation on the challenge, and
- F. any interim or final orders or decisions of the Library Board.