Arkansas Law for School Libraries

Summer 2023 Professional Development
I am not a lawyer!!!!!!!

**Disclaimer**
We are a Local Control State

Local Control refers to:

(1) the governing and management of public schools by elected or appointed representatives serving on governing bodies, such as school boards or school committees, that are located in the communities served by the schools, and

(2) the degree to which local leaders, institutions, and governing bodies can make independent or autonomous decisions about the governance and operation of public schools.
Rules Governing Standards for Accreditation

Standard 2-D Media Center for Student Support

2-D.1 Each public school district shall annually budget and expend sufficient resources to purchase and maintain an appropriate balance of print, non-print, and electronic media that is adequate in quality and quantity to meet the academic standards for all students. *(D/C)*
Rules Governing Standards for Accreditation

Standard 4-F Library Media Specialists

4-F.1. Each public school district shall employ library media specialists that meet the licensure requirements in accordance with the laws of the State of Arkansas and the rules of the Department or are working under an approved waiver in accordance with the laws of the State of Arkansas and the rules of the Department. (D/C)
Standard 4-F Library Media Specialists

4-F.2. Public schools with fewer than three hundred (300) students shall employ at least one half-time library media specialist. Public schools with three hundred (300) or more students shall employ at least one full-time library media specialist. Schools enrolling fifteen hundred (1500) or more students shall employ at least two full-time library media specialists. (S/P)
Current Rules

https://dese.ade.arkansas.gov/Offices/Legal/CurrentRules
Google Folder

https://tinyurl.com/y22er84w
How to use the Arkansas Code

*Arkansas Code link:
https://advance.lexis.com/container?config=00JAA3ZTU0NTIzYy0zZDEyLTRhYmQtYmRmMS1iMWIxNDgxYWMxZTQKA
FBvZENhdGFsb2cubRW4ifTiwi5vLw6cI1uX&crid=8d0c2469-e604-4df1-9af0-d0cccf4df4ff

Terminology:
• **Shall** is an imperative
• **May** can be an imperative depending on the context
• **Should** is a suggestion not a mandate

* Arkansas Code can also be found by going to the Arkansas State Legislature homepage.*
Public School Library Media and Technology Act (Chapter 25)

- Describes duties
- Duties outside of the library
- Equipment/personnel for production
- Policies for selection, removal and retention of materials
- Resources
Library Media Services Program

• Defines the program as:
  • Information and media services
  • Delivered by a library media specialist
Three Primary Functions of the SLMS

• Information Specialist
• Instructional Consultant
• Teacher of Information and Technology Skills
Information Specialist

- Collection Development
- Assist patrons in identifying, location, and interpreting information
- Provide learning opportunities related to technologies (including use & production of a variety of formats)
- Provide instruction in the use of the library media center
- Limit on elementary class sessions (1/3 time stipulation)
Instructional Consultant

- Participate in curriculum development and assessment projects at all levels
- Provide professional development
  - new technologies
  - use of appropriate technologies
  - incorporation of technology into instructional program
  - laws and policies pertaining to ideas and information including copyright
- Inform patrons of new acquisitions (specifically, software & hardware)
Teacher of Information & Technology Skills

• Technology to access information and networks
• Logical, sequential curriculum
• Expertise and instruction in electronic retrieval systems
• Instruction in the use of the library media center
Other Requirements

• No less that 1/3\textsuperscript{rd} of LMS time spent as Information Specialist allowing for administrative tasks
• Class size set forth in Standards of Accreditation
• Only trained & certified LMS shall be assigned (clerks/aides supervised by LMS)
Other Requirements

• Equipment/personnel available for developmentally appropriate production of media
• Written policies for addressing challenged material
• Written policies for selection, removal and retention of materials
• Collection resources accommodate a wide range of differences
Other Requirements

“Duties that interfere with library media center responsibilities may not be assigned outside the library media center for the library media specialist.”

Commissioner’s Memo #1
Commissioner’s Memo #2
Information Sheet
Waivers

- **Act 1240 District Waiver**
  - allows a school district to ask for the same waivers granted to an open-enrollment public charter school

- **Open Enrollment Charter**
  - a public school that is operating under the terms of a charter granted by the State Board of Education on the application of an eligible entity and may draw its students from any public school district in this state.

- **District Conversion Charter**
  - an existing public school which has converted to a school under the terms of a charter approved by the local school board and the State Board of Education.
Charter Applications

Describe how the school will provide library media services for all students. Make sure to address the following questions.

a) How will access to materials that support curriculum, research, and recreational reading be provided to students and teachers?

a) If there will be no librarian who will provide instruction in the use of the library and the Library Media Standards, and how will they be trained to teach the standards?

a) If there is no librarian, who will provide professional development in new and emerging technologies, integration of technology in the instructional programs, and in the laws and policies pertaining to the use and communication of ideas and information, including copyright law?

a) Will the school have written policies for selection, removal, and retention of materials as well as a policy for addressing challenged materials, and who will be responsible for implementing those policies?
Waivers

Current Rules:
https://dese.ade.arkansas.gov/Offices/Legal/CurrentRules

Waivers AC § 6-15-202(b)(2): “...the state board may grant a waiver of any standard for accreditation for a time period of no longer than one (1) school year, except that no curriculum, student performance, school performance, or any standard required by law may be waived for any time period.”

Data Center: My School Info
Let’s take a break!

? minutes
Collection Development and Access

- Written policies for addressing challenged material
- Written policies for selection, removal and retention of materials
Challenge to Instructional Materials

A.C.A. § 6-16-155

(b) Each public school district shall develop and adopt policies, in consultation with parents and legal guardians, regarding:

(1) The right of a parent, legal guardian, person having lawful control of a student, or person standing in loco parentis to a student to inspect, upon request, any instructional material used as part of the educational curriculum for a public school student; and

(2) A procedure for granting a person under subdivision (b)(1) of this section:

(A) Reasonable access to instructional material within a reasonable period of time after a public school district receives a request to inspect instructional material; and

(B) The opportunity to challenge or express concerns about:

(i) Instructional material; and

(ii) Events and activities associated with classroom instruction.
(b) A public school shall make the following, as they relate to sex education, sexual orientation, and gender identity, available for inspection by parents and legal guardians of participating public school students:

(A) Curricula;
(B) Materials;
(C) Tests;
(D) Surveys;
(E) Questionnaires;
(F) Activities; and
(G) Instruction of any kind.

(2) Information made available for inspection under subdivision (b)(1) of this section shall be made available regardless of whether any of the listed items are offered as part of a sex education class or program or as part of any other class, activity, or program.
Laws Affecting Collections

Act 372
Act 372/SB81

AN ACT TO AMEND THE LAW CONCERNING LIBRARIES AND OBScene MATERIALS MADE AVAILABLE TO MINORS; TO AMEND THE LAW CONCERNING THE POSSESSION, SALE, DISTRIBUTION, OR FURNISHING OF OBScene MATERIALS; TO CREATE THE OFFENSE OF FURNISHING A HARMFUL ITEM TO A MINOR; TO AMEND THE CRIMINAL CODE IN RELATION TO OBScene MATERIALS LOANED BY A LIBRARY; TO ALLOW A PARENT OR LEGAL GUARDIAN OF A MINOR TO ACCESS THE MINOR'S LIBRARY RECORDS; TO PROVIDE FOR A CIVIL CAUSE OF ACTION AGAINST GOVERNMENTAL ENTITIES THAT POSSESS, SELL, OR DISTRIBUTE OBScene MATERIALS; TO AMEND THE LAW CONCERNING THE PROCESS FOR CHALLENGING MATERIALS INCLUDED IN A LIBRARY; AND FOR OTHER PURPOSES.
Legal Definition of Harmful to a Minor (AC § 5-68-501)

(2) “Harmful to minors” means that quality of any description, exhibition, presentation, or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when the material or performance, taken as a whole, has the following characteristics:

(A) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient * interest in sex to minors.

(B) The average person eighteen (18) years of age or older applying contemporary community standards would find that the material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and

(C) The material or performance lacks serious literary, scientific, medical, artistic, or political value for minors;

*prurient: Having or encouraging an excessive interest in sexual matters.
(b) A person commits furnishing a harmful item to a minor if, knowing the character of the item involved, the person knowingly:

*(1) Furnishes, presents, provides, makes available, gives, lends, shows, advertises, or distributes to a minor an item that is harmful to minors;

* Furnishing a harmful item to a minor is a Class A misdemeanor
Obscenity

(AC § 5-68-302)

(4) “Obscene material” means a material that:

(A) Depicts or describes in a patently offensive manner sadomasochistic abuse, sexual conduct, or hard-core sexual conduct;

(B) Taken as a whole, appeals to the prurient interest of the average person, applying contemporary statewide standards; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value;
The Miller Test

For something to be considered "obscene", it must pass the Miller test as approved by the Supreme Court. This might be something handy to save and link in your challenge policies.

(1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;
(2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
(3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

The Free Speech Center: https://www.mtsu.edu/first-amendment/
(AC § 5-68-308) is amended to read as follows:

(c) No employee, director, or trustee of a bona fide school, museum, or public library, acting within the scope of his or her regular employment, is liable to prosecution for a violation of this subchapter for disseminating a writing, film, slide, drawing, or other visual reproduction that is claimed to be obscene.

(AC § 5-68-405) is amended to read as follows:

(a) Any person that, with knowledge of its contents, sends or causes to be sent or brings or causes to be brought into this state for sale or commercial distribution, or in this state prepares, publishes, sells, exhibits, loans at a library, or commercially distributes, or gives away or offers to give away or has in the person's possession with intent to sell or commercially distribute or to exhibit or to give away, any obscene printed or written matter or material other than mailable matter, or any mailable matter known by the person to have been judicially found to be obscene under this subchapter, or that knowingly informs another of when, where, how, or from whom or by what means any of these things can be purchased or obtained, is guilty of a Class D felony.
Amends the Public School Library Media and Technology Act


(a) Media centers shall have written policies to establish guidelines for the selection, removal relocation, and retention of physical materials.

(b) The school district shall have a written policy for addressing challenged material that is physically present in the library and available to the public and meets the requirements stated in subsection (c) of this section.

(c) A written policy by a school district under subsection (b) of this section shall provide, at a minimum, the following:

The steps listed in Act 372 MUST be included in your school/district challenge policy.
Challenge Procedure - Short Version

• Only a parent/guardian or employee of the school district can challenge

• School district can decide if challenged material shall remain available during the process

• Challenger must first request a conference: at which time the person is provided with a copy of the challenge policy & challenge form

• After the conference, if not satisfied, the person shall complete and submit a formal request for reconsideration
Challenge Procedure - Committee Review

- Principal selects a review committee: principal or principal designee, one media specialist, other licensed personnel (knowledge of curriculum, diverse viewpoints)

- Committee determines if item meets selection criteria, shall not be withdrawn solely for viewpoints expressed and reviewed in its entirety

- Challenger allowed to present request to committee

- Committee determines if item shall be relocated to an over 18 area (removal is not mentioned)
Challenge Procedure continued

- A written summary of decision is submitted to superintendent and copy given in person or sent certified mail to challenger.

- If decision is to retain the item on the library shelf, then a person may appeal decision in writing to school board.

- Superintendent submits material for board review and may include administration’s recommendation.

- Board reviews information and makes decision on the appeal which is final.

- Meetings are public and subject to Freedom of Information Act.
Challenge Procedure - Timeline

- No time limit between formal challenge submitted and committee recommendation ("reasonable time to adequately review material")
  
  - **Day 1** - Challenger receives committee decision
  - **Day 6** - Written appeal submitted to Superintendent (5 working days)
  - **Day 21** - Superintendent presents materials to School Board (15 days)
  - **Day 51** - Board makes final decision (30 days)
• How long before a title can be challenged again?
• How many titles can be challenged at the same time?
• How many titles can one person challenge?
• Are there times during the year when a challenge cannot happen?
• Should the person challenging the title have to read the book in its entirety?
• Should the person challenging a title have to pay for the copies of the title needed for the review committee to read?
Challenges to Act 372

- Central Arkansas Library System
- Fayetteville Public Library
- Pearl’s Bookstore (Fayetteville)
- Eureka Springs Carnegie Public Library
- Arkansas Library Association
- American Booksellers Association
- Association of American Publishers
- Freedom to Read Foundation
- WordsWorth Books
- Nate Coulter (executive director - CALS)
- Adam Webb (executive director - Garland County Library)
What the Courts have said:

**Sund v. City of Wichita Falls:**
Removal of materials from a children’s collection to a parent collection placed a significant burden on the ability to find the books while browsing.

**Counts v. Cedarville School District:**
Restricting access to books because the books were “stigmatized” violated student’s First Amendment rights by burdening the ability to access the books in the school library. Schools may not restrict access to books based on ideas expressed.
What the Courts have said:

Right to Read Defense Committee v. School Committee of the City of Chelsea:
If a resource has been selected using a school’s collection development policy, it should not be removed without due process.

Board of Education v. Pico:
“If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioner’s decision, the petitioners have exercised their discretion in violation of the Constitution.”
LEARNs

- Section 8 - Safe Schools Initiative Act
- Section 12 - Student Success Plan
- Section 14 - School Transformation Contracts (Charter Schools)
- Section 15  & Subchapter 19 - Community Service
- Section 16 - Indoctrination
- Section 29 - Right to Read Act
Confidentiality of Patrons’ Records

- **Arkansas Code – Title 13: Libraries**
  - Library records are confidential
  - Exceptions: the patron, anyone with written consent, and law enforcement with search warrant
  - Does not prohibit disclosure for the purpose of collecting materials or fines, informing patrons about the library and its programs and policies or aggregating statistics
FERPA

• Family Educational Rights and Privacy Act
• Federal Law
  • Parents have right to student’s educational record until the student reaches age 18
  • Parents and students have the right to request the correction of inaccurate information
  • Schools may disclose directory information unless specifically requested by parent otherwise. Notification of opt-out must happen annually
  • Confidentiality applies except with written consent or to comply with law enforcement or in the case of health and safety emergencies
Rules Governing Professional Development

- To keep your license, you must complete 36 hours of professional development per year.
- This includes 2 hours of
  - Teen Suicide/Bullying (23-24)
  - Arkansas History (24-25)
  - Child Maltreatment (25-26)
  - Parental Involvement (26-27)
  - Human Trafficking (30 minutes every year)
Arkansas Code 6-17-429, the Right to Read Act states: “By the beginning of the 2021-2022 school year: A) All teachers employed in a teaching position that requires an elementary education (K-6) license or special education (K-12) license shall demonstrate proficiency in knowledge and practices of scientific reading instruction; and B) All other teachers shall demonstrate awareness in knowledge and practices of scientific reading Instruction.

Other academic areas in K-6 (e.g., Art, Music, PE, Library Media, Counselor, Administrators) must show awareness in the Science of Reading (SoR).

http://www.arkansased.gov/divisions/learning-services/r.i.s.e.-arkansas/prescribed-pathway-credentials
School Properties and Supplies

- **Arkansas Code 6-21-105**
  - Arkansas School for the Blind must provide braille and large print textbooks for blind and visually impaired students attending public schools in this state.

- **Arkansas Code 6-21-107**
  - School Board must adopt a written policy concerning student and staff use of computers owned by the school district.

- **Arkansas Code 6-21-110**
  - Disposition of school property
  - Cannot give, donate or transfer without adequate market value consideration
  - Cannot give away public property valued at $100.00 or more.
Maintenance of Permanent Student Records

- Act 1573 of 2007
  - Arkansas Code – 6-18-901
  - “The school district shall not fail or refuse to provide a copy of the student's permanent student record to the receiving school district because the student owes money to the school district for school-related charges, including without limitation charges for:
    (i) Food services;
    (ii) Unreturned library books; or
    (iii) Fees.”
Arkansas Library Materials Security Law

(ACA § 13-2-801-13-2-806):

“Unlawful for any person to remove library materials without authorization from the premises wherein such materials are maintained or to retain possession of library materials without authorization”

*ACA § 13-2-802 (3):

“Without authorization” means contrary to rules which set forth policies governing access to library materials and include eligibility for library patronage and lending procedures.
Tax Exemption

- Arkansas Code 26-52-437
  - “Textbooks, library books, and other instructional materials shall be exempt from the gross receipts tax levied by this chapter if purchased by:
    1. An Arkansas school district or Arkansas public school that receives state funding; or
    2. The State of Arkansas for free distribution to Arkansas school districts or Arkansas public schools.”
Parental Involvement Plan

• Arkansas Code 6-15-1702, 6-15-703
  • Purchase parenting books, magazines, and other informative material regarding responsible parenting through the school library, advertise the current selection, and give parents an opportunity to borrow the materials for review;
  • Every 4 years attend a 2 hour PD session on Parental Involvement
  • The licensed staff member serving as a parental facilitator shall receive supplemental pay for the assigned duties as required by law.
  • Engage in other activities determined by the school to welcome parents into the school
Copyright Fair Use

• When Congress established the rights of authors to their own works, they also acknowledged that students and researchers need to have access to otherwise protected works in order to build upon existing knowledge.

• To achieve this goal, Congress established the doctrine of “FAIR USE” (Sections 107-110)

• Copyright Brochure
• copyrightandcreativity.org
• Six Copyright Concepts Article
Fair Use

Section 107 on Fair Use identifies four factors to be considered in determining whether or not a particular use is fair:

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work (fiction/non-fiction, published/unpublished)
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for, or value of, the copyrighted work
How we apply our rights for fair use depends not on \textit{how much} of a piece of copyrighted work that we use, but instead on the \textit{ways} in which we use it.

- Guidelines are not in the copyright law
- Initially considered minimum standards as a way of quantifying fair uses
- No longer compatible with open-ended, creative process of learning, researching and creating new works
Arkansas Library Media Standards

**6.EN.C.1** Ethically use and reproduce others’ work.

**6.EN.C.2** Acknowledge authorship and demonstrate respect for the intellectual property of others.

**6.EN.C.3** Include elements in personal-knowledge products that allow others to credit content appropriately.

- [Creative Commons](#)
- [Copyright Brochure](#)
- [Copyright & Creativity.org](#)
- [Six Copyright Concepts Article](#)
Evaluation link

https://rb.gy/9at90
Questions?

Google Folder

https://tinyurl.com/y22er84w
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