TO: Indiana School Libraries & Public Libraries Housed in Schools

FROM: Indiana State Library

RE: **HEA 1447** (Schools; School Libraries)

DATE: 5/15/23

HEA 1447 was recently passed by the Indiana General Assembly and signed by Governor Holcomb. The bill:

* requires Indiana school boards to prepare a publicly available catalog of materials available in the school library;
* requires Indiana school boards to establish a procedure that allows parents, guardians, and community members to request removal from the school library materials that are obscene (per IC 35-49-2-1) or harmful to minors (per IC 35-49-2-2);
* prohibits Indiana school libraries from making available materials that contain obscene matter or matter harmful to minors;
* provides certain new requirements with regard to evaluations and surveys performed by third parties in the school setting; and
* Prohibits state agencies and schools from requiring students to adopt a specific position or take any action that would result in favoring any particular position on an issue or issues when students are engaged in political activism or lobbying efforts as part of a class.

This memo addresses the portions of the bill that impact school libraries. The school libraries impacted include libraries of public school corporations ([IC 36-1-2-17](https://iga.in.gov/legislative/laws/2022/ic/titles/036/#36-1-2-17)) and charter schools. Libraries in private schools and libraries for home schooled groups do not appear to be affected by HEA 1447. College and University libraries are not impacted by HEA 1447 except to the extent that they have been added as a group that has an affirmative defense to prosecution for disseminating, displaying, or performing material harmful to minors. The provisions in HEA 1447 that affect school libraries take effect January 1, 2024.

**Catalog of Library Holdings**

Effective January 1, 2024, HEA 1447 requires the school boards of public school corporations and charter schools to establish a procedure for each school in their district to prepare a catalog of materials available in the school library. Each school must publish on their website, and provide a hard copy on request, a catalog of material available in the school library. HEA 1447 prohibits libraries of Indiana public school corporations and charter schools from making available materials that contain obscene matter or matter harmful to minors. Upon request, schools must provide a copy of any policies relating to these requirements.

Q. We are a public library and just happened to be housed in the school. Are we required to abide by HEA 1447?

A. It depends on the specific facts of the situation. Is the school using that library or library branch as a school library? If a school is housing a public library (or branch of a public library) and that library is made available for student use during school hours, but is not available to the general public, then it could be reasonably presumed that the school is using that library as their “school library.” In such cases, if the school asks the library for a catalog of the library’s holdings, it would be reasonable for the library to just provide the catalog of materials that are available to students at that particular branch that is located within that particular school. Those public library branches located within the schools should not have

available within those specific school locations, materials that are obscene or contain matter harmful to minors.

Admittedly, this is not a simple and clearcut solution because this would require a separate library catalog for the public library branch housed in the school, the library would have to be careful about the content of material available via interlibrary lending, and there would have to be a way to screen off electronic holdings that should not be made available at/via the school library location. There may need to be a setting in the electronic materials database for “school based” versus general library cards and materials may need to be classified as general or restricted. This could potentially be an administrative burden for public libraries housed in schools and could lead to those libraries removing their satellite school-based branches if HEA 1447 is enforced. More clarification is needed from lawmakers to know for sure if they intended for public libraries housed in schools to be considered “school libraries” for the purpose of HEA 1447.

Q. We are a library in a private school, are we required to post a catalog of our library holdings on our school website?

A. No. The school libraries affected include libraries of [public school corporations](https://iga.in.gov/legislative/laws/2022/ic/titles/036/#36-1-2-17) and charter schools. Private school libraries and libraries for home schooled groups do not appear to be affected by HEA 1447.

Q. How do we account for materials students may find using the internet on library computers?

A. The general internet at large cannot logically be said to be part of the library’s collection, such that the library would be required to list everything available via general internet access. However, school libraries should be using filters on library computers that would exclude obscene content and material that is harmful to minors from appearing in search results.

Q. Do we need to provide a catalog of our electronic holdings?

A. Yes, electronic materials that are part of the library’s collection would need to be included in the posted/provided catalog of materials available.

Q. What if the electronic collection isn’t actually procured by the school library but rather, the electronic collection is provided to the school compliments of the local public library?

A. If the school library is providing access for the students, as opposed to the students getting access directly from the public library, then the school library would likely need to include the list of electronic materials on their published catalog of library holdings. This is because the law says the catalog must be of “materials available in the school library.”

**Materials Challenges**

Effective January 1, 2024, HEA 1447 requires school boards to establish a procedure for each school to allow parents, guardians, or community members within the school district to submit a request to remove material from the school library if that material is obscene (as described in [IC 35-49-2-1](https://iga.in.gov/legislative/laws/2022/ic/titles/035/#35-49-2-1)) or harmful to minors (as described in [IC 35-49-2-2](https://iga.in.gov/legislative/laws/2022/ic/titles/035/#35-49-2-2)). The procedure must include a response and appeal process. The response and appeal process must require the governing body/school board to review the removal request at the next public meeting. Upon request, schools must provide a copy of any policy relating to these requirements.

Q. Can Parents/guardians challenge any of our books?

A. It depends on the scope of your materials challenge policy. HEA 1447 only requires a policy that addresses challenging materials that are considered obscene or harmful to minors under Indiana law.

Q. Do we have to address a challenge made by someone who doesn’t even have a child attending our school?

A. Yes, if the individual is a resident/community member in the school district.

Q. There is a challenge to a large number of our books, is our board required to have reviewed the content of each book so they can make a decision whether to keep or purge the books at the next board meeting.

A. The law only requires the board to review the request at the next board meeting. It does not appear that they have to make a decision by the next board meeting. Timelines could be covered in your materials challenge policy.

Q. What is considered “obscene” under Indiana law?

A. Per, IC 35-49-2-1 a matter or performance is if:

(1) the average person, applying contemporary community standards, finds that the dominant theme of the matter or performance, taken as a whole, appeals to the prurient interest in sex;

(2) the matter or performance depicts or describes, in a patently offensive way, sexual conduct; and

(3) the matter or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The material must meet all three criteria above to be considered obscene. If the content does not satisfy even one element of the 3-part test, the matter would not legally be considered obscene.

Q. What is considered “material harmful to minors” under Indiana law?

A. Per IC 35-49-2-2, a matter or performance is harmful to minors if:

(1) it describes or represents, in any form, nudity, sexual conduct, sexual excitement, or sado-masochistic abuse;

(2) considered as a whole, it appeals to the prurient interest in sex of minors;

(3) it is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable matter for or performance before minors; and

(4) considered as a whole, it lacks serious literary, artistic, political, or scientific value for minors.

The material must meet all four of the above criteria in order to be considered material harmful to minors. If the content does not satisfy even one element of the 4-part test, the matter would not legally be considered material harmful to minors.

Q. There is a local community group that believes all materials discussing LGBTQ+ issues are obscene and/or harmful to minors. Are we required to purge all materials discussing LGBTQ+ issues.

A. Not necessarily. The words “contemporary community standards” refers to society at large, not a subset of society or particular interest groups in the community. Additionally, when determining what is patently offensive in the adult community with respect to what is suitable matter for children, you would look at the adult community in society at large, not a subset of society or specific interest groups. Any challenge to materials should list the specific materials/titles to which the individual or group is objecting and should go through the challenge process for each item. The library would need to analyze the content in each item to determine if it meets all the criteria of obscene matter or material harmful to minors. It would be acceptable to include in the library’s challenge policy, a requirement that the complainant provide specific page numbers and/or other specific content information in the challenged material, as opposed to just a list of books on a specific topic.

Q. Do we have to purge all material containing nudity or discussing sex?

A. Not necessarily. The obscenity statue does not prohibit material that appeals to a normal interest in sex. The obscenity statute also does not prohibit mere nudity. Remember, all elements must be met to be a violation of either the obscenity statute or the material harmful to minors statute.

Q. There is a group challenging an audio book that does not contain any pictures. Can this be considered obscene or material harmful to minors?

A. Yes. A book containing only fictional text with no pictures can still be considered obscene.

**Immunity From Prosecution**

Indiana law, with some specific exceptions, provides that it is a level 6 felony to disseminate, display, or perform material harmful to minors in an area where minors are exposed to such material. Historically, it has been a defense to prosecution if the matter was disseminated or performed for legitimate scientific or educational purposes. Additionally, it has historically been a defense if the matter was disseminated, displayed, or performed by a school or by an employee of such school acting within the scope of the employee’s employment. As of January 1, 2024, HEA 1447 removes as a defense, that the material harmful to minors was provided for educational purposes. Additionally, effective January 1, 2024, HEA 1447 removes as a defense to prosecution that the material was provided to the recipient or performed by a school. Notably, in the version of the bill I reviewed at the time of this memo, school employees acting within the scope of employment were still included as parties who could claim a defense to prosecution. Whether or not this is intentional or will be changed in some sort of future clean-up action remains to be seen.