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TO: Ms. Meg Placke, Assistant Secretary / State Librarian
FROM: Jeff Landry, Attorney General
DATE: September 13, 2023
RE: Guidance for libraries implementing 2023 La. Acts No. 436

The following guidance on 2023 La. Acts No. 436, enacted as La. R.S. 25:225, is to assist parish and municipal libraries in the implementation of this law.

IMPLEMENTATION

1. By what date must a library adopt and implement the policy required by La. R.S. 25:225?

Each library must adopt a compliant policy by January 1, 2024, and must implement the policy by June 1, 2024.

2. Does La. R.S. 25:225 require that parent selections be in place by June 1, 2024?

No. La. R.S. 25:225 requires that by June 1, 2024, the library must implement a system that allows a parent or guardian to decide whether their minor child may check out digital content and sexually explicit material physically available in the library. The parent or guardian is not required to make the selection by any certain date.

3. What are the minimum policy requirements in La. R.S. 25:225?

Community Standards Requirement: La. R.S. 25:225(C)(2)(a)

Community standards for the population served by the library must be part of the consideration when acquiring library material that will be accessible to a minor.

Library Card System Requirement: La. R.S. 25:225(C)(2)(b)

A library card system that requires a minor's parent or guardian to select whether the minor is permitted to check out sexually explicit material physically available in the library.

There are two available options a library can use to satisfy this requirement.

Option 1: A library card system that allows for restriction of each library material that the board of control has determined meets the definition of sexually explicit material as set forth in La. R.S. 25:225 (B)(4). Under this option, the minor will have access to all material in a library collection, but will be restricted from individual library materials. La. R.S. 25:225(C)(2)(b)(ii)

Option 2: A library card system that allows for the restriction of a specific collection that contains sexually explicit material. La. R.S. 25:225(C)(2)(b)(i).

Each board of control should implement the library card system that best suits the needs, resources, and finances of their library while still maintaining access to age-appropriate materials that do not meet the definition of sexually explicit material.

Digital Content Selection Requirement: La. R.S. 25:225 (C)(2)(c)

The library must have a system in place that allows a parent or guardian to select whether their minor child may check out digital content. La. R.S. 25:225(C)(2)(c). This is a separate selection from the selection of whether the minor may check out sexually explicit material physically available in the library, as required by La. R.S. 25:225(C)(2)(b). Digital content means a book, e-book, audiobook, video book, essay, newspaper, magazine, film, or other library material provided in a digital format. La. R.S. 25:225(B)(1).

Additionally, the library must maintain, within its policy, a list of digital content sources that are accessible to minors and contain sexually explicit material for check out so that parents or guardians can make an informed decision about whether to permit their child to check out digital content. La. R.S. 25:225(C)(2)(c).

Request for Reconsideration Requirement: La. R.S. 25:225(C)(2)(d)

The procedure must allow a library patron to request the reconsideration of whether a library material should be included in a library collection accessible to minors. La. R.S. 25:225(C)(2)(d).

The library patron making the request for reconsideration must be notified in writing of the library's decision on the request for reconsideration. La. R.S. 25:225(C)(2)(d)(i).

A general request for reconsideration should be reviewed in accordance with the library's policy and does not have to be determined by the board of control. However, the written determination should notify the library patron that the decision is appealable to the board of control. La. R.S. 25:225(C)(2)(d)(i).

If the request for reconsideration involves an allegation that the library material meets the definition of sexually explicit material in La. R.S. 25:225(B)(4), then the determination of whether the library material meets the definition must be made by the board of control in an open meeting, *See* La. R.S. 25:225(C)(2)(d)(ii), La. R.S. 42:11, *et seq.* (Louisiana's Open Meetings Law).

- 4. Does La. R.S. 25:225 require that a library use a specific form to indicate whether a minor is restricted from checking out digital material or sexually explicit material physically available in the library?**

No. There is no requirement that the library utilize a specific form.

5. Does La. R.S. 25:225 require that a library restrict a minor's access to library materials prior to check out?

No. La. R.S. 25:225(C)(2)(b).

6. Does La. R.S. 25:225 require that a library prevent a minor with a non-restricted card from checking out library material for a minor with a restricted card?

No.

7. If a minor with a restricted card attempts to check out sexually explicit material, is the library required to do anything other than tell the minor that s/he cannot check out the material?

No.

8. How should the library handle an emancipated minor?

The types of emancipation in Louisiana are judicial emancipation (full and limited), emancipation by marriage, and limited emancipation by authentic act. La. C.C. art. 365. Judicial emancipation may be either full or limited. La. C.C. art. 366.

Full judicial emancipation confers all the effects of majority on the person emancipated. La. C.C. art. 366. A minor with full judicial emancipation should be treated the same as an adult.

Limited judicial emancipation confers certain effects of majority which are specified in the judgment of emancipation. La. C.C. art. 366. Whether a minor with limited judicial emancipation should be treated the same as an adult for the purposes of La. R.S. 25:225 depends on the language of the judgment of emancipation.

A minor who is emancipated by marriage should be treated the same as an adult, even if the minor subsequently divorces their spouse. La. C.C. art. 367.

An authentic act of limited emancipation confers upon a minor age sixteen or older the capacity to make certain juridical acts. La. C.C. art. 368. Whether a minor with an authentic act of limited emancipation should be treated the same as an adult depends on the specified juridical acts contained in the limited emancipation document.

9. Will a physical indicator that identifies a library material as sexually explicit to staff comply with La. R.S. 25:225 or is an automated rejection system required?

La. R.S. 25:225 does not require an automated rejection system. A physical indicator can be used to identify the library material as sexually explicit.

10. Will it be sufficient if the library puts a note on the minor's account evidencing the restriction, or is the library required to have separate cards?

The library can implement the policy required by La. R.S. 25:225(C)(2)(b) by putting a note on the minor's account. There is no requirement that the library issue a separate card.

11. Can a minor with a student library card issued through the public school system check out digital content or sexually explicit material physically available in the library?

A minor's parent or guardian is required to select whether the minor is permitted to check out digital content and sexually explicit material physically available in the library. La. R.S. 25:225(C)(2)(b) and (c).

If a library card is automatically issued through the school system without the consent of the parent, the conditions in La. R.S. 25:225(C)(2)(b) and (c) have not been met and the library policy should not permit the minor to check out digital content or sexually explicit material physically available in the library unless and until the parent makes that selection.

12. How should the library treat a minor whose parent or guardian is absent?

If a parent or guardian is absent then the conditions in La. R.S. 25:225(C)(2)(b) and (c) have not been met, and the library policy should not permit the minor to check out digital content or sexually explicit material physically available in the library.

DIGITAL LIBRARY

13. Does La. R.S. 25:225 include electronic reference databases that do not offer material for check out?

No, La. R.S. 25:225 does not regulate reference databases accessible to minors that do not contain material for check out.

REQUESTS FOR RECONSIDERATION

14. Do all references to sexual conduct meet the statutory definition of sexually explicit material?

No, the definition of "sexually explicit material" only applies to material that *depicts* or *describes* sexual conduct. A mere reference to sexual conduct or a statement that sexual conduct occurred does not meet the statutory definition of sexually explicit material. La. R.S. 25:225 (B)(4).

Statutory construction requires that the words of a law be given their generally prevailing meaning. La. C.C. art. 11. The meaning of the word *depict* is "to represent by or as if by a picture."¹ A *depiction* is "a representation in words or images of someone or something."² The meaning of the word *describe* is "to give an account in words."³ A *description* is "discourse intended to give a mental image of something experienced."⁴

¹ *Depict* MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/depict> (last visited August 30, 2023).

² *Depiction* MERRIAM-WEBSTER DICTIONARY <https://www.merriam-webster.com/dictionary/depiction> (last visited August 30, 2023).

³ *Describe* MERRIAM-WEBSTER DICTIONARY <https://www.merriam-webster.com/dictionary/describe> (last visited August 30, 2023).

⁴ *Description* MERRIAM-WEBSTER DICTIONARY <https://www.merriam-webster.com/dictionary/description> last visited August 30, 2023).

The library material must actually depict or describe sexual conduct to meet the definition of sexually explicit material in La. R.S. 25:225 (B)(4).

15. If a library material depicts genitalia or breasts, does it automatically meet the definition of sexually explicit material?

No. Sexually explicit material depicts or describes sexual conduct. La. R.S. 25:225 (B)(4). Sexual conduct includes the “lewd exhibition . . . of the genitals, pubic hair, anus, vulva, or female breast nipples.” La. R.S. 25:225(B)(3)(a).

A depiction of genitalia or female breasts in a library material (such as an encyclopedia or artwork) will not meet the definition of sexual conduct unless it rises to the level of being lewd. La. R.S. 25:225(B)(3)(a).

The word “lewd” means “lustful, indecent, lascivious, and signifies that form of immorality which has relation to sexual impurity or incontinence carried on in a wanton manner.” *State v. Holstead*, 354 So. 2d 493, 497 (La. 1977).

16. Can the board of control adopt a request for reconsideration form that asks the library patron to identify the specific content believed to meet the definition of sexually explicit material?

Yes, the library may ask the library patron to identify the content within the library material for faster processing.

17. Does La. R.S. 25:225 require a library to conduct a review of all library materials?

No, La. R.S. 25:225 only requires a board of control to consider library material after the library receives a request for reconsideration from a library patron. La. R.S. 25:225 (B)(2) and (C)(2)(d)(ii).

18. Does La. R.S. 25:225 require a library to remove or relocate a library material under review by the board of control?

No.

19. Should library material be relocated to the Adult Collection if the board of control determines it meets the definition of sexually explicit material?

La. R.S. 25:225 does not require a library to relocate any library materials. Whether a book is appropriate for a particular collection is controlled by the collection policy of the library. Before relocating a book to a different collection, the library should consider whether relocation is appropriate under the library’s collection policy.

20. May the board of control review library material without a request for reconsideration?

Nothing in La. R.S. 25:225 prohibits the board of control from reviewing on its own initiative whether a library material meets the definition of sexually explicit material.

21. If the board of control has reviewed a library material and made a determination, is the board of control prohibited from reviewing the library material again?

Nothing in La. R.S. 25:225 prohibits a subsequent review of the same library material. However, whether a library material is sexually explicit material should be determined by the definitions contained in La. R.S. 25:225(B) and not the personal, political, or ideological views of board members. *See Board of Educ. Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982).

22. If a board of control previously determined whether a library material constitutes sexually explicit material, does La. R.S. 25:225 require the board of control to review the same material anew for subsequent requests for reconsideration?

No, if a board of control has reviewed a book and held a vote pursuant to La. R.S. 25:225 (C)(2)(d)(ii) to determine whether the material is sexually explicit, La. R.S. 25:225 does not require the board of control to repeatedly vote on the same material for subsequent requests for reconsideration.

The library should maintain the written determination approving or denying requests for reconsideration in accordance with its record retention schedule. If desired, the board of control may use previous determinations to respond to subsequent identical requests. La. R.S. 25:225 (C)(2)(d)(i).

23. Does La. R.S. 25:225 require the board of control to make separate determinations for different formats?

No, La. R.S. 25:225 does not require a separate determination for different formats (i.e. e-book, audiobook, large print edition, etc.) if the substance is identical to the library material that is being considered in the request for reconsideration.

If the substance is not identical, such as in the case of an unabridged edition and an abridged edition, then a separate determination is necessary for each item.

24. Is a decision by a board of control in one parish binding on a board of control in another parish?

No.

25. Is there an appeal from a decision by the board of control?

No, the board of control makes the final decision on a request for reconsideration.

26. Does La. R.S. 25:225 specify a period for finalizing the decision on a request for reconsideration?

No, although libraries have the option to establish a period in their policy.

27. Can a library limit the number of requests for reconsideration that a library patron can make?

No. La. R.S. 25:225(C)(2)(d).

28. Are requests for reconsideration exempt from production under the Louisiana Public Records Law?

To the extent that a library collects information (i.e., name, library card number, address, etc.) to determine whether the requestor is a library patron and therefore eligible to utilize the request for reconsideration process, such information is not a public record. The request for reconsideration procedure is a library service only available to library patrons and is mandated by state law. La. R.S. 25:225(C)(d)(i)–(ii). Library records maintained for the purpose of determining eligibility for the use of a library service are not subject to public disclosure. La. R.S. 44:13(B).

Information collected, maintained, or used for the purpose of determining whether a requestor meets the definition of library patron should be redacted from the reconsideration requests before it is made available to the public.

CONSEQUENCES

29. What happens if a library does not adopt and implement the policy required by La. R.S. 25:225 by January 1, 2024, or does not implement the policy by June 1, 2024?

The State Bond Commission will not approve the issuance of debt by a library if the library has not adopted and implemented the policy required by La. R.S. 25:225(C). This applies to new library millages and the renewal of library millages.

A library's local governing authority (e.g. a parish council in the case of a parish library) has the option to withhold the payments required by La. R.S. 25:220 if the library has not adopted and implemented the policy required by La. R.S. 25:225(C). Prior to withholding payment, the local governing authority must first give written notice to the library 60 days in advance of its intent to withhold payment. La. R.S. 25:225(E)(1). If the library comes into compliance during this 60-day period, then the governing authority may not withhold payments. Payments may only be withheld during the period of noncompliance.

30. Can the consequences in La. R.S. 25:225(E) be imposed if the library has adopted and implemented the policy required by La. R.S. 25:225?

No. If the library has adopted and implemented the policy required by La. R.S. 25:225(C), the recourse in La. R.S. 25:225(E) is not available and may not be utilized in other disputes.