



Tennessee

November 2022

This document does not give legal advice, and you should not rely on it as legal advice. You should speak with a lawyer to get advice on your specific situation.

# Frequently Asked Questions:

## Censorship in Tennessee's Schools

A nationwide attempt to censor honest discussion of America's history is underway. State legislatures – including Tennessee's – have passed legislation that censors teachers or employees of LEAs.

We oppose Tennessee's oppressive and vague policies, which threaten free speech in the classroom.

### Age Appropriate Materials Act

#### What is the Age Appropriate Materials Act?

In 2022, the Tennessee legislature passed the "Age Appropriate Materials Act of 2022" (Tennessee Code Annotated (TCA) 49-6-3801, et seq.). This law includes requirements for local boards of education to update library collection policies to include procedures for review of materials located in public school classrooms.

#### What does the Age Appropriate Materials act do?

The law requires LEAs to post a list of library collections on their website and to include updated policies for reviewing materials, which must include a procedure to "evaluate feedback" from a student, parent, or school employee.

If feedback is received, the school board must evaluate the material that received "feedback" to determine whether it is age appropriate and consistent with the mission of the school. If deemed not "appropriate" the book must be removed.

Many, if not most, schools already have similar processes in place. However, the policies are usually crafted to meet First Amendment requirements and to have procedural safeguards in place. The language in this new law is unclear and vague, so it will likely chill or minimize the range of content in classroom libraries.

### State Library Censorship Law

The State Textbook and Instructional Materials Quality Commissions is composed of 14 members who recommend an official list of textbooks and instructional materials to be approved by the State Board of Education.

#### What does the State Library Censorship Law do?

In 2022, the state legislature made changes to the law that regulates the Tennessee State Textbook Commission. This law makes changes to the Commission by adding the appointment of a librarian or retired librarian, changing some of the position requirements, and changing the process so that now only the governor's appointees must be confirmed by the General Assembly.

However, the modification with the biggest impact is the creation of a process through which an individual can appeal a local school board's decision about a book to the textbook commission. This new process could result in the statewide ban of a book challenged by a single person and/or complaint anywhere in the state.

### K-12 Classroom Censorship Law

During the 2021 legislative session, Tennessee passed a law that prohibits local education agencies (LEA) or public charter schools from including or promoting the concepts that follow as part of a course of instruction or in a curriculum or instructional program, and prohibits them from allowing teachers or other employees of the LEA or public charter school to use supplemental instructional materials that include or promote the concepts that follow.

#### Who does this law apply to?

The law applies to LEAs. It does not apply to students or student clubs.

#### What does this law apply to?

The law applies to curriculum – not personal conversations or student activities.

## K-12 Classroom Censorship Law (Cont'd)

### How will this law be enforced?

The Tennessee Department of Education (TDOE) issued rules as to how the law would be enforced.

- Only a parent, student, or LEA staff can file a complaint with an LEA.
- The complaint must be made within 30 days of the incident.
- The LEA will review the complaint and issue a written decision.
- If a violation is found, the LEA can take remedial action, including removing the material from the curriculum and even **disciplinary action** against the teacher.
- The LEA's decision can be appealed to the Tennessee Department of Education.
- If the TDOE determines that a violation has occurred, they will leave it to the LEA to pursue disciplinary action and will place the LEA into a corrective action plan.
- The LEA's funds are withheld until the terms of plan are met.

Educators should reach out to their unions (Tennessee Education Association) or a lawyer regarding any employment action taken against them.

### Can schools still teach about Black American history, such as the Civil Rights movement?

Yes, historical concepts like slavery, the Civil Rights movement, and desegregation are still a part of Tennessee's education curriculum. And existing law even requires that all public schools provide age-appropriate "courses and content designed to educate children in black history and culture and the contribution of black people to the history and development of the world" (Tenn. Code Ann. § 49-6-1006).

However, planning to teach these concepts may require some additional thought as the law calls for impartial discussion and instruction when teaching "controversial aspects of history" and "historic oppression of a particular group of people based on race, ethnicity, class, nationality, religion or geographic region" [Tenn. Code Ann. 49-6-1019(b)].

These vague mandates incentivize teachers to avoid discussions of race and gender altogether. If teachers overstep these indeterminate boundaries – intentionally or not – they risk the state withholding funding to their school (not to mention risks to their own careers). This threat can prevent teachers from engaging students in challenging academic discussions.

### Can students still talk about race in school?

Yes. Students do not shed their constitutional rights, including the right to free speech, at the schoolhouse gates. Schools can limit student speech that is substantially disruptive to the school environment, but should not be using the

## Concepts prohibited at LEAs & public charter schools

The law outlines a series of 14 "concepts" which may not be taught in Tennessee's schools, including the following:

- An individual, by virtue of the individual's race or sex, is inherently privileged, racist, sexist, or oppressive, whether consciously or subconsciously;
- A meritocracy is inherently racist or sexist, or designed by a particular race or sex to oppress members of another race or sex;
- This state or the United States is fundamentally or irredeemably racist or sexist;

The provisions of this law are so vague that they will likely ban or chill an even broader range of content from the curriculum.

For example, does this law bar teaching that some of America's Founding Fathers – indeed fundamental to American government and society – espoused racist views or owned slaves? Surely our Founding Fathers were "fundamental" to the American story. Another section of the bill requires "impartial" instruction on histories of racial oppression. What is meant by "impartial"?" Should teachers avoid offering moral judgments on the practice of slavery? Or the deprivation of the voting rights of non-white, non-male Americans for more than a century?

These vague mandates incentivize teachers to avoid discussions of race and gender altogether. If teachers overstep these indeterminate boundaries – intentionally or not – they risk the state withholding funding to their school (not to mention their own careers). This threat prevents teachers from engaging students in challenging academic discussions.

"banned topics" law to restrict student speech.

If you are aware of a school using this law to stop student speech, association, or other activity, please contact ACLU-TN by visiting:

[www.action.aclu.org/legal-intake/aclu-tn-legal-intake-form](http://www.action.aclu.org/legal-intake/aclu-tn-legal-intake-form).

**If any of these laws affect you, we want to hear from you.**

**If you are a teacher** and have been told to change curriculum or course instruction, been disciplined for something you've said or taught, or been told to remove a book from the classroom or library because of this law, please contact ACLU-TN at: [www.aclu-tn.org/legal-assistance/](http://www.aclu-tn.org/legal-assistance/).

**If you are a student** and your school has prohibited you from discussion with other students, forming a club, reading or presenting on a certain book or topic, or has inhibited your speech any other way, please contact ACLU-TN at: [www.aclu-tn.org/legal-assistance/](http://www.aclu-tn.org/legal-assistance/).