



## **NJLA Statement on Library Confidentiality and Access to Children’s Library Records**

Over the years NJLA has received numerous questions from librarians, library board members and parents regarding whether or not the NJ Library Confidentiality statute (N.J.S.A. 18A:73-43.2) protects the confidentiality of children as well as adults. NJLA’s position is that this law protects the confidentiality of ALL library users in New Jersey. Nothing in the statute exempts minors from its protections. The rights of minors to privacy in reading their choice of library materials should be respected and protected.

That said, NJLA is also aware of another statute, commonly referred to as the Parental Access statute (N.J.S.A . 9:2-4.2), which affords parents access to records of their minor children. These two statutes conflict and which one prevails is not a clear matter of law in the opinion of NJLA’s legal advisors. In both 2002 and 2014 NJLA sought legal guidance on this matter in an effort to be able to provide NJ libraries with advice on how to handle the issue of parental access to children’s library records. The most recent legal opinion, which reiterates the guidance we were given in 2002, may be found at:

<http://njla.org/sites/default/files/Confidentiality%20of%20Children%27s%20Library%20Records.pdf>

Our legal advisors cannot tell us how a judge would rule on the conflicting laws. They have told us how they believe a judge would look at both laws and which arguments they believe such a ruling would be based on. Central to both the 2002 and 2014 guidance provided to NJLA is the assumption that the younger the child the more likely the Parental Access statute would prevail. As a child ages First Amendment issues also come into play and a child’s confidential use of the library becomes more likely to be upheld by a court. But there is no common agreement on how old a child must be in order to be assured of the full protections of the Library Confidentiality Law.

Our most recent legal opinion states that a library “runs little risk” if it permits parents to access records of their children who are elementary school age or younger. While NJLA continues to believe that the full protections of the Library Confidentiality Law should be extended to all library users, we also acknowledge that libraries hold parents financially responsible for their child’s library materials. We know that many libraries feel that the Confidentiality Law’s provision allowing access to records ‘for the proper operation of the library’ can be applied to the need to inform parents of the titles of overdue and lost materials. We strongly urge all NJ libraries to adopt policies which address any circumstances under which the library records of minor children may be disclosed to their parents and to have such policies reviewed by their attorney for compliance with existing law.

**And we remind everyone that children are afforded all other protections of the Library Confidentiality Act and libraries must guard the confidentiality of their library records in all other instances (requests from law enforcement, other family members, etc.)** Parental responsibility is key to a minor's use of the library. Notifying parents about the library's privacy and confidentiality policies should be a part of the process of issuing library cards to minors.

We wish there was more clarity in the law on this issue. In the absence of such clarity we can only urge library boards to adopt policies that are clear and provide sufficient guidance to library staff so any rules governing minor patrons are applied in an objective and reasonable manner.

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