

---

## New California Law Authorizes Financial Penalties Against School Boards Banning Books

---

November 9, 2023

Number 36

**Written by:**

Daniel M. McElhinney

Partner

San Luis Obispo Office

[dmcElhinney@lozanosmith.com](mailto:dmcElhinney@lozanosmith.com)

Karina Demirchyan

Associate

San Luis Obispo Office

[kdemirchyan@lozanosmith.com](mailto:kdemirchyan@lozanosmith.com)

On September 25, 2023, California Governor Gavin Newsom signed Assembly Bill (AB) 1078, which prohibits school boards from banning books because the books include diverse perspectives. Additionally, AB 1078 makes changes to enforcement of a school district's duty to provide sufficient and appropriate textbooks and instructional materials. AB 1078 is effective immediately.

### **New Book Banning Standard**

The new law prevents school boards from prohibiting the use of any appropriately adopted textbook on the basis that it contains inclusive and diverse perspectives. This includes the study of the role and contribution of the following: people of all genders; Native Americans; African Americans; Latino Americans; Asian Americans; Pacific Islanders; European Americans; LGBTQ+ Americans; persons with disabilities; and other ethnic, cultural, religious, and socioeconomic status groups.

### **Instructional Materials Enforcement**

Generally, California law requires school boards to determine, at a public hearing conducted by the board and by adopted resolution, whether each student in their school district has sufficient standards-aligned books and other instructional materials. If the school board determines there are insufficient textbooks or instructional materials, the school board must ensure that the insufficiency is remedied within two months of the beginning of the school year in which such determination is made. Now, after the passage of AB 1078, when a school board makes the determination that there are insufficient textbooks or instructional materials, the school district is required to submit a copy of the resolution to the county superintendent of schools within three business days of the board meeting.

If a county superintendent determines that a school does not have sufficient textbooks or instructional materials, California law requires the county superintendent to provide the school district with the opportunity to remedy the deficiency. Previously, if the deficiency was not remedied, the law required the county superintendent to request that the California Department of Education,

with approval by the State Board of Education, purchase the required library books, textbooks, or instructional materials for the school. Under the new law, if the deficiency is not remedied within two months of the beginning of the school year in which the determination is made, the Department of Education will purchase the required textbooks or instructional materials for the school, and the funds expended towards the purchase will be considered a loan to the school district. Unless the loan is repaid based upon an agreed-upon schedule with the State Superintendent, the Controller will deduct the amount of the loan from the school district's next principal apportionment or other apportionment of state funds.

AB 1078 also authorizes complaints regarding insufficient textbooks or instructional materials to be filed directly with the State Superintendent of Public Instruction. Previously, such complaints had to be submitted to the school district through the uniform complaint process. Now, the State Superintendent may intervene without waiting for the school district to investigate.

## Takeaways

School boards continue to be tasked with ensuring that each pupil within their district is provided sufficient standards-aligned books and other instructional material. However, school boards should be aware that in the event they do not provide these materials, AB 1078 authorizes the Department of Education to purchase the required materials for schools. Unless the school district repays the costs of the instructional materials, school districts will have the funds deducted from their next principal apportionment or other apportionment of state funds.

In addition, AB 1078 prohibits governing boards from banning classroom or library materials based upon their inclusion of diverse perspectives.

If you have questions about AB 1078, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*