

# Book Bans & Curriculum Selection – Who Decides What Students Learn?

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# Agenda:

- Legal Framework and Current Landscape
- ABC School District Receives a Complaint
- Policy Development
- Review Process & Suggested Practices

# Legal Framework and Current Landscape

# Legal Framework – Colorado Law

- The Colorado Constitution grants local boards of education “control of instruction in the public schools of their respective districts.” Colo. Const. Art. 9, § 15.
- Colorado Revised Statutes:
  - Boards are required to adopt academic standards that “meet or exceed” state academic standards (C.R.S. § 22-32-109(1)(II))
  - Boards are responsible for determining the educational programs and prescribing textbooks (C.R.S. § 22-32-109(1)(t))
  - Boards have the authority to exclude from each school and school library any materials which, in the board’s judgment, are of immoral or pernicious nature (C.R.S. § 22-32-110(1)(r))

# Legal Framework – First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

## Legal Framework – Curricular v. Non-Curricular

What is the authority of the board of education?

- ✓ Adopt academic standards that meet or exceed state standards
- ✓ Select curriculum (in addition to requirements of state law to cover certain topics)
- ✓ Select textbooks and require teachers to teach the curriculum
- ✓ Acquire library books, but can remove library books **only within the bounds of the U.S. Constitution**

## Legal Framework – *Island Trees v. Pico*

- The U.S. Supreme Court considered removal of school library books in *Island Trees v. Pico* (1982).
- Case background
  - A group of parents obtained a list of books they believed were “objectionable” and “improper fare for school students” at a political conference.

## Legal Framework – *Island Trees v. Pico*

- Case background
  - 9 books on the list were in the district’s high school library and 1 book was in the middle school library (another book was part of the 12<sup>th</sup> grade curriculum)
  - The Board directed the books’ immediate removal for review, and characterized the removed books as “anti-American, anti-Christian, anti-Sem [i]tic, and just plain filthy.”



# Legal Framework – *Island Trees v. Pico*

- Case background
  - The Board appointed a book review committee consisting of 4 parents and 4 staff to recommend whether the books should be retained, taking into account the books’
    - Educational suitability
    - Good taste
    - Relevance
    - Appropriateness to age and grade level

## Legal Framework – *Island Trees v. Pico*

- Case background
  - The committee recommended that:
    - 5 of the 11 books be retained
    - 2 books be removed
    - Could not reach consensus on 2 books
    - Took no position on 1 book
    - Recommended that 1 book be available with parental approval
  - The Board rejected the committee's recommendation, and gave no reason for doing so, and removed all the books, except for one.

# Legal Framework – *Island Trees v. Pico*

- Case background
  - Five students sued the Board, arguing that the Board had removed the books because particular passages in the books “offended [the Board’s] social, political, and moral tastes and not because the books, taken as a whole, were lacking in educational value,” in violation of their First Amendment rights.



# Legal Framework – *Island Trees v. Pico*

- Questions before the Court:

1. Does the First Amendment impose any limitations on a school board's discretion to remove library books from school libraries?

Yes, school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.

2. If so, was the board justified in its decision to remove the books?

Probably not; the Board didn't give any reason for rejecting the committee's recommendation so the Court couldn't rule out the possibility that the removal was based on the Board's disagreement with constitutionally protected ideas in the books.

## Legal Framework – *Island Trees v. Pico*

- Discussion:
  - At the outset, the Court distinguished between curricular and non-curricular materials → only the library books were at issue (and the question concerned the books' removal, not their acquisition).
  - The opinion highlights the foundational premise that public education is generally left to local control while emphasizing the role the First Amendment plays in affording public access to discussion, debate, and dissemination of information and ideas.
  - A student's right to access ideas and receive information is necessary to enable them to meaningfully exercise their rights to speech, press, and political freedom.

## Legal Framework – *Island Trees v. Pico*

- Takeaways:
  - Students have a First Amendment right to receive information and have access to ideas. School libraries play a unique role. Selection of books is a matter of free choice.
  - Board removal of library book may be permissible if book contains “pervasive vulgarity” or is “educationally unsuitable.”
  - However, simply stating that book is “educationally unsuitable” is not enough. Court will assess the credibility of this conclusion to determine whether unconstitutional viewpoint discrimination has occurred (i.e., disagreement with the ideas in the book).

## Legal Framework – Post-*Pico* Cases

- *Case v. Unified School District (1995)*
  - A court in Kansas adopted *Pico* to find the removal of library books with homosexual story lines unconstitutional because the board, while claiming the removal was for educational suitability reasons, never discussed the books' literary merit or educational suitability.
- *Campbell v. St. Tammany Parish School Board (1995)*
  - The Fifth Circuit Court of Appeals, applying *Pico*, held that a board's removal of a book on voodoo from school libraries may have been based on unconstitutional motives since the board gave no reason for its removal action.

## Legal Framework – Post-*Pico* Cases

- *Counts v. Cedarville School District (2003)*
  - A court in Arkansas ruled that a board's decision to restrict access to the *Harry Potter* series was unconstitutional because it was based on concerns that the books taught about witchcraft instead of promoting Christianity.
- *ACLU v. Miami-Dade County School Board (2009)*
  - The Eleventh Circuit Court of Appeals held that the removal of a book on Cuban culture was permissible because it was primarily based on factual inaccuracies in the book (and not a dislike of the book's ideas or political viewpoint).



# Current Landscape – Book Challenges

- 1,915 unique titles challenged in 2023
- 92% of challenged books were part of attempts to remove multiple titles



# Current Landscape – Book Challenges



- *OCR Investigation of Forsyth County Schools in Georgia*
- *Escambia County School District in Florida Sued for School Library Censorship*
- *Florida School District Sued by Students and Authors for Restricting Access to School Library Book*
- *Texas Sued by Publishers, Booksellers over Public School Book Ban*

# ABC School District Receives a Complaint

**From:** Concerned Parents <[concernedparents@gmail.net](mailto:concernedparents@gmail.net)>  
**Date:** Friday, December 8, 2023 at 2:24 PM  
**To:** [superintendent@abcschools.org](mailto:superintendent@abcschools.org)  
**Subject:** Request to remove book from school libraries

Superintendent –

We are a group of concerned parents who are committed to ensuring that sexually explicit books that promote obscenity are not made available to ABC School District students. The following books contain pornography and vulgar and obscene sexual content, and we demand that they be immediately removed from the ABC School District's libraries:

“Gender Queer: A Memoir” by Maia Kobabe  
“Push” by Sapphire  
“The Bluest Eye” by Toni Morrison  
“Slaughterhouse-Five” by Kurt Vonnegut  
“And Tango Makes Three” by Justin Richardson

Signed –

Concerned Parents of ABC School District

- How should ABC School District respond? How would your district respond?
- What questions do you have about ABC's policy?
  - What additional information do you feel is needed?

# Policy Development

# Policy Development

- Greeley-Evans School District 6 used CASB's sample policies for book complaints:
  - **KEC**: Public Concerns/Complaints about Instructional Resources
  - **KEC-R**: Public Complaint Review Process (Instructional Resources)
  - **KEC-E**: Public Complaint Form (Instructional Resources)

# Policy Development

- Prior to 2022-2023 school year...
  - No formal book challenges via Board policy
    - Concerns from community members
  - “Interim” book committee



# Policy Development

- December 12, 2022
  - 4,432 paper complaints
    - 11 titles
    - ~211 Complainants
      - Filed separate complaints based on location
      - Vast majority of complaints were carbon copies of a single, unified complaint
        - » Florida Citizen's Alliance

# Policy Development

- Primary focus of complaints:
  - Inappropriate for school-aged children due to sexual content
  - Quoted passages mentioning sexual content
- **Complainants request:**
  - Removal or
  - parental restrictions

# Policy Development

- Many **non-resident** complainants
  - Majority of complainants were **not parents**
- Many complaint forms were **incomplete or illegible**
- **No attempts at informal resolution**
  - Went straight to BOE for consideration
- Vast majority of complainants indicated they never read the book

# Policy Development

- Policy Update: KEC (Public Concerns/Complaints about Instructional Resources)
  - Profanity/obscenity: -Materials shall be subjected to a test ~~of~~ **that weighs the relative literary merit value of the material as a whole** ~~by media specialists and teachers who will take into~~ **with** consideration **of** the maturity **of** students and the standards of the community

# Policy Development

## KEC (continued)

- Other changes:
  - Only parents, students, employees, residents, and vendors conducting official business with the district may file complaints
  - Must be from the same year
  - Must address one title
  - Included specific language about a “review committee”
  - Updated appeals process
  - Tied Policy (KEC) to regulation (KEC-R)

# Suggested Practices

## Suggested Practice #1

Consider who can file a complaint

- Only parents/students/employees?
- Must include residents?

## Suggested Practice #2

Develop a timeline that is practical and does not waste valuable time and resources during the school year



## Suggested Practice #3

Require complaints filed in a certain way

- Online submissions only
  - In-person filings
- Incomplete forms will be rejected
- Require informal resolution process
- Inform principals and librarians about policy/process

## Suggested Practice #4

Create clear policy and process for how books will be reviewed

- Develop criteria
- Committee process
- Appeal process

## Suggested Practice #5

Review current inventory of books

- Are there books in your school libraries that haven't been checked out in years?
  - Have any community members expressed concerns about those books?
  - Are those books being challenged on a national scale?

## Suggested Practice #6

Update and review process for **selecting** books

- Have a strong process for vetting titles to avoid future headaches!

## Suggested Practice #7

Remember: Book must be viewed in consideration of its literary value as a **whole** rather than a few, isolated sections. Avoid removing/restricting titles for unconstitutional purposes.

## Suggested Practice #7 – cont'd

The following have raised suspicion that board's motivation might be unconstitutional:

- No reason given
- Removal suggested by outside interest group (but interest in book/topic does not by itself equate with improper motive)
- Board members failed to read book
- Failure to follow district's own policy/procedures
- Failure to consider or adopt recommendation of review committee
- Ignoring advice of literary experts, librarians
- Failure to consider less restrictive alternative to complete removal of book – but, requiring parent permission (restricting student free access), is analyzed using the same legal standard

## Suggested Practice #8

Be prepared for public participation at board meetings.

- Is the complainant attempting to read passages from the book that are inappropriate for a K-12 audience and, therefore, in violation of policy?

# QUESTIONS?

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