

November 16, 2016

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Wesley J. Bellamy, Member  
James H. Dillard, Member  
Daniel A. Gecker, Member  
Elizabeth Vickrey Lodal, Member  
Sal Romero, Jr. Member

Virginia Board of Education  
BOE@doe.virginia.gov

Dear President Cannaday, Vice President Wodiska, and Members of the Board of Education:

As a coalition of organizations devoted to protecting the right to read, we write to raise some serious concerns about a proposed amendment to 8VAC-131-270, which will require public schools to “include a notice to parents identifying any sexually explicit materials that may be included in the course, the textbook, or any supplemental instructional materials.” The regulation is nearly identical in its requirements to HB 516, which was recently vetoed by Governor Terry McAuliffe. In addition to raising serious First Amendment concerns, the regulation is likely to undermine the quality of education throughout the Commonwealth of Virginia by stigmatizing canonical works of literature for the sole reason that they include sexual content. We strongly urge the Department to refrain from adopting the regulation.

The term ‘sexually explicit’ is **vague, over-inclusive, and potentially prejudicial and thus likely to adversely affect the quality of education in Virginia**. It could be used to describe classic works of literature such as *Romeo and Juliet*, *The Diary of Anne Frank*, *Slaughterhouse Five*, and *Brave New World*. This stigmatizing label relies on the emphasis of decontextualized passages that detract from students’ understanding and appreciation of a work as a whole. Once a book is declared ‘sexually explicit,’ students will lose sight of the book’s other themes.

For this reason, leading educational associations oppose labeling books. The National Council of Teachers of English notes that “‘red flagging’ is a blatant form of censorship; the practice reduces complex literary works to a few isolated elements.” Similarly, the American Library Association has observed how labels are “prejudicial [and] designed to restrict access” to disfavored books.

Overbroad and prejudicial in its “red flagging” of books, the “sexually-explicit” label is likely to generate parental requests that children be given alternative assignments in cases where

parents would not otherwise do so. Teachers, concerned about such complaints, may simply decide not to include books with references to sex in the curriculum in the first place. Likewise, librarians may decide not to include certain books in their school libraries. Labeling “sexually explicit” books will also invite demands to label books with additional types of “objectionable” content such as violence, LGBT themes, drug use, and profanity. This will ultimately result in an overly expansive and comprehensive regime of labeling that will leave few books unaffected.

It is worth noting that Chesterfield County Public Schools considered a policy similar to the Department’s proposed regulation this past summer and, after receiving extensive feedback from the community, rejected it.

Aside for the damage it will potentially do to the curriculum, **singling out books with disfavored content raises First Amendment concerns.** Schools are prohibited from discriminating against “the expression of an idea simply because society finds the idea itself offensive or disagreeable” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). As stated above, teachers and librarians will be pressured into removing disagreeable content from their classrooms and libraries, which may make schools liable for violating students’ First Amendment rights; *Montiero v. Tempe Union High School District*, 158 F. 3D at 1028 recognizes the right of students to read books selected for “legitimate educational value.”

Finally, the **process by which the Department is attempting to enact this regulation is particularly objectionable.** By burying its regulation deep within a lengthy and scantily publicized document of proposals, DOE officials are preventing voters and local communities from meaningfully considering this controversial issue. Very few citizens have the knowledge, time, or acumen to offer input about the proposed regulations. In contrast, when similar policies were proposed at the state level (HB 516) and in Chesterfield County, citizens and activists were able to speak with their elected leaders and participate in informed debates.

Moreover, Article VIII, Section 7 of the Virginia Constitution requires that the day-to-day management of a school is a function vested in the local boards: “The supervision of schools in each school division shall be vested in a school board [and that] the Board shall have primary responsibility and authority for effectuating the educational policy set forth in this Article...” Passing this controversial regulation without local school board input or further public discussion will undermine citizens’ trust in the Department of Education, as citizens will perceive that the Department acted in a largely clandestine manner on a very important issue.

Please let us know if we can be of any additional assistance.



Joan Bertin, Executive Director  
National Coalition Against Censorship



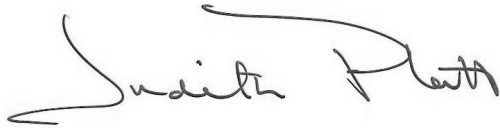
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American Civil Liberties Union of Virginia



Charles Brownstein, Executive Director  
Comic Book Legal Defense Fund



Chris Finan, Director  
American Booksellers for Free Expression



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Free Expression Advocacy  
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Mary Rasenberger, Executive Director  
Authors Guild



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Children's and Young Adult Book Committee  
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