

**NATIONAL
COALITION
AGAINST
CENSORSHIP** **KIDS'
RIGHT
TO READ**

January 3, 2024

School Board
Elkhorn Area School District
3 North Jackson Street
Elkhorn, WI 53121

Dear Members of the School Board,

The National Coalition Against Censorship is an alliance of national nonprofit groups dedicated to protecting freedom of expression, including the rights of K-12 students, teachers, and staff. We are writing in response to media reports that your district has temporarily removed over 400 books from the district's libraries.

As we understand it, a parent in the community has challenged 444 library books. In accordance with Board Policy 361, the challenged materials were temporarily withdrawn from circulation pending reviews by school administrators. Since that time, many of the books have already been reviewed and returned to library shelves. This has prompted the board to revise the *Instructional Material Selection/Evaluation Procedures*.

Based on NCAC's 50 years of experience advising public institutions in developing best practices that address book challenges, we are recommending policy improvements for you to consider.

Firstly, a policy which restricts challenged books while they are under review, is counterproductive: it encourages large-scale meritless challenges. In fact, many districts' policies include an explicit requirement that access to books remain unrestricted during the reconsideration process. Without this requirement, mass challenges may be filed for the sole purpose of temporarily, but effectively limiting students' access to ideas the complainers' dislike.

Moreover, as you have experienced, large-scale challenges are harmful to the district itself because they force the administration to spend huge amounts of time and resources adjudicating challenges. As you have seen, when mass challenges are filed, most books removed from libraries are likely to be returned after review. In the meantime, however, students are deprived of these books.

Secondly, your current policy allows principals and district administrators to unilaterally make decisions regarding the appropriateness of library materials. When a decision is made outside of a review committee, it leaves the district open to suspicion that the administration has acted for improper reasons. That policy may violate the principles set forth by the Supreme Court in *Board of Education v. Pico*. That case established

that "school boards may not remove books from library shelves simply because they dislike the ideas contained in those books" Board of Education v. Pico, 457 U.S. 853, 872 (1982). In 2021, the Court reaffirmed the principle underlying *Pico*, stating that public schools have a responsibility to protect unpopular ideas. *Mahanoy Area Sch. Dist. v. B. L.*, 594 U.S. ___, 141 S. Ct. 2038, 2046 (2021).

Hence, most districts require that recommendations be made by review committees composed of diverse stakeholders. For similar reasons, we recommend that policies also specify the criteria that can and cannot be used by the committee in reviewing challenged materials. Specifying those criteria also helps ensure confidence and transparency in the process.

Therefore, we strongly encourage you to amend your policy. We have created a resource to help school officials address the problem of book challenges, *Material Review and Policy Guidelines and Examples*, which includes sample book challenge procedures from school districts across the country. It is attached.

Please let us know if you have any questions or need any further support in this matter.

Thank you for your time and attention.

Sincerely,



Christine Emeran
Youth Free Expression Program Director
National Coalition Against Censorship

Co-signed by: American Booksellers for Free Expression
The Authors Guild
Children's and Young Adult Books Committee, PEN America

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