

April 21, 2024

Rockingham County Public School Board
100 Mount Clinton pk.
Harrisonburg, VA 22802

Dear Rockingham County Public School Board,

On January 8, 2024, the Board voted to remove 57 books from all school libraries, citing parent complaints that the books included “sexual content, violence, and profanity” while the Board endeavored to create a “policy that provides a review and decision-making process for these books and others.”¹ It appears that some books on the list are not available in any public school in Rockingham County, and some members of the Board indicate that the Board did not “get a chance to personally read 57 parent complaints” but had to confiscate the books because they are alleged to be “dangerous to the minds of children.”²

Under the existing policy governing challenges to “supplementary materials,” Rockingham County librarians report receiving merely four complaints in the last ten years.³ Moreover, the existing and proposed policies do not permit school officials to preemptively remove books after they are challenged, as the district did in January.⁴

The Supreme Court has held that the Constitution requires a procedure to critically examine all educational content before it can be censored or removed from public libraries.⁵ The Court has also held that school boards cannot remove books from school libraries because they dislike the ideas in the book or based on religious, political, or discriminatory reasons. School boards must comply with the Constitution in their pedagogical decisions, and any action that censors curriculum or bans educational content to advance orthodoxy in political thought or religious belief, eliminate dissent, or protect students from amorphous harms (intellectual or otherwise) offend the First Amendment, which students do not shed at the schoolhouse doors.⁶

¹ [Meeting Minutes](#), Rockingham County Public Schools (Jan 8, 2024).

² See Colby Johnson, *Rockingham County School Board meets with librarians to discuss book review policy*, WHSV (Feb. 13, 2024) (“What we all desire, is an opportunity to have a personal conversation with a parent when there is a concern. Most of us have never had a book challenged, it’s my understanding that there have been four formal challenges in the last ten years,” said Tim Mumbauer, the librarian at Turner Ashby High School.”).

³ *Id.*

⁴ [IIAC-Process for Challenged Materials](#), Rockingham County Public Schools (Sep. 26, 2022).

⁵ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963).

⁶ See *Pen America v. Escambia County*, No. 3:23-cv-10385-TKW-ZCB, *at 7 (N.D. Fl. (Jan. 24, 2024) (denying the state’s motion to dismiss because the plaintiffs provided prima facie evidence of a First Amendment violation arising from school officials’ decision to remove *All Boys Aren’t Blue*, *Out of Darkness*, among others from the school library was based on ideological objections rather than pedagogical); *Fayetteville Public Library v. Crawford County*, (W.D. Ar., Jun. 6, 2023) (denying the County’s Motion to Dismiss Plaintiffs challenge of Arkansas’ newly enacted law which criminalizes providing vaguely “harmful” and “explicit” material to minors in public schools on First Amendment grounds); *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 996 (W.D. Ark. 2003) (finding that a school board’s religious objection to Harry Potter violated students’ First Amendment rights, adopting the *Pico* standard); *Case v. Unified Sch. Dist. No. 233*, 908 F.Supp. 864, 876 (D. Kan. 1995) (finding the school board’s anti-LGBTQ+ motive for removing a lesbian romance novel from high school public libraries improper under the First Amendment, adopting the *Pico* standard); *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853 (1982) (explaining that “[School boards] rightly possess significant discretion to determine the content of their school

School districts should endeavor to create open and transparent processes and procedures by which the governing body examines concerns and challenges about library resources or educational content. **Challenged resources should remain in the library**, and access to the resources should remain unrestricted during the review process to not create a hostile school environment.

For example, in Forsyth County, Georgia, the school district removed scores of books that parents and community members deemed inappropriate before substantive review. As a result, many students expressed concern about how the school board's comments about the book removals created a hostile environment for students violating Title IX and Title VI.⁷ In response to complaints, the Department of Education instituted an investigation ending with a Resolution Agreement with the County mandating greater transparency and communication with students about the challenged books, coordination with a federal monitor about the process governing challenges to books in the future, a District Climate Survey Working Group to create a more inclusive educational environment, and public reporting requirements about the district's progress.⁸

Any attempt to regulate or exclude content in curriculum or libraries must be closely scrutinized so that protected expression is not abridged. Attempts to circumvent library policy or actions taken by school board members outside the established legal process for making board decisions can be evidence of unconstitutional censorship. While the stated goal of the school board is commendable in its goal to protect students from harm, the proposed policy is deficient in ways that can potentially harm students and make librarians' jobs unnecessarily contentious. As such, I urge the Rockingham County School Board to protect students', parents', and librarians' rights by doing the following:

- Immediately return all revoked books to the public school libraries.
- Revise Policy IIAC: Process for Challenged Materials to exclude challenges by parents or guardians who are not patrons of Rockingham County Public Schools.⁹
- To inform and further revise the proposed policies, seek additional input from students, particularly those affected by the book removals.
- Revise Policy IIABB: Supplementary Materials Complaints

libraries. But that discretion may not be exercised in a narrowly partisan or political manner [...] In order for school officials to justify the prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”) (plurality opinion); *Epperson v. Arkansas*, 393 U.S. 97 (1968) (holding that Arkansas’ curriculum ban on teaching evolution was unconstitutional under the First Amendment’s Free Exercise and Establishment Clauses because it was primarily motivated by a religious purpose).

⁷ [Letter from Department of Education Office of Civil Rights](#), Region IV to Superintendent of Forsyth County Schools (May 19, 2023).

⁸ [Resolution Agreement](#), Forsyth County Schools, Complaint No. 04-22-1281.

⁹ In any court, no community member who does not have a student in public school or is not an affected employee would not have a legal claim against the school district arising from the policies as the individual would lack standing.

- Define obscene or sexually explicit material to conform to the Supreme Court’s definition in *Miller v. California*, such that work with “serious literary, artistic, political, or scientific value” can remain in libraries, not just “literary classics” or “historically sacred texts of major world religions.”
- The Virginia law and Rockingham County Policy defining “sexually explicit conduct” extends to *descriptions* of sex, which has the potential to exclude books that do have serious literary value. Books can have literary and pedagogical value yet also contain innocent descriptions of sexual activity. The state’s definition of sexually explicit is at odds with the Supreme Court’s for purposes of First Amendment protection.
- Clarify who will select the parents on the review committee and mandate that parents must have children currently enrolled in the school district.
- Include more than one librarian or teacher on the review committee.

The First Amendment, a cornerstone of our democracy, guarantees freedom of speech and expression, including in the classroom and library, prohibiting the state from censoring educational material if the primary motivation is political, religious, ideological, or based on racial animus. The Founders, Constitution, and Supreme Court precedents reaffirm this fundamental principle, and I hope Rockingham County School Board will also.

Sincerely,



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