Is Your District Ready for Library Book Challenges?

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Introduction

- Nationally, challenges to school district library books are on the increase.
  - However, a recent *Washington Post* review found that the same 11 people are responsible for 60% of book challenges last school year.
  - That same review found that books with LGBTQ content were the majority of the books challenged, and the second most dealt with issues of race.
- This session will cover:
  - The applicable law
  - The relevant policy
  - Some best practices

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Takeaways

- ❑ Follow policy, and be sure it is a clear and good policy!
- ❑ Be deliberate in the initial selection of library books.
- ❑ Make sure any book removal decisions are made in a consistent and legally sound manner, and that the decision is explained to a complaining party.
- ❑ Be cautious about what is said by board members or other school officials during board meetings on these issues.
- ❑ Promptly address any student claims of bullying or harassment or discrimination based on the issues being raised in book challenges.

Board of Education v. Pico (1982)

- Facts of the case:
  - Three then-members of the Board of Education attended a conference where they got a list of books that one called "objectionable" and another said was "improper fare for school students."
  - The Board "unofficially" directed that the books on that list be removed from district libraries.
  - Later, in defending that action to the commnity, the Board issued a press statement saying the removed books were "anti-American, anti-Christian, anti-Sem [i]tic, and just plain filthy," adding that it is the Board's "duty, our moral obligation, to protect the children in our schools from this moral danger as surely as from physical and medical dangers."

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Board of Education v. Pico (1982), cont.

- After more controversy, the Board appointed a "Book Review Committee," made up of four parents and four staff members to read the books and to recommend to the Board whether the books should be retained, taking into account the books' "educational suitability," "good taste," "relevance," and "appropriateness to age and grade level."
- When the Committee recommended to the Board that five of the listed books be retained, two others be removed from school libraries, and one be made available to students only with parental approval, the Board simply rejected the recommendation and decided only one book should be returned to the High School library without restriction while another should be made available with parental approval. The rest were removed without explanation.

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Board of Education v. Pico (1982), cont.

- Five students sued, and argued:
  - The Board had removed the books because they "offended their social, political and moral tastes and not because the books, taken as a whole, were lacking in educational value."
  - The Board's actions were unconstitutional and denied them their First Amendment rights.

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The Supreme Court Said in *Pico*

- The First Amendment rights of students "may be directly and sharply implicated by the removal of books from the shelves of a school library."
- "[T]he Constitution protects [students'] right to receive information and ideas."
- While school officials have discretion to choose books *to add* to their school libraries, removal of books "may not be exercised in a narrowly partisan or political manner" nor based on "disagreement with constitutionally protected ideas in those books."
- Books that are "pervasively vulgar" or inappropriate for a specific "age group" may be restricted or removed, but local school boards and officials "may not remove books from school libraries simply because they dislike the ideas contained in those books" or try to remove books in order to "prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." WG

Since the *Pico* decision

- The federal courts have generally said that when a district:
  - has legally and educationally sound book review and removal policies,
  - provides equitable treatment of all contested books in accordance with those policies, and
  - does not show that its removal decisions were based on a desire to restrict student access to ideas and information based on school officials' personal beliefs or opinions,
  - Then the book removal or restrictions will likely be found constitutional.

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In the Tenth Circuit

- A lower district court, in Kansas, considered a case where:
  - District library media specialists, and then a district committee, determined that copies of a donated book with gay/lesbian storylines should remain in the library.
  - The district's CEO then unilaterally changed book donation policies and rejected the donated books, removing them from all the libraries.
  - The district did not follow its policies and procedures for library book concerns.
  - The reason? The CEO's belief that there was public concern about the book and that the board "would favor taking this book off the shelves."

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Ruling: *Case v. Unified Sch. Dist. No. 233*

- In its decision, the court said:
  - The book was removed in a "highly irregular and erratic manner" without regard to prior policy for removing objectional material.
  - There was a lack of discussion about how to apply less restrictive limitations on access to the novel.
  - There was persuasive evidence of improper motivation and overwhelming evidence of viewpoint discrimination.
  - The book removal violated the First Amendment rights of students, so the book was ordered to be returned to district library shelves.

Case v. Unified Sch. Dist. No. 233, 908 F. Supp. 864, 874 (D. Kan. 1995).

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2023 OCR Decision

- In May, the US Department of Education's Office for Civil Rights (OCR) found that:
  - ".....communications at board meetings [related to parent complaints about library books] conveyed the impression that books were being screened to exclude diverse authors and characters, including people who are LGBTQI+ and authors who are not white, leading to increased fears and possibly harassment."
  - Given testimony from students and witnesses that students feared bullying and going to school, and lack of action by the Board to address these student concerns..."OCR is concerned a hostile environment may have arisen that the District needed to ameliorate."
- The OCR required a Resolution Agreement with the District with activities to resolve these issues.

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NMSBA Policy K-1500 - KEC

- PUBLIC CONCERNS / COMPLAINTS ABOUT *INSTRUCTIONAL RESOURCES*
  - Occasional objections to the selection of instructional materials may be made by the public despite the care taken to select materials most valuable for the student and the teacher. The complainant will be asked to complete the form "Citizen's Request for Reconsideration of Instructional Material." Upon receipt of a request for reconsideration, the Superintendent will review the work in question. After review by the Superintendent, copies of the request form and the report will be sent to the principal and the citizen.
  - If not satisfied with the decision contained in the report, the citizen may appeal the decision to the Board.
  - Should a complaint reach the Board, *the Board may refer the matter back to the Superintendent for further review, or the Board may review the materials in question in the light of its policy establishing criteria for the selection of materials.*

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Complaint Form for K-1500 – KEC

- ❑ The NMSBA Exhibit for Policy K-1500 KEC has a form with four options for a complaining party:
  - ❑ Do not assign or recommend it to my child (children).
  - ❑ Do not assign it to students.
  - ❑ Withdraw it from all patrons of the library.
  - ❑ Refer it to an official committee for reevaluation.

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Related Policy: I-5950 - IJL

- The Superintendent shall annually recommend to the Board an expenditure level for the purchase of library books and materials. The Superintendent shall approve the purchase of library materials that:
  - Enrich and support the curriculum, taking into consideration the varied interests, abilities, and maturity levels of the students served.
  - Stimulate growth in factual knowledge, literary appreciation, aesthetic values, and ethical standards.
  - Provide a background of information that will enable students to make intelligent judgments in their daily lives.
  - Provide materials representative of the many religious, ethnic, and cultural groups and their contributions to our American heritage.
  - Assure a comprehensive collection appropriate for the users of the library.
  - Provide a current, balanced collection of books, basic reference materials, texts, periodicals, and audiovisual materials that depict in an accurate and unbiased way the cultural diversity and pluralistic nature of American society.

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Policy I-5950 – IJL Goes on to Say

- The Superintendent will establish procedures for the removal of the following categories of books and other material from the library:
  - Damaged materials.
  - Materials that no longer present current information.
  - Materials that no longer support the goals of the District.
  - Materials that have not been used frequently enough to justify the use of library space.

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Review & Follow Your Policies - Selection

- ❑ Review your policies and regulations on library book selection.
- ❑ The American Library Association suggests school library book selection consider factors like:
  - ❑ Support and enrichment of the curriculum and/or students' personal interests and learning
  - ❑ High standards in literary, artistic, and aesthetic quality
  - ❑ Appropriateness of book for the subject area and age, emotional development, ability level, learning styles, and social, emotional, and intellectual development of the intended student readers
  - ❑ Accurate and authentic factual content from authoritative sources
  - ❑ Favorable reviews in standard reviewing sources and/or favorable recommendations based on preview and examination of materials by qualified professional staff
  - ❑ High potential user appeal and interest
  - ❑ Differing viewpoints on controversial issues
  - ❑ Global perspectives and promotion of diversity by including materials by authors and illustrators of all cultures

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Review and Follow Your Policies - Challenges

- Review your policies on regular library book reviews and on handling challenges.
- Is there a built-in process for regular review of library materials?
  - Policy ILJ says books will be removed regularly if they:
    - Are damaged.
    - No longer present current information.
    - "No longer support the goals of the District."
    - "Have not been used frequently enough to justify the use of library space."
- How will library book challenges be handled and decided?
  - ALA suggests a Reconsideration Committee might be composed of a teacher, an administrator, a school librarian, a reading specialist or language arts teacher, and a member of the community.

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Have Clear Factors for Committee Book Reconsideration

- If you have a Library Book Review or Reconsideration Committee, they should at least:
  - Know and follow policy.
  - Understand the applicable law.
  - Read the entirety of any book being challenged.
  - Explain its decision or recommendation in writing.
    - Possibly provide majority and minority recommendations from the Committee.
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What About?

- Requiring parental consent to check out challenged books?
  - Will depend on why the book at issue is being limited, but assuming no improper motive to deny access to disfavored ideas, this may be acceptable. To date, there is no relevant decision in federal courts with jurisdiction over NM.
- What if a book is vulgar and/or explicitly sexual?
  - Maybe. It must be shown to be "pervasively vulgar" or educationally unsuitable, based on the book as a whole, not just a selected passage or two, or on the opinion of a complainant or others who simply share their views.
- Parents' rights?
  - The courts are looking at a student's rights to information or ideas, not parent's rights. The courts recognize a parent's right to "claim authority in their own household to direct the rearing of their children" but have added that "their sensibilities are not the full measure of what is a proper education." WG

The information in this presentation was prepared by Walsh Gallegos Treviño Kyle & Robinson P.C. It is intended to be used as general information only and is not to be considered specific legal advice. If specific legal advice is sought, consult an attorney.

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