



depictions of sexual acts” to books with language some people find offensive.⁶ The objectors often ignore the educational or literary merit of the book entirely, focusing only on specific

Federal courts have largely affirmed the discretion of school boards under the First Amendment to make these choices. The Supreme Court has recognized that school boards have a “duty to inculcate community values” and may make curricular decisions to reflect those values.¹¹ This discretion is not limitless, and school boards may not impose, for example, “an identifiable religious creed” or “otherwise impair permanently the student’s ability to investigate matters that arise in the natural course of intellectual inquiry,” but their discretion is broad.¹² For example, federal courts have affirmed the ability of a school board to remove previously approved curricular materials so long as the decision is “reasonably related” to the “legitimate pedagogical concern” of denying students access to “potentially sensitive topics.”¹³

This low bar makes it difficult to mount legal challenges to the actions of a school board on its choice of curricular materials. Courts have found that legitimate pedagogical concerns include regulating student access to books for being “pervasively vulgar,” for containing sexually explicit content or “factual inaccuracies,” or for “educational unsuitability.”¹⁴ In claiming certain books are “sexually explicit,” book ban proponents attempt to argue that school boards are operating within constitutional limits.

LIBRARY BOOKS NOT PART OF CURRICULUM: Pennsylvania school boards have less discretion in restricting noncurricular materials in schools, such as library books. The Supreme Court has held that “the special characteristics of the school library” create additional First Amendment protections for students.¹⁵

In 1982, the U.S. Supreme Court ruled in *Board of Education, Island Tree Free School District No. 26 v. Pico* that books in libraries are different from mandatory school curricula, as libraries are intended as a “place to test or expand upon ideas presented to [a student], in or out of the classroom” and are distinct from materials included in the school’s curriculum, over which the board has greater discretion.¹⁶ The court agreed that while school boards have discretion to transmit community values, that discretion is not unfettered, and libraries have a unique role different and separate from mandatory school curriculum.¹⁷ A school board “may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge”¹⁸ by imposing a narrow view of “community values” that limits the books available in a school library where the “opportunity at self-education and individual enrichment ... is wholly optional.”¹⁹ The First Amendment requires that “

Additionally, board policies, including book policies, are unlawful if they are deemed impermissibly vague or arbitrary and capricious.²⁴ See ELC's [fact sheet on the powers of school boards](#) for more information. Vague language and overbroad prohibitions may be challenged as having a chilling effect on book choices and speech protected by the First Amendment. The reliance on vague, subjective criteria and failure to require consideration of a book in its entirety, including whether it has received critical acclaim, may be evidence that the policy is not tailored to be objective and to identify "educational suitability" but instead serves to impermissibly enforce a particular viewpoint.²⁵

Courts also consider the context of proposed policies and the motivation of policymakers to determine if animus toward a particular population is a motivating factor.²⁶ And in a recent investigation by the U.S. Department of Education's Office for Civil Rights (OCR), the agency found that Forsyth County (Ga.) Schools' book removal policy for sexually explicit content created a hostile environment for LGBTQ students and students of color, with an underlying motivation of targeting books due to gender identity, sexual orientation, or racial orientation.²⁷

ARE THERE PROCEDURES THAT SCHOOL BOARDS MUST FOLLOW TO REMOVE BOOKS?

The First Amendment requires school districts to have "established, regular, and facially unbiased procedures" governing the removal of noncurricular books.²⁸

¹⁰ 24 PA. CONS. STAT. § 5-510.2 (1949) (School boards have the power to adopt “courses of study.”); 24 Pa. Cons. Stat §15-1512 (1949) (Courses of study may be adapted to age, development and need of pupils).

¹¹ *Bd. of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853 (1982).

¹² *Zykan v. Warsaw Cmty. Sch. Corp.*, 631 F. 2d 1300 (7th Cir. 1980).

¹³ *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517 (11th Cir. 1989) (finding school board's actions of removing certain materials from high school curriculum while allowing the same books to remain in school library was reasonably related to Boards legitimate concern regarding the appropriateness of materials for the age of students). *See also Pratt v. Independent School District*, 670 F.2d 771 (8th Cir. 1982) (ordering reinstatement to high school curriculum of films which had been removed by school board because of alleged violence and effect on students' religious and family values).

¹⁴ *Pico*, 457 U.S. 853, 871 (1982) (“pervasive, 87 (pervasive