



FIRE

Foundation for Individual
Rights and Expression

December 22, 2022

Terry Castillo
Chair, Osceola County School Board
817 Bill Beck Boulevard
Kissimmee, Florida 34744

Sent via U.S. Mail and Electronic Mail (terry.castillo@osceolaschools.net)

Dear Ms. Castillo:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by the School District of Osceola County's decision to remove several books from its libraries in response to public complaints about the books' content. Although Osceola County has discretion to determine what books to carry in its libraries based on considerations of educational suitability, the First Amendment prohibits the district from removing books for narrowly political reasons or for the purpose of restricting students' access to certain ideas or perspectives.

Troublingly, Osceola County removed the books without comprehensively reviewing them under its own established procedures, and has refused to adopt its own committee's recommendation to retain the books. Osceola County's actions indicate that these books' continued absence from school library shelves is attributable not to a considered, bona fide judgment about their educational value or age-appropriateness, but rather to a desire to placate community members who objected to their content.

Libraries should be a place where students can freely explore a wealth of ideas and information—where they can spark their curiosity and learn about the experiences and perspectives of others. To the extent some parents want to keep certain content beyond their children's reach, Osceola County may accommodate them without denying *all* students access to materials that the most vocal group of detractors find objectionable. FIRE therefore calls on the Osceola County School Board to immediately restore the removed books, to ensure future decisions about the district libraries' collections comply with the First Amendment, and to preserve the libraries as a resource that offers students a window into the world around them.

¹ For more than 20 years, FIRE defended freedom of expression, conscience, and religion, and other individual rights on America's college campuses as the Foundation for Individual Rights in Education. More information about our recently expanded mission and activities is available at our website, thefire.org.

I. Osceola County Removes Books from Its School Libraries Following Complaints from Parents and Residents

On April 5, 2022, during public comments at an Osceola County School Board meeting, several parents and community members raised objections to certain books carried in the district's libraries, including "All Boys Aren't Blue," "Me, Earl, and the Dying Girl," "Looking for Alaska," "Genderqueer," and "Out of Darkness."² One commenter raised concerns about "grooming" kids and "transgenderism," citing "Genderqueer" and "Me, Earl, and the Dying Girl." Another quoted the Bible for the proposition that God created male and female, and told the board to "stop grooming children to think they can change their gender." Other commenters read sexually explicit passages from the books.

Although no parent or resident filed a formal challenge to any of the books pursuant to board policy, two days later, on April 7, Osceola County Superintendent Dr. Debra Pace instructed staff to remove "Out of Darkness," "Me, Earl, and the Dying Girl," "All Boys Aren't Blue," and "Looking for Alaska" from the district's school libraries. Superintendent Pace said a committee would review the books in accordance with school board rules "in order to make a recommendation to the Osceola County School Board on whether their content matter violates state statutes."³ Pace noted the district was immediately adopting a new process for parents to select their student's level of access to school library collections each year and adding a label to any book with mature content. On August 3, the district directed three media specialists to remove their copies of the book "Tricks" from their libraries for review.

The board's rules permit parents, county residents, and district employees to challenge library materials. First, the school's media specialist must meet informally with the complainant to discuss the school's procedure for selecting materials.⁴ If that mediation fails, the complainant must, within two weeks, submit to the school principal a "formal written objection" using a district-provided form, "which must reflect that the complainant has read the material in full."⁵ After receiving the form, the principal must forward it to a school-level review committee, whose members then read the challenged material, review the objections, and consider a long list of factors, including:⁶

- The purpose, theme or message of the material.
- Whether it offers an "opportunity to better understand and appreciate the aspirations[,] achievements, and problems of various minority groups."

² SDOC - Board Meetings, *April 5, 2022 Board Meeting | Osceola School District*, YOUTUBE (Apr. 5, 2022), <https://youtu.be/1L0iBpLnbIc?t=8711>. The factual recitation here reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us.

³ Press Release, School District of Osceola County, *Empowering Parents In Media Center Partnerships* (Apr. 7, 2022) (on file with author).

⁴ SCH. DIST. OF OSCEOLA CNTY., 2022-23 SCHOOL BOARD RULES (rev. Dec. 13, 2022), ch. 4, § VI(A), *available at* bit.ly/3v9jPtN [<https://perma.cc/5DV2-7A4Z>].

⁵ *Id.* § VI(B).

⁶ *Id.* § VI(C); SCH. DIST. OF OSCEOLA CNTY., CHECKLIST FOR MEDIA ADVISORY COMMITTEE'S RECONSIDERATION OF LIBRARY MATERIAL FICTION AND OTHER LITERARY FORMS, *available at* <https://www.osceolaschools.net/cms/lib/FL50000609/Centricity/Domain/146/FC-820-0249%20Checklist%20for%20Media%20Advisory%20Committee.pdf> [<https://perma.cc/E9P7-6NXX>].

- Whether “any questionable elements of the story [are] an integral part of a worthwhile theme or message.”
- Whether “concepts presented [are] appropriate to the ability and maturity of the potential readers.”
- Whether any “use of offensive language, is . . . appropriate to the purpose for the text for children.”
- Whether the material makes “a significant contribution to the history of literature or ideas.”

If the complainant disagrees with the committee’s recommendation, the complainant may appeal it to a district-level review committee, whose decision may then be appealed to the superintendent. The matter come before the school board only if the complainant or the school’s media specialist is dissatisfied with and appeals the superintendent’s decision.⁷

Despite the absence of any formal complaint, the committee convened by Superintendent Pace reviewed the four initially removed books and voted to retain them in at least some school libraries. The committee recommended keeping “Out of Darkness,” “Me, Earl, and the Dying Girl,” and “All Boys Aren’t Blue” in high school libraries only, and making “Looking for Alaska” available in high school and middle school libraries.⁸

At a September 6 school board meeting, the board postponed a vote on whether to accept the review committee’s findings and new “Proposed Guidelines for Books with Mature Content.”⁹ Board Chair Terry Castillo acknowledged the board did not follow its own protocols for reviewing library book challenges. As of the date of this letter, all five books remain unavailable in Osceola County school libraries.

II. The First Amendment Limits the Government’s Power to Remove Books from Public School Libraries Outside of Established Policies or for Partisan Purposes

Osceola County’s abrupt, process-free removal of books from its libraries in response to several community members’ complaints about their content—and the board’s continued inaction despite its own committee’s recommendation to reshelve the books—cannot be squared with the district’s policies or its First Amendment obligations. The board’s actions undermine the libraries’ function as a space where students can continue their intellectual journeys outside the classroom, and risk turning the libraries into political battlefields.

In *Board of Education, Island Trees Union Free School District No. 26 v. Pico*, a Supreme Court plurality explained that students’ First Amendment rights are “directly and sharply implicated by the removal of books from the shelves of a school library,” as the First Amendment protects

⁷ 2022-23 SCHOOL BOARD RULES, *supra* note 4, at §§ VI(D)–(K).

⁸ A record of the committee’s votes is available here: <http://bit.ly/3V3wTLL> [<https://perma.cc/AC8W-4BB3>]. No recommendation has been made as to “Tricks.”

⁹ Ken Jackson, *Despite task force recommendation, School Board delays vote on questioned books*, OSCEOLA NEWS-GAZETTE (Sept. 7, 2022), <https://www.aroundosceola.com/news/despite-task-force-recommendation-school-board-delays-vote-questioned-books>.

not only individual self-expression but the “right to receive information and ideas.”¹⁰ While local authorities have discretion to determine the content of their school libraries, “that discretion may not be exercised in a narrowly partisan or political manner.”¹¹ Justice Harry Blackmun’s concurring opinion likewise explained that school authorities “may not remove books for the purpose of restricting access to the political ideas or social perspectives discussed in them, when that action is motivated simply by the officials’ disapproval of the ideas involved.”¹² To these ends, public schools must adhere to established and unbiased procedures for reviewing challenged library materials.¹³

Pico acknowledged local school boards’ broad discretion to establish curriculum for the purpose of transmitting “community values” and “promoting respect for authority and traditional values be they social, moral, or political.”¹⁴ But the Court drew a sharp distinction between a school’s curriculum and library collection. A school board cannot “attempt to extend their claim of absolute discretion beyond the compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there holds sway.”¹⁵ Unlike textbooks and assigned readings in class, Justice William Brennan reasoned, the “selection of books from these libraries is entirely a matter of free choice; the libraries afford [students] an opportunity at self-education and individual enrichment that is wholly optional.”¹⁶ When reviewing library books, school authorities may consider relevant factors like “educational suitability,” but they may not remove books from a library simply because they or certain community members “dislike the ideas contained in those books.”¹⁷

The facts of this case are remarkably similar to those in *Pico*. The public school board members in *Pico* received lists of “objectionable books” from an organization of parents concerned about education, and later discovered some of the books were available in the school district’s libraries.¹⁸ The board in *Pico* ordered the books removed from the libraries, justifying its decision on grounds that the books were “anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.”¹⁹ The board then appointed a book review committee charged with recommending whether to retain the books, taking into account their “educational suitability,” “good taste,” “relevance,” and “appropriateness to age and grade level.”²⁰ Although the committee recommended retention of five of the books without restriction, the board rejected

¹⁰ 457 U.S. 853, 866–67 (1982) (cleaned up). *See also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (stating the “Constitution protects the right to receive information and ideas,” which is “fundamental to our free society”).

¹¹ *Pico*, 457 U.S. at 870.

¹² *Id.* at 879–80 (Blackmun, J., concurring in part and concurring in the judgment).

¹³ *Id.* at 874.

¹⁴ *Id.* at 864.

¹⁵ *Id.* at 869.

¹⁶ *Id.*

¹⁷ *Id.* at 871–72. *See also Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) (“The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.”).

¹⁸ *Pico*, 457 U.S. at 856.

¹⁹ *Id.* at 857 (alteration in original).

²⁰ *Id.*

the committee’s recommendation and instead allowed only one book to be reshelved without restriction, and another to be made available only with parental approval.²¹

The *Pico* Court noted evidence that the district there removed books at least in part based on objections to their ideas, and emphasized the lack of reliance on “established, regular, and facially unbiased procedures for the review of controversial materials.”²² Instead of using the established channel for review and removal of library books, the board “resorted to the extraordinary procedure” of appointing a book review committee and then rejected its advice without explanation.²³

Like the school board in *Pico*, Osceola County has arbitrarily flouted its own policies and procedures for reviewing library book challenges. Nobody filed a formal written challenge to any of the removed books, so no review should have occurred in the first place. Even if anyone had filed such a challenge, it would have necessitated multiple rounds of thorough committee review before reaching the board. Nevertheless, the board and Superintendent Pace took matters into their own hands, ordering removal of the books from *all* Osceola school libraries after several community members verbally objected to their content and read brief, cherry-picked passages from the books at a school board meeting. The district then formed a review committee and, again following in the footsteps of the school board from *Pico*, refused to adopt its own committee’s recommendation to reshelve the books, which remain in limbo.

Not only did the board here violate district policy, it failed to exercise its discretion over educational matters “in a manner that comports with the transcendent imperatives of the First Amendment.”²⁴ Nothing about the board’s process—or lack thereof—evinces an impartial, good-faith effort to holistically assess the books’ educational suitability. Instead, Osceola County hastily capitulated to criticism and pressure from several community members to remove the books—criticism that focused not only on sexually explicit language in the books but also on their ideas, in particular themes of gender identity. *Pico*’s emphasis on adherence to fair, established procedures is intended to prevent exactly this type of result.

None of this is to dismiss parents’ concerns about their children’s potential access to content the parent deems inappropriate for their child’s age or maturity level. To the contrary, parents and guardians should be able to decide what material *their* children can access. But Osceola County’s actions here do not advance that interest. They instead allow a vocal minority of parents and other residents to speak for *all* parents in the community, some of whom may *want* their children to have access to the challenged books. After all, different parents inevitably reach different judgments about what content their kids are mature enough to handle or understand.²⁵ But there is an easy solution, which Osceola County appears to be implementing:

²¹ *Id.* at 858.

²² *Id.* at 874.

²³ *Id.* at 875.

²⁴ *Id.* at 864.

²⁵ Moreover, considerations of age-appropriateness are a standard part of librarians’ professional responsibility. For example, the American Library Association’s guidelines recommend that school library selection criteria include, among other factors, the “age, emotional development, ability level, learning styles, and social, emotional, and intellectual development of the students for whom the materials are selected.” *Selection Criteria*, AM. LIBRARY ASS’N,

The district can create a way for parents to request that a school restrict *their own* child's access to certain library materials. That would be a preferable—and constitutional—alternative to flatly denying *all* students access to material that a few parents or community members consider objectionable.

FIRE urges Osceola County to immediately return all five books to the libraries where the books were available before their removal. The district should further ensure all future reviews of library materials comply with the First Amendment, and established, impartial, viewpoint-neutral procedures, to avoid politicized outcomes. In doing so, Osceola County will maintain faithfulness to the First Amendment and preserve its school libraries as a space where students can freely explore a rich diversity of information and ideas beyond the classroom, preparing them for “active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”²⁶

We respectfully request a substantive response to this letter no later than the close of business on January 12, 2023.

Sincerely,



Aaron Terr
Director of Public Advocacy

Cc: Julius Melendez, Member, Osceola County School Board
John Arguello, Member, Osceola County School Board
Heather Kahoun, Member, Osceola County School Board
Erika Booth, Member, Osceola County School Board
Dr. Debra Pace, Superintendent, School District of Osceola County
Frank Kruppenbacher, General Counsel, School District of Osceola County

<https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> [<https://perma.cc/22UD-QSQ9>].

²⁶ *Pico*, 457 U.S. at 868.