



# FIRE

Foundation for Individual  
Rights and Expression

February 7, 2023

Dana Hunter  
President, Central Bucks Board of School Directors  
20 Weldon Drive  
Doylestown, Pennsylvania 18901

*Sent via U.S. Mail and Electronic Mail (dhunter@cbsd.org)*

Dear President Hunter:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,<sup>1</sup> is concerned by Central Bucks School District's "Library Materials" policy, which imposes vague and overbroad restrictions on school library content. Further, the policy's procedures for selection and reconsideration of library materials lack sufficient guardrails to prevent biased and viewpoint-discriminatory decisions. Although Central Bucks has discretion to determine what content to carry in its libraries based on bona fide considerations of educational suitability, the district must ensure its policies and procedures advance that interest and minimize the risk of outcomes motivated by opposition to certain viewpoints or ideas.

## **I. Central Bucks Adopts New Library Materials Policy**

In July 2022, Central Bucks adopted its Library Materials policy (Policy 109.2), which restricts—and in some instances outright bans—certain “sexualized” and “inappropriate” content.<sup>2</sup> No library in the district, including high school libraries, may carry any materials containing “explicit written descriptions of sexual acts.”<sup>3</sup> Staff responsible for selecting materials for middle school libraries must prioritize materials that do not contain “implied written description of sexual acts or implied nudity.”<sup>4</sup> This prioritization requires that during the selection process, librarians notify the “District-level library supervisor or Superintendent’s designee” if a book contains such content and “offer potential alternative

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<sup>1</sup> 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](https://thefire.org).

<sup>2</sup> CENT. BUCKS SCH. DIST., POLICY MANUAL, LIBRARY MATERIALS, 109.2 (adopted July 26, 2022), [https://go.boarddocs.com/pa/cbuc/Board.nsf/files/CETQN869FCCD/\\$file/11C-Policy%20109.2-for%20First%20Read.pdf](https://go.boarddocs.com/pa/cbuc/Board.nsf/files/CETQN869FCCD/$file/11C-Policy%20109.2-for%20First%20Read.pdf) [<https://perma.cc/G7P7-ULW7>].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

options from which to choose, which cover similar pedagogical purposes for the resource but which do not contain the aforementioned sexualized content.”<sup>5</sup> Additionally, no middle school library materials may contain “visual depictions of nudity—not including materials with diagrams about anatomy for science or content relating to classical works of art.”<sup>6</sup>

The policy’s criteria for selecting library materials require books to:<sup>7</sup>

1. Support and enrich the curriculum and/or students’ personal interests and learning;
2. Be appropriate for the subject area and for the age, intellectual development, and ability level of the students for whom the materials are selected; and
3. For non-fiction resources, incorporate accurate and authentic factual content.

The policy also allows any district resident or student’s parent to file a formal challenge to library materials. The “District-level library supervisor or Superintendent’s designees shall review the complaint and the challenged material and determine whether it conforms to the principles of selection set out in this policy.”<sup>8</sup>

## **II. The Library’s Content Restrictions Are Vague and Overbroad**

The Library Materials policy is not closely tailored to advancing Central Bucks’ interest in making content available to students that supports their personal interests and learning and is appropriate for their age and intellectual maturity. It instead excludes a large number of works without any individualized, contextual evaluation of their educational suitability.

As an initial matter, FIRE recognizes Central Bucks’ extensive authority over its curriculum, which is mandatory for students. In *Board of Education v. Pico*, a plurality of Supreme Court Justices recognized school districts’ 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.”<sup>9</sup> But the Court drew a sharp distinction between a school’s curriculum and library collection. Unlike textbooks and assigned readings in class,

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 457 U.S. 853, 864 (1982). The Justices were unable to reach a simple majority in *Pico* on the issue of whether a public school board’s removal of certain books from its libraries violated the First Amendment. The case produced seven different opinions, including the plurality opinion written by Justice William Brennan, which stated that students’ First Amendment rights are “directly and sharply implicated by the removal of books from the shelves of a school library.” *Id.* at 866. Justice Brennan explained that the First Amendment protects not only individual self-expression but the “right to receive information and ideas.” *Id.* at 867. In his concurring opinion, Justice Harry Blackmun opined 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.” *Id.* at 879–80 (Blackmun, J., concurring in part and concurring in the judgment).

Justice William Brennan explained, 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.”<sup>10</sup> To its credit, Central Bucks similarly recognizes that because “school and classroom libraries are viewed as places for voluntary inquiry, library materials must be treated differently from instructional materials used in the classroom.”<sup>11</sup>

Policy 109.2 considerably narrows students’ opportunities for self-education and individual enrichment outside the classroom. Here are just some of the renowned books the policy may ban from high schools for containing “explicit written descriptions of sexual acts”:

- *Slaughterhouse Five*
- *Siddhartha*
- *The Bluest Eye*
- *Beloved*
- *I Know Why the Caged Bird Sings*
- *Ulysses*
- *The Perks of Being a Wallflower*
- *The Kite Runner*
- *Catch-22*
- *Native Son*
- *The Handmaid’s Tale*
- *The Color Purple*

The policy would also broadly restrict the inclusion of classic and popular literature in middle school libraries by requiring staff to prioritize materials that do not contain “implied written description of sexual acts or implied nudity.” Titles affected by this provision could include (in addition to everything on the above list):

- *1984*
- *The Catcher in the Rye*
- *The Odyssey*
- *The Great Gatsby*
- *Brave New World*
- *A Farewell to Arms*
- *The Hunger Games*
- *Lord of the Flies*
- *Flowers for Algernon*
- *Invisible Man*
- *The Bible*

Sweeping restrictions on certain subject matter—whether sex, violence, drug use, or any other potentially controversial topic—are a blunt tool and a poor substitute for individualized, contextual assessment of a work’s educational value or age-appropriateness. Certainly, it’s

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<sup>10</sup> *Id.* at 869.

<sup>11</sup> POLICY MANUAL, LIBRARY MATERIALS, 109.2, *supra* note 2.

something for librarians to consider when curating their collections. But they should consider these elements in the full context of the works in which they appear.

In addition to being overbroad, the restrictions are vague and subjective. Without further guidance, the determination of whether a book depicts “implied” or “explicit” sexual activity or nudity leaves substantial room for disagreement. Vague rules endow authorities with a troubling amount of discretion, inviting arbitrary decisions and making suppression of subjectively disfavored views and ideas more likely.

In a statement, you and Superintendent Abram M. Lucabaugh assert the Library Materials policy bans only books that “contain salacious, gratuitous, graphic, explicit sexual content with no literary or educational applications.”<sup>12</sup> To the contrary, the policy’s categorical ban on materials containing “explicit written descriptions of sexual acts” makes no exception for works that have “literary or educational applications.” Your statement claims that “[b]ooks such as ‘The Bluest Eye’ by Pulitzer Prize winning author Toni Morrison, which chronicles the real-life horror of racism and sexual abuse, belongs [*sic*] in our school libraries at an age-appropriate level.”<sup>13</sup> Yet, *The Bluest Eye* was on the American Library Association’s (ALA’s) list of the ten most challenged books of 2021 because it “depicts child sexual abuse and was considered sexually explicit.”<sup>14</sup> Those reasons are enough to get it banned from all Central Bucks school libraries—including high school libraries—under the plain language of the Library Materials policy.

The policy also makes a distinction between “classical” and other works of visual art, without defining “classical” or what makes “non-classical” works inappropriate per se. Are students allowed to encounter the *Venus de Milo*, but not the more abstract depiction of nudity in Pablo Picasso’s *Les Femmes d’Alger (O. J. R. M.)*?

### **III. The Library Materials Policy’s Selection and Reconsideration Procedures Create a Substantial Risk of Biased and Arbitrary Outcomes**

The *Pico* plurality emphasized the importance of school districts adhering to established, regular, and impartial procedures when reviewing library book challenges.<sup>15</sup> Central Bucks’ procedures for selecting and reviewing challenges to library materials lack sufficient protections against biased and arbitrary outcomes.

Central Bucks should supplement its existing selection criteria—which track certain standards recommended by the ALA—with additional standards to mitigate improper influence of decision-makers’ subjective preferences. The district can do so by consulting trusted third-

<sup>12</sup> *CBSD Community Message On Library Materials Policy*, CENT. BUCKS SCH. DIST., <https://www.cbsd.org/site/default.aspx?PageType=3&ModuleInstanceID=82652&ViewID=7b97f7ed-8e5e-4120-848f-a8b4987d588f&RenderLoc=0&FlexDataID=211889&PageID=44000> [<https://perma.cc/57GK-V2SS>].

<sup>13</sup> *Id.*

<sup>14</sup> *The Top 10 Most Challenged Books Lists*, BANNED & CHALLENGED BOOKS, A WEBSITE OF THE ALA OFF. FOR INTELL. FREEDOM, <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10> [<https://perma.cc/4WBQ-U2DL>].

<sup>15</sup> *Pico*, 457 U.S. at 874.

party sources and making a commitment to viewpoint diversity. For example, the ALA’s sample school library selection criteria also include:<sup>16</sup>

- Earn favorable reviews in standard reviewing sources and/or favorable recommendations based on preview and examination of materials by professional personnel
- Represent differing viewpoints on controversial issues

The procedure for challenges to library materials also presents a substantial risk of arbitrary outcomes by allowing a single employee designated by the superintendent to review and grant requests for removal based on vague criteria. Central Bucks can reduce the risk that any one individual’s personal beliefs will skew the results of book challenges by instead requiring review by a committee representing various stakeholders, such as librarians, administrators, parents, teachers, students, and community members.

As with selection criteria, the district should establish specific, objective standards to guide reconsideration. Existing criteria like “appropriateness of the resource for its intended educational use,” while unobjectionable on their face, leave too much room for subjective, biased decision-making if not accompanied by more precise guidance. The ALA’s best practices for reconsideration committees include:<sup>17</sup>

- Read or view all materials referred to you including the full text of the material in question, available reviews, and notices of awards, if applicable.
- Challenged materials should not be removed from the collection while under reconsideration.
- Passages or parts of the work in question should not be pulled out of context. The values and faults should be weighed against each other and the opinions based on the materials as a whole.

Central Bucks rightly acknowledges that “parents hold an essential role in the education of their children and have the right to guide what their children read.”<sup>18</sup> To the extent the adoption of the current Library Materials policy might be motivated by parents’ demands to keep certain content beyond their children’s reach, Central Bucks can readily accommodate those parents’ concerns without denying *all* students access to certain subject matter. In fact, the policy already allows parents to “contact the campus librarian directly and/or complete an online form for library book or content opt-out decisions” for their own children.<sup>19</sup> That is a preferable alternative to denying all students access to material a few parents or community

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<sup>16</sup> *Selection Criteria*, AM. LIBR. ASS’N, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/criteria> [https://perma.cc/JE42-5LCZ].

<sup>17</sup> *Reconsideration Committees*, AM. LIBR. ASS’N, <https://www.ala.org/tools/challengesupport/selectionpolicytoolkit/committees> [https://perma.cc/59KK-ZL2H].

<sup>18</sup> POLICY MANUAL, LIBRARY MATERIALS, 109.2, *supra* note 2.

<sup>19</sup> *Id.*

members might consider objectionable. Other parents may *want* their children to have access to those books or art. After all, different parents inevitably reach different judgments about what content their kids are mature enough to handle or understand.

FIRE calls on Central Bucks to revise its Library Materials policy to preserve its school libraries as a space where students can freely explore a rich diversity of ideas and information beyond the classroom, preparing them for “active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.”<sup>20</sup>

We respectfully request a substantive response to this letter no later than close of business on February 21, 2023.

Sincerely,



Aaron Terr  
Director of Public Advocacy

Cc: Dr. Abram M. Lucabaugh, Superintendent  
Leigh Vlasblom, Vice President, Board of School Directors  
Debra T. Cannon, Member, Board of School Directors  
Sharon Collopy, Member, Board of School Directors  
Dr. Tabitha Dell’Angelo, Member, Board of School Directors  
Dr. Mariam Mahmud, Member, Board of School Directors  
Jim Pepper, Member, Board of School Directors  
Lisa Sciscio, Member, Board of School Directors  
Karen Smith, Member, Board of School Directors  
Stephanie Radcliffe, Secretary, Board of School Directors

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<sup>20</sup> *Pico*, 457 U.S. at 868.