



“School leaders and librarians have an obligation to promote information access, intellectual freedom, and the right to read.”

# Intellectual Freedom, Censorship, and Case Law

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School leaders are often questioned about instructional resources that are made available to students. Strong opinions opposing or supporting controversial resources can turn into litigation, but the courts have historically championed the rights of students regarding access to reading materials. School authorities cannot ban books or other library materials because they or others disagree with the expressed viewpoint or fear disruption. School officials must rely on facts and a solid, reasonable argument to justify removing or restricting access to challenged resources as necessary to protect the learning environment. Librarians have a unique position in supporting learning and inquiry and have a professional obligation to support intellectual freedom. Well-planned selection policies and reconsideration procedures are the first steps in meeting that obligation.

Information is central to both teaching and learning; therefore school librarians serve a critical role in providing students with quality educational experiences through the facilitation of independent learning and support of the formal curriculum. However, school librarians often find themselves in the center of controversy when parents, administrators, school boards, and others attempt to remove or restrict student access to books and other library resources. This controversy often results in contentious debate and litigation regarding public school students' right to read materials of their choosing.

## STUDENT RIGHTS

The First Amendment to the United States Constitution guarantees the freedom of speech and press. The freedom of speech and press includes intellectual freedom, which refers to the right to seek and retrieve unrestricted information (Oltmann, 2016). The American Library Association (2016) defines intellectual freedom as “the rights of library users to read, seek information, and speak freely as guaranteed by the First Amendment” (para. 1).

*Tinker v. Des Moines School District* (1969) is a landmark case involving First Amendment rights in the school environment. In 1965, school administrators at a public school in Des Moines, Iowa, suspended a group of students when they attempted to demonstrate their opposition to the Vietnam War by wearing black armbands to school. A lawsuit resulted, and the case ended in the U.S. Supreme Court. In rendering the decision, the court described students' rights to free speech within the school setting:

First Amendment rights, applied in light of the special characteristics of

the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. (*Tinker v. Des Moines School District*, 1969, p. 2)

The court's decision provides guidance for school leaders in regard to the legal tension created by students' First Amendment rights and the need to maintain an orderly educational environment. First, students' rights are protected whenever they are on campus and during all school activities. Second, school leaders cannot ban one view while allowing another that is categorically similar and must prevent their personal feelings from interfering with their willingness or ability to protect students' rights. Finally, the mere possibility of a disruption does not give support to restrict intellectual freedom (Alexander & Alexander, 2009).

## BOOK CENSORSHIP CASE LAW

Many disputes regarding the restriction of library materials have emerged since the *Tinker* decision. These disputes usually emerge when a person or group strongly supports or opposes a controversial viewpoint. Profanity, violence, sexual content, homosexuality, witchcraft, racism, and sexist language are common reasons books have been questioned (Lisberg, 2014).

Traditionally, the courts have opposed censorship, and challenged materials have been returned to the library shelves after decrees (Kelsey, 2007). Over the past 50 years, quite a few cases have been brought before the courts to determine the extent of First Amendment rights afforded to students. The following seminal court

decisions serve as guidelines for school leaders and librarians.

### ***Board of Education v. Pico* (1982)**

The opinion in *Board of Education v. Pico* (1982) articulates the standard regarding the removal of books from school libraries. In *Pico*, a school district in New York removed books from the district's libraries deemed anti-Christian, anti-Semitic, and inappropriate, acting contrary to the recommendations of a committee of parents and school staff. The school board was accused of actions that violated students' First Amendment rights.

Reflecting the argument in the *Tinker* case, the U.S. Supreme Court ruled that school authorities' disapproval of materials or fear of misconduct does not supersede the constitutional rights of students. The court conceded that school boards are responsible for monitoring the education of their students and can remove information that is educationally unsuitable or pervasively vulgar; however, they cannot stifle students' rights just because they object to a certain viewpoint or idea (*Board of Education v. Pico*, 1982). The Supreme Court stated that school authorities do not have unhindered authority to remove books from the school library "simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion" (*Board of Education v. Pico*, 1982, p. 1).

### ***Minarcini v. Strongsville City School District* (1976)**

Even before *Board of Education v. Pico* (1982) set a standard against banning books, the courts supported students' First Amendment rights regard-

ing information access. Six years prior to the *Pico* decision, the school district of Strongsville, Ohio, removed two controversial books (*Cat's Cradle* and *Catch-22*) from both the school library and curriculum. Students and parents, along with the American Civil Liberties Union filed a lawsuit. Although the district court ruled for the school district, the court of appeals reversed the decision, favoring the students and parents.

The appeals court found that the school board violated basic constitutional values by banning books based primarily on personal objections to the authors' viewpoints. The court stated that the school was not required to offer library services or particular materials. However, after "having created such a privilege for the benefit of its students," it could not "place conditions on the use of the library which were related solely to the social or political tastes of school board members" (*Minarcini v. Strongsville City School District*, 1976, p. 7). The court acknowledged the role of the school library as an important communal resource:

A library is a storehouse of knowledge. When created for a public school, it is an important privilege for the benefit of students in the schools. That privilege is not subject to being withdrawn by succeeding school boards whose members may desire to winnow the library for books the contents of which occasioned their displeasure or disapproval. (*Minarcini v. Strongsville City School District*, 1976, p. 6)

### ***Right to Read Defense Committee v. School Committee of the City of Chelsea* (1978)**

Two years later, a district court in



## YA NONFICTION

### WARS

Galliker, Leslie. **Native American Wars on the Western Frontier, 1866-1890** (Major U.S. Historical Wars). Mason Crest, 2016. 64p. LB \$31.93. 9781422233573. Grades 8-12. Table of Contents shows icons to notice: a book symbol for glossary words, symbol for sidebars, research, questions, and key terms. By alerting important points throughout the book, understanding progresses from beginning to end. Text is enhanced with maps, charts, photographs, and paintings. Back matter has a timeline, index, and glossary.

Hall, Kevin and R. Conrad Stein. **The Korean War** (United States at War). Enslow, 2017. 112p. LB \$37.27. 9780766076594. Grades 6-12. The Korean War is called the “Forgotten War” though many American lives were lost. Researchers find information with primary sources, narrative accounts, sidebars, and photos. Chronology, chapter notes, glossary, and index complete the title.

Paley, Caitlyn. **Strategic Inventions of the Revolutionary War** (Tech in the Trenches). Cavendish Square, 2016. 112p. LB \$33.89. 9781502610287. Grades 9-12. During the Revolutionary War, David Bushnell’s idea of a submarine became reality. Invisible ink and special rifles were developed. Brief biographies of leaders are included, with photographs, sketches, maps, glossary, and index.

Streissguth, Tom. **Battle of Antietam** (Essential Library of the Civil War). ABDO, 2017. 112p. LB \$35.64. 978-1-68078-272-1. Grades 6-12. This set covers the Civil War from beginning to end. **Antietam** gives the reader an in-depth evaluation of the strategies in this turning-point battle. Leaders’ biographical sketches are interspersed with concluding features of source notes, timeline, glossary, and index.

Massachusetts supported the concept that libraries foster intellectual freedom and acknowledged the perils of censorship. The court deemed the library as a place where students “can literally explore the unknown . . . discover areas of interest and thought not covered by the prescribed curriculum . . . [and] test or expand upon ideas presented to [them]” (*Right to Read Defense Committee v. School Committee of the City of Chelsea*, 1978, p. 14). In this case, a committee removed the poetry anthology titled *Male and Female Under 18* from the high school library. The book included a poem deemed “objectionable, salacious, and obscene” (*Right to Read Defense Committee v. School Committee of the City of Chelsea*, 1978, p. 3). The committee argued that it had the authority to oversee curriculum and make revisions as necessary; the plaintiffs claimed the committee overstepped its censorship bounds. The court agreed with the plaintiffs:

Compelling policy considerations argue against any public authority having such an unreviewable power of censorship. . . . If this work may be removed by a committee hostile to its language and theme, then the precedent is set for removal of any other work. The prospect of successive school committees “sanitizing” the school library of views divergent from their own is alarming, whether they do it book by book or one page at a time. (*Right to Read Defense Committee v. School Committee of the City of Chelsea*, 1978, p. 13)

#### **Case v. Unified School District (1995)**

Children’s literature addressing the topic of homosexuality emerged at the end of the 20th century. In *Case v. Unified School District* (1995), the plaintiffs challenged a Kansas school board’s re-

moval of the book *Annie on My Mind*, which favorably discusses homosexuality, from the junior and senior high school libraries. The district court relied on *Board of Education v. Pico* (1982) in finding for the plaintiffs. The school board, the court determined, removed the book because of its disapproval of the content, not because it was educationally unsound or vulgar. The court rejected the board’s claim that it had the “discretion to transmit community values, and . . . remove library books based upon [its] personal social, political, and moral views” (p. 9).

Additionally, the school district did not follow its materials reconsideration policy when removing the book. The court noted this omission: “The highly irregular and erratic manner in which defendants removed *Annie on My Mind* from the District’s libraries and their disregard of established policy and procedure are important evidence of their improper motivation” (*Case v. Unified School District*, 1995, p. 9).

### PREEMPTIVE POLICY

History is replete with case law regarding the censorship of children’s literature, and there will likely be more challenges in the future. Consistently, the courts have supported intellectual freedom; students’ First Amendment rights trump the authority and opinions of school leadership and the community. Librarians are called upon to understand basic First Amendment rights and guard intellectual freedom. Creating and maintaining well-designed policies on selection and reconsideration of materials place school districts on solid ground when censorship issues arise. More importantly, sound selection and reconsideration policies protect student

patrons and prevent the abridgment of their First Amendment rights.

The preceding legal rulings prompt librarians, school administration, and school boards to vigorously defend the right to read. These notable court cases not only highlight the necessity of establishing policies and procedures but also the importance of following them in every situation. Formal district selection policies should state the criteria for all new purchases, donations, and other acquired resources. The district's educational goals should also be included, along with a process to evaluate nonfiction titles for accuracy and bias (Bishop, 2007). Both print and electronic materials should meet the criteria of the school district's selection policy. Professional librarians should make sure that selections are age appropriate and suitable for the curriculum; a thoughtful selection process is the first line of legal defense.

Additionally, a reconsideration policy for challenged material should be in place to protect the intellectual freedom of patrons (Martin & Zannier, 2009). Most challenges arise from sincere concerns about the appropriateness of materials for children; however, the unilateral banning or limiting of access to materials is not the appropriate or legal way to handle such concerns or complaints (Martin & Zannier, 2009). By having specific procedures in place, schools are protected and can handle contentious issues with respect and confidence. The documented process should be precise and clear. It should describe the initial challenge request, committee assembly, and the postdecision notification process (Martin & Zannier, 2009).

The courts have shown that they solidly support the rights of students

when it comes to reading. School leaders and librarians have an obligation to promote information access, intellectual freedom, and the right to read. Banning or limiting access to reading materials without legitimate pedagogical concerns and due process is antithetical to those important student rights.

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