



207 East Buffalo Street, Ste 325
Milwaukee, WI 53202
(414) 272-4032
aclu-wi.org

Via e-mail
munodav@sdmfschools.org

December 13, 2023

Superintendent David Muñoz
Menomonee Falls School District
W156N8480 Pilgrim Road
Menomonee Falls, WI 53051

Re: Open Records Requests Regarding Book Removal Decisions

Dear Superintendent Muñoz:

For decades the ACLU of Wisconsin has fought to preserve fundamental rights for all under the US and Wisconsin constitutions including the First Amendment rights to freedom of expression. As part of that mission, please find enclosed the attached open records request directed to your School District, its school board and administration.

Why We Are Sending This Open Records Request to Your School District

We write to express our alarm regarding past and current efforts to ban books by removing them from school libraries and classrooms in your school district. We urge you to affirm your commitment to public education, the First Amendment, and the welfare of all students in your community by resisting and speaking out against these harmful and misguided efforts—and, for books which have been removed from school libraries in your district, restoring students' access to all materials in your collection as soon as possible.

Unfortunately, recent events appear to be part of a dangerous nationwide trend in which school boards or administrators have succumbed to pressure from parents and politicized advocacy groups to deny students access to important literature and information about LGBTQ+ people, human sexuality, racism, and other topics that students have the right to learn about in an educational setting. Restricting students' access to books limits their opportunity to be introduced to new ideas and information, to learn about themselves and about people who are different from themselves, and to become active and informed citizens in their communities. To the extent that some individual parents wish to insulate their children from exposure to ideas that might make them uncomfortable or conflict with their personal values or religious beliefs, such an objective does not justify culling the school library's collection to deny all students access to books that some parents dislike.

It has long been recognized that removing books from school libraries is a serious threat to the First Amendment rights of students and their families. The Supreme Court held over 40 years ago that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books.” *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 872 (1982). “[T]he special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students.” *Id.* at 868. “[J]ust as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they will soon be adult members.” *Id.* “[I]n light of the special role of the school library as a place where students may freely and voluntarily explore diverse topics,” a school district’s “non-curricular decision to remove a book well after it had been placed in the public school libraries evokes the question whether that action might not be an unconstitutional attempt to ‘strangle the free mind at its source.’” *Campbell v. St. Tammany Par. Sch. Bd.*, 64 F.3d 184, 190 (5th Cir. 1995) (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

The circumstances we are now encountering in your school district and various locations throughout Wisconsin are strikingly similar to the facts of *Board of Education v. Pico*, where school board members removed books from the library shelves after obtaining a list of “objectionable” books from a “politically conservative organization of parents.” *Pico*, 457 U.S. at 857. Although the school board in that case had been able to cherry-pick excerpts from many of the disfavored books containing vulgar or sexually explicit language, the Supreme Court held that the school board violated the First Amendment insofar as they “intended by their removal decision to deny [students] access to ideas with which [the board members] disagreed.” *Id.* at 871.

Historically, book banning has long been used to marginalize underrepresented and disempowered voices and communities, and we are particularly troubled by the dangerous anti-LGBTQ+ rhetoric that has accompanied much of the recent book-banning advocacy. Nationally, LGBTQ+ youth are far more likely to be bullied and harassed at school, alienated from their families and communities, and suffer from depression and suicidal ideation than their non-LGBTQ+ peers. For LGBTQ+ youth who are isolated at home, in school, or in their community, access to LGBTQ+ representation or information in books and literature can be a refuge—and in some cases life-saving. Courts have repeatedly ruled that censoring books because they express support for lesbian, gay, bisexual, and transgender people is a form of viewpoint-based discrimination prohibited by the First Amendment. See *Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 897 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that restrictions on access to *Heather Has Two Mommies* in public libraries violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal of book depicting romance between two women from school libraries violated First Amendment).

In debating whether to allow students to check out a controversial book from the school library, it is easy to lose sight of the overarching function of our schools: to train young people to

think for themselves. Many years ago, the Supreme Court explained the essential role our schools play in helping young people to develop into the reflective and critical citizens that a democracy needs to survive and flourish: “The Nation’s future depends upon leaders trained through wide exposure to [a] robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.” *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967) (internal quotation marks and alterations omitted).

These book bans and restrictions may also violate Wisconsin state statutes and administrative codes that require the District to provide library materials that give students an appreciation and understanding of the diverse histories, cultures, and value systems in American society. Specifically, school boards must provide instruction that gives students “skills to participate in political life,” “knowledge of state, national and world history,” “an appreciation and understanding of different value systems and cultures,” and “an understanding of human relations, particularly with regard to American Indians, Black Americans and Hispanics.” Wis. Stat. § 118.01(2)(c)(6), (7), and (8).

The District must also provide “a current, balanced collection of books” and library services, “in an accurate and unbiased way the cultural diversity and pluralistic nature of American society.” Wis. Admin. Code § PI 8.01(2)(h), Wis. Stat. § 121.02(1)(h). The library plan has to be steered by a licensed library media specialist. Wis. Admin. Code § PI 8.01(2)(h)(1-2). Finally, there must be a library materials selection policy that complies with these mandates. Wis. Admin. Code § PI 9.03(1)(e). A district that fails to have such a policy risks violating state pupil nondiscrimination law.

Wisconsin law therefore goes further than the First Amendment by requiring schools to affirmatively provide specific content about diverse identities, regardless of the viewpoint of the District. That necessarily includes identities and perspectives that are not white, straight, and cis-gendered. Library plans must be directed by specialists, not a board member who does not “remember” a historical event as it is portrayed in a book or a single parent who feels uncomfortable about the idea of gay character in a young adult novel. The District must allow students to learn about different value systems, cultures, human relations, and history—even the history of protests and the history of the Gay Pride Flag—so that they can appreciate the pluralistic nature of American society and go on to participate in political life

Indeed, students in a diverse society will thrive only if a diverse array of literature and informational material are available to them—from literature by and about LGBTQ+ people, to religious texts of all faiths, to books about science, art and history written from traditional as well as non-traditional perspectives. By contrast, when school officials attempt to create a “sanitized” learning space by eliminating controversial texts from school libraries, they undermine this critical function of public education. And when books can be removed based on parents’ complaints about the author’s message or point of view, it paves the way for an unending series of attempts by one group or another to cleanse a school of reading material based on what a vocal faction finds objectionable. In the end, schools become another arena for political warfare, rather than a space of learning for our youth. Neither students nor their communities are well served by this practice.

Given the importance of these issues for students, their families and the community, the ACLU of Wisconsin is submitting the following open records requests to seek transparency and information regarding the recent decisions in your District to remove certain books from your school libraries.

We trust you will respond promptly to these requests. If you have any questions or need any clarification on these requests, please contact me.

Yours truly,



R. Timothy Muth
Interim Legal Director/Staff Attorney
ACLU of Wisconsin Foundation

OPEN RECORDS REQUEST

Pursuant to Wis. Stat. §§ 19.31 *et seq.*, you are hereby requested to provide the records listed below which are within the custody or control of the District

If any material responsive to this request is deemed to be exempt from disclosure, identify the material withheld and specify the asserted basis for the exemption. Please release all segregable portions of otherwise exempt material.

Documents requested under the public records law must be produced “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a). The Wisconsin Department of Justice policy is that 10 days is ordinarily a reasonable time for response to an open records request. Wisconsin Department of Justice, *Wisconsin Public Records Law Compliance Outline* at 13 (Aug. 2010).

You are requested to provide the documents without charge pursuant to Wis. Stat. § 19.35(3)(e). The ACLU of Wisconsin Foundation is a not-for-profit charitable and educational organization dedicated to the protection of civil liberties and government accountability, and waiving fees is in the public interest. Should you decline to waive the charges and the expenses exceed \$50, please contact me so that we may discuss how to proceed.

DEFINED TERMS

In this request, the term “records” includes all email, documents, reports, and all other information recorded in any form whatsoever, including, but not limited to, papers, digital electronic media (both on local computers and servers and internet servers accessible to you (“the cloud”), and analog recording media (such as audio and video recordings).

“Records” also includes text messages on phones, instant messages and direct messaging in social media applications. Persons involved with the topics of these requests should be instructed to review their cellphones and messaging applications for responsive records.

“District” means the School District of Menomonee Falls, its administration, school board members and Library staff.

“Library” or “Libraries” means school libraries within the schools of the District

“Remove” or “Removal” means removing a book from the shelves of a Library, or prohibiting a book from being checked out, or otherwise limiting student access to a specific book.

RECORDS REQUESTED

1. List of Removed Books:
 - a. Any list of books which have been requested for Removal from Libraries since January 1, 2021.
 - b. Any lists of books which have been removed from Libraries since January 1, 2021 pursuant to a request by a parent or other person not employed by the District.
 - c. Lists of books for which a request for Removal has been made, but for which the District has not yet made a determination whether to remove the book from Libraries.

2. Decision-Making Process:
 - a. Any record describing the policy or procedure which the District follows to decide whether to Remove a book from Libraries pursuant to a request.
 - b. Any records containing the standards or criteria related to initial book selection for Libraries and book Removal, including any external review, rating, or editorial resources used in making book selection or Removal decisions.
 - c. Any communications, memos, or statements issued by the school district regarding the Removal of books.
 - d. All communications received by the District administration from Library staff relating to the Removal of any books from Libraries since January 1, 2021.
 - e. Any assessment of the potential impact of book removal on different demographic groups within the District student body and community.
 - f. Documents describing any reconsideration process for challenged books and details on how individuals can appeal the removal decision.

3. Decisions Made
 - a. For any book Removed from Libraries since January 1, 2021, all records related to the decision-making process, including minutes of relevant committee, task force, working group or board meetings, internal communications, and any external consultations or reviews that influenced the decision to Remove the mentioned books.

4. Community Input and Feedback:
 - a. Records of any community input or feedback provided before or during the process for removal of any books from Libraries. This may include surveys, public forums, or other means of gathering community perspectives.

5. Alternative Solutions
 - a. Records of communications or discussions of alternatives to removing books from Libraries.