

Wisconsin

June 6, 2022

Jenny Starck, Superintendent
School District of Cadott Community
426 Myrtle Street
Cadott, WI 54727
via email at starckj@cadott.k12.wi.us

Re: Records Request Related to School Library Books

Dear Supr. Starck,

The ACLU submits this Open Records request, pursuant to Wis. Stat. § 19.35, as part of an investigation into reports that the School District of Cadott Community has banned and restricted access to at least three books that address protest movements, the LGBTQ movement, and the age-old question of where babies come from.

1. The District's Bans & Restrictions on School Library Books

According to news reports, the District banned *Protest Movements: Then and Now* by Eric Braun,¹ and *The Baby Tree* by Sophie Blackall,² which was moved to the guidance counselor's office to "recommend at their discretion."³ The District also moved *Pride: The Story of Harvey Milk and the Rainbow Flag* by Rob Sanders,⁴

¹ *Protest Movements* is a non-fiction book geared toward fifth to ninth graders, which "discusses the main concerns of the protest movements of the 1960s, and how those have evolved since; what's changed for the better, what might be worse, and where do we go from here."

<https://shop.capstonepub.com/library/products/protest-movements/>.

² *The Baby Tree* is an illustrated children's book, in which parents explain to their young child that babies "begin with a seed from their dad/ Which gets planted in an egg inside their mom...."

<https://ccbc.education.wisc.edu/the-baby-tree/>.

³ Julia Lopez, Cadott School Board reconsiders Six Library Books, Removes One, Mar. 29, 2022, https://www.wqow.com/townnews/education/cadott-school-board-reconsiders-six-library-books-removes-one/article_369cbbc8-afb0-11ec-815d-83ae57e56619.html; See also Maria Blough, Cadott School Board Makes Final Decision on Possible Book Removals, Mar. 28, 2022,

<https://www.weau.com/2022/03/29/cadott-school-board-makes-final-decision-possible-book-removals/>.

⁴ *Pride* is an illustrated children's book for children 5-8 years old that "trace[s] the life of the Gay Pride Flag, from its beginnings in 1978 with social activist Harvey Milk and designer Gilbert Baker to its spanning of the globe and its role in today's world."

<https://www.penguinrandomhouse.com/books/538691/pride-the-story-of-harvey-milk-and-the-rainbow-flag-by-rob-sanders-illustrated-by-steven-salerno/>.

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from a first-grade level to a fourth-grade level. The District acted in response to the request of one parent to remove 12 books from the K-6 grade libraries. One board member disapproved of *Protest Movements* because “a couple pages [] made [him] uncomfortable” and “that’s kind of not the way [he] remembered it happened.”⁵ Another lodged a similarly vague complaint that there were “a couple spots in there that were not factual.”⁶ That same board member did not think it was appropriate that the book addressed “highly controversial issues” and said that the book should be removed and replaced with a “positive uptake on protests.”⁷ Another noted that protesting and protests are “real big world issues” and therefore “bigger kid issue[s].”⁸

2. Free Speech Requirements for School Libraries

Students have First Amendment rights in their public-school libraries, and the District must respect those rights. Over 40 years ago, the Supreme Court held 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) (plurality). “[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 Board’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.V. Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

The First Amendment’s prohibition on viewpoint-based censorship of library books includes a prohibition on viewpoint-based censorship of books because they express support for lesbian, gay, bisexual, and transgender people. *See Parents, Fams., &*

⁵ March 28th, 2022 Special and Committee of the Whole Meeting, at 34:36, <https://www.youtube.com/watch?v=gIe9YgsQ2iQ&feature=youtu.be>.

⁶ *Id.* at 33:23.

⁷ *Id.* at 34:14.

⁸ *Id.* at 32:07.

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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 addition to prohibiting the complete removal of library books for political or viewpoint-based reasons, the First Amendment also prohibits viewpoint-based restrictions on *access*, such as placing disfavored books in a separate section of the library or behind the librarians' desk. "Even where a regulation does not silence speech altogether, the Supreme Court has given 'the most exacting scrutiny to regulations that suppress, disadvantage, or impose differential burdens upon speech because of its content.'" *Sund*, 121 F. Supp. 2d at 549-50 (quoting *Turner Broadcasting, Inc. v. FCC*, 512 U.S. 622, 641 (1994)); *accord Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003) (explaining that "the stigmatizing effect of having to have parental permission to check out a book constitutes a restriction on access" based on viewpoint). When the school board "has used its official power to perform an act clearly indicating that the ideas contained in the [books] are unacceptable and should not be discussed or considered," that "message is not lost on students and teachers, and its chilling effect is obvious." *Pratt v. Indep. Sch. Dist. No. 831*, Forest Lake, Minn., 670 F.2d 771, 779 (8th Cir. 1982).

The District's removal and restriction of books from school libraries appears directly related to a nationwide campaign to censor specific viewpoints and therefore contravenes settled First Amendment principles. Over the past few months, activists and politicians across the country have worked to remove or restrict access to the certain books because they present and celebrate queer, Black, and/or other marginalized perspectives. See <https://www.theguardian.com/us-news/2022/jan/24/us-conservatives-campaign-books-ban-schools>, see also American Library Association, *Lawn Boy and Gender Queer: The Trend Toward Book Challenges* (Oct. 13, 2021), <https://www.oif.ala.org/oif/lawn-boy-and-gender-queer>

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[the-trend-toward-book-challenges/](#). Here, the District considered banning six books, four of which have LGBTQ+ characters.⁹

The circumstances in *Cadott* are strikingly similar to those in *Pico* itself, where school board members removed books from the library shelves after obtaining a list of “objectionable” books from a “politically conservative organization of parents concerned about education legislation.” *Pico*, 457 U.S. at 857. Although the school board in *Pico* was able to cherry-pick excerpts from many of the disfavored books containing explicit language, the Supreme Court held that school board violated the First Amendment if the board “intended by their removal decision to deny [students] access to ideas with which [the board members] disagreed, and if this intent was the decisive factor in [the school board’s] decision.” *Id.* at 871.

The Supreme Court emphasized that the school board failed to use “established, regular, and facially unbiased procedures” for reviewing the books and “ignored the advice of literary experts, the views of librarians and teachers within the Island Trees School system, the advice of the Superintendent of Schools, and the guidance of publications that rate books for junior and senior high school student.” *Id.* at 874 (internal quotation marks omitted).

Here, the District’s removal of books did not follow established, regular, and unbiased procedures. In response to the request of a single parent, the District’s school board formed a special book Reconsideration Committee and reviewed six books chosen by this parent. This was not a regular and unbiased procedure for reviewing books.

3. State Requirements for School Libraries

These book bans and restrictions may also violate 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).

⁹ See Lopez, *supra* at n. 3. Mar. 29, 2022, [reporting that, along with *Pride*, the District also considered removing *Melissa* by Alex Gino, *The Deepest Breath* by Meg Grehan, and *Hurricane Child* by Kacen Callender.](#)

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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.

4. Open Records Request

This letter constitutes a request under Wisconsin’s public records law, Wis. Stat. § 19.35. The ACLU of Wisconsin seeks disclosure of any records received, transmitted, collected and/or maintained by the School Board of Cadott Community, the School District of Cadott Community central office administration, and/or key administrators for the District, including the Superintendent and principals, which:

- a. evidences, describes, or discusses any aspect of the District’s ban or restriction of books from school libraries, from January 2022 to the present
- b. evidences, describes, or discusses the District’s compliance with its duties under the following Wisconsin statutes and administrative codes, dating from the beginning of the 2019-20 school year to the present:
 - i. Wis. Stat. § 121.02(1)(h) to “provide adequate [...], texts and library services which reflect the cultural diversity and pluralistic nature of American society”; Wis. Stat. § 118.01(2)(c)7 to provide an instructional program designed to give pupils “an



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understanding and appreciation of different value systems and cultures”; and

- ii. Wis. Admin. Code § PI 8.01(2)(h) to:
 - 1. “have on file a written long-range plan for library services development”;
 - 2. “designate a licensed library media person to direct and coordinate the district’s library media program”; and
 - 3. “make available to all pupils a current, balanced collection of books . . . which depicts in an accurate and unbiased way the cultural diversity and pluralistic nature of American society.”

Wisconsin law requires that requested documents be produced “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

The ACLU of Wisconsin Foundation is a non-profit organization whose mission is to defend and promote the civil liberties and civil rights of all residents of Wisconsin. Therefore, pursuant to Wis. Stat. § 19.35(3)(e), I request that you waive charges for production of these records. If you do not waive charges and there is a fee in excess of \$100 for production of these records, please advise me before proceeding.

If this request is denied, in whole or in part, we ask that you justify all deletions by reference to specific exemptions under Wisconsin’s public records law. The ACLU expects the release of all segregable portions of otherwise exempt material.

If possible, please send all applicable records in electronic format to me at cdonahoe@aclu-wi.org. If records are not available in electronic format, please send them to:

Chris Donahoe
American Civil Liberties
Union of Wisconsin Foundation
207 E. Buffalo St., Ste 325
Milwaukee, WI. 53202

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5. Conclusion

We urge the District to end policies and practices that suppress the free exchange of ideas and discriminate against viewpoints and representation of marginalized communities. Thank you for your prompt attention to this matter.

Sincerely,



Chris Donahoe
Staff Attorney

Elisabeth Lambert
Equal Justice Works Fellow