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June 14, 2022

Central Bucks School District
Board of Education and Policy Committee
16 Welden Drive
Doylestown, PA 18901

Dear School Board Members,

Education Law Center (ELC) provides this letter in response to continuing concerns brought to our attention by parents in Central Bucks School District (District) regarding the Board's proposed policies relating to book selection and removal. We urge the Board to reject the proposed Policy 109.2 (the Policy) in its current form and make further revisions as described in our May 19 letter and herein. Without such revisions, the Policy impermissibly violates students' First Amendment right to receive information and ideas.

It appears that the only substantive revisions made to Policy 109.2 following the May 19, 2022 Special Meeting were removing language vesting direct authority for book selection and removal in the Board members, and striking a 10 year ban on reconsideration of any book removed by challenge. These are appropriate revisions but by themselves fail to satisfy the many concerns presented by Policy 109.2's current form and issues raised by community members.

Proposed Policy 109.2 still suffers from the following problems:

- The Policy's broad direction to exclude or remove books from school libraries that include "sexualized content" as "generally inappropriate and/or unnecessary for minors in school" violates Supreme Court precedent interpreting the First Amendment's prohibition on viewpoint discrimination. The Board "may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge"¹ by proscribing a narrow view of "community values" that limit the books available in a school library where the "opportunity at self-education and individual enrichment ... is wholly optional."²
- Vague language directing staff to ban the selection of - and prioritize for removal - books that have "implied depictions of sexual acts" and overbroad prohibitions on "descriptions of sexual acts" will have a chilling effect on book choices and speech protected by the First Amendment.
- The failure to require consideration of a book in its entirety and whether it has received critical acclaim is further evidence that the Policy is not tailored to be objective and to identify "educational suitability" but instead intends to impermissibly enforce a particular viewpoint.³

¹ *Board of Education, Island Trees Union Free School District No. 26 et al v. Pico*, 457 U.S. 853, 866 (1982).

² *Pico*, 457 U.S. at 869.

³ *See Pico*, 457 U.S. at 874-75.

- Language encouraging the library to maintain “recognized classics” begs the question: who determines what qualifies as a “classic” and will that list include modern classics written to include diverse relationships and experiences of all people - or be limited to white straight Christian individuals?
- Parents of CBSD students already have the opportunity and a process through which to request their children not be allowed access to certain library books, so the intent and effect of the Policy is overly broad in that it will deny access to students whose parents do not object to the books at issue.
- Requirements to maintain a printed list of materials in each library and on each school website to be updated with each material selected and slated for acquisition is unduly burdensome for staff.

Courts consider the context of proposed policies and the motivation of policymakers to determine if animus is a motivating factor.⁴ It is very concerning that proposed Policy 109.2 is being pushed – against the advice and suggestions of experienced district library staff and contrary to national professional library associations – within the context of several months of complaints from parents and students about policies and practices that create hostile learning environments for LGBTQ students and a failure of the entire Board to condemn such policies and practices and offensive transphobic and antisemitic comments made at board meetings.

CBSD parents have expressed their desire for a rich 21st Century education for their students. That requires access to a library that has diverse, inclusive options for students to read and learn about a wide range of experiences and places. The Supreme Court has held that the school library is intended as a place to test or expand upon ideas presented in or out of the classroom⁵ and a school board does not have unfettered discretion to proscribe what is orthodox or appropriate for students to check out in a voluntary optional library process.⁶ Therefore, we again urge the Central Bucks School Board to reject Policy 109.2 in its current form because the proposed revised Policy continues to violate students’ First Amendment rights.

Sincerely,



Kristina Moon
 Maura McInerney
 EDUCATION LAW CENTER

Cc: Mr. Jeffrey Garton, Solicitor

⁴ See e.g., *Case v. Unified School Dist. No. 233*, 895 F.Supp.1463, 1470 (D.Kans. 1995)(ordering case to proceed to trial where the school officials’ motivations for removing books with LGBTQ themes from school libraries was a genuine issue of fact); see also *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977)(law is unconstitutional under the Equal Protection Clause if race, sex or gender is a motivating factor in its enactment).

⁵ *Pico*, 457 U.S. at 868-69.

⁶ *Pico*, 457 U.S. at 871-72.