

CHALLENGING BOOK BANS: WHAT YOU CAN DO

August 2023

Attempts to ban books are an alarming national trend, and Pennsylvania is no exception. A 2022 report indicated that since 2021 there had been more than 2,500 decisions to ban books in public schools nationally and 458 book bans in Pennsylvania, ranking our state third in the nation for the highest number of book bans.¹ In 2023, Pennsylvania has already accounted for 27 additional book bans. Nationally during the first half of the 2022-23 school year alone, there were 1,477 instances of individual books banned, affecting 874 unique titles, an increase of 28% compared with the prior six months.²

This trend is negatively impacting Pennsylvania students, who have less access to the diverse viewpoints and ideas expressed in the books being banned. While school districts have the power to select and, in some cases, remove books from public schools, there are important limitations on a school board's ability to ban books. There are important actions students, parents, and community members can take to fight back against these harmful policies.

The evidence is clear that book bans across the country and in Pennsylvania directly target works that feature Black and Brown characters, address racism, and include LGBTQ+ characters and themes.³ Book bans not only deprive students of important learning, they directly undermine student self-esteem, erase identities, and treat students of color and students who identify as LGBTQ+ as inferior and unwelcome. As Ibram X. Kendi, author of the frequently challenged book *How to Be Antiracist* explains, books that don't say anything about Black people reinforce perceptions of Black inferiority and what our society believes constitutes education.⁴

WHAT IS A BOOK BAN?

A book ban occurs when a school administrator or other personnel removes or restricts student access to a book that was previously available, based on the content of that book. According to [PEN America](#), an organization devoted to protecting rights of free expression in this country, a book ban is an “action taken against a book based on its content and as a result of parent or community challenges, administrative decisions, or in response to **direct or threatened** action by lawmakers or other governmental officials.”⁵ [Emphasis added.] Notably, the **initial** decisions made by schools regarding which books to purchase or assign to students are not considered “book bans.”

WHAT BOOKS ARE BEING TARGETED AND BANNED?

In the past year, the number of books challenged nationally has grown rapidly. Parents or community members object to books in school libraries and ask administrators to review and/or remove the books from circulation based on content an individual finds objectionable. The targeted books range from those that allegedly include “sexual conduct” or even “implied

depictions of sexual acts” to books with language some people find offensive.⁶ The objectors often ignore the educational or literary merit of the book entirely, focusing only on specific words or passages. Those promoting a book ban often claim they are “protecting” students from harmful ideas or information.”⁷

In practice, parents and school board members are targeting books that reference race and racism, books that include main characters of color, or books that focus on LGBTQ+ characters or themes. In addition, books that depict violence, discuss grief, and deal with death are under further scrutiny.⁸ In the 2021-2022 school year, of the books that were targeted, 42% featured LGBTQ+ characters or themes, 28% contained characters of color, and 6% had both.⁹ The most banned book during this period, for example, was *All Boys Aren't Blue* by George M. Johnson, a novel that addresses, among other themes, the experience of a queer Black man with racism and sexual abuse.

The books that parents and school board members are targeting reflect entrenched anti-Black racism and anti-LGBTQ+ hate that continue to be reinforced in our schools. The action of seeking to ban books that reflect student and teacher identities and our history of racism directly harms students and educators of color, students and teachers who are LGBTQ+, and school communities, which are deprived of important learning and honest relationships.

DOES PENNSYLVANIA HAVE ANY STATE LAWS ADDRESSING BOOK BANS?

Not yet. A few states (Florida, Utah, and Missouri) have passed book-banning legislation at the state level, which increased book bans in those states. Pennsylvania does not have such a state law. On the other hand, legislation introduced in June 2023, [HB 1506](#), also known as the Freedom to Read Act, seeks to limit school district book censorship while protecting parental oversight of their children’s book choices. The bill would protect students’ ability to select books and preserve local districts’ ability to set their own book review policies aligned with book review standards recommended by the American Library Association. The bill also creates a neutral appeals process for challenges to school district book removal decisions. There is also [pending legislation](#) in the state Senate that would prevent schools and public libraries from banning books.

WHAT IS THE SCHOOL BOARD’S AUTHORITY REGARDING BOOK BANS?

In Pennsylvania, school boards have the power to remove books so long as they comply with federal and state law, including the First Amendment. Students have a First Amendment right to read and receive information, and school boards cannot target certain viewpoints to be prohibited. School boards have far greater authority to select or remove books that are part of the curriculum, with less latitude over books that are optional, including library books. School districts also have policies related to selection and removal of books, and districts should follow those policies.

BOOKS ASSIGNED AS PART OF THE CURRICULUM: Pennsylvania school boards have broad discretion over curricular decisions under Pennsylvania law, with responsibility to adopt a “course of study” that is adapted to the “age, development, and needs of the pupils” in school.¹⁰ Typically, a school board delegates the details of these decisions to superintendents, who work with teachers and other school personnel to select or recommend curricular materials. Together, school boards and superintendents have the authority to select the textbooks and other curricular materials used by teachers and students in public schools.

Federal courts have largely affirmed the discretion of school boards under the First Amendment to make these choices. The Supreme Court has recognized that school boards have a “duty to inculcate community values” and may make curricular decisions to reflect those values.¹¹ This discretion is not limitless, and school boards may not impose, for example, “an identifiable religious creed” or “otherwise impair permanently the student’s ability to investigate matters that arise in the natural course of intellectual inquiry,” but their discretion is broad.¹² For example, federal courts have affirmed the ability of a school board to remove previously approved curricular materials so long as the decision is “reasonably related” to the “legitimate pedagogical concern” of denying students access to “potentially sensitive topics.”¹³

This low bar makes it difficult to mount legal challenges to the actions of a school board on its choice of curricular materials. Courts have found that legitimate pedagogical concerns include regulating student access to books for being “pervasively vulgar,” for containing sexually explicit content or “factual inaccuracies,” or for “educational unsuitability.”¹⁴ In claiming certain books are “sexually explicit,” book ban proponents attempt to argue that school boards are operating within constitutional limits.

LIBRARY BOOKS NOT PART OF CURRICULUM: Pennsylvania school boards have less discretion in restricting noncurricular materials in schools, such as library books. The Supreme Court has held that “the special characteristics of the school library” create additional First Amendment protections for students.¹⁵

In 1982, the U.S. Supreme Court ruled in *Board of Education, Island Tree Free School District No. 26 v. Pico* that books in libraries are different from mandatory school curricula, as libraries are intended as a “place to test or expand upon ideas presented to [a student], in or out of the classroom” and are distinct from materials included in the school’s curriculum, over which the board has greater discretion.¹⁶ The court agreed that while school boards have discretion to transmit community values, that discretion is not unfettered, and libraries have a unique role different and separate from mandatory school curriculum.¹⁷ A school board “may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge”¹⁸ by imposing a narrow view of “community values” that limits the books available in a school library where the “opportunity at self-education and individual enrichment ... is wholly optional.”¹⁹ The First Amendment requires that “students must always remain free to inquire,” and “the school library is the principal locus of such freedom.”²⁰

This higher standard offers additional protections for students. The Supreme Court has held that school boards may not remove books from a school library “simply because they dislike the ideas contained in those books” or in an effort “to prescribe what must be orthodox in politics, nationalism, religion, or other matters of opinion.”²¹ In practice, this means that school boards may not remove a library book because it does not agree with what is discussed, such as “controversial racial issues.” School boards also may not remove a book simply because it depicts gay or lesbian relationships.²² Further, school boards may not remove or restrict a library book based on an unfounded “concern that the books might promote disobedience and disrespect for authority” or because a book deals with “witchcraft”—a common complaint against the *Harry Potter* series.²³

Additionally, board policies, including book policies, are unlawful if they are deemed impermissibly vague or arbitrary and capricious.²⁴ See ELC's [fact sheet on the powers of school boards](#) for more information. Vague language and overbroad prohibitions may be challenged as having a chilling effect on book choices and speech protected by the First Amendment. The reliance on vague, subjective criteria and failure to require consideration of a book in its entirety, including whether it has received critical acclaim, may be evidence that the policy is not tailored to be objective and to identify "educational suitability" but instead serves to impermissibly enforce a particular viewpoint.²⁵

Courts also consider the context of proposed policies and the motivation of policymakers to determine if animus toward a particular population is a motivating factor.²⁶ And in a recent investigation by the U.S. Department of Education's Office for Civil Rights (OCR), the agency found that Forsyth County (Ga.) Schools' book removal policy for sexually explicit content created a hostile environment for LGBTQ students and students of color, with an underlying motivation of targeting books due to gender identity, sexual orientation, or racial orientation.²⁷

ARE THERE PROCEDURES THAT SCHOOL BOARDS MUST FOLLOW TO REMOVE BOOKS?

The First Amendment requires school districts to have "established, regular, and facially unbiased procedures" governing the removal of noncurricular books.²⁸ Book removals by school districts that rely on irregular procedures without standards or a review process are more likely to violate the First Amendment. For example, courts have found that the removal of noncurricular books by school districts violated the First Amendment when those schools failed to provide a standard or review process regarding book removal,²⁹ where districts failed to follow their own policy and procedures regarding book removal,³⁰ or where that policy merely amounted to a disapproval of the ideas contained in certain books.³¹

School boards also must follow relevant state laws governing the addition or removal of books from schools. In Pennsylvania, any school district's decision to adopt a new textbook or course of study requires an affirmative vote by a majority of all members of the school board. This vote must be recorded, showing how each member voted.³² Pennsylvania law also requires a recommendation from the superintendent before a change in textbooks is made. A change in textbooks cannot be made without the superintendent's approval unless two-thirds or more of the school board votes for it.³³

As mentioned above, a bill introduced in the Pennsylvania General Assembly in June 2023 but not yet acted on, [HB 1506](#), also known as the Freedom to Read Act, would limit school district book censorship and also protect parental oversight of their children's book choices.

HOW CAN PARENTS, STUDENTS, OR COMMUNITY MEMBERS CHALLENGE BOOK BANS?

The first step is to become familiar with your district's policies, which you can find on your district's website. Many districts use a standard numbering format for their policy manuals, placing curricular policies in the "100" category. Check to see that your school district has a policy and is following its approved policy.

You can file a Freedom of Information request to determine if your district has removed books from circulation or has received complaints about any books. You can also ask in public meetings or by requesting information from your superintendent.

Attend your school board meeting and speak out if you believe that the board is taking actions that are inappropriate or illegal. As parents and taxpayers, your opinion is very important.

A group of parents may want to consider bringing a legal challenge to a school district that is banning books. During a school board election cycle, parents and community members can most forcefully advocate by voting. School boards are democratically elected and accountable bodies, and community members can fight against book bans by voting out school board members who endorse book bans and supporting candidates who oppose them.

The National Coalition Against Censorship has collected a range of resources for students, parents, and school staff to advocate against and protest book bans, including sample letters that can be sent to school boards by students or parents.³⁴ Students especially should understand their rights to protest.³⁵ The National Coalition Against Censorship has collected a number of [advocacy tools and resources](#) for students and others. Check out ELC's webpage, [Inclusive Schools and Honest Education](#), for more information.

The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.

¹ PEN America's Index of School Book Bans, https://docs.google.com/spreadsheets/d/1hTs_PB7KuTMBtNMESFEGuK-0abzhNxVv4tgpI5-iKe8/edit#gid=660619424.

² PEN America's Update on Book Bans in the 2022-2023 School Year Shows Expanded Censorship of Themes Centered on Race, History, Sexual Orientation and Gender, <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/>.

³ *Banned in the USA: Rising School Book Bans Threaten Free Expression and Student's First Amendment Rights*, PEN AMERICA (June 28, 2022), <https://pen.org/banned-in-the-usa/> (last visited Jun. 5, 2023) (emphasis added).

⁴ Zan Romanoff, Readers Digest, *Ibram X. Kendi on His New Book and Why Kids Today Need the Kinds of Books Being Banned* (Nov. 07, 2022), <https://www.rd.com/article/ibram-x-kendi-book-banning/>.

⁵ *Banned in the USA: Rising School Book Bans Threaten Free Expression and Student's First Amendment Rights*, PEN AMERICA (June 28, 2022), <https://pen.org/banned-in-the-usa/> (last visited Jun. 5, 2023) (emphasis added).

⁶ For example, see Central Bucks School District Policy 109.2 Library Resource Materials, <https://go.boarddocs.com/pa/cbuc/Board.nsf/goto?open&id=ARZJQC4C9A95>, and ELC's letter opposing the vague undefined terms among other problems, <https://www.elc-pa.org/wp-content/uploads/2022/05/2022.05.19-Open-Letter-to-Central-Bucks-re-book-ban-antiLGBT.pdf>. Proposed legislation Pennsylvania SB 1277 (Printer's No. 1832) from last session used similar language and posed the same problems. See ELC's letter opposing the bill, <https://www.elc-pa.org/wp-content/uploads/2022/06/ELC-SB-1277-SB-1278-letter-06282022.pdf>.

⁷ *Banned and Challenged Books: Banned Book FAQ*, AM. LIBR. ASS'N, <https://www.ala.org/advocacy/bbooks/banned-books-qa>. The three most common reasons provided by individuals attempting to ban books are "sexually explicit" material, "offensive language," or books that are "unsuited to any age group."

⁸ *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, PEN AMERICA (Apr. 20, 2023), <https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/>.

⁹ Hannah Natanson, *Objection to Sexual, LGBTQ Content Propels Spike in Book Challenges*, WASHINGTON POST (May. 23, 2023), <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/>.

¹⁰ 24 PA. CONS. STAT. § 5-510.2 (1949) (School boards have the power to adopt “courses of study.”); 24 Pa. Cons. Stat §15-1512 (1949) (Courses of study may be adapted to age, development and need of pupils).

¹¹ *Bd. of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 457 U.S. 853 (1982).

¹² *Zykan v. Warsaw Cmty. Sch. Corp.*, 631 F. 2d 1300 (7th Cir. 1980).

¹³ *Virgil v. Sch. Bd. of Columbia Cnty.*, 862 F.2d 1517 (11th Cir. 1989) (finding school board's actions of removing certain materials from high school curriculum while allowing the same books to remain in school library was reasonably related to Boards legitimate concern regarding the appropriateness of materials for the age of students). *See also Pratt v. Independent School District*, 670 F.2d 771 (8th Cir. 1982) (ordering reinstatement to high school curriculum of films which had been removed by school board because of alleged violence and effect on students' religious and family values).

¹⁴ *Pico*, 457 U.S. 853, 871 (1982) (“pervasively vulgar” and “educational unsuitability”); *ACLU v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, (11th Cir. 2009) (“factual inaccuracies”).

¹⁵ *Pico*, 457 U.S. at 868 (“the special characteristics of the school library make that environment especially appropriate for the recognition of the First Amendment rights of students”).

¹⁶ *Pico*, 457 U.S. at 868-69 citing *Right to Read Defense Committee v. School Committee*, 454 F.Supp. 703, 715 (Mass. 1978).

¹⁷ *Pico*, 457 U.S. at 869.

¹⁸ *Pico*, 457 U.S. at 866 citing *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965).

¹⁹ *Pico*, 457 U.S. at 869.

²⁰ *Pico*, 457 U.S. at 868-69 citing *Keyishian v. Board of Regents*, 385 U.S. 589, (1967).

²¹ *Pico*, 457 U.S. at 872 citing *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 642 (1943).

²² *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864 (D. Kan. 1995).

²³ *Counts v. Cedarville Sch. Dist.*, 295 F. Supp. 2d 996, 1002 (W.D. Ark. 2003).

²⁴ *See e.g., Flaherty v. Keystone Oaks Sch. Dist.*, 247 F. Supp.2d 698, 704 (W.D. Pa. 2003) (holding a policy that prohibited “abuse, offense, and harassment” was overly vague because the terms were not defined in any way); *Bender v. Exeter Twp. Sch. Dist.*, 63 Pa. D. & C.4th 414, 425 (Berks Cty. Ct. C.P. July 18, 2003), *aff'd mem.*, 839 A.2d 486 (Pa. Commw. Ct. 2003) (holding that a transfer to an alternative school for minor misbehavior was arbitrary and capricious).

²⁵ *Pico*, 457 U.S. at 874-75.

²⁶ *See e.g., Case v. Unified Sch. Dist. No. 233*, 895 F.Supp.1463, 1470 (D. Kan. 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).

²⁷ Off. of Civil Rts., U.S Dep. Of Ed., Letter to Forsyth County Schools Re: OCR Complaint No. 04-22-1281 (2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>. (OCR investigated Forsyth County Schools in Georgia for the school district's policy removing select books that depicted sexual explicit content. Through comments made at school board meetings, OCR found that the policy had an underlying motivation of targeting books due to gender identity, sexual orientation, or racial orientation, and therefore created a hostile environment for students of certain racial and gender identities.)

²⁸ *Pico*, 457 U.S. at 874.

²⁹ *See Sund v. City of Wichita Falls*, 121 F. Supp. 2d 530, 552-53 (N.D. Texas, 2000).

³⁰ *See Case v Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 876 (D. Kan. 1995).

³¹ *Case*, 908 F. Supp.at 875-76.

³² 24 P.S § 5-508.

³³ 24 P.S § 8-803.

³⁴ *School Book Challenge Resource Center*, National Coalition Against Censorship, <https://ncac.org/resource/book-challenge-resource-center> (last visited Jun. 13, 2023).

³⁵ *See* KAI TEXEL, NATIONAL COALITION AGAINST CENSORSHIP, BE HEARD! PROTECTING YOUR PROTEST RIGHTS (2021) <https://ncac.org/wp-content/uploads/2021/12/Be-Heard-2021.pdf>.