

# Memorandum



Coeur d'Alene Public Schools  
DIVISION OF TEACHING AND LEARNING  
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**To:** Board of Trustees  
Superintendent Shon Hocker  
Deputy Superintendent Mike Nelson  
**From:** Katie Graupman, Coordinator  
**Date:** August 26, 2022  
**Re:** Policy 2530

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At the Board Workshop on August 22, 2022, Trustees unanimously voted to approve Policy 2530, removing the line “No library material shall be removed solely because of the ideas expressed therein” unless state statute required us to keep it.

To investigate this matter, we consulted Quin Perry, Deputy Director and Government Affairs for the Idaho School Boards Association and Megan O’Dowd our legal counsel.

In short, they both recommend not removing the line from policy due to First Amendment issues and concerns. Their correspondence follows.

While the Trustees voted to remove the line unless it violates state statute, we would recommend leaving the line in for now since the spirit of what the Trustees seemed to want was for the policy to be in alignment with law, and since the First Amendment is law, this action seems to align with the intentions of the Board. If this is not in the spirit of what the Trustees intended, this could be removed at the September Board meeting. Additionally, although we plan to leave the sentence at this time as a result of our attorney’s recommendation, we do plan to present the policy to the Board again in September with the intent to adjust that specific sentence by placing it just prior to the list of three reasons to remove any material. We believe this adjustment makes the policy read much better and is better to understand

## **Correspondence from Quin Perry:**

We would be not able to advise you to remove that sentence and would refer you to your legal counsel if the Board felt strongly in removing it. You’re right it is not explicitly noted in statutes. The reason behind our guidance and included in the policy is because there are long standing supreme court cases about censorship and school libraries, and removing books because of ideas is likely to put the district in a situation where you’re facing legal challenges and controversy. The most notable case on this issue is *Board of Education v. Pico*. **I found a good blog piece on the case to outline the merits of the case, if you’re curious in reading:**

<https://www.oif.ala.org/oif/pico-case-thirty-five-years-later/>

April and I have been contacted by attorneys and librarians who are asking us to beef up our library policies as it relates to ensuring schools have sound policies and procedures related to collection, selection, and reconsideration of library books that will hopefully help navigate these conversations a bit more. We hope to issue it in the Fall update.

For now, I am letting folks gently know that first amendment groups are watching library policies very closely and are prepared to litigate.

## **Correspondence from Megan O’Dowd:**

Quinn is right in that the case law on this issue is not very clear. As far as I know the issue has only gone before the US Supreme Court one time in 1982 (Board of Education, Island Trees Union Free School District v. Pico), which resulted in 7 different opinions and the Court has referred back to the decision as being ‘unclear.’ The case has been cited for the position that “School officials cannot remove materials if the decisive factor for the removal was to deny students access to ideas.” *Pico*, 457 US at 871. The decision also upholds the position that schools can remove books for vulgarity and ‘educational suitability.’ For example, whether the book may be appropriate for the age of the students at issue.

A recent federal district court opinion in Missouri discussed this decision at length and suggested that schools may remove books partly because they intend to deny students access to particular ideas with which they disagree, but it could not be the decisive factor in the decision making. *C.K.-W v. Wentzville R-IV Sch. Dist.*, No. 4:22-cv-00191-MTS, 2022 U.S. Dist. LEXIS 139554, at \*15 (E.D. Mo. Aug. 5, 2022). In that case, the Court upheld the temporary removal of books due to application of a policy requiring temporary removal as a result of objections by patrons. The Court also upheld the permanent ban of three additional books where (again in conformity with the policy) the librarian deemed them inappropriate due to age appropriateness and vulgarity.

All this to say, there is no precise statement of the law on this issue but the highlighted statement does appear consistent with the current case law suggesting that content objections cannot be the sole reason for removing a book (the Missouri case suggests it cannot be the decisive reason for removal), and that the decision could include consideration of vulgarity and educational appropriateness.

Our recommendation would be to leave in the language as it seems consistent with the law on the issue. To the extent that the sentence is not included in the policy, the standard would still apply (assuming the law had not changed) and objection to the content itself could not be the sole and/or 'decisive' basis for removal of the book. The focus should be on educational appropriateness and vulgarity.