

**MEMORANDUM**

TO: The Board of Education

FROM: The Board Attorney

DATE: February 22, 2023

SUBJECT: Teacher Appeal on District Termination v. First Amendment Protection

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**I. BACKGROUND**

The teacher in question is the supervisor of a book club at her school where a group of students read books about recent issues which they personally connect with and discuss them. The Board of Education recently created a policy restricting a large quantity of controversial books, which would remove them from the school library and teacher libraries throughout the district. The teacher had discovered that a number of books from her library were on the restricted book list, and that she would have to get rid of them to comply with the ban.

During the school day, Student A was caught in possession of “Jack of Hearts (and other parts)” by L.C Rosen, one of the banned books. It was uncovered that the book was in fact from the library, and the teacher was terminated immediately for acknowledging that she read the all-district email, understood the new policy, that the book provided to the student was on the list, and therefore violated the Board policy. The teacher has requested a hearing before the Board of Education to appeal her termination. She claims that the policy violates the First Amendment and that the district’s ability to prohibit school employees from providing banned books off of school premises is an overreach of its authority.

## II. ANALYSIS AND SUMMARY

In addressing the teacher's actions throughout the incident, it is the duty of the Board to uphold its standards and proceed with termination. According to the North Carolina Education Statues, it is the responsibility of faculty members to maintain good order, provide discipline, and "enter actively into the plans of the superintendent" of their schools.<sup>1</sup> By opposing the guidelines of the book restriction, the teacher was actively deviating from the Board of Education and superintendent's plans.

The foundation of constitutional rights for both students and teachers was created by the ruling in *Tinker v. Des Moines* (1969). Justice Abe Fortas in the opinion wrote that "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."<sup>2</sup> While this ruling protects political speech in schools, it does not protect vulgar or obscene speech, which some argue "Jack of Hearts (and other parts)" includes. This non-protected speech status was established in *Bethel School District No. 403 v. Fraser* (1986) in which a student was suspended for making a sexually suggestive speech at a school assembly.<sup>3</sup> Similarly, books must follow many of the same guidelines to have their speech protected. In this situation, due to the significant amount of sexual content in the book "Jack of

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<sup>1</sup> "G.S. 115C-307." n.d. North Carolina General Assembly. Accessed February 10, 2023.

[https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_115C/GS\\_115C-307.html](https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_115C/GS_115C-307.html).

<sup>2</sup> "Excerpts from *Tinker v. Des Moines* U.S. Supreme Court Majority Opinion, 1968." n.d. Iowa Department of Cultural Affairs. Accessed February 14, 2023.

<https://iowaculture.gov/history/education/educator-resources/primary-source-sets/protest-america/excerpts-tinker-v-des>.

<sup>3</sup> Hudson, David L. n.d. "Bethel School District No. 403 v. Fraser | The First Amendment Encyclopedia." Middle Tennessee State University. Accessed February 10, 2023.

<https://www.mtsu.edu/first-amendment/article/675/bethel-school-district-no-403-v-fraser>.

Hearts (and other parts)”, the book would not have the protection to keep it from being removed from public school libraries. In an online review of the novel, Kelly Johnson, a school nurse, argues “It is replete with promiscuity for girls and guys, gay and straight; there are orgies, passages of first time anal sex described, encouraging young girls and boys to have anal sex, talking and sending nude pictures via phone...”<sup>4</sup> In the case *Board of Education, Island Trees Union Free School District v Pico* (1982), the Supreme Court ruled that public schools can restrict school library books that are “pervasively vulgar” or are out of line with the curriculum. In past years, renowned pieces of American literature such as John Steinbeck’s *The Grapes of Wrath* and William Golding’s *The Lord of the Flies* have been under extreme scrutiny for their violent and explicit language. If the Board of Education has reason to believe that certain books are of this criteria, they have the authority to remove them from the library. The book restriction is not a violation of the First Amendment as schools have the right to remove books from their school libraries as long as there is reasonable claim that they contain inappropriate messages or are not deemed suitable for the educational curriculum.

The second claim from the teacher is that the Board of Education was overreaching its authority by prohibiting school employees from providing the restricted books to students to have off school grounds. It is important to note that this claim is invalid as although the intent was to have the book read off school grounds, Student A had been caught with it during the school day. The prohibition can be upheld as the books are property of the Board of Education, and therefore need to be returned upon demand. According to Chapter 115, Article 37 of the North Carolina General Statutes, “Provided, when any real property to which the board holds title is no longer

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<sup>4</sup> Jensen, Kelly. 2021. “JACK OF HEARTS (AND OTHER PARTS) Under Fire by Christian Right Group in Irving, Texas.” Book Riot. <https://bookriot.com/jack-of-hearts-and-other-parts-challenged-in-irving-texas/>.

suitable or necessary for public school purposes, the board of county commissioners for the county in which the property is located shall be afforded the first opportunity to obtain the property.”<sup>5</sup> As the books were not her own, the teacher’s right to property was not being revoked and she did not have the right to withhold them from the Board of Education. Also, the teacher was not prohibited from recommending book titles to students that she believed would benefit from reading them, she was restricted from providing the students said books. Students still have the right to go home, speak to their parents and guardians and access the book if their legal guardians approve.

### III. OPTIONS AND RECOMMENDATIONS

The purpose of this Board policy is to have legal guardians making decisions about what controversial books their minor students can read. The books on the restriction list were placed because of content that the Board deemed questionable and L.C Rosen’s *Jack of Hearts (and other parts)* falls under that list. The book was placed there as it contained an extreme level of sexual content that was not suitable for an educational environment. The teacher claims the book restriction violates the First Amendment, but as shown in the *Fraser* and *Pico* cases, vulgar language can be limited on school grounds, whether it is verbal or written form. Therefore, it is the recommendation of the Board Attorney that the teacher who provided the book is denied her appeal. As stated by the Education Commission of the United States, the qualifications for termination in any of the fifty states includes insubordination or violation of school laws, both of which were committed by the teacher.

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<sup>5</sup> “NC General Statutes - Chapter 115C Article 37 1 SUBCHAPTER IX. PROPERTY. Article 37. School Sites and Property. § 115C-517. A.” n.d. North Carolina General Assembly. Accessed February 11, 2023. [https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_115C/Article\\_37.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_115C/Article_37.pdf).

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