

# Memo on Selection of Library Materials

## Purpose

The purpose of this model policy is to provide a streamlined process for the selection and reconsideration of educational materials in Massachusetts schools. The policy addresses the growing amount of sexually explicit, vulgar, and violent content in schools by setting clear standards for age-appropriateness. It also promotes parental rights by ensuring that parents can review educational materials and opt their children out of content that violates their families' beliefs.

## Legal Basis

Schools generally have broad discretion to determine how students should be educated in their classrooms and libraries.<sup>1</sup> Courts are wary of overstepping the bounds of their jurisdiction to make educational decisions in local school districts.<sup>2</sup>

There is a common misconception that schools may not remove vulgar, sexually explicit, or otherwise inappropriate books from their libraries because doing so would be an unconstitutional restriction on students' rights to receive information. Much of this confusion stems from the misinterpretation of an important United States Supreme Court case, *Board of Education v. Pico*.<sup>3</sup>

*Pico* was a fractured plurality opinion and its precedential value remains unclear. But at most, *Pico* held only that schools may not remove books "simply because they dislike the ideas contained in those books."<sup>4</sup> In other words, the plurality in *Pico* prohibited schools from engaging in viewpoint discrimination when removing books from their libraries. But the Court did adopt the radical view that there can be no standards to judge whether educational materials are suitable for K-12 students. In fact, *Pico* made clear that schools are in no way restricted from removing books because they are "pervasively vulgar" or otherwise educationally unsuitable. The First Circuit Court of Appeals has also clearly noted that "*Pico* provides no ground for calling into question school board decisions to remove library books based on educational suitability, good taste, relevance, and appropriateness to age and grade level." And other federal court decisions have confirmed that public schools do not violate the Constitution when they remove materials because of concerns regarding age-appropriateness.

It is both a matter of common sense and of constitutional law that not all content that is protected under the First Amendment for adults should be equally available to children. Just because a book or other resource does not meet the high standard to be considered legally obscene for adults, this does not mean that schools must make it available to minor students.

As long as schools adopt clear procedures for the reconsideration of educational materials that employ viewpoint-neutral selection criteria, they should not face liability for removing materials that are age-inappropriate. This policy provides schools with such procedures.

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<sup>1</sup> See, e.g., *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988) ("[T]he education of the Nation's youth is primarily the responsibility of parents, teachers, and state and local school officials, and not of federal judges").

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<sup>2</sup> *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 207 (1982) (“[C]ourts must be careful to avoid imposing their view of preferable educational methods upon the States.”).

<sup>3</sup> 457 U.S. 853 (1982).

<sup>4</sup> *Id.* [1] *Id.* at 871.