



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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Dr. Bryan Bowles
Davis School District
45 East State Street
P.O. Box 588
Farmington, Utah 84025

Via U.S. Mail and Email

June 12, 2012

Dear Superintendent Bowles:

It has come to the attention of the ACLU of Utah that in April of this year, "Our Mothers' House," a book by Patricia Polacco was removed from the shelves of one of the school libraries in the Davis School District. Our understanding is that "Our Mothers' House" contains a positive depiction of a family headed by a same sex couple. It has been reported that a district panel determined that the book would be placed behind the library counter, where a student must ask for the book and have parental permission to check it out. At least one newspaper account suggested that the district is considering identifying other books to remove and place behind the counter. As explained further below, we have serious concerns about whether these actions comport with the First Amendment rights of the students in the district. Accordingly, we respectfully request that you meet with us so that we can understand all of the relevant facts and circumstances and try to work together to find a course of action that respects the constitutional rights of your students.

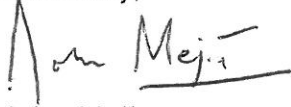
Though school districts generally have broad discretion in school matters, they must always act within constitutional limits. See *Tinker v. Des Moines Independent Community Sch. Dist.*, 393 U.S. 503, 507 (1969). In particular, in *Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853 (1982), a plurality opinion, the United States Supreme Court held that schools do not have unfettered discretion in removing books from library shelves. Several federal district courts have relied on the principles set out in *Pico* to reverse attempts to by schools to limit access to materials containing portrayals of

lesbian and gay people. For example, in *Parents, Families, and Friends of Lesbians and Gays, Inc. v. Camdenton R-III School Dist.*, --- F.Supp.2d ----, 2012 WL 510877 (W.D. Mo., February 15, 2012) the federal district court held that a school library could not limit student access to websites that contained positive messages about LGBT people while allowing access to websites with negative messages regarding LGBT people. In *Case v. Unified School Dist. No. 233*, 908 F. Supp. 864 (D. Kan. 1995), the court concluded that a school could not remove a book with a lesbian main character from its library shelves without running afoul of the First Amendment.

We note that in public statements, the district spokesman has asserted that "Our Mothers' House" was removed to comply with Utah Code Section 54-13-101. From our perspective, this statute does not appear to apply here. The statute purports to bar materials that advocate homosexuality from school health curriculum. School library books, however, are generally extra curricular, and in particular, are not generally part of the health curriculum. Assuming that "Our Mothers' House" is part of the health curriculum, it would be a stretch to say that it "advocates homosexuality." In any event, even if this statute were to apply to this book, we believe that the constitutionality of a statute barring a specific viewpoint from schools, especially in such a generalized way, is highly suspect.

In light of all of these considerations and from the facts as we understand them, we have concluded that it is unlikely that removing the book complies with the First Amendment. I would like to meet with you in person to fully understand the facts from your perspective and to discuss the possibility of a different resolution. Please email me at jmejia@acluutah.org or call me at (801) 521-9862 ext. 108 so we can arrange for such a meeting. I look forward to hearing from you. Thank you.

Sincerely,

A handwritten signature in black ink that reads "John Mejia". The signature is written in a cursive style with a horizontal line underneath the name.

John Mejia
Legal Director
ACLU of Utah