



July 6, 2022

Dr. Gregg Russell, Superintendent
and all records custodians
Nampa School District # 131
619 S Canyon St
Nampa, ID 83686
superintendent@nsd131.org

Jeff Kirkman, Chair
and all records custodians
Board of Trustees Nampa School District
Nampa School District # 131
619 S Canyon St
Nampa, ID 83686
t_jkirkman@nsd131.org

publicrecords@nsd131.org

By email only

RE: Idaho Public Records Law Request

Dear Superintendent Russell, Chair Kirkman, and all records custodians for Nampa School District #131 or the Board of Trustees for the Nampa School District,

As the chief defender of the First Amendment in our state, the ACLU of Idaho is deeply concerned about the Board of Trustees for the Nampa School District's decision to remove 22 books from the School District's libraries "forever."¹ And we are troubled by the Board's recent admission that the Trustees "had not done their due diligence"² before voting to ban these books.

It appears as though the Board failed to follow existing procedures, then created an ad hoc process for reviewing 22 books identified by one individual as deserving of removal from the school libraries; the process, which the Board itself was reportedly troubled by, involved the creation of a committee to review the books and required immediate removal of the books pending

¹ Nampa School District Board of Trustees, Regular Meeting (May 9, 2022).

² Nampa School District Board of Trustees, Regular Meeting (June 16, 2022).

review. Before the conclusion of the ad hoc process, the Board chose to remove the 22 books “forever” notwithstanding committee recommendations not to do so.

Public school libraries are cornerstones of American Democracy, ensuring that students have access to information and ideas so they can prepare to participate actively and effectively in our pluralistic, contentious society.³ “Students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding.”⁴ And “[t]he school library is the principal locus of such freedom.”⁵ So when books are removed from school library shelves, “the First Amendment rights of students may be directly and sharply implicated.”⁶

The U.S. Supreme Court has declared that “[l]ocal school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books,”⁷ even if those ideas are offensive, disagreeable, or uncomfortable.⁸ The 22 books removed from library shelves in the Nampa School District appear to have been removed because of Board Trustees’ dislike or discomfort with the ideas expressed within those books: ideas related to issues of race, gender, and sexuality, and views expressed by authors and characters who are members of racial or sexual minority groups.⁹ Thus, Trustees, by removing books based on their personal values, morals, and tastes, may have violated students’ First Amendment rights.

Trustees may also have violated the First Amendment by failing to follow “established, regular, and facially unbiased procedures for the review of controversial materials.”¹⁰ In *Island Trees School District v. Pico*, the U.S. Supreme Court was troubled by a local school board’s “highly irregular and ad hoc”¹¹ book removal process and decision to “ignore[] the advice of literary experts [and] the views of librarians and teachers within the [school] system.”¹² Here, the Nampa School Board’s abandonment of established and neutral procedures for book selection and review, reliance on a single community member’s complaint, and rejection of the advice of

³ *Island Trees School District v. Pico*, 457 U.S. 853, 868 (1982).

⁴ *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (quoting *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1957)).

⁵ *Pico*, 457 U.S. at 868-69.

⁶ *Id.* at 866.

⁷ *Id.* at 872.

⁸ *See id.* *See also Texas v. Johnson*, 491 U.S. 397, 414 (1989).

⁹ Removing books because they express support for lesbian, gay, bisexual, and transgender people would violate the First Amendment. *See Parents, Fams., & Friends of Lesbians & Gays, Inc. v. Camdenton R-III Sch. Dist.*, 853 F. Supp. 2d 888, 901 (W.D. Mo. 2012) (holding that censorship of LGBT-supportive websites in school library likely violated First Amendment); *Sund v. City of Wichita Falls, Tex.*, 121 F. Supp. 2d 530, 532 (N.D. Tex. 2000) (holding that merely moving certain books from the public library’s children’s section to the adult book section restricted children’s access and thus violated First Amendment); *Case v. Unified Sch. Dist. No. 233*, 908 F. Supp. 864, 875 (D. Kan. 1995) (holding that removal of book depicting romance between two women from school libraries because of school district’s personal disapproval violated First Amendment).

¹⁰ *Pico*, 457 U.S. at 874.

¹¹ *Id.* at 875.

¹² *Id.* at 874.

librarians and teachers raises significant constitutional concerns. “[L]ocal school boards must discharge ‘their important, delicate, and highly discretionary functions,’ within the limits and constraints of the First Amendment.”¹³ We fear that the Trustees for the Nampa School District overstepped and abused their discretionary power.

We thus seek records pursuant to the Idaho Public Records Law to ensure the Trustees did not violate the First Amendment to the United States Constitution when they voted to remove 22 books from District library shelves.

As public officials, Trustees are “servant[s] of the people and not the master of them.”¹⁴

[They do not have] the right to decide what is good for the people to know and what is not good for the people to know. It is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be knowledgeable and advised . . . of the decisions that are reached in all governmental activities and of the formulation of public policy.¹⁵

The Statement of Purpose undergirding the Idaho Public Records Law further explains:

[I]t is in the public interest to enable any person to review and commend or criticize the operation and actions of government and governmental officials and employees, even though allowing the people to examine the operations and actions of government may cause inconvenience and additional expense to government and may result in criticism or embarrassment of officials and employees.¹⁶

The Nampa School District and its Trustees may not withhold any requested records because they fear criticism or embarrassment or worry that the ACLU of Idaho may publish records, or use them to support a lawsuit or for any other purpose. The Idaho Legislature has made clear that “[t]he records of governmental activity and officials at all levels should generally be accessible to members of the public to determine whether those entrusted with the affairs of government are honestly, faithfully and competently performing their functions as public servants.”¹⁷

Under the Idaho Public Records Law, the American Civil Liberties Union of Idaho Foundation, a tax-exempt nonprofit association, requests an opportunity to inspect and copy all of your records created, received, or obtained at any time after July 1, 2020, through the last date that you provide any response or records in response to this request and that fit any of these descriptions:

¹³ *Id.* at 865.

¹⁴ Statement of Purpose, 1990 Idaho House Bill No. 860 (RS 24228).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

1. Communications (as defined below) directed to any member of the Nampa School District Board of Trustees (hereinafter “Board”), or to the Board generally, requesting the Board to remove any book from Nampa School District libraries and/or classrooms or restrict student access to any book. This request includes emails, letters, text messages, or Signal messages written to, or by, any Board member regarding any request to remove or restrict access to any one of the 22 books¹⁸ that the Board voted to remove from Nampa School District libraries during its May 9, 2022 Board meeting.
2. Records (as defined below) or Communications that reflect any debate or discussion, either public or internal, among the Board about banning books from Nampa School District libraries and/or classrooms or restricting student access to any book. This request includes the following:
 - (a) Notes (including raw notes) taken by any Board member or the Board clerk regarding removing or restricting access to books during the Board’s January 18, 2022 Board meeting, May 2, 2022 work session, May 9, 2022 Board meeting, June 6, 2022 work session, June 16, 2022 Board meeting, and/or June 27, 2022 Special Board meeting (collectively, “the Meetings”);
 - (b) Any memoranda, email, or other Communications reflecting any Board member’s thoughts or positions on removing or restricting access to books in the Nampa School District—both in general and specifically with respect to the 22 books that the Board voted to remove from the Nampa School District on May 9, 2022;

¹⁸ The Board voted to remove 24 books at its May 9, 2022 Board meeting. One book was listed twice and one book was not held by any Nampa School District library. Accordingly, this letter refers to the “22 books” that were actually impacted by the Board’s May 9, 2022 vote. Those 22 books are the following: (1) *Kite Runner* by Khaled Hosseini c. 2003; (2) *Leah on the Offbeat* by Becky Albertalli c. 2018; (3) *The Prince and the Dressmaker* by Jen Wang c. 2018; (4) *Thirteen Reasons Why* by Jay Asher c. 2008; (5) *The 57 Bus* by Dashka Slater c. 2017; (6) *Drama* by Raina Telgemeier; (7) *Looking for Alaska* by John Green c. 2005; (8) *The Bluest Eye* by Toni Morrison c. 1970.; (9) *The Handmaid’s Tale* by Margaret Atwood c. 1986; (10) *L8r, g8r* by Lauren Myracle c. 2007; (11) *Out of Darkness* by Ashley Hope Perez c. 2015; (12) *Perks of Being a Wallflower* by Stephen Chbosky c. 1999; (13) *Crank* by Ellen Hopkins c. 2004; (14) *The Absolutely True Diary of a Part-Time Indian* by Sherman Alexie c.2007; (15) *City of Heavenly Fire* by Cassandra Clare c. 2014; (16) *Clockwork Princess* by Cassandra Clare c. 2013; (17) *Eleanor & Park* by Rainbow Rowell c. 2013; (18) *Extremely Loud and Incredibly Close* by Jonathan Safran Foer c. 2005; (19) *Sold* by Patricia McCormick c. 2006; (20) *Speak* by Laurie Halse Anderson c. 1999; (21) *33 Snowfish* by Adam Rapp c. 2003; (22) *It’s Perfectly Normal: Changing Bodies, Growing Up, Sex, and Sexual Health* by Robie H. Harris c. 2014.

- (c) Any memoranda, email, or other Communications reflecting any Board member's views on the 22 books the Board voted to remove from the Nampa School District on May 9, 2022—including, but not limited to, any records regarding how Board members familiarized themselves with the books;
 - (d) Any memoranda, email, or other Communications reflecting any Board member's thoughts or positions on the process that should be followed, presently or in the future, in determining whether to remove or restrict access to a book in the Nampa School District;
 - (e) Any email, text message, Signal message, voicemail or other Communications exchanged by or between Board members in advance of and/or in preparation for the Meetings or any other meetings that mention or otherwise relate to removing or restricting access to any books in the Nampa School District; and
 - (f) Any email, text message, Signal message or other Communications sent to or among Board members mentioning or otherwise relating to removing or restricting access to books *after* the Board voted to remove 22 books from Nampa School District libraries and classrooms during its May 9, 2022 meeting.
3. Records and Communications that explain any aspect of the discussion or rationale for the Board's decision to ban books from or restrict access to books in Nampa School District libraries and classrooms during its May 9, 2022 Board Meeting.
4. Communications with any member of the Board or Nampa School District employee regarding the formation, composition, membership, or activities of the committee and/or subcommittee (the "Committees") formed within the Nampa School District earlier this year to review the 22 books that parent(s) had requested the Board remove from Nampa School District libraries and/or classrooms. This request includes, but is not limited to:
- (a) Communications ordering the formation of the Committees;
 - (b) Communications conveying the goals or purpose of the Committees;
 - (c) Communications regarding what individuals should be members of the Committees, including but not limited to any Communications regarding the specific individuals who were ultimately chosen to be members of the Committees; and
 - (d) Communications inviting individuals to join the Committees.

5. Records and Communications that reflect the work, activities, and recommendations of the Committees. This request includes, but is not limited to:
 - (a) Notes (including raw notes) taken at any and all Committee meetings;
 - (b) Memoranda reflecting the work, activities, and recommendations of the Committees;
 - (c) Emails or other Communications amongst members of the Committees or between such members and the Board regarding the Committees' work, activities, and recommendations; and
 - (d) Emails or other Communications provided to Committee members regarding the process they should follow in evaluating books or the standards or criteria they should apply in evaluating books.

6. Policies, guidelines, procedures, or other instructions, adopted or considered by the Nampa School District, or any of its schools, about restricting student access to books in its libraries or classrooms. This request includes, but is not limited to:
 - (a) Policies, guidelines, procedures, or other instructions for requiring a student to obtain a parent's permission before permitting the student to checkout or otherwise access a particular book in a school library or classroom;
 - (b) Policies, guidelines, procedures, or other instructions for allowing parents to affirmatively restrict their child's ability to checkout or otherwise access a particular book in a school library or classroom;

The term "Communications" (as used in requests 1, 2, 4, and 5 above) includes records of transmission of information by any method, including but not limited to email, telephone, voicemail, electronic chat, online and mobile communication platforms, text message, Signal message, letter, memorandum, and electronic file sharing and file transfer.

The term "Records" (as used in requests 2, 3, and 5 above), includes memoranda, minutes, working papers, notes (including raw notes), and audio and video recordings.

If you have any questions about what materials we are requesting, please contact Aadika Singh at asingh@acluidaho.org or by phone 208-344-9750 x1208. We are requesting all records, whether they are stored physically (such as in file cabinets or boxes) or electronically (such as in cell phones, computers, hard drives, USB drives, cloud storage systems, voicemail, or audio-visual equipment).

For any materials available in a commonly used electronic format, please email them in that format to asingh@acluidaho.org. For any materials that you can't email, please call Aadika Singh at 208-

344-9750 x1208 before you copy anything, because we are requesting to inspect the materials first to determine whether a record is relevant before it is copied.

The ACLU of Idaho Foundation is eligible for costs waivers under the Idaho Public Records Act. Please do not incur any copy or labor cost greater than \$100 that you intend to charge for without contacting me first.

The ACLU of Idaho Foundation needs this information as soon as possible within the statutory time periods. If you have any questions, please contact Aadika Singh by email at asingh@acluidaho.org.

Thank you for your work responding to this request.

Sincerely,

/s/ Aadika Singh
Legal Director
ACLU of Idaho

/s/ Colleen R. Smith
Associate
Stris & Maher LLP