

## Q&A FOLLOW-UP POST BREAKOUT SESSION

### Book Challenges: A How to Guide for School Boards Caught in the Middle

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We offer the following additional information that will hopefully address questions that came up during or right after our presentation.

The new statutory provisions regarding book challenges are untested, and we do not have any guidance from the courts on statutory interpretation. Furthermore, many of these matters are fact-specific, which is why it is important to consult with your Board Attorney for guidance.

1. **Slide 6 of the presentation, when discussing Florida Statute Section 1006.28, stated that “[a]ny materials purchased pursuant to this section must be free of depictions or descriptions of sexual conduct as defined in s. 847.001(19)”. However, Florida Statute Section 1006.40(3)(c) discusses the purchase of instructional materials, and the legislature did not include the prohibition of “sexual conduct” as defined in 847.001(19). Did the legislature purposefully leave out “sexual conduct” or was it an oversight?**

We are not sure. However, Fl. Stat. 1006.28 (2)(a)(1) states that “[e]ach district school board is responsible for the content of all instructional materials and any other materials used in a classroom, made available in a school or classroom library, or included on a reading list, whether adopted and purchased from the state-adopted instructional materials list, adopted and purchased through a district instructional materials program under s. 1006.283, or otherwise purchased or made available.” Thus, we do not recommend that districts purchase or make materials available that contain sexual conduct as defined (which is theoretically possible under F.S. 1006.40) only to have to pull those items from the shelves to comply with F.S. 1006.28.

2. **Have the courts given any direction regarding the ability of a public school to remove books from a school library?**

Yes, there have been a number of cases over the years that involve the removal of books from school libraries. Additional cases addressing this issue are being decided at the time of this writing. Thus, this continues to be an evolving area of law. The most prominent court decision on this issue is Board of Education, Island Trees Union Free School District No. 26 v. Pico, 457 US 853 (1982). In that case, the United States Supreme Court held in a 5-4 decision that a school board could not restrict the availability of books in its libraries solely based on the ideas expressed in those books. We caution, however, that these cases can be heavily affected by the particular set of facts involved. Further, Pico is a complicated case, with multiple justices issuing their own opinions making it a plurality decision. Thus, it is not controlling. For all the foregoing reasons, we cannot offer legal advice as to your district’s particular situation and strongly encourage you to discuss these issues with your Board Attorney.

3. **Does quiet reading in the library count as “instruction”?**

Again, this is very fact specific. We believe that the bar is set very low for something to qualify as instruction in the library setting. Any time the instructor leads a class discussion, any type of assessment, or there is an Accelerated Reader test, then “instruction” probably has occurred.