

SCHOOL LAW ADVISORY

#236

Educational policy and academic freedom: An important decision for school boards

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The Book

A Maine school board's encounter with the book "Bastard Out Of Carolina" was portrayed as censorship, banning and even "shunning." When Tabitha King gave financial support to an individual distributing copies of the book at local high schools - who acknowledged not actually having read the book - the *London Times* picked up the story. And the case actually did involve censorship, but not the sort implied by the media. The school board's carefully considered plan for dealing with sensitive material was censored by a teacher's misuse of the collective bargaining agreement's grievance procedure.

It has been said that much of southern literature can be characterized by the sentence: "The night the hogs ate Lilly, Momma died when she heard what Daddy had done to Sister." "Bastard Out Of Carolina" is in that tradition. The book is very well written, but dwells unrelentingly on sexual violence, exploitation, and despair. While raising important issues, it is at least debatable whether the disturbing images of this book are appropriate for a 10th grade English class.

The School Board's decision

After receiving a parent complaint, SAD 58's controversial materials committee reviewed the book. Unable to reach consensus, the committee by a one vote majority recommended keeping the book in the curriculum. SAD 58's school board then held a lengthy public hearing. It voted to remove the book from the curriculum until the high school developed a plan for presenting the book with an alternative text in a manner that would permit students offended by "Bastard Out of Carolina" to stay in class rather than opting out. The school board reasoned that it was less important that this particular book, out of the whole world of English literature, be taught than that kids who were offended by it receive uninterrupted instruction.

The arbitrator's decision

Even though the collective bargaining agreement reserved educational policy and the direction of staff exclusively to the school board, the grievance arbitrator, John Alfano, concluded that the bargaining relationship and the remote possibility that discipline and nonrenewal might follow a teacher's mishandling of the book, gave him the power to rewrite the school board's outline of how the potentially offensive material in the book should be presented.

The Court's decision

SAD 58 appealed the arbitrator's decision to Maine's Supreme Court. For a unanimous court, Justice Kermit Lipez - whom President Clinton has nominated to the First Circuit Court of Appeals - unequivocally found that the statutory exclusion of school board educational policy decisions from collective bargaining means both that a school board is prohibited from negotiating educational policy and that even if educational policy is negotiated into a collective bargaining agreement, such language cannot bind the school board and is not grievable.

This decision answers a question previously generated by the labor board: Is educational policy a permissive subject of negotiation for a school board? The answer is now clear; school boards may not negotiate educational policy. For school boards at bargaining tables around the state, this should be very helpful. Union proposals for evaluations, preparation periods, length and scheduling of student day or year, curriculum modifications, and the like can be confidently rejected.

Academic freedom

The decision also is very important for what it does not say. The extent, if any, to which teachers have academic freedom in the classroom independent of school board direction is a hotly debated issue nationally. In *SAD 59 v Solmitz*, 495 A2d 812 (1985) - Maine's Tolerance Day case - our highest court concluded that individual teachers had no right to determine general curriculum, but left unanswered the extent to which teachers might have academic freedom in their individual classrooms. In the *SAD 58* decision, however, the court concluded without hesitation that it is the school board, not the classroom teacher, who has the final say on how even individual works of literature are presented in class.

When a Maine school board in good faith decides how educational material should be presented - an issue which may be important as school boards consider how to implement the learning standards - it is now clear that the school board's decision is final and not subject to challenge or review by individual teachers or the union. Of course a school board still does not have the right to impose religious or political orthodoxy. It does, however, have

authority to make pedagogical decisions based on what it feels will best address the needs and values of its unique school community.

Controversial materials policy

SAD 58 had a controversial materials policy under which a committee first reviewed the book and then made a recommendation to the board. The policy confirmed that the board made the final decision. It is not clear how important this policy was to the court's decision, but it clearly helped. Other school boards will do well to review their policies for clarity and the preservation of school board discretion.

Kudos

Considering the media's portrayal of this case, SAD 58's superintendent and school board easily could have decided to avoid the hot lights by not appealing the arbitrator's decision. That, however, would have undermined confidence in the school board's ability to address educational needs without compromise. And now our Law Court has provided very helpful guidance for all Maine school boards. Hats off also to Maine School Management Association for providing financial assistance and encouragement to SAD 58. ■