



Southern Poverty Law Center
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August 22, 2023

Florida Board of Education

ATTN: Rule 6A-1.094126, Special Magistrate for Materials Used in Classroom or School Libraries

325 West Gaines Street

Tallahassee, Florida 32399

Dear Sir or Madam,

I write on behalf of Moms for Libros, an association of parents in Florida opposing school library censorship, and the Southern Poverty Law Center (“SPLC”), regarding Rule 6A-1.094126, the Department’s proposed regulations for special magistrates for materials used in classrooms or school libraries, implementing HB 1069 (2023). Moms for Libros and SPLC are deeply concerned that the proposed regulations inappropriately favor book challenges by providing an opportunity to appeal to the DOE only to parents or residents who oppose a board’s decision to not ban a challenged book. The lack of an equivalent right to appeal for parents and other guardians¹ of children who oppose a board’s decision to ban a challenged book unfairly privileges one point of view.

We strongly recommend an amendment that to the rule to provide the same fundamental due process right to be heard to *all* parents and guardians with a substantial interest in the materials their children have access to, not just to a subset of those parents, as the proposed rule currently provides. *See Keys Citizens for Responsible Gov’t, Inc. v. Fla. Keys Aqueduct Auth.*, 795 So.2d 940, 948 (Fla. 2001) (“Procedural due process requires both fair notice and a real opportunity to be heard ... ‘at a meaningful time and in a meaningful manner.’”) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). In other words, “[t]o qualify under due process standards, the opportunity to be heard must be meaningful, full and fair, and not merely colorable or illusive.” *Rucker v.*

¹ As used in the rest of this letter, “Parents” includes guardians and others responsible for children as defined in Fla. Stat. § 1000.21(6).



City of Ocala, 684 So.2d 836, 841 (Fla. 1st DCA 1996). To make special magistrate reviews available to only one set of parents is to deny the other set a meaningful, full and fair opportunity to be heard.

Specifically, page 2, Section (3)(a) currently reads “(a) Except as set forth in paragraph (3)(b), the appointment of a Special Magistrate will be considered *for parental objections to any type of material made available to a student in a school library, included on a school, grade, or classroom reading list, or used in a classroom*” (emphasis added). SPLC and Moms for Libros propose adding the following language at the end of the sentence “or for parental objections to the decision of a School Board to remove any type of material from a school library, included on a school, grade, or classroom reading list, or used in a classroom after a challenge to that material by another person.” This language should address procedural due process issues by giving parents who object to the removal of material the same rights as parents who approve a removal.

Additionally, the term “parental” as referenced in Rule 6A-1.094126 should be clarified by adding it to the definitions under subsection (2) as follows:

“Parental” as used herein means of or by a “parent” as defined herein and in s. 1000.21(6), F.S.

Furthermore, subsection (7)(b) should be revised to require the Department to dismiss a Parental Request if not filed by an actual parent with a child currently attending the school in question as follows:

6. The Parental Request shall identify the parent in whose name it is being submitted and shall include sufficient identifying information to verify that the parent has a student currently attending the school where the allegedly objectionable material was made available to the student. The Department shall dismiss a Parental Request if this information is not included in the Parental Request or if the parent does not currently have a student at the school.

The past year has seen a small number of individuals, some of them not even parents, object to large numbers of books in school libraries to advance particular ideological



agendas.² Existing law gives parents who oppose these challenges the opportunity to be heard and advocate for the continued availability of these important books. For example, after one person in St. Lucie County challenged 16 separate books, including acclaimed works like *The Kite Runner* and *the Hate U Give*, the school board voted to retain all of them after a hearing attended by more than 200 people, including high school students who wanted access to challenged books.³

Under the proposed regulations, school boards will face a one-sided incentive to approve book challenges because only parents whose challenges are denied may appeal and, under HB 1069, school boards bear the costs for those challenges whether or not the challenges have merit.⁴ Giving parents who oppose a book ban the opportunity to make similar appeals would correct this imbalance. More importantly, it would allow them to challenge instances in which school boards do not adopt policies that properly take their views into account and/or fail to follow those policies.

We also recommend clearly restricting the availability of the appeal process to parents with children currently attending a school where the challenged material is available. This amendment will help limit challenges to those with serious concerns about their children's welfare, rather than those seeking to push a particular political, cultural, racial, or religious agenda. Parents of home-schooled children, for example, should not be allowed to obtain a special magistrate's review over what happens in schools their children do not attend; they do not have a substantial interest in the outcome of the challenge.

Best Regards

/s/ Sam Boyd

/s/ Vanessa Brito

² Hannah Natason, "Objection to sexual, LGBTQ content propels spike in book challenges," (Washington Post, May 23, 2023), <https://www.washingtonpost.com/education/2023/05/23/lgbtq-book-ban-challengers/>.

³ Colleen Wixon, "St. Lucie County School Board decides to keep challenged books in school libraries" (Treasure Coast Newspapers, April 11, 2023), <https://www.tcpalm.com/story/news/education/st-lucie-county-schools/2023/04/11/books-stay-in-st-lucie-county-schools-but-most-move-to-high-school/70098338007/>.

⁴ HB 1069 (2023) at 17:376-377 ("The costs of the special magistrate shall be borne by the school district.").



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