



March 18, 2009

Kal Zucker, President
Cleveland Hts.-University Hts.
Board of Education
2155 Miramar Blvd.
University Hts., Ohio 44118
Fax: (216)397-3857

Sent via U.S. mail and fax

Dear Sir:

The ACLU of Ohio has been contacted by the Cleveland Heights Teachers Union ("the Union"), concerning a recent action by the Principal of Roxboro Middle School ordering the removal of a publication from the stacks of the school library. Based on our understanding of the facts, as stated below, this action was in clear violation of the First Amendment as well as written policies of the School Board.

On September 24, 2008, the Union was informed that the school Principal, Mr. Brian Sharosky, instructed the school librarian, Ms. Amy Bloomberg, to remove a periodical, the November 2008 edition of *Nintendo Power*, from the library shelves. Ms. Bloomberg objected because the Principal had failed to follow the procedures for eliminating publications from the stacks, set forth in Policy # 1340 of the School Board. The Union presented Ms. Bloomberg's objections to the School District Administration and was advised that the Administration was supporting the Principal's action. The Union then presented the issue to the School Board for resolution and, as of December 2008, that matter was still pending before the School Board. We do not have any information, as of the date of this writing, as to whether the School Board has made any decision on the matter.

Policy #1340 sets forth the procedure for removing unsuitable materials from the library shelves. It requires that a form be submitted to the Superintendent, identifying the subject publication and the basis for the requested removal. The Superintendent is then required to review the matter and submit a report to the Board of Education. The Board then makes the final decision as to the appropriate action to be taken. Nowhere in this procedure is the principal of a school given the authority to remove a publication from the school library. This procedure was not followed in this case.

The School Administration has apparently taken the position that Policy #1340 does not apply to the Principal (or presumably other School District personnel); that it applies only to "Patrons," i.e. students and members of the

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SHARES

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public who use the library services. This interpretation seems to be in conflict with the provisions of another Board Policy, #6137, (titled "Selection of Controversial Materials,") which requires that there be a procedure whereby citizens, *staff* or pupils may challenge materials. This same section then specifically refers to Policy #1340, which reference certainly seems to suggest strongly that #1340 applies to staff. Either #1340 does apply to this situation, in which case, the procedure was clearly not followed, or, if it does not apply, then the School Board is in violation of its own policy #6137. Either way the situation should be promptly remedied.

We would also like to call to your attention that the removal of a book from a school library, because it seems objectionable to one or more staff or School Board members, without a reasonable procedure in place to deal with such action, is a violation of the free speech guarantees of the First Amendment. See, e.g. *Minarcini v. Strongsville Board of Education*, 541 F.2d 577 (6th Cir. 1976).

For the foregoing reasons, and to avoid possible litigation, we request that the subject publication be immediately restored to the stacks of the school library, and that a clarification or amendment of the School Board policies be made to assure that a procedure for removal of publications from the school district libraries, binding on the School Board and the staff, is put in place. Thank you.

Very truly yours,

Jeffrey M. Gamso

Legal Director

Cc: Tom Schmida, President, CHTU

Brian Sharosky, Roxboro M.S. Principal

Amy Bloomberg, Roxboro MS Librarian

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