

By U.S. Mail and Email

August 18, 2022

Buckeye Valley Board of Education
c/o Paul Craft, Superintendent
679 Coover Road
Delaware, OH 43015
[REDACTED]

Dear Mr. Craft,

I am writing in response to your August 15, 2022 letter.

We are pleased to receive your assurance that, contrary to reports, Mr. Tharp's book has not been removed or banned. Similarly, we are very glad to understand that BVLS will now be committing to providing a diversity of viewpoints to its students in its library and speaker selections. We agree, to say the least, that Mr. Tharp's visit could and should have been handled in a more appropriate manner.

Some aspects of your response do raise concerns. In particular, you raise the specter of the school district, in order to eschew viewpoint discrimination, being required to accept an "age-appropriate [H]olocaust denial book" or an "age-appropriate flat-earth theory presentation." Your apprehension is misplaced. Your cited examples conflate content limitations—which are often permissible in the context of school libraries and guest speakers—with viewpoint discrimination, which is unlawful. Viewpoint discrimination only exists where speech is excluded for its "specific motivating ideology or the opinion or perspective of the speaker[.]" *Rosenberger v. Record and Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995). The First Amendment does not generally require a school to accept a book that features pervasive, disprovable factual inaccuracies about world history, nor to entertain a presentation based wholly on pseudoscience. See *ACLU of Fla. v. Miami-Dade Cty. Sch. Bd.*, 557 F.3d 1177, 1202 (11th Cir. 2009).

We understand your position that viewpoint neutrality is already guaranteed by the policies you now cite. We urge you to adhere carefully to these policies in the future, consistent with the commitment in your letter to us. Indeed, regardless of the particular phrasing of any policy, viewpoint neutrality is not optional. It is a requirement of the Constitution. A school may not "remove books from school library shelves merely because they dislike the ideas contained in those books[.]" *Bd. of Educ., Island Trees v. Pico*, 457 U.S. 853,

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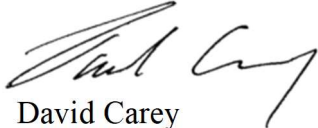
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872 (1982). Nor may it ban or restrict a guest speaker from voicing a viewpoint merely because it disagrees. *Searcey v. Harris*, 888 F.2d 1314, 1324–25 (11th Cir. 1989).

We are pleased to be able to come to an understanding without the immediate necessity of litigation. That said, the manner in which Mr. Tharp’s visit was handled raises serious concerns about BVLS’s regard for its legal obligations. We sincerely hope that your administration will not permit similar incidents in the future. Should it fail to do so, we will take appropriate action.

Very truly yours,



David Carey
Deputy Legal Director
American Civil Liberties Union of Ohio Foundation
(614) 586-1972 x 2004
[REDACTED]

cc (by email):

Amy Dutt, School Board President, Buckeye Valley Local School District ([REDACTED])

Matthew Besser, General Counsel, ACLU of Ohio ([REDACTED])