

**IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 23 D.o.E. App. Dec. 188)**

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*In re Removal of Book from Curriculum*

Sara Slagle and Jerry Gahard, Appellants,	:	
vs.	:	DECISION
Pleasant Valley Community School District, Appellee.	:	[Admin. Doc. 4603]

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The above-captioned matter was heard in person on March 3, 2005, before a hearing panel comprised of Jane Todey, Learning Supports Consultant; Jeff Berger, Legislative and Policy Liaison; and Administrative Law Judge Carol J. Greta, the designated presiding hearing officer. Appellant Sara Slagle was personally present, as was legal counsel for the Appellants, Brian Farrell. Appellee, Pleasant Valley Community School District, was represented by legal counsel, Cameron Davidson. Also appearing on behalf of the Appellee were Superintendent James Spelhaug and Board President Deborah Dayman.

An evidentiary hearing was held pursuant to agency rules found at 281 Iowa Administrative Code Chapter 6. Authority and jurisdiction for the appeal are found in Iowa Code § 290.1. The administrative law judge finds that she and the State Board of Education have jurisdiction over the parties and subject matter of the appeal before them.

The Appellants seek reversal of a decision the local Board of Directors of the District made on December 6, 2004, to remove the book *The Misfits* (©2001) by James Howe from the approved curriculum for pupils in grades 6 and lower in the District. The Board's decision left the book in the District's libraries and as an optional curricular selection in grades 7 and higher. A minority of the Board voted to leave the book in both the curriculum and the District's libraries.

**I.  
FINDINGS OF FACT**

There are four elementary attendance centers in the Pleasant Valley Community School District. All of the elementary buildings include 6<sup>th</sup> grade. Grades 7 and 8 comprise the District's junior high school, while the senior high school includes grades 9 through 12.

Linda Goetz is a 6<sup>th</sup> grade teacher at Bridgeview Elementary in the District. Prior to the 2003-04 school year, Mrs. Goetz was in search of a book she could use in her

classroom to address an unspecified problem with name-calling. A media specialist in the District recommended *The Misfits*. Mrs. Goetz used the book as a “read aloud” selection; that is, she would read the book aloud to the 6<sup>th</sup> graders in her classroom during class time. This helped to accomplish two goals – (1) to provide a commonality for class discussions about bullying and harassment and (2) to teach reading strategies.

The District has a formal process that parents may use to ask that a particular part of the curriculum be reviewed. The parent of a child in Mrs. Goetz’s classroom took advantage of this process, filing a “Citizen’s Request for Reconsideration of Instructional Materials” of *The Misfits*. Explaining her reason, this parent stated on the Request form, “You communicate complex social ideas and agendas to children who are too young to critically examine them.” She also objected to “the notion of homosexuality being an innate trait.”

The local committee charged with review of the book included two classroom teachers, an administrator, an instructional materials specialist, two laypersons, a board member, and one high school senior. Its description of the book, as included in its written recommendation to the local Board, is as follows:

The book...explores the hurt and anguish that unkind names and labels can cause and sends a powerful message: every human being has the right to be who they are without fear of persecution or name-calling. The story, told about four 7<sup>th</sup> grade students – “misfits,” describes their experiences as social outcasts each for very distinct reasons: being overweight, too smart, gay, and sleezy [sic]. In the course of the story, “sticks and stones may break our bones, but names will break our spirit” becomes the new mantra for these students as they campaign to stop all name-calling. This book gives hope to any student who has ever been bullied or harassed for being different and allows students the opportunity to explore the issue of name-calling somewhat vicariously, while also relating it to their own personal experience.

The committee’s recommendation was that the book both remain in the school library and continue as an option as a teacher read aloud. It also recommended that any parent or student who has objection to the contents of the book may be granted an alternative assignment. Considerations cited by the committee included the following:

- The central theme of the book, as unanimously discerned by the committee, is one of name-calling.
- The district’s selection of materials is guided by the School Library Bill of Rights which states “Libraries should provide materials and information presenting all

points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.”

- The material is age appropriate and favorably reviewed by multiple authorities (Horn Book, Publisher’s Weekly, School Library Journal, etc) describing it as a selection suitable for young people between the ages of 10 and 14 and/or Grades 4 – 8.
- The message of tolerance and acceptance is fundamental to the mission statement of the district, conveyed in its emphasis on Character Counts, and espoused in its bullying and harassment policy.
- The material does not conflict with the district’s Human Growth and Development curriculum because it does not provide instructional information on the topic of homosexuality. As a piece of literature, the material is not intended to provide fact but offers a vehicle for discussion and an opportunity for students to share their viewpoints.
- The continued use of this piece of literature supports students’ freedom of speech protected under the U.S. Constitution’s Bill of Rights and also, the freedom to read as an essential underpinning of our democracy.
- With the opportunity for a student/parent to voice objections to the material and be given alternative accommodations, no student need be subjected to material which runs contrary to his/her personal belief system.

Prior to its December 6 meeting, Board members received a great deal of input from the public, including a petition signed by several patrons asking that the book be removed from classroom discussion. The petition language stated in part that the signers desired that teachers be prohibited from “discussing or orally reading, in any elementary or junior high class room settings, books, literature or other media, that promote the homosexual agenda or lifestyle, for example, the book entitled ‘*The Misfits*,’ by James Howe. As taxpayers who underwrite the District, we re-affirm our mandate that the District focus on reading, writing and mathematics, and leave the discussion of sensitive moral issues for the home.” At the meeting on December 6, it was apparent that many members of the public who spoke against the book did so based on their views that sexual orientation is a matter of morality.

All seven Board members also spoke at the conclusion of the public comments, for and against the removal of the book from the 6<sup>th</sup> grade curriculum. A transcript of their comments was made available for this hearing.<sup>1</sup> Some of the comments of Board members as to the motivation behind their votes were as follows:

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<sup>1</sup> Admittedly, the local Board members were not accustomed to using microphones at their meetings. Consequently, not all of their remarks can be clearly heard on the tapes. The Board secretary reviewed the transcript of the tapes with the Board members in an effort to reconstruct their comments. We find that the substance of all members’ remarks is fairly represented in the transcript.

- “[W]e’re here tonight to consider the appropriateness of a particular book for a particular audience.” [Messman]
- “[W]e are not trying to censor anything. Simply trying to place material that is age appropriate. ... I find it hard to believe that younger children have the physical or emotional maturity to understand some of the content of this book. ...I think it should stay on the [library] shelves, but I have an issue with the age appropriateness of this book for the younger ages.” [Schurr]
- “In light of the communications that we’ve received that objected to the book often parents felt that it was not appropriate at all and should not [be] used at any level. [Between the two sides, not using at 6<sup>th</sup> grade level is a compromise.]” [Kaminski]
- “A final criterion is age-appropriateness. This, I believe, is at the heart of the objection.” [Barsness]<sup>2</sup>

President Dayman reiterated her belief at this hearing that the book was not age appropriate for 6<sup>th</sup> graders because not all of them possess the level of maturity and perspective to process the concept of homosexuality. She acknowledged that many members of the public had objections to the book based on morality or religion, but she stated that her vote – and, insofar as she knew, those of her fellow Board members – was not based on religion. Dayman stressed that school board members are not to impose their personal beliefs on their constituents, but are to represent the patrons of the District. She represented that neither she nor the others who voted to remove *The Misfits* from the 6<sup>th</sup> grade curriculum acted out of their personal beliefs.

Dayman explained that the alignment within the District of 6<sup>th</sup> grade as an elementary grade level, rather than a junior high school grade, was instrumental to her determination that the book was not age appropriate for all 6<sup>th</sup> graders. The Board made a deliberate decision when aligning grade levels in attendance centers to include 6<sup>th</sup> grade with the other elementary grades. She explained that her vote was a reflection of a general philosophy that 6<sup>th</sup> graders need more maturity and life experiences, and that discussions about sexual orientation should be led first in the home by parents before taking place in the 6<sup>th</sup> grade classroom.

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<sup>2</sup> Ms. Barsness was the Board’s representative on the reconsideration committee. She voted consistent with that committee’s recommendation to retain the book in the curriculum as well as the libraries.

## II. CONCLUSIONS OF LAW

The Appellants do not dispute that the local Board has the authority to make curricular decisions for each grade level in the District. That authority is derived from Iowa Code sections 279.8 and 301.1(1), which state as follows:

The [local] board shall make rules for its own government and that of the ... pupils, and for the care of the schoolhouse, grounds, and property of the school corporation ... . Section 279.8.

The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state ... . Section 301.1(1).

The above statutes demonstrate that removal/retention of curricular materials is clearly vested in the discretion of local school boards. Therefore, the issue before the State board is whether the local Board impermissibly decided to remove *The Misfits* from the 6<sup>th</sup> grade classrooms. Analogizing from Iowa Code section 17A.19, governing judicial review, such reasons are limited to the following:

- That the decision violates constitutional tenets.
- That the decision is the product of “reasoning that is so illogical as to render it wholly irrational.”
- That the decision is “unreasonable, arbitrary, capricious, or an abuse of discretion.”

### *Constitutional Considerations*

Before analyzing the constitutional underpinnings herein, it may be instructive to discuss briefly what this case is not about. We are not faced here with a decision to remove a book from the District’s libraries. Such decisions face a much greater degree of scrutiny than do decisions that affect the curriculum in a classroom. “Curricular matters do not enjoy the ‘heightened protection’ provided to library and similar resource materials.” *Silano v. Harbor Union Free School Dist. Bd. of Educ.*, 42 F.3d 719, 723 (2<sup>nd</sup> Cir. 1994). The students in all attendance centers of the District may voluntarily read *The Misfits* by simply checking out the book from a school library.<sup>3</sup> They are not being deprived of their ability to read it voluntarily and/or to engage in discussion of it not initiated by the District.

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<sup>3</sup>Not unforeseeably, more interest has been generated in checking out this book from the District’s libraries than existed when the book was used as a read aloud option in the 6<sup>th</sup> grade classroom.

This does not mean, however, that curriculum decisions are given little or no scrutiny. Both parties recognize that curriculum decisions must be based on “legitimate pedagogical concerns.” *Hazelwood School District v. Kuhlmeier*, 484 U.S.260 (1988). Although *Hazelwood* involved articles in a student newspaper, the case is cited as precedential in the curricular context because of the distinction the case draws between decisions motivated by legitimate pedagogical concerns versus ideological concerns. This is not a new concept. Much earlier, the United States Supreme Court ruled that courts and other adjudicatory bodies must make no decision based on dogmatic concerns (that is, the desire to indoctrinate children) over educational concerns. *Watson v. Jones*, 13 Wall. 679 (U.S.S.C. 1872). In *Hazelwood*, the Supreme Court said that a local school board “must be able to take into account” the emotional maturity of the intended audience, the suitability of the challenged materials for the intended audience, and community values. 484 U.S. at 272.

The leading case in the federal circuit court of appeals that includes Iowa is *Pratt v. Ind. School District No. 831, Forest Lake*, 670 F.2d 771 (8<sup>th</sup> Cir. 1982). In *Pratt*, the local school board removed a film version (and its trailer) of author Shirley Jackson’s short story, *The Lottery*, from the junior and senior high school curricula. The 8<sup>th</sup> Circuit panel stated that “to avoid a finding that it acted unconstitutionally, the [local school] board must establish that a substantial and reasonable governmental interest exists for interfering with the students’ right to receive information.” 670 F.2d at 777.

What distinguishes *Pratt* from this case is that the local board in *Pratt* initially “gave no reasons for its decision [to remove the film from the curricula]. Only after the district court invited the [school district] appellant to submit evidence showing that its decision was based on reasons neutral in First Amendment terms did the board attempt to justify its action by stating it was concerned with the violence in the films.” *Id.* at 778. Thus, the *Pratt* court determined that the local board’s action violated the First Amendment, first by failing initially to articulate any substantial governmental interest at stake and second by belatedly coming up with a pretext (concern with violence) to hide that fact that it was acting because it was offended by the films’ ideological and religious themes.

The Pleasant Valley Board members who voted to remove *The Misfits* from the 6<sup>th</sup> grade classroom presented their rationale at the December 6 meeting. The Appellants argue that the proffered reasons were a pretext in the case of two Board members who had earlier spoken at the November public meeting held by the reconsideration committee. The Appellants stopped short of characterizing the concerns voiced at that meeting by the two Board members as homophobic, but the inclusion in *The Misfits* of a gay character clearly personally bothered those two members. Nevertheless, we cannot conclude that they were improperly motivated in voting as they did at the December Board meeting.

The evidence supports the testimony of Board President Dayman that the individual views of herself and her fellow Board members were put aside, and that the age appropriateness of the book was the major factor at the Board meeting. This is buttressed

by the statement made by Board member Barsness, who voted to retain the book in the classroom, that the “heart of the objection” of those who voted in the majority was the lack of age appropriateness.

While it is true that the “Constitution does not permit the official suppression of ideas,” *Board of Education v. Pico*, 457 U.S. 863, 871 (1982)(emphasis in original), the evidence shows that the local Board acted out of the legitimate educational concern of age appropriateness and not out of impermissible dogmatic or ideological concerns. Age appropriateness is a substantial and reasonable governmental interest.

This decision joins similar ones made by other decision-makers with faithfulness to legal principles. The trial court in *Virgil v. School Bd. of Columbia County, Florida*, 862 F.2d 1517 (11<sup>th</sup> Cir. 1989), for instance, stated that it had difficulty seeing what harm could be done to high school students by exposure to the challenged “masterpieces of Western literature.”<sup>4</sup> 862 F.2d at 1525. Nevertheless, that court and the subsequent appellate court acknowledged that the local board decision in *Virgil* was reasonably related to the board’s “legitimate concerns regarding the appropriateness [for the student audience] of the sexuality and vulgarity in these works.” *Id.* We do likewise here in acknowledging that the Pleasant Valley Board acted out of the legitimate educational concern of age appropriateness.

#### *Whether the Decision was Illogical or Irrational*

Under this standard of review, we must be deferential to a local board’s decision because the legislature decided that the local board’s “expertise justifies vesting primary jurisdiction over this matter in the discretion” of the local boards. *Berger v. Iowa Department of Transportation*, 679 N.W.2d 636, 640 (Iowa 2004). *Cf.*, *Christensen v. Snap-On Tools Corp.*, 665 N.W.2d 439 (Iowa App. 2003)(when a rational person could agree with either of two competing arguments, it cannot be said that the agency’s decision is so illogical or irrational as to dictate a different outcome).

This is not to say that the standard of review cannot be overcome. In *Auen v. Alcoholic Beverages Div., Iowa Department of Commerce*, 679 N.W.2d 586 (Iowa 2004), a challenge to agency action was successful. The Iowa Supreme Court reversed an agency action that it found to be based on an illogical interpretation of Iowa Code section 123.45. That statute prohibited *any* ownership interest, no matter how remote, by a person in the chain of alcohol beverage distribution in the retailing of such beverages. The agency permitted persons to have an indirect ownership interest, thus unlawfully changing the meaning of the statute based upon what the court found to be an interpretation of section 123.45 that was illogical because it was contrary to the plain language of the statute.

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<sup>4</sup> In that case, selections from Aristophanes’ *Lysistrata* and Chaucer’s *The Miller’s Tale* were removed from secondary classrooms by a local school board as too vulgar and sexually explicit.

The local Board has the authority to determine what curricular materials are appropriate for the different grade levels of students in the District. It did not interpret its statutory authority in an illogical or irrational way. The Board made a decision consistent with what it believed to be the age appropriateness of the book.

#### *Abuse of Discretion*

The abuse of discretion standard means that we may not substitute our judgment for that of the underlying decision-maker absent a showing that the initial decision was “unreasonable and lacked rationality.” *Sioux City Community School District v. Iowa Department of Education*, 659 N.W.2d 563, 571 (Iowa 2003). In that case, the Iowa Supreme Court further explained that, just because rational people can disagree about a decision, there is no authority to override the original decision and replace it with one that is more palatable. The local Board must have either erroneously applied the relevant law or failed to base its decision upon substantial evidence. It did neither.

We have repeated previously that the “State Board of Education does not sit as a ‘super school board’ substituting its judgment for that of the elected board officials.” *See, e.g., In re Jerry Eaton*, 7 D.o.E. App. Dec. 137, 141 (1987); *In re Zach Hodges*, 22 D.o.E. App. Dec. 279, 284 (2004). Our duty, “regardless of personal views or individual philosophies, is to uphold a school regulation unless it is clearly arbitrary and unreasonable. Any other approach would result in confusion detrimental to the management, progress, and efficient operation of our public school system.” *Board of Directors of the Independent School District of Waterloo v. Green*, 147 N.W.2d 854, 858 (Iowa 1967).

We understand that the decision of the local Board offends the Appellants. But there are no legal grounds for reversal by this Board. Lacking any legal grounds on which to reverse the local Board, we would do great harm to the administrative legal system were we to substitute our own judgment for that of the Pleasant Valley School Board.

In summary, we conclude that, as the reviewing board, we cannot substitute our judgment for that of the lower board. Because the local Board’s decision was not contrary to law, we allow it to stand.

#### *Policy Statement from the State Board*

Of paramount concern to us is our desire that this Decision not be viewed by either party or any reader as agreement with the decision reached by the local Board to remove *The Misfits* from the 6<sup>th</sup> grade curriculum. We acknowledge in this Decision that the Pleasant Valley School Board has the right to make curricular decisions and we further acknowledge that the local Board did not remove access to the book from any student. However, we recognize that permissible removal of a book from curricula is one step away from impermissible removal of a book from school libraries. We emphasize



that our schools should be venues for the free exchange of ideas. We are troubled by any local board action that gives the appearance of seeking to squelch the free exchange of ideas or of being improperly motivated by dogmatic concerns.

Additionally, the primary focus of *The Misfits* clearly was a positive, anti-bullying message. To that end, we attach to this Decision the Resolution passed by this Board on August 1, 2002, which stressed the need for aggressive leadership in providing safe learning environments for our children. This Board wishes to remind school administrators and board members of our responsibility to send a clear message to all children *that they shall be safe in their schools*.

### III. DECISION

For the foregoing reasons, it is recommended that the decision of the Board of Directors of the Pleasant Valley Community School District made on December 6, 2004 be AFFIRMED. There are no costs of this appeal to be assigned.

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Date

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Carol J. Greta, J.D.  
Administrative Law Judge

It is so ordered.

\_\_\_\_\_  
Date

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Gene E. Vincent, President  
State Board of Education