



Parents
Defending
Schools and
Libraries



October 5, 2023

SENT VIA EMAIL

Dr. Aaron Downs, Superintendent

aaron.downs@canby.k12.or.us

Kamela Davis, Executive Assistant to the Superintendent and Board of Directors

kamela.davis@canby.k12.or.us

Kristen Wohlers, Director of Communications

kristen.wohlers@canby.k12.or.us

**RE: PUBLIC RECORDS REQUEST – ACLU OF OREGON AND PARENTS
DEFENDING SCHOOLS & LIBRARIES**

Dear Dr. Downs, Ms. Davis and Ms. Wohlers,

Pursuant to ORS 192.311 *et seq.* the American Civil Liberties Union of Oregon (ACLU of Oregon) and Parents Defending Schools and Libraries (PDSAL) jointly request records related to the District's decisions to retain, label, or remove certain titles from its school libraries. We respectfully request that this communication be directed to the appropriate Canby School District personnel to facilitate the fulfillment of our request.

The ACLU of Oregon and PDSAL understand that last school year the District received parent-driven complaints about several titles, which led the District to pull those titles out of circulation and form a reconsideration committee pursuant to Policy IIA-AR(1). Reporting indicates that the books' authors were predominantly Black and Latina women and LGBTQ+ people. To date, neither the ACLU of Oregon nor PDSAL has been able to ascertain from the District's publications or communications what the committee considered or recommended, nor have we been able to form a complete understanding of the decisions made thereafter.

The ACLU of Oregon and PDSAL believe the district is obligated to notify the public about its decisions and provide an opportunity for interested members of the public to be heard regarding those decisions. These are fundamental principles of due process, which are critical when our government officials are making decisions that impact our fundamental freedoms like the freedom to access information and engage in expressive activities. This request is geared toward building greater public awareness about the District's decisions.

In order to promote greater transparency for the public surrounding the District's consideration of its library materials, the ACLU of Oregon and PDSAL request copies of the following public records¹:

- 1) All "Request for Reconsideration of Instructional Material" (IIA-AR(3)) forms the District has received from August 1, 2021 to present.
- 2) All records from or about the formation of or activities of any committees, individuals, or groups of people acting subject to Policy IIA-AR(1) from August 1, 2021 to present.
- 3) All records from meetings conducted by any committee that reviewed library materials from August 1, 2021 to present.
- 4) All records from August 1, 2021 to present containing recommendations to the Superintendent or any District administrator about library material access.
- 5) All records from August 1, 2021 to present that discuss, describe, or refer to any labels placed on library materials that warn potential readers about any material's content.
- 6) All records containing decisions from the Superintendent or any District employee or designee about library material access from August 1, 2021 to present
- 7) All records that instruct about how the District or its designees are to make decisions about materials in District libraries or otherwise implement Policy IIA in District libraries.
- 8) Follett Destiny Library Catalog "Weeding/Deleted Book Report" from August 1, 2021 – present.
- 9) Follett Destiny Library Catalog "All Transaction History Reports" for the following materials:
 - a. All titles by Alex Gino
 - b. All titles by Alice Oseman
 - c. All titles by Ellen Hopkins
 - d. All titles by Elana K. Arnold
 - e. All titles by Erika Sanchez
 - f. All titles by Rupri Kaur
 - g. All titles by Sarah J Maas
 - h. All titles by Tiffany D. Jackson
 - i. All titles by Toni Morrison
 - j. "All Boys Aren't Blue" by George M. Johnson
 - k. "Beyond Magenta" by Susan Kuklin

¹ Throughout this request, the term "record" includes, but is not limited to, any paper or electronic document, policy, procedure, guidance, directive, communication, message, correspondence, letter, email, calendar entry, database information, text message, App communication, agendas, minutes, notes, transcripts, recordings, or files. "Records" is not limited to those contained in or on District property or devices. Oregon public records law defines public records relative to the content of the record, not the location. *Compare* 192.311(5)(a) (defining public records to be writings about public business), *with* ORS 192.311(5)(b) (excluding from the definition of public record, writings on privately-owned computers only when they do not pertain to public business).

- l. “Breathless” by Jennifer Niven
 - m. “Eleanor & Park” by Rainbow Rowell
 - n. “Fade” by Lisa McMann
 - o. “Flamer” by Mike Curato
 - p. “Genderqueer” by Maia Kobabe
 - q. “Homegoing” by Yaa Gyasi
 - r. “Lolita” by Vladimir Nabokov
 - s. “Looking for Alaska” by John Green
 - t. “Me Earl and the Dying Girl” by Jesse Andrews
 - u. “None of the Above” by I.W. Gregorio
 - v. “Out of Darkness” by Ashley Hope Perez
 - w. “Push” by Sapphire
 - x. “Sold” by Patricia McCormick
 - y. “The Art of Racing in the Rain” by Garth Stein
 - z. “The Glass Castle” by Jeanette Walls
 - aa. “The Handmaid’s Tale” by Margaret Atwood
 - bb. “The Handmaid’s Tale: The Graphic Novel” by Margaret Atwood
 - cc. “The Nowhere Girls” by Amy Reed
 - dd. “The Perks of Being a Wallflower” by Stephen Chbosky
 - ee. “The Truth About Alice” by Jennifer Mathieu
 - ff. “Thirteen Reasons Why” by Jay Asher
 - gg. “This Book is Gay” by Juno Dawson
 - hh. “Water for Elephants” by Sara Gruen
- 10) All records referencing or discussing any book or author listed in Request 9 from August 1, 2021 to present.
- 11) A list of all books currently in circulation in the Canby school district libraries.

Request for Waiver or Reduction of Fees Because Disclosure Benefits the Public

Both the ACLU of Oregon and PDSAL are non-profit public interest organizations with missions to educate the public about threats to an inclusive and free democracy, including by government censorship, arbitrary government decision-making, and discrimination in schools.

Oregon has recently seen a record number of requests to ban books. *See, e.g.*, Jenn Chavez, “Oregon libraries report record number of books challenged in past year,” [Oregon Public Broadcasting](https://www.opb.org/article/2023/09/18/oregon-library-lgbtq-queer-book-ban-gay-transgender-youth-intellectual-freedom/) (Sept 18, 2023), <https://www.opb.org/article/2023/09/18/oregon-library-lgbtq-queer-book-ban-gay-transgender-youth-intellectual-freedom/>. That is consistent with the national trend as efforts to request bans for books containing LGBTQ+ and Black characters, authors, and other content are particularly on the rise. *See, e.g.* American Library Association, “American Library Association reports record number of demands to censor library books and materials in 2022” (March 22, 2023), <https://www.ala.org/news/press-releases/2023/03/record-book-bans-2022>. This is particularly concerning given the national rise in government-led efforts to target people with Black and LGBTQ+ identities.

Students do not shed their constitutional rights when they walk into school. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506 (1969). As the United States Supreme Court has long recognized, the freedom of expression is predicated on the notion of the freedom to access a free marketplace of ideas. *See, e.g., Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 866-67 (1982) (reviewing precedents). Students’ right to access ideas are “directly and sharply implicated by the removal of books from the shelves of school libraries.” *Id.* at 866. That is because the public school library, in particular, plays a critical role in a student’s experience of First Amendment *accord id.* at 868-69 (referring to school libraries as the “principal locus” of student First Amendment freedoms to gain knowledge, understanding, and maturity through free inquiry).

Oregon is a state that values protecting against discrimination and avoiding intrusions on freedoms of expression. For example, the ACLU of Oregon just recently secured a legal victory on behalf of a teacher who displayed a pride sign in her classroom. In that case, the Yamhill County Circuit Court made clear that a school District’s policy prohibiting “controversial” displays is a facially unconstitutional content-based restriction. *See Schotts v. Newberg School District 29J et al.*, Case No. 21CV47996, Order On Defendants’ Motions For Summary Judgment And Plaintiff’s Cross-Motion For Summary Judgment (Sept. 28, 2022). Public school library materials should enjoy at least the same amount of protection as classroom displays.

It is imperative that school district decisions with constitutional magnitude be made with utmost transparency. Therefore, the ACLU of Oregon and PDSAL request a waiver of fees associated with this request so that all records can be obtained and shared. Under ORS 192.324(5), a fee waiver or reduction is available where record disclosure “primarily benefits the general public.” This occurs “when the furnishing of the record has utility—indeed, its greatest utility—to the community or society as a whole, in contrast to a concern or interest of a private individual or entity.” *In Defense of Animals v. Oregon Health Sciences University*, 199 Or. App. 160, 189 (2005). That is the case here, where the public locally and nationally has a strong interest in transparency about school district decisions to ban or restrict library materials.

Furthermore, the ACLU of Oregon also has the ability and commitment to ensure a significant portion of the public is educated about what it learns through this public records request. The ACLU of Oregon frequently disseminates information to the public about government activities through our website, social media, legislative advocacy, and public engagement activities. In fact, just this week, the ACLU of Oregon disseminated over 1,700 “I Read Banned Books” pins to requesting communities. Additionally, the ACLU of Oregon regularly communicates with over 28,000 members and supporters through the mail, e-mail, social media, and other online forums.

Request for Explanation of Any Exemptions Invoked

The ACLU of Oregon and PDSAL recognize that Oregon public records law contains some exemptions. However, many exemptions are conditional and the law balances the need for confidentiality against the public interest in disclosure of the records. *See, e.g., American Civil Liberties Union of Oregon v. City of Eugene et al.*, 360 Or. 269 (2016). Given the strong public interest in disclosure discussed above, the ACLU of Oregon and PDSAL urge the District to

presume records should be disclosed. The ACLU of Oregon and PDSAL also respectfully request an explanation of any exemptions relied upon to deny, partially or fully, any records requested herein.

In accordance with Oregon public records laws, please respond as soon as practicable and without unreasonable delay. You must acknowledge receipt of this request within five (5) business days of receiving the request, and you must complete your response to this request within ten (10) business days after providing us with acknowledgement of receipt (i.e., within 15 business days after receiving this request). See ORS 192.329. Kindly furnish all applicable records to the ACLU of Oregon at publicrecords@aclu-or.org if in electronic format; if in hard copy, please send to: ACLU of Oregon, Attention: Public Records, P.O. Box 40585, Portland, OR 97240.

Sincerely,

Kelly Simon
Legal Director
ACLU of Oregon

Jackie Yerby
Director of Community Engagement
ACLU of Oregon

Darin Stewart
Founder
Parents Defending Schools and Libraries