

Lee Parkison
Director of Schools
McMinn County School District
3 South Hill Street
Athens, TN 37303
lparkison@mcmminnschools.com

Kim Bivens
Public Records Request Coordinator
McMinn County School District
3 South Hill Street
Athens, TN 37303
kbivens@mcmminnschools.com

Via U.S. Mail and Electronic Mail

February 10, 2022

RE: ACLU-TN Request for Public Records Regarding the Removal of *Maus* from McMinn County Schools Curriculum

Dear Mr. Parkison and Ms. Bivens:

The ACLU of Tennessee, on behalf of its members across the state and in McMinn County, write to you regarding the McMinn County Board of Education's recent decision to remove Art Spiegelman's Pulitzer Prize-winning graphic novel *Maus* from its eighth grade English Language Arts ("ELA") curriculum.

We believe that the removal of this landmark work of historical literature from McMinn County classrooms poses an urgent threat to academic freedom.

Academic freedom is a transcendent value to all Americans and a "special concern" of the First Amendment, "which does not tolerate laws that cast a pall of orthodoxy over the classroom." *Keyishian v. Bd. of Regents of Univ. of State of N. Y.*, 385 U.S. 589, 603 (1967) (internal quotation omitted). Indeed, "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion." *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

In the context of public schools, the First Amendment protects not only the right of students to speak but also their right to receive information and ideas. This is in part because receiving information is the "necessary predicate to the [student's] meaningful exercise of [their] own rights of speech, press, and political freedom." See *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 867 (1982). Students must have the "right[] to receive a broad range of information so that they can freely form their own thoughts..." *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d 1022, 1027 (9th Cir. 1998). Nothing less than "[t]he Nation's future depends upon leaders trained through wide exposure to that robust exchange of ideas which 'discovers truths from a multitude of tongues, (rather) than through any kind of authoritative selection.'" *Keyishian*, 385 U.S. at 603 (internal citations omitted).



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Tennessee

PO Box 120160
Nashville TN 37212
(615) 320-7142
aclu-tn.org

While school districts and their boards have discretion in choosing the curriculum and materials offered on a school's campus, that discretion "must be exercised in a manner that comports with the transcendent imperatives of the First Amendment." *Pico*, 457 U.S. at 864. At a minimum, a district's curricular choices must be reasonably related to a legitimate government purpose, and decisions to *remove* books may be subject to a more stringent standard.

The McMinn County Board of Education affirms its commitment to these tenets of academic freedom in its own Policy Manual. Rule 4.403 of the Manual begins: "The Board supports principles of intellectual freedom inherent in the First Amendment of the Constitution of the United States and expressed in the *Library Bill of Rights* of the American Library Association."¹ The Rule then outlines a protocol for reviewing challenges to instructional materials and textbooks. Because "opinions differ" regarding instructional materials and textbooks, when a complaint is made about a certain text, the Rule mandates that, among other things, the challenged materials must be kept available for use during the reconsideration process and that a review committee be formed to review the contested material.² The review committee shall be appointed by the principal and must include certified library media personnel, representatives from classroom teachers, one or more parents, and may include one or more students. The review committee shall take the following steps:

- a. Read, view, or listen to the contested material in its entirety;
- b. Check general acceptance of the material by reading recognized and evaluative reviews;
- c. Determine the extent to which the material supports the curriculum;
- d. Complete the appropriate Checklist for Reconsideration of Instructional Materials, judging the material for its strength and value; and
- e. Present recommendation to principal for further action and to the Director of Schools for purposes of information.³

Yet, as pointed out by board member Jonathan Pierce shortly before voting to remove *Maus*, "[u]nfortunately," the board did not follow this established procedure.⁴ Apparently, neither did the Board employ Rule 4.801 which allows

¹ Rule 4.403 ("Reconsideration of Instructional Materials and Textbooks") of the McMinn County Board of Education Policy Manual, available at https://tsbanet-my.sharepoint.com/:w:/g/personal/policy_tsba_net/EYeCYN9yw0hL19_6ebKnm9wB1oZ5xzgi3zLt8Wx_NP0rgw?e=NPLctP.

² Rule 4.403 (4)-(5).

³ Rule 4.403 (7).

⁴ Meeting Minutes of the McMinn County Board of Education, January 10, 2022, Statement of Jonathan Pierce at pg. 7, previously available at https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/1818370/Called_Meeting_Minutes_1-10-22.pdf. Records of this meeting have since been removed from the School Board's website.

for the Board to approve an individual parent's request to exempt their child from certain required reading.⁵

Neither did the Board's members profess to have read or seen *Maus* in its entirety before voting to remove the book that served as the foundational text of an entire curriculum module.⁶ As explained to the Board by the educators responsible for designing the curriculum, there are only four modules in the eighth grade ELA curriculum — one of which centered on the events of the Holocaust. As the foundational text of this module, *Maus* would have been studied in-depth by students over the course of several months and would have served as a means of introducing themes and content to be explored across the entire module.

Instructional supervisors informed the Board that *Maus* was carefully chosen given its wide acceptance and numerous accolades — including an endorsement from the United States Holocaust Museum.⁷ Accordingly, in the educators' opinions, there was no book that could serve as an appropriate substitute for *Maus*. Since the Board's vote to remove *Maus* nonetheless, instructional supervisors presumably have spent the intervening weeks redesigning a quarter of the 8th grade ELA curriculum in the middle of the school year.

Outside of these practical concerns, several of the Board members' comments suggest that Board members believe schools should not be educating students about the events of the Holocaust at all. Board member Tony Allman began the debate by saying, "...we don't need to enable or somewhat promote this stuff. It shows people hanging, it shows them killing kids, why does the educational system promote this kind of stuff, it is not wise or healthy." Millions of historians, educators, and survivors of the Holocaust disagree.⁸ According to the United States Holocaust Memorial Museum:

⁵ Meeting Minutes of the McMinn County Board of Education, January 10, 2022, Statement of Attorney Scott Bennett at pg. 13-14, previously available at https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/1818370/Called_Meeting_Minutes_1-10-22.pdf. ("[T]his Board has a policy that allows people to opt out of material that parents believe to be inappropriate. I don't know if the parents are aware of that, I would suggest most parents really aren't. So, if this is something community people have a real concern about, I think that's where this board interacts with its constituents and says we do value your input and there is a mechanism to opt out."). Records of this meeting have since been removed from the School Board's website.

⁶ Meeting Minutes of the McMinn County Board of Education, January 10, 2022, Statement of Rob Shamblin at pg. 18, previously available at https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/1818370/Called_Meeting_Minutes_1-10-22.pdf. ("...I have not seen the book and read the whole book, I read the reviews..."). Record of this meeting has since been removed from the School Board's website.

⁷ Meeting Minutes of the McMinn County Board of Education, January 10, 2022, Statement of Steven Brady at pg. 5, previously available at https://core-docs.s3.amazonaws.com/documents/asset/uploaded_file/1818370/Called_Meeting_Minutes_1-10-22.pdf. Records of this meeting have since been removed from the School Board's website; see also "Bibliography and Videography for Secondary Education," United States Holocaust Museum, pg. 22, available at <https://www.ushmm.org/m/pdfs/USHMM-Bibliography-Videography.pdf> (Listing *Maus* as appropriate for Grades 8-12).

⁸ See, e.g., Shayna Estulin, "Descendants of Holocaust survivors offer help teaching after incident at D.C. elementary school," WTOP News, Dec. 22, 2021, available at

Studying the Holocaust reminds us that democratic institutions and values are not automatically sustained. They need to be appreciated, nurtured, and protected. The Holocaust was not an accident in history. It occurred because individuals, organizations, and governments made choices that not only legalized discrimination but also allowed prejudice, hatred, and ultimately mass murder to occur. It also teaches us that silence and indifference to the suffering of others, or to the infringement of civil rights in any society, can—however unintentionally—perpetuate these problems.⁹

American schools have long been held as “a most vital civic institution for the preservation of a democratic system of government” and “the primary vehicle for transmitting the values on which our society rests.” *Plyler v. Doe*, 457 U.S. 202, 221 (1982)(internal citations omitted). It is difficult to imagine that they could remain so without the Holocaust’s crucial lessons on civics, the maintenance of democratic institutions, and the individual’s responsibility to respond to hatred and prejudice in society.

Perhaps tellingly, the minutes of the January 10 meeting have since been removed from the Board’s website — a development that is deeply concerning. *See* Tenn. Code Ann. §8-44-104 (“The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection [...]”). Such a move away from transparency deprives the residents of McMinn County, including affected parents, teachers, and students, the opportunity to learn more about how the Board’s decision was made.

Based on the Board’s actions, the ACLU of Tennessee is concerned that the Board is using its members’ personal discomfort and disagreement with *Maus* as a pretext to limit access to an age-appropriate and educational depiction of the events of the Holocaust. The ACLU of Tennessee is also concerned that the Board’s decision to remove approved instructional material without regard to its own protocols, and then make an apparent retreat into secrecy, sets a dangerous precedent wherein Board Members may summarily ban materials that contain

<https://wtop.com/dc/2021/12/grandchildren-of-holocaust-survivors-offer-to-help-shape-holocaust-education-after-incident-at-a-dc-elementary-school-sparks-outrage/>; Holocaust Institute for Teacher Educators, hosted by United States Holocaust Memorial Museum, available at <https://www.ushmm.org/teach/opportunities-for-educators/holocaust-institute-for-teacher-educators>; “Holocaust Education in Crisis? UNESCO and UN Online Panel Discusses Challenges and Opportunities,” UNESCO, Mar. 12, 2020, available at <https://en.unesco.org/news/holocaust-education-crisis-unesco-and-online-panel-discusses-challenges-and-opportunities>; G.A. Res. 76/L.30, U.N. GAOR, 76th Sess., U.N. Doc. A/76/L.30 (“Resolution on Holocaust Denial”).⁹ “Why Do We Study the Holocaust?” Frequently Asked Questions about the Holocaust for Educators, United States Holocaust Museum, available at <https://www.ushmm.org/teach/fundamentals/holocaust-questions>.



viewpoints with which they disagree, absent any reasonable relationship to a legitimate pedagogical concern.

To ensure the protection of the rights of Tennessee students, and pursuant to Tenn. Code Ann. §10-7-503 and Rule 1.407 of the McMinn County Board of Education Policy Manual, the ACLU of Tennessee respectfully requests the following records from the entities provided below:

1. Any and all documentation and materials¹⁰ regarding the School Board's decision to remove *Maus* from curriculum, including but not limited to:
 - a. Documents and materials raising concerns over or otherwise regarding the content of *Maus* submitted to, created by, or in the possession of Director of Schools, School Board, teachers, or any school staff member during the 2020-21 and 2021-22 school years;
 - b. Meeting minutes of the School Board Meetings on January 10 and 13 and any documents and materials relied on, or discussed in said meetings, as well as any documents related to following up to said meetings;
 - c. Meeting minutes of Policy Committee Meeting held immediately before January 14 School Board Meeting and any documents and materials relied on, discussed in, or following up from said meeting;
 - d. Documentation and materials related to the Board's response to inquiry or comment following its decision to remove *Maus*—to wit, meeting minutes, electronic communications, public statements or otherwise produced after January 10, 2022 that concern the Board's decision to remove *Maus* and how to address public or private inquiries into said decision.
 - e. Policies and procedures¹¹ relied upon by the Board in making its decision to remove *Maus* from its curriculum.
2. Any and all documentation and materials regarding Rule 4.403 including documentation, if any, as to why the Board Policy protocol was not followed with respect to the removal of *Maus*; documentation, if any, of rules or policies that allow for protocol to be waived; and, any and all past instances where protocol was invoked or waived within the last five academic school years, as well as any documents and materials which reference the reasons or justifications for invoking or waiving Board Policy protocol.
3. Any and all documentation regarding parent requests under Rule 4.801 submitted to the Board, Director of Schools, or school principals in the

¹⁰ For the purposes of this request, “documentation and materials” means any and all budget records, fiscal notes, itemized lists, ledgers, spreadsheets, records, emails, correspondence, notes, meeting minutes, transcripts, memoranda, screenshots, videos, photographs, sound recordings, presentations, or other documentation.

¹¹ “Policies and Procedures” means any and all rules, regulations, internal memoranda, guidelines, directives, and other related communications (whether formal or informal).



McMinn County School District Public Records Request

February 10, 2022

Page 6 of 6

2020-21 and 2021-22 school years, including but not limited to those regarding *Maus*.

The undersigned recognizes that responsive documents should be redacted to the extent, and only to the extent, they reflect personally identifiable information under 20 U.S.C. § 1232g; 34 CFR Part 99 (FERPA).

If you claim that any document or portion thereof is exempt from inspection under T.C.A. § 10-7-504, or any other statute or judicial decision, as to each document or portion you claim to be exempt, please state the basis for the exemption, and identify the document or portion by date; by sender, recipient, or author; and by a description of the contents sufficiently detailed to enable an independent evaluation of the exemption. If any record is otherwise withheld for any reason, please indicate the type of record withheld, the title or style of the record, the length or size of the record, the author of the record, a description of the subject matter of the record, the file(s) where the record (or copies thereof) may be located, and the reason(s) the record is being withheld.

Pursuant to state law, I request a copy of these public records be forwarded to the address indicated on this letter within seven (7) days. If you anticipate that the completion of this request will take longer to complete, please contact me with an anticipated time for completion of this request. If some or all of the requested public records exist in **electronic form**, (i.e. a pdf, excel spread sheet, jpg file, word document, etc.) please provide them in such form. For records that are not available in an electronic format, please provide black and white, hard copies of the requested materials.

Regards,



Stella Yarbrough
ACLU-TN, Staff Attorney
P.O. Box 120160
Nashville, TN 37212

CC: Scott Bennett
School Board Attorney
707 Georgia Ave #300
Chattanooga, TN 37402
dsb@bennettdecamp.com

