1994

Legal issues addressed in policies for selection and retention of classroom materials in western Montana high schools

Mary Sheehy Moe

The University of Montana

Let us know how access to this document benefits you.

Follow this and additional works at: https://scholarworks.umt.edu/etd

Recommended Citation

Moe, Mary Sheehy, "Legal issues addressed in policies for selection and retention of classroom materials in western Montana high schools" (1994). Graduate Student Theses, Dissertations, & Professional Papers. 8937.
https://scholarworks.umt.edu/etd/8937

This Thesis is brought to you for free and open access by the Graduate School at ScholarWorks at University of Montana. It has been accepted for inclusion in Graduate Student Theses, Dissertations, & Professional Papers by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.
Permission is granted by the author to reproduce this material in its entirety, provided that this material is used for scholarly purposes and is properly cited in published works and reports.

** Please check "Yes" or "No" and provide signature**

Yes, I grant permission

No, I do not grant permission

Author's Signature

Date: ________________

Commercial purposes or financial gain may be undertaken with the explicit consent.
LEGAL ISSUES ADDRESSED IN POLICIES
FOR SELECTION AND RETENTION
OF CLASSROOM MATERIALS
IN WESTERN MONTANA HIGH SCHOOLS

by
Mary Sheehy Moe
B.A., The University of Montana, 1972

presented in partial fulfillment of the requirements
for the degree of
Master of Arts
The University of Montana
1994

Approved by:
[Signature]
Chairperson

[Signature]
Dean, Graduate School

Date: April 28, 1994
Legal Issues Addressed in Policies for Selection and Retention of Classroom Materials in Western Montana High Schools

Director: Dr. Kathleen E. Miller

Although court decisions contain implicit guidelines for policies on selection and retention of classroom materials, researchers have seldom used these guidelines to analyze such policies. This study describes what procedures and criteria are being used in policies for selection and retention of classroom materials in western Montana high schools and examines how these procedures and criteria correspond to those addressed by case law. A checklist of 13 legal issues, developed through a review of court cases relevant to selection and retention of classroom materials, guided the interpretation of data.

The selection/retention policies of 36 high schools in Western Montana, including representatives from Class AA, A, B, and C school districts, were examined. Data on the format and content of these policies, along with the legal issues they address, are provided. The study includes recommendations on improving selection and retention policies and concludes with a model policy.
# TABLE OF CONTENTS

## CHAPTER 1. INTRODUCTION

Purpose of the Study 1  
Illustration of Need: A Montana Story 2  
Further Illustration: Beyond Big Timber 4  
Application: The Need for Effective Policies 5  
Focus of This Research 9

## CHAPTER 2. REVIEW OF THE LITERATURE

## CHAPTER 3. REVIEW OF CASE LAW

The First Amendment and Materials Selections 16

### Basis for Selection/Retention
- Existence of a Written Policy 17  
- An Articulated Educational Philosophy 18  
- Scope of the Policy 21  
- Clear Criteria for Selection 22  
- Age-Appropriateness and Sensitive Topics 23  
- Controversial Materials and Endorsement 26

### Methods of Selecting/Retaining Classroom Materials
- Following Established Procedures 27  
- Compulsory vs. Optional Use 30  
- Library vs. Classroom Selections 33  
- Selection Criteria vs. Retention Criteria 34

Conclusion 35

## CHAPTER 4. METHODS AND PROCEDURES

### The Sample

### Procedure for Data Collection

### Response

### Procedure for Data Interpretation

### Checklist: Legal Issues Addressed by Instructional Materials Policies

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
CHAPTER 1

INTRODUCTION

Purpose of the Study

If banned-books lists and Montana episodes are valid indicators, challenges to instructional materials should be a significant consideration in the development and use of materials selection policies. In 1992-1993 alone, 145 such challenges were reported to the Office of Intellectual Freedom of the American Library Association (Doyle, 1993). Each challenge represents a disruption—occasionally to the harmony of an entire community, sometimes to the peace of mind of a particular group of individuals, and always to the education of at least one student.

Despite the fact that instructional materials are the primary tool educators use in the classroom, materials selection policies have been the subject of only superficial research to date. Moreover, although nearly 70 years of case law relevant to materials selection sheds light on the issues materials selection policies should address, virtually no research has used that light to examine the connection between legal issues and the contents of materials selection policies. The purpose of this study, therefore, is twofold: (1) to gather and present information on the contents of current materials selection policies in western Montana high schools, and (2) to examine these policies on the basis of legal guidelines. The study describes the formats, philosophies, procedures and criteria found in current materials selection policies in western Montana high schools. Beyond these general descriptions, the study uses the guidelines expressed and implied in case law to examine how well the policies address the issues basic to selection and retention of classroom materials.
Illustration of Need: A Montana Story

In the fall of 1991 in Big Timber, Montana, the parent of a student in the course, Frontier Literature, objected to the assignment of A. B. Guthrie's novel, *The Big Sky*, because of its "explicit, vulgar language" (Doyle, 1993, p. 50). The parent requested that an alternative book be assigned to his son. Although the teacher initially suggested that the student take another class, ultimately she granted the request, along with the subsequent requests of two other students (Findings of Fact and Conclusions of Law, 1993).

When he learned of the teacher's decision, Big Timber's superintendent of schools was concerned. The district had a board-approved policy for complaints about instructional materials, and it had not been followed. Big Timber's policy required that requests for reconsideration of instructional materials be made in writing and reviewed by an evaluation committee. If the decision of the committee was not satisfactory to the complaining party, it could be appealed to the school board. This teacher, "on her own initiative" (Findings of Fact and Conclusions of Law, 1993, p. 1), had circumvented the policy. The superintendent instructed her to follow it in the future.

The following semester, the teacher did just that. The student who had made the initial complaint again enrolled in her class and again requested an alternative, this time on the basis of a religious objection to Herman Hesse's novel *Siddhartha*. The student and his father were told to follow the district policy, and on February 21, 1992, they submitted a written request for reconsideration. The evaluation committee recommended that no alternative be provided. On March 26, the school board upheld that decision. On April 3, the decision was appealed to the county superintendent of schools. On March 8, 1993, the Superintendent of Schools for Yellowstone County, sitting for the Sweet Grass County superintendent, dismissed the appeal (Findings of Fact and Conclusions of Law, 1993).
Following board policy was time-consuming and at times uncomfortable for educators and trustees in Big Timber. More than a year elapsed between the filing of the initial complaint and the final decision by the county superintendent of schools. During that year, the Big Timber schools were subject to the scrutiny of the media, both locally and nationally (Big Sky causing big flap, 1993; Doyle, 1993). However, the superintendent of Big Timber's schools believed that acceding to challenges, particularly when the challenges involve a series of changes, "shred[s] your curriculum" (Big Sky causing big flap, 1993, p. 8).

Ultimately, the county superintendent ruled in the school district's favor. He found that the challenges placed an unwarranted burden on the school (Findings of Fact and Conclusions of Law, 1993, p. 2). When the teacher met the initial objection, to The Big Sky, with an alternative, two other students soon requested the alternative, and their requests, too, were granted, although extra copies of the book were not available at the school. The teacher testified that selecting, locating, and preparing instructional materials for the alternative book increased her work load, and she had to change the way she conducted class to accommodate students who were reading different material. The county superintendent also agreed with the district's claims that the quality of teaching and learning in the course deteriorated when the alternative request was granted. The district had claimed that there was an "awkwardness among the students" (Findings of Fact and Conclusions of Law, p. 2) when not all students participated in the discussion of The Big Sky and that time on task was diminished when the teacher tried to teach two books at once. The county superintendent was persuaded that the students who read the alternative book did not understand it as well or write with the depth of thought demonstrated by the students who had the advantage of class discussions of The Big Sky.

The "big flap in Big Timber" illustrates the difficulty of balancing conflicting interests and concerns with regard to instructional materials.
Accommodating a parent's or student's exercise of conscience can create a burden for the teacher and weaken the quality of instruction for the objecting student and the class as a whole. Nonetheless, local school boards must find ways to resolve that difficulty because objections to instructional materials are not limited to Big Timber and The Big Sky. As the following cursory review of books challenged or banned from March 1992 to March 1993 in the United States shows, challenges to instructional materials are widespread and the specific objections extremely diverse (Doyle, 1993).

**Further Illustration: Beyond Big Timber**

The presence of such controversial books as Catcher in the Rye on lists of banned books is commonplace, but even The Bible was on this 1992-1993 list. The complaint against The Bible, registered by an atheist in a Minnesota school district, stated that "the lewd, indecent and violent contents of that book are hardly suitable for young children" (Doyle, 1993, p. 49). Novels for high school English classes—Steinbeck's Of Mice and Men and Golding's Lord of the Flies—also made the list, challenged on the basis of their language, descriptive passages about sex, and "statements defamatory to minorities, God, women, and the disabled" (Doyle, p. 54). Nathaniel Hawthorne's "Young Goodman Brown," a part of high school literature curricula for decades, wasn't immune to objection: it was challenged in Copenhagen, New York, "because the story might give children the wrong idea about witchcraft" (Doyle, pp. 50-51).

Objections to materials used in elementary classrooms were also in evidence on the list. The Impressions series raised concerns about witchcraft and neo-paganism (Doyle, 1993, p. 49). Katherine Paterson's The Great Gilly Hopkins was challenged in a Texas school district because it contains the words "hell" and "damn" (Doyle, p. 52). Classic fairy tales like "Hansel and Gretel" and "Snow White" were challenged and restricted because of violent
plots and themes (Doyle, p. 50). Maurice Sendak's seemingly innocuous *In the Night Kitchen* was challenged because it "could lay the foundation for future use of pornography" (Doyle, p. 53).

Nonfiction materials, particularly those used in health and wellness courses, also made the list. Randall Cottrell's *Wellness: Stress Management* was challenged and rejected as a supplemental health book in Eagle Point, Oregon, because the book "cited yoga and TM as ways to reduce stress, but failed to mention Christian prayer" (Doyle, 1993, p. 50). The use of Winship, Caparulo, and Harlin's *Human Sexuality* in the Fulton County, Georgia, schools was protested because it "undermines parents' authority, encourages breaking the law, and tears down normal sexual barriers" (Doyle, p. 54).

**Application: The Need for Effective Materials Selection/Retention Policies**

Challenges in and beyond Montana are strong indicators of a need for effective materials selection/retention policies. Such policies address several issues of concern to schools and communities.

First, effective materials selection and retention policies nurture a healthy democracy, one which encourages the participation of parents and citizens in the education of young people and which provides an opportunity for redress of grievances for those who are concerned about materials selected for classroom use. When clear, consistent policies guide the selection and retention of instructional materials, school districts build a framework for democratic decision-making.

Second, effective policies on selection and retention of instructional materials not only help to deliver the curriculum, but also preserve its integrity. Schools rely heavily on instructional materials—textbooks, as well as supplementary print and nonprint media—to deliver their curricula. This reliance is borne out by the focus in current research on the role instructional resources play in meeting curriculum objectives and student needs.
Moreover, a 1987 study on the effects of education reforms in selected California schools concluded that instructional materials are "a key link to curriculum change" (Odden & Marsh, 1987, p. 11). Thus, effective policies for materials selection and retention can assist schools as they implement curriculum changes.

Some challenges seek to impede or obstruct those changes for all students. Recently challenged in Kessler School in Helena, for example, were two films which were used as the basis for a unit on sexuality in the sixth-grade health curriculum. Although students whose parents objected were not required to watch the films, objectors wanted the films removed from the curriculum entirely (Myers, 1993; Wilson, 1993). Because the sexuality unit relied on the films to deliver sensitive content and to provide the basis for discussion, the ability of trustees to defend their selections on the basis of their materials selection policy determined the degree to which the school could deliver its curriculum on sexuality. McCarthy noted the importance of preserving the integrity of the curriculum in the following statement:

If policy makers do not take a stand against the mounting threats to public school curriculum [including instructional materials] ... we may produce a generation of citizens who lack the skills necessary to address the vexing dilemmas that will confront our nation in the 21st century. (McCarthy, 1993, p. 60)

At least two forces threaten the integrity of the curriculum through their influence on the selection and retention of instructional materials. The first force is the force of the censor. The influence of citizens and groups who insist on uplifting, optimistic instructional materials that present traditional American values and use a factual, skills-based approach may have a "blanding" effect on classroom materials (Last, 1982). Publishers may respond to pressure from these citizens and groups by "eliminating materials liable to draw criticism from the most likely petitioners" (Last, 1982, p. 25). The second force is that of the propagandist, individuals or groups seeking the captive audience found in a schoolroom to sell their ideologies or polish
their images. In an age when the oil industry offers free educational materials on environmental issues and entrepreneurs offer free current events programs with advertising as part of the package, ensuring that materials are balanced and accurate may be difficult, but is extremely important. Kozol emphasized the distortion of purpose that promotional propaganda can create in the schools:

> When business enters education ... it sells something more important than the brand names of its products. It sells a way of looking at the world and at oneself. It sells predictability instead of critical capacities. It sells a circumscribed, job-specific utility. "I'm in the business," says Elaine Mosley, the principal of a corporate-sponsored high school in Chicago, "of developing minds to meet a market demand." (Kozol, 1992, p. 277)

Materials developed by corporate or other special interest groups can also pose ethical problems. What limits should be placed on the presentation of religious or commercial messages in instructional materials? Rank, a critic of the use of Channel One as instructional material, pointed out what happens when ethical issues are not addressed in materials selection discussions. Instead of considering the ethical questions posed by requiring classes to watch television advertising targeting a student audience, when districts decide whether to select Channel One, the supposed value of the educational program dominates the debate and "obscure[s] the central issue: it is unethical to exploit children" (Rank, 1993, p. 52).

Ethical questions beyond those involving propaganda and commercial exploitation also suggest the wisdom of developing good materials selection policies. Can educators simultaneously accommodate the concerns of the atheist and the devout Christian? Do health educators have a duty to provide clear instruction about sexuality and sexually transmitted diseases in this era of teenage pregnancy and AIDS, or must they defer to parental judgment on these matters? How is the obligation of the teacher-scholar to the tenets of her discipline ensured? Can language arts instructors meet the demands of accreditation standards which require literature representative of diverse
cultures and ideas when alternatives are provided for students who object to reading about ways of living and thinking other than their own? Can educators develop students' critical thinking skills with materials that give students nothing critical about which to think? These questions can be answered by an effective selection policy.

Financial considerations, too, validate the importance of a good policy for selecting and retaining effective instructional materials. Nationwide, schools account for a significant percentage of book purchases, comprising roughly 13% of all book purchases in 1982 alone (Commission on Academic Freedom and Pre-College Education, 1986, p. 6). The purchase of basic instructional materials like textbooks represents a major investment for a district, one which it expects not to make again for a considerable length of time. In 1990, for example, the purchase of a literature series for grades 7 - 12 in Columbia Falls, Montana, cost the district over $5,000. It was the first literature series to be purchased in nearly 20 years (B. McCaw, personal communication, December 17, 1993). One can only speculate what the cost has been to the one of five California districts which abandoned and replaced the Impressions series after challenges in 1989-90 (McCarthy, 1993). Clearly, as funding for education becomes scarce, meeting a challenge successfully is a financial concern, as well as an ethical and pedagogical one.

Finally, legal considerations emphasize the importance of effective materials selection and retention policies. In this as in all other civic matters, when members of the public believe that their institutions have failed them, they turn to the courts for a remedy. Although the courts have shown a decided reluctance to substitute their judgment for a school board's, they have done so repeatedly when constitutional rights were affected. Because litigation is expensive and time-consuming and ultimately strips all parties of local control, it is in the interest of students, educators, and the public to have materials selection and retention policies that meet legal requirements.

As the review of case law will show, court decisions not only
emphasize the need for materials selection and retention policies, but also provide guidance on what those policies should include. Although a case challenging the selection of classroom materials has never reached the United States Supreme Court, several Supreme Court decisions have implications for policies on instructional materials. In addition, many cases involving challenges of classroom materials have reached the appellate court level, and those decisions provide implicit policy guidelines. Even the issues left undecided or ambiguous by the courts suggest areas that materials selection policies might effectively address.

Focus of This Research

My interest in conducting this research is to help to ensure that Montana school children have access to a wide range of stimulating instructional materials which prepare them to live thoughtful lives in a complex, ever-changing world. As educational approaches expand, emphasizing whole language and multicultural awareness, schools are in the position to provide children with a greater variety of classroom materials than ever before (Dunleavey, 1993). However, access to those materials is jeopardized by groups and individuals who for a variety of reasons pressure educators and schools boards not to select and not to retain certain materials (Dunleavey, 1993; Jones, 1993; McCarthy, 1993).

Previous research and some public comment may give the misleading impression that caving in to this pressure represents the greatest threat to selecting and retaining stimulating, varied classroom materials. Perhaps inadequate policies are the real threat. For instance, when materials adoption procedures do not involve parents,

... it is not surprising that suspicions [about innovative materials] are aroused. Educators need to explain to parents the pedagogical justification for programs and materials. If parents become knowledgeable ... they will be less likely to be
persuaded by groups [with] a "hit list" of materials and programs. (McCarthy, 1993, p. 59)

Also, as the teacher in Big Timber learned, ignorance of or disregard for the policies that do exist may weaken the integrity and quality of instruction. Finally, inadequate policies—or no policies at all—jeopardize the quality of public debate on materials selection. As McCarthy pointed out, these debates should be grounded in educational considerations, not emotions or politics, but "it is too late to establish a process when parents are storming the school with their list of 'objectionable' materials" (McCarthy, 1993, p. 59).

What makes an effective policy? My focus is particularly on how policies address legal issues because, when push comes to shove, the final decision on the effectiveness of materials selection and retention policies is made by the courts. As a result, a wealth of case law suggests ways that policies can allay the concerns of all members of the education community about the materials children are required to use in school.
CHAPTER 2

REVIEW OF THE LITERATURE

Tulley, in his study of the intent of state-level textbook adoption, noted the defect in the literature that is perhaps the best justification for this study: "the absence of definitive adoption policy research" (Tulley, 1983, p. 4). Although studies of materials selected for schools, particularly school libraries, abounds, very little of it provides a detailed description of the contents of materials selection and retention policies or an examination of their approaches to legal issues.

Research relevant to materials selection and retention policies has tended to focus primarily on challenged materials. Major studies in this area began with Fiske (1959); included the Association of American Publishers, the American Library Association, and the Association for Supervision and Curriculum Development (1981); and continued most recently with Hopkins (1991). Each of these studies established that the existence and use of a materials selection policy has a positive relationship to the outcome of a book challenge, a finding which less well-known studies confirmed (Jenkinson, 1986; Bracy, 1982 [cited in Hopkins, 1991]). However, only one of these studies explored the specific contents of selection policies (Fiske, 1959), although the Association of American Publishers et al. and Hopkins presented findings which suggest areas such policies might address.

The Fiske study, described elsewhere as "the most influential research on intellectual freedom in United States libraries" (Hopkins, 1991, p. 5), involved 156 school and public librarians in an in-depth interview process designed to elicit findings on how challenges of the 1950s had affected library policies and practices. The study revealed that very few materials selection policies existed and that librarians themselves were in disagreement about the utility of such policies and fearful of tying their hands with specific policy
guidelines (Fiske, 1959, p. 76). Selection criteria in the policies tended to be
general, permitting "a wide range of subjective interpretation" (Fiske, p. 77).
The procedures in the policies, like the criteria, were described as so vague as
to be "evasive" (Fiske, p. 78).

Although the methodology of other "challenge" studies included
collection of sample policies, Fiske's is the only one to analyze the contents of
these policies in depth. The Association of American Publishers et al. (1981)
collected information about such policies from 1,891 public elementary and
secondary school librarians, library-supervisors, principals and super-
intendents throughout the United States, but the authors referred to this
information only briefly and drew only superficial conclusions about the
contents of the policies. For instance, they noted that over half of the
materials selection policies did not specify a stance on controversial issues;
the others did specify approaches to such issues as racism, sexism, religion,
minority group representation, and sexuality. However, the authors explored
that difference no further, providing no details on what those approaches
were. This study's findings also suggested a greater need for materials
selection policies at the higher grade levels and in courses which include
fiction, but offered no suggestions as to the contents of policies for those
levels or courses.

The Association of American Publishers et al. (1981), along with
Hopkins (1991), did provide information on reasons for challenges which
have implications for materials selection and retention policies. The most
frequently challenged aspects in materials, the former study noted, are sex,
sexuality, obscenity, and objectionable language. Hopkins, in a sample of
communities of all sizes and regions in the United States, also found that
objections tended to be to sexuality, profanity, and obscenity. However, she
found that objections to morality, witchcraft and the occult, the immaturity of
students, nudity, family values, and violence were also common. Both of
these studies concluded that districts with materials selection/retention
policies are more likely to experience a book challenge, but their chances of retaining the materials are also greater. These findings indicate that good selection and retention policies discourage censorship. In addition, the Association of American Publishers et al. found that book challenges at the local level, rather than at the state level, tend to limit students' access to materials, whereas challenges on the state level tend to expand access. It would appear that public pressures cause local selection and review committees to suppress controversial materials, whereas similar pressures on state committees result in expanding the list of adopted materials, perhaps to balance or accommodate the concerns of a variety of groups.

One other finding from two different studies (the Association of American Publishers et al., 1981; Jenkinson, 1986) is worth noting. Both of these studies indicated that challenges to materials are as likely to be made by school personnel as by persons beyond the school walls. The results of the Association of American Publishers et al. study showed that as many as 30% of the reported challenges came from classroom teachers alone (Association of American Publishers et al., p. 5). Jenkinson, in his survey of 644 Manitoba public and private schools, found that 44% of the library challenges came from parents, citizens, groups, or school board members; 6% came from students. The rest came from teachers, librarians, principals, school clerks and custodians (Jenkinson, p. 9).

Other than these sketchy details, the studies reviewed thus far provide little information or guidance on what materials selection policies might include. Also, because Fiske, Hopkins, and Jenkinson limited their research to library materials, their findings may not generalize to the classroom setting.

Another category of studies on materials selection includes those that concern aspects of state-wide adoption procedures (Last, 1982; Tulley, 1983; Duke, 1985; Odden & Marsh, 1987). Of these, Duke's study, perhaps more accurately termed a status report, is the most relevant to my research. His
survey of all 28 state-level adoption states included a section describing and comparing the criteria used by adoption committees. The descriptions raise a number of considerations for selection criteria: using generic, as opposed to subject-specific criteria; specifying objectionable content (such as advocacy of homosexuality) and desirable values (such as fair treatment of diverse groups); and evaluating the compliance of materials with equity demands. Duke's observations on procedures for materials selection were also helpful. For example, he noted that some procedures included providing training for and better communication among evaluators and establishing more meaningful timelines. Although Duke's sample was not the local, district level where materials selection decisions are made in Montana, the study is useful as an illustration, since it is one of the few examples of a study of the contents of materials selection policies.

The study most relevant to my research was conducted by Atkins (1977). First, the study set up a yardstick for evaluation of materials selection policies by reviewing relevant court decisions to establish legal guidelines. Second, the study surveyed schools nationwide to examine their materials selection policies and procedures. However, the results failed to connect the legal guidelines with the policies in any substantive way; the two parts are not brought together as a systematically integrated whole. Although Atkins found the policies "vague," with no clear guidelines or set procedures, her conclusions are based on policies received from less than one-third of those surveyed, 32 policies total. Only seven policies in Atkins' study were from districts comparable in size to Montana's school districts.

My research replicates the Atkins study in some ways. Like Atkins, in the absence of definitive policy research, I review relevant case law in order to establish key areas that materials selection policies should address. I also examine and present findings on the contents of policies from high schools in western Montana, with particular emphasis on whether these contents reflect the key areas established through the review of case law.
Although my approach is similar to that of Atkins, it is different in three critical ways. First, the emphasis in her sampling excluded most Montana schools. Atkins surveyed 90% of the large school districts (20,000 pupils or more) in her sample and only 10% of the small districts (0-4,999 pupils). Since none of Montana's school districts are represented in 90% of Atkins' emphasis—and conceivably are not represented even in her "small school" sampling—her findings may not generalize to Montana. Second, Atkins studied only policies regarding selection of reading materials, and only a small number of them, whereas my study will include all instructional materials, including nonprint materials. Finally, and most importantly, court decisions since 1980, the year of Atkins' study, have added considerable detail to the outlines of materials selection and retention considerations.
CHAPTER 3

REVIEW OF CASE LAW

The purpose of this section is to provide a rationale for this study's analysis of materials selection policies. The previous chapter reveals a dearth of research which examines the contents of such policies, but a body of relevant literature does exist—in the form of case law. Because disputes over the contents or the application of instructional materials policies which are not resolved in the schools are ultimately resolved in the courts, the issues that concern the courts should concern policy-makers. Thus, relevant case law provides a basis for analyzing policies on selection and retention of classroom materials.

Court decisions which directly concern the selection and retention of classroom materials are relatively uncommon; in fact, the United States Supreme Court (referred to in short form in this document as "the Court") has never decided such a case. However, appellate court decisions on the selection and retention of instructional materials, along with Supreme Court decisions on related matters, highlight the issues that board policies should address. On some policy issues, a consistent pattern of legal decisions has rendered clear guidelines; on others, legal views conflict, providing boards with only a framework for decision-making on the local level.

The First Amendment and Materials Selection

Any discussion of the constitutionality of a state's chosen method of regulating its public schools must begin with the fundamental axiom that the states enjoy broad discretionary power [to achieve legitimate educational objectives].... Equally fundamental, though, is the proposition that to accomplish these objectives, the state must exercise its power within the constraints set the by United States Constitution in general and the First Amendment in particular (Bieber, 1984, pp. 174-175).
In this statement, Bieber describes the balance of authority for decision-making in schools, including policies on classroom materials. Essentially, local school boards in Montana enjoy the "broad discretionary power" Bieber describes—within constitutional constraints. Understanding the constraints of the First Amendment is particularly important in the development of policies for selection and retention of classroom materials.

In *Journal of Law and Education*, Stewart delineated the four types of cases involving First Amendment claims within public schools (Stewart, 1989). The first type involves students' freedom of expression, both in and out of class. Another type of case centers on academic freedom, teachers' right to use the materials and teaching methods they deem appropriate. A third type involves freedom of conscience and is frequently asserted by parents who claim the right to shield their children from objectionable materials, curriculum, or activities. The fourth type, in which the right to receive information is asserted, arises when students' access to materials is limited or denied. Although the fourth type of case is the most directly related to this study, court decisions in all four types have laid the foundation for First Amendment freedoms in schools, all of which have implications for materials selection and retention policies. The discussion which follows categorizes those implications and summarizes legal discussion relevant to policies on selection and retention of classroom materials.

**Basis for Selection/Retention**

**Existence of a Written Policy**

Legal precedent has left no doubt that at the very least, school boards should have some statement of policy for selection and retention of instructional materials. They should develop such a policy for two reasons. First, the courts have consistently voiced a reluctance to substitute their judgments for those of locally elected boards (*Hazelwood v. Kuhlmeier*, 1988;
Board of Education v. Pico, 1982; Epperson v. Arkansas, 1968; West Virginia v. Barnette, 1943). However, when a board appears to have acted in a capricious or arbitrary manner, the courts show concern, and nothing gives the appearance of capriciousness so strongly as the lack of a policy. The cases in which courts have overruled board decisions "seemed to be situations where school authorities acted in the absence of a general policy, after the fact" (Cary v. Board of Education, 1979, p. 541). Second, boards may incur another problem if they do not develop policies for materials selection and retention. As Yudof pointed out,

If higher authorities have no policy on book assignment or selection and thereby de facto delegate such authority to teachers and librarians, they cannot later intervene on an ad hoc basis to limit the dissemination of the books in their acquisition. (Office for Intellectual Freedom, 1983, p. 56)

Thus, if only to preserve their own authority in selection and retention matters, boards should have written policies.

The same arguments apply to the development of specific areas in materials selection and retention policies. When local boards do not indicate the bases for decisions and the procedures which must be followed, they open the door for others—either de facto delegates or ex post facto courts—to make those decisions for them. It should also be noted that Montana school accreditation standards, which have the force of statute, require school boards to develop a "materials selection policy, including a challenge procedure, for all curricular and support materials" in Rule 10.55.701 (2) [f] (Board of Public Education, 1992, p. 5).

An Articulated Educational Philosophy

The courts continually examine school decision-making in light of two particular philosophies of education. The first is the belief that an important function of schools is to inculcate community and cultural values. Courts which lean toward this philosophy recognize and approve schools' attempts
to instill such values as respect for authority, patriotism, and social propriety. The second philosophy is reflected in Holmes' metaphor for free inquiry, the "marketplace of ideas." Court which lean toward this philosophy tend to express either the belief that students should learn by examining a wide range of experiences and viewpoints or a suspicion that school efforts to instill values in fact impose orthodoxy. Ideally, the two philosophies co-exist, and Court decisions in this area need not be viewed as dichotomous.

First Amendment challenges to the decisions of public school authorities do not in fact present a conflict between freedom and coercion, or between a utilitarian calculus and the rights of individuals. The child is inevitably coerced, placed in an environment which is manipulated by those around him and which is bound to affect his attitudes as an adult. The question is simply who ... should decide what values will be inculcated and how they should be instilled. (Stewart, 1989, p. 15)

However, a number of legal scholars believe that the two philosophies cannot co-exist harmoniously, positing that a Court which embraces one philosophy sometimes negates the other (Bieber, 1984; Clarick, 1990; Goldberg, 1989). One scholar noted the difficulty this conflict poses for schools:

Only a unique school system ... would satisfy fully both viewpoints. Guaranteeing students' constitutional rights that permit exposure to varied ideas, while simultaneously indoctrinating students to community sentiments and fundamental values, remains a difficult task. With the judicial definition of the public school's educational mission seesawing between promoting an exchange of ideas and indoctrinating students, censorship and removal of books have increased .... (Goldberg, 1989, pp. 1317-1318)

Because the Supreme Court cases most relevant to materials selection and retention issues rely strongly on one or both of these philosophies, local boards should consider them as well when they develop their policies. The following summary of frequently cited cases clarifies how the Court applies the two philosophies in its decisions.

In 1943, the Court ruled that the schools' avowed purpose of inculcating patriotism did not justify compelling two Jehovah's Witnesses to violate their religious beliefs by saluting the flag, saying
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 or force citizens to confess by word or act their faith therein. (*West Virginia v. Barnette*, 1943, p. 642)

The Court emphasized that eliminating diversity of thought "strangle[s] the free mind at its source and teach[es] youth to discount important principles of our government as mere platitudes" (*West Virginia v. Barnette*, p. 637). In 1967, the Court indicated that the "marketplace of ideas" metaphor applied to schools, saying schools should provide "wide exposure to that robust exchange of ideas which discovers truth 'out of a multitude of tongues'" (*Keyishian v. Board of Regents*, 1967, p. 589). In 1969, the Court reinforced its ban on orthodoxy in the *Tinker* decision, pointing out that students "may not be regarded as closed-circuit recipients" of only "those sentiments that are officially approved" (*Tinker v. Des Moines Ind. Community School District*, 1969, p. 511). Later, in a case challenging a school board's removal of books from the library, the Court scolded the board for suppressing ideas:

> Just as access to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner, such access prepares students for active and effective participation in the pluralistic, often contentious society in which they soon will be adult members. (*Board of Education v. Pico*, 1982, p. 868)

These decisions reflect the Court's reliance on the "marketplace of ideas" philosophy. Other court decisions, particularly recent ones, emphasize the importance of inculcating community values. In *Brown v. Board of Education*, the Court recognized schools as "a principal instrument in awakening the child to cultural values" (*Brown v. Board of Education*, 1954, p. 493), thus permitting—even encouraging—schools to indoctrinate students in social mores. In 1979, the Court ruled that because teachers must be able to transmit democratic values fundamental to the American system, foreign teachers could be barred from the teaching profession (*Ambach v. Norwich*, 1979). In *Bethel v. Fraser* (1986), the Court recognized school officials' right to

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
instill notions of propriety in civil conduct, and in *Hazelwood v. Kuhlmeier*, the Court held that schools "retain the authority to refuse to sponsor [speech and conduct] ... inconsistent with the shared values of a civilized social order" (*Hazelwood v. Kuhlmeier*, 1988, p. 272). In fact, the Court included these values in its discussion of "legitimate pedagogical concerns" (*Hazelwood*, p. 273). As Goldberg pointed out, in recent years the Court "has adopted a deferential attitude toward the regulation of speech ... if the board can advance an inculcative or pedagogical purpose" (Goldberg, 1989, p. 1330).

Like the Court, school boards may find that their philosophies about the mission of schools sometimes compete and constantly evolve. However, if boards don't define their philosophies, the courts may make the decision for them, because philosophy is the guiding light for the policy. If state or local policies resolve this issue, they not only ensure that a clear philosophy drives materials selection, but also direct the attention of the courts toward the board's own intent, should a challenge occur. Thus, the Minnesota Board of Education recently adopted a policy embracing the "marketplace of ideas" philosophy, but acknowledging the citizen's right to criticize resources and teaching methods (Harrington-Lueker, 1993). Montana school accreditation standards leave development of philosophy to local boards, but do not require a philosophy specifically guiding materials selection and retention. Rather, the standards require boards to develop "a comprehensive philosophy of education" (Rule 10.55.701 (3)[a]) and an academic freedom policy (Rule 10.55.701 (3)[i]). Although both have relevance to the issue of whether materials selection and retention policies are consistent with other district statements of philosophy, that issue is beyond the scope of this study. This study will examine whether a *materials selection and retention* philosophy is clearly stated in the policy and whether it reflects relevant legal guidelines.

**Scope of the Policy**

Most people probably think of instructional materials as textbooks; in
fact, of course, a variety of media are used in the course of instruction. Court cases involving the use of instructional materials have included textbooks (Loewen v. Turnipseed, 1980; Mozert v. Hawkins, 1987; Edwards v. Aguillard, 1987), novels (Parducci v. Rutland, 1970; Virgil v. School Board, 1989), films (Pratt v. Ind. School District, 1982; Fowler v. Board of Education, 1987), articles in magazines (Keefe v. Geanokos, 1969), and even promotional brochures (Brubaker v. Board of Education, 1974). Therefore, materials selection and retention policies should address selection of all instructional materials, not merely textbooks. One of the difficulties of developing such a policy is balancing the authority of the board to approve materials with the need for spontaneity and currency in teaching. Clearly, submitting all materials—the morning's newspaper editorial, the unforeseen telecast—for board approval is not feasible.

Clear Criteria for Selection

When criteria for selection are provided in policies, courts show a great interest in them. In Loewen v. Turnipseed (1980), for example, a textbook author sued the state of Mississippi for adopting another text instead of his. The court found that the rating committee had not justified its rejection of the text on the basis of any of the criteria; further, two members of the committee had substituted their own criteria for the established criteria, judging it too controversial and too "racially oriented." This disregard for the established criteria caused the court to conclude that the rating committee had acted on the basis of personal prejudice; the court ordered that the text be adopted.

As early as 1959, Fiske noted the tendency toward vagueness in selection policy language and speculated that policy-makers hoped to protect their selections with an umbrella that would cover every conceivable eventuality (Fiske, 1959, p. 78). However, the arguments in several court decisions contradict that philosophy and indicate a particular interest in
criteria requiring selections to be relevant to curriculum objectives. Justice Blackmun, in his concurring opinion in *Pico*, cited relevance to the curriculum as an appropriate, value-neutral criterion for selection. In *Zykan v. Warsaw* (1980), the court held that although schools have the function of nurturing fundamental values, local boards cannot replace educational objectives with rigid indoctrination. Most significantly, *Hazelwood* upheld the appropriateness of relevance to curriculum, but expanded the concept to include "legitimate pedagogical concerns" (*Hazelwood v. Kuhlmeier*, 1988, p. 273). Later cases have ruled that values like tolerance of divergent views and respect for authority can be regarded as curriculum objectives, commenting that "the universe of legitimate pedagogical concerns is by no means limited to the academic" (*Poling v. Murphy*, 1989, p. 758).

In sum, it can be inferred that relevance to curriculum objectives is a sound criterion for materials selection. Beyond that, any pedagogical concerns which are stated as criteria may cause courts to hesitate about superimposing their judgment on such matters for that of a local board.

**Age-Appropriateness and Sensitive Topics**

Case law verifies what censorship studies have found; sensitive topics in school materials tend to fall into one of these four categories: (1) obscenity, profanity, and vulgarity; (2) the subject of sex; (3) religious and moral objections; and (4) violence and brutality (*Association of American Publishers* et al., 1981; Hopkins, 1990). Sexual explicitness in health education materials raises difficult materials selection policy questions, as do religious and moral objections to materials. These issues are covered in the Methods subdivision of this section.

Objections to materials on the basis of their alleged obscenity, vulgarity, profanity or violence might all be called objections to offensiveness. Case law is by no means consistent on the issue of offensiveness, but most courts have taken for granted that obscenity and vulgarity are legitimate reasons for
removal of instructional materials. In fact, Justice Brennan, whose record as a free-speech advocate is well-documented (Tinker v. Des Moines, 1969; Board of Education v. Pico, 1982; Hazelwood v. Kuhlmeier, 1988) concedes that books which are "pervasively vulgar" should be removed (Board of Education v. Pico, p. 871). The Fraser limitations on students' expression on the grounds that vulgarity constitutes a substantial and material disruption to the educational mission (Bethel v. Fraser, 1986) would certainly extend to expression in classroom materials. The problem, of course, is who defines vulgarity and at what point is it impermissible? Eliminating all literature with any vulgarity would leave a rather barren book closet. Much of Shakespeare and most of Chaucer would be gone. Add profanity to the list and many twentieth-century works would disappear as well. Defining and limiting the degree of violence in classroom materials poses similar problems. Both Pratt (1982) and Fowler (1987) involved complaints about the violence in instructional materials; significantly, the works in questions were both films. However, neither decision provides guidelines for making judgments about the issue of violence in classroom materials.

The answer to creating guidelines regarding offensiveness—whether the offense is violence, brutality, obscenity, profanity, or vulgarity—may lie in connecting topic-sensitivity with age-appropriateness. The courts have long recognized the factor of age in the selection of school materials. In 1974, the Seventh Circuit Court upheld the firing of three eighth-grade teachers who had distributed a brochure glorifying the Woodstock lifestyle (Brubaker v. Board of Education, 1974). Justice O'Sullivan ruled that teachers must always consider the age and sophistication of their students, as well as the educational purpose of the material (Brubaker v. Board of Education, p. 985). In a similar vein, the Supreme Court recently noted that

[a] school must be able to take into account the emotional maturity of the intended audience in determining whether to disseminate student speech on potentially sensitive topics, which might range from the existence of Santa Claus in an elementary school setting to the particulars of teenage sexual
activity in a high school setting. (Hazelwood v. Kuhlmeier, 1988, p. 272)

Although the Hazelwood decision involved the age-appropriateness of student expression in a school newspaper, its discussion of emotional maturity logically extends to selection of instructional materials. The expressed concern about the sensitivity of such a topic as the existence of Santa Claus is perhaps disingenuous. Case law is replete with challenges to "sensitive" material, and nothing as tame as whether or not there is a Santa surfaces. However, the commentary illustrates a key point: considerations of topic sensitivity in materials selection are commonly linked to the maturity level of students.

Courts have approached age-appropriateness/topic sensitivity in a variety of ways. The most common is a determination that the material in its entirety has a value which can be recognized by its intended audience. In Parducci v. Rutland (1970), for example, Justice Johnson relied on his own judgment that a particular book was not obscene and had literary and social value for high school juniors. Similarly, in Keefe v. Geanokos (1969), the court found that the overall merit of an assigned article superseded concern about its occasional use of profanity. The court balanced "whether a teacher may, for demonstrated educational purposes, quote a 'dirty' word ... or whether the shock [would be] too great for high school seniors to stand" (Keefe v. Geanokos, 1969, p. 360). Noting that high school seniors are "not devoid of all discrimination or resistance," the court ruled that the vulgar term in the article was essential to its point and that, in any event, [i]f ... students must be protected from such exposure we would fear for their future" (Keefe v. Geanokos, p. 362). The Keefe court also relied on the fact that students were exposed to the word elsewhere, describing the word as "currently used" (Keefe v. Geanokos, p. 362) and pointing out that books containing the same word could be found in the school library. Exposure is also an underlying consideration in Right to Read Defense Committe v.
School Committee of the City of Chelsea (1978). That court noted that the vulgar words in a controversial poem were in other books in the library and that the language and theme of the poem did not conflict with the English curriculum. Therefore, although the poem contained language which was certainly offensive to some, the court ruled that the book containing the poem should remain in the school library.

The Chelsea court (1978) also used the criterion of harmfulness to assess age-appropriateness/topic sensitivity. Using a two-pronged test, the court concluded that the school board was unable to establish that harm to the reader of the poem in question was either (1) likely to occur, or (2) had already occurred. Parducci used a similar criterion, borrowed from Tinker: whether reading the work in question had caused material and substantial disruption to the educational program. The court found that the assignment of Welcome to the Monkey House had not caused any disruption because the evidence suggested that most of the students responded to it with apathy (Parducci v. Rutland, 1970).

Connecting topic-sensitivity with age-appropriateness may provide school boards with more specific means of judging particular materials. At the very least, policies should have some statement of position on sensitive topics and age-appropriateness because in all likelihood some challenge will advance the argument that the work in question is either offensive or inappropriate for the age level of the student.

Controversial Materials and Endorsement

[There are] 256 separate and substantial religious bodies ... in the United States. Each of them ... has as good a right to demand that the courts compel the schools to sift out of their teaching everything inconsistent with its doctrines. If we are to eliminate everything that is objectionable to any of these warring sects or inconsistent with any of their doctrines we will leave public education in shreds. (McCollum v. Board of Education, 1948, p. 205)

The difficulty which Justice Jackson described in McCollum in 1948 has
certainly not eased since that time. With the variety of religious and political
groups in America today, school boards cannot avoid controversy in
materials selection—nor, perhaps, should they. Examining controversy can
be a powerful way to develop critical thinking skills, and development of
these skills is a primary emphasis in state and national standards. Further, in
this day and age, protecting children from exposure to information is nearly
impossible. As Glasser noted in 1982, television alone makes it impossible for
the censor to be successful. "While we all discuss what ... children should
know and be exposed to, they are exposed, regardless of fine distinctions and
court resolutions" (Office for Intellectual Freedom, 1983, p. 87).

Therefore, school boards may be wise to include statements in
materials selection policies which affirm the value of controversy and of a
wide range of viewpoints. A number of court decisions support such an
approach (Sweezy v. New Hampshire, 1957; Keyishian v. Board of Regents,
School Committee of Chelsea, 1978; Board of Education v. Pico, 1980). How-
ever, boards may want to consider the following argument:

Part of the educator's function is to give students a sense of both the range and
limits of ongoing public debate; students must be shown that there exists a
middle ground between blind adherence to a monolithic orthodoxy and the
nihilistic belief that no idea is better than any other. (Stewart, 1989, p. 26)

Stewart maintains that trustees establish the range and limits of discussion
through their endorsement of selected materials. This endorsement does not
imply agreement, he cautions; it simply means that the board approves the
materials as "worth reading," as making legitimate contributions to the
public debate" (Stewart, 1989, p. 26).

Methods of Selecting/Retaining Instructional Materials

Following Established Procedures

The outcomes of several court cases have hinged upon the board's
ability to show that it followed its own procedures. Several such cases are
worth exploring in detail since they highlight aspects of procedure in which
the courts have been particularly interested.

In * Salvail v. Nashua Board of Education* (1979), a board removed Ms.
magazine from the library, purportedly because of advertisements and articles
on "objectionable" subjects. The board's interim guidelines required that
complaints be referred to a review committee. However, without making the
referral and waiting for the committee's findings and recommendations to be
presented to the superintendent, the board voted 5-3 to cancel Ms. and to
remove all back issues from the library. The court ruled that the board was
required to follow its own guidelines. According to Yudolf, "This conclusion
of law was sufficient to support the court injunction against banning the
magazine.... It was unnecessary for the court to address broader censorship
issues" (Office for Intellectual Freedom, 1983, p. 58).

Although not all courts have found that failure to follow procedures
was sufficient cause to override a board decision (*Cary v. Board of Education*,
1979), case law illustrates another strong reason for following procedure. In
*Board of Education v. Pico* (1982), school board members returned from a
conference with a list of "objectionable" books, several of which they located
in the school library and curricular areas. When the trustees voted to have
the books removed, contrary to the recommendation of the superintendent,
some faculty and members of the public objected. Eventually, the board
agreed to establish a book review committee; the committee voted to return
all but three of the books to the library shelves. The school board responded
by voting on each book separately at a public meeting and rejecting all but two
of them for use in the schools.

The board's decision was reversed in a district court decision which
was later upheld by the Supreme Court. Justice Brennan, writing for the
Court, called the board's procedures "highly irregular and *ad hoc* " (*Board of
Education v. Pico, 1982, p. 876). He pointed out that there had apparently been no "established regular and facially unbiased procedures" (Board of Education v. Pico, 1982, p. 874) to begin with, that the board ignored the advice of its professional staff, and that it had never conducted an independent review of the books. The Court's belief that the board had been motivated by personal dislike for the ideas in the books was based in part on the board's failure to follow its own procedures.

Of course, critics point to cases in which the courts have disregarded procedural issues (Landy, 1981) or found them insignificant (Office for Intellectual Freedom, 1983). However, in the main, and by the courts' own statements, when boards follow their own procedures, the courts will not override their judgments—although sometimes it is tempting. In Bicknell v. Vergennes (1980), the Second Circuit upheld the Board of Directors' decision to remove two books from the school library, but the court seemed to disapprove of the board's methods:

> Although the court does not entirely agree with the policies and actions of the [board] we do not find that those policies and actions directly or sharply infringe upon the basic constitutional rights of the students of Vergennes Union High School. (Bicknell v. Vergennes, 1980, p. 438)

In sum, the courts seem to require no particular procedure in materials selection policies, but do expect some procedure to be followed.

Case law indicates that policies should address three procedural issues in particular. The first is the delegation of authority. Who has the board authorized to make decisions on materials selection? Has the board reserved its right to make a final decision (Bicknell v. Vergennes, 1980)? In Montana, statute stipulates that the authority for final approval lies with school trustees and that the responsibility for selection is the superintendent's (Keenan, 1989, 20-4-402; 20-7-601, 602). However, the appearance of arbitrary and/or biased motivation when a superintendent or board ignores or overrides authority delegated by policy often concerns the courts (Minarcini v. Strongville, 1976;
Right to Read Defense Committee v. School Committee of Chelsea, 1978; Savail v. Nashua Board of Education, 1979; Board of Education v. Pico, 1982). The second procedural issue addressed by case law concerns the review process. If a selection is challenged, who will reconsider it and how? (Savail v. Nashua Board of Education, 1979; Board of Education v. Pico, 1982). A third issue is the right of the challenger(s) to be heard. The First Amendment guarantees citizens the right to "petition for redress of grievances." Put simply, this right allows citizens to demand an accounting from the institutions that they support. Appointed boards of all descriptions provide the forums in which this First Amendment right is exercised. Thus, citizens who object to the selection of instructional material have the right to demand an accounting from the school board. They may have the additional right to make their own objections to the selection heard. Since the selection of a book deprives every taxpayer of some fraction of a cent, due process considerations may apply to decisions about book selections. Lawyers may argue as to whether book selection is indeed a property right protected by due process, but no conscientious board member would seriously entertain the notion that a public school official can thumb her or his nose at the concerns of any member of the public. Whether or not there is a legal requirement to provide persons who object to a particular decision with the opportunity to protect their rights, reasons of fair treatment indicate that school boards should do so.

Compulsory vs. Optional Use

Another procedural issue boards may want to consider is based on the distinction between compulsory and optional use. Whether use of certain instructional materials is required or optional makes a great deal of difference in a challenge situation. For one thing, "opting out" allows all parties a pressure-release valve of sorts: students are not compelled to use materials they or their parents find objectionable, and boards are less likely to have
requests to remove material for all children when parents of some children object. The courts, too, consider alternative provisions as antidotes to coercion. In *Medeiros v. Kiyosaki* (1970), for instance, parents objected to sex education instruction, calling it an invasion of privacy and a violation of religious freedom. The fact that the program was not compulsory influenced the court's decision to allow the school to retain the program. Also, when students were offered alternatives, but rejected them, courts have found that no coercion was present. For example, in *Grove v. Mead* (1985), a student rejected the offer of an alternate selection and excusal from class during discussion of the book to which he objected. The court found no coercion present; the provision of alternatives was "the determinative factor" (*Grove v. Mead*, 1985, p. 1542).

Case law includes opting-out requests made on the basis of objections to religious messages (*Pierce v. Society of Sisters*, 1925; *Wisconsin v. Yoder*, 1972; *Mozert v. Hawkins*, 1987) and to the subject of sex (*Medeiros v. Kiyosaki*, 1970; *Valent v. New Jersey*, 1971). Although schools often respond to such objections with provisions for "excusal" (release from class for any discussion or use of the selection) and/or "substitution" (an alternative selection), making these provisions part of policy deserves a study of the issues.

Essentially, in making decisions about optional use, boards must balance the same interests courts have attempted to balance: the right of parents to control the upbringing of their children, the interest of the state in providing young people with an education that enables them to sustain the democracy and themselves as adults, and the right of young people to receive that education. Traditionally, courts have deferred to parental wishes about the upbringing of their children, particularly in matters of religion (*Pierce*, 1925; *Valent*, 1972; *Wisconsin*, 1972). Contemporary teachers, familiar with the methodologies of individualizing instruction, can usually accommodate parental wishes. However, substitution and excusal can be problematic. Shobe enumerated some of the problems with substitution alone:
What book will be substituted and who will choose it—the child, the parent, the teacher, the parent with some sort of supervision, some independent decisionmaker? Will the substitute provide an equivalent as well as an alternative learning experience? How will the child's progress be monitored and evaluated? (Shobe, 1988, p. 117)

Exclusion, too, poses logistical problems: where to send the child, how to provide supervision, and whether the child must be excused from class every time the offending material is mentioned. According to Stewart, excusal also raised a larger issue:

The threat posed by a right of excusal ... is partly administrative—where will these children go?—but it is more importantly psychological. The proper functioning of a school requires a sense of order, a sense that those who run the institution are truly in charge of its operations and that all children are subject to the same rules. Perhaps most important, it depends upon a sense of community, of shared experience; the right of excusal, by contrast, threatens to create a hodgepodge of subgroups whose members change constantly. (Stewart, 1989, p. 88)

In recent years, the courts have become more sensitive to these concerns. In Mozert v. Hawkins (1987), for example, the Sixth Circuit Court of Appeals reversed a lower court ruling that children could be excused from using the Holt reading series and receive instruction at home. The circuit court found that merely being exposed to ideas contrary to one's religion is not tantamount to compelled belief, but more significant, in light of this discussion, is that Judge Kennedy, in a concurring opinion, held that even if the religious objection had been sustained, the school had sufficient concern about disruption to justify requiring the series (Mozert v. Hawkins, 1987).

Because of the potential disruption of substitution and excusal practices, school boards may want to consider limiting these options when the course itself is an optional one. Courts continually make such distinctions themselves. For instance, the courts tend to regard materials which students elect to use in the school library differently than those required for use in the classroom. Classroom materials, unlike library materials, are seen as "compulsory"—thus, courts have given school libraries greater latitude than
classrooms in materials selection (*Minarcini v. Strongville*, 1974; *Board of Education v. Pico*, 1982). With the same logic, instructional policies materials for elective courses might allow less flexibility in the area of substitution and excusal, since the course itself is not required.

A final consideration, to date given only brief attention by the courts, is the right of the child to receive an education *in spite* of parental objection. Although the Supreme Court sided with the parents in *Wisconsin v. Yoder*, the Court recognized that children, too, have rights, which may at times conflict with parental rights (*Wisconsin*, 1972). Traditionally, schools and courts have supported the parent's right to make decisions about the child. However, in an age when children succeed in court with once unheard-of actions like "divorcing" their parents, children seem to be gaining greater legal stature. It may be that they can overrule their parents' objections to classroom materials.

**Library vs. Classroom Selections**

As noted above, the courts have often seen a key difference between library and classroom selections and have provided a greater latitude for the selection of library materials. In *Minarcini v. Strongville* (1976), five high school students brought action against the school board for removing books from the library. Although the Sixth Circuit recognized the board's authority to remove textbooks, it found that removing books from the school library violated the First Amendment right of students. Justice Brennan, in *Pico* (1982), contrasted the state's control over classroom matters with its control over the library:

> Petitioners might well defend their claim of absolute discretion in matters of *curriculum* by reliance upon their duty to inculcate community values. But we think that petitioners' reliance upon that duty is misplaced beyond the compulsory environment of the classroom, into the school library and the regime of voluntary inquiry that there holds sway." (*Board of Education v. Pico*, p. 864)
Similarly, the *Chelsea* court (1978) noted this aspect of free inquiry embodied by the library. If school boards agree that school libraries differ fundamentally from classrooms, they should develop separate selection policies.

**Selection Criteria vs. Retention Criteria**

Policies for selection of instructional materials should establish criteria that materials must meet in order to be selected. Should challenge procedures use the same criteria, or develop separate criteria for retention decisions? This is the final distinction school boards must consider.

At least one court decision made no distinction between selection and retention decisions, asserting that books that are "obsolete, irrelevant, or were improperly selected originally, for whatever reason, can be removed by the same authority ... empowered to make the selection in the first place" (*President's Council v. Comm. School Board*, 1972, p. 293). Kaplan, however, raised the perception of disapproval as one good reason to distinguish between selection and retention issues. Selected materials, she noted, "are regarded as reflective of the values that the school officials seek to inculcate. Likewise, removal [of materials] conveys disapproval ... and *the simultaneous endorsement of a perspective that is directly contrary* [italics mine]" (Kaplan, 1991, p. 96). In its 1986 report on academic freedom and censorship in the schools, a commission of the American Association of University Professors warned that removing allegedly offensive books "increases in some measure the probability that the student will see suppression as an acceptable way of responding to controversial ideas" (Commission on Academic Freedom and Pre-College Education, p. 9). Judge Newman, in the Second Circuit *Pico* decision, raised another perception problem:

[R]emoval, more than a failure to acquire, is likely to suggest that an impermissible political motivation may be present. There are many reasons why a book is not acquired, the most obvious being limited resources, but there are few legitimate reasons why a book, once acquired, should be removed from a library not filled to capacity. (cited in *Board of Education v. Pico*, 1982, p. 881)
Although Newman was referring to the removal of library books, his comments have some legitimacy in relation to classroom materials as well. Because the public may perceive that a removed book is "a bad book," and because the courts may find "few legitimate reasons" for book removal, school boards should consider what criteria are legitimate.

Two particular guidelines deserve attention. The first involves efforts to shield students from particular points of view. In *Pico*, for example, Justice Blackmun stated that although a school can inculcate values through positive curriculum choices, it may not "deny access to an idea simply because school officials disapprove of that idea for partisan or political reasons" (*Board of Education v. Pico*, 1982, p. 879). The *Zykan* and *Pratt* courts had similar positions. Challenge procedures clarifying that viewpoint discrimination is not a legitimate criterion may address this concern. For instance, removing *Mein Kampf* from a history curriculum because of its objectionable message would be viewpoint discrimination. Second, a board should be able to show "substantial and reasonable government interest ... for interfering with students' right to receive information" (*Pratt v. Ind. School District*, 1982, p. 777). Applying this standard, a board might be justified in removing *Mein Kampf* from a junior high classroom—not because of its message, but because of the difficulty of its reading level. Challenge policies which delineate a substantial and reasonable interest as a criterion put the onus on the challenger to demonstrate a weighty reason for removing the material.

**Conclusion**

This discussion of court decisions related to materials selection and retention issues concludes with no easy answers. Because of the changing compositions of the courts and the evolving nature of law itself, legal guidelines are often subject to debate and always subject to change. However,
case law over the past few decades does delineate a number of areas for boards to address in their development of policy. These areas have been stated as questions in the checklist developed to examine materials selection policies in western Montana high schools. The checklist follows in Chapter 4.
CHAPTER 4

METHODS AND PROCEDURES

The Sample

In this study of policies for selection and retention of instructional materials, I use high schools as the population for two reasons. First, current data on challenged materials indicate a greater likelihood of challenges on the secondary level (Doyle, 1993), and therefore, perhaps, a greater need for effective policies. Second, because secondary schools usually split curriculum into separate disciplines taught by different teachers with a variety of instructional materials, I high school policies may present a greater range of issues in selection and retention.

The sample for this study includes all high schools in western Montana, as defined by zip codes with the first three numbers of 596, 597, 598, and 599. The 60 high schools in the sample represent 32.9% of all high schools in Montana. The sample has a high percentage of the larger high schools in Montana. Eight of the 13 AA schools, representing 5 school districts, or 61% of all Class AA high schools, are located in western Montana. Half of the 22 Class A high schools are located there. Smaller schools, on the other hand, are underrepresented in this sample. Only 41% of all Class B schools and 22.5% of all Class C schools are in western Montana.

Procedure for Data Collection

Requests for policies on selection and retention of classroom materials were made to the high school principals in the sample. Appendices 1, 2, and 3 are the requests sent to each principal. Appendix 1 is the initial request in letter form. Appendix 2 is a follow-up postcard sent to principals who had
not responded to the initial request. Appendix 3 is the letter sent to the superintendents of districts in which principals had not responded after six weeks. In addition, I made telephone calls to 12 high school principals who had not responded in six weeks' time. These calls sometimes prompted a written response. In two cases, I was informed by the principal on the telephone that a written policy did not exist. Appendix 4 provides data on specific responses from schools in a list of the sample coded by size classification.

Response

Of the 60 high schools in the sample, 53—or 88.3%—provided the responses used in the study. In the largest high schools in western Montana, classified AA and A, the response rate was 100%. The smallest high schools, classified C, responded at the rate of 86.9%; the B schools, at a rate of 77.8%. Four private schools are also part of this sample. Three, or 75%, responded to requests for information. Appendix 5 provides data on the response rate by size classification.

Procedure for Data Interpretation

Data on the policies were recorded in two categories. The first category focused on descriptions of the policies. To compile general, descriptive information, I recorded data on the length and format of the policies. In addition, I noted unique features of policies and evidence of the use of a "boilerplate" (a model policy, provided by such organizations as the Montana School Boards Association and the American Library Association). The second category focused on whether policies included language which addresses the concerns expressed by the courts. Using the following checklist, I compiled descriptive and statistical information in this category. Because
analysis in both the legal issues and the general description categories sometimes posed specific questions of methodology, those questions and how I resolved them are explained in the appropriate portions of the next chapter, which reports the results of the study.

Checklist: Legal Issues Addressed by Instructional Materials Policies

1. Is there a written policy for selection and retention of instructional materials?

2. Is a philosophy for selection and retention of materials articulated?
   a. Does the philosophy embrace the "inculcation of values"?
   b. Does it embrace the "marketplace of ideas"?

3. Does the policy clarify its scope through a definition of "instructional materials" or inclusion of specific types of materials?

4. Does the policy describe a procedure for selection of instructional materials?
   a. Does it delegate authority for selection?
   b. Does it preserve the board's final authority?
   c. Does it provide a process for decision-making?

5. Does the policy delineate criteria to be used in the selection of instructional materials?

6. Does the policy address the issue of topic-sensitivity?
   a. Does it delineate sensitive topics?
   b. Does it describe how decisions on topic-sensitivity will be made?
7. Does the policy address the issue of age-appropriateness? If so, does it describe how decisions on age-appropriateness will be made?

8. Does the policy endorse selection of a wide range of topics, including potentially controversial ones?

9. Does the policy establish a procedure for retention decisions?
   a. Does it delegate authority for consideration of the challenge?
   b. Does it preserve the board's final authority?
   c. Does it outline a process for decision-making?
   d. Does it provide the complainant with an opportunity to be heard?

10. Does the policy delineate criteria for retention decisions?

11. Does the policy establish a connection between selection and retention decisions?
   a. Does it provide separate policies?
   b. Is it a single policy with distinguishing language?
   c. Is the basis for the selection decision considered in the retention decision?

12. Does the policy distinguish between library and classroom decisions?
   a. Does it provide separate policies?
   b. Is it a single policy with distinguishing language?

13. Does the policy include provisions for substitution and excusal?
    If so, what bases are used for decisions on substitution/excusal?
CHAPTER 5

RESULTS

General Description of the Policies

The 36 policies which address both selection and retention range in length from five lines to five pages. The mean length is 2.5 pages, with the median slightly lower, at 2.3 pages. The length of the greatest number of policies is one page. Seven policies fall into this category, followed by five policies in the five-page category.

The format of the policies also varies considerably. The longer policies tend to begin with philosophical statements or general guidelines and move to a section on selection, which typically includes definition of materials, responsibility for selection, and criteria to be used. Frequently, longer policies are those which incorporate library and classroom decisions in one policy, so separate subsections on aspects of library decisions are part of the format. Most long policies end with subsections on review of challenged materials. Frequently, these subsections are as long as—if not longer than—the preceding sections on selection.

Another typical format, found in seven of the policies, consists of two parts, the first part devoted to a broad statement of policy and the second to a procedural statement. These policies tend to be relatively short, general in their language, and vague with respect to most checklist items. The area they address most specifically is that of responsibility, usually delegating initial authority to a committee and reserving final authority on both selection and retention to the board of trustees.

The shortest policies, those of less than a page in length, tend to be the most general in focus and the least organized. Frequently, they address selection and retention issues only in passing reference. For instance, Policy
A1 includes decisions about materials in a brief section devoted mainly to curriculum committees. Other short policies emphasize purchasing practices, rather than selection criteria and procedures.

Several policies seem to be "forced merges"; that is, evidence suggests that new sections were simply spliced into existing policies. For example, Policy C9 appears to have blended new language on classroom instructional materials into an existing policy on library materials. Thus, decisions about weeding and gifts, typical in library policies, apply in this policy to classroom materials as well. In one such "forced merge" policy (C15), the review committee for classroom materials includes two library media specialists, but no teachers. In another policy (A6), the sections on classroom materials appear to have been literally cut and pasted into an existing policy on library materials. What is more, the existing policy is the original model from the American Library Association: the identifying phrases and parenthetical explanations have not been deleted.

Evidence of the use of "boilerplate" or model policies abounds. Nearly identical language and even the same policy numbers are found in Policies B9, B13, C2, and C17. The model seems to be that of the Montana School Boards Association (MSBA). Similarly, one Office of Public Instruction (OPI) model seems to have influenced seven of the policies very strongly, not only in language but in format. Many policies pull language from several models and/or insert language that is probably their own. For example, Policy A5 relies on the MSBA model for general policy, borrows language from OPI for selection criteria, uses American Library Association language for criteria on retention, and incorporates still other language for selection of supplemental materials. However, of 36 policies, excluding those that represent multiple high schools from the same district, only two pairs were "identical twins," two policies identical to each other.

The policies were more unique than similar, and a few of the more noteworthy features are itemized here:
• Policy C11, the only policy provided by a private school, lists seven guiding principles for curriculum decisions, two of which are a "scripturally based philosophy of education" and "a psychology of learning with a Christian view of the child as a child of God."

• Policy C9 stipulates that selection and retention policies are to be reviewed annually with faculty. Additionally, part of this policy's selection procedures are the development of faculty rationales for using proposed materials.

• Policy B6 addresses materials selection in an academic freedom policy, delineating the issues involved in academic freedom, and connecting decisions of materials selection and retention with those issues.

• Policy A2 is one of the briefest policies and concerns itself primarily with purchasing practices. However, it is the only policy to address propaganda directly, specifically stating that materials selected must be "free of objectionable propaganda."

Overview: How Policies Address Legal Issues

Using the checklist provided in Chapter 4, I compiled statistical and descriptive data on how well policies in the sample address issues which have concerned the courts. By counting the number of "Yes" answers to the broad, numbered questions posed in the checklist, I was able to assign an overall "score" to each policy. I did not include question #1 (Is there a written policy?) in this tally because answers of "No" to that question would mean additional answers of "No" throughout the checklist. By excluding those high schools without a policy, my data for this answer includes only those 36 policies which are the basis for most of these results. I also did not include question #9 in the scoring. The connection between selection and retention, although important to the results and conclusions in this study, has only been addressed by the courts in regard to the criteria for each. Since question
#10 also focuses on criteria, I excluded #9. Data on the overview scores can be found in Appendix 6.

Eleven "Yes" answers are possible for any particular policy. One policy with nine "Yes" answers is the highest score; one policy with eleven "No" answers is the lowest. Ten of the policies score in the lower third, with "Yes" answers of three or fewer. Only two policies score in the upper third, with eight or more "Yes" answers. The highest number of policies at any particular level is at the seven-Yes level, with seven policies. Overall, the policies score in the middle range, with 24 of them addressing four to seven of the items on the checklist.

Because "Yes" answers were awarded on any item that the policy addressed even superficially, these scores reflect the minimum degree to which a given policy addresses legal issues. More instructive information follows in an item-by-item presentation of results.

**Checklist Item #1: Existence of a Policy**

Forty-one of the 53 schools responding submitted written policies; however, only 36 of those policies were for selection and retention of instructional materials. Two were clearly policies for library materials only; another two policies were for retention or review of instructional materials with no language concerning selection. Requests for additional information or clarification from these high schools went unanswered. For the sake of consistency, I approached all of these policies as though they were indeed policies only for those areas they described in writing. Thus, I excluded the two library policies entirely; I included the retention policies only in those areas of this study pertaining to retention. I did not include them in the statistics answering this question.

I should also note that several high schools are located in the same school district. The Missoula district includes four high schools; Helena, two;
and Columbia Falls, two. Without exception, these high schools in the same district have a single policy for selection and retention of instructional materials. However, nothing requires districts to operate this way, and in at least one district, a principal is not aware of the policy which guides him. (This principal informed me that his high school had no formal policy on selection; however, I had already received from the curriculum director the policy governing his high school and others in the district.) Therefore, I regarded the policies I received from these districts—whether single or multiple copies—as separate policies for tallying purposes.

With those qualifications, 67.9% of the high schools in western Montana have policies for selection and retention of instructional materials. The findings indicate that the larger the high school, the greater the likelihood that it will have a policy for selection/retention of instructional materials. In Class AA schools, 87.5% have these policies, followed by Class A schools with 81.8%, Class B schools with 60%, and Class C schools with 55%. Of the three private schools responding, only one had a written policy. (See Appendix 7.)

Checklist Item #2: Articulated Philosophy for Selection/Retention

In order to answer this question, I examined policies for a broad statement of belief about the connection between educational purpose and instructional materials. Typically, if such statements are included, they appear at the beginning of the policy. Sometimes the statement is extremely brief. For instance, Policy B12 states only that "a variety of textbooks and other learning resource materials meet the unique needs of the students." Other statements are several paragraphs in length. In any case, if a statement in the policy addresses a philosophy about the relationship between the purpose of education and the function of instructional materials, I considered it an articulated philosophy. If the policy itself refers to these broad
statements as criteria or objectives, I included them in the data on criteria, but not as statements of philosophy.

Half of the policies, or 18, express a philosophy for selection/retention of instructional materials. The most common philosophy, found in seven policies, is the view that instructional materials implement, enrich, and support the curriculum. Also common are the views that instructional materials should promote an atmosphere of free inquiry (found in six policies) and should represent a wide range of appeal and points of view (found in five policies). Unusual philosophies, found only in single policies, include the beliefs that materials should contribute to the development of each student; be "free of objectionable propaganda"; develop skills in literary appreciation, critical thinking, viewing, and library use; and promote recreational reading and viewing.

I also examined the statements of philosophy for language which embraced the two philosophical issues which have interested the courts. If statements of philosophy mentioned the role of schools in general or materials in particular in inculcating values, as opposed to promoting academic skills or educational objectives, I considered such statements endorsements of the "inculcation of values" philosophy. If the statements endorsed free inquiry or providing access to a wide range of ideas, I regarded them as endorsements of the "marketplace of ideas" philosophy. More policies (27.8%) addressed the "marketplace of ideas" philosophy than the "inculcation of values" philosophy (16.7%), but in most policies, neither was addressed. Two policies embraced both philosophies. (See Appendix 7.)

Checklist Item #3: Scope of the Policy

I collected data on the scope of the policies by recording definitions of "instructional materials," or synonymous terms, and statements of included materials. Only 25% (9) of the policies provide such definitions, and these
present a range of interpretations for the term. Policy A7 provides perhaps the broadest interpretation, defining "educational materials" as "any material used as a part of the course of instruction." Policy C9 narrows the field with a definition of "text materials" as "textbooks and other print and nonprint material provided in multiple copies for use in a total class or a major segment of such a class." Policy B12 defines "instructional materials" as "all printed, filmed or recorded materials furnished by the district for student use and/or included on students' reading lists." The policy also defines "textbooks" as material meeting either of the following criteria: (1) "any instructional material held in six or more copies in a given classroom," or (2) "the major instructional material for a given course," including a "collection of pamphlets, periodicals, etc.," around which a course "is built." Policy A11 does not define "books and instructional materials" in the selection portion of its policy, but in the review selection defines "related educational material" as Policy A7 does, "any material used as a part of the course of instruction."

The majority of the policies provide no definition of instructional materials, but many indicate scope through mention of specific types of materials. Thus, 69.4% (25) of the policies specifically include textbooks in their scope. Other types of materials are far less frequently mentioned. Films are mentioned in 11.1% (4) of the policies. Novels and periodicals, including magazines and newspapers, are mentioned in only 5.5% (2) of the policies.

A few policies include types of materials not mentioned in my guidelines, but worth noting here. Gifts are specifically mentioned in two of the policies. Workbooks, worksheets, and transparencies are included in the selection policy of one high school. (See Appendix 8.)

Checklist Item #4: Selection Procedures

Thirty of the 36 policies (83.3%) establish some procedure for selection, but in every instance, these procedures are very broadly outlined. Typically,
the procedural statements go no further than to delineate the responsibilities of the parties involved in selection. Thus, in nine of the 30 policies, the initial selection is delegated to individuals—either classroom teachers or department chairs. Twenty-one of the 30 policies delegate the initial selection of materials to a committee. Eight of the policies do not delineate the composition of the committee. Two of these eight refer specifically to the curriculum committee; another one refers to a textbook committee. In the 13 policies which do delineate the composition of the committee, there is little variation. Specific data follows:

Representation on Selection Committees

<table>
<thead>
<tr>
<th>Designated Individuals</th>
<th>Number of Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers</td>
<td>13</td>
</tr>
<tr>
<td>Administrators</td>
<td>9</td>
</tr>
<tr>
<td>Library/Media Specialist</td>
<td>3</td>
</tr>
<tr>
<td>Trustees</td>
<td>3</td>
</tr>
<tr>
<td>Community Members</td>
<td>2</td>
</tr>
<tr>
<td>Department Chairs</td>
<td>2</td>
</tr>
<tr>
<td>Students</td>
<td>2</td>
</tr>
<tr>
<td>Parents</td>
<td>1</td>
</tr>
</tbody>
</table>

In 21 of the 30 policies, the board expressly reserves final authority on the selection of instructional materials. Two policies delegate total authority to faculty to make decisions about supplementary materials, but reserve decisions on textbook selection for the board. In two other cases, the public is provided an opportunity to review selected materials before the board votes on adoption. (See Appendix 8.)

Four policies treat the selection of films or movies differently from the selection of other materials. Policy B4 requires that a list of all movies proposed as part of the instructional curriculum during a particular school year be submitted to a review committee for prior approval. Permission slips "containing relevant information about films to be shown in class" must be sent home at least one week in advance of showing the film. Students without signed permission slips will not be allowed to view films. Another
policy (A10) distinguishes between print and nonprint materials briefly in its selection criteria, stipulating that "audiovisual representations should correspond to the comprehension level of the intended users." Policies AA5 and AA6 (two high schools with the same policy) restrict the selection of films in several ways. R-rated films seem to be forbidden, but the policy is unclear on this matter. At one point, the policy says R-rated films may not be used, yet "some R-rated movies" may be shown with prior permission from parents. Excerpts from R-rated movies—"for example, Arthur pulling the sword from the stone in *Excalibur*"—may be shown. Movies previously edited by vendors or edited on-site by the teacher to omit "offensive language" may be shown. The policy also specifies the appropriate film rating for each grade. Students in all grades may watch G-rated films; in grades 6-12, PG-rated films; and in grades 8-12, PG-13-rated films.

**Checklist Item #5: Selection Criteria**

The majority of the policies—29 of the 36, or 80.5%—provide criteria for selection of instructional materials. The typical presentation of these criteria is as a numbered list of anywhere from three to eight criteria. Eleven of the policies, or 30.5%, use virtually identical lists of five or six criteria. These lists, in turn, can be found in model policies from the Office of Public Instruction. However, individual high schools have modified the list to reflect their own concerns and priorities. (See Appendix 9 for statistical information on each criterion.)

The most common selection criterion (found in 25 policies, or 86.2%) is consideration of the needs of students who will use the material. Frequently, policies list these needs as "abilities, interests, and maturity levels." Another common description is "ability and social and emotional development." Policies C2 and C17 simply refer to "the unique needs of students." Policy B8 narrows the criterion to the "maturity of the average student."
The second most common selection criterion (22 policies, 75.8%) is enrichment and support of the curriculum. Variations of this language include "consistent with curriculum and district goals" and "relevant to curriculum and district objectives."

Most policies (21, or 72.4%) use the criterion of providing a variety of viewpoints on controversy, often linking this criterion to the development of critical thinking skills or the skills needed in a democracy. This criterion is discussed in greater detail under Checklist Item #8.

The majority of the policies (16, or 55.1%) show an interest in selecting materials which develop understanding of the concerns and contributions of current and historical cultures, varied religions, minorities, and both sexes. A number of variations on this theme are in evidence in the policies. Some policies (B12 and B13, for example) list this criterion as two separate criteria, one on "ethnic, cultural, and occupational diversity" and another on the contributions of various groups. Policy AA3 phrases this criterion as the presentation of the "problems, aspirations, attitudes and ideals of society."

Many policies (11, or 37.9%) include a criterion which emphasizes "growth in factual knowledge, critical thinking, literary appreciation, aesthetic values, and ethical standards." Again, several variations on this criterion exist. Some policies (B12, B13) include physical fitness in this list; others (A11, C20) omit one or two items. Two variations may be the result of typographical errors. Policy A11 refers to "literacy appreciation," rather than "literary appreciation." Policy B11 refers to this item as "library appreciation." Finally, one policy (AA2) condenses this criterion to "stimulates creativity and growth."

Criteria less commonly found in the policies include:

- provide a high-quality, comprehensive collection
- meet high standards of quality in content and format
- present factual material objectively
- model self-respect and ethnic pride
• provide coordination between and within schools in the district
• serve the interests and needs of the majority of the students
• meet the standards of truth and art
• provide aids to learning, including teachers manual
• have appropriate philosophy, integrity, scope, approach, and nature of content
• include services offered by publisher
• help child develop into a citizen of God's Kingdom

Checklist Item #6: Topic Sensitivity

Only three of the policies refer to topics regarded as sensitive. (See Appendix 10.) Policy A2 specifies "objectionable propaganda" as a sensitive topic, but provides no guidelines for judging whether material contained objectionable propaganda. Policy A8 delineates several sensitive topics: obscenity, advocacy of overthrow of the government, sex, and profanity. The policy also provides guidelines for judgments in two of these areas, requiring that objections to sex and profanity be weighed against the realism of the work and its literary merit. Finally, Policy C15 makes the most extensive list of sensitive topics. Included are excessive sexual language, excessive violence portrayed favorably, the excitation of lust, the author's negative attitude or intent, and lack of literary value. For guidelines, the policy indicates that literary value will be considered.

Checklist Item #7: Age-Appropriateness

A substantial number of the policies—15, or 41.6%—address the issue of age-appropriateness. Typical language includes "appropriate to the level of the user" (AA2), "suitable for the student's maturity" (A7), and "appropriate for the ability level, emotional and social development of the students for
whom the materials are selected" (B11).

Although the issue of age-appropriateness is addressed, guidelines on how to assess age-appropriateness are provided in none of the policies. Only one policy comes close. Echoing court decisions citing the response of the average person as a guideline, Policy B8 mentions the average student as the determining guideline. (See Appendix 10.)

Checklist Item #8: Endorsement of Wide Range of Topics

Sixteen of the high schools responding, or 44.4%, endorse selections which include a wide range of topics, including controversial ones. (See Appendix 10.) Once again, a great variety exists in the language and scope of endorsement. Policy AA3 devotes three pages to the subject, beginning with the observation that "instruction in controversial issues is an important phase to the development of a student toward responsible citizenship" and important questions and issues "are likely to contain a significant emotional element." The policy then delineates the rights and responsibilities of students, teachers, administrators, patrons, and the board of trustees. Policy A8 declares that "there shall be the fullest practical provision of material presenting all points of view concerning the problems and issues of our times," but the emphasis of this section of the policy is on factual material, rather than fictional: "material of sound factual authority shall not be prescribed or removed ...." The policy also contains a section devoted to the potentially controversial subjects of religion, ideology, sex, and science. Guidelines are provided for all of these subjects other than sex, but the guidelines focus on presentation of factual material. Virtually identical language can be found in the policy for AA6, AA7, AA8, and C14. Another policy, B6, endorses selection of controversial material, but limits the scope. This policy limits its endorsement to "issues which have political, economic or social significance about which [students] will begin to have an opinion."
Thus, if students have not yet begun to have an opinion on these matters, or if the issue is a religious one, it is beyond the scope of this endorsement. Policy AA2 appears to support the study of controversial issues, but precedes its endorsement of controversial materials with the qualification, "when appropriate." Finally, Policy C3 is an example of a policy which endorses the inclusion of controversial topics, but specifies its own neutral stance. "Materials shall represent various points of view even when those opinions presented might be controversial. The inclusion of controversial material does not imply endorsement of the ideas by the ___ School District or its personnel." (This language is also in an OPI model policy.)

Checklist Item #9: Retention Procedures

Thirty of 38 policies, or 78.9%, establish procedures for challenged materials. (It should be noted that, although all policies related to selection and retention of instructional materials were requested, some districts with separate policies addressing challenged materials may not have sent them. Therefore, the 78.9% figure may actually be low.) Of the 30 policies received, 11 treat the issues of retention and selection in separate policies. Two of these policies were not sent and therefore are not included in this study, leaving a total of 28 policies on retention. (See Appendix 11.)

Twenty-five of the 28 policies establish a committee to review the challenged material. Although a few policies designate review committees as either ad hoc or standing committees, most policies are not specific on this point. Nine policies do not delineate the composition of the review committee; of the other 16, each differs from the rest in some way. Therefore, a typical review committee cannot be inferred. However, data on individual representation on such committees follows:
Representation on Retention Committees

<table>
<thead>
<tr>
<th>Designated Individuals</th>
<th>Number of Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers</td>
<td>15</td>
</tr>
<tr>
<td>Administrators</td>
<td>10</td>
</tr>
<tr>
<td>Library/Media Specialist</td>
<td>9</td>
</tr>
<tr>
<td>Parents</td>
<td>7</td>
</tr>
<tr>
<td>Students</td>
<td>5</td>
</tr>
<tr>
<td>Community Members</td>
<td>5</td>
</tr>
<tr>
<td>Trustees</td>
<td>5</td>
</tr>
<tr>
<td>Subject Area Specialist</td>
<td>1</td>
</tr>
<tr>
<td>Member of Ethnic Group</td>
<td>1</td>
</tr>
<tr>
<td>Complainant</td>
<td>1</td>
</tr>
</tbody>
</table>

Three of the policies delegate the review to the superintendent, and the superintendent has strong influence in two others, since (s)he appoints the committee and has considerable latitude as to the size and type of representation on the committee (Policies A7, B18). Policy C9 allows the superintendent to decide whether to refer the review to a committee or to make the decision herself/himself.

Policy C23 establishes two review committees: the first committee is comprised of a teacher or library media specialist, the building principal, and a parent. On appeal, a second committee is formed, comprised of two trustees, one administrator, one teacher, and one library/media specialist. Apparently, the decision of this appeal committee is final.

The policies frequently provide specific procedures for the committee to follow, as well as criteria to use in making its decision. Of the 25 policies establishing a committee, 13 require that the committee seek information about the materials outside of the school, either by reading reviews and professional booklists or by consulting experts in the field. Eleven policies begin their procedural guidelines by requiring the committee to read the challenged material in its entirety. Seven require that the committee listen to the complaints of the objecting party, thus providing the party with the opportunity to be heard. (A total of 11 policies, including four without a committee provision, give the complainant this opportunity. Four policies
imply a restriction of the opportunity with phrases like "upon request of the committee" or "when appropriate.") Only three of the policies require that the committee conduct a public hearing on the matter. Once the review is completed, nine policies require that the committee submit a written report to the superintendent; two require that this report be submitted directly to the board. The remaining 14 are vague on this point. (See Appendix 12.)

Thirteen of the 30 policies expressly reserve the right of the board to make a final decision with explicit language to that effect; however, the majority do not. Two delegate the final decision to the superintendent.

Suspension, or the restriction of the material until the challenge process is completed, is provided in four of the 30 policies. Two policies delegate the decision on suspension to the review committee.

**Checklist Item #10: Retention Criteria**

Sixteen of the 30 policies provide criteria for the retention decision, but interpretations for each criterion are not provided. (See Appendix 13.) The most common criteria are evaluations from reviews and experts (13 policies), the value of the material as a whole (12), the extent to which the material supports the curriculum (11), and the validity of the objections to the material (10). Less common criteria include the weighing of the material's merits and defects (5), "truth and art" (1), age and development of intended user (1), and the application to the selection policy and other district policies (2).

**Checklist Item #11: Selection vs. Retention**

Of the 30 policies received, 19 address challenged materials as part of the same policy covering selection of instructional materials. Beyond inclusion in the same policy, however, only two of the policies show a clear connection between the decision to select and the decision to retain. Policy
A11 stipulates that the criteria used for selection of the material will also be
used for the decision on retention. Another policy (A7) mentions the
selection policy as one of several policies upon which the decision to retain
will be based. (See Appendix 14.)

Checklist Item #12: Library vs. Classroom

The majority of the policies (29, or 76.3%) are in the form of a single
policy for both library and classroom decisions. Fifteen of these 29 distinguish
library and classroom selection and retention through direct language or
separate sections; in the other 14 policies, no distinctions separate library from
classroom decisions. Only 7.9% (3) of the 38 policies have separate library and
classroom policies for both selection and retention. The remainder, 13.1%,
separate libraries and classroom decisions on selection, but incorporate them
on retention. Policies AA4, AA5, A5, C3 and C4 have separate selection
policies, but one retention policy for both library and classroom materials.
(See Appendix 14.)

Checklist Item #13: Substitution and Excusal

Eight of the 28 policies (28.6%) include provisions for substitution or
excusal. (See Appendix 14.) Excusal provisions are found in three policies.
Policy AA2 allows students to be excused from using any materials which
they or their parents find objectionable, but stipulates that others may still use
the material. Policies AA3 and B5 require that either substitute materials or
excusal be provided, whichever the parents wish. Three policies contain
provisions for substitution. Policy A7 requires that alternative materials be
provided by the instructor. Policy A10 requires that alternative materials be
provided "where feasible." Policy A11 offers the possibility of substitution, but
no guarantees, and stipulates that class-wide changes will not be made
without the approval of the review committee or the board of trustees.

Two policies make some alternative provision, but the nature of the provision doesn't clearly fall under the description of either substitution or excusal. Policy B8 allows the principal to decide whether a student can work "independently." In addition, this policy stipulates that the decision will be made independent of the challenge process. Apparently, then, the principal alone ultimately decides whether a challenge is successful for that particular student. Policy C15, while technically providing neither option, does imply excusal by including criteria for "restricting" a book and an option for "parental sign-off" for materials.

Policies having substitution/excusal language frequently designate the grounds for objection as well. Policy AA2 requires a "valid reason" that students or parents find material "personally objectionable." Similarly, Policy A7 accepts personal objections, but adds that the school may ask for reasons. Policy AA3 requires "strong objections ... on religious, moral, or other acceptable grounds." Finally, Policy A10 allows objections to materials found "offensive on grounds of individual conscience," as long as the objections are "reasonable" and "made in good faith."
CHAPTER 6

DISCUSSION AND CONCLUSIONS

The results of this study provide both general and specific information about policies for selection and retention of instructional materials in Montana high schools. Not only can the general outlines of such policies be described, but specific areas of strength and weakness also surface. For ease of reference, this discussion analyzes the findings in the same sequence that they were presented in the previous chapter, sometimes combining topics when it seems logical to do so. Each subsection ends with specific recommendations. This chapter concludes with recommendations for further study, general comments about the value and limitations of the study, and a model policy.

Existence of a Written Policy

Perhaps the most obvious weakness revealed by this study is the absence of a policy for either selection or retention in a large portion of the sample. Over a quarter of the schools responding did not have such a policy, despite the statutory requirements for one and the pedagogical, financial, and ethical arguments expounded in Chapter I. Two principals told me that they had a policy, but it was unwritten. "The teachers have it in their heads," one Class AA administrator said. "It's just been sort of a tradition here that everyone understands," a Class C principal said. Unwritten policies give the appearance of leaving the important matter of selection to the whim of an individual. Moreover, unwritten policies do not protect a district well in the event of a challenge.

Beyond the concerns raised by the lack of a policy, the responses of many districts reveal a lack of familiarity with their policies. Those districts which sent library policies instead of policies for instructional materials,
despite follow-up requests, may be unaware of the difference between the two. The AA principal who was unaware of the selection policy in his district is another example.

Recommendations

• All school districts in Montana should develop a written policy for selection and retention of instructional materials.
• All personnel in the district should become acquainted with existing policies for selection and retention of instructional materials.

General Description of the Policies

The previous chapter stated that the policies are notable more for their uniqueness than for their similarity. Although many policies use language and concepts from model policies, the vast majority of these do not simply replicate a model without local adaptations. The use of models from such sources as the American Library Association, the Office of Public Instruction, and the Montana School Boards Association demonstrates a willingness to rely on the expertise of others. Perhaps more important, the adaptations of the models hint at a laudable effort by local authorities to make the policies their own, a process that necessitates reading and interpreting the model, pondering applications and potential problems, and posing solutions which fit local attitudes and circumstances.

However, not all policies use models well. Policies which merely duplicate a boilerplate model give just the opposite impression of the adapted policies, a sense that perhaps no local thought has gone into the policy. In some cases, the merging of two policies, or inserting local language into an existing boilerplate, results in a policy that is inconsistent, unclear, or just plain odd. For example, Policy A6 uses a model provided by the American Library Association in 1975; the blank spaces in which the district is to provide
its name have not even been completed. However, language pertaining to selection of classroom materials has been inserted. As a result, two different lists of criteria for selection confuse that issue. This policy also delegates the responsibility for coordinating and recommending the selection of all instructional materials—including, presumably, classroom materials—to the library media specialist. Similarly, in Policy C15, the selection of classroom materials is delegated to classroom teachers, but the retention portion of the policy includes library media specialists—and no teachers—in the formal review process.

The majority of the policies are of sufficient length and scope to provide guidance for selection and retention, but some policies are too short to be clear. A policy on materials selection that does not even mention materials (A1) is surely too broad to be useful to decision-makers. Other short policies focus on matters already mandated by law—selection of textbook publishers, for instance (A2). Still others deal only briefly with selection and retention issues and at greater length with extraneous matters—e.g., free, lost, and damaged materials.

Finally, the format of some policies makes them difficult to follow and subject to misuse. Policy AA4/AA5 is relatively general as a board policy statement. However, other materials which are not referred to in policy (but were sent in response to my request for policies) provide lengthy procedures and guidelines on selection and retention decisions. The guidelines on film selection are in a different section than those on materials selection. Because the guidelines are so scattered, someone trying to deduce how a particular selection fits the school's policy would be hard-pressed to put all the pieces together coherently.

The unique features of a few policies deserve special comment. As schools become increasingly interested in school-business partnerships and as special interests, including corporate interests, become more aware of the captive audience in the classroom, attention to bias and propaganda in the
selection process is appropriate. Only one policy (A2) mentions this concern specifically, and the language is ambiguous: selected materials must be "free of objectionable propaganda." Is unobjectionable propaganda, on the other hand, acceptable? Where and how is the line drawn between "objectionable" and "unobjectionable"?

Another policy (C9) is unique in its proactive approach to selection and retention issues. It requires that teachers be updated annually on selection and retention policies. This insistence that faculty be familiar with critical policies in the district is commendable. As Ihrig noted in her work on selection and retention of public library materials,

Reviewing policy in a given area, and listing factors to be considered is a good preliminary for reaching a decision; it helps form the basis for the discussion which precedes it, outfits [decision-makers] with the rationale that can be cited, and develops an awareness of the need to revise older policies. (Ihrig, 1989, p. 49)

Policy C9 also stipulates that part of the selection process must include written rationales for recommended materials. This practice emphasizes justifying selections by tying them to specific educational objectives, a connection courts often consider. The practice is also recommended by the National School Boards Association (1989). However, in the retention portion of Policy C9, no specific mention is made of these rationales, although they would appear to be a valuable consideration in the review of challenged materials.

Recommendations

- In formulating policies, districts should examine a variety of models provided by organizations with expertise and consider adapting these models to local needs.
- Districts should organize policies so that they are easy to use.
- Districts should evaluate whether their policies are of sufficient length and specificity to provide adequate guidance in selection and retention decisions.
• Districts should address the issue of propaganda in their policies on selection of instructional materials.

• Districts should establish procedures which ensure that all those involved in selection and retention decisions—particularly faculty, administrators, and trustees—are familiar with the policies governing these decisions.

• Districts should require selection committees to supply written rationales for the selection of recommended materials. These rationales should be considered in the review of challenged materials.

Articulated Philosophy for Selection and Retention

Case law indicates that the courts find an overarching philosophy for selection and retention an important guide for the decisions made in a district, yet half of the policies in this sample express no such philosophy for selection and retention of instructional materials. Although it is possible that a more general district philosophy of education occurs elsewhere—in fact, state accreditation standards require such a philosophy—policies for selection and retention should clearly reflect a guiding philosophy.

Those policies with articulated philosophies usually have not tied these philosophies clearly to the two considerations common in case law. Although the "marketplace of ideas" approach is more commonly articulated in policies in the sample than the "inculcation of values" approach, neither is typical. What is typical, in those policies articulating a philosophy, is an endorsement of the belief that materials should support and enrich the curriculum. This particular language is more appropriate as a criterion for selection than as a philosophy that drives selection. A philosophy driving selection should clarify how instructional materials will be chosen to achieve a fundamental purpose of education. Unless that fundamental purpose is expressed, the philosophy provides little guidance. Local schools are certainly
not required to echo the philosophies of the courts; however, the facts that only half the policies express any philosophy and that many of those express philosophies which are more appropriate as criteria may indicate a failure to recognize this important part of policy development.

**Recommendations**

- Policies should begin with a statement of philosophy which guides the selection and retention policies.
- Districts should address one or both of the common philosophies expressed by the courts in their philosophy statement.

**Scope of the Policy**

Specific definitions of the term "instructional materials" are rarely provided in these policies; most policies leave the term open to a broad interpretation. Indeed, this open-ended approach may be the wiser course of action; those definitions which are provided often posed potential problems. For instance, defining "educational materials" in a selection policy (A7) as "any material used as a part of the course of instruction," technically makes the most spontaneous selection decision—e.g., the morning's newspaper editorial—subject to board approval. Other definitions are perhaps too narrow, limiting selection policy to the selection of textbooks. Some appear arbitrary—defining "textbooks" as material held in six or more copies in a classroom, for instance. Still other definitions seem hastily conceived. Policy C9, in its definition of "text materials" includes nonprint material provided in multiple copies for use in class. However, much nonprint material is provided in a single copy because an entire class can use it simultaneously. Thus, this definition may actually exclude what it seeks to include.

The findings note that gifts are included in the scope of instructional materials in a few policies, possibly because the policy is a "merge" of new
material on classroom materials selection with an existing library materials policy. A policy on gifts, although unusual in the classroom context, has merit, particularly, as noted earlier, with the influx of corporate and special interests in the schools.

Recommendation

- If definitions are used or the scope of materials covered by the policy is described, these definitions and descriptions should be examined to see if they are sensible, inclusive, and practical.
- Instructional materials policies should include gifts in their scope.

Selection Procedures

The vagueness of the selection procedures in most policies gives the designated authorities considerable latitude in, but little guidance for, the manner in which they make decisions on selection. Other than establishing a sequence for decision-making, which usually begins with selection by committee and ends with adoption by the board, few policies outline procedures further. Some mention piloting materials, but do not require it. As previously stated, one policy requires the submission of rationales as part of the selection process.

The scant attention given to selection procedures is in distinct contrast to the amount of space devoted to retention procedures, indicating a greater concern about being challenged than about ensuring appropriate choices to begin with. School districts may find that challenges can be avoided by connecting selection and retention issues more directly, particularly by providing opportunities for the public to be included in selection decisions. Although many policies refer the initial selection process to a committee, few of those committees include parents, students, and community members. Two commendable policies provide an opportunity for public review of the
selected materials prior to adoption, allowing all interested members of the public to be involved in selection decisions.

The specific focus on films in some of the policies is intriguing. Other than textbooks, films are the single form of instructional material most frequently mentioned specifically in policies. Furthermore, the attention given to film selection in four of the policies hints at a belief that films present special problems as instructional material. These policies require procedures for film selection far more restrictive than those for other instructional materials. For one thing, three of the four policies rely heavily on an extra-district evaluator, the movie rating system. Without any internal review, a movie is virtually outlawed if it has an R rating. In two policies, offensive language (which is undefined) dooms a film, and teachers are seemingly encouraged to edit films on their own, a possibly illegal practice. The requirement in another policy for prior review by committee and parental permission slips for all films outstrips anything the policy requires for selection of print materials. These practices in regard to films suggest a fear of controversy in the area of film that is not evident in regard to print media. In addition, such practices may invite precensorship and censorship.

Recommendations
- Districts should outline a procedure in policy, which might include piloting books requiring a major expenditure, considering a broad range of alternatives, and requiring written rationales for selection.
- Policies should ensure the opportunity for community input before adoption through such measures as community representation on selection committees, open committee meetings, and a well-publicized "preview" period prior to adoption.
- Districts should evaluate the consistency of their selection policies, particularly whether and why the requirements for a particular instructional medium is more restrictive than requirements for other media.
Selection Criteria

The criteria included in most policies provide authorities with appropriate guidelines for selection. The attention to educational objectives is commendable, particularly those objectives emphasized in Montana's accreditation standards, critical thinking and awareness of multicultural issues. However, the criteria themselves are often subject to broad interpretation and offer no guidelines for interpretation. This is as true of the most common criteria—age-appropriateness of the material, for instance—as of the more uncommon criteria—e.g., the truthfulness and artistry of the material, or the high quality of content and format. Thus, although those responsible for selection are given some guidance for their decisions, the lack of specific guidelines may result in inconsistencies, both among selectors in a particular decision and between one decision and another.

Typographical errors are trivial mistakes in most cases, but not when they confuse the criteria by which selection decisions are made. When criteria are provided, they should be adhered to, but when selectors are required to evaluate the ability of material to promote "literacy appreciation" or "library appreciation," the confusion encourages selectors to ignore or overlook those criteria.

Recommendation

- Policies should provide clear criteria for selection of instructional materials, particularly criteria relating the choice of material to educational objectives and to the philosophy for selection of materials.

Sensitive Topics and Age-Appropriateness

Not surprisingly, although few policies designate certain topics as sensitive, those that do validate the findings of previous studies; obscenity,
profanity, and the subject of sex are seen as sensitive areas. However, only one policy provides even the most general guideline for defining or weighing sensitive topics. The issue of age-appropriateness, closely linked to the subject of sensitive topics, is fairly commonly addressed, but only one policy even hints at a guideline for how to establish age-appropriateness. Chapter 3 of this study provides some considerations for such guidelines: the reaction of the average student, the likelihood of exposure to similar material outside the classroom, the connection of the material to the curriculum objectives, and the actual and potential harm.

Recommendations

- Those policies which delineate topics as sensitive should provide guidelines for defining or weighing sensitivity.
- Those policies which include considerations of age-appropriateness should provide guidelines for establishing age-appropriateness.

Controversial Issues

Although the majority of the policies do not specify the district's approach to controversial material, a number of the policies do. These policies show a creditable variety of approaches to the issue, invariably endorsing exposure to controversial issues in the classroom, but often providing limitations on the exposure. Some of the limitations are too elastic—providing exposure to controversy "when appropriate," for example. Other policies are too narrow in focus; the emphasis in several policies on providing wide access to factual material ignores the fact that fictional material is also frequently challenged (Doyle, 1993).

Recommendations

- Policies should avoid the use of ambiguous phrasing or phrasing
subject to diverse interpretations when specific guidelines for interpretation are not provided.

- Policies on controversial materials should include both factual and fictional materials in their scope.

Retention Procedures

Unlike selection procedures, which are usually addressed only briefly, retention procedures, when included, tend to be the longest portions of the policies. These procedures are most explicit on the responsibility for the decision, but are also far more explicit than selection policies on other aspects of procedure. Most retention policies are careful to establish a clear sequence of decision-making, usually beginning with a review committee and moving to the superintendent and ultimately to the school board. Also, the process for decision-making, particularly in committee review, generally provides a clear impression of how to proceed—what to read, what to consider, with whom to confer. Possibly, the more extensive literature on challenge issues accounts for the greater clarity of these portions of the policies.

Nonetheless, some procedural guidelines could be improved. As with the selection process, the review committees do not often include community members, parents or students, and seldom is prior appointment to such a committee or training for committee members specified. Therefore, the review process is extremely vulnerable to a "stacked" committee completely unaware of the issues involved.

The decision to use a committee is no doubt prompted in large part by the desire to be open, democratic, willing to exchange points of view on the material at hand. The appearance of openness is jeopardized by policies that encourage the appointment after the fact of committee members who do not open their deliberations for public scrutiny and comment. Furthermore, in Montana, open decision-making is not merely a matter of appearances.
Montanans have a constitutional right to know; thus, decisions on public matters like the use of classroom materials must be made in compliance with the open meeting law (J. C. Sheehy, personal communication, March 27, 1994). While Montana law does not require that complainants be given the opportunity to air their complaints in a public forum, the appearance of openness suggests the wisdom of doing so. In these policies, the provision of such an opportunity is the exception rather than the rule. Also, policies which delegate both the review and the final decision to a single person—in the case of these policies, to the superintendent—seem to provide neither an open meeting nor the opportunity to be heard.

Retention policies should be quite explicit on who makes the final decision on challenged materials; courts have found cause for concern when boards without explicit authority have overruled review committees. The majority of these policies are not explicit on this point.

Finally, some policies indicate that the use of instructional materials will be restricted or suspended, pending the outcome of the review process. This practice is feasible if the material is part of the library collection. However, suspension or restriction of classroom material presents practical problems, particularly if use of the primary text for a course is suspended for all students and if the review process is a lengthy one.

Recommendations

- Retention procedures should not only designate who is responsible for making the decision, but also outline a process to be used. That process should clarify what materials should be read, what testimony should be heard, and what criteria should be used to make the decision.
- Review policies should include community members, parents, and students in the process, both in public meetings and on review committees. These committees should be encouraged to develop expertise in the area by being appointed and trained in advance of a challenge. Training should
provide background on the philosophical and legal issues relevant to challenged materials and should familiarize committee members with the selection and retention policies and procedures in the district.

- Retention procedures should encourage open exchange of ideas and open decision-making. Policies should ensure that complainants have the opportunity to express their views, not only in writing as an initial step, but in oral testimony. A public forum should be part of the procedure and the report of the review committee should be available to the public.

- If boards intend to have final authority on retention decisions, they should state so specifically in the policy.

- Policies should stipulate that the use of classroom materials will not be suspended for all students because of the objections of some.

Retention Criteria

With respect to criteria for retaining instructional materials, only half of the policies are specific, and when provided, criteria are seldom connected with selection criteria, even though the retention policy is typically part of the same policy which addressed selection. The individual or committee that selected the material is seldom asked to defend that decision.

As with selection criteria, many of the criteria are so general as to encourage whim—e.g., "the value of the material as a whole" and "weighing faults and virtues of the material." Most policies having criteria emphasize relying on professional reviews as a major part of the decision, a practice that is not always possible, particularly when the material in question is "spontaneously" selected. On the other hand, "outside" expertise is never the sole criterion for decision-making. Most policies having criteria encourage reviewers to form their own opinions by reading the material in its entirety and evaluating the validity of the objections to the material.
Recommendations

- Policies should tie the decision to retain material more directly to the original decision to select it. Selection criteria should be included in retention criteria. Rationales for selection and testimony from selection committees should be included in the consideration to retain.

- In establishing retention criteria, consideration should be given to their practicality and their clarity. Terms should be clearly defined and/or guidelines for applying them should be supplied.

Compulsory Use Considerations

Student use of instructional materials is frequently compulsory. However, as noted in Chapter 3, a number of policy provisions can be made for students who object to particular materials. The route a district chooses to take can be clarified in several places in the selection/retention policy. The findings of this study lend themselves to the conclusion that western Montana high schools prefer not to provide alternative provisions, or at least, not to formalize them in policy.

One way to make a distinction between compulsory and optional use occurs in the way a policy approaches selection and retention policies for the library, as opposed to the classroom. Justice Brennan characterized the library as the center of free inquiry, implying that the classroom is the place for compulsory requirements. In light of that distinction, the prevalence in this sample of selection/retention policies which blend library and classroom decisions raises questions. Is this blending the considered decision of school authorities? Or is it perhaps the result of a "forced merge," the insertion of language on instructional materials into existing library policies? Such blending can create inconsistencies. For instance, age-appropriateness is a concern in many high schools, a concern which is mitigated when use of materials is optional, rather than compulsory. However, when policies fail to
distinguish between library and classroom decisions, libraries are bound by a criterion which is more appropriate to the classroom. Thus, the prevalence of blended library/classroom policies, while logical on some levels, may not be particularly logical when considered in the light of compulsory use.

There are other alternatives to compulsory classroom materials that districts may provide, but again the high schools in this sample tended not to provide them. Remarkably few policies provide either substituted selections or excusals from compulsory classroom materials. Those policies that do make such provisions tend to have ambiguous or broad criteria for making that decision. Most honor a parent's objection to particular material when the objections seem "valid" and "reasonable," or are made on "acceptable" grounds or "in good faith." Such broad criteria boil down to the judgment of whoever makes the decision, which brings up another weakness in this approach. Only two policies specify who makes this judgment. In one case, it is the superintendent; in another, the principal. The contrast between this "process" and the challenge process delineated in most policies is extreme. Challenge processes emphasize shared decision-making, specific procedures, and some criteria; this approach to alternative challenges invites inconsistent, arbitrary decisions. It implies a private decision, "just between us," with no committee review, no consultation with the teacher involved, and no public scrutiny.

**Recommendations**

- School districts should determine their philosophy on alternatives to compulsory material and use that philosophy as the basis for reconsidering their approaches to both library and classroom policies on selection and retention.

- If districts do provide alternatives to compulsory materials, these alternatives should be specified in policy. The bases for decisions on alternatives should be stated in clear terms.
• Procedures for alternative use of instructional materials should parallel challenge procedures in many respects, the most important being open and shared decision-making, established procedures, and a clear basis for the decision.

Recommendations for Further Study

This study provides general descriptive information; areas for further study abound. The most obvious is acquiring similar data from a broader sample. More specific information in several areas would also provide a clearer picture of the contents of policies for selection and retention of instructional materials and the rationales for those contents. The most fruitful areas of comparison would probably be the procedures and criteria for both selection and retention. Beyond the broadening of the sample, answers to the following questions are suggested for future studies:

• How typical is the verbatim use of model policies? In those districts where such policies are used verbatim, how familiar are trustees, administrators, and teachers with their contents?

• How do policies in schools where materials have been challenged score on the checklists provided in this study? Have areas in the checklist been relevant to the outcome of the challenges?

• How do people who have participated in retention decisions evaluate the adequacy of the policies that guided them? In a similar vein, how do people who participate in selection decisions evaluate the adequacy of the policies that guide them?

• Is the incidence of challenge lower in districts which include the public in selection procedures? Is the outcome of such challenges influenced by input from those members of the public included in selection?

• How common are written rationales for selection of materials in the United States today? What forms do these rationales take?
• How common are challenges to nonprint materials? What approaches toward the selection and retention of films are used elsewhere in Montana and the nation?
• How common are substitution/excusal provisions in policies nationwide? Is the incidence of challenge lower in districts which have policies with such provisions?
• How do materials selection/retention policies in private schools compare with those in public schools?

Implications and Limitations of This Study

Although the sample on which this study is based is limited to western Montana high schools, the conclusions have implications for a larger population. First of all, the conclusions apply to all K-12 schools in western Montana. Although my original request was for high school policies, in all but one case I was provided with a district policy applicable to all schools in the district. In essence, then, the conclusions of this study apply to K-12 schools in the sample. Second, although the conclusions may not apply to all public schools in the United States, they may be generalized to schools of like demographics in Montana and elsewhere. The response rate is extremely high; moreover, the reliance of the schools in this sample on models supplied by national organizations may be typical throughout the United States. That reliance, along with some of the problems of adaptation, may produce similar strengths and weaknesses in policies nationwide.

Of course, the study itself has limitations. First of all, some of the decisions about data required personal interpretation. Criteria which seemed vague to me might not to another researcher. Processes that I found precise, someone else might find unduly restricting. For those reasons, I supplied as much specific detail as possible about the processes, the criteria, and the bases for my decisions. Although I reduced my scoring questions to black-and-
white, yes-and-no forms, in the presentation and analysis of my findings, I did not limit myself to black-and-white answers. The interpretive nature of much of my approach would make my procedures difficult to replicate, but I am confident that I was consistent in my approach, and no one assisted me.

The greatest limitation may result from the nature of dissection. A policy is actually more than its parts, perhaps even more than the sum of its parts. Even though some policies in this sample addressed a creditable number of the items on the checklist, I did not consider them particularly strong policies. Technically, they addressed the areas with which this research is concerned, but as a whole something was missing, inconsistent—sometimes in voice, sometimes in philosophy, and sometimes even in specifics. On the other hand, some policies which addressed only a moderate number of checklist issues had a clarity which seemed to result from a singleness of vision that flowed through the policy. Perhaps, then, no part-by-part examination of policies can give a true picture of any particular policy; perhaps, like human beings, each must be considered as a whole.

My purpose in this research was to provide descriptive information that, to my knowledge, had not been provided heretofore. I have done that. This study provides information that future policy-makers may find helpful. Perhaps the most helpful addition I can make—and an appropriate conclusion to this study—is a model policy of my own making. This model relies strongly on sections of the Office of Public Instruction policy and borrows occasionally from other policies in the study; however, many of its sections are completely of my own design and the entire policy addresses the recommendations in this study. Because the model reflects my philosophies on the purposes of education and the rights of the citizens in the education community, it too has its limitations, but I provide it as a specific answer to the critical question underlying this research: How should a policy on selection and retention of classroom materials address the legal issues raised by the courts?
Model Policy for Selection of Required Instructional Materials

I. Philosophy

The Board of Trustees of Yellowstone School District believes that free inquiry of students into subject matter reflecting a broad range of ideas is the best preparation for productive, fulfilling, and responsible adult lives. Therefore, the guiding philosophy for selection of required instructional materials embraces the freedoms to learn about and express ideas without fear of censorship. These freedoms must be balanced with the freedom of students to exercise conscience without fear of reprisal, the right of parents to guide the education of their children, and the responsibility of the Yellowstone School District to preserve the integrity of its curricula.

II. Scope and Implementation

This policy guides the selection of all materials which a student or students are required to read, view, or use as part of their instruction in the Yellowstone School District. These materials may be print or nonprint in form, in single or multiple copies, and purchased or donated.

Creating a school environment characterized by the freedoms expressed in the philosophy of this policy requires the informed efforts of all members of the education community. To that end, this policy will be included in registration materials for students and summarized in informational mailings to parents each year. Annual training programs will update faculty, administration, and trustees on the interpretation and application of concepts framing this policy.

III. Selection

A. The selection of required instructional materials is based on the following criteria:

1. Material shall support or enrich the district's general educational goals, its selected program goals, and the objectives of specific courses.

2. Material shall be appropriate for the maturity level of the student for whom it is selected, as assessed by:
   a. the exposure to such subject matter or style experienced by the typical student of that age, or
   b. the relevance of the subject matter to the typical student of that age.
3. Material shall promote growth in factual knowledge, critical thinking, ethical standards, literary appreciation, and/or aesthetic values.

B. In addition, classroom material must be selected with consideration given to the collection of materials as a whole in any course, discipline, or grade level. To be consistent with the selection philosophy, the materials as a whole must meet the following criteria:

1. The materials as a whole address the varying ability levels of the students for whom they are selected.

2. The materials as a whole represent the contributions of people of both sexes and of diverse religions, ages, races, ethnicity, and cultures.

3. The materials as a whole, whether factual or fictional, present various points of view and approaches to presentation of subject matter, even when those views are controversial or promotional. The inclusion of controversial or promotional material does not imply endorsement of that material by the Yellowstone School District or its employees; rather, such materials are included to provide students with a balance of viewpoints and opportunities to exercise critical thinking under guidance.

4. The materials as a whole provide coordination within and between grade levels, courses, and disciplines.

C. Responsibility for Selection

Curriculum committees, as outlined in [insert section of board policy or administrative guidelines], will generally be responsible to recommend purchases of required instructional materials as part of the ongoing process of curriculum development and review. Recommendations will be made to the superintendent, with final approval made by the Board of Trustees.

The Board of Trustees recognizes the value of using materials which do not lend themselves to the formal selection process—e.g., current newscasts, television programs, and articles, or materials for short-term projects. Such supplemental materials may be selected by the appropriate instructor, but must comply with the selection criteria outlined in III.A and III.B of this policy.
D. Selection Procedure

The Superintendent shall be responsible for establishing the selection procedures and appointing appropriate committees. While specific procedures may vary, the following elements shall be present:

1. The committee shall consist mainly of teachers in the subject and/or grade level(s) for which materials are being selected. The committee may also include administrators, students, trustees, and citizens.

2. All meetings of the committee shall be open to the public.

3. The committee will establish specific criteria to be used in the selection of the required instruction materials. These criteria shall be consistent with this policy and with the criteria developed by the Montana Office of Public Instruction.

4. The committee will review available materials and recommend not more than five programs or sets of materials which meet the developed criteria and the criteria established in this policy.

5. The superintendent or her/his designee will approve materials recommended by the committee for staff and public consideration.

6. When possible, the committee shall pilot materials approved for consideration if materials represent a major purchase.

7. The materials under consideration shall be available throughout the district for a period of at least two weeks so that interested staff, students, and citizens may review, study, and make suggestions, if they wish. Information concerning the availability of materials for review will be sent home in the usual written communication procedures used by individual schools. In addition, appropriate notices will be placed in local newspapers or school newsletters.

8. The committee will consider the comments from staff, students, and citizens and evaluate the results of any pilot study before recommending material for purchase. The recommendation will be made in writing and will provide a rationale for purchase that addresses the committee’s selection criteria and the criteria in this policy.
9. The superintendent will approve the recommendation and submit both committee recommendation and rationale to the board of trustees. In the event that the superintendent rejects the recommendation, the committee may appeal that decision to the board of trustees.

10. The board, having examined the committee recommendation and rationale, will formally approve the purchase at a regularly scheduled meeting. The committee recommendation and rationale will become part of the minutes of that meeting.

IV. Objections to Selected Materials

The Board of Trustees recognizes that providing a wide range of instructional materials for all students may result in a conflict of conscience for some. In order to encourage the free exercise of conscience, the responsibility of parents to guide the education of their children, and public participation in school decisions, these procedures shall be followed:

A. Alternative Options: No student shall be required to use instructional materials that are personally objectionable to the student or to his or her parent/guardian. In order to avoid presenting students with conflicts between the demands of home, school, and/or conscience, the Yellowstone School District will publish a list of required instructional materials and distribute it with registration materials at all grade levels.

Nonetheless, an objection to required materials may arise. Such an objection should be taken to the building principal, whose responsibility it is to ensure that all parties involved make reasonable efforts to respect the free exercise of conscience, preserve the integrity of the curriculum, and prevent substantial disruption of the educational program. The principal will:

1. Have the parent/guardian/student complete the form "Request for Alternative Options" and assess the validity of the objection by determining that the objection is to the material itself, not to extraneous circumstances, such as the curriculum, the composition of the class, or the methods of the teacher.

2. Discuss the nature of the objection with staff member(s) directly involved in the request; ask for suggestions for alternate material which, in the teacher's judgment, may be substituted for the required material; and solicit the teacher's concerns about problems of implementing alternative options.
3. Contact the individual who made the request, discuss the validity of the objection, and if this discussion does not resolve the concern, present the following sequence of alternatives:

   a. **Substitution:** Suggest any alternate material for substitution recommended by the teacher. If the material is not acceptable to the individual, the individual may suggest alternate material. If this material is approved by the teacher as an equivalent alternative, it will be substituted for the material in question.

   b. **Excusal:** If, in the judgment of the teacher, the material in question does not comprise a major component of the course, the student may be excused from that portion of the course. Her/his grade in the course will not be affected by this excusal.

   c. **Withdrawal/Transfer:** If, in the judgment of the teacher, the material in question, or the addition of this excusal to previous excusals, does comprise a major component of the course, and if, in the judgment of the principal, the objection is valid, as defined in IV.A(1), the student may:

      i. drop the course without a record of the course on his/her permanent transcript;

      ii. retain his/her grade average at the point of withdrawal and transfer to a course which the principal deems equivalent; or

      iii. substitute coursework which the principal deems equivalent from another source.

4. Maintain a written record of the request for alternative options and its resolution.

B. **Reconsideration.** Members of the community or staff may wish to request the reconsideration of certain required instructional materials. Because such reconsideration may disrupt the educational process, require additional expenditures, and damage the atmosphere of free inquiry in the schools, the Yellowstone School District will encourage public participation in the review of books prior to their adoption.
Nonetheless, a request for reconsideration may occur. In that event, it is the responsibility of the Board of Trustees to ensure that only a substantial and reasonable justification interferes with free inquiry in the Yellowstone School District.

A review committee shall be established by the superintendent at the beginning of every school year. This committee will include one high school student, one trustee, one citizen, two teachers, one library/media specialist and one administrator. The committee will receive inservice training and periodic informational mailings to familiarize members with the selection policy, the review procedures, and censorship issues.

To request reconsideration, the individual shall contact the teacher in an attempt to resolve the issue informally. If the matter is not resolved at that level, the following formal reconsideration process will be implemented. If the issue is resolved at any step in this process, the process will be terminated. The individual making the request for reconsideration may withdraw the request at any time. Material will not be suspended or restricted during the reconsideration process.

1. The individual will complete the form, "Request for Reconsideration of Instructional Materials," available in the office of the principal.

2. The principal will:
   (a) notify all staff members directly involved in the request and discuss the nature of the complaint with them;
   
   (b) contact the individual who made the request to discuss the issue further and attempt to resolve it; and
   
   (c) if the issue is not resolved, forward the "Request for Reconsideration of Instructional Materials" and other appropriate correspondence to the superintendent.

3. The superintendent will:
   (a) provide the review committee with the "Request for Reconsideration of Instructional Materials;" the written rationale for selection, if any; and other materials, as requested by the committee;
(b) act as information officer to the public, the Board of
Trustees, the faculty, and the committee;

(c) review the determination of the committee and make a
final decision;

(d) communicate the final disposition of the reconsideration
to all parties in the action.

4. The review committee will:

(a) conduct all of its meetings in public;

(b) review the material in question in its entirety in order to
form an opinion based on the material as a whole;

(c) read the request for reconsideration and the selection
rationale, and consult any professionals or professional
reviews which individual members desire;

(d) provide the individual(s), the selection committee, and
other interested parties an opportunity to meet with the
committee, present their opinions, and answer the
committee's questions;

(e) determine through committee vote whether the material
in question meets the selection criteria outlined in
Sections III.A and III.B. of this policy, and should therefore
be retained;

(f) render its determination in writing, along with a minority
report, if desired, to the superintendent.

5. In the event of an appeal by any parties involved in the original
reconsideration process, the Board of Trustees will make a final
determination, using the same procedure as the review
committee (outlined in IV.B(4)).
APPENDICES
Appendix 1
Initial Collection Letter to High School Principals

November 11, 1993

Jo/Joe Principal
Whatever High School
Wherever, MT

Dear Jo/Joe:

I am writing to request copies of all policies which are used to select instructional materials for classroom (as opposed to library) use. I am interested in materials selection policies for both textbooks and supplementary materials, such as novels, films, and videos. If you have a particular policy for complaints about selected materials, I would appreciate receiving that as well.

As you know, the choice of instructional materials has come under considerable scrutiny, in Montana and throughout the nation. In order to help schools face that scrutiny with greater confidence and clarity as to the issues involved, I am conducting descriptive research of materials selection policies in western Montana high schools. My research project is being supervised by the Department of Education of the University of Montana.

I can assure you that your high school will not be identified in any way in the course of my research. My purpose is simply to gather data and to analyze how western Montana high schools are dealing with the complex issues involved in choosing materials which are both meaningful and appropriate for Montana students.

Once I have received the pertinent policies, I may follow up with a telephone call to learn more about how and by whom your policies have been developed and how they are applied. I realize that you may not be the person most directly involved with materials selection, so please forward this request and the enclosed cover sheet to the staff person you deem most appropriate. Thank you in advance for your cooperation.

Sincerely,

Mary Sheehy Moe
Appendix 2
Follow-up Postcard to High School Principals

A Reminder for the Principal or Curriculum Director:

A month ago, I sent a request for any policies your high school uses for selection of instructional materials (not for the library, but for the classroom). As of Mon., Nov. 29, I had not received a response.

If you have responded, just disregard this reminder. If you have not, please send your policy/policies as soon as possible. If you have no policy, put an X here ____, and send me this card.

Thank you in advance for your cooperation.

Mary Sheehy Moe
Graduate Research Project
University of Montana
Appendix 3
Final Request for Materials from District Superintendent

December 20, 1993

Superintendent Whoever
Wherever, MT

To the superintendent:

I am writing to request your help in obtaining materials selection policies from your district for the research project I am conducting under the supervision of the University of Montana.

Enclosed is the first of two communications I sent to your high school's principal explaining the scope of the project and the nature of the policies which I am gathering.

Also enclosed is a self-addressed, stamped envelope for your convenience. If you have access to the selection policies for classroom (not library) materials at the high school level in your district, I would appreciate a copy. If you do not have such policies, just put a checkmark here ______, and return this letter in the SASE.

I know that this is a busy time of year, but I am most interested in including your high school in my study. Thanking you in advance for your cooperation, I am

Sincerely,

Mary Sheehy Moe

Enclosures: 11/11 Letter to High School Principal
SASE
Appendix 4
Coded Sample and Responses

Note: Unless noted through the symbol system described below, policies on selection and retention of instruction materials were received.

* No written policy
** Sent only library policy
*** No response
*+ Sent only review policy
++ Telephone response: no policy

Class AA Schools

<table>
<thead>
<tr>
<th>AA1</th>
<th>AA2</th>
<th>AA3</th>
<th>AA4</th>
<th>AA5</th>
<th>AA6</th>
<th>AA7</th>
<th>AA8</th>
</tr>
</thead>
<tbody>
<tr>
<td>**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Class A Schools

<table>
<thead>
<tr>
<th>A1</th>
<th>A2</th>
<th>A3</th>
<th>A4</th>
<th>A5</th>
<th>A6</th>
<th>A7</th>
<th>A8</th>
<th>A9</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>**</td>
</tr>
</tbody>
</table>

Class B Schools

<table>
<thead>
<tr>
<th>B1</th>
<th>B2</th>
<th>B3</th>
<th>B4</th>
<th>B5</th>
<th>B6</th>
<th>B7</th>
<th>B8</th>
<th>B9</th>
<th>B10</th>
<th>B11</th>
<th>B12</th>
<th>B13</th>
<th>B14</th>
<th>B15</th>
<th>B16</th>
<th>B17</th>
<th>B18</th>
</tr>
</thead>
<tbody>
<tr>
<td>**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>***</td>
<td></td>
<td></td>
<td></td>
<td>***</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Class C Schools

| C1  | C2  | C3  | C4  | C5  | C6  | C7  | C8  | C9  | C10 | C11 | C12 | C13 | C14 | C15 | C16 | C17 | C18 | C19 | C20 | C21 | C22 | C23 |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| *** |    |    |    |    |    |    |    |    |    |    |    | *** |    |    |    |    |    |    |    |    |    |    |    |    |    |
Appendix 5
Response Rate

Class AA Schools

13 schools total
8 in western Montana/5 separate districts, 61% of all AA schools
8 responded/5 separate districts

Class AA Response Rate: 100%

Class A Schools

22 schools total
11 in western Montana, 50 % of all A schools, 1 parochial school
11 responded, including 1 parochial school

Class A Response Rate: 100%

Class B Schools

45 schools total
18 in western Montana, 41% of all B schools, 1 parochial school
14 responded

Class B Response Rate: 77.8%

Class C Schools

102 schools total
23 in western Montana, 22,5% of all C schools, 2 parochial schools
20 responded, including 2 parochial schools

Class C Response Rate: 86.9%

Totals

182 high schools in Montana
60 high schools in western Montana, representing 32.9% of total
53 responded

Total Response Rate: 88.3%
# Appendix 6
Distribution of Scores on Checklist of Legal Issues

**Yes Answers**

<table>
<thead>
<tr>
<th>Score</th>
<th>Answers</th>
</tr>
</thead>
<tbody>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>A10</td>
</tr>
<tr>
<td>8</td>
<td>B18</td>
</tr>
<tr>
<td>7</td>
<td>A11 B5 B11 C3 C9 C20 C23</td>
</tr>
<tr>
<td>6</td>
<td>A5 B6 B8 B12 C4</td>
</tr>
<tr>
<td>5</td>
<td>AA2 AA6 AA7 AA8 A6 B2</td>
</tr>
<tr>
<td>4</td>
<td>AA3 A8 A7 A3 B13 C14</td>
</tr>
<tr>
<td>3</td>
<td>AA4 AA5 B9 C2 C17</td>
</tr>
<tr>
<td>2</td>
<td>A2 C5 C7 C11</td>
</tr>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>A1</td>
</tr>
</tbody>
</table>
Appendix 7
Existence of Selection/Retention Policy
Articulated Philosophy

Checklist Item #1: Is there a written policy for selection and retention of instructional materials?

Yes: 36 schools of 53 (67.9%)
No: 13 (24.5%)
Retention only: 2
Library only: 2

Answer by Size Classification

<table>
<thead>
<tr>
<th>Size Classification</th>
<th>Yes</th>
<th>No</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA</td>
<td>7/8</td>
<td></td>
<td>87.5%</td>
</tr>
<tr>
<td>A</td>
<td>9/11</td>
<td></td>
<td>81.8%</td>
</tr>
<tr>
<td>B</td>
<td>9/15</td>
<td></td>
<td>60%</td>
</tr>
<tr>
<td>C</td>
<td>11/20</td>
<td></td>
<td>55%</td>
</tr>
<tr>
<td>Private</td>
<td>1/3</td>
<td></td>
<td>33.3%</td>
</tr>
</tbody>
</table>

Checklist Item #2: Is a philosophy for selection and retention of instructional materials stated?

Yes: 18/36 (50%)
No: 18/36 (50%)

Data on philosophies of interest to the courts

<table>
<thead>
<tr>
<th>Philosophy Type</th>
<th>Yes</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marketplace of Ideas Language:</td>
<td>10/36</td>
<td>36</td>
</tr>
<tr>
<td>Inculcate Values Language:</td>
<td>6/36</td>
<td>36</td>
</tr>
<tr>
<td>Both:</td>
<td>2/36</td>
<td>36</td>
</tr>
</tbody>
</table>

Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.
**Appendix 8**  
Definitions of "Instructional Materials"  
Procedure for Selection

<table>
<thead>
<tr>
<th>Checklist Item #3:</th>
<th>Does the policy define &quot;instructional materials?&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes: 10/36 27.8%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>What materials do policies specifically include?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Textbooks 25/36 69.4%</td>
</tr>
<tr>
<td>Novels 2/36 5.5%</td>
</tr>
<tr>
<td>Films 4/36 11.1%</td>
</tr>
<tr>
<td>Periodicals 2/36 5.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Checklist Item #4:</th>
<th>Does the policy establish procedures for selection?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes: 30 of 36 policies</td>
</tr>
<tr>
<td></td>
<td>No: 6/36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Who makes the selection decisions?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delegated to committee: 21 of 30 policies</td>
</tr>
<tr>
<td>Board preserves final authority: 21 of 30 policies</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Who are represented on the selection committee?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teachers 13</td>
</tr>
<tr>
<td>Administrators 9</td>
</tr>
<tr>
<td>Library/Media Specialist 3</td>
</tr>
<tr>
<td>Trustees 3</td>
</tr>
<tr>
<td>Community Members 2</td>
</tr>
<tr>
<td>Department Chairs 2</td>
</tr>
<tr>
<td>Students 2</td>
</tr>
<tr>
<td>Parents 1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Does public have opportunity to review prior to adoption?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes: 2 of 30 policies</td>
</tr>
</tbody>
</table>
Appendix 9
Selection Criteria

Checklist Item #5: Does the policy delineate selection criteria?

Yes: 29
No: 7

Criteria Mentioned in Policies

1. Consider the needs and level of students (25/29) 86.2%
2. Enrich and support curriculum (22/29) 75.8%
3. Provide variety of viewpoints (2/29) 72.4%
4. Develop gender, multicultural awareness (16/29) 55.1%
5. Stimulate intellectual growth (11/29) 37.9%
6. Provide high-quality, comprehensive collection (7/29) 24.1%
7. Meet high standards for content and format (6/29) 20.7%
8. Provide information to enable students to make intelligent judgments (4/29) 13.8%
9. Present factual material objectively (4/29) 13.8%
10. Provide models for self-respect and ethnic pride (2/29) 6.9%
11. Provide coordination between/within schools (2/29) 6.9%
12. Be affordably priced (2/29) 6.9%
13. Include services offered by publisher (1/29) 3.4%
14. Reflect truth and art (1/29) 3.4%
15. Serve interests, needs of majority of students (1/29) 3.4%
16. Have appropriate philosophy, integrity, scope, approach, and content (1/29) 3.4%
17. Provide aids to learning (1/29) 3.4%
18. Help child develop into citizen of God's Kingdom (1/29) 3.4%
Appendix 10
Topic Sensitivity
Age-Appropriateness
Controversy

Checklist Item #6: Does the policy address topic sensitivity?
Yes: 3 of 36 policies 8.4%
No: 33 of 36 91.6%

Checklist Item #7: Does the policy address age-appropriateness?
Yes: 15 of 36 policies 41.6%
No: 21 of 36 policies 59.4%

Checklist Item #8: Does the policy endorse inclusion of controversial materials?
Yes: 16 of 36 policies 44.4%
No: 20 of 36 policies 55.6%
Appendix 11
Retention Procedures

Checklist Item #9: Does the policy establish a procedure for retention decisions?

Does a policy for retention of challenged material exist?
Yes: 30 of 38 policies
Received: 28 of 30 policies

Is the retention policy part of the policy which addresses selection of instructional materials?
Yes: 19 of 30
No: 11 of 30

Is the complaining party provided with a public forum in which to be heard?
Yes: 11*
* Four policies qualify the opportunity with phrases like "when appropriate" and "upon request of committee"

Is use of the material suspended while the decision is being made?
Yes: 4 policies
Committee decides: 2

If explicitly stated, to whom is the final decision on challenged materials delegated?
Board of Trustees: 13
Superintendent: 2
Appendix 12
Retention Committees and Committee Process

Does the policy delegate review of the material to a committee?
Yes: 25 of 28 policies
Deferred to superintendent: 3 of 28

Does the policy specify the composition of the committee?
Yes: 16 of 25 policies
No: 9 of 25

Which entities are typically represented on retention committees?

- Teachers: 15 of 16 policies
- Administrators: 10
- Library/media: 9
- Parents: 7
- Students: 5
- Community members: 5
- Trustees: 5
- Subject area specialist: 1
- Member of ethnic group: 1
- Complainant: 1

What specific procedures for evaluating material are given?

- Total number of policies delineating procedure: 18
- Read/seek professional reviews/counsel: 13
- Read challenged material in entirety: 11
- Listen to objections of complainant: 7
- Complete reconsideration form: 5
- Conduct public hearing: 3
- Submit report to superintendent: 9
- Submit report to board: 2
### Appendix 13
Retention Criteria

**Checklist Item #10:** Does the policy delineate criteria for retention decisions?

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes:</td>
<td>16 of 38 policies</td>
</tr>
<tr>
<td>No:</td>
<td>22 of 38 policies</td>
</tr>
</tbody>
</table>

What specific criteria are delineated as the bases for decisions?
(Total number of policies delineating criteria: 16)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expert opinion</td>
<td>13</td>
</tr>
<tr>
<td>Value of material as whole</td>
<td>12</td>
</tr>
<tr>
<td>Extent to which material supports curriculum</td>
<td>11</td>
</tr>
<tr>
<td>Validity of objections</td>
<td>10</td>
</tr>
<tr>
<td>Weighing of merits and defects</td>
<td>5</td>
</tr>
<tr>
<td>Application to selection criteria</td>
<td>1</td>
</tr>
<tr>
<td>Application to other district policies</td>
<td>1</td>
</tr>
<tr>
<td>Truthfulness and artistry</td>
<td>1</td>
</tr>
<tr>
<td>Age and development of intended user</td>
<td>1</td>
</tr>
</tbody>
</table>
Appendix 14
Connection between Selection and Retention
Library vs. Classroom Policies
Substitution/Excusal Provisions

Checklist Item #11: Does the policy connect selection and retention decisions?

Is the retention policy part of the policy which addresses selection?
Yes: 19 of 30
No: 11 of 30

Checklist Item #12: Does the policy distinguish between library and classroom selection/retention issues?

Separate Policies: 3 of 38 7.9%
Single Policy, Distinguishing Language 15 of 38 39.5%
No Distinction: 14 of 38 36.8%
Other: 5 of 38 13.1%

Checklist Item #13: Does the policy include provisions for substitution and/or excusal?

Yes: 10 of 28 policies
Substitution: 5 policies
Excusal: 3 policies
Other: 2 policies

Bases for substitution/excusal:

• valid reason
• personally objectionable
• strong objections on religious, moral, or other "acceptable" grounds
• good faith objections
• reasonable objections
• wishes of parents
• feasibility of substitution
• principal determines student can work independently
REFERENCES


Brubaker v. Board of Education, 502 F.2d 973 (7th Cir. 1974).

Cary v. Board of Education, 589 F.2D 535 (10th Cir. 1979).


Fowler v. Board of Education of Lincoln County, Kentucky, 819 F.2d 657 (6th Cir. 1987).


Grove v. Mead School District No. 354, 753 F.2d 1528 (9th Cir. 1985).


Mozert v. Hawkins County Board of Education, 827 F.2d 1058 (6th Cir. 1987).


Reproduced with permission of the copyright owner. Further reproduction prohibited without permission.


Pratt v. Independent School District No. 831, 670 F.2d 771 (8th Cir. 1982).


Virgil v. School Board, 862 F.2d 1517 (11th Cir. 1989).


Zykan v. Warsaw Community School Corporation and Warsaw Board of Trustees, 631 F.2d 1300 (7th Cir. 1980).