



RIGHT TO READ

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Who Decides What You Can Teach?

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In my time as a classroom teacher in the Miami Dade County Public School system, I taught books such as *Speak*, by Laurie Halse Anderson (1999), and had in-depth discussions with students about date rape and dating violence; *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie (2007), where we interrogated issues of colonialism and racism; and *Geography Club*, by Brent Hartinger (2003), through which we examined homophobia and homophobic bullying. Although these novels have been frequently challenged and banned elsewhere (Peters, 2016), I was never in fear of being forbidden to teach any text. Many teachers today do not enjoy similar rights to choose texts, and every year at the ALAN Workshop, I have discussions with public school teachers who are not allowed by their administrations to teach certain texts. Why is it that I was able to choose texts while many of my colleagues across the country are not? The answer is both simple and complicated: academic freedom.

Academic freedom is a wide-ranging concept that operates both at the university and K–12 levels, and in the most general ways refers to the protections that professors, teachers, students, and institutions (such as universities and public schools) are afforded from external censorship. These protections are rooted in the Germanic concepts of *Lehrfreiheit* and *Lernfreiheit*, which describe the freedom of the

teacher and of the student in academic pursuits; in America, however, academic freedom is based in constitutional law, contract law, and academic custom (Euben, 2004). The basis for an individual's academic freedom stems from the First Amendment's ban on prohibiting free speech and in a cultural belief in the intellectual freedom of teachers and students that is often described as the right of "faculty members . . . to speak and write as they please without interference from the university, the state, or the public [and] the right of students to engage in discussion without fear of reprisal" (Wood, 2009).

The study of academic freedom encompasses many fields, including law, library science, and education, and there is even a scholarly journal dedicated to the topic, the *Journal of Academic Freedom*. Although there are many facets to academic freedom—including the protection of speech outside the classroom, the right of teachers to bring in guest speakers, and the right to criticize policies and superiors—this article will focus on how academic freedom relates to public school classroom teachers and their ability to choose curricula, especially as it relates to English language arts teachers choosing texts and topics.

Current legal precedents for academic freedom related to teachers' right to choose curricula are heavily influenced by the landmark supreme court decision in *Hazelwood v Kuhlmeier* (1988). In this case, the principal of Hazelwood East High School in St. Louis County, Missouri, removed a page from the school's student newspaper because he deemed two articles that addressed divorce and student pregnancy objectionable (Moshman, 2009). The students sued, arguing that their First Amendment rights had been

violated. The initial court ruling found in favor of the principal, but the Eighth Circuit Court of Appeals reversed that decision and found that the principal's actions violated the students' freedom of speech. The case went to the Supreme Court, which overturned the appeals court 5-3, reaffirming the principal's right to censor what was considered to be official school speech. The court concluded in its opinion that educators, in this case the school principal, "do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored activities" (*Hazelwood v. Kuhlmeier*, 1988, p. 273). This court ruling was decisive because it found that "the curriculum, and all speech associated with it" were "a domain largely outside the scope of the First Amendment" (Moshmann, 2009, p. 33), effectively placing the final say on all curricular decisions in the hands of school administrators and/or school boards.

Court cases involving academic freedom specifically related to English teachers are few, but the verdicts are not promising for those looking to deviate from a proscribed reading list. One such case was *Minarcini v Strongsville City School District* (1976), where the Sixth Circuit Court of Appeals found that school boards had the right to ban texts from being purchased by school libraries or assigned as reading in classes and that school boards could prohibit teachers and students from simply discussing the banned books; on the other hand, the court ruled that the school board could not remove texts from the school library (Algeo & Zirkel, 1987). Thus, once a book has entered a library, it is more difficult for it to be removed; unfortunately, the same does not hold true for texts in classrooms and curricula.

Other cases have reinforced the power of school boards to be the ultimate decider in curriculum, and courts have found that they can create reading lists and forbid teachers from deviating from them as long as no "systematic effort was made to exclude any particular type of thinking or book" (*Cary v Board of Education*, 1979). School boards can also require prior approval of all curricular materials used in classes, providing "the board does not create a curriculum that favors a particular race, religion, or political preference" (Algeo & Zirkel, 1987, p. 180). Thus, although commonly thought of as an individual's right to free speech, academic freedom is strongest when exercised

by institutions such as school boards or universities; however, there is one group that can override them: state legislatures.

A recent example of a legislature dictating curricular policies to a school district was the Arizona legislature's ban on Ethnic Studies programs, accomplished through Bill 2281 and signed into law by Arizona Governor Jan Brewer (R) in 2010. The bill specifically targeted a Mexican American Studies program offered by the Tucson Unified School District; it banned districts from offering courses that: 1) promote the overthrow of the United States government; 2) promote resentment toward a race or class of people; 3) are designed primarily for pupils of a particular ethnic group; and 4) advocate ethnic solidarity instead of the treatment of pupils as individuals. School districts that were found to be in violation of the law would face losing up to 10% of their state funding. After seven years of court battles in which lower courts found in favor of the state, Bill 2281 was ruled unconstitutional in 2017 by the 9th Circuit Court of Appeals, with Judge A. Wallace Tashima finding that the "enactment and enforcement" of the law were "motivated by racial animus" (Depenbrock, 2017).

The ability of state legislatures to influence curriculum by punitively withholding educational funding is not limited to K-12 schools, as state universities have also been targets. When the South Carolina legislature did not approve of the University of South Carolina, Upstate's use of *Out Loud: The Best of Rainbow Radio* (Madden & Chellew-Hodge, 2010), a queer-themed text assigned as common reading in first-year seminars, they voted to cut \$17,142 from the university's budget. The South Carolina legislature similarly cut \$52,000 from the College of Charleston's budget because it used an LGBTQ-themed graphic novel *Fun Home* (Bechdel, 2007) as its first-year summer reading selection. The legislature was unequivocal in voicing

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the punitive nature of its actions, as representative Gary Smith (R), who proposed the budget cuts, said, “One of the things I learned over the years is that if you want to make a point, you have to make it hurt” (Leichenger, 2014).

Unfortunately, this type of legislative aversion to LGBTQ issues is nothing new, as seven states

have laws that prevent or dictate how educators can address LGBTQ issues in classrooms. These laws, commonly known as “no promo homo laws,” are currently in effect in Alabama, Arizona, Louisiana, Mississippi, Oklahoma, South Carolina, and Texas. The laws have varying impacts: mandates in Alabama and Texas related to sexual health education require students be taught that being gay “is not a lifestyle acceptable to the general public”; Arizona’s law bans instruction that “portrays homosexuality as a positive alternative life-style”; and South Carolina’s law relegates discussions of homosexuality to

discussions of sexually transmitted diseases (Lambda Legal). Although not aimed specifically at English language arts teachers, these laws often have the side effect of effectively censoring queer texts from English language arts classrooms.

Legal challenges to these types of laws have been less successful than the fight against Arizona Bill 2281. Utah had a similar law that effectively silenced “virtually any discussion of LGBT topics” (Thoreson, 2017). Although a challenge to the law had been filed by Equality Utah, lawmakers repealed the no homo provision in 2017, effectively ending the legal challenge to it. Thus, there have been no court rulings to contradict the power of states to censor or dictate how LGBTQ issues are addressed in public schools.

Although state legislatures wield considerable power of curriculum, citizens can also dictate curricu-

lum through ballot initiatives. An example of ballot initiatives dictating not only curriculum but even teaching methods was California’s Proposition 227, which made English-only instruction the only type of instruction that Limited English Proficient students could receive. This proposition passed in 1998 with the support of 61% of voters and was in effect until it was repealed in 2016, this time by California Proposition 58, which passed with 74% approval. During the 18 years the ban was in effect, courts consistently found Prop 227 constitutional despite it being challenged as unconstitutional through lawsuits filed by teachers unions, parents, and bilingual education supporters such as the Mexican American Legal Defense Fund and the American Civil Liberties Union (Jorsett, 2002). Thus, it seems that curricular decisions can be made by almost everyone except individual classroom teachers.

Beyond having a say at the ballot box, Florida citizens now have direct access to challenging any type of curriculum through Florida HB 989, which was signed into law by Governor Rick Scott (R) in 2017. This law allows Florida residents, regardless of whether or not they have a child in public schools, to object to a school’s use of “specific instructional material”; furthermore, it requires that school boards “hold at least one open public hearing [per public objection][that] must be conducted before an unbiased and qualified hearing officer who is not an employee or agent of the school district” (Florida Senate, 2017, p. 5). Thus, the law removes final say on curriculum from school boards, as the arbiter of these challenges would be “an unbiased and qualified hearing officer who is not an employee or agent of the school district” (Florida Senate, 2017). Exactly what constitutes an unbiased and qualified officer is mysterious, but the position has been described as “a kind of literary officer” who “would hear the parent’s concerns and make a determination about if the book [or other challenged materials] can stay” (Magnoli, 2017). The law was developed by the Florida Citizens’ Alliance, a conservative group that supports teaching intelligent design as part of science classes and whose co-founder, Keith Flaugh, has argued that much of the literature taught in schools is pornographic, including “*Angela’s Ashes*, *A Clockwork Orange*, and books by author Toni Morrison” (Allen, 2017).

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dom functions only in areas where legislative bodies have not found cause to intercede, and even then, it functions much more vigorously as an institutional right for school districts and school boards than it does for individual teachers. Teachers are not entirely without recourse, though, as some public school teachers are granted varying degrees of academic freedom as a contractual provision negotiated through collective bargaining.

Teachers Unions and Academic Freedom

Teachers unions are best known for negotiating salaries, healthcare, performance evaluations, layoff procedures, and due process rights; however, academic freedom provisions are often an important part of contractual negotiations. Recent attacks on teachers unions have been highly publicized, as both conservative and liberal politicians have sought to impose more charter schools across the country and to pay teachers according to their students' test scores. But how has the push to privatize public education affected academic freedom for public school teachers?

To answer this question, it is important to begin with a survey of collective bargaining rights across the country. At the current time, 28 states have "right to work" laws, which prohibit unions from requiring membership from the employees who are covered by their negotiated contracts. In other words, under these criteria, unions are allowed to collectively bargain contracts for all employees, but all employees are not required to join the unions, effectively reducing the amount of dues paid to the unions, concomitantly reducing the unions' power both in negotiations and politics. Beyond right to work laws, which are clearly intended to weaken the power of collective bargaining, five states have made it illegal for teachers to collectively bargain: Georgia, North Carolina, South Carolina, Texas, and Virginia (Lubin, 2011). Thus, in these states, teachers have virtually no individual academic freedom. Considering that tenure has been eliminated for teachers in Kansas, North Carolina, and Florida, and that efforts are underway to weaken tenure in many other states, it is easy to conclude that academic freedom is on the endangered list and may already be extinct in many states.

On the other hand, teachers in states where unions are able to collectively bargain may have more established and formal academic freedoms. I taught

in the Miami-Dade County School system (Florida is a right to work state), where teachers' contracts were negotiated by the United Teachers of Dade (UTD).

Although the school board reiterated its control of curriculum in the preamble to

academic freedom: "[T]he Board has the authority to establish educational policy and the guidelines for utilization of instructional materials of any nature in classroom presentation" (UTD, 2015, p. 138), our contract had what would be considered a very strong academic freedom clause that guaranteed "freedom in classroom presentations and discussions" and the ability to "introduce political, religious, or other controversial material" when teachers deemed it appropriate. Furthermore, teachers were "guaranteed freedom of choice and flexibility with respect to teaching styles and methodology" and were allowed to express "personal opinions on all matters relevant to the course content," as long as they clearly indicated

they were sharing personal opinions. Finally, teachers were "not to be censored . . . on the grounds that the material discussed and/or opinions expressed are distasteful or embarrassing to those in authority" (UTD, 2015, p. 138).

This provision was part of the culture of schools in the MDCPS system and allowed teachers to have control over most curricular choices. Typically, departments would develop a vertically integrated curriculum, choosing common texts for grade levels while still allowing teachers to add individual titles at their professional discretion. The system worked so well that Artie Leichner, First Vice President of UTD from 2005 to 2013, could not recall any instances where conflicts over English teachers' textual choices led

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to filed grievances. On the other hand, how teachers tested students became a contentious issue, as many principals urged or even tried to require teachers to use assessments that mirrored state standardized tests. In instances where teachers and administrators were in conflict, the academic freedom provision proved invaluable in protecting teachers' right to choose the way they assessed student learning.

Other teachers unions have similar provisions, including the United Federation of Teachers in New York City, whose contract details the process through which conflicts between teachers and administrators

over curriculum and textbook selection are handled; the Chicago Teachers Union contract, in which principals are encouraged to "consult with grade level representatives and/or department chairs . . . to determine the selection of texts and instructional materials" (CTU, 2016, p. 44); or the Clark County Education Association contract for Las Vegas teachers, which stipulates that teachers have the discretion to use supplementary materials, though the contract does recognize the

principal as the instructional leader of each school.

Beyond negotiating for contractual academic freedom, local, state, and national unions have been instrumental in fighting legislative infringements on teachers' rights. For example, the California Teachers Association filed and lost a legal challenge to Proposition 227 and also played a critical role in successfully fighting plaintiffs in the Vergara case, which sought to erode tenure. The Florida Education Association filed a lawsuit against its state's teacher evaluation system (*Cook v. Stewart*, 2014), and the Florida Education Association House of Delegates recently voted to initiate a legal challenge to Florida HB 989. Unions also stand up for teachers when their individual academic freedom is violated; an example of this was the Chicago Teachers Union (CTU) filing a lawsuit against Mayor Rahm Emmanuel's "handpicked" Board of Education

for firing a teacher after she criticized school leadership for failing to provide adequate services to special education students (CTU, 2017).

The Seat at the Table Myth

During the Obama presidency, teachers unions were often at a crossroads. Many members supported the overall goals of the Obama agenda, but most were opposed to his Department of Education policies that supported the corporatization and privatization of public education. Although the Federal Department of Education did not punish states by threatening to withhold funds, it achieved much more by using the lure of billions of dollars through its Race to the Top initiative. This competitive \$4.35 billion grant award program, started in 2009 during the midst of the recession caused by the housing bubble crisis, was used to cajole states into adopting educational policies such as eliminating bans on or increasing charter schools, evaluating teacher performance according to student test scores, and embracing the Common Core State Standards. (For an in-depth examination of the policies advocated for in Race to the Top, see Diane Ravitch's [2013] *Reign of Error: The Hoax of the Privatization Movement and the Danger to America's Public Schools*.)

During this time, some union members argued that they could not support a president whose agenda was so anti-public education, while others, including national, state, and local union leaders, contended that supporting the Obama administration would get teachers a "seat at the table" during educational reform talks. There was a real backlash to this; the most notable example could be the 2010 election of Karen Lewis as president of the Chicago Teachers Union. Karen Lewis, a science teacher who was unabashedly anti-Obama in terms of educational policy, defeated incumbent Marilyn Lewis, who had embraced the seat at the table myth and refused to be critical of Obama's education policies. Since taking over the CTU, Karen Lewis has become nationally renowned for battling Mayor Rahm Emmanuel (D) by fighting school closings, battling against charters, and leading the CTU on its 2012 strike.

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the nation. Furthermore, well-respected *Washington Post* education columnist Valerie Strauss (2017) has argued that the Democrats and the Arne Duncan years set the stage for a Betsy DeVos-led Department of Education.

Saving Academic Freedom

The Power (or Not) of the Vote

For teachers interested in retaining or gaining a say in curricular decisions, the most important thing to do is to vote. In all elections. Not just in presidential years. Unfortunately, teachers do not vote. Yes, citizens who are employed as teachers go to the voting booth, but the vast majority of them do not cast their votes as teachers, because many mirror a large part of the general population who either vote strictly down the ticket along party lines or who are issues-voters, choosing candidates based on single topics, such as abortion, gun control, gay rights, or immigration. Could you vote for a candidate who agreed with you completely on educational policies but who disagreed with your view on one of the above issues?

Both major political parties seem to have decided that the teacher vote, if it exists at all, is not worth courting. Republicans, many of whom have backed various forms of vouchers and elements of privatization since the infamous *Nation at Risk* report was released in 1986 (even though most of its assertions were debunked in *The Manufactured Crisis* [1995]), seem to have written off teachers as potential supporters. This is confirmed somewhat by numerous studies that show that educators in general are members of one of the most liberal professions. Verdant Labs' (2016) study based on political donations found that teachers are predominantly Democrats (79%) and that English teachers are the second most Democratic of all teacher types (97% Democrat), eclipsed only by health educators (99% Democrat). A similar study that also used donations to political candidates as a metric found that academics are second only to the entertainment industry in being liberal, which is traditionally associated with Democrats (Kiersz & Walker, 2014). Many Democrats also appear to have noticed these patterns and may have concluded that teachers are going to vote for them regardless of what type of educational policies they adopt. This, too, is supported by research that found that, in the 2016 election, edu-

cation ranked as only the 8th most important issue for voters (Pew Research Center, 2016).

Can Anything Be Done?

The first step for many teachers will be to get involved with local unions. I do not advocate for being a dogmatic cheerleader for whatever your union is doing, but I do encourage readers to become part of the conversation, and when issues related to academic freedom arise, speak up. When your union is considering endorsing a candidate who does not value public education, refuse to support that endorsement. Moreover, fight against it. If you are in a state that outlaws collective bargaining, get involved in protests that support public education, such as the Moral Monday protests in North Carolina, or join an NCTE special interest group working for students and teachers, such as the CEE Commission on Social Justice in Teacher Education Programs, who at the 2015 NCTE Annual Convention in Minneapolis led a demonstration on the exhibition floor protesting Pearson's role in the corporatization of public education.

Resist. Yes, now that President Donald J. Trump is in office, many educators are speaking up loudly against Betsy DeVos, against policies that threaten undocumented students, and against the censoring of the Centers for Disease Control and Prevention from using words such as "evidence based," "diversity," and "fetus." However, remember that it is easy to speak up against those you see as your opposition. What is needed at least as much is for all educators, teachers, administrators, and professors to find the courage to speak out against those they see as their allies but who do not have the best interests of public education at heart. This will become critical as the 2020 election

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looms closer with each passing day. Will educators support presidential candidates just because they are not “the other guy”? Or will they demand a candidate who actually has a pro-public education platform?

Conclusion

Academic freedom is not just about teaching texts that deal with topics that some may find offensive; it is about deciding who has a say in what is best for students. Should it include a classroom teacher? A school principal? A politician who has never taught? A textbook company whose main goal is to reap profits? If you believe that children are individuals whose needs should be known when making curricular decisions, then the answer is clear. There are myths, rhetoric, and millions of dollars in potential profit that motivate those who support standards, curricula, and tests developed far removed from the students who will be subjected to them. Without all educators, both in public schools and in the professorate, becoming active opponents to these forces, not only will teachers’ freedom to choose curricula and materials become endangered everywhere, but public education as we know it today may be changed irrevocably.

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