



ASSESSING AGE-APPROPRIATENESS

Contextualizing Educational Suitability and Pervasive Vulgarities Post-*Pico*

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SUMMARY OF REPORT

Discussion of the Supreme Court’s decision in *Island Trees School District v. Pico* (1982)² (hereinafter, “Pico”) has largely been anchored in the analysis of viewpoint discrimination, with less attention dedicated towards the opinion’s invocation of educational suitability and pervasive vulgarity that may be leveraged to elucidate and perhaps even define what should properly determine the age-appropriateness of materials aimed at minors.³ This report provides a variety of legal and academic resources to contextualize this examination by providing:

- An overview of Supreme Court precedent shaping a “harmful to minors” standard⁴
- A survey of relevant Texas state laws that affirm a “harmful to minors” standard
- Criteria to gauge educational unsuitability and pervasive vulgarity, followed by an identification of age-inappropriate materials

¹While this report aims to offer guidance on how to assess educational suitability and pervasive vulgarity based off of the age-appropriateness of materials, this report simultaneously acknowledges that in Texas, the authority rests with the State Board of Education (SBOE) to adopt the Texas Essential Knowledge and Skills (TEKS) for each subject of the required curriculum. SBOE members nominate educators, parents, business and industry representatives, and employers to serve on TEKS review committees. The SBOE, with input from educators, parents, business representatives, and employers, identifies the essential knowledge and skills for each subject. These standards guide instructional materials evaluation and assessment instruments. For more, see Texas Education Agency (TEA), “Texas Essential Knowledge and Skills,” available [here](#).

²*Board of Education, Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853. It is worth noting that Pico was a plurality opinion (one that received the greatest number of votes of any of the opinions filed, but considered non-binding because a majority of the court could not reach a common view). Pico therefore did not produce a binding majority opinion: three Justices joined the plurality, two Justices concurred, and four Justices dissented. As noted in Stanford Law Review’s “[Questioning Marks: Plurality Decisions and Precedential Constraints](#),” (69 Stan. L.Rev. 795 (2017)), “The Supreme Court’s failure to reach majority consensus on the controlling rationale can thus be seen as an implicit decision not to resolve that issue for the lower courts and an implicit delegation of authority to those courts to continue addressing the issue in the manner they did before the Supreme Court intervened.” However, although Pico is not binding, it still maintains significant influence as persuasive authority. As the article also observes, “But even in this category of cases, the plurality decision may still exert some meaningful constraining force by closing off certain rationales that may otherwise have been available to the lower courts, including any rationale that would have led to a different result in the precedent case itself.”

³Recent scholarship whose primary focus is centered on viewpoint discrimination to further promote the idea that parents with well-founded concerns around objectionable content targeting minors are operating as “book banners” include Ryan L. Schroeder, [How to Ban a Book and Get Away With It: Educational Suitability and School Board Motivations in Public School Library Book Removals](#), 107 Iowa L. Rev. 363, 389 (2021) and Johany G. Dubon, [Rereading Pico and the Equal Protection Clause](#), 92 Fordham L. Rev. 1567. Interestingly enough, the words “viewpoint discrimination” do not appear in the Supreme Court’s plurality opinion which instead contains the language first expressed at the appellate level regarding the “suppression of ideas” one finds distasteful or disagreeable.

⁴The term “harmful to minors” is a reference to [47 U.S. Code § 254](#), in which it is defined to mean “any picture, image, graphic image file, or other visual depiction that— (i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion; (ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and (iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.”

THE STATE OF THE LAW⁵

I. THE SUPREME COURT: PICO AND BEYOND

- The First Amendment, Substantial Interest, and Establishing a “Harmful to Minors” Precedent

To date, *Pico* is the sole Supreme Court decision involving the removal of books from public school libraries. Following the acquisition of a list of nine books deemed unsuitable for children by a conservative organization on the basis of being “anti-American, anti-Christian, anti-[Semitic], and just plain filthy,” (*Pico* at 857) a group of members on the Board of Education for the Island Trees Union Free School District directed the removal of the books from the school libraries. On the motivations driving this decision, the Board cited a sense of duty and moral obligation to “protect the children in our schools from this moral danger” (*Pico* at 853). The Board then established a “Book Review Committee,” featuring four parents and four members of the school staff, to examine the removed books in terms of their “educational suitability,” “good taste,” “relevance,” and “appropriateness to age and grade level” (*Pico* at 857). The committee proceeded to review several books, recommending that two be kept off library shelves and agreeing on five books for students without deciding on four others. Because of this, the school board overruled the Committee, allowing only one book back in the library without restrictions and removing the rest, without providing a rationale for why this was done.

The absence of an explanation, coupled with concerns around the First Amendment rights of students that may be restricted on the grounds of safeguarding against exposure of materials deemed to be “lacking in educational value,” (*Pico* at 859) prompted a lawsuit by four high school students and one junior high school student against the Board.⁶ The lower district court found in favor the Board, not the students, concluding that it should not infringe upon the power of the local school boards to dictate educational policy, including what is deemed acceptable or appropriate for students. Indeed, when the Supreme Court took up review of the case, this perspective was reinforced, stating that “local authorities and federal courts should not ordinarily intervene in the resolution of conflicts which arise in the daily operation of school systems,” thereby affirming “the comprehensive authority of the States and of the school officials to prescribe and control conduct in the schools” (both *Pico* at 864). Nevertheless, the appeals court, in a three-judge panel, reversed the decision of the district court, citing First Amendment

⁵**DISCLAIMER:** This report is intended for informational purposes only and does not constitute legal advice. The information contained herein should not be relied upon as a substitute for legal counsel. As such, under no circumstances should this report be construed as legal opinion. Moreover, while this report aims to provide comprehensive information, it may not address all potential topics that may arise as it pertains to this subject matter. As such, this report does not seek to replace consultation with an attorney regarding any legal issues related to the subject matter of this report.

⁶It has been noted by critics that among the removed titles were a Pulitzer Prize winner, a Martin Luther King Prize winner, several National Book Award nominees, and a book later named by TIME Magazine as one of “The 100 Best YA Books of All Time.” See *Riggan, K. The Road to Hell is Paved with Good Intentions: How Pico’s Focus on the Intent Behind Book Bans Has Failed Public School Students*. 22 First Amend. L. Rev. 54. Similarly, in an effort to invalidate or cast doubt on the legitimacy of book challenges made, those who object to these efforts are often quick to point out that some of the titles have been the recipient of prestigious literary prizes to try and establish their acceptability (“literary and artistic merit”) within educational circles. This may also be attributed to the Supreme Court case *Jacobellis v. Ohio*, 378 U.S. 184 (1964), stating “It follows that material dealing with sex in a manner that advocates ideas, *Kingsley Int’l Pictures Corp. v. Regents*, 360 U. S. 684, or that has literary or scientific or artistic value or any other form of social importance, may not be branded as obscenity and denied the constitutional protection” (*Jacobellis* at 184). However, on the subject of “literary or artistic” value, Judge Scalia in *Pope v. Illinois*, 481 U.S. 497 (1987) wrote, “[I]n my view it is quite impossible to come to an objective assessment of (at least) literary or artistic value, there being many accomplished people who have found literature in Dada, and art in the replication of a soup can. Since ratiocination has little to do with esthetics, the fabled ‘reasonable man’ is of little help in the inquiry, and would have to be replaced with, perhaps, the ‘man of tolerably good taste’—a description that betrays the lack of an ascertainable standard.... I think we would be better advised to adopt as a legal maxim what has long been the wisdom of mankind: De gustibus non est. disputandum. Just as there is no arguing about taste, there is no use litigating about it” (*Pope* at 504-505).

concerns. This included Judge Newman, who inquired whether the removal decision was motivated “by a justifiable desire to remove books containing vulgarities and sexual explicitness, or rather by an impermissible desire to suppress ideas” (*Pico* at 861). Similarly, the Supreme Court held that “local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to “prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion”” (*Pico* at 872). This language, however, did not originate from *Pico*, but rather, *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943), a landmark Supreme Court case that established a First Amendment protection of students from being compelled to salute the American flag or say the Pledge of Allegiance in public schools.⁷

Ultimately, it is important to remember that the motivations driving book removal are instrumental to assessing whether one is likely to prevail in a challenge. If motivated by viewpoint-based reasons, as indicated by *Pico*, this may constitute viewpoint discrimination. However, the removal of a book based on its “educational suitability” is acceptable, so long as disagreement with the ideas expressed in the book is not the motive driving the challenge. Perhaps most crucially, *Pico* determined that a removal decision based upon the “educational suitability” of a book, or upon its perceived vulgarity, is “perfectly permissible,” with Justice Brennan writing in the plurality that, “an unconstitutional motivation would *not* be demonstrated if it were shown that petitioners had decided to remove the books at issue because those books were pervasively vulgar” (both *Pico* at 871).

Moreover, the right articulated in *Pico* to remove books on the basis of educational unsuitability or pervasive vulgarity was reasserted in *Bethel School District No. 403 v. Fraser* (478 U. S. 675, 682 (1986), with Justice Burger for the majority writing:

“In addressing the question whether the First Amendment places any limit on the authority of public schools to remove books from a public school library, all Members of the Court, otherwise sharply divided, acknowledged that the school board has the authority to remove books that are vulgar. These cases recognize the obvious concern on the part of parents, and school authorities acting in loco parentis, to protect children, especially in a captive audience-from exposure, to sexually explicit, indecent, or lewd speech” (*Fraser* at 684).⁸

These sentiments were also reiterated in a myriad of other Supreme Court cases, including the 5-3 decision *Hazelwood School District v. Kuhlmeier* (484 U.S. 260, 1988).⁹ Although the case focused on the issue of “legitimate pedagogical concerns” of objectionable content available to minors in the context of student speech¹⁰, the Court heavily relied upon its decision in *Fraser* to establish that:

⁷[West Virginia State Board of Education v. Barnette](#), 319 U.S. 624 (1943).

⁸[Bethel School District No. 403 v. Fraser](#), 478 U. S. 675, 682 (1986).

⁹[Hazelwood School District v. Kuhlmeier](#), 484 U.S. 260 (1988).

¹⁰The subject of the material in-question included two articles about student pregnancy and divorce that the Court was concerned could be construed as vulgar and thus “wholly inconsistent with the fundamental values of public school education” (*Hazelwood*, quoting *Fraser*, at 267). The teacher overseeing a student newspaper featuring these articles deferred to the principal who omitted the articles, particularly the one on student pregnancy, out of sensitivity around privacy (for example, that identities of pregnant students could be extrapolated) and for references to sexual activity/birth control thought to be inappropriate for minors.

- The First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings" (*Hazelwood* at 266).
- Educators reserve the right to exercise "greater control" to ensure "that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school" (*Hazelwood* at 270).

Decided two years before *Hazelwood*, *Fraser* similarly entailed an instance of student speech, in which a high school student was suspended for delivering a sexually suggestive speech at a school assembly.¹¹ The Supreme Court ruled in favor of the school, upholding the suspension and establishing that schools have the authority to prohibit "offensive lewd and indecent" speech that is incompatible with the basic educational mission of the school, even if the speech is not obscene.¹² This was deemed necessary to ensure the success of "the role and purpose of the American public school system" advanced in the promotion of "the habits and manners of civility as values in themselves conducive to happiness and as indispensable to the practice of self-government in the community and the nation" (both *Fraser* at 681).

On the subject of First Amendment concerns, *Fraser* looked to *FCC v. Pacifica Foundation*, 438 U. S. 726 (1978) to shield minors from vulgar and offensive speech that may be considered "indecent but not obscene" (*Fraser* at 684).¹³ Per the Federal Communications Commission (FCC), indecent language may be defined as "intimately connected with the exposure of children to language that describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities and organs, at times of the day when there is a reasonable risk that children may be in the audience" (*FCC* at 732).¹⁴ The case stemmed from a radio station's airing of George Carlin's "Filthy Words" comedy routine during the afternoon, when children were likely to be a listening audience. Included were words that "depicted sexual and excretory activities in a patently offensive manner" (at 684-85). The Court ruled that the FCC could restrict indecent material broadcast during hours when

¹¹*Bethel School District No. 403 v. Fraser*, 478 U. S. 675, 682 (1986), available [here](#).

¹²See also *Bethel School District No. 403 v. Fraser*, "It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse [speech that was deemed obscene]." Additionally, per *Miller v. California*, 413 U.S. 15 (1973), material is considered obscene if it 1) appeals to prurient interest (whether the average person, using contemporary community standards, finds the work appeals to an erotic, abnormal, unhealthy, or other prurient interest in sex, nudity, or excretion), 2) depicts or describes sexual conduct in a patently offensive way (whether the work depicts or describes sexual conduct in a way that is explicitly offensive, such as lewd genital exhibitions, sadomasochistic abuse, or excretory functions), and 3) lacks serious literary, artistic, political, or scientific value (whether the work lacks serious value in these areas).

¹³ *FCC v. Pacifica Foundation*, 438 U. S. 726 (1978).

¹⁴Difficulties may arise with legally establishing "contemporary community standards" as the social, moral, and cultural goalposts continue to shift with respects to what is deemed morally permissible. For more on this, see Stone, G.R. (2018). [Sexual Expression and Free Speech: How Our Values Have \(D\)evolved](#). 43 Human Rights 22. American Bar Association. Yet, in *Miller v. California*, 413 U.S. 15 (1973), the first prong of the so-called "Miller Test," pertaining to the ascertainment of prurient interest, is situated within the context and application of community standards ("the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.") See also Kagan, S. (2010). [Obscenity on the internet: Nationalizing the Standard to Protect individual Rights](#). *Hastings Const. LQ*, 38, 233, Footnote 27, stating: "In *Hamling v. United States*, 418 U.S. 87, 105 (1974), the Court noted that a "community" was not any "precise geographic area," and suggested that it might be less than an entire state. Meanwhile, in *Jenkins v. Georgia*, supra note 8, 418 U.S. at 157 (1974), the Court approved a "trial court's instructions directing jurors to apply 'community standards' without specifying what 'community.'" For these reasons, consulting state laws to establish community standards is necessary, as those are the values that will govern a particular locality in contrast to certain societal or cultural norms that may be prevalent, but not necessarily representative of the values of the community or state in-question.

children might be listening, creating a precedent for government regulation of broadcast media content.¹⁵ This was predicated on the understanding that exposure to these ideas were “of such slight social value” that any “benefit” that could be gained was “clearly outweighed by the social interest in order and morality” (*FCC* at 746; *Fraser* at 685)¹⁶. The Court in *FCC* also found that “other forms of offensive expression may be withheld from the young without restricting the expression at its source,” (*FCC* at 749) citing bookstores and movie theaters as venues that may be prohibited from making indecent material available to minors.

Like *FCC*, *Fraser* also relied upon the Court’s precedent in *Ginsberg v. New York*, 390 U.S. 629 (1968), recognizing that there is a bona fide government interest to protect the well-being of the country’s youth to support regulating the availability of materials unsuitable for children (*FCC* at 758).¹⁷ *Ginsberg* also helped to establish “limitations on the otherwise absolute interest of the speaker in reaching an unlimited audience where the speech is sexually explicit and the audience may include children” (at 684). Connecting this imperative to the priority articulated in *Fraser* regarding the school’s responsibility to instill values in minors, it was decided that vulgar speech and lewd conduct is “wholly inconsistent with the ‘fundamental values’ of public school education” (*Fraser* at 285).

Aside from *Fraser*, *Sable Communications v. FCC*, 492 U.S. 115 (1989) also reiterated that First Amendment considerations do not bar the regulation of otherwise constitutionally protected speech “in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest” (*Sable* at 126) which includes “protecting the physical and psychological wellbeing of minors” and “shielding minors from the influence of literature that is not obscene by adult standards” (*Sable* at 126). This echoes yet an earlier opinion of the Court in 1944’s *Prince v. Massachusetts*, 321 U.S. 158, which recognized that the State has an interest “to protect the welfare of children” so as to ensure that they are “safeguarded from abuses” which might otherwise inhibit their “growth into free and independent well developed men and citizens” (*Prince* at 165).¹⁸

- The Inculcation of Moral Values, Transmission of Community Standards, and Substantial Interest (continued)

Some additional insights from *Pico* that are often overlooked include the Court’s proclamation that “public schools are vitally important in the preparation of individuals for participation as citizens, and as vehicles for inculcating fundamental values necessary to the maintenance of a democratic political system” (*Pico* at 864).¹⁹ What’s more, the Court went so far as to state that they were “in full agreement

¹⁵See [18 U.S. Code § 1464 - Broadcasting obscene language](#) (June 25, 1948): “Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.”

¹⁶Both *FCC* and *Fraser* cited [Chaplinsky v. New Hampshire](#), 315 U.S. 568 (1942), the case that established that “fighting words” (words that incite immediate violence or breach of peace) are not protected under the First Amendment. Relevant to the quoted portion is the following excerpt from the opinion: “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.’ It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality” (at 572). For a comparable analysis, see [Roth v. United States](#), 354 U.S. 476 (1957), citing [Beauharnais v. Illinois](#), 343 U.S. 250 (1952), on the similarities between obscenity as unprotected speech and libel (at 486).

¹⁷[Ginsberg v. New York](#), 390 U. S. 629 (1968).

¹⁸[Prince v. Massachusetts](#), 321 U.S. 158 (1944).

¹⁹See also [Bethel School District No. 403 v. Fraser](#), 478 U. S. 675, 682 (1986), “We echoed the essence of this statement of the objectives of public education as the “inculcat[ion of] fundamental values necessary to the maintenance of a democratic political system,” (*Fraser* at 681, citing [Ambach v. Norwick](#), 441 U. S. 68, 76-77 (1979)). Also note from *Ambach*, “Further, a teacher serves as a

with petitioners [the school board] that local school boards must be permitted to establish and apply their curriculum in such a way as to transmit community values, and that there is a legitimate and substantial community interest in promoting respect for authority and traditional values be they social, moral, or political” (*Pico* at 864).²⁰

Similarly, in *Fraser*, the Court found that a school “must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct” otherwise inconsistent with “the shared values of a civilized social order,” or to associate the school with any position other than neutrality on matters of political controversy” (*Hazelwood* at 272). Here, it was acknowledged that restricting minor access to objectionable materials may therefore be integral to avoid the appearance of endorsing values that run counter to promoting a civilized social order.

Beyond schools, as recent as 2003, the Supreme Court in *U.S. v. ALA* (539 U.S. 194) has also addressed the interest in public libraries to count, among its objectives, “restricting access to obscenity, child pornography, and material that is comparably harmful to minors” (*ALA* at 197).²¹ In this action, the American Library Association (ALA) challenged the Child Internet Protection Act (CIPA), which requires public schools and libraries to install internet filtering software to protect minors from visual depictions of content that is considered obscene, pornographic, or harmful to minors in order to receive federal funding, by arguing that it violated the First Amendment rights of library patrons.²² The Court ruled in favor of the government, upholding CIPA and finding that public libraries, as bastions of “learning and cultural enrichment,” (*ALA* at 203) possessed the “interest in protecting young library users from material inappropriate for minors” that was characterized, in Justice Breyer’s concurrence, as both “legitimate” and “compelling”.²³ Further, it was held that the use of internet filtering software did not violate patrons’ First Amendment rights and that CIPA was a valid exercise of Congress’s spending power.²⁴

role model for his students, exerting a subtle but important influence over their perceptions and values. Thus, through both the presentation of course materials and the example he sets, a teacher has an opportunity to influence the attitudes of students toward government, the political process, and a citizen’s social responsibilities.’ This influence is crucial to the continued good health of a democracy” (*Ambach* at 78-79).

²⁰See also *Bethel School District No. 403 v. Fraser* (478 U. S. 675, 682 (1986)), “The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board” (*Fraser* at 683).

²¹*United States v. American Library Association*, 539 U.S. 194 (2003).

²²Federal Communications Commission. *Children’s Internet Protection Act* (CIPA). *U.S. v. ALA* (2002) upheld the Children’s Internet Protection Act (CIPA), which forbids public libraries to receive federal assistance for Internet access unless they install software to block obscene or pornographic images and to prevent minors from accessing material harmful to them.

²³“The interest in protecting young library users from material inappropriate for minors is legitimate, and even compelling, as all Members of the Court appear to agree. Given this interest, and the failure to show that the ability of adult library users to have access to the material is burdened in any significant degree, the statute is not unconstitutional on its face. For these reasons, I concur in the judgment of the Court” (Breyer, S., concurring opinion, *ALA* at 215).

²⁴“Congress has wide latitude to attach conditions to the receipt of federal assistance to further its policy objectives.” (Rehnquist, C.J., *ALA* at 209). Moreover, as CIPA allows libraries to permit any adult patron access to an “overblocked” Web site or to disable the software filter entirely upon request, this was considered to not be deleterious to the exercise of the First Amendment. On this basis, it was rationalized that “it cannot be said that any speech-related harm that the statute may cause is disproportionate when considered in relation to the statute’s legitimate objectives” (Syllabus 197; Breyer, concurring, at 220).

II. AN OVERVIEW OF TEXAS LAW

Consistent with the Supreme Court’s recognition of materials that may be harmful to minors, to formulate a state-specific “harmful to minors” standard regarding age-appropriateness in the context of educational suitability and pervasive vulgarity, the following provisions may be consulted to better understand the relevant application of law within the parameters of existing statutes. This is also in keeping with the Neighborhood Act (47 U.S.C. § 254(l)(2)) stating that the definition of “inappropriate matter” is a matter of local determination. As expressed in 47 U.S.C. § 254(h)(1)(B),

Local Determination of Content – a determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other United States authority responsible for making the determination. No agency or instrumentality of the Government may – (a) establish criteria for making such determination; (b) review agency determination made by the certifying school, school board, local educational agency, library, or other authority; or (c) consider the criteria employed by the certifying school, school board, educational agency, library, or other authority in the administration of subsection.²⁵

Considering this, the following can be leveraged to facilitate the development of criteria that may be employed to facilitate the determination of educational suitability and pervasive vulgarity (see [Defining Educational Suitability and Pervasive Vulgarity](#))²⁶:

- *Defining age-appropriate material*

Per Texas Family Code Sec. 264.001:

1) “Age-appropriate normalcy activity” means an activity or experience:

(A) that is generally accepted as suitable for a child’s age or level of maturity or that is determined to be developmentally appropriate for a child based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for the age or age group.²⁷

- *Defining obscene material and patently offensive material*

Pursuant to Texas Penal Code 43.21, Subchapter B: Obscenity: Definitions:

(1) “Obscene” means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

²⁵[47 U.S. Code § 254 - Universal service.](#)

²⁶HB 900, or the Restricting Explicit and Adult-Designated Educational Resources, or READERS Act (codified as [13 Tex Admin. Code Sec. 4.2](#)) also defers to the Pico standard in (7)(B), “Prohibit the possession, acquisition, and purchase of harmful material, as defined by Penal Code, §43.24, library material rated sexually explicit material by the selling library material vendor under Education Code, §35.002, or library material that is pervasively vulgar or educationally unsuitable as referenced in Pico v. Board of Education, 457 U.S. 853 (1982).”

²⁷[Texas Family Code FAM Sec. 264.001. Definitions.](#)

- (ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and
- (C) taken as a whole, lacks serious literary, artistic, political, and scientific value.²⁸

- *Defining sexually explicit material/sexually relevant material (within the sexual conduct and patently offensive materials)*

The following statutes contribute to the definition above:

1. Texas Education Code 33, Subchapter B: Libraries, Section 33.021: Sec. 33.021: Library Standards
 - (a) In this section, "sexually explicit material" means any communication, language, or material, including a written description, illustration, photographic image, video image, or audio file, other than library material directly related to the curriculum required under Section 28.002(a), that describes, depicts, or portrays sexual conduct, as defined by Section 43.25, Penal Code, in a way that is patently offensive, as defined by Section 43.21, Penal Code.²⁹
2. Texas Penal Code Sec. 43.25: Sexual Performance by a Child
 - (a) In this section:
 - (2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.³⁰
3. Texas Penal Code Sec. 43.21: Obscenity: Definitions:
 - (2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.
 - (4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

- *Defining harmful material to minor(s)*

Per Section 43.24 of the Texas Penal Code: Sale, Distribution, or Display of Harmful Material to Minor:

- (2) "Harmful material" means material whose dominant theme taken as a whole:
 - (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
 - (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
 - (C) is utterly without redeeming social value for minors.³¹

²⁸ [Texas Penal Code 43.21, Subchapter B: Obscenity: Definitions.](#)

²⁹ [Texas Education Code 33, Subchapter B: Libraries, Section 33.021: Sec. 33.021: Library Standards.](#)

³⁰ [Texas Penal Code Sec. 43.25: Sexual Performance by a Child.](#)

³¹ [Section 43.24 of the Texas Penal Code: Sale, Distribution, or Display of Harmful Material to Minor.](#) Note that the "harmful material to minors" standard per Texas law is both informed by *Miller v. California*, 413 U.S. 15 (1973) regarding the first and second prongs, respectively (what "appeals to the prurient interest" and what is "patently offensive to prevailing standards"), but replaces the third prong of the Miller Test a standard from *Roth v. United States*, 354 U.S. 476 (1957). Miller replaced Roth's "utterly without redeeming social value" with "serious, literary, artistic, political, or scientific value." However, per the Texas Penal Code, the *Roth* standard remains.

- *Defining the sale, distribution, or display of harmful materials to minor(s)*³²

Per Texas Penal Code Section 43.24: Sale, Distribution, or Display of Harmful Material to Minor:

(b) A person commits an offense if, knowing that the material is harmful:

(1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;

(2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or

(3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2).

(c) It is an affirmative defense to prosecution under this section that the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification.

(c-1) It is a defense to prosecution under this section that the actor was the spouse of the minor at the time of the offense.

(d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) in which event it is a felony of the third degree.

- *Defining the standard of care of a “reasonable and prudent parent”*³³

According to Texas Family Code Sec. 264.001,

(5) “Standard of care of a reasonable and prudent parent means the standard of care that a parent of reasonable judgment, skill, and caution would exercise in addressing the health, safety, and welfare of a child while encouraging the emotional and developmental growth of the child, taking into consideration:

(A) the overall health and safety of the child;

(B) the child’s age, maturity, and development level;

(C) the best interest of the child based on the caregiver’s knowledge of the child;

(D) the appropriateness of a proposed activity and any potential risk factors;

(E) the behavioral history of the child and the child’s ability to safely participate in a proposed activity;

(F) the importance of encouraging the child’s social, emotional, and developmental growth; and

(G) the importance of providing the child with the most family-like living experience possible³⁴

³²In Texas, the penalty for providing harmful material to a minor is a Class A misdemeanor under Texas Penal Code 43.24. This includes selling, distributing, or displaying material that appeals to a minor’s prurient interest in sex, nudity, or excretion, or is offensive to community standards. The maximum penalty is up to one year in jail and a \$4,000 fine. However, if the offense involves hiring a minor to commit the act, it becomes a third degree felony with a maximum penalty of up to 20 years in prison and a \$10,000 fine.

³³Although this statute establishes a “reasonable and prudent *parent*” standard (emphasis intentionally added), the common law doctrine of “in loco parentis” also makes this relevant to academic representatives (educators, school administration, etc.). Justice Thomas elaborated on this doctrine in [Morse v. Frederick](#), 551 U.S. 393 (2007), a decision that determined that school officials can restrict student speech that reasonably promotes illegal drug use, writing “Through the legal doctrine of *in loco parentis*, courts upheld the right of schools to discipline students, to enforce rules, and to maintain order” (at 413). Thomas also noted that this doctrine has been applied as early as 1837, reproducing the following quote out of the Supreme Court of North Carolina called [State v. Pendergrass](#), 19 N. C. 365, 365–366 (1837): ““One of the most sacred duties of parents, is to train up and qualify their children, for becoming useful and virtuous members of society; this duty cannot be effectually performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits . . . The teacher is the substitute of the parent; . . . and in the exercise of these delegated duties, is invested with his power.” Additionally, while [13 Tex Admin. Code Sec. 4.2](#) clearly affirms parental rights, those commissioned with the roles and responsibilities articulated in [Texas Administrative Code Rule §247.2: Code of Ethics and Standard Practices for Texas Educators](#) would be keen to still maintain familiarity with the considerations put forth in [Texas Family Code Sec. 264.001](#).

³⁴[Texas Family Code Sec. 264.001. Definitions.](#)

DEFINING EDUCATIONAL UNSUITABILITY AND PERVASIVE VULGARITY

I. ACKNOWLEDGING CHALLENGES

- There is a lack of absolute definitional clarity and certainty.

Before an analysis is undertaken of specific books found in Texas libraries exhibiting pervasive vulgarity and educational unsuitability at odds with existing law (see “Examples Demonstrating Educational Unsuitability and Pervasive Vulgarity”), it is still necessary to acknowledge that both terms are not clearly defined in the *Pico* decision. As indicated by Justice Burger in his dissent,

"Educational suitability," however, is a standardless phrase. This conclusion will undoubtedly be drawn in many—if not most—instances because of the decisionmaker's content based judgment that the ideas contained in the book or the idea expressed from the author's method of communication are inappropriate for teenage pupils." (*Pico* at 890).

Comparable ambiguity exists regarding *Pico*'s “pervasive vulgarity,” though the Court in *Jacobellis v. Ohio*, 378 U.S. 184 (1964) eighteen years prior may provide some direction. *Jacobellis* challenged the state's right to ban the film "The Lovers" under obscenity laws, centering on the question of whether Ohio could restrict the showing of a film due to its sexual content without violating the First Amendment's protection of free speech.³⁵ Ultimately, the Court ruled in favor of *Jacobellis*, the manager of the theater who was previously convicted for possessing and exhibiting an allegedly obscene film, finding that the film did not meet the legal definition of obscenity.

As the Court deliberated, they recognized that the film contained an explicit love scene in the last reel of the film while also observing that the State of Ohio's objections to the film were “based almost entirely upon that scene” (*Jacobellis* at 196). In other words, the explicitness was not “pervasive,” or prevalent, throughout the film, to override the film's right to be seen. Notably, to bolster this position, the Court also pointed to its widespread circulation as well as its critical acclaim to establish its merit.³⁶ Showing proof of the latter quality is not unlike the third prong of the *Miller Test* which requires the demonstration that the content in-question is devoid of “literary, artistic, political, or scientific value.”

- Obscenity must go beyond mere descriptions/portrayals of sex.

Moreover, in *Jacobellis v. Ohio*, 378 U.S. 184 (1964), it was also established the material proscribed as obscene must be found to go “substantially beyond customary limits of candor in description or representation” (*Jacobellis* at 184). Put alternatively, to be rendered obscene, the content must entail more than mere descriptions of sex.

Similarly, in *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 498 (1984), the Court held that for a publication to be obscene, it must appeal to “a shameful or morbid interest in nudity, sex, or excretion.”³⁷ This was after a state statute was struck down to the extent that it defined “prurient” as “that which incites

³⁵[Jacobellis v. Ohio](#), 378 U.S. 184 (1964).

³⁶Writing for the court, Justice Black observed, “The film was favorably reviewed in a number of national publications, although disparaged in others, and was rated by at least two critics of national stature among the best films of the year in which it was produced. It was shown in approximately 100 of the larger cities in the United States, including Columbus and Toledo, Ohio.” (196).

³⁷[Brockett v. Spokane Arcades, Inc.](#), 472 U.S. 491 (1985).

lasciviousness or lust.” The Court held that a publication was not obscene if it “provoked only normal, healthy sexual desires” (*Brockett* at 498). Likewise, in *Roth v. United States*, 354 U.S. 476, (1957), the Court found that “The portrayal of sex, e. g., in art, literature and scientific works, is not itself sufficient reason to deny material the constitutional protection of freedom of speech and press” (*Roth* at 487).³⁸

- Not all nudity rises to the level of obscenity.

Similarly, in *Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975), it was decided that “under any test of obscenity as to minors, not all nudity would be proscribed,” proceeding to cite their decision in *Cohen v. California*, 403 U. S. 15, 20 (1971), thereby establishing that, for material to be considered obscene “such expression must be, in some significant way, erotic”³⁹ (*Erznoznik*, citing *Cohen*, at 213). Finally, in *Manual Enterprises v. Day*, 370 U.S. 478, 480 (1962), the Court determined that photographs of nude male models, although appealing to the prurient interest and lacking literary, scientific, or other merit, did not rise to the level of being patently offensive, with Justice Harlan in the plurality stating “[T]hese portrayals of the male nude cannot fairly be regarded as more objectionable than many portrayals of the female nude that society tolerates”⁴⁰ (*Manual* at 490).

II. EMBRACING OPPORTUNITY

Not excluding the considerations articulated in Section I, the following standards, though not exhaustive, may be consulted in the determination of educationally unsuitable or pervasively vulgar materials aimed at minors.⁴¹

It is also worth noting that other variables, such as accuracy and relevance, may be considered in the assessment of educational unsuitability warranting book removals, though the line of inquiry which might accompany this kind of assessment falls outside the scope of this report.⁴²

- **Sexually Suggestive or Explicit Content:** Content that is sexually explicit or promotes sexual acts.⁴³

³⁸*Roth v. United States*, 354 U.S. 476 (1957).

³⁹*Erznoznik v. City of Jacksonville*, 422 U.S. 205 (1975), citing *Cohen v. California*, 403 U. S. 15, 20 (1971).

⁴⁰*Manual Enterprises, Inc. v. Day*, 370 U.S. 478 (1962).

⁴¹As expressed elsewhere in this report, while special attention and sensitivity should be demonstrated towards the First Amendment implications of book restrictions or removals upon speech, it is critical to note that, should materials be deemed obscene, as established in *Miller*, this content is not constitutionally protected, in the same way that “fighting words” are not constitutionally protected. Moreover, even if certain content may not be obscene in the context of adult exposure, insofar as minors are involved, the standard often differs (see *Ginsberg*). To quote Henry Cohen’s report for Congressional Research Service (CRS), titled “[Obscenity and Indecency: Constitutional Principles and Federal Statutes](#),” “Obscenity apparently is unique in being the only type of speech to which the Supreme Court has denied First Amendment protection without regard to whether it can cause harm” (p.1). Cohen also observes, “Obscenity and child pornography, however, being without First Amendment protection, may be totally banned on the basis of their content, not only in the absence of a compelling governmental interest, but in the absence of any evidence of harm.” (p.1.).

⁴²For an example of a book removal on the basis of containing factual inaccuracies, see *ACLU v. Miami Dade County School Board*, 557 F. 3d 1177 (2009).

⁴³Recalling [Texas Penal Code Sec. 43.21 and 25](#) regarding obscenity, respectively, this includes “(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs,” with “sexual conduct” (2) meaning “sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.” This may also encompass indecency as defined in [10 USC § 920c\(d\)\(6\)](#), with the term “indecent manner” is also meaning “conduct that amounts to a form of immorality relating to sexual

Physical and Emotional Development: Minors are still developing their understanding of sexuality and relationships. Exposure to explicit content can lead to premature sexualization, distorted body image, unsafe or risky sexual activity, desensitization to sexual violence, and emotional distress.⁴⁴

Brain development: Unlike the adult brain, the adolescent brain is still developing, featuring an immature prefrontal cortex, over-responsive limbic and striatal circuits, heightened period for neuroplasticity, overactive dopamine system, a pronounced HPA axis, augmented levels of testosterone, and the unique impact of steroid hormones. (Brown, J. A., & Wisco, J. J. (2019)). This makes susceptibility to the influence of sexually explicit material all the more pronounced.

Studies and resources:

Braun-Courville, D. K. and Rojas, M., (2009). [Exposure to sexually explicit web sites and adolescent sexual attitudes and behaviors](#). *Journal of Adolescent Health*, 45(2), 156-162. (p. 157).

Brown, J. A., & Wisco, J. J. (2019). [The components of the adolescent brain and its unique sensitivity to sexually explicit material](#). *Journal of adolescence*, 72, 10–13.

Callister, M., Coyne, S. M., Stern, L. A., Stockdale, L., Miller, M. J., & Wells, B. M. (2012). [A content analysis of the prevalence and portrayal of sexual activity in adolescent literature](#). *Journal of sex research*, 49(5), 477–486.

Krassas, N.R., Blauwkamp, J.M. & Wesselink, P. [Boxing Helena and Corseting Eunice: Sexual Rhetoric in Cosmopolitan and Playboy Magazines](#). *Sex Roles* 44, 751–771 (2001).

Lin, W. H., Liu, C. H., & Yi, C. C. (2020). [Exposure to sexually explicit media in early adolescence is related to risky sexual behavior in emerging adulthood](#). *PloS one*, 15(4), e0230242.

Martino, S. C., Collins, R. L., Elliott, M. N., Strachman, A., Kanouse, D. E., & Berry, S. H. (2006). [Exposure to degrading versus nondegrading music lyrics and sexual behavior among youth](#). *Pediatrics*, 118(2), e430–e441.

Privara, M., & Bob, P. (2023). [Pornography Consumption and Cognitive-Affective Distress](#). *The Journal of nervous and mental disease*, 211(8), 641–646.

Sinković, M., Štulhofer, A., & Božić, J. (2012). [Revisiting the Association between Pornography Use and Risky Sexual Behaviors: The Role of Early Exposure to Pornography and Sexual Sensation Seeking](#). *The Journal of Sex Research*, 50(7), 633–641.

impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.” However, legal definitions regarding “obscenity,” “indecent,” and “offensiveness” may vary according to jurisdiction and thus should not be taken as equivalent without consulting state and local laws, as well as legal counsel, to corroborate the existence of any distinctions, if applicable.

⁴⁴In *Fraser*, the subject of developmental concerns was addressed, with the student speech-in question characterized by the Court as containing “pervasive sexual innuendo” that “could well be seriously damaging to its less mature audience, many of whom were only 14 years old and on the threshold of awareness of human sexuality” (at 683). Similarly, the court in *Hazelwood* invoked an excerpt from *Brown v. Board of Education*, 347 U. S. 483, 493 (1954) on the role of schools to facilitate healthy adjustment (“The schools would be unduly constrained from fulfilling their role as “a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”) (*Hazelwood*, citing *Brown*, at 272).

On retraumatization from exposure to triggering content:

Retraumatization: Retraumatization occurs when individuals who have suffered a trauma encounter a trigger that causes them to relive this past trauma again. Such triggers might include exposure to violence or abuse that brings back vivid memories of their past trauma. Watching or reading about a trauma that resembles their own traumatic experience can also cause retraumatization.

Harm associated with retraumatization: After experiencing retraumatization, individuals often face increased sensitivity and vulnerability to traumatic memories, leading to heightened stress and anxiety, which can worsen or contribute to the onset of various medical conditions including cardiovascular diseases, diabetes, chronic pain, digestive disorders, and insomnia.

Studies and resources:

Trauma Informed. [After the Crisis: Trauma and Retraumatization Issue Brief](#).

Bright Quest Treatment Centers. [PTSD Retraumatization](#).

Carello, J., & Butler, L. D. (2014). [Potentially perilous pedagogies: Teaching trauma is not the same as trauma-informed teaching](#). *Journal of Trauma & Dissociation*, 15(2), 153-168.

Miller, K., & Flint-Stipp, K. (2024). [The unintended consequences of integrating trauma-informed teaching into teacher education](#). *Teaching Education*, 1–19. <https://doi.org/10.1080/10476210.2024.2307360>

- **Graphic Violence:** Depictions of extreme violence, gore, or cruelty that may be disturbing.

Psychological Impact: Exposure to graphic violence can lead to increased aggression, desensitization to violence, anxiety, and nightmares, with youth particularly vulnerable to the latter due to increased spatial presence experience in children that may result from the not fully developed control functions of the frontal cortex (Zimmerman, citing Baumgartner, et al. 2006 (footnote 38)).

Studies and resources:

Anderson, C. A., Berkowitz, L., Donnerstein, E., Huesmann, L. R., Johnson, J. D., Linz, D., Malamuth, N. M., & Wartella, E. (2003). [The Influence of Media Violence on Youth](#). *Psychological Science in the Public Interest*, 4(3), 81-110.

Coyne, S. M., Ridge, R., Stevens, M., Callister, M., & Stockdale, L. (2012). [Backbiting and bloodshed in books: Short-term effects of reading physical and relational aggression in literature](#). *British Journal of Social Psychology*, 51(1), 188–196.

Stockdale, L. A., Coyne, S. M., Nelson, D. A., & Padilla-Walker, L. M. (2013). [Read anything mean lately? associations between reading aggression in books and aggressive behavior in adolescents](#). *Aggressive behavior*, 39(6), 493–502.

Zimmerman FJ. (2008). [Children's Media Use and Sleep Problems: Issues and Unanswered Questions](#). Kaiser Family Foundation.

- **Substance Abuse:** Content that promotes or glamorizes the use of drugs or alcohol.

Addiction: Exposure to content glamorizing substance abuse can increase the likelihood of experimentation and addiction.

Health Risks: Substance abuse has severe physical and mental health consequences including impaired judgment, anxiety, depression (including suicidal thoughts), and organ and brain damage, among others.

Studies and resources:

Coyne, S. M., Callister, M., & Phillips, J. C. (2011). [Getting boozy in books: substance use in adolescent literature](#). *Health communication*, 26(6), 512–515.

Jackson, K. M., Janssen, T., & Gabrielli, J. (2018). [Media/Marketing Influences on Adolescent and Young Adult Substance Abuse](#). *Current addiction reports*, 5(2), 146–157.

Stern S. R. (2005). [Messages from teens on the big screen: smoking, drinking, and drug use in teen-centered films](#). *Journal of health communication*, 10(4), 331–346.

- **Self-Harm or Suicide:** Content that promotes or glorifies self-harm or suicide.

Mental Health: Content promoting self-harm or suicide can trigger suicidal ideation or behavior in vulnerable individuals. This is otherwise known as the Werther effect, the phenomenon where an increase in suicides follows highly publicized reports of suicide. Coined after Johann Wolfgang von Goethe’s novel, *The Sorrows of Young Werther*, which sparked a wave of copycat suicides upon its publication, the term highlights the potential for media coverage, particularly literary depictions, to influence vulnerable individuals.⁴⁵

Coping Mechanisms: Minors must develop healthy coping strategies, not harmful ones that encourage self-harm.

Studies and resources:

Bridge, J. A., Greenhouse, J. B., Ruch, D., Stevens, J., Ackerman, J., Sheftall, A. H., Horowitz, L. M., Kelleher, K. J., & Campo, J. V. (2020). [Association Between the Release of Netflix’s 13 Reasons Why and Suicide Rates in the United States: An Interrupted Time Series Analysis](#). *Journal of the American Academy of Child and Adolescent Psychiatry*, 59(2), 236–243.

Gould, M., Jamieson, P., & Romer, D. (2003). [Media contagion and suicide among the young](#). *American Behavioral Scientist*, 46(9), 1269-1284.

Nationwide Children’s Hospital. (2019). [Suicide Rates Spike Nationally Among Youth After “13 Reasons Why” Release](#).

Psychology Today. [Media Coverage and Suicide Contagion](#).

Scalvini, M. (2020). [13 Reasons Why: can a TV show about suicide be ‘dangerous’? What are the moral obligations of a producer?](#) *Media, Culture & Society*, 42(7-8), 1564-1574.

⁴⁵For more on this, see Phillips, D. P. (1974). [The influence of suggestion on suicide: Substantive and theoretical implications of the Werther effect](#). *American sociological review*, 340-354. “According to Goethe, “My friends... .thought that they must transform poetry into reality, imitate a novel like this in real life and, in any case, shoot themselves; and what occurred at first among a few took place later among the general public. . . .” (Goethe, quoted in Rose, 1929: XXIV.) (p.340).

Transue, L. & Whitlock, J. [Self-injury in the media](#). *Cornell Research Program on Self-Injury and Recovery*.

- **Mature/Strong Language:** Content containing strong language may be unsuitable for minors.

Language Development: Excessive exposure to strong language can negatively impact a minor's vocabulary and communication skills.

Linked to aggression: There is a link between exposure to profanity in media and increased aggression among adolescents.

Studies and resources:

Brendgen, M., Wanner, B., Vitaro, F., Bukowski, W. M., & Tremblay, R. E. (2007). [Verbal abuse by the teacher during childhood and academic, behavioral, and emotional adjustment in young adulthood](#). *Journal of Educational Psychology*, 99(1), 26–38.

Coyne, S. M., Stockdale, L. A., Nelson, D. A., & Fraser, A. (2011). [Profanity in media associated with attitudes and behavior regarding profanity use and aggression](#). *Pediatrics*, 128(5), 867-872.
<https://doi.org/10.1542/peds.2011-1062>

Infante, D. A., & Wigley, C. J. (1986). [Verbal aggressiveness: An interpersonal model and measure](#). *Communication Monographs*, 53(1), 61–69.

Jay, T. (2009). [The Utility and Ubiquity of Taboo Words](#). *Perspectives on Psychological Science*, 4(2), 153-161.

- **Indoctrinating or Politically Themed Content:** Content that promotes specific ideologies or political viewpoints in a biased, unbalanced, or manipulative ways.⁴⁶

Emotional Manipulation: Politically themed materials can be used to manipulate young minds and influence the development of viewpoints.

Critical Thinking: Exposure to explicitly biased or one-sided information can also hinder a minor's ability to develop critical thinking skills integral to thinking for oneself while hampering the formation of one's own ideas and values.

Studies and resources:

Burke, L.M., Butcher, J., Greene, J.P. [The Critical Classroom: How Critical Race Theory Undermines Academic Excellence and Individual Agency in Education](#). *The Heritage Foundation*.

Goldberg, Z. & Kaufmann, E. (2023). [School Choice Is Not Enough: The Impact of Critical Social Justice Ideology in American Education](#). *Manhattan Institute*.

Reisman, J. A., & McAlister, M. E. (2018). [Materials Deemed Harmful to Minors Are Welcomed into Classrooms and Libraries via Educational" Obscenity Exemptions](#). *Liberty University Law Review*, 12(3), 3.

⁴⁶See also [Texas Education Code Section 28.0022](#): Certain Instructional Requirements and Prohibitions(4)(A)(III), which states, “A teacher may not be compelled to discuss a widely debated and currently controversial issue of public policy or social affairs; [and] (2) a teacher who chooses to discuss a topic described by Subdivision (1) shall explore that topic objectively and in a manner free from political bias.” This includes eight concepts associated with Critical Race Theory (CRT). Beyond this, [Texas Administrative Code Section 247.2](#), Code of Ethics and Standard Practices for Texas Educators, Subsection(3)(B), Standard 3.2, noting that “the educator shall not intentionally, knowingly, or recklessly treat a student or minor in a manner that adversely affects or endangers the learning, physical health, mental health, or safety of the student or minor.”

Shrier, A. (2024). *Bad Therapy: Why the Kids Aren't Growing Up*. Swift Press (particularly Chapter 4 on “Social-Emotional Meddling”).

Walton, S.E. [Gender Identity Ideology: The Totalitarian, Unconstitutional Takeover of America’s Public Schools](#). *34 Regent University Law Review* 219 (2022).

*On Gender Identity and Social Contagion*⁴⁷:

Rawee, P., Rosmalen, J. G. M., Kalverdijk, L., & Burke, S. M. (2024). [Development of Gender Non-Contentedness During Adolescence and Early Adulthood](#). *Archives of sexual behavior*, 53(5), 1813–1825.

Michael Bailey and Suzanna Diaz (2023). [Rapid-Onset Gender Dysphoria: Parent Reports on 1,655 Possible Cases](#). *Researchers.One*.

What about Pervasive Vulgarity?

The assessment of pervasive vulgarity may be determined by evaluating a book alongside factors such as:

- Frequency: How often does the objectionable content appear?
- Context: Is vulgarity gratuitous or integral to the plot or message?
- Impact: Could the content harm students' well-being or create a hostile learning environment?

We may also look to Justice Burger’s dissent in *Pico* for additional guidance, in which he expressed that vulgarity “might be concentrated in a single poem or a single chapter or a single page, yet still be inappropriate” (*Pico* at 890). He also observed that “a school board might reasonably conclude that even “random” vulgarity is inappropriate for teenage school students,” or that “a school board might also reasonably conclude that the school board's retention of such books gives those volumes an implicit endorsement” (*Pico* at 890).

EXAMPLES OF AGE-INAPPROPRIATE CONTENT

Titles are organized according to the section titles offered in [II: Embracing Opportunity](#) germane to the assessment of educational unsuitability and pervasive vulgarity. Books that have been removed from Texas school districts are highlighted in red, though the reasons for their removal may not correlate with their categorization in this report.⁴⁸ It is recommended that readers of this report visit the websites of their respective school districts to identify which titles below (if any) have been removed, **as this list is not in any way exhaustive or complete**.

Additional titles accompanied by selected excerpts may be found at [Book Looks](#), [Library Exposed](#), and [Rated Books](#). It should also be noted that several of the titles reproduced below do not contain one element alone, but may include a combination of different objectionable content. For example, a book may contain both explicit sex scenes and graphic violence, even if the title is only represented in one category above.

⁴⁷These studies are cited for the increased emphasis of literature aimed at minors and other ALA-recommended works where the notion that gender is changeable is endorsed. The research provided demonstrates how the glorification, glamorization, and overall promotion of gender as a malleable social construct has contributed to the likelihood of young people identifying as a gender in disagreement with their biological sex. See The Hill’s “[New studies find millions of young nonbinary and transgender Americans](#),” citing a UCLA brief on “[Nonbinary LGBTQ Adults in the United States](#),” finding that there were “1.2 million nonbinary people in the 18-60 age group,” with “three-quarters were under 30, which suggests Generation Z has explored gender identity to an extent that older Americans have not.”

⁴⁸Removed titles are either from [Frisco Independent School District \(ISD\)](#), [McKinney ISD](#), and/or [Plano ISD](#), respectively.

- Sexually suggestive or explicit content
 - [Choke](#)
 - [Flamer](#)
 - [Gender Queer](#)
 - [The V Word](#)
 - [Tilt](#)
 - [Lucky](#)
 - [Identical](#)
 - [Fallout](#)
 - [She gets the girl](#)
 - [Red Hood](#)
 - [Red at the Bone](#)
 - [This Book is Gay](#)
 - [Let's Talk About It](#)
 - [Plan A](#)
 - [Crank](#)
 - [How Beautiful the Ordinary](#)
 - [Him](#)
 - [Life is Funny](#)
 - [All Boys Aren't Blue](#)
 - [A Court of Frost and Starlight](#)
 - [A Court of Mist and Fury](#)

- Graphic violence
 - [Dead End](#)
 - [Love Lives Beneath](#)
 - Assassination Classroom series: [Volume 1](#), [Volume 2](#), [Volume 3](#), [Volume 4](#), [Volume 5](#), [Volume 6](#), [Volume 7](#), [Volume 8](#)
 - [Haunted](#)
 - [People Kill People](#)

- Substance abuse
 - [Beautiful](#)
 - [House of Earth and Blood](#)
 - [Hooked](#)
 - [Gabi, A Girl in Pieces](#)
 - [The Gift](#)
 - [Glass](#)

- Self-harm and/or suicide
 - [Cut](#)
 - [Living Dead Girl](#)
 - [Lighter Than My Shadow](#)
 - [Crank](#)
 - [Hunger: A Memoir of \(My\) Body](#)
 - [13 Reasons Why](#)
 - [Scars](#)

- [A Sin Such as This](#)
- [Lessons in Chemistry](#)
- Mature/strong language
 - [Red, White & Royal Blue](#)
 - [The Lesbiana's Guide to Catholic School](#)
 - [Lawn Boy](#)
 - [The Haters](#)
 - [The Handsome Girl and Her Beautiful Boy](#)
- Indoctrinating or politically themed content
 - [Being you: A first conversation about gender](#)
 - [Beyond the gender binary](#)
 - [She's My Dad!](#)
 - [Jay's Gay Agenda](#)
 - [Sissy: A Coming-of-Gender Story](#)
 - [They, She, He, Me: Free to be!](#)
 - [Seeing Gender](#)
 - [Rethinking Normal](#)
 - [Stamped \(For Kids\): Racism, Antiracism, and You](#)
 - [Sam is my sister](#)
 - [Bye, Bye Binary](#)
 - [Hooray for She, He, Ze, and They! What Are Your Pronouns Today?](#)
 - [The GayBC's](#)
 - [Woke: A Young Poet's Call to Social Justice](#)
 - [Who are you? The Kid's Guide to Gender Identity](#)
 - [You be You! The Kid's Guide to Gender, Sexuality, and Family](#)
 - [Gender Pirates](#)
 - [Our Skin: A First Conversation About Race](#)
 - [The Freedom Writers Diary](#)
 - [Everything I learned about racism I learned in school](#)
 - [The Black Friend: On Being a Better White Person](#)



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