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## Case v. Unified School District No. 233

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*Case v. Unified School District No. 233*, 13 U. Miami Ent. & Sports L. Rev. 288 (1996)

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argument regarding the taking of unprotected material is without merit.

Next, the court concluded that Robinson's use was not 'fair use'. In determining whether a reasonable author would consent to the use, the fair use doctrine specifies 'four non-exclusive factors' that a district court should weigh in their decision. Those factors are (1) the purpose and character of the use, (2) the nature of the copyrighted work, (3) the amount and substantiality of the portion use in relation to the copyrighted work as a whole, and (4) the effect of the use on the potential market for, or value of, the copyrighted work. The court found that Robinson's taking was not fair use. Robinson did not show any justification for using 25-30 percent of the Daley Book to write a historical book about the Pan Am saga or why Daley's exact words were necessary in order to complete his book. In the instant case, the court held that "as a matter of law that Robinson's book was a substantially nontransformative duplication of the Daley Book, albeit in a shorter version." It was clear to the court that no reasonable jury could make a finding of fair use. A permanent injunction was issued prohibiting Robinson from further printing, publishing, or marketing his book without first obtaining licensing rights from Daley. Further, Robinson was obligated to pay attorney's fees for the other side.

L.L.

CASE V. UNIFIED SCHOOL DISTRICT No. 233, 908 F. Supp. 864 (D. Kan. 1995).

A school district in Kansas removed a novel entitled *Annie on My Mind* from school library shelves. The novel depicts a fictional romantic relationship between two teenage girls. It has received numerous literary awards and distinctions, including an American Library Association award for "Best of the Best" books for young adults; and it contains no vulgarity, offensive language or explicit sexual content. Former and current students of junior and senior high school and their parents, brought suit against the school board and superintendent seeking an injunction to compel reinstatement on school library shelves of *Annie on My Mind*.

The issue presented in this case was whether defendant's removal of *Annie on My Mind* from the District's libraries violated plaintiffs' rights under the First and Fourteenth Amendments.

Before addressing the substantive issues in this case, the court determined whether the plaintiffs had standing to challenge the removal of the book. Defendants contended that several plain-

tiffs had not suffered an injury-in-fact because the book was available at the public libraries and, thus, had no standing to bring suit. After analyzing the constitutional standing requirements under each class of plaintiffs, the court determined that the former students and parents of those students lacked standing because they are not allowed free access to, nor are they allowed to check out, books at the District's libraries. Thus, these former students no longer have a cognizable interest in the case or controversy and their injuries would not be redressed by the return of the book to the libraries. However, the court did find that the teacher, current students and their parents had standing to challenge the book's removal. Accordingly, the remaining plaintiffs with standing to challenge the removal of *Annie on My Mind* are the teacher, current students and their parents.

Plaintiffs contend that their First Amendment rights were violated when the school district removed *Annie on My Mind* from the school library. The defendants claim that they removed the book from the library because it was "educationally unsuitable". The Constitutional standards for removing books from libraries on account of their content was articulated by the United States Supreme Court in *Board of Education v. Pico*, 457 U.S. 853 (1982). The plurality opinion in that case held that although books may be removed from libraries if they are "pervasively vulgar" or lacking in "educational suitability," removal is unconstitutional if it is done solely to deny students access to ideas with which school officials disagree.

Following a four-day trial of the instant case, the judge determined that the motives of the school district board members ran afoul of the First Amendment. Although the school board members testified they had voted to remove the book because it was "educationally unsuitable", the judge found that "there was no basis in the record to believe that these Board members meant by 'educational suitability', anything other than their own disagreement with the ideas expressed in the book. Hence, the invocation of 'educational suitability' did nothing to counter-balance the overwhelming evidence of viewpoint discrimination." As a result, the court concluded that the school district members "removed *Annie on My Mind* because they disagreed with ideas expressed in the book . . . ." Defendants' removal of *Annie on My Mind* from the School District libraries violated Plaintiffs' First Amendment rights and, thus, was unconstitutional.

Plaintiffs also claim that their due process rights were violated by the Olathe School District's failure to follow its own procedures. The court found that the plaintiffs did not have a liberty or property interest in the removal of a book from the school library. Therefore, the court rejected plaintiffs contentions that failure to follow these procedures was a violation of their constitutional due process rights. In reaching its conclusion the court noted that the defendants provided plaintiffs the opportunity to express their views at the January 1994 school board meeting and thus the public board meeting satisfied the minimum federal constitutional requirements for procedural due process. Accordingly, the court held that defendant's removal of *Annie on My Mind* did not violate plaintiffs' due process rights under the Fourteenth Amendment.

Plaintiffs' request for injunctive, declaratory relief, and attorney's fees and costs was granted. The court ordered defendants to return the copies of *Annie on My Mind* to the school libraries.

A.H.