



## **KIMBERLY SCHOOL DISTRICT**

Superintendent – Luke Schroeder

Program Director – Matt Schvaneveldt

District Clerk – Cassandra Searby

Business Manager – Laurie Wirtz

Board of Trustees: Myron Nield, Curtis Giles, Chad Allen, Zachary Kelsey and Rex Ward

### **Establishing a Measurement Tool for Literary Merit**

In order to establish a tool for measuring literary merit when a review is suggested or requested, several sources are examined to determine how a rubric for evaluation could be created. According to a publication by Cornell Law School, establishing if a work is protected under the 1<sup>st</sup> amended as free speech or breeches protections against obscenity is difficult to determine.<sup>1</sup> To create a “one size fits all” test is a challenging undertaking, and we have attempted to create a form that is neutral, objective, and useful in reviewing library materials for content that complies with community views and simultaneously upholds the right for all citizens to obtain materials that they want their children to access.

The current legal precedent for evaluating materials that an individual might refer to as containing obscenity derives from what is known as the Miller Test.<sup>2</sup> It is derived from Supreme Court case *Miller v. California* (1973).<sup>3</sup> Though the case pertains to a public case unrelated to materials selection in libraries, it still serves for the basis for determining if a material should be removed or restricted in a library. In his article describing the Miller Test, Professor David L. Hudson outlines the three guidelines used by Chief Justice Warren Burger:

- (1) whether the average person applying contemporary community standards would find the work, taken as a whole, appeals to the prurient interest;
- (2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and
- (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.<sup>4</sup>

Utilizing this test as a guideline as Chief Justice Burger intended, we next look at current Idaho Statute 18-1514, which outlines the state descriptions of obscene materials and its definition of harmful to minors as:

"Harmful to minors" includes in its meaning one or both of the following:

- (a) The quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:
  - (1) appeals to the prurient interest of minors as judged by the average person, applying contemporary community standards; and

---

<sup>1</sup> “Obscenity,” Legal Information Institute, accessed May 8, 2023, <https://www.law.cornell.edu/wex/obscenity>.

<sup>2</sup> Ibid.

<sup>3</sup> “U.S. Reports: Miller v. California, 413 U.S. 15 (1973).,” The Library of Congress, accessed May 8, 2023, <https://loc.gov/item/usrep413015/>.

<sup>4</sup> David L Hudson, Miller Test, 2018, <https://www.mtsu.edu/first-amendment/article/1585/miller-test>.

- (2) depicts or describes representations or descriptions of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse which are patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors and includes, but is not limited to, patently offensive representations or descriptions of:
- (i) intimate sexual acts, normal or perverted, actual or simulated; or
  - ii) masturbation, excretory functions or lewd exhibition of the genitals or genital area. Nothing herein contained is intended to include or proscribe any matter which, when considered as a whole, and in context in which it is used, possesses serious literary, artistic, political or scientific value for minors, according to prevailing standards in the adult community, with respect to what is suitable for minors.<sup>5</sup>

Having established the federal and state requirements evaluating materials that can be determined as obscene, we must almost maintain a system of measurement that upholds freedom of speech rights of students. It is an established precedent that libraries, school or community, should provide a wide assortment of materials that appeal to all age ranges, interests, and content areas. This ranges from reference materials and other non-fiction categories as well as works of fiction. It is our aim and goal at Kimberly School District to provide materials for all students from all walks of life to receive the education they desire with the least number of hurdles to overcome. To do this, the attached rubric is suggested, but open to input from the community to evaluate materials in an objective, unbiased way.

Christopher Ahlm

KHS Librarian

---

<sup>5</sup> "Idaho Statute 18-1514," Idaho State Legislature, 2022, <https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH15/SECT18-1514/>.

## Works Cited

“Obscenity.” Legal Information Institute. Accessed May 8, 2023.  
<https://www.law.cornell.edu/wex/obscenity>.

“U.S. Reports: Miller v. California, 413 U.S. 15 (1973).” The Library of Congress. Accessed May 8, 2023. <https://loc.gov/item/usrep413015/>.

Hudson, David L. Miller Test, 2018. <https://www.mtsu.edu/first-amendment/article/1585/miller-test>.

“Idaho Statute 18-1514.” Idaho State Legislature, 2022.  
<https://legislature.idaho.gov/statutesrules/idstat/Title18/T18CH15/SECT18-1514/>.

Library Materials Evaluation Rubric					
<b>Date Evaluated:</b>					
<b>Evaluator:</b>					
<b>Title of Book Being Reviewed:</b>					
<b>Author:</b>					
<b>Publishers Indicated Age Range:</b>					
<b>Length (Pages):</b>					
<b>Read publication in its entirety?:</b>	Yes	No			
<b>Personal Role:</b>	Parent	Teacher	Administrator	Community Member	Other:
Section One: Age Level (Circle all that apply)					
<b>Vocabulary Level:</b> <i>What age level would you recommend this for?</i>	Primary	Middle Grades	9-12	12+	
<b>Content Level:</b> <i>What maturity level would this be applicable to?</i>	Primary	Middle Grades	9-12	12+	
Section Two: Literary Evaluation (Choose One)					
<b>Content:</b> <i>The material being evaluated as a whole contributes to literacy in our schools</i>	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
<b>Themes:</b> <i>The material contains themes as a whole that warrant inclusion in the library</i>	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
<b>Language:</b> <i>The language used within reflects the common language used by its recommended audience</i>	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Section Three: Evaluation of Mature Themes (Choose One, *N/A indicates no examples of this criteria observed)					
<b>Language:</b> <i>The language used would be patently offensive by community standards for the intended age group</i>	Strongly Agree	Agree	Disagree	Strongly Disagree	N/A*
<b>Sexuality:</b> <i>The sexuality described would be patently offensive by community standards for the intended age group</i>	Strongly Agree	Agree	Disagree	Strongly Disagree	N/A*
<b>Violence:</b> <i>the violence described would be patently offensive by community standards for the intended age group</i>	Strongly Agree	Agree	Disagree	Strongly Disagree	N/A*

Individual Recommendation	General Access	Restricted Access	Removed
Signature			