

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
VIRGINIA, ALEXANDRIA DIVISION

E.K. and S.K., minors, by and through their parent and next friend
Lindsey Keeley, et al. v. Department of Defense Education Activity, et
al.

E.K. v. Department of Defense Education Activity · No. No. 1:25-cv-637 (PTG/IDD) · Decided March 20, 2026

SUMMARY

The United States District Court for the Eastern District of Virginia denies the Department of Defense Education Activity defendants’ motion to dismiss First Amendment claims brought by students at DoDEA schools. The court holds that the plaintiffs adequately established standing and ripeness and plausibly alleged that curricular changes and library-book removals were motivated by impermissible political considerations and were not reasonably related to legitimate pedagogical interests. The court relies in part on its prior preliminary-injunction opinion.

CASE DETAILS

COURT	United States District Court for the Eastern District of Virginia, Alexandria Division
WRITING FOR THE COURT	Patricia Tolliver Giles
JURISDICTION	United States District Court for the Eastern District of Virginia, Alexandria Division
DECIDED	March 20, 2026
DOCKET	No. 1:25-cv-637 (PTG/IDD)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendants moved under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) to dismiss First Amendment claims brought by students of military families. The court denied the motion to dismiss.
STANDARD OF REVIEW	For the Rule 12(b)(1) standing and ripeness challenge, the court considered whether plaintiffs established Article III standing and whether their claims were ripe, and could consider evidence outside the pleadings without converting the motion into one for summary judgment. For the Rule 12(b)(6) challenge, the court accepted well-pleaded factual allegations as true, drew reasonable inferences for

plaintiffs, and asked whether the complaint stated a facially plausible claim for relief.

PRECEDENTIAL VALUE

nonprecedential

TOPICS

first amendment

free speech

standing

motions to dismiss

civil procedure

PRACTICE AREAS

constitutional law

civil rights

military law

civil procedure

administrative law

QUESTIONS PRESENTED

1. Whether plaintiffs had Article III standing to challenge the removal of library books and changes to curricular materials.
2. Whether plaintiffs' First Amendment claims were ripe despite the absence of final agency decision-making.
3. Whether the complaint plausibly alleged that the curricular changes violated the First Amendment under the Hazelwood standard.
4. Whether the complaint plausibly alleged that the library-book removals violated the First Amendment because they were motivated by impermissible partisan or political considerations and were not justified by legitimate pedagogical interests.

HOLDINGS

1. Plaintiffs adequately established Article III standing at the motion-to-dismiss stage for both their book-removal and curricular-change claims.
2. Plaintiffs' claims were ripe because the challenged book removals and curricular changes had an operative effect notwithstanding the absence of final decision-making.
3. The complaint plausibly alleged a First Amendment violation based on DoDEA's curricular changes because the alleged restrictions were not reasonably related to legitimate pedagogical interests.
4. The complaint plausibly alleged a First Amendment violation based on DoDEA's removal of library books because the alleged removals could have been motivated by impermissible partisan or political considerations and were not justified by legitimate pedagogical interests.

KEY QUOTATIONS

“the Secretary of Defense and DoDEA administrators immediately deferred to the President’s directives absent any further pedagogical review or cited interest.” (Dkt. 58 at 39)

“A pedagogical priority or other motivation set directly by the President of the United States, in accordance with his political views and no further pedagogical inquiry from the educational system, is exactly the type of conduct deemed impermissible under the First Amendment.” (Dkt. 58 at 39-40)

FACTUAL BACKGROUND

Twelve students from military families attending five DoDEA schools challenged the removal of library books and changes to curricular materials. The challenged actions were allegedly implemented in response to presidential Executive Orders addressing politically divisive subjects, including critical race theory, diversity and equity, gender ideology, and related topics. The complaint alleged that the removals and curricular changes were undertaken without independent pedagogical review and were motivated by partisan or political considerations.

PROCEDURAL HISTORY

Plaintiffs filed suit challenging the removal of library books and changes to curricular materials at Department of Defense Education Activity schools. While the motion to dismiss was pending, the court granted preliminary injunctive relief in part and ordered restoration of the removed books and curricular materials at plaintiffs' five schools. The parties cross-appealed the preliminary-injunction decision to the Fourth Circuit, and those appeals remained pending when the court denied the motion to dismiss.

DISPOSITION

dismissed

CASES CITED

- Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 552 (2005)
- Lovern v. Edwards, 190 F.3d 648, 654 (4th Cir. 1999)
- Dreher v. Experian Information Solutions, Inc., 856 F.3d 337, 343 (4th Cir. 2017)
- Pye v. United States, 269 F.3d 459, 466 (4th Cir. 2001)
- White Tail Park, Inc. v. Stroube, 413 F.3d 451, 459 (4th Cir. 2005)
- Richmond, Fredericksburg & Potomac Railroad Co. v. United States, 945 F.2d 765, 768 (4th Cir. 1991)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009)
- E.I. du Pont de Nemours & Co. v. Kolon Industries, Inc., 637 F.3d 435, 440 (4th Cir. 2011)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007)
- Allen v. Wright, 468 U.S. 737, 750 (1984)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Cooksey v. Futrell, 721 F.3d 226, 240 (4th Cir. 2013)
- Virginia Society for Human Life, Inc. v. Federal Election Commission, 263 F.3d 379, 389 (4th Cir. 2001)
- Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947, 956 (1984)
- Action NC v. Strach, 216 F. Supp. 3d 597, 628 (M.D.N.C. 2016)
- Suri v. Trump, No. 25-1560, 2025 WL 1806692, at *9 (4th Cir. July 1, 2025)
- Elrod v. Burns, 427 U.S. 347, 373 (1976)

- Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)
- Boring v. Buncombe County Board of Education, 136 F.3d 364, 368 (4th Cir. 1998)
- Board of Education v. Pico, 457 U.S. 853, 870-71 (1982) (Blackmun, J., concurring)
- PEN American Center, Inc. v. Escambia County School Board, 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024)
- ACLU of Florida, Inc. v. Miami-Dade County School Board, 557 F.3d 1177, 1202 (11th Cir. 2009)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA
 Alexandria Division E.K. and S.K., minors, by and through their ___ parent and next friend
 Lindsey Keeley, et al., □)) Plaintiffs,))) No. 1:25-cv-637 (PTG/IDD)) DEPARTMENT OF
 DEFENSE) EDUCATION ACTIVITY, ef ai.,))) Defendants.) MEMORANDUM ORDER This
 matter comes before the Court on Defendants’ Motion to Dismiss, which was filed on June 27,
 2025.

Dkt. 48. In this suit, twelve students of military families (collectively, “Plaintiffs”) at five
 Department of Defense Education Activity (“DoDEA”) schools bring First Amendment claims
 against Defendants DoDEA, Director of DoDEA Dr. Beth Schiavano-Narvaez, and Secretary of
 Defense Peter Brian Hegseth (collectively, “Defendants”). Dkt. 1 (“Compl.”) 4, 10-18.

The Complaint alleges that Defendants violated Plaintiffs’ First Amendment rights by removing
 library books at DoDEA schools and making changes to curricular material in implementation of
 various Presidential Executive Orders (“EOs”). *Jd.* 51, 83-101.

In seeking dismissal, Defendants argue that Plaintiffs lack standing and additionally have failed to
 state a claim for relief under the First Amendment. Dkts. 48-49, At the time Defendants filed the
 instant Motion, Plaintiffs’ Motion for Preliminary Injunction seeking to restore the removed
 curricular materials and books to all DoDEA schools was pending before the Court.

Dkt. 9. Recognizing the overlapping arguments between the Motion to Dismiss and Defendants’
 opposition to a preliminary injunction, on July 17, 2025, the Court indicated it would decide the
 Motion to Dismiss on the papers. Dkt. 56.

The Court has since granted injunctive relief in part. Dkt. 59. On October 20, 2025, this Court
 ordered Respondents to restore the removed books and curricular material as to Plaintiffs’ five
 DoDEA schools. *Jd.* In parallel, the Court issued a more fulsome memorandum opinion with its
 reasoning and assessment of the parties’ jurisdictional and merits arguments.

Dkt. 58 (“Preliminary Injunction Opinion”). The parties filed cross-appeals of that decision before
 the Fourth Circuit, which remain pending. Dkts. 60, 63. For the reasons set forth below, the Court
 now denies Defendants’ Motion to Dismiss. **LEGAL STANDARD** Federal district courts are
 courts of limited subject matter jurisdiction. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545

U.S. 546, 552 (2005). “[A] federal court is obliged to dismiss a case whenever it appears the court lacks subject matter jurisdiction.” *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir.

1999) (citing Fed. R. Civ. P. 12(h)(3) (providing that the court may dismiss for lack of subject matter jurisdiction at “any time”)). “Standing ‘is a threshold jurisdictional question’ that ensures a suit is ‘appropriate for the exercise of the [federal] courts’ judicial powers.” *Dreher Experian Info. Sols., Inc.*, 856 F.3d 337, 343 (4th Cir. 2017) (alteration in original) (quoting *Pye v. United States*, 269 F.3d 459, 466 (4th Cir.

2001)). “When a defendant raises standing as the basis for a motion under Rule 12(b)(1)... the district court ‘may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.’” *White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 459 (4th Cir. 2005) (quoting *Rich., Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir.

1991)). To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint must set forth “a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

The plausibility requirement mandates that a plaintiff “demonstrate more than ‘a sheer possibility that a defendant has acted unlawfully.’” *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678).

Accordingly, a complaint is insufficient if it relies upon “naked assertions” and “unadorned conclusory allegations” devoid of “factual enhancement.” /d. (first quoting *Iqbal*, 556 U.S. at 679; and then quoting *Twombly*, 550 U.S. at 557). When reviewing a motion brought under Rule 12(b)(6), the Court “must accept as true all of the factual allegations contained in the complaint,” drawing “all reasonable inferences” in the plaintiff's favor.

E.J. du Pont de Nemours & Co. v. Kolon Indus., Inc., 637 F.3d 435, 440 (4th Cir. 2011) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). DISCUSSION Because the Court addressed the majority of Defendants’ arguments for dismissal in its Preliminary Injunction Opinion, it relies extensively on that reasoning here. Dkt. 58. Below, the Court first addresses the jurisdictional arguments and then the Rule 12(b)(6) motion.

A. Rule 12(b)(1) Motion for Lack of Jurisdiction Defendants challenge the Court’s jurisdiction over Plaintiffs’ claims on standing and ripeness grounds. Dkt. 49 at 8; *Allen v. Wright*, 468 U.S. 737, 750 (1984) (stating both ripeness and standing bear on the Court’s jurisdiction).

To establish Article III standing, a plaintiff must show (1) a concrete, particularized, and actual or imminent injury-in-fact that is (2) fairly traceable to the challenged action by the defendant, and is (3) likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). “Ripeness ‘concerns the ‘appropriate timing of judicial intervention.’” *Cooksey v. Futrell*, 721 F.3d 226, 240 (4th Cir.

2013) (quoting *Va. Soc’y for Human Life, Inc. v. FEC*, 263 F.3d 379, 389 (4th Cir. 2001)). The Court’s review of ripeness “is inextricably linked to our standing inquiry.” *Jd.* The requirements for both standing and ripeness are relaxed in the First Amendment context, given the “chilling effect” from regulating First Amendment rights. */d.*; *Sec. of State of Md. v. Joseph H. Munson Co., Inc.*, 467 U.S. 947, 956 (1984).

First, for the reasons stated in its Preliminary Injunction Opinion, the Court finds that Plaintiffs have established Article III standing on both the book removal and curricular changes claims. Dkt. 58 at 14-22. The Court may consider materials outside of the pleadings for standing purposes. *Stroube*, 413 F.3d at 459. Further, “the standard for determining whether Article III standing exists at the preliminary injunction stage carries a higher burden, i.e., a clear likelihood of success.” *Action NC v. Strach*, 216 F. Supp. 3d 597, 628 (M.D.N.C.

2016). Accordingly, where Plaintiffs met the standing requirements at the preliminary injunction stage, the Court finds that they have established standing under the lower burden at the motion to dismiss stage as well.

Moreover, Plaintiffs’ claims are ripe. Defendants contend that because DoDEA has not made any final decisions on the book and curricular removals, Plaintiffs’ claims cannot be ripe. Dkt. 49 at 8. However, as this Court’s prior opinions in this matter have laid bare, both the book removals and curricular changes have been operative notwithstanding the lack of final decision- making.

See Dkt. 54 (highlighting the “real operative effect” of the draft list of removed books); Dkt. 58 at 5-8 (discussing implementation of policies). Accordingly, a live case or controversy exists. See *Suri v. Trump*, No. 25-1560, 2025 WL 1806692, at *9 (4th Cir. July 1, 2025) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”).

Therefore, the Court has jurisdiction over Plaintiffs’ claims. B. Rule 12(b)(6) Motion for Failure to State a Claim Defendants’ arguments seeking to dismiss the Complaint for failure to state a claim substantially echo the same arguments asserted in their pleadings in response to the Motion for Preliminary Injunction. See Dkts. 29, 49.

Because the Court previously addressed several of Defendants’ arguments as to the proper First Amendment framework, the Court incorporates by reference its reasoning as to the legal standard from its Preliminary Injunction Opinion. Dkt. 58 at 22-40.

The Court's review of a motion to dismiss is limited to the pleadings, unlike its review of a preliminary injunction motion. Fed. R. Civ. P. 12(d). Nevertheless, the Court finds that on the pleadings alone, Plaintiffs have stated a plausible claim under the First Amendment with respect to both the curricular changes and book removals. i. Curricular Changes The Court reviews the First Amendment challenge to the curricular changes under the standard articulated in *Hazelwood School District v. Kuhlmeier*, which permits regulation of school-sponsored speech where "reasonably related to legitimate pedagogical interests."

484 U.S. 260 (1988). The facts alleged in the Complaint suggest that Defendants' regulation of DoDEA's curricular materials is not reasonably related to pedagogical interests. On the contrary, the allegations in the pleadings make clear that DoDEA's curricular changes stem from a directive from the President of the United States. Compl. §§ 2, 25-31.

As this Court asserted with respect 1 The Court rejects Defendants' suggestion that school curricular speech is government speech. Dkt. 49 at 14. As Defendants' relied-upon case *Boring v. Buncombe County Board of Education* makes clear, under Fourth Circuit law, restrictions on curricular speech are assessed under the *Hazelwood* standard. 136 F.3d 364, 368 (4th Cir.

1998) (applying *Hazelwood* on the grounds that the regulated speech at issue was part of the school's curriculum). to the preliminary injunction, Plaintiffs' attachments to the Complaint demonstrate that "the Secretary of Defense and DoDEA administrators immediately deferred to the President's directives absent any further pedagogical review or cited interest." Dkt.

58 at 39; see also DKt. 1- 10 at 2 (Memorandum from Defense Secretary Pete Hegseth barring DoD from "provid[ing] instruction on Critical Race Theory (CRT), DEI, or gender ideology... "); Dkt. 1-11 (Memorandum from DoDEA Acting Chief Academic Officer directing instructors to cease using curricula "potentially related to gender ideology or discriminatory equity ideology topics[.]").

Nor do Defendants' asserted pedagogical interests appear to be reasonably reflected in the curricular changes. Defendants aver that *Hazelwood* permits DoDEA to regulate curriculum on gender ideology, discriminatory equity ideology, and invidious race and sex discrimination, all of which "have been part of national discourse for some time." Dkt. 49 at 20-21. Again, the Court reiterates: it cannot contemplate the pedagogical basis for banning the "Gender and Sex" module in Advanced Placement Psychology; lessons on immigration in elementary school; chapters on "Human Reproductive System, Menstrual Cycle, and Fetal Development, Abuse and Neglect," and "Adolescence and Puberty" from health education textbooks; and celebrations related to "identity months," including Black History and Women's History Months.

Compl. 52, 56-57; Dkt. 1-11 at Attachment A; see also Dkt. 58 at 39-40. Accordingly, Plaintiffs have alleged sufficient facts to state a First Amendment violation with respect to the curricular

changes. ii. Book Removals Similarly, the Court finds that the Complaint states a plausible First Amendment claim with respect to the book removals. This Court has already rejected Defendants' position that (1) the right to receive information does not extend to a library's decision to remove books, and that (2) book removals constitute government speech.

Dkt. 58 at 23-37. In its Preliminary Injunction Opinion, the Court further addressed the unresolved legal framework around First Amendment challenges to book removals. /d. at 28-37. In accordance with the weight of authority in other courts, the Court determined it would evaluate the book removals under the legal standards set forth by both the plurality opinion in *Board of Education v. Pico*, 457 U.S. 853 (1982), and the majority in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

Jd. at 28-37. -Accordingly, the Court looks to (1) whether the underlying motivation for removal is improper, and (2) whether legitimate pedagogical interests justify the book removals. /d.; see also *PEN Am. Ctr., Inc. v. Escambia Cnty Sch. Bd.* 711 F. Supp. 3d 1325, 1331 (N.D. Fla. 2024); *ACLU of Fl, Inc. v. Miami-Dade Cnty Sch. Bd.*, 557 F.3d 1177, 1202 (11th Cir.

2009). Applying that standard to the Complaint, the Court finds that Plaintiffs' allegations support a plausible claim that Defendants' stated motivations for removing hundreds of library books set forth an impermissible partisan or political motivation.

For example, a memorandum from DoDEA's Acting Chief Academic Officer—which is attached to the Complaint—details that the book removals are done in “alignment with the applicable Executive Orders,” which target politically divisive topics. Dkt. 1-4. Further, the Complaint points to the President's own words as a direct link between his EOs and his war on “wokeness.” Dkt.

1 | 28; see also *Pico*, 457 US. at 870-71 (Blackmun, J., concurring) (“[T]he State may not act to deny access to an idea simply because state officials disapprove of that idea for partisan or political reasons.”). A directive from the President on eradicating “wokeness” is the pinnacle of narrow partisan motivations.

The Complaint asserts a valid First Amendment challenge to the book removals under the *Hazelwood* standard as well. As with the curricular changes, the book removals implement, in whole, the President's EOs and are not limited to any particular “pedagogical standards and priorities.” Indeed, if anything, Defendants' stated interests run afoul of *Hazelwood* because they “associate the school with any position other than neutrality on matters of political controversy.” 484 U.S. at 272.

A pedagogical priority or other motivation set directly by the President of the United States, in accordance with his political views and no further pedagogical inquiry from the educational system, is exactly the type of conduct deemed impermissible under the First Amendment.

Accordingly, the Court finds that Plaintiffs have stated a plausible claim for a First Amendment violation with respect to the book removals as well. CONCLUSION For the foregoing reasons, it is hereby ORDERED that Defendants' Motion to Dismiss (Dkt. 48) is DENIED. Entered this 10th day of March, 2026. Alexandria, Virginia (The Patricia Tolliver Giles United States District Judge

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