

United States Department of Education  
Office for Civil Rights, Washington D.C.  
400 Maryland Ave. SW  
Washington, D.C. 20202  
Copy via email to [OCR.DC@ed.gov](mailto:OCR.DC@ed.gov)

May 13, 2024

**Re: Complaint Against Collier County Public School District and Collier County School Board Pursuant to Title IX of the Education Amendments of 1972 and Title VI of the Civil Rights Act of 1964.**

To the Office for Civil Rights:

Collier County’s public schools are systemically marginalizing lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+) students in violation of Title IX of the Education Amendments of 1972 (Title IX) and students of color in violation of Title VI of the Civil Rights Act of 1964 (Title VI). The Collier County School Board and Collier County Public Schools (collectively “the County”) have done so by targeting and removing an extensive amount of classroom and library materials that feature characters of color and LGBTQIA+ characters, that are written by people of color and/or LGBTQIA+ authors, that discuss racial identity and race-based discrimination, and that discuss LGBTQIA+ identity and anti-LGBTQIA+ discrimination.

Testimonials offered by students, parents, educators, and Board members<sup>1</sup> evince that the County’s policies are creating a hostile environment for students. Classroom libraries and media centers<sup>2</sup> have been decimated; students have been forced back into the closet; teachers and other school staff who seek to provide safe environments for students have been driven away from schools; incidents of bullying and harassment have been ignored; and there is a pall of fear over the educational environment for LGBTQIA+ students and students of color.

The County has taken no action to address the hostile educational environment it has created, despite being repeatedly confronted with evidence that censoring materials featuring LGBTQIA+ people and people of color has impacted the ability of LGBTQIA+ students and students of color to feel safe and represented in their educations.

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<sup>1</sup> The National Women’s Law Center has worked with local community-based organizations to gather a comprehensive picture of the impact of book bans and censorship in Collier County Public Schools. We received information through testimony to the Board, an [online submission](#) form, email communications, and personal interviews. The individuals quoted herein by name agreed to be quoted in this complaint and to speak with OCR investigators upon request. Other individuals have agreed to be quoted anonymously and have consented to speak with OCR investigators upon request, provided their names are not shared with Collier County Public Schools or the public. The testimonials are excerpted in Parts II and III below. Complete testimonials are included in the attached Appendix.

<sup>2</sup> This complaint uses “classroom libraries” to refer to collections of books, magazines, and other reading materials organized by teachers in their classrooms and “media centers” to refer to the County’s library programs, where each school has a certified media specialist who is part of the instructional staff.

Title IX and Title VI are clear in the protections they offer to students. The County’s failure to abide by Titles IX and VI demands federal intervention. All of the County’s students deserve a safe public education—including LGBTQIA+ students and students of color. Without swift remedial efforts to make Collier County Public Schools welcoming to all students, the damage caused by banning inclusive books will result in ongoing harm.

**Table of Contents**

**I. Preliminary information ..... 3**

**II. The County has implemented policies that discriminate against LGBTQIA+ students and students of color..... 5**

**A. The County enacted policies to censor inclusive materials. .... 5**

**B. Board Members have made discriminatory statements..... 10**

**C. The County banned materials supportive of LGBTQIA+ youth. .... 14**

**D. These actions have negatively impacted students. .... 15**

**III. The County has created and tolerated a hostile educational environment for LGBTQIA+ students and students of color in public schools in violation of Title IX and Title VI..... 20**

**A. Federal law prohibits the creation, tolerance, or acceptance of a hostile environment based on sex and race in federally funded schools. .... 20**

**B. The County created, tolerated, exacerbated, and failed to ameliorate a hostile environment based on sex and race. .... 23**

**IV. OCR must take steps to bring Collier County’s public schools into compliance with Title IX and Title VI and rectify the sex- and race-based hostile environments. .... 28**

**V. Conclusion ..... 30**

## I. Preliminary information

**The complainant** is the National Women’s Law Center (NWLC). Based in Washington, D.C., NWLC is a nonprofit organization that fights for gender justice—in the courts, in public policy, and in our society—working across issues central to the lives of women and girls with a particular focus on women and girls of color, LGBTQIA+ people, and low-income women and families. Since 1972, NWLC has worked to secure equal opportunity in education for women and girls through full enforcement of the U.S. Constitution, Title IX, 20 U.S.C. § 1681 et seq., and other laws prohibiting sex discrimination.

**The legal basis of this complaint is** discrimination based on sex (including based on sexual orientation, gender identity, and sex characteristics) in violation of Title IX of the Education Amendments Act of 1972, 20 U.S.C. §§ 1681-1688, and based on race, color, and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. The discriminatory acts are described in detail in Parts II and III below.

NWLC brings this complaint on behalf of LGBTQIA+ students and students of color, families, staff, and faculty who have been and continue to be subjected to sex- and race-based discrimination in the County’s public schools. Specifically, this complaint alleges that the County has created a sex- and race-based hostile environment for LGBTQIA+ students and students of color by targeting and removing numerous classroom and library materials that feature people of color and LGBTQIA+ characters and authors, that discuss racial identity and race-based discrimination, and that discuss LGBTQIA+ identity and LGBTQIA+ discrimination (“inclusive books”).<sup>3</sup> The County’s efforts to censor inclusive books, in the context of discriminatory statements and actions, has resulted in LGBTQIA+ students and students of color fearing sex- and race-based harassment, worrying they are unsafe to be who they are, and feeling the County is erasing any representation of their identities in the books they read and what they learn.

**Discrimination is ongoing** and involves the County’s course of conduct against LGBTQIA+ students and students of color in the form of a hostile educational beginning in 2022 and continuing through the present. The complainant therefore does not request a waiver of the 180-day time frame to file the complaint. environment

This complaint is filed by:

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<sup>3</sup> This complaint uses the phrase “inclusive books,” to refer to books that feature people of color and LGBTQIA+ characters and authors, discuss racial identity and race-based discrimination, and discuss LGBTQIA+ identity and anti-LGBTQIA+ discrimination.

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**The agencies that that engaged in alleged discrimination** are the Collier County Public School District and the Collier County Public School Board, both located at:

Dr. Martin Luther King, Jr. Administrative Center  
5775 Osceola Trail  
Naples, FL 34109

Collier County Public School District (“CCPS”) is responsible for the administration and operation of Collier County schools, which covers 2,300 square miles in Southwest Florida and encompasses Naples, Marco Island, and Everglades City.<sup>4</sup> CCPS serves nearly 50,000 students in grades K-12. CCPS is a recipient of federal funding both directly and through the state.<sup>5</sup> It is a local educational agency as defined in 20 U.S.C. § 8801(19).

According to the CCPS website, the CCPS student population is 52 percent Hispanic, 35 percent white, 11 percent Black, and 2 percent “other” (including Native American, Asian, and multi-racial).<sup>6</sup> The District Profile also notes that English is not the first language for nearly 16 percent of CCPS students, and that approximately 54 percent of students “live in non-English homes, where English is not the first language and sometimes isn’t even spoken.”<sup>7</sup>

The Collier County Public School Board (“the Board”) is vested by the Florida Constitution with the responsibility to operate, control and supervise all free public schools within CCPS.<sup>8</sup> The Board appoints the Superintendent of Schools, who is the Secretary and Executive Officer of the School Board and administers the daily operations of CCPS. The Board has five members, elected at large, for staggered four-year terms. It exercises all powers and duties assigned by law, operating also under the regulation of the Florida Department of Education’s State Board of Education.

Member Erick Carter, Chair Kelly Lichter, Vice Chair Stephanie Lucarelli, Member Tim Moshier, and Member Jerry Rutherford comprise the current Board. Member Carter and Vice Chair Lucarelli’s terms expire in November 2024; Chair Lichter and Members Moshier and Rutherford’s terms expire in November 2026.

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<sup>4</sup> Collier County Public Schools, District Profile, <https://www.collierschools.com/Page/349>.

<sup>5</sup> Collier County Public Schools, Final Budget 2023-2024, <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/86/Part%201%20Table%20of%20Contents%20Introduction%20Millages%20Taxes%20and%20Projected%20Students.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Collier County Public Schools, Collier County Public School Board, <https://www.collierschools.com/Domain/101>.

**The allegations in this complaint** have not been previously raised to any state or federal agencies.

**II. The County has implemented policies that discriminate against LGBTQIA+ students and students of color.**

The County efforts to censor inclusive books exemplifies the wave of censorship in public schools that has surged in recent years, driven by extremists’ activism promoting laws and regulations that limit access to inclusive and accurate education. From July to December 2023, more than 4,300 books have been removed from public schools throughout the United States. Since 2021, book bans have increasingly been proposed and enacted, with banning activity recorded in 42 states—and a recent report shows that such bans have continued to proliferate across the country in this current school year.<sup>9</sup> The national movement to ban books has involved hyperbolic rhetoric about “porn in schools” and obscenity law to justify banning books about sexual violence and LGBTQIA+ topics. Additionally, the book banning movement distorts themes of race and racism by advancing rhetoric disparaging diversity and “critical race theory” and claiming these topics are “too divisive.”

Book banning efforts in Collier County have followed this trend and, in combination with other discriminatory actions, created an unsafe and unwelcoming school environment for LGBTQIA+ students and students of color. Book bans such as those in Collier County allow ignorance to develop about racism, Black history, transphobia, homophobia, sexism, and sexual violence. Such efforts prevent students from learning about social issues and accurate United States and world history. The hostility to students of color and LGBTQIA+ students and students of color evinced by this censorship can also encourage bullying, harassment, and discrimination. For example, the number of hate crimes on K-12 campuses have *more than quadrupled* in states with restrictive laws focused on LGBTQIA+ students’ rights and education.<sup>10</sup>

The same devastating effects of censorship efforts are being felt by students in the County’s schools—especially by LGBTQIA+ students and students of color. Students have complained repeatedly to the Board, Superintendent, teachers, and staff that they do not feel safe at school. CCPS students are experiencing a hostile educational environment in clear violation of federal civil rights protections.

**A. The County enacted policies to censor inclusive materials.**

*1. The 2022 “Advisory Notices”*

Beginning in early 2022, the County implemented policies resulting in the censorship of inclusive curricula and library materials. In February and March 2022, the County placed

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<sup>9</sup> Kasey Meehan, et al., *Banned in the USA: Narrating the Crisis*, PEN AMERICA (Apr. 16, 2024), <https://pen.org/report/narrating-the-crisis/>.

<sup>10</sup> Laura Meckler, *In states with laws targeting LGBTQ issues, school hate crimes quadrupled*, WASHINGTON POST (Mar. 13, 2024), <https://www.washingtonpost.com/education/2024/03/12/school-lgbtq-hate-crimes-incidents>.

“advisory notice” labels on 115 books within their media centers, including both online and physical copies of the books.<sup>11</sup> The advisory notices state: “This book has been identified by some community members as unsuitable for students.”<sup>12</sup>

Many of the books with the “advisory notice” labels were written by people of color and LGBTQIA+ authors. Many also featured people of color and LGBTQIA+ characters, discussed racial identity and race-based discrimination, and discussed LGBTQIA+ identity and anti-LGBTQIA+ discrimination. In fact, of the books marked with “advisory notices,” 42 percent were stories with LGBTQIA+ characters or themes, and 15 percent had transgender characters or themes.<sup>13</sup> Thirty-four—about 30 percent—of the labeled books had protagonists or secondary characters of color.<sup>14</sup>

For example, the labeled books included *I Know Why the Caged Bird Sings* by Maya Angelou, *The Hate U Give* by Angie Thomas, *Gender Queer: A Memoir* by Maia Kobabe, *Stamped from the Beginning* by Jason Reynolds and Ibram X, *Beloved* by Toni Morrison, *Autoboyography* by Christina Lauren, and *All Boys Aren't Blue* by George M. Johnson.<sup>15</sup>

The process for how the County determined which books received an advisory notice label was unclear. Although the advisories did not prohibit students from checking out the books from their media centers, the notices segregated the texts in a manner that stigmatized reading the books. An employee of PEN America, a nonprofit organization whose mission is to protect free expression, noted that such labelling can turn a student off from reading the book or could signal that the topics are “not normal” or “taboo.”<sup>16</sup> One parent stated, “I feel like this is a little bit like the [S]carlet [L]etter ... we [are] ostracizing kids that are different from what a group of parents think should be the norm.”<sup>17</sup>

A few months after the County placed the “advisory notices” on those books, the National Coalition Against Censorship (“NCAC”) informed the County that those labels were “imprecise and potentially prejudicial.”<sup>18</sup> NCAC noted that segregating books influences whether students would read the books. Such labelling could “discourage students from reading books that they might find stimulating or educational and may have a chilling effect on teachers

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<sup>11</sup> Nikki Ross, *115 books in Collier Schools on LGBTQ+, race, and sex get advisory label*, NAPLES DAILY NEWS (Aug. 14, 2022), <https://www.naplesnews.com/story/news/education/2022/08/14/collier-county-public-schools-puts-advisory-label-controversial-books/10267758002/>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Nikki Ross, *Here are the 115 library books Collier County Schools placed an advisory label on*, NAPLES DAILY NEWS (Aug. 15, 2022), <https://www.naplesnews.com/story/news/education/2022/08/15/collier-schools-put-advisory-labels-115-books-heres-list-banned-books-library-lgbtq-race-sex/10286454002/>.

<sup>16</sup> Nikki Ross, *115 books in Collier Schools on LGBTQ+, race, and sex get advisory label*, NAPLES DAILY NEWS (Aug. 14, 2022), <https://www.naplesnews.com/story/news/education/2022/08/14/collier-county-public-schools-puts-advisory-label-controversial-books/10267758002/>.

<sup>17</sup> Rachel Cox-Rosen & Matthew Seaver, *Nearly 90 library books will carry content warning labels in Collier County schools*, WINK NEWS (Aug. 9, 2022), <https://winknews.com/2022/08/09/nearly-90-books-will-carry-content-warning-labels-in-collier-county-schools/>.

<sup>18</sup> National Coalition Against Censorship, *Letter to Collier County School Board* (Aug. 22, 2022), [https://authorsguild.org/app/uploads/2022/12/Collier-County-Public-Schools\\_NCAC-1.pdf](https://authorsguild.org/app/uploads/2022/12/Collier-County-Public-Schools_NCAC-1.pdf).

and librarians who are likely to avoid ‘red-flagged’ books.”<sup>19</sup> Further, NCAC pointed out that the advisory notices were inconsistent with the Board’s own policies. The Board’s longstanding instructional materials policy (Policy 2520) indicates that in selecting instructional material, including textbooks and library books, the Board, Superintendent, and school principals must consider the ages of the students, educational purpose, and “racial, ethnic, socio-economic and cultural diversity.”<sup>20</sup>

## 2. *The 2023 Book Banning*

Beginning in spring 2023, CCPS administrators instructed their schools to undertake a review of their media centers.<sup>21</sup> This aggressive review was in anticipation of a new Florida law, HB 1069, which broadened school board oversight over instructional materials and materials available in classroom libraries and media centers.<sup>22</sup> Florida’s HB 1069 went into effect on July 1, 2023.<sup>23</sup> It required “the suspension of materials alleged to contain pornography or obscene depictions of sexual conduct,”<sup>24</sup> pointing to the definitions of pornography and sexual conduct in the state’s criminal obscenity statute.<sup>25</sup>

In August 2023, the County began pulling **more than 350 books** from its classroom libraries and media centers.<sup>26</sup> In addition to banning a large number of literary classics, the banned books included an extensive number of titles by authors of color and an abundance of books with LGBTQIA+ themes.

On November 14, 2023, the County updated their media services website to address the book banning. The school stated that “[i]n accordance with [Florida House Bill 1069](#), Collier County Public Schools (CCPS) has been conducting an extensive review of materials available at our 50+ media centers. The State has made clear the potential punishment for non-compliance is a third degree felony ([FL Statute 847.12](#)).”

On the CCPS media services’ website, the County included a spreadsheet listing the titles and authors of the banned books, the date that each book was reviewed, and “specific examples of explicit sexual content from the book reviewed.”<sup>27</sup> Some, but not all, of the removed books were the same books targeted with “advisory notice” labels. The spreadsheet indicated that many reviews were crowd-sourced from Goodreads<sup>28</sup> (a public cataloging website that allows

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<sup>19</sup> *Id.*

<sup>20</sup> Policy 2520: INSTRUCTIONAL MATERIALS AND RESOURCES, adopted August 21, 2008 and last reviewed March 5, 2024, <https://go.boarddocs.com/fl/collier/pl/Board.nsf/Public?open&id=policies#>.

<sup>21</sup> @FLFreedomRead, Twitter (Nov. 5, 2023), <https://twitter.com/FLFreedomRead/status/1721297712274907556?s=20>.

<sup>22</sup> Fla. HB 1069 (2023).

<sup>23</sup> *Id.*

<sup>24</sup> HB 1069: Education, The Florida Senate, <https://www.flsenate.gov/Session/Bill/2023/1069>.

<sup>25</sup> Fla. Stat. § 847.012 (2023); Fla. Stat. § 847.001(19) (2023).

<sup>26</sup> Samantha Riedel, *These 300 Books Are Banned in Some FL Schools Due to a Vague Anti-LGBTQ+ Law*, THEM (Nov. 7, 2023), <https://www.them.us/story/300-books-are-banned-some-fl-schools-vague-anti-lgbtq-censorship>.

<sup>27</sup> Collier County Public Schools, Media Center September 2023 Review (Sept. 2023), <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/1278/HB1069%20-%20Titles%20with%20Rationale.pdf>.

<sup>28</sup> Goodreads, <https://www.goodreads.com/>.

individuals to upload reviews), Reddit<sup>29</sup> (a social media website where users submit content), Good Books for Catholic Kids (a website whose mission is to “connect Catholic families with uplifting, worthwhile literature”<sup>30</sup>), Trigger Warning Database<sup>31</sup> (a crowd-sourcing resource that allows readers to search for terms or themes related to certain triggers), and Prezi<sup>32</sup> (a presentation website where users can upload content), among others.

Of the 300+ books banned, many were written by, or featured characters who were, people of color, and/or discussed racial identity and race-based discrimination. These texts include, but are not limited to:

- *American Street*, by Ibi Aanu Zoboi
- *Breath, Eyes, Memory*, by Edwidge Danticat
- *Clap When You Land*, by Elizabeth Acevedo
- *Grown*, by Tiffany Jackson
- *He Said, She Said*, by Kwame Alexander
- *I Am Not Your Perfect Mexican Daughter*, by Erika Sánchez
- *Invisible Man*, by Ralph Ellison
- *Jubilee*, by Margaret Walker
- *Mexican WhiteBoy*, by Matt de la Peña
- *Sula*, by Toni Morrison
- *The Absolutely True Diary of a Part-Time Indian*, by Sherman Alexie
- *The Hate U Give*, by Angie Thomas
- *The Kite Runner*, by Khaled Hosseini
- *Their Eyes Were Watching God*, by Zora Neale Hurston

Of the 300+ books banned, many were written by LGBTQIA+ authors, featured LGBTQIA+ characters, and/or discussed LGBTQIA+ identity and anti-LGBTQIA+ discrimination. These texts include, but are not limited to:

- *Full Disclosure*, by Camryn Garret
- *Night Kites*, by M.E. Kerr
- *Rainbow Boys*, by Alex Sanchez
- *Simon vs. The Homo Sapiens Agenda*, by Becky Albertalli
- *The Color Purple*, by Alice Walker
- *The Perks of Being a Wallflower*, by Stephen Chbosky

In the spreadsheet’s category listing specific examples about why the book should be banned, race, gender, and sexuality are mentioned numerous times. And although HB 1069 required only those materials with “pornography or obscene depictions of sexual conduct”<sup>33</sup> be removed, some of the reasons stated for removing books in the County’s spreadsheet contain no

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<sup>29</sup> Reddit, <https://www.reddit.com/>.

<sup>30</sup> Good Books for Catholic Kids, <https://goodbooksforcatholickids.com/>.

<sup>31</sup> Trigger Warning Database, <https://triggerwarningdatabase.com/about/>.

<sup>32</sup> Prezi, <https://prezi.com/>.

<sup>33</sup> HB 1069: Education, The Florida Senate, <https://www.flsenate.gov/Session/Bill/2023/1069>.



mention of pornography or sexual conduct—rather, they simply acknowledge that the book contains mentions of race or LGBTQIA+ characters or themes.

For example, the explanation given for banning *Full Disclosure* by Camryn Garrett does not mention either pornography or explicit sexual content. The column reads: “The primary and most secondary characters are well developed, and the pace is spot-on. Simone, her Pops, and Miles are black; her Dad is Latinx; Lydia is Taiwanese and bisexual; and tan-skinned Claudia is an asexual lesbian. A story about telling your truth, your way.”<sup>34</sup> Despite having no mention of the type of content at issue in HB 1069, the County banned the book and pointed to discussion of race and sexual orientation. Similarly, for the book *The Dive from Clausen’s Pier* by Ann Packer, the explanation mentions neither pornography nor explicit sexual content; it only states that the protagonist “moves in with a gay friend” and that she “befriends a lesbian.”<sup>35</sup>

In November 2023, Collier County School Board chair Kelly Lichter was interviewed by a local news source, stating that there was “some misconception that the Collier County School Board [was] banning books. This is actually just a compliance issue that we are following the state law.”<sup>36</sup> But clearly, by targeting books featuring discussions about race and LGBTQIA+ issues, and books written by authors of color and LGBTQIA+ authors, without consideration of whether the books contained pornography or obscenity, the County’s approach to removing books went well beyond the Florida statute.

To date, parents and students have expressed that they are unsure of the full scope of books that have been banned and removed from CCPS schools and media centers. Parent 4, in an interview with NWLC, expressed that there has been an “extreme lack of clarity” around which books were banned and whether they will be returned.<sup>37</sup> According to parents of CCPS students, there are multiple books that are unavailable to students in CCPS libraries despite not being named on the media center’s list of removed books, including *Flamer* by Mike Curato, *Gender Queer* by Maia Kobabe, and *Something Happened in Our Town* by Marianne Celano, Marietta Collins, and Ann Hazzard.<sup>38</sup> *Flamer* is a semi-autobiographical graphic novel about a gay teenager struggling with his identity; *Gender Queer* is a memoir recounting the author’s exploration of gender identity and sexuality. *Something Happened in Our Town* is a children’s book that teaches about racial injustice by following two families, one white and one Black, as they discuss a police shooting of a Black man in their community.

Parent 2 spoke at the April 2024 Board meeting to express this directly to the Board, stating:

Yesterday was Right to Read Day – rather ironic given that Florida is number one in book bans. I’ve been trying to determine the scope of books that have been removed from

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<sup>34</sup> Collier County Public Schools, Media Center September 2023 Review (Sept. 2023), <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/1278/HB1069%20-%20Titles%20with%20Rationale.pdf>.

<sup>35</sup> *Id.*

<sup>36</sup> Annette Montgomery, ‘I was surprised’ Collier County school board chair reacts to hundreds of removed books, WINK NEWS (Nov. 7, 2023), <https://winknews.com/2023/11/07/collier-county-banned-books-removed/>.

<sup>37</sup> Conversation with Parent 4, March 18, 2024.

<sup>38</sup> Conversation with Parent 4, April 19, 2024.

our media centers and classroom libraries. I view myself as a reasonably informed parent, and I'm finding it difficult, if not impossible, to find the full list of removed and/or restricted books. Please make a complete list so parents can be aware of all the books that have been removed. This will provide full transparency.<sup>39</sup>

The media center's website was updated on April 26, 2024 with a new list of "Titles Recommended for Removal Based on HB 1069."<sup>40</sup> The new version has removed the category providing specific examples about why the book should be banned. Each of the aforementioned titles are still included in this new list, but even more titles have been added, including *Beloved* and *The Bluest Eye* by Toni Morrison, *One Flew Over the Cuckoo's Nest* by Ken Kesey, *History Is All You Left Me* by Adam Silvera, and *If I Was Your Girl* by Meredith Russo—books that respectively focus on race, racial discrimination, LGBTQIA+ characters, and experiences of trans youth.

## **B. Board Members have made discriminatory statements.**

### *1. Jerry Rutherford's "Ideologies"*

At the June 2023 Board meeting, Board member Jerry Rutherford stated that he wanted the Board to create a policy to reject ideologies and indoctrination that he felt were "Anti-God."<sup>41</sup> Rutherford said that the following topics should be banned in schools: "critical race theory; social and emotional learning; diversity, equity, and inclusion; wokeness; BLM; Antifa; white supremacy; and gay agenda."<sup>42</sup> He restated his opposition to these topics in the July 2023 Board meeting.<sup>43</sup>

To further explain these "ideologies," Rutherford shared additional documents with the Board members. One was an article titled "45 Goals of Communism Has Already Taken Place in America!"[sic]<sup>44</sup> from a website with a clear anti-LGBTQIA+ stance.<sup>45</sup> The pamphlet that Rutherford handed out stated that homosexuality was akin to "degeneracy and promiscuity" and was abnormal.<sup>46</sup> Rutherford had added annotations, including underlines, notes in the margins, and highlighted sections. He had highlighted the section comparing homosexuality to degeneracy.<sup>47</sup>

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<sup>39</sup> April 10, 2024 Regular School Board Meeting, at 1:34, <https://www.collierschools.com/Page/19630>.

<sup>40</sup> Collier County Public Schools, CCPS Recommended Removed Titles [sic] (Apr. 26, 24), <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/1278/CCPS%20Recommended%20Removed%20Titles%204-26-24.pdf>.

<sup>41</sup> June 13, 2023 Regular School Board Meeting, at 5:42, <https://www.collierschools.com/Page/18783>.

<sup>42</sup> *Id.* at 5:43.

<sup>43</sup> July 31, 2023 Regular School Board Meeting, at 4:50, <https://www.collierschools.com/Page/18890>.

<sup>44</sup> 45 Goals of Communism Has Already Taken Place in America!, Exhibit 1.

<sup>45</sup> Minutemen United, *About Us* <https://mmunited.org/who-are-the-minutemen/>.

<sup>46</sup> 45 Goals of Communism Has Already Taken Place in America!, at 6, Exhibit 1.

<sup>47</sup> *Id.*

Additionally, Rutherford handed out a document at the Board meeting on August 8, 2023, titled “Brief Exposition of Ideologies”<sup>48</sup> explaining his definitions of critical race theory; social emotional learning; diversity, equity, and inclusion (“DEI”); Black Lives Matter; Antifa; “woke,” and “the Gay Agenda.”<sup>49</sup> In this document, DEI is framed as “a racist ideology . . . with a system of race based preferences.”<sup>50</sup> The section on Black Lives Matter states that the movement is characterized by “people [who] started riots, fires, destroyed property, looted and committed other crimes.”<sup>51</sup> Rutherford describes the “Gay Agenda” as a plan to “convince[e] parents, communities, courts, judges and national leaders to accept their ideology as the norm.”<sup>52</sup> These documents exhibit Rutherford’s distorted viewpoints and strong hostility toward both the LGBTQIA+ community and people of color .

Rutherford had previously exhibited animus toward LGBTQIA+ people. In August 2022, he protested Naples’s LGBTQ Pride festival by “speaking out against drag shows.”<sup>53</sup> Following his election to the Board, on November 12, 2022, he stated to the local newspaper that he believed people are being indoctrinated into supporting LGBTQIA+ rights, and “when it comes to indoctrination, I will not put up with that.”<sup>54</sup> The local newspaper reported that Rutherford believes the rights accorded to LGBTQ people have been extended “beyond normal rights” to give them “special rights” that they should not have. When asked about what rights LGBTQIA+ people have that others do not, he “did not elaborate.”<sup>55</sup>

Students, parents, and community members expressed their disagreement with Rutherford’s proposal to ban these “ideologies.” At a Board meeting in September 2023, Student C stated “A policy that targets Black Lives Matter, diversity, and the gay agenda will only make students feel less safe and accepted at school. . . . Students shouldn’t feel unsafe because of a school board policy. As students, we just want to be accepted and feel like we belong.”<sup>56</sup>

Another student, Student F, spoke at the September 2023 Board meeting, noting that “When you dehumanize an entire group of people by limiting us to words such as ‘ideology,’ or ‘groomers,’ or an ‘agenda,’ it becomes much easier to enact violence on that group of people—especially in a school.”<sup>57</sup> They continued:

Harassment turns to bullying, turns to physical violence outside of the school system. When you foster an environment of, “that person next to you, they’re less than you” . . . it

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<sup>48</sup> August 8, 2023 Regular School Board Meeting, at 2:21, <https://www.collierschools.com/Page/18905>

<sup>49</sup> Brief Exposition of Ideologies, Exhibit 2.

<sup>50</sup> *Id.* at 1.

<sup>51</sup> *Id.* at 2.

<sup>52</sup> *Id.*

<sup>53</sup> Kate Cimini, *Collier school board’s Jerry Rutherford says he wants to bring back corporal punishment*, NAPLES DAILY NEWS (Nov. 10, 2022), <https://www.naplesnews.com/story/news/education/2022/11/10/collier-school-boards-rutherford-says-hes-pro-corporal-punishment/8315178001/>.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*; Nikki Ross, *Collier school board member gets national attention, campaign for his removal started*, NAPLES DAILY NEWS (Dec. 2, 2022), <https://www.naplesnews.com/story/news/education/2022/12/02/jerry-rutherford-collier-school-board-member-corporal-punishment-remarks-go-national/10789104002/> (describing outcry after Rutherford’s comments).

<sup>56</sup> September 11, 2023 School Board Meeting, 3:13 <https://www.collierschools.com/Page/19109>.

<sup>57</sup> *Id.* at 3:20.

leads to fear and hatred and distrust. It leads to violence. We are not letters on a page; we are people, we are children. . . we are not DEI. We are students . . . we are not critical race theory. We are your brothers and sisters and siblings, not the gay agenda . . . we are your children; not ideologies . . . I am a student under your school board. I only wish to be recognized as the human I am and respected in your school system.<sup>58</sup>

Chris Schmeckpeper-Kobzina, co-chair of GLSEN Collier County, also spoke at the September 2023 Board meeting and stated that the Board “needs to welcome and accept all students and staff as a diverse community, especially as one member pushed an agenda that targets Black, brown, Indigenous people, and people of color, and LGBTQ people. . . . This policy is based on divisiveness that continues to make people in this community feel unsafe, unwelcome, and unwanted.”<sup>59</sup>

## 2. *Tim Moshier’s Public Statements*

On July 2, 2023, Board member Tim Moshier attended a community event and introduced himself to the crowd as a Board member.<sup>60</sup> While on the stage, he stated, “We got some books out of the school,” and went on to say, “We’ve got to save the children, that’s our job, get the LGBTQ letter people out.”<sup>61</sup>

Parents of CCPS students expressed their dismay with Moshier’s comments at the July 2023 Board meeting later that month. Parent 2 stated:

I am particularly concerned about the rights of our LGBTQ+ students and staff due to recent comments by a Board member, Tim Moshier. . . . His comments about the LGBTQ+ community were offensive and alarming. . . . As Board members, your job is to ensure that all our students are safe in the school setting and have the opportunity to receive an excellent education. This includes our LGBTQ+ students. How can they feel safe when a Board member wants to ‘get the LGBTQ+ letter people out.’ As Board members, you are tasked with leading our school district and setting the climate. . . . Not only do you set policy, but through these policies you set the climate of our district.<sup>62</sup>

At that same July 2023 Board meeting, Chris Schmeckpeper-Kobzina noted that the Board is responsible for caring for students who are LGBTQIA+ just as the Board is responsible for caring for all other students. Schmeckpeper-Kobzina asked, “Are you going to protect them from bullying and discrimination, or are you going to try to erase them – pretending that they are not part of the community of Collier County Public Schools? You set the tone for the school system. Denying the existence of LGBTQ+ student population is cheating those students of an education that is safe and affirming.”<sup>63</sup> She continued:

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 3:31.

<sup>60</sup> Trump Flotilla 2024, July 2, 2023, at 1:47:45, <https://rumble.com/v2xd50k-trump-flotilla-2024-july-2-2023-keewaydin-florida-live.html>.

<sup>61</sup> *Id.* at 1:50:16.

<sup>62</sup> July 31, 2023 Regular School Board Meeting, at 2:37, <https://www.collierschools.com/Page/18890>.

<sup>63</sup> *Id.* at 2:40.

What each of you say reflects on CCPS. Standing for bigotry is not in the CCPS's best interests and portrays the school board as bullies. Unless it is okay to traumatize a fifth of the student population and let them know at least one member of the school board wants them out of school. Ninety-eight percent of LGBTQ students report hearing homophobic comments at school. More than 60 percent experience verbal harassment. After comments such as Mr. Moshier's, that number is certainly not going to go down. You, as members of the Collier County Public School System School Board, have a responsibility to stand for all students, whether or not you are comfortable with it.<sup>64</sup>

### 3. *Erick Carter's Facebook Comment*

In July 2023, an individual posted an inflammatory news article about GLSEN, an organization that supports LGBTQIA+ students, to Facebook with a caption asking whether CCPS had a chapter and if CCPS would be "supportive of homosexuality."<sup>65</sup> In response to a second individual's comment that "we must stay on top of this so it doesn't creep into CCPS," Board member Carter replied "absolutely!"<sup>66</sup> On the same post, Board member Moshier commented "we are cognizant and fighting this!!!!!"<sup>67</sup>

### 4. *Collier County Teacher and Board Candidate Statements*

On August 20, 2024, there will be a primary election for two seats on the Board, as Member Carter and Vice Chair Lucarelli's terms expire in November 2024. On May 7, 2024, the Florida Citizens' Alliance hosted a forum for candidates running against Carter and Lucarelli.<sup>68</sup> Candidate Maria Naranjo is a current teacher in Collier County, where she has taught for twelve years.

During the forum, an audience member asked the candidates "Do you feel there is a need to support LGBTQ clubs in our school system?"<sup>69</sup> All three candidates emphatically said no, with candidate Pam Cunningham stating, "We can't have essentially pedophilia developing within the public schools."<sup>70</sup> Naranjo, who currently teaches CCPS students at Pelican Marsh Elementary School, stated:

I will not tolerate any LGTB [sic] agenda in our schools. I know it exists. I know there are some higher schools that are doing the Pride month, they do parades. . . . I know that there are higher schools that have groups after school that are led by gay people. I don't know what happens indoors inside the meetings, but I know that something is going on. It's our time to stand up and say 'Not in Collier County.'<sup>71</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> Facebook Post, July 19, 2023, Exhibit 3.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> 2024 FLCAction Forum CCPS School Board District 2 & 4 (May 7, 2024), <https://www.youtube.com/watch?v=q-dkDmlNxA>.

<sup>69</sup> *Id.* at 46:54.

<sup>70</sup> *Id.* at 47:30.

<sup>71</sup> *Id.* at 48:00.

### C. The County banned materials supportive of LGBTQIA+ youth.

In August 2023, an individual emailed the members of the Board to “report” a poster in a CCPS classroom.<sup>72</sup> The poster read “Rise up for LGBTQ+ Youth” and had a logo for GLSEN in the lower right corner.<sup>73</sup> The individual followed up the next week to demand that a “general direction [go] out to the principals of all other Collier Schools to instruct them to remove all GLSEN, Rainbow and related posters.”<sup>74</sup>

The superintendent of CCPS, Dr. Leslie Ricciardelli, responded directly to the individual and the members of the Board on August 9, 2023. Dr. Ricciardelli stated: “[P]rincipals were informed of the following today: flags, posters, flyers, magnets, stickers or other materials with messages that have symbols or language that could be construed as virtue-signaling, politicizing, or having a disruptive effect on the learning environment shall be removed.”<sup>75</sup> This was intended and understood as a policy banning GLSEN posters, safe space stickers, and any other posters supporting LGBTQIA+ students.

In an April 2024 interview NWLC with a CCPS student, the student reported that the teacher who sponsors their Gay-Straight Alliance (GSA) club had safe space stickers on their classroom door that the school principal painted over earlier this school year.<sup>76</sup> Similarly, Parent 2 testified to the Board during a March 5, 2024 Board meeting that a high school mural with rainbow colors was painted over.<sup>77</sup>

Censoring inclusive materials has been an ongoing issue in the County. Teacher 2, who taught second graders, had a classroom library “carefully culminated from 23 years of collecting children’s books such that any student from any ethnicity or culture would be able to find himself or herself in a story.”<sup>78</sup> In May 2022, Teacher 2’s teaching assistants informed her that she needed to get rid of the classroom library preemptively “because many of the books would be banned and they didn’t want me to get into trouble.”<sup>79</sup> Additionally, another teacher told Teacher 2 to remove her bulletin boards “because the primary-colored striped borders were too much like rainbows and I would not be allowed to ‘groom’ kids.”<sup>80</sup> Another educator told Teacher 2 to remove her family photo off their desk so she wouldn’t be fired. The photo showed her, her wife, and their children.<sup>81</sup>

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<sup>72</sup> GLSEN Poster Email Chain, Exhibit 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Conversation with Student H, April 6, 2024.

<sup>77</sup> March 5, 2024 Regular School Board Meeting, at 3:32, <https://www.collierschools.com/Page/19553>.

<sup>78</sup> Statement provided anonymously via Naples Pride Director Cori Craciun.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

#### **D. These actions have negatively impacted students.**

Parents, students, and community members have repeatedly voiced their concerns about the censorship of inclusive media and books and the hostile comments by Board members to the County through the Board, the Superintendent, and a multitude of CCPS teachers and staff. Despite being told directly that the removal of books from schools was creating and contributing to a hostile environment for LGBTQIA+ students and students of color, the County has failed to take reasonable steps to remedy the situation.

In June 2023, after HB 1069 was passed, but *before* the inclusive books were removed from classroom libraries and media centers, parents and former students spoke at a Board meeting to express frustration. Chris Schmeckpeper-Kobzina, co-chair of GLSEN Collier County, noted that the process for removing materials was opaque: “The list of books is not shown on the website or shown any information. . . . Students do better when they see people like them in the books, and I think it’s important that there’s diversity shown.”<sup>82</sup>

At the same June 2023 Board meeting, a CCPS graduate, Student D, spoke out about “the misinformation that has been spoken about our schools,” noting that there was a false understanding of critical race theory and ongoing “attacks on the LGBTQ+ community” in the school district.<sup>83</sup> Student D said:

Critical race theory has been invoked repeatedly but is often misinterpreted and used incorrectly as a catchall term. . . . [CRT] was never a part of my CCPS education. Moreover, this month is Pride. I was saddened to learn that the number of students in the Gay-Straight Alliance or the GSA has decreased dramatically. This is not due to there being fewer queer students. It is due to an increasingly hostile climate within our schools and society. All students deserve to be accepted and included within their school regardless of race, religion, sexual orientation, or gender identity. I was shocked to hear some of the horrible comments directed at the LGBTQ+ community at a recent CCPS School Board meeting. . . . I encourage the Board to consider how our district will stamp out this hateful rhetoric. [As a student, the GSA] was a space to create friendships and camaraderie among the student body. The hateful, fearmongering speech in our community has and is continuing to destroy opportunities for friendship and morale. Don’t we want our students to support each other? We have a diverse community of students, and it is important to be accepting and inclusive.<sup>84</sup>

As the school year began and the book bans were implemented, students and parents continued to speak out. At the September 2023 Board meeting, Student A explicitly stated, “**I don’t feel safe while I’m at school.** I’ve faced bullying, harassment, discrimination at the hands of my peers because of my gender identity and sexual orientation.”<sup>85</sup> Student A stated that the County’s censorship policies expressed an anti-LGBTQIA+ sentiment that “**embolden[s]** bullies

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<sup>82</sup> June 13, 2023 Regular School Board Meeting, at 0:36, <https://www.collierschools.com/Page/18783>.

<sup>83</sup> *Id.* at 2:44.

<sup>84</sup> *Id.*

<sup>85</sup> September 11, 2023 School Board Meeting, 3:18 <https://www.collierschools.com/Page/19109>.

and make[s] it even more difficult for victims to speak up, especially if they are not out to their friends or families.”<sup>86</sup>

Teacher 1, who had co-sponsored a GSA at her school, shared an anecdote at the September 2023 Board meeting about how a student who had previously bullied LGBTQIA+ students changed his behavior and came to be a defender of those same students. She said, “the changes that took place in those students ... happened because the curriculum was inclusive and the kids felt safe in the classroom, safe to be who they were. That meant material from Black, LGBTQ, Asian, Indigenous, and other marginalized communities, and it also came from honest teaching moments.”<sup>87</sup>

At the October 2023 Board meeting, a community member read a letter from Student G, a former CCPS student, who said, “It’s blatantly clear to me that only one type of person is being touted as the norm in Collier County Public Schools, and it’s not gay people.”<sup>88</sup> The student’s letter stated that “the full-time homophobic bullying that I was forced to face from my peers was so unbearable that I became a dual-enrollment student.”<sup>89</sup> They additionally said:

When Florida and the Collier County Public Schools erase gay people from history, stigmatize, and portray them as villains who are infiltrating public schools, gay students see how you think of them. These students with great potential believe that they are lesser, that there’s something wrong with them, because unlike their heterosexual peers, they’re not allowed to be spoken [about] in class. ... These issues are only exacerbated with the introduction of parental rights bills and rhetoric like Jerry Rutherford’s. Bullies are now emboldened to treat students like me like a second-class citizen because people in power that we’re supposed to admire, respect, emulate did it too.<sup>90</sup>

The book bans were also brought up at the November 2023 Board meeting. At that meeting, the CCPS Superintendent, Dr. Leslie Ricciardelli, stated that the County’s aggressive approach to book banning was to comply with Florida law, including HB 1069.<sup>91</sup> She pointed attendees to the 73-page spreadsheet that the CCPS media specialists had compiled listing the books that were recommended for removal.<sup>92</sup> During the public comment period at that meeting, nearly a dozen individuals—including teachers, parents, and a student—spoke out against the policy and the way it was being implemented.<sup>93</sup> One person stated: “When we ban books that are

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<sup>86</sup> *Id.*

<sup>87</sup> September 11, 2023 Regular School Board Meeting, at 2:55, <https://www.collierschools.com/Page/19109>.

<sup>88</sup> October 10, 2023 Regular School Board Meeting, at 1:02, at <https://www.collierschools.com/Page/19209>.

<sup>89</sup> Dual enrollment is a program that allows students to earn college credits for free while still enrolled in high school. The student can take courses that fulfill both their high school requirements and earn college credit at the same time. Students have the option of taking classes at their high school, on the participating colleges’ campuses, or online. Collier County Public Schools, Dual Enrollment Information, <https://www.collierschools.com/Page/18609>.

<sup>90</sup> *Id.*

<sup>91</sup> November 14, 2023 Regular School Board Meeting, at 1:08, at <https://www.collierschools.com/Page/19310>.

<sup>92</sup> See section II.A; Media Center 2023 Review, <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/1278/HB1069%20-%20Titles%20with%20Rationale.pdf>.

<sup>93</sup> November 14, 2023 Regular School Board Meeting, at 1:20, 1:31, 1:43, 1:46, 1:55, 2:20, 2:23, 2:25, and 2:48, at <https://www.collierschools.com/Page/19310>



written about LGBTQ, Black, immigrant, indigenous, and people of color, we are telling those students that they don't matter. Feeling that they don't belong harms their academic growth.”<sup>94</sup>

During the December 2023 Board meeting, the Board was once again informed that the book bans were having an adverse impact on the student population. Chris Schmeckpeper-Kobzina spoke out, saying:

Collier County schools has managed to remove more books from the shelves than any other county. That is not a goal that anyone should be proud of. I'm concerned that there are more books written by people of color and on LGBTIA topics than there are of any other type. Students need books that are representative of themselves and the people in situations that are similar to theirs. . . . Things need to be taken in context, and media specialists should be protected by using their own judgment. . . . Ralph Ellison's book *The Invisible Man* was removed based on a PowerPoint. Once again, no specific pages or items were noted. How many more books were removed without specific instances being spelled out? How many books were removed because of words taken out of context? And what about the rights of parents who want their children to read as many of the award-winning books on the list? . . . Not everyone has the money to buy the books or are able to go to the public library. Books need to be available to allow students to see themselves; to imagine what they would do; to learn about people and places. Books help create compassionate human beings.<sup>95</sup>

The impact of banning inclusive books and materials has continued into 2024. In early March 2024, NWLC heard from a CCPS student about the impact of the book bans and the hostile environment they faced as an LGBTQIA+ student. Student B stated that they have wanted to check out a book from the CCPS media center because they lost their original copy to Hurricane Ian, but it was “one of the many books that have been banned in Collier [C]ounty.”<sup>96</sup> They further said:

When homophobic and transphobic remarks are made by classmates they are often ignored by the administrators and seen as harmless jokes. With the suicide rate of LGBTQ+ teens being so high, schools should be able to provide a safe space such as a GSA (many of the GSA clubs in Collier have been disbanded) so teens like me have somewhere we belong without feeling judged or being mocked. I have been subject to the hate and bigotry of my fellow classmates and report time and time again, it has even led to a physical altercation and because the school system treats the subject as taboo, they are hesitant to interject.<sup>97</sup>

Parent 1 also told NWLC:

As a parent of a transgender child, it is painful to watch the ways they are continually being blocked from everything from sports to bathrooms to books. But banning books

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<sup>94</sup> *Id.* at 1:55.

<sup>95</sup> December 12, 2023 Regular School Board Meeting, at 2:25, <https://www.collierschools.com/Page/19361>.

<sup>96</sup> Statement provided via NWLC online submission form.

<sup>97</sup> *Id.*

with gender and sexual diversity doesn't just hurt the students who identify that way. My two cis-het children aren't allowed to see their sister, our family, reflected [in] books. And if they have questions, or better want to understand what their sister is going through, that information isn't available to them. It also hurts kids who may be questioning and don't have safe spaces/people to go to with their questions. Lastly, I also believe not having these books on the shelves leads to more discrimination and bullying because banning them makes the people or content of the book somehow “bad.”<sup>98</sup>

Student E wrote a letter to the editor in a local Naples newspaper in March 2024 stating that the “blatant censorship” of books in CCPS has been an issue for them. Student E stated:

A school library is the easiest way for me, as a 10th grader, to access books and shutting down the easiest way to get something is not suddenly okay just because there exist other ways. Our cities are not walkable in this state, so to say you can just go to a library and get the book is laughable because most of us teens can't! Most of our parents are busy and can't drive us, and most of us can't drive.<sup>99</sup>

Individuals have also informed the Board that the removal of all books that mention sexual assault is especially harmful for teenagers who are learning about healthy versus unhealthy relationships, with a particular impact on teen girls. Parent 2 spoke out against the County's decision to ban *Speak*, by Laurie Halse Anderson at a February 13, 2024 Board meeting: “Over half of women experience sexual violence in their lifetime. *Speak* is a well-written book that accurately portrays the thoughts of a teenager who has been sexually assaulted. . . . If we really want to protect our students, we need to make sure that they are truly educated.”<sup>100</sup>

Indeed, the County's banning of these books is part of the larger and increasingly more common trend of targeting books discussing sexual violence across the country, which has the harmful effect of indicating there is something obscene in talking about sexual violence.<sup>101</sup> Rather than lead to safer and more informed schools, such bans further stigmatize sexual violence and create more silence around this pervasive problem, preventing many survivors—including students—from finding validation and support through accessing stories that reflect their own experiences.<sup>102</sup> This is especially important because girls of color and LGBTQIA+ students are more likely to experience sexual violence and harassment.<sup>103</sup> Banning books on sexual experiences and sexual assault leaves students unprepared to identify discrimination and

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<sup>98</sup> Statement provided via NWLC online submission form.

<sup>99</sup> Letters to the Editor, NEWS-PRESS (Mar. 6, 2024), <https://www.news-press.com/story/opinion/2024/03/06/letters-to-the-editor-for-wednesday-march-6-2024/72804683007/>.

<sup>100</sup> February 13, 2024 Regular School Board Meeting, at 2:48, <https://www.collierschools.com/Page/19514>.

<sup>101</sup> Shiwali Patel, *Book Bans are Silencing Survivors' Stories*, NATIONAL WOMEN'S LAW CENTER (Apr. 15, 2024), <https://nwlc.org/book-bans-are-silencing-survivors-stories/>.

<sup>102</sup> Kasey Meehan, et al., *Banned in the USA: Narrating the Crisis*, PEN AMERICA (Apr. 16, 2024), <https://pen.org/report/narrating-the-crisis/> (outlining the trend of censoring sexual violence).

<sup>103</sup> See Kayla Patrick & Neena Chaudhry, *Let Her Learn: Stopping School Pushout for Girls Who Have Suffered Harassment and Sexual Violence*, NATIONAL WOMEN'S LAW CENTER (2017), [https://nwlc.org/wp-content/uploads/2017/04/final\\_nwlc\\_Gates\\_HarassmentViolence.pdf](https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_HarassmentViolence.pdf); Sabrina Bernadel, et al., *Keep Her Safe: Centering Black Girls in School Safety*, NATIONAL WOMEN'S LAW CENTER & SOUTHERN POVERTY LAW CENTER (2024), [https://nwlc.org/wp-content/uploads/2024/04/f.NWLC\\_SPLC\\_SROReport.pdf](https://nwlc.org/wp-content/uploads/2024/04/f.NWLC_SPLC_SROReport.pdf).

abuse, less able to understand and challenge oppressive systems, and without the knowledge to make informed choices about their bodies and rights.<sup>104</sup>

Efforts like those by the County to ban inclusive books and curricula have a wide impact. As explained above, multiple students have directly informed the County that they are facing bullying, harassment, and discrimination by their peers because of their sexual orientation and/or gender identity. Following a vicious physical attack on an LGBTQIA+ student in a public school bathroom in Oklahoma and that student’s tragic death, Parent 2 spoke out at the March 2024 Board meeting. Parent 2 noted that the school district in Oklahoma created a toxic environment for LGBTQIA+ students that their district leadership had directly contributed to, and inflamed, this environment. She then said this about CCPS:

Please take a moment to reflect on what environment is being created in CCPS. Think about the environment for our LGBTQ students. Books have been removed, many of which have queer characters. Safe space stickers have been taken down from classrooms. GSAs, gay straight alliance clubs, have been decimated. A high school mural with rainbow colors was painted over. In this very room, brave LGBTQ students have spoken about bullying they endure within our school hallways. Think of what it takes for a student to address this Board and think of how many students are suffering in silence. Looking the other way at how our LGBTQ students were treated was unacceptable before, and now we clearly see how dangerous this can be. And let’s be honest, being LGBTQ in Florida has been hard over the last few years. Our students are not immune. They see the news, they experience the changes, and they feel threatened and under attack. . . . Some in this boardroom have mentioned that there shouldn’t be special rights. The right to attend school in a safe environment is a basic right – not a special one.<sup>105</sup>

In early April 2024, Student H informed NWLC in an interview that in the current environment at CCPS, book bans are teaching students that it isn’t acceptable to talk about LGBTQIA+ identities. As a queer student who had moved to Naples, they initially had a difficult time making friends and found refuge in books that reflected them and their identity.<sup>106</sup> They noted that they have had to rely on their parent to purchase books that their school library would never carry right now. Student H stated that the County’s book bans “teach queer kids that they need to hide themselves.”

Student H also reported that students at CCPS are currently afraid to attend the GSA club. CCPS now requires a permission slip to attend any extracurricular activity—a significant barrier for students who are not out to their parents—and activities coordinators are extremely zealous about the rules given the fear of penalties under Florida law. Student H noted that attendance at their high school’s GSA fell from 20 people last school year to 4 attendees this school year.<sup>107</sup>

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<sup>104</sup> See Hunter F. Iannucci, *Gender Justice Means Freedom to Learn: How School Censorship Promotes Sex Discrimination*, NATIONAL WOMEN’S LAW CENTER (Jan. 9, 2024), [https://nwlc.org/wp-content/uploads/2024/01/2024\\_nwlc\\_Censorship\\_FS.pdf](https://nwlc.org/wp-content/uploads/2024/01/2024_nwlc_Censorship_FS.pdf).

<sup>105</sup> March 5, 2024 Regular School Board Meeting, at 3:32, <https://www.collierschools.com/Page/19553>.

<sup>106</sup> Conversation with Student H, April 6, 2024.

<sup>107</sup> *Id.*

Attempting to eradicate the visibility of LGBTQIA+ characters and themes affects how the LGBTQIA+ community is seen by broader society.<sup>108</sup> Further, the County’s approach to censorship is contrary to Floridians’ broad support for public education and for access to inclusive materials. A December 2023 survey of Florida residents found that about 75 percent of Floridians said it was more important that children have access to books and information that challenges their thinking or their personal experience.<sup>109</sup> Additionally, 70 percent of Floridians said that teaching critical thinking skills will require “diverse perspectives—even those that make some uncomfortable—to be done well.”<sup>110</sup> Meanwhile, a mere 16 percent of the general adult population in Florida supports allowing any parent to remove books from a school for any reason.<sup>111</sup>

### **III. The County has created and tolerated a hostile educational environment for LGBTQIA+ students and students of color in public schools in violation of Title IX and Title VI.**

The County has failed to address the sex- and race-based hostile environments resulting from its censorship of inclusive books. As outlined above, such book bans have contributed to an ongoing hostile environment for LGBTQIA+ students and students of color in violation of Titles IX and VI.

#### **A. Federal law prohibits the creation, tolerance, or acceptance of a hostile environment based on sex and race in federally funded schools.**

As recipients of federal funding, the County must comply with Title IX<sup>112</sup> and Title VI.<sup>113</sup>

##### *1. Title IX*

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<sup>108</sup> Samantha Laine Perfas, *Who’s getting hurt most by soaring LGBTQ book bans? Librarians say kids.*, THE HARVARD GAZETTE (June 28, 2023), <https://news.harvard.edu/gazette/story/2023/06/lgbtq-book-challenges-are-on-the-rise-heres-why/>. The annual Gallup Values and Beliefs poll, conducted May 2023, found that acceptance for LGBTQIA+ people dropped *seven percent* from 2022 to 2023. This was the largest decrease of acceptance for all the polled issues. See Jeffrey M. Jones, *Fewer in U.S. Say Same-Sex Relations Morally Acceptable*, GALLUP (June 16, 2023), <https://news.gallup.com/poll/507230/fewer-say-sex-relations-morally-acceptable.aspx>.

<sup>109</sup> *2024 Survey of Floridians’ Support for Public Education*, SOUTHERN POVERTY LAW CENTER, [https://www.splcenter.org/sites/default/files/com\\_pol\\_fl-survey-support-public-education\\_v3.pdf](https://www.splcenter.org/sites/default/files/com_pol_fl-survey-support-public-education_v3.pdf).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> 20 U.S.C. § 1681(a) (“No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”). As noted at the outset, CCPS is a recipient of federal educational funding. See Final Budget 2023-2024, Collier County Public Schools, <https://www.collierschools.com/cms/lib/FL01903251/Centricity/Domain/86/Part%201%20Table%20of%20Contents%20Introduction%20Millages%20Taxes%20and%20Projected%20Students.pdf>.

<sup>113</sup> 42 U.S.C. § 2000d, *et seq.* (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).

Title IX prohibits discrimination against any student “on the basis of sex,”<sup>114</sup> which includes discrimination based on sexual orientation, gender identity, and sex characteristics.<sup>115</sup> The Department of Education’s Office for Civil Rights has made clear that recipient institutions “must operate its education program or activity in a nondiscriminatory manner free of discrimination based on sex, including sexual orientation and gender identity.”<sup>116</sup> Title IX defines discrimination broadly in an effort to eliminate all forms of bias. This includes any disparate provision of programs, aid, benefits or services or inequitable application of rules or sanctions.<sup>117</sup>

The regulations implementing Title IX define sex-based harassment to include conduct on the basis of sex that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a school’s education program or activity.<sup>118</sup> Instances of offending conduct are not considered in isolation; courts have reiterated that the question is whether the incidents *cumulatively* have resulted in a hostile environment.<sup>119</sup> The recent changes to the Title IX regulations define sex-based harassment more broadly to include conduct on the basis of sex that is unwelcome and “based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity.”<sup>120</sup>

A school district with actual knowledge of sex-based harassment must respond in a manner that is not deliberately indifferent—meaning that the school’s response cannot be clearly unreasonable in light of known circumstances.<sup>121</sup> Actual knowledge is defined by the regulations implementing Title IX in the elementary and secondary school context as notice of allegations of sex-based harassment to any employee of an elementary and secondary school.<sup>122</sup> A school

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<sup>114</sup> 20 U.S.C. § 1681(a).

<sup>115</sup> See, e.g., *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1741 (2020) (“[I]t is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.”). *Bostock* involved a Title VII claim alleging sex discrimination in the workplace. *Id.* at 1738. However, “[t]hrough Title VII and Title IX are two distinct statutes, their statutory prohibitions against sex discrimination are similar, such that Title VII jurisprudence is frequently used as a guide to inform Title IX.” U.S. Dep’t of Justice, Civil Rights Division, Title IX Legal Manual, available at <https://www.justice.gov/crt/title-ix#:~:text=Though%20Title%20VII%20and%20Title,guide%20to%20inform%20Title%20IX>.

<sup>116</sup> Title IX and Sex Discrimination, Dep’t. of Educ., Office for Civil Rights (Revised Aug. 2021), [https://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html).

<sup>117</sup> 45 C.F.R. § 86.31.

<sup>118</sup> 34 C.F.R. § 106.30(a)(2).

<sup>119</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 87 Fed. Reg. 41416, 41397 (July 12, 2022) (citing *Crandell v. N.Y. Coll. of Osteopathic Med.*, 87 F. Supp. 2d 304, 319 (S.D.N.Y. 2000)).

<sup>120</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33884 (to be codified at 34 C.F.R. § 106.2) (finalized Apr. 29, 2024) [hereinafter, “Final Rule”]. At the time of the filing of this complaint, the U.S. Department of Education’s new Title IX regulations were not yet in effect. Because the County has engaged in a continuing violation of Title IX as students are continuing to experience a hostile environment, OCR should apply the most updated regulations and apply the revised hostile environment, notice, and remedial standards to its investigation of this complaint. Regardless of the standard OCR applies, the County’s actions have demonstrated a clear violation of Title IX.

<sup>121</sup> 34 C.F.R. § 106.44(a).

<sup>122</sup> 34 C.F.R. § 106.30(a).

district must respond to sex-based harassment by offering supportive measures to a complainant designed to restore or preserve equal access to the recipient's education program or activity.<sup>123</sup> Here, too, the recent changes to the Title IX regulations offer broader protections against sex-based harassment. When a school district has knowledge of conduct that reasonably may constitute sex discrimination, it must offer supportive measures to the complainant and take other prompt and effective action to end the sex discrimination and prevent its recurrence.<sup>124</sup>

## 2. Title VI

The regulation implementing Title VI forbids educational institutions from discriminating against any student "on the basis of race, color, or national origin."<sup>125</sup> The Department of Education's Office for Civil Rights ("OCR") has Title VI guidance clarifying that the existence of a hostile environment that is created, encouraged, accepted, tolerated, or left uncorrected by a recipient constitutes discrimination on the basis of race, color, or national origin in violation of Title VI.<sup>126</sup>

To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.<sup>127</sup>

Harassment creates a racially hostile environment when it is "sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges" that a school district provides.<sup>128</sup> As with sex-based harassment, whether harassing conduct creates a hostile environment must be determined from the totality of the circumstances. Recipients must have had actual or constructive notice of the harassment and take action to correct it, meaning that "if, upon reasonably diligent inquiry in the exercise of reasonable care, it knew or should have known of the discrimination," the educational institution must "take "prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring."<sup>129</sup> The appropriateness of the responsive action is assessed by whether it was reasonable, timely, and effective.

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<sup>123</sup> 34 C.F.R. § 106.30(a).

<sup>124</sup> Final Rule at 33888 (to be codified at 34 C.F.R. § 106.44).

<sup>125</sup> 34 C.F.R. § 100.3.

<sup>126</sup> U.S. Dep't of Educ., Off. Civ. Rights, Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. 11,448, 11,450 (Mar. 10, 1994) ("1994 Racial Harassment Guidance"), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

**B. The County created, tolerated, exacerbated, and failed to ameliorate a hostile environment based on sex and race.**

OCR has recognized that banning books and censoring access to inclusive materials can contribute to a sex- and race-based hostile learning environment.<sup>130</sup>

In May 2023, OCR issued a resolution letter following its investigation of Forsyth County School District for similarly targeting and removing books featuring people of color and LGBTQIA+ people as authors and, characters, or discussing racial identity and LGBTQIA+ identity and themes from its school libraries.<sup>131</sup> In the Forsyth County Resolution, OCR expressed concern that the school district’s media center book screening process may have created a hostile environment.<sup>132</sup> OCR noted that Forsyth County may have violated Title VI and Title IX by failing to take remedial action to ameliorate the hostile environment created by its removal of books with diverse authors and characters, including people who are LGBTQIA+ and authors who are not white.<sup>133</sup>

Consistent with the Forsyth County Resolution analysis, this complaint outlines the ways in which the County has violated Title IX and Title VI, by (1) creating a sex- and race-based hostile environment through its targeting and removing of inclusive books, (2) the actual and constructive notice it had of this hostile environment, and (3) its failure to take appropriate remedial action to address this hostile environment.

*1. The County has created a hostile environment on the basis of sex, race, color, and national origin by targeting and removing inclusive books.*

As outlined in Part II, statements made by students at Board meetings and to NWLC demonstrate that the County has impermissibly created a hostile environment on the bases of sex and race by banning and censoring inclusive books, in combination with other statements and actions evincing sex- and race-based hostility. CCPS students and parents repeatedly expressed concern and frustration that the County was targeting books and otherwise expressing hostility to inclusive measures that reflected their identities. For example, in September 2023, Student A told the Board “I don’t feel safe while I’m at school. I’ve faced bullying, harassment, discrimination at the hands of my peers because of my gender identity and sexual orientation.”<sup>134</sup> They stated that the County’s policies—including the book bans—“embolden bullies and make it even more difficult for victims to speak up.”<sup>135</sup>

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<sup>130</sup> See, e.g., U.S. Dep’t of Educ., Off. for Civ. Rights, *U.S. Department of Education Toolkit: Creating Inclusive and Nondiscrimination School Environments for LGBTQI+ Students 2*, <https://perma.cc/V5UQ-JJSU> (“Book bans may violate Federal civil rights laws, depending on the facts and circumstances” as to “whether students have experienced a hostile environment at school based on sex, race or disability.”).

<sup>131</sup> See generally U.S. Dep’t of Educ., Off. Civ. Rights, Resolution Letter to Forsyth School District, OCR Complaint No. 04-22-1281 (May 19, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf> [hereinafter “Forsyth County Resolution Letter”].

<sup>132</sup> *Id.* at 6.

<sup>133</sup> *Id.* at 7.

<sup>134</sup> September 11, 2023 School Board Meeting, 3:18 <https://www.collierschools.com/Page/19109>.

<sup>135</sup> *Id.*

In an interview with Student H in early April 2024, NWLC learned that CCPS has a pervasive culture of harassment and bullying of LGBTQIA+ students. Student H reported that people have thrown food at them in the cafeteria; when they reported the incident, a school police officer stationed in the cafeteria stated that the students “were just looking for attention.”<sup>136</sup> The student said, “there is a huge problem [because] students are really scared to report things. The system is so opaque.”<sup>137</sup>

Student H also noted that books reflecting their identity were immensely important to them. They said: “As someone who has faced discrimination in school for being queer from my peers, having literature has really supported me. Having exposure to queer characters in a way that’s normalized is really important.”<sup>138</sup> They noted that they have refrained from asking for books at their school’s media center because they like the librarian and do not want her to get in trouble.<sup>139</sup>

Student B reported to NWLC that they have repeatedly suffered from a hostile environment at CCPS. They said: “I have been subject to the hate and bigotry of my fellow classmates and report time and time again, it has even led to a physical altercation and because the school system treats the subject as taboo, [school staff] are hesitant to interject.”<sup>140</sup>

At the October 2023 Board meeting, a parent read out a letter from Student G, a former CCPS student who graduated in spring of 2023. That student stated that “the full-time homophobic bullying that I was forced to face from my peers was so unbearable that I became a dual-enrollment student.”<sup>141</sup> In June, another former student stated to the Board: “I was saddened to learn that the number of students in the Gay-Straight Alliance or the GSA has decreased dramatically. This is not due to there being fewer queer students. It is due to an increasingly hostile climate within our schools.”<sup>142</sup>

OCR has recognized that harassing conduct “may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the internet; or other conduct that may be physically threatening, harmful, or humiliating.”<sup>143</sup> The testimonials herein illustrate repeated incidents of name-calling, online bullying, food being thrown, and even physical altercations in CCPS specifically on the basis of the victims’ identities. The testimonials and statements make it clear that by targeting and removing inclusive books, the County has created and tolerated a racially and sexually hostile educational environment.

2. *The County had both actual and constructive notice of the hostile environment it had created and tolerated on the bases of sex and race.*

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<sup>136</sup> Conversation with Student H, April 6, 2024.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> Statement provided via NWLC online submission form.

<sup>141</sup> October 10, 2023 Regular School Board Meeting, at 1:02, <https://www.collierschools.com/Page/19209>.

<sup>142</sup> June 13, 2023 Regular School Board Meeting, at 2:44, <https://www.collierschools.com/Page/18783>.

<sup>143</sup> U.S. Dep’t of Educ. Off. Civ. Rights, *Dear Colleague Letter*, (Oct. 26, 2010), <https://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201010.html>.



As stated above, a school district is responsible for addressing sex-based discrimination under Title IX when it has actual notice of such discrimination, which is satisfied in the K-12 context when any employee has actual notice. A school district is required to respond to race-based discrimination under Title VI when it has actual or constructive notice of such discrimination. Here, the County had actual notice of the hostile environment based on sex it created, and both actual and constructive notice of the hostile environment based on race it created through its banning of inclusive books and other discriminatory statements and actions.

First, since the removal of inclusive materials at the start of the 2023-24 school year, students and parents repeatedly voiced that such removal impacted students' ability to feel safe and supported at school. These statements have been excerpted and provided throughout Parts II and III and are attached in full in the appendix. One former CCPS student, for example, stated at the October 2023 Board meeting: "When Florida and the Collier County Public Schools erase gay people from history, stigmatize, and portray them as villains who are infiltrating public schools, gay students see how you think of them. . . . Bullies are now emboldened to treat students like me like a second-class citizen because people in power that we're supposed to admire, respect, emulate did it too."<sup>144</sup>

Second, Student H informed NWLC that LGBTQIA+ students are generally afraid to report incidents of harassment and bullying, due in part to fear about being outed to their families.<sup>145</sup> This indicates that there is underreporting of misconduct. However, Student H has bravely spoken to trusted teachers and administrators at their high school about specific incidents of anti-LGBTQIA+ bullying and harassment they have repeatedly experienced during their time as a CCPS student, directly giving them actual knowledge of the issue.

Additionally, the County had constructive notice of the race-based hostile environment. Had the County undertaken a "reasonably diligent inquiry"<sup>146</sup> of the circumstances, it would have known of the race-based hostile environment created, in part through media reporting on the impact on CCPS students of Board member Jerry Rutherford's proposed "ideologies" policy and the banning of inclusive materials. The County's focus on denouncing "critical race theory"; Black Lives Matter; diversity, equity, and inclusion; and efforts to address matters of racial injustice particularly harms students of color and was the subject of widespread media attention.<sup>147</sup>

Students and parents also spoke out publicly about a race-based hostile environment in CCPS. In September, 2023, Student C spoke at a Board meeting to say "a policy that targets Black Lives Matter, diversity, and the gay agenda will only make students feel less safe and accepted at school. . . . Students shouldn't feel unsafe because of a school board policy. As

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<sup>144</sup> October 10, 2023 Regular School Board Meeting, 1:02, at <https://www.collierschools.com/Page/19209>.

<sup>145</sup> Conversation with Student H, April 6, 2024.

<sup>146</sup> 1994 Racial Harassment Guidance, at <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>147</sup> See, e.g., Amy Galo, *Collier County School Board member's plan to eliminate ideologies from classroom*, WINK NEWS (Aug. 22, 2023), <https://winknews.com/2023/08/21/collier-county-school-board-members-plan-eliminate-ideologies-from-classroom/>; Sandy Parker, *School Board's Rutherford Wants Policy on Political Ideologies*, SPARKER'S SOAPBOX (Aug. 29, 2023), <https://www.sparkers-soapbox.com/collier-school-board-rutherford-wants-policy-on-political-ideologies/>.

students, we just want to be accepted and feel like we belong.”<sup>148</sup> Parents and community members repeatedly stressed to the Board that the book bans were creating an unwelcoming environment for students of color. In December 2023, Chris Schmeckpeper-Kobzina testified at a Board meeting that “Students need books that are representative of themselves and the people in situations that are similar to theirs,” and pointed out that seminal books by Black authors like Ralph Ellison’s *The Invisible Man* were being removed without clear cause.<sup>149</sup> Schmeckpeper-Kobzina noted months earlier at the September 2023 Board meeting that the Board’s discussions were marginalizing and targeting “Black, brown, Indigenous people, and people of color,” which was “mak[ing] people in this community feel unsafe, unwelcome, and unwanted.”<sup>150</sup>

3. *The County has failed to take appropriate remedial action to address the hostile environment.*

Despite repeated instances of sex- and race-based harassment and widespread knowledge of the hostile environment, the County failed to take corrective action to ameliorate the hostile environment. Instead, the County continued to adopt policies—including banning inclusive books and prohibiting materials supportive of LGBTQIA+ students—exacerbating the hostile environment in violation of Title IX and Title VI.<sup>151</sup>

In fact, in an interview with NWLC in early April 2024, Student H pointed out that although some of their high school teachers have tried to intervene to stop specific harassing incidents on the basis of their sexual orientation and gender identity, the harassment and discrimination has continued, enabled by the actions of leadership. They said: “The underlying cause is that people feel empowered to be homophobic and discriminatory toward their classmates because they think they have the right to. You can punish people for acting out, but it will keep happening because it’s not just two students, it’s more.”<sup>152</sup>

Student H noted that they knew another student who was relentlessly bullied because of their LGBTQIA+ status. When that student tried to bring these incidents to their school’s administration, the administrator responded by handing them a dual-enrollment form that would allow them to take college classes and stop attending high school classes.<sup>153</sup> Rather than addressing the sex-based harassment that was causing that student extreme suffering and duress, the County attempted to avoid the situation by pressuring that student to leave the premises altogether.

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<sup>148</sup> September 11, 2023 School Board Meeting, 3:13 <https://www.collierschools.com/Page/19109>.

<sup>149</sup> December 12, 2023 Regular School Board Meeting, at 2:25, <https://www.collierschools.com/Page/19361>.

<sup>150</sup> September 11, 2023 School Board Meeting, 3:31, <https://www.collierschools.com/Page/19109>.

<sup>151</sup> See, e.g., U.S. Dep’t of Educ., Off. for Civ. Rights, *U.S. Department of Education Toolkit: Creating Inclusive and Nondiscrimination School Environments for LGBTQI+ Students 2*, <https://perma.cc/V5UQ-JJSU> (“Book bans may violate Federal civil rights laws, depending on the facts and circumstances” as to “whether students have experienced a hostile environment at school based on sex, race or disability.”); Forsyth County Resolution Letter, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>.

<sup>152</sup> Conversation with Student H, April 6, 2024.

<sup>153</sup> *Id.*

Finally, the County’s book banning policies are not required or justified by Florida HB 1069. First, state law cannot overcome a school district’s obligations under federal law<sup>154</sup> to address a sex- and race-based hostile educational environment.<sup>155</sup> Second, the County’s aggressive implementation of the book bans has gone far beyond what was necessary to fulfill its obligations under HB 1069.

Further, a recent settlement resolving a challenge to HB 1557, Florida’s Parental Rights in Education Act, widely known as Florida’s “Don’t Say Gay” law [hereafter, “the Settlement”] illustrates that Florida state law cannot supersede federal law prohibiting discrimination on the basis of protected characteristics. The 2022 law prohibits “classroom instruction by school personnel or third parties on sexual orientation or gender identity” in kindergarten through third grade, and the state board of education expanded the ban to cover all grades K-12 in 2023.<sup>156</sup> Florida parents, students, and teachers, through Equality Florida and Family Equality, sued and alleged, among other claims, that HB 1557 violated the Fourteenth Amendment and was discriminatory in violation of equal protection principles. On March 11, 2024, the plaintiffs reached a settlement agreement with the Florida State Board of Education, Florida Department of Education, and certain school districts to resolve considerable confusion around the “Don’t Say Gay” law.<sup>157</sup>

The Settlement gives concrete examples to clarify that the state of Florida and school districts in Florida cannot discriminate against LGBTQIA+ students, teachers, and families.<sup>158</sup> Some critical clarifications in the Settlement include:

- Teachers are free to respond if students discuss their identities or family life, to provide grades and feedback if a student chooses “LGBTQ identity” as an essay topic, and to answer questions about their families.
- The law does not restrict gay and transgender teachers from putting a family photo on their desk or from referring to themselves and their spouse and their own children.
- The law does not prohibit intervention against LGBTQ bullying.
- The law does not “require the removal of ‘safe space stickers,’ which are not ‘classroom instruction.’”

This Settlement implicates the County’s conduct, given that in conjunction with banning books and in response to an email about a poster supporting LGBTQIA+ youth, it instituted a policy that schools had to remove “flags, posters, flyers, magnets, stickers or other materials with

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<sup>154</sup> U.S. Const. art. VI, cl. 2.

<sup>155</sup> See Final Rule, 89 Fed. Reg. 33474, 33541 (noting that “courts have long held that Spending Clause statutes, like Title IX, can preempt inconsistent State laws by operation of the Supremacy Clause”).

<sup>156</sup> See Eesha Pendharker, *Florida Just Expanded the “Don’t Say Gay” Law. Here’s What You Need To Know*, EDUCATION WEEK (April 19, 2023), [Florida Just Expanded the ‘Don’t Say Gay’ Law. Here’s What You Need to Know \(edweek.org\)](#).

<sup>157</sup> Ileana Najarro, *What’s Permissible Under Florida’s “Don’t Say Gay” Law? A New Legal Settlement Clarifies*, EDUCATION WEEK (Mar. 12, 2024), [What’s Permissible Under Florida’s ‘Don’t Say Gay’ Law? A New Legal Settlement Clarifies \(edweek.org\)](#) (text of settlement at the end of the article).

<sup>158</sup> *Historic Settlement Achieved in Challenge to Florida’s “Don’t Say Gay or Trans” Law*, EQUALITY FLORIDA (Mar. 11, 2024), <https://www.eqfl.org/historic-settlement-achieved-challenge-floridas-dont-say-gay-or-trans-law>.

messages that have symbols or language that could be construed as virtue-signaling, politicizing, or having a disruptive effect on the learning environment.”<sup>159</sup> Since the Settlement in March, students and parents have not identified any change by the County to address the hostile environment it has created.<sup>160</sup>

By removing inclusive books from school libraries, in a context of other hostile statements and actions from the County, the County has created an environment where sex- and race-based harassment can flourish. As recounted from testimonies submitted to the Board, media reports, and statements provided to NWLC, the removal of these books directly harms students of color and LGBTQIA+ students. But despite the repeated notification by students and parents that students are experiencing harm the County banning inclusive books, the County has failed to respond to remedy the harm and ensure students have equal access to their education. Though the County has been repeatedly notified by students and parents of the hostile environment that students are experiencing as a result of the County banning inclusive books, it has failed to respond to remedy the harm students have and continue to experience by ensuring they have equal access to their education.

#### **IV. OCR must take steps to bring Collier County’s public schools into compliance with Title IX and Title VI and rectify the sex- and race-based hostile environments.**

On behalf of the LGBTQIA+ students and students of color who have suffered and continue to suffer the racially and sexually hostile environment the County has created, NWLC asks that OCR require the County to, at a minimum, implement the following remedies:

1. Require the County to return all the inclusive books it has removed, and:
  - a. Ensure that the County is using nondiscriminatory criteria for evaluating challenges to books or learning materials that clearly state that inclusion of LGBTQIA+ characters, discussion of sexual orientation and gender identity, discussion of sexual assault or abuse, discussion of race and racism, or inclusion of characters of color, shall not form the basis for removal of books or learning material.
  - b. Ensure that, when a book is challenged, it must be read in its entirety while under review so that out-of-context excerpts cannot be used as justification for removal.<sup>161</sup>

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<sup>159</sup> GLSEN Poster Email Chain, Exhibit 4.

<sup>160</sup> Conversation with Parent 4, April 10, 2024.

<sup>161</sup> A common tactic by extremists when challenging books is to reduce the message of a book to a single excerpt. Extremists coordinate attacks on commonly challenged books by choosing the same excerpts and reading them at school board meetings in an attempt to elicit shock from a school board to garner support to remove the challenged book. For example, Moms For Liberty, an extremist hate group driving many challenges to inclusive books in school districts across the country, has disseminated a long list of books to target—most of which feature people of color or LGBTQIA+ people or discuss race, LGBTQIA+ identity, sexual assault and consent, or sexual or reproductive health—along with excerpts from each book deemed “sexually explicit” or “obscene.” Moms For Liberty, *Banned Book List*, 1, <https://drive.google.com/file/d/1BNfax73kzqWwMMfkjcopgEXMDBD-fr4O/view>. These excerpts have been relied on by many extremists seeking to ban inclusive books.

- c. Require the County to provide quarterly reports (twice a semester) to students and parents/guardians through its website on any changes to books allowed in schools—whether stemming from challenges made under County policy or as part of updates the County makes to its school libraries—and ensure the opportunity for public comment before any book changes are finalized. The County must also report any changes to books allowed in schools to OCR twice a year.
2. Require the County to create a plan to ensure a welcoming and nondiscriminatory educational environment that OCR must approve, which includes the following:
    - a. A statement by the County that it “strives to provide a global perspective and promote diversity” by including instructional materials by and about people “of all cultures.”<sup>162</sup>
    - b. An acknowledgment that the removal of books harmed students.
    - c. Notice to students on how to file a complaint of harassment or discrimination with the institution and with OCR.
    - d. A requirement that all Board members and CCPS staff receive training on sex- and race-based harassment and discrimination, as well as on cultural competency. This training should emphasize responding to sex- and race-based harassment and discrimination, including how to identify, interrupt, report, and investigate it. The cultural competency training should emphasize how to support students of color and LGBTQIA+ students, including education on sexual orientation, gender identity, and gender expression. The County may accomplish this by retaining or designating consultants with expertise on remedying disparate educational outcomes and mistreatment of students of color and LGBTQIA+ students.
    - e. A requirement that the County clearly states in all mission statements and policies that it values diversity and is committed to ensuring safe, inclusive, and supportive campuses that are free from discrimination and harassment.
    - f. A requirement that the County conducts climate surveys to assess the frequency of harassment or discrimination on the basis of sex and race.
3. Order the County to rescind policies and practices that contribute to a hostile environment for LGBTQIA+ students.<sup>163</sup>
    - a. The County cannot prohibit students and teachers from discussing their identities and families.
    - b. The County cannot prohibit teachers from displaying flags, posters, flyers, magnets, stickers or other materials with messages that have symbols or language supportive of the LGBTQIA+ community.
    - c. Allow GSA attendance without a parental permission slip.

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<sup>162</sup> U.S. Dep’t of Educ., Off. Civ. Rights, Resolution Agreement with Forsyth School District, OCR Complaint No. 04-22-1281, 1 (May 19, 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04221281-b.pdf>.

<sup>163</sup> See, e.g., Dep’t of Educ. Off. for Civ. Rts., *Supporting Transgender Youth in School* (June 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/ed-factsheet-transgender-202106.pdf>.

Finally, NWLC requests that OCR issue a determination to the County that its school censorship policies, in the context of hostile statements and practices, violate federal civil rights laws. Specifically, we ask that OCR issue a determination to the County that:

1. The County's application of its book ban policies, in the context of other hostile statements and practices, violates Title IX and Title VI.
2. Florida HB 1069 does not provide legal justification for the violation of Title IX and Title VI.

## **V. Conclusion**

In Collier County, book bans targeting content about people of color and LGBTQIA+ individuals and themes were enacted alongside hostile statements, sending a harmful and regressive message to students. In this context, these book bans convey to students in those communities that they do not deserve visibility and affirmation. The book bans also communicate that it is acceptable to discriminate and harass on the basis of these identities because these are not issues the school district takes as seriously. Barring inclusive materials from school leaves students unprepared to identify and understand discrimination; it prevents students from learning about or understanding the experiences of their peers; and ultimately, it harms schools' ability to create safe and inclusive environments for all students.

At Collier County Public Schools, despite vigorous protests and concerns raised by students, parents, and educators, inclusive books were targeted and removed alongside abject sex- and race-based hostility by the Board, including a litany of disparaging statements by Board members about the LGBTQIA+ community and people of color. These books disproportionately were written by people of color and LGBTQIA+ people; they featured people of color and LGBTQIA+ people as characters and themes; and they discussed discrimination on the basis of race, sexual orientation, and gender identity.

These book bans, in this context, created and contributed to a sex- and race-based hostile environment in violation of Title IX and Title VI. Students at CCPS explicitly expressed feeling unwelcome and unsafe at school because of the harassment they faced on the basis of protected characteristics. Despite this, the County failed to take steps to address the hostile environment it had created. The County has violated the promise of federal laws that ensure all students are able to learn in safety, free from discrimination on the basis of sex and race. This failure requires the federal government to intervene. We respectfully request that OCR open an investigation into the County's ongoing violations of Title IX and Title VI and require the County to adopt the remedies outlined above.

Thank you for your consideration of this complaint. If more information is needed that would help your investigation, please contact us.

Respectfully submitted,

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