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May 13, 2024

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

The National Women’s Law Center (“NWLC”) files this complaint against Cobb County School District (“CCSD”) in Georgia for its discriminatory censorship of books and learning materials that feature characters and authors of color and who are lesbian, gay, bisexual, transgender, queer, intersex, and asexual (LGBTQIA+), and books that discuss race and racism, and LGBTQIA+ identity and discrimination. CCSD’s discriminatory efforts to censor these books and learning materials have harmed students—particularly students of color and LGBTQIA+ students—by creating a hostile environment in which they feel unsafe to be who they are at school, feel unsupported or in their identities, and cannot see themselves reflected in what they learn at school. This complaint relies on students’ narratives<sup>1</sup> of the harm they have experienced as a result of CCSD’s actions, as well as facts demonstrating the racist and anti-LGBTQIA+ climate CCSD—including the CCSD Superintendent, School Board, and certain staff—has fostered.

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<sup>1</sup> At several points, this complaint references statements CCSD students have made in interviews with NWLC about the impact of CCSD’s censorship efforts on them and the school environment. NWLC has provided a full record of these statements in the attached Appendix.

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## I. Preliminary information.

**The complainant** is 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 of the Education Amendments of 1972 (“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 discrimination 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.

**Discrimination is ongoing** against LGBTQIA+ and students of color in the form of a hostile educational environment. The complainant therefore does not request a waiver of the 180-day time frame to file the complaint.

This complaint is being filed by:

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The agency that engaged in alleged discrimination is:

Cobb County School District  
Address: 514 Glover Street  
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Cobb County School District (“CCSD,” which refers collectively to the school administration, local CCSD schools, and CCSD School Board) is a local educational agency, as defined in 20 U.S.C. § 8801(19), and is responsible for the administration and operation of Cobb County schools. CCSD is the second largest school system in Georgia and serves almost 113,000 students in grades K-12 at 112 schools. CCSD is a recipient of federal funding from the U.S. Department of Education.

The CCSD School Board (“the Board”) is responsible for the control and management of CCSD, including the establishment of Board Policy,<sup>2</sup> and is made up of seven school board members. Randy Scamihorn (“Scamihorn”), Brad Wheeler (“Wheeler”), David Chastain (“Chastain”), and David Banks (“Banks”) are the Republican members on the Board and make up a majority of Board members (collectively, “Board Majority”); the remaining three are the Democratic members of the Board, Becky Sayler (“Sayler”), Nichelle Davis (“Davis”), and Leroy Tre’ Hutchins (“Hutchins”) (collectively, “Board Minority”). The Superintendent of CCSD is responsible for implementing and overseeing policies established by the Board.<sup>3</sup> Currently, Christopher Ragsdale (“Ragsdale”) is CCSD’s Superintendent.

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

This complaint alleges that CCSD has created a race- and sex-based hostile environment for students of color and LGBTQIA+ students. CCSD has done so by enacting policies aimed at censoring inclusive classroom library materials and curricula. Since enacting these policies, CCSD has targeted and removed numerous classroom and library materials that feature people of color and LGBTQIA+ people as characters and authors, that discuss racial identity and race-based discrimination, and that discuss LGBTQIA+ identity and anti-LGBTQIA+ discrimination (“inclusive books”).<sup>4</sup> CCSD’s censorship of inclusive books has resulted in students of color and LGBTQIA+ students fearing race- and sex-based harassment, worrying they are unwelcome and that it is unsafe to be who they are at school, and feeling that CCSD is endeavoring to erase any representation of their identities in the books they read and what they learn. Through its censorship of inclusive books, CCSD has violated its obligations under Title VI and Title IX to provide all students with equal access to a safe environment that is both conducive to learning and free from discrimination based on race and sex. CCSD’s discriminatory acts are described in detail in Part II below.

## **II. FACTUAL BACKGROUND: CCSD has both engaged in conduct and implemented policies that discriminate against students of color and LGBTQIA+ students.**

CCSD’s efforts to censor inclusive books is just one example of a wave of censorship in elementary and secondary schools that has proliferated across the country in recent years, driven by extremists as part of a coordinated plan to erase learning and discussion about our history and to create hostile learning environments for students of color and LGBTQIA+ students. These extremists have sought to ban books by inappropriately and broadly labeling books featuring people of color and LGBTQIA+ people as authors and characters, or discussions of racial identity or LGBTQIA+ identity, as “divisive,” “inappropriate,” “obscene,” or “pornographic.” These bans have also extended to censoring stories and lessons about sexual violence, sex education, and reproductive health, with particular harms for girls and LGBTQIA+ students.

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<sup>2</sup> Ga. Const. art. VIII, § 5, ¶ II; O.C.G.A. §§ 20-2- 50; 20-2-61.

<sup>3</sup> O.C.G.A. § 20-2-61.

<sup>4</sup> Whenever this complaint uses the phrase “inclusive books,” this means books that feature people of color and LGBTQIA+ as characters and authors, that discuss racial identity and race-based discrimination, as well as LGBTQIA+ identity and anti-LGBTQIA+ discrimination.

These censorship efforts create unwelcoming school environments by promoting ignorance around racism, Black history, transphobia, homophobia, sexism, and other forms of bias; by preventing students from learning about current social issues and accurate history by scrubbing information about race discrimination and sex discrimination, including anti-LGBTQIA+ discrimination, from schools; and by stripping students—particularly students of color and LGBTQIA+ students—of a sense of belonging and safety and of the ability see their own lives and experiences reflected in what they read and learn. CCSD’s censorship efforts and attacks on students’ rights to access inclusive materials mirror this broader pattern, with devastating impacts on CCSD students’ ability to feel safe at school. Students in CCSD are thus experiencing hostile educational environments in clear violation of federal civil rights protections.

**A. In 2022, CCSD implemented policies aimed at censoring inclusive curricula and classroom and library materials.**

Efforts by CCSD to censor inclusive materials began in summer of 2022, after the Georgia legislature enacted HB 1084 (the “Divisive Concepts Law”), which prohibits educators from “espousing personal political beliefs” concerning “divisive concepts.”<sup>5</sup> The statute defines “espousing personal political beliefs” as “an individual, while performing official duties as part of his or her employment or engagement with a school or local school system, intentionally encouraging or attempting to persuade or indoctrinate a student, school community member, or other school personnel to agree with or advocate for such individual’s personal beliefs concerning divisive concepts.”<sup>6</sup> The statute defines “divisive concepts” to include several concepts regarding the role of race and racism in the United States; for example, it prohibits espousing that the U.S. “is fundamentally racist,” that “[a]n individual, solely by virtue of his or her race, bears individual responsibility for actions committed in the past by other individuals of the same race,” and “[a]ny other form of race scapegoating or race stereotyping.”<sup>7</sup> The Divisive Concepts Law also requires school districts to, by August 1, 2022, “adopt a complaint resolution policy to address complaints alleging violations” of the Divisive Concepts Law.<sup>8</sup>

To implement the Divisive Concepts Law, in summer 2022, the Board instituted four policies aimed at censoring inclusive classroom and library materials, as well as curricula (collectively, “the Censorship Policies”). This included (1) the Instructional Resources Selection and Acquisition Policy, which was revised on July 1, 2022; (2) the Material Harmful to Minors Complaint Resolution Process, which was adopted August 1, 2022 (collectively, “Harmful to Minors Policies”); (3) the Controversial Issues Policy, which was revised July 1, 2022; and (4) the Divisive Concepts Complaint Resolution Process, which was adopted August 1, 2022 (collectively, “Divisive Concepts Policies”). Collectively, these policies aim to restrict students’ access to inclusive information, including by preventing teachers from assigning books, creating lessons, and facilitating dialogue reflective of the lives, histories, and experiences of people of color and LGBTQIA+ people, and limiting the ability of students to read books featuring people of color and LGBTQIA+ people as characters and authors, or discussing of racial identity or LGBTQIA+ identity. These policies also establish complaint processes to allow objections to access to inclusive books and the teaching of inclusive curricula.

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<sup>5</sup> H.B. 1084, 156th Gen. Assemb., Reg. Sess. (Ga. 2022).

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

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

<sup>8</sup> *Id.*

CCSD’s Harmful to Minors policies govern the process for challenging any learning materials that are “harmful to minors,”<sup>9</sup> and state that “content harmful to minors shall be prohibited.”<sup>10</sup> Content that is “harmful to minors” is defined as any content with a “quality or description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse” that, “(1) Taken as a whole, predominantly appeals to the prurient, shameful, or morbid interest of minors; (2) Is patently offensive to prevailing standard in the adult community as a whole with response to what is suitable material for minors; and (3) Is, when taken as a whole, lacking in serious literary, artistic, political, or scientific value for minors.”<sup>11</sup>

CCSD’s Divisive Concepts Policies govern the process to submit a complaint against curriculum and classroom instruction that “advocate[s] for divisive concepts,”<sup>12</sup> and prohibits school district employees “from using classroom instruction or their relationships with students in order to espouse personal political beliefs,” which has the same definition as in the Georgia Divisive Concepts Law of “intentionally encouraging or attempting to persuade or indoctrinate a student, school community member, or other school personnel to agree with or advocate for such individual’s personal beliefs concerning divisive concepts.”<sup>13</sup> The Divisive Concepts Policies also prohibits “content that is harmful to minors,” which is defined as it is in the Harmful to Minors Policy.<sup>14</sup>

## **B. CCSD has implemented the Censorship Policies to remove inclusive books and discipline school staff that have sought to ensure students’ access to inclusive books.**

From the beginning, CCSD’s enforcement of its Censorship Policies was marked by abject hostility towards students of color and LGBTQIA+ students, and any teachers attempting to create a supportive environment for them. The first known instance of CCSD enforcing its Censorship Policies in the 2022-2023 school year was the firing of a fifth-grade teacher, Ms. Katherine Rinderle, from a CCSD school, Due West Elementary, for reading *My Shadow Is Purple*, a book that tells the story of a gender non-conforming child, to her fifth-grade class.<sup>15</sup> On

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<sup>9</sup> Cobb County School District, District Administrative Rule, IKBC-R: Materials Harmful to Minors Complaint Resolution Process (Aug. 1, 2022), <https://sbcobbstor.blob.core.windows.net/media/WWWCobb/medialib/ikbc-r.e8e9aa70920.pdf>.

<sup>10</sup> Cobb County School District, District Administrative Rule, IFAA-R: Instructional Resources Selection and Acquisition 4 (July 1, 2022), <https://sbcobbstor.blob.core.windows.net/media/WWWCobb/medialib/ifaa-r.1d1a3037152.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> Cobb County School District, District Administrative Rule, IKBB-R: Divisive Concepts Complaint Resolution Process 1 (Aug. 1, 2022), <https://sbcobbstor.blob.core.windows.net/media/WWWCobb/medialib/ikbb-r.ef329570919.pdf>.

<sup>13</sup> Cobb County School District, District Administrative Rule, IKB-R: Controversial Issues 1 (July 1, 2022), <https://sbcobbstor.blob.core.windows.net/media/WWWCobb/medialib/ikb-r.6dc94b37171.pdf>.

<sup>14</sup> Instructional Resources Selection and Acquisition *supra* note 10, at 4 (defining content that advocates for divisive concepts shall be prohibited).

<sup>15</sup> Rhonda Sonnenberg, *Georgia Teacher Fired for Reading Children’s Book About Acceptance in Class*, SPLC (June 22, 2023), <https://www.splcenter.org/news/2023/06/22/georgia-teacher-fired-reading-childrens-book-about-acceptance-class>. Specifically, Rinderle was charged with violating the Instructional Resources Selection and Acquisition Policy and the Controversial Issues Policy. See Cobb County School District Termination Hearing, Findings of Fact and Recommendations to the Cobb County Board of Education, *In re: Katherine Rinderle* 4 (Aug. 14, 2023), <https://www.splcenter.org/sites/default/files/rinderletribdec.pdf>.

March 8, 2023, Rinderle read *My Shadow Is Purple* to her class and discussed the book's message of acceptance and the importance of embracing diverse identities. The next day, another Due West teacher and a parent of one of her students complained to the school principal about Rinderle reading *My Shadow Is Purple* to her class.<sup>16</sup> Subsequently, CCSD put Rinderle on paid administrative leave from March 13, 2023, to May 5, 2023, for purportedly violating the Censorship Policies;<sup>17</sup> she was later given the choice to resign or be terminated and refused to accept either option.<sup>18</sup> On June 6, 2023, the Board issued Rinderle an official notice of termination.<sup>19</sup> The matter was then referred to a panel of three retired educators who presided over a multi-day investigation hearing in August 2023.<sup>20</sup> Rinderle's attorney questioned CCSD employees during the hearing, including Christopher Dowd, CCSD's Director of Employee Relations (and a former Atlanta police officer with a history of harassing LGBTQIA+ people<sup>21</sup>), who sharply criticized Rinderle for reading *My Shadow Is Purple*. He referred to the book's content—specifically its use of colors to describe the main character's gender expression as having a “purple” shadow, as opposed to their mom who has a “pink” shadow and their dad who has a “blue” shadow—as “pornographic” and “inappropriate.”<sup>22</sup> Dowd also said that the book's ending was “controversial,” because it showed the main character “dressed in what we consider traditional feminine garb, [and] traditional male garb.”<sup>23</sup> At the end of the hearing on August 14, 2023, the panel recommended that the Board should not terminate Rinderle;<sup>24</sup> however, despite the panel's recommendation, the Board voted 4-3 on August 17, 2023 to reject the panel's recommendation and terminated Rinderle.<sup>25</sup>

Later, at school board meetings, CCSD students shared their concerns about the Board's decision to terminate Rinderle for reading a book featuring a gender nonconforming character. One student at a September 14, 2023, school board meeting spoke about the fear she and other students felt after Rinderle was fired.<sup>26</sup> She said that when students “read about the banning of books and the firing of Ms. Rinderle, we felt very afraid,” because “by banning representation

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<sup>16</sup> Rhonda Sonnenburg, *supra* note 15.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*; Rebecca Gaunt, *Interview with Cobb Teacher Fired Over Book Under Georgia's 'Divisive Concepts' Law*, COBB COUNTY COURIER (June 28, 2023), <https://cobbcountycourier.com/2023/06/interview-with-cobb-teacher-fired-over-book-under-georgias-divisive-concepts-law/>.

<sup>20</sup> *Georgia tribunal rejects recommendation to fire teacher over controversial book*, AP (Aug. 15, 2023), <https://apnews.com/article/georgia-teacher-fired-reading-book-gender-identity-b68cfd5f75339978ddebdea3cd83d5ba>.

<sup>21</sup> In an effort to call out the flagrant hostility displayed by CCSD against the LGBTQIA+ community in terminating Rinderle for reading *My Shadow is Purple*, the attorney representing Rinderle during her investigation hearing alluded to Dowd's history of anti-LGBTQIA+ conduct and his participation in a violent raid on a gay bar while working for the Atlanta Police Department. *See infra* Part II.C; Ross Williams, *Cobb teacher grilled over book illustrating gender roles in test of 'divisive concepts' law*, Georgia Recorder (Aug. 11, 2023), <https://georgiarecorder.com/2023/08/11/cobb-teacher-grilled-over-book-illustrating-gender-roles-in-test-of-divisive-concepts-law/>.

<sup>22</sup> Rhonda Sonnenburg, *supra* note 15.

<sup>23</sup> Cassidy Alexander, *Cobb teacher accused of reading controversial book testifies in hearing*, THE ATLANTA JOURNAL-CONSTITUTION, (Aug. 10, 2023), <https://archive.fo/f7UNa#selection-2959.0-2959.341>.

<sup>24</sup> *Georgia tribunal rejects recommendation to fire teacher over controversial book*, *supra* note 20; Cobb County School District Termination Hearing, Findings of Fact and Recommendations to the Cobb County Board of Education, *supra* note 15, at 5 (“WHEREFORE, the Hearing Tribunal denies the recommendation of the Superintendent to terminate Ms. Rinderle's employment contract.”).

<sup>25</sup> *Georgia tribunal rejects recommendation to fire teacher over controversial book*, *supra* note 20.

<sup>26</sup> Cobb Schools, *Watch Meetings Online*, Sept. 14, 2023 Board of Education Meeting, 1:07:27–1:09:26 (Broadcasted 9/14/23 6:55 pm - 9/14/23 8:40 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

for all students, regardless of gender, race, ethnicity, or sexuality” CCSD “negat[es]” students’ identities, “making [them] feel lost and unsupported.”<sup>27</sup> CCSD students have also observed that the firing of Rinderle has in fact resulted in other teachers restricting what is taught in their classrooms. For example, a student stated in a January 2024 interview with NWLC that one of her teachers during the 2022-2023 school year shared that, while he used to permit students to read and analyze various religious texts, he was now afraid of permitting students to do so—namely Islamic texts—for fear he would be subjected to repercussions by the Board.

CCSD has continued to enforce its Censorship Policies to inhibit students’ access to inclusive books in the current 2023-2024 school year. Shortly after the Board voted to terminate Rinderle in August 2023, CCSD removed two books from CCSD libraries, *Flamer* and *Me, Earl, & the Dying Girl* (“the August 2023 removal”). On Friday, August 19, 2023, a member of Libs of TikTok<sup>28</sup>—an extremist, anti-LGBTQI+ social media account, which has used its platform to spread hate, disinformation, and violence against LGBTQIA+ people, including the false idea that LGBTQIA-inclusive content is somehow obscene<sup>29</sup>—emailed Superintendent Ragsdale and John Floresta, the Chief Strategy & Accountability Officer of CCSD, regarding what he referred to as two “pornographic” and “inappropriate” books available in CCSD libraries.<sup>30</sup> The email (which is attached at Ex. 1 below) named *Flamer* and *Me, Earl, & the Dying Girl*, and asked if the district thought these two books were “appropriate” for students.<sup>31</sup> *Flamer* is written by a gay author and tells the story of a boy who is bullied for being gay and his struggle to come to terms with his identity; *Me, Earl, & the Dying Girl* is about a boy befriending a girl who is dying of cancer.<sup>32</sup> Floresta responded via email (which is attached at Ex. 1 below) on Monday, August 21, 2023, in which he called the books “sexually-explicit” and stated that “over the weekend, [they] . . . removed both books from all . . . schools.”<sup>33</sup> On Monday, August 21, 2023, CCSD sent an

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<sup>27</sup> *Id.*

<sup>28</sup> *BREAKING: Georgia school removes pornographic books after Libs of TikTok expose*, LIBS OF TIK TOK (Aug. 24, 2023), <https://www.libsoftiktok.com/p/-g>.

<sup>29</sup> Libs of TikTok was founded and is run by Chaya Raichik, who has used this account to spread anti-LGBTQIA+ hate, including by reviving the use of “groomer” as a slur to refer to LGBTQIA+ people or anyone who supports or affirms LGBTQIA+ people, intimidating LGBTQIA+ content creators, and calling for the removal of LGBTQIA-affirming books and instructional materials in schools. She has also used her platform to mobilize right-wing extremist groups to threaten or commit violence against LGBTQIA+ people, LGBTQIA-affirming spaces and events, hospitals, libraries, teachers, and schools. For example, her posts have been linked to bomb threats against children’s hospitals for providing gender-affirming care to transgender youth. *Chaya Raichik*, SPLC (last visited Apr. 9, 2024), <https://www.splcenter.org/fighting-hate/extremist-files/individual/chaya-raichik>.

<sup>30</sup> Kristal Dixon, *Cobb schools unresponsive to issues important to students, parents say*, AXIOS ATLANTA (Sept. 25, 2023), <https://www.axios.com/local/atlanta/2023/09/25/cobb-county-schools-book-bans-parents-complaints>; Kristal Dixon, *The battle over books continues in Cobb schools*, AXIOS (Aug. 30, 2023), <https://www.axios.com/local/atlanta/2023/08/30/schools-books-removed-libraries-cobb-county-georgia>.

<sup>31</sup> *Id.*

<sup>32</sup> Jeff Amy, *Georgia school district is banning books, citing sexual content, after firing a teacher*, AP (Aug. 22, 2023), <https://apnews.com/article/library-book-bans-explicit-content-georgia-school-4ebc873ca36ae398a2c3bc506db578c2>.

<sup>33</sup> Notably, responding to a complaint made by someone other than a parent or guardian of an enrolled student, a student 18 or older, or a CCSD employee violates CCSD’s own Censorship Policies. The Materials Harmful to Minors Complaint Resolution Process provides only that “a parent or permanent guardian of a student that is enrolled in the Cobb County School District may submit a complaint alleging that material that is harmful to minors has been provided or is currently available to his/her student.” While this policy is permissive, it does not stipulate that anyone apart from parents or guardians may file a complaint. Materials Harmful to Minors Complaint Resolution Process, *supra* note 9. One retired CCSD media specialist commented on this at a September 14, 2023 school board meeting, stating:



email to parents in Cobb County notifying them of the removals, which stated that books with “highly inappropriate, sexually explicit content” have been removed from their libraries, that it was “unacceptable,” and that “an investigation [was] underway.”<sup>34</sup> The book’s titles were not named.<sup>35</sup>

Parents and students repeatedly complained about the August 2023 removal to the Board at various school board meetings. *See also* student statements at school board meetings *infra* at 22–23. For example, at an October 19, 2023, school board meeting, a parent of a CCSD student warned the Board of the harm that would come to students as a result of accommodating Libs of TikTok’s request to remove *Flamer* and *Me, Earl, and the Dying Girl*. He explained that when Libs of TikTok posted about the availability of LGBTQIA-inclusive books at an Oklahoma elementary school, the school subsequently received multiple bomb threats over six days.<sup>36</sup> That parent went on to say that by acting on Libs of TikTok’s demand, the Superintendent demonstrated that he would “continue to listen to hate groups like [Libs of TikTok] when it comes to reviewing books” and has “invit[ed] hate groups to have a role in our children’s education,” which “is dangerous and subjects kids to potential threats and violence.”<sup>37</sup> Later, at a January 18, 2024, school board meeting, a student warned the Board about the impacts to students from the August 2023 removal. He explained that young people need to “see [themselves] affirmed through characters and stories that mirror [their] own, and that adequately represent [them],” as well as “stories from diverse perspectives” to “allow [them] to understand the perspectives of those unlike [them].”<sup>38</sup> However, the school district’s “removal of titles like *Flamer*, which deals with a queer main character whose experiences mirror [his] own” effectively “steal[s] that opportunity . . . for understanding . . . away from . . . young people.”<sup>39</sup>

Students and parents have also raised concerns about the August 2023 removal at a protest of CCSD’s censorship of inclusive books, which occurred outside a September 14, 2023 school board work session and just before the school board met later that day (“September 2023 demonstration”).<sup>40</sup> During a press conference at the September 2023 demonstration, one student pointed out that students were now having to assume the burden of keeping themselves safe and being reflected in what they learn, instead of CCSD fulfilling its obligations to maintain a safe

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[A]n outside hate group influencer . . . wrote an email to the county claiming we had pornographic books on our shelves, and the books were pulled that very weekend . . . out of all Cobb schools . . . What the board must’ve forgotten was that Cobb has a very strict removal policy, which states that only a parent or guardian may request that a book should be removed. There are multiple steps that must be taken, and they never happened here. The hasty removal of these books . . . undermines . . . our established policy.

Cobb Schools, *Watch Meetings Online*, Board of Education Meeting - 9/14/2023, 57:50–59:50 (Broadcasted 9/14/23 6:55pm - 9/14/23 8:40pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>34</sup> Wendy Parker, *Cobb school district removes ‘sexually explicit’ books from libraries*, EAST COBB NEWS (Aug. 22, 2023), <https://eastcobbnews.com/cobb-school-district-removes-sexually-explicit-books-from-libraries/>

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

<sup>36</sup> Cobb Schools, *Watch Meetings Online*, Oct. 19, 2023 Board of Education Meeting, 31:40–33:38 (Broadcasted 10/19/2023, 6:56pm - 7:54 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>. *See also* David Ingram, *After Libs of TikTok posted, at least 21 bomb threats followed*, NBC NEWS (Feb. 7, 2024), <https://www.nbcnews.com/tech/internet/libsof-tiktok-x-chaya-raichik-bomb-threat-twitter-of-libsoftiktok-rcna102784>

<sup>37</sup> Cobb Schools, *Watch Meetings Online*, Oct. 19, 2023 Board of Education Meeting, 31:40–33:38 (Broadcasted 10/19/2023, 6:56pm - 7:54 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>38</sup> Cobb Schools, *Watch Meetings Online*, Jan. 18, 2024 Board of Education Meeting, 23:53–25:42 (Broadcasted 1/18/2024, 6:57 pm - 7:49 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>39</sup> *Id.*

<sup>40</sup> Amanda Andrews, *Cobb County students organize against divisive concepts bans*, GPB NEWS (Sept. 19, 2023), <https://www.gpb.org/news/2023/09/19/cobb-county-students-organize-against-divisive-concept-bans>.

and inclusive learning environment: “No matter how much [CCSD] tr[ies] to ban books or tr[ies] to limit our education, that’s what’s going to get us to go out and seek for that, and to go out and read about it, and to learn about it and to explore ourselves more in that identity in that way.”<sup>41</sup> She added that while the Board’s actions made her feel “hopeless[] and defeat[ed],” “[students] have to be the change” “[b]ecause if not us, then who?”<sup>42</sup>

CCSD has also censored inclusive books, even without complaints made against the books. During the fall of 2023, CCSD removed hundreds of books from its libraries (“Fall 2023 removal”). A local newspaper submitted an Open Records Request pursuant to Georgia’s Open Records Act<sup>43</sup> to CCSD in October 2023 (“October 2023 Open Record Request”) to request a list of all books and materials that were removed from CCSD school libraries between August 10, 2023 and September 22, 2023.<sup>44</sup> The Open Records Request revealed that over **600 books** had been removed during this period and that these books were not removed due to challenges made under the Censorship Policies. While CCSD tried to pass the Fall 2023 removal off as innocuous and part of a “routine” process schools undertake to update out of date or damaged books and materials in libraries,<sup>45</sup> the Fall 2023 removal was clearly part of CCSD’s larger scheme to inhibit students’ access to inclusive books and materials, as an overwhelming number of the books removed are among the most common books targeted for censorship in other school districts, or feature topics commonly targeted for censorship. Some of the books on this list included: books and materials written by LGBTQIA+ authors about their lived experiences as queer people and books featuring LGBTQIA+ characters (including *All Boys Aren’t Blue*,<sup>46</sup> *Being Jazz: My Life as a (Transgender) Teen*,<sup>47</sup> and *The Perks of Being a Wallflower*<sup>48</sup>); educational materials on gender, sexuality, and LGBTQIA+ identity (including three volumes of the *Encyclopedia of Lesbian, Gay, Bisexual and Transgender History in America*); books written by people of color or about people of color and racism (including *The Hate U Give*,<sup>49</sup> *So You*

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> The Georgia Open Records Act (O.C.G.A. §50-18-70 to §50-18-77).

<sup>44</sup> Jake Busch, *Hundreds of Books Removed from Cobb School Libraries Since Early August, Records Show*, MARIETTA DAILY JOURNAL (Oct. 29, 2023), <https://archive.fo/e4Fj2#selection-2723.0-2723.85>.

<sup>45</sup> *Id.*

<sup>46</sup> *All Boys Aren’t Blue* is a memoir written by journalist and activist George M. Johnson about their experience growing up as Black, queer, and nonbinary, and is listed as one of the top 10 most challenged books in 2022 by the American Library Association. Janell Ross, *One of America’s Most Banned Authors is Appalled by Conservative Censorship—and Liberal Silence*, TIME (Mar. 9, 2023), <https://time.com/6261238/george-m-johnson-book-bans-censorship-interview/>; American Library Association, *Top 10 Most Challenged Books of 2023* (last visited Apr. 9, 2024), <https://www.ala.org/advocacy/bbooks/frequentlychallengedbooks/top10>.

<sup>47</sup> *Being Jazz: My Life as a (Transgender) Teen* is a memoir written by activist Jazz Jennings, which tells the story of her experiences coming out and navigating life as a young transgender girl.

<sup>48</sup> *The Perks of Being a Wallflower* is written by Stephen Chbosky and features a relationship between two gay characters. It is on the American Library Association’s list of the top 10 books challenged in 2022. *Top 10 Most Challenged Books of 2023*, *supra* note 46.

<sup>49</sup> *The Hate U Give*, written by Angie Thomas, explores themes of racist violence and police brutality through the story of a young Black man being murdered by a police officer, and how his friend, a young Black woman, copes with the trauma of witnessing her friend’s murder. According to the American Library Association, it was one of the most challenged books in Georgia in 2022. American Library Association, *Censorship by the Numbers* (last visited Apr. 9, 2024), <https://www.ala.org/advocacy/bbooks/by-the-numbers>.

*Want To Talk About Race?*,<sup>50</sup> and *The Color Purple*<sup>51</sup>); educational materials about race and racism (including textbooks like *Critical Race Theory: An Introduction*); educational materials on Islam and Muslim identity (including two textbooks, *Islam and Muslims in America*, and a collection of essays entitled *Women in Islam*); and even books discussing the state of censorship of educational materials (like *Banned in the U.S.A.: a reference guide to book censorship in schools and public libraries*).<sup>52</sup>

Since the August 2023 removal and Fall 2023 removal, CCSD has continued to target inclusive books for censorship. At a January 18, 2024, school board meeting, after a neighboring school district, Marietta Independent School District (“MISD”), voted to ban 23 books, Superintendent Ragsdale announced his intent to target these same books—many of which feature people of color and LGBTQIA+ people as characters or authors, or discuss race and LGBTQIA+ identity.<sup>53</sup> Ragsdale commended MISD for removing the 23 books, announced that CCSD was “currently reviewing” its libraries to determine if any of the books were available to students, and promised that “the same process [would] be taken . . . to remove any sexually explicit material from our schools.”<sup>54</sup> He concluded by stating that CCSD had “a professional and moral obligation to protect students from vulgar, lewd, sexually explicit, obscene, and pornographic material.”<sup>55</sup> Students have observed that CCSD was directly influenced by other school districts deliberately targeting topics related to race and LGBTQIA+ identity for censorship. Indeed, one student commented in a February 2024 interview with NWLC that “it was [his] understanding that [the school district] was trying to mirror the list of books Marietta had banned” because of their content. As of April 2024, Ragsdale announced that CCSD found

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<sup>50</sup> *So You Want to Talk About Race?* is written by Ijeoma Oluo. The book examines Oluo’s opinions on and experiences with systemic racism and advises readers on how to effectively discuss topics related to race and racism, including racist violence by police, cultural appropriation, microaggressions, and intersectionality.

<sup>51</sup> *The Color Purple* is written by Alice Walker and is commonly targeted for censorship by school districts because it explores the experiences of a young Black woman with racism during the Jim Crow-era in rural Georgia, in addition to discussing sexual assault, incest, and a queer relationship between two women. Amanda Chatel, *Why The Color Purple Became a Banned Book*, THE LIST (Oct. 15, 2022), <https://www.thelist.com/1053945/why-the-color-purple-became-a-banned-book/>.

<sup>52</sup> *List of Books Removed from Cobb High Schools for the 2022-2023 school year*, MARIETTA DAILY JOURNAL (Oct. 27, 2023), [https://www.mdjonline.com/news/local/heres-the-list-of-books-removed-from-cobb-high-schools-this-school-year/pdf\\_aaa14402-7503-11ee-86c7-0f470399cdee.html](https://www.mdjonline.com/news/local/heres-the-list-of-books-removed-from-cobb-high-schools-this-school-year/pdf_aaa14402-7503-11ee-86c7-0f470399cdee.html).

<sup>53</sup> Thom Chandler, *Cobb County Superintendent Responds to Marietta School Board Banning 23 Books*, THE GEORGIA SUN (Jan. 18, 2024), <https://thegeorgiasun.com/2024/01/18/cobb-county-superintendent-responds-to-marietta-school-board-banning-23-books/>. The list of 23 books Marietta banned include commonly banned titles like *The Perks of Being a Wallflower*, *This Book is Gay*, and *All Boys Aren’t Blue* (which are commonly banned because they feature LGBTQIA+ characters or authors), and *Monday’s Not Coming* (which is commonly banned because it is written by a Black author, and discusses violence, abuse, and neglect experienced by girls of color). *Top 10 Most Challenged Books of 2023*, *supra* note 46, Elliott C. McLaughlin, *Book banning in the US: These are the authors of color who censors are trying to silence*, CNN (June 4, 2022), <https://www.cnn.com/2022/06/04/us/banned-book-authors/index.html>. Many of the books on this list had already been removed from several CCSD libraries in the Fall 2023 removal. The October 2023 Open Records Request does not make clear whether each title was removed from every CCSD library they were available in, or if they remained in a few CCSD libraries—it just lists the books that were removed from each CCSD library. However, based on the fact that Superintendent Ragsdale said he intended to search all of CCSD’s libraries to ensure none of the 23 titles MISD banned were available in any library, it is possible that some copies of the 23 titles remained in CCSD libraries as of January 2024.

<sup>54</sup> Cobb Schools, *Watch Meetings Online*, Jan. 18, 2024 Board of Education Meeting, 42:23–43:45 (Broadcasted 1/18/2024, 6:57 pm - 7:49 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>55</sup> *Id.*

four of the 23 books MISD voted to ban in its libraries, and accordingly removed them,<sup>56</sup> including *The Perks of Being a Wallflower* by Stephen Chbosky, which features a relationship between two gay characters.<sup>57</sup>

Students have also expressed concerns that CCSD's actions have led teachers to self-censor out of fear that teaching inclusive books would subject them to discipline. In September 2023, one student was quoted in a local newspaper saying that because of CCSD's actions, her teachers have become reluctant to teach certain topics or literature out of fear that doing so would trigger complaints against them under CCSD's Censorship Policies. The student named *A Raisin in the Sun* as an example of a book her teachers were now afraid to assign students and pointed out that her teachers expressed fears that assigning this book would risk their jobs.<sup>58</sup> *A Raisin in the Sun* tells the story of a Black family's experience in the 1940s with racist harassment and housing discrimination after their neighbors attempted to enforce a racially restrictive covenant when they moved into a predominantly white neighborhood. In a February 2024 interview with NWLC, another student stated that CCSD teachers have started to "steer[] clear of teaching" certain books they used to assign students "as a precaution," including *To Kill a Mockingbird*—which is often targeted for censorship because it discusses racist tactics historically used to justify violence against, and lynchings of, Black men, including falsely accusing them of sexually assaulting white women.

Alongside CCSD's enforcement of its Censorship Policies and efforts to target inclusive books, CCSD has also attempted to prevent students from speaking out against this conduct. For example, CCSD tried to block parents and students from signing up for public comment at a September 14, 2023, school board meeting after learning that they intended to stage a rally to protest CCSD's censorship of inclusive books before the school board meeting and to speak in opposition to the August 2023 removal. One of the students planning to speak had previously published an op-ed about how CCSD's enforcement of its Divisive Concepts Policies negatively impacted her education by preventing her teachers from assigning certain books.<sup>59</sup> On the day of the September 14, 2023, meeting, after parents and students had stood in line for hours waiting to

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<sup>56</sup> Cassidy Alexander, *Cobb schools pulls 4 more books from libraries for 'vulgar' content*, THE ATLANTA-JOURNAL CONSTITUTION (May 1, 2024), <https://archive.fo/9ZQvS#selection-1297.0-1297.67> (discussing CCSD's removal of the four books being prompted by MISD's removal, noting that "[b]oth districts have been criticized for restricting access to books and for allegedly targeting books that feature LGBTQ+ characters").

<sup>57</sup> *Id.* The other three books removed were *It Ends With Us* by Colleen Hoover, which tells the story of a young woman struggling not to repeat patterns of abuse she experienced in her childhood, which discusses her experiences with sexual abuse and domestic violence; *Lucky* by Alice Sebold, a memoir that discusses navigating the trauma of a violent sexual assault the author experienced to empower survivors to come forward and discuss their victimizations; and *13 Reasons Why* by Jay Asher, which discusses suicide, bullying, and consent. Book bans targeting content about sexual violence are increasingly common, and they have the harmful effect of indicating there is something obscene in talking about sexual violence. 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. See 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>58</sup> Ross Williams, *Cobb protesters complain superintendent sidestepped formal process to allow a TikTok book challenge*, GEORGIA RECORDER (Sept. 14, 2023), <https://georgiarecorder.com/2023/09/14/cobb-protesters-complain-school-superintendent-sidestepped-formal-process-to-allow-a-tiktok-book-challenge/>.

<sup>59</sup> Rebecca Gaunt, *Group Accuses Cobb County School District Of Retaliation Against Critics*, COBB COUNTY COURIER (Dec. 1, 2023), <https://cobbcountycourier.com/2023/12/group-accuses-cobb-county-school-district-of-retaliation-against-critics/>.

sign up for public comment, CCSD abruptly moved the originally designated sign-in area.<sup>60</sup> Parents and students there believed that CCSD’s motive for moving the sign-in area was to permit proponents of CCSD’s censorship efforts to jump the line.<sup>61</sup> Based on this suspicion, a retired CCSD school counselor<sup>62</sup> submitted an Open Records Request (“September 2023 Open Records Request”) to CCSD that yielded an email exchange between several CCSD employees about the September 2023 school board meeting (see Ex. 2 below).<sup>63</sup> The email chain began with one email from Julian Coca, CCSD’s Director of Content & Marketing, which was dated just two days before the September school board meeting and read: “FYI There is a ‘fire Ragsdale’ rally planned for Thursday. Would be great to have a counter voice.” After receiving an email from a former teacher informing the Board and Floresta of a rally students, families, and educators were planning before the September 14, 2023, school board meeting to protest Superintendent Ragsdale’s “poor leadership choices” “to foster school climates teeming with racism, homophobia censorship . . . and removing books,” Floresta wrote to Coca “[t]he student who wrote the article . . . is planning on speaking in public comment tomorrow.” Coca responded: “If so, [that student] has to have their parent with them (under the age of 18). If not—they can’t speak...and the student’s mom is a member of the Board of Electors... so.... she probably doesn’t want to be in the limelight on this particular issue.” Coca responded: “I hope that the threat of . . . an anti-rally would bring some folks out.” These emails are indicative of CCSD’s intent to block the student author of the op-ed, as well as others critical of CCSD’s censorship efforts, from speaking at the September 2023 meeting.

In addition, CCSD maintains a policy aimed at chilling public comment by young students—especially LGBTQIA+ students. CCSD’s policy, *Public Participation in Board Meetings*, states that “[s]tudents under the age of 18 must be accompanied by the student’s parent/guardian.”<sup>64</sup> In a December 2023 interview with NWLC, one student explained that this requirement has created roadblocks for minor students wanting to speak at school board meetings, and especially for LGBTQIA+ minors who “are afraid of bringing a parent with them” for fear of outing themselves to their families. The same student said that CCSD has attempted to disingenuously enforce this policy to dissuade even students who are over 18 years old from

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> This school counselor resigned in protest after the Board voted to pass a resolution to ban teaching critical race theory in June 2021. Larry Felton Johnson, *School counselor and anti-racism activist resigns from Cobb school in protest*, COBB COUNTY COURIER, (July 26, 2021), <https://cobbcountycourier.com/2021/07/jennifer-susko-resigns/>; Kristal Dixon, *Cobb County school board bans teaching critical race theory*, THE ATLANTA JOURNAL-CONSTITUTION (June 10, 2021), <https://www.ajc.com/news/atlanta-news/cobb-county-school-board-bans-teaching-critical-race-theory/WSPF6NAVZJC2PNPBAPD7SCXOXE/>. Importantly, this resolution was passed before Georgia’s Divisive Concepts Law was enacted in 2022—which lends further support to the fact that CCSD had created a hostile educational environment long before it implemented its Censorship Policies in the summer of 2022 (see *infra*, Part II.C), and further, that its failure to remedy this hostile environment was not based on compliance with the Divisive Concepts Law (see *infra*, Part III.B). Additionally, this school counselor was subpoenaed by CCSD’s attorneys in a lawsuit brought against it by the Southern Poverty Law Center on behalf of a group of parents and civil right organizations challenging CCSD’s redistricted maps as being racially gerrymandered, which in the school counselor believed to be done in retaliation for her activism and criticism of CCSD given that she had nothing to do with the lawsuit. Rebecca Gaunt, *Former Cobb school district employee calls subpoena ‘retaliation’ for criticism of district*, COBB COUNTY COURIER (Nov. 2, 2023), <https://cobbcountycourier.com/2023/11/former-cobb-school-district-employee-calls-subpoena-retaliation-for-criticism-of-district/>.

<sup>63</sup> *Id.*

<sup>64</sup> Cobb County School District, Board of Education Policy, BCBI: Public Participation in Board Meetings (last updated Jan. 20, 2022), <https://sbcobbstor.blob.core.windows.net/media/WWW/Cobb/medialib/bcbi.21124234694.pdf>.

speaking at school board meetings: once while checking in to speak at a school board meeting, after she presented her ID, which shows she is over the age of 18, the person who checked her in still asked where her parent was. She said that while “[she] know[s] the rules, other kids may not—so this shows how far the Board will go to prevent us from being heard.”

### **C. CCSD has a history of engaging in race- and sex-based hostility, which predates its discriminatory censorship of inclusive classroom and library materials.**

CCSD’s efforts to censor inclusive classroom and library books fits within a larger pattern of anti-LGBTQIA+ and racist conduct. In fact, before the events that are the basis of this complaint took place, CCSD has engaged in hostility towards students of color and LGBTQIA+ students and staff, as well as towards school staff and school board members that sought to provide safe, affirming environments for these students.

#### *1. CCSD’s history of racial hostility.*

Over the last several years, CCSD has engaged in displays of overt race-based hostility. This includes open hostility by some white school board members towards Black school board members, such as:

- **A school board member repeatedly using a derogatory racial term to refer to a former Black school board member.** Scamihorn, who is white, called Jaha Howard, a former Black school board member, “boy” in a derogatory tone several times in 2021 throughout live school board meetings broadcast to the public.<sup>65</sup>
- **Efforts by the Board majority to silence former Black school board members.** In November 2020, the Board majority voted to enact a policy<sup>66</sup> that would require the approval of four out of seven board members to add an item to the agenda of any school board meeting. Previously, only the approval of three board members were required.<sup>67</sup> At the time, the Board was made up of four white Republicans—Wheeler, Scamihorn, Banks, and Chastain, each of whom still sit on the Board today—who all voted in support of this policy, and three Black Democrats—former school board members David Morgan, Charisse Davis, and Jaha Howard (“former Board minority”)—who voted

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<sup>65</sup> These and several other complaints by school staff and parents of CCSD students formed the basis of an April 2021 request by Howard and two other Black school board members, Charisse Davis and Leroy Tre’ Hutchins, to CCSD’s accrediting agency, Cognia, to conduct a special review into “selected board members” for failing to “adhere to a code of ethics regarding board conduct during board meetings” and “ma[king] decision that seem unethical, discriminatory, or inhumane.” Chris Jose, *Report details complaints by teachers, staff that sparked accreditation review of Cobb Schools*, WSB-TV (June 23, 2021), <https://www.wsbradio.com/news/local/cobb-county/report-details-complaints-by-teachers-staff-that-sparked-accreditation-review-cobb-schools/7GTSUWT3NNDGHCEZ6554543JZE/>; Wendy Parker, *Cobb school district to undergo special review by accreditor*, EAST COBB NEWS (Apr. 22, 2021), <https://eastcobbnews.com/cobb-school-board-undergoing-special-review-from-accreditor/>.

<sup>66</sup> Cobb County School District, Board of Education Policy, BC: Board Meetings 1 (revised Nov. 19, 2020), <https://sbcobbstor.blob.core.windows.net/media/WWWCobb/medialib/bc.54a5fb34692.pdf>.

<sup>67</sup> Shannon Ballew, *GOP-led Cobb school board asserts control over meetings*, ROME NEWS-TRIBUNE (Nov. 20, 2020), [https://www.northwestgeorgianews.com/region/gop-led-cobb-school-board-asserts-control-over-meetings/article\\_851eb74b-ad8b-5bb1-961c-b0b703f07cf7.html](https://www.northwestgeorgianews.com/region/gop-led-cobb-school-board-asserts-control-over-meetings/article_851eb74b-ad8b-5bb1-961c-b0b703f07cf7.html).

against this policy.<sup>68</sup> Effectively, this policy required the three Democrats to get the support of at least one Republican member any time they wanted to add something to the agenda.<sup>69</sup> During a November 19, 2020 board meeting, Howard objected to this policy, stating it was clearly “a maneuver to silence the voices of the minority” and it was “another example of systemic racism,” and further, “that the majority of the Board has made it very clear that [it] do[es] not believe that” “all of our voices [on the Board] matter.”<sup>70</sup> After the policy passed, Davis commented that the policy “amounted to censorship of the three Democrats on the board, as well as the residents they represent,”<sup>71</sup> and that it had become “difficult” for her and the former Board minority “to get anything on the agenda.”<sup>72</sup> Newspapers reported on the overt racial implications of the policy, saying it was no coincidence that the Board majority took advantage of the 4-3 partisan split on the board to put the Democrat board members—all of whom were Black—in a position where they would need the support of at least one Republican member—all of whom were white.<sup>73</sup>

CCSD has also historically dismissed students’ concerns about racial harassment and discrimination within CCSD schools. For example, CCSD:

- **Failed to respond to a Black Student Association’s demands to address racist conduct.** Student members of Campbell High School’s Black Student Association staged a silent protest before a March 24, 2022 school board meeting in response to CCSD’s repeated failure to address previous racist and antisemitic conduct by students over the years.<sup>74</sup> Several student members of the Black Student Association and concerned parents spoke at the March school board meeting to demand that the Board enforce harsher punishment for use of racial slurs and all forms of hate speech and rebuked the Board for its failure to discipline students for racist conduct over the years, including incidents of students wearing Black face to school and vandalizing a school bathroom stall with a swastika.<sup>75</sup> In a February 2024 interview with NWLC, one CCSD student lamented that the Board completely failed to respond to the students’ demands, stating that “not only did [the school board] not listen to students or respond to any emails, they did not make any effort to acknowledge the mass protest”—which “shows how insensitive they are and

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<sup>68</sup> Both Davis and Howard voted against the policy; Morgan was absent. *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> Cobb Schools, *Watch Meetings Online*, Nov. 19, 2020 Board of Education Work Session, 2:53:42–2:58:08 (Broadcasted 11/19/20 12:58pm - 11/19/20 4:12 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>71</sup> *GOP-led Cobb school board asserts control over meetings*, *supra* note 67.

<sup>72</sup> Arielle Robinson, *Dissolution of School Naming Committee Sparks Conflict on School Board*, COBB COUNTY COURIER (Jan. 3, 2021), <https://cobbcountycourier.com/2021/01/cobb-school-names-racism/>

<sup>73</sup> *See, e.g.*, Larry Felton Johnson, *From the Editor: The Cobb School Board White Sponsor Rule*, COBB COUNTY COURIER (Sept. 26, 2021), <https://cobbcountycourier.com/2021/09/cobb-school-board-white-sponsor-rule/>; Wendy Parker, *Cobb school board member rips colleagues for ‘systemic racism,’* EAST COBB NEWS (Nov. 19, 2020) <https://eastcobbnews.com/cobb-school-board-member-rips-colleagues-for-systemic-racism/>.

<sup>74</sup> *Campbell High students protest racist incidents at school*, SPOTLIGHT SOUTH COBB NEWS (Mar. 27, 2022), <https://spotlightsouthcobbnews.com/campbell-high-students-protest-racist-incidents-at-school/>; Michele Newell, *Cobb students demand harsher penalties for hate speech in school*, YAHOO NEWS (Apr. 22, 2022), <https://news.yahoo.com/cobb-students-demand-harsher-penalties-235539566.html>; Kristal Dixon, *Cobb students want stiffer punishment for bigoted comments*, AXIOS ATLANTA (Apr. 1, 2022), <https://www.axios.com/local/atlanta/2022/04/01/cobb-students-punishment-bigoted-comments>.

<sup>75</sup> Cobb Schools, *Watch Meetings Online*, Mar. 24, 2022 Board of Education Meeting, 28:23–59:59 (Broadcasted 3/24/22 6:57 PM – 3/24/22 8:12 PM), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

the extent to which they will ignore students seeking change.” She further remarked that, after the protest, the Board went so far as to threaten the job of the faculty advisor to the Black Student’s Association, which resulted in him stepping down from his role as the faculty advisor.

- **Failed to respond to students’ efforts to rename a high school that was named after a Civil War-era Confederate general.** CCSD students staged a demonstration before an April 22, 2021 school board meeting to protest CCSD’s refusal to change the name of Joseph Wheeler high school, which memorialized the Civil War-era Confederate general.<sup>76</sup> The same group of students and concerned parents spoke at the April school board meeting, during which they presented a petition with over 5,000 signatures<sup>77</sup> to change the school’s name and explained that commemorating Confederate historical figures sent the message that CCSD endorsed the Confederacy’s white supremacist and racist ideals.<sup>78</sup> However, despite students’ concerns, no action by the Board has been taken since.<sup>79</sup> This was not the first time the Board dismissed students’ concerns about the racial implications of the high school’s name; the student-led April 2021 protest was part of movement to rename the high school that had been ongoing for years.<sup>80</sup>

Finally, CCSD has engaged in anti-Arab and anti-Muslim rhetoric, and made Palestinian, Arab, and Muslim students feel unsafe. For example:

- **The school district sent out an email stoking unnecessary fear and hate against Palestinian, Arab, and Muslim students and families.** On October 13, 2023, CCSD sent an email to all parents and students within CCSD schools, which alerted them to “the international threat issued by Hamas,” despite there being no threat directed at any CCSD schools.<sup>81</sup> The email spurred a group of concerned Muslim parents into action, expressing their concerns to the Board at an October 19, 2023 Board Work Session that the message promoted fear against and harassment of Arab, Muslim, and Palestinian students and

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<sup>76</sup> Mira Sydow, *Georgia School Board Fights Over Race, Diversity Face Pushback From Students*, TEEN VOGUE (Nov. 17, 2021), <https://www.teenvogue.com/story/georgia-school-board-students-race>.

<sup>77</sup> *Change the Name: Wheeler High School*, CHANGE.ORG (petition started June 13, 2020), <https://www.change.org/p/cobb-county-school-board-change-the-name-wheeler-high-school>.

<sup>78</sup> Cobb Schools, *Watch Board Meetings Online*, Apr. 22, 2021 Board of Education Meeting, 19:44–50:53 (Broadcast 4/22/21 7:00 PM - 4/22/21 8:04 PM), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>79</sup> A September 2023 article detailing the Board majority’s historical failure to respond to issues that are important to students stated that since student-led efforts in 2020 to rename the high school began, no action has been taken, and that that “[t]he request to change Wheeler High Schools name will most likely not be considered, at least while [the Board] remains under Republican control.” Kristal Dixon, *supra* note 30.

<sup>80</sup> After students petitioned to rename the high school in June 2020, the Board voted to create a special committee dedicated to recommending a name change for the high school. Wendy Parker, *Petitions demand name changes for Walton, Wheeler high schools*, EAST COBB NEWS (June 16, 2020), <https://eastcobbnews.com/petitions-demand-name-changes-for-walton-wheeler-high-schools/>; Arielle Robinson, *supra* note 72. However, as students were lined up to speak in November 2020 at a school board meeting to demand that the Board take action to rename the high school, they were disappointed to learn that efforts to rename the high school had been halted by the Board majority, which voted at a November 19, 2020 school board meeting to dissolve the special committee. Kaitlyn Ross, *Students fighting to change name of Wheeler High School say board is ignoring their wishes*, ALIVE (Nov. 23, 2020), <https://www.11alive.com/article/news/local/wheeler-high-school-rename-committee-students-upset/85-7485c036-ae9d-467e-bcdf-0e48212f5c46>; Arielle Robinson, *supra* note 72.

<sup>81</sup> Erica Murphy, *Cobb County Schools receives backlash after message over Hamas threat*, 11ALIVE (Oct. 20, 2023), <https://www.11alive.com/article/news/local/parents-community-members-concerned-cobb-schools-hamas-threat-response/85-ab1b4e74-7814-4185-bf75-a69d90d12239>.



families.<sup>82</sup> One mother of three CCSD students said the email “spread[] dangerous misinformation” which “play[ed] into Islamophobic propaganda,” and was “harmful . . . to the numerous students, staff, and faculty in [the] district who identify as Muslim,” and that she had “already heard that their innocent children had been called terrorists;” she remarked that the email created pointless fear about a “fake threat,” and yet failed to identify the humanitarian crisis, horrific violence, and genocide Palestinians were facing.<sup>83</sup> A mother of a fifth grader stated “it was not only irresponsible, since it wasn’t substantiated with any kind of evidence of specific evidence of threat to Cobb County, but it was also fearmongering, sensationalized, and incredibly distressing” and it “directly resulted in hate, harassment, and bullying threats directed towards Cobb Muslim and Arab students and their families, including [herself].”<sup>84</sup> She said that after the email was sent, “Muslim Cobb County parents were anxious and terrified to send their students to school the following day because of the backlash towards Muslim students.”<sup>85</sup> Another mother of a CCSD student stated her child, “a proud, confident Muslim child” had been “called a terrorist in the past” and this email would only “add[] fuel to Islamophobia,” citing the fact that after the email was sent out, her son “was advised by a concerned educator to ignore the kids who [would] tease him.”<sup>86</sup>

- **The school board has failed to address hostility against Arab, Muslim, and Palestinian students.** Students have also expressed their concerns about the Board’s failure to address hostility directed at Arab, Muslim, and Palestinian students in the wake of the October 13, 2023 email. During a January 18, 2024 school board meeting, one student remarked: “When this message was sent out, you promoted fear in our county . . . and pushed forward stereotypes that impacted the Muslim and Arab communities . . . [I] believ[ed] that my beloved county would send a message about the countless lives lost, but never once were the 30,000 Palestinian lives lost acknowledged.”<sup>87</sup> She then addressed Superintendent Ragsdale directly about the Board’s failure to acknowledge the genocide against Palestinians while discussing anti-Semitism: “last month, I was in the room when you, Mr. Ragsdale, acknowledged Pearl Harbor, mentioning the Holocaust had occurred, and the anti-Semitic remarks that been happening in our county . . . and I truly appreciate that: yet, when these same students brought up that anti-Muslim and anti-Arab rhetoric was also present in our county, you stayed quiet, which I did not understand.”<sup>88</sup> In a February 2024 interview with NWLC, the same student said that because of the Board’s inaction to support Muslim, Arab, and Palestinian students, she “felt unsafe speaking at school board meetings because [she] did not feel represented” by the Board.

## 2. CCSD’s history of anti-LGBTQIA+ hostility.

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<sup>82</sup> *Id.*

<sup>83</sup> Cobb Schools, *Watch Board Meetings Online*, Oct. 19, 2023 Board of Education Work Session, 10:31–12:20 (Broadcasted 10/19/23 1:25 PM - 10/19/23 4:57 PM), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>84</sup> *Id.* at 12:35–14:32.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 14:44–15:53.

<sup>87</sup> Cobb Schools, *Watch Board Meetings Online*, Jan. 18, 2024 Board of Education Meeting, 25:55–27:57 (Broadcasted 1/18/24 6:57 PM - 1/18/24 7:49 PM PM), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>88</sup> *Id.*

CCSD has a history of abiding and perpetuating anti-LGBTQIA+ hostility. For example, CCSD employs several staff members with known ties to anti-LGBTQIA+ hate groups:

- Presently, CCSD employs three staff members who have previously worked at the anti-LGBTQIA+ hate group, American Vision, alongside its extremist leader, Gary DeMar.<sup>89</sup> Among other things, Gary DeMar has advocated for the execution of LGBTQIA+ people, compared them to animals, and likened being gay to being racist and perpetrating sexual assault.<sup>90</sup> The three employees include Julian Coca, who was hired to work in CCSD's Communications Department in 2018 and who has done previous work in media and marketing for DeMar, as well as for businesses overseen by other leaders at American Vision; Eric Rauch, who worked at American Vision until he was hired to work in CCSD's Communications Department in 2022; and John Floresta, who was hired in 2003 and runs CCSD's Office of Strategy & Accountability, but previously contributed content to Eagle Rising, an extremist website DeMar founded, edited, and contributed to, which often featured anti-LGBTQIA+ content.<sup>91</sup>

CCSD staff have openly espoused anti-LGBTQIA+ views and engaged in anti-LGBTQIA+ violence:

- Coca, CCSD's Director of Content & Marketing, wrote articles in 2016 under the name Onan Coca. In one, he blamed the existence of HIV on the "negative and immoral behavior" of LGBTQIA+ people and in another he lambasted "the current cultural trends to defend homosexuality and gender confusion" as "misguided at best, and culturally destructive at worst," and that this "confused morality . . . may literally be destroying our future."<sup>92</sup>
- CCSD's Executive Director of Employee Relations, Christopher Dowd, is a former police officer for the Atlanta Police Department. In this role, he participated in an illegal raid of a gay bar alongside other Atlanta officers, who claimed they were looking for public sex, drugs, and illegal weapons, despite not having a search or arrest warrant.<sup>93</sup> Dowd and other officers stormed in into the bar and forced gay patrons to lie down on a floor covered in beer, dirt, and broken glass while kicking them and using homophobic slurs.<sup>94</sup> The gay men who experienced this abuse filed suit against the Atlanta Police Department as well as Dowd and his fellow officers in U.S. District Court for the

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<sup>89</sup> Rebecca Gaunt, *Employees With Ties To SPLC-Designated Extremist Group Found In Cobb Schools District Office*, COBB COUNTY COURIER (Dec. 11, 2023), <https://cobbcountycourier.com/2023/12/employees-with-ties-to-splc-designated-extremist-group-found-in-cobb-schools-district-office/>; Doug Richards, *Report: Cobb school employees hail from anti-gay religious group*, 11ALIVE (Dec. 12, 2023), <https://www.11alive.com/article/news/politics/report-cobb-school-employees-anti-gay-religious-group/85-0b44d9b8-01f6-48c2-b4a9-aa78202ef360>.

<sup>90</sup> *Employees With Ties To SPLC-Designated Extremist Group Found in Cobb Schools District Office*, *supra* note 89.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Sarah J. Totonchi, *After Illegal Raid of Gay Bar, Atlanta Police Required to Reform Conduct*, OPEN SOCIETY FOUNDATIONS (Mar. 9, 2011), <https://www.opensocietyfoundations.org/voices/after-illegal-raid-gay-bar-atlanta-police-required-reform-conduct>; Complaint at 9, *Geoffrey Calhoun, et al. v. Richard Pennington, et al.*, 2010 WL 11508380 (N.D. Ga. 2010), ECF No. 44.

<sup>94</sup> *After Illegal Raid of Gay Bar, Atlanta Police Required to Reform Conduct*, *supra* note 93. See also Complaint *supra* note 93, at 11–12.

Northern District of Georgia.<sup>95</sup> The suit resulted in a settlement; in the order approving the settlement, the District Court stated that the Dowd and his fellow officers “unlawfully searched, detained, and/or arrested” gay bar-goers despite “none of [them being] personally suspected of any illegal activity.”<sup>96</sup>

CCSD schools have discouraged LGBTQIA+ students from expressing themselves or creating safe spaces at school. For example:

- A CCSD high school shut down students’ efforts to form a Gay-Straight Alliance (GSA). In a February 2024 interview with NWLC, one student explained that several students at Walton High School, a CCSD school, attempted to start a Gay-Straight Alliance (GSA). The student remarked that administrators at Walton High School refused to permit the students to start this GSA because it would be “too divisive”; the student went on to say that, in his opinion, this was part of a larger pattern by CCSD schools of “discriminating against,” “ignor[ing],” and “suppress[ing]” LGBTQIA+ students.

Finally, CCSD has promoted an environment in which school staff are inhibited from creating an inclusive learning environment for LGBTQIA+ students. For example:

- A former CCSD student explained in a February 2024 interview with NWLC that even before CCSD enacted its Censorship Policies, a school librarian discussed his concerns around censorship during the 2021-2022 school year and stated that while he hoped to ensure students had access to certain books, he would not be able to “officially recommend” them for students. The librarian specifically named *All Boys Aren’t Blue* (a book that is commonly censored because it tells the author’s story of growing up as a Black queer non-binary person). She said this indicated to her that school librarians “were having to walk on eggshells” when it came to the books to which students have access.

### **III. LEGAL ANALYSIS: By targeting and removing inclusive classroom and library materials, CCSD has created a hostile educational environment for students of color and LGBTQIA+ students in its schools in violation of Title VI and Title IX.**

By failing to address the race- and sex-based hostile environments resulting from CCSD’s censorship of books featuring people of color and LGBTQIA+ people as characters and authors, or discussing racial identity or LGBTQIA+ identity, CCSD has violated its obligations under Title VI and Title IX to ensure all students have access to a safe learning environment, free from discrimination.

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

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<sup>95</sup> Complaint, *supra* note 93.

<sup>96</sup> Order Approving Settlement at 3, *Geoffrey Calhoun, et al. v. Richard Pennington, et al.*, 2010 WL 11508380 (N.D. Ga. 2010), ECF No. 265.

Title VI bars discrimination based on race, color, or national origin in programs and activities receiving federal financial assistance, including federally funded school districts.<sup>97</sup> Guidance by the Department of Education’s Office for Civil Rights (“ED OCR”) states that a school district violates Title VI if it “creat[es], encourag[es], accept[s], tolerat[es], exacerbat[es], or [leaves] uncorrected” a racially hostile environment, which is any “harassing conduct . . . that 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>98</sup> ED OCR’s guidance requires any recipient that had actual notice or constructive notice—meaning that “if, upon reasonably diligent inquiry in the exercise of reasonable care, it knew or should have known of the discrimination”—of the racially hostile environment to 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>99</sup> ED OCR’s guidance states that a recipient can receive constructive notice in an “indirect manner,” including from “a member of the educational or local community[] or the media,” and that in some cases, “the pervasiveness, persistence, or severity” of the discrimination may be sufficient to infer that a recipient had notice.<sup>100</sup>

The regulations implementing Title IX<sup>101</sup> prohibit educational institutions receiving federal financial assistance from discriminating against an individual on the basis of sex,<sup>102</sup> which includes discrimination based on sexual orientation, gender identity, and sex characteristics.<sup>103</sup> This includes prohibiting any person from being, on the basis of sex, excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.<sup>104</sup> The regulations implementing Title IX define sexual 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>105</sup> The recent changes to the Title IX regulations define sex-based harassment more

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<sup>97</sup> 42 U.S.C. § 2000d, *et seq.*

<sup>98</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>99</sup> 1994 Racial Harassment Guidance; U.S. Dep’t of Educ., Off. Civ. Rights, Dear Colleague Letter: Harassment and Bullying 2–3, 6 (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>100</sup> 1994 Racial Harassment Guidance.

<sup>101</sup> At the time of the filing of this complaint, the U.S. Department of Education’s new Title IX regulations were released but not yet in effect. Given that CCSD has engaged in a continuing violation of Title IX as students are still experiencing a hostile environment from CCSD’s actions, ED OCR should apply the revised hostile environment, notice, and remedial standards in the new regulations to its investigation of this complaint. Regardless of the standard ED OCR applies, CCSD’s actions have demonstrated a clear violation of Title IX.

<sup>102</sup> 34 C.F.R. § 106.30(a).

<sup>103</sup> Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 33474, 33886 (to be codified at 34 C.F.R. § 106.10) (“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”) (finalized Apr. 29, 2024) [hereinafter, “Final Rule”]. *See also* E.O. 14,021, Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity, 86 Fed. Reg. 13,803 (Mar. 11, 2021) (in which President Biden clarified that it is administration policy “that all students should be guaranteed an educational environment free from discrimination on the basis of sex . . . including discrimination on the basis of sexual orientation or gender identity”).

<sup>104</sup> 34 C.F.R. § 106.30(a).

<sup>105</sup> *Id.*

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>106</sup>

A school district with actual knowledge of sexual harassment must respond in a manner that is not deliberately indifferent, which means a school’s response cannot be clearly unreasonable in light of known circumstances.<sup>107</sup> Actual knowledge is defined by the regulations implemented Title IX in the K-12 context as notice or allegations of sexual harassment to any employee of an elementary and secondary school.<sup>108</sup> A school district must respond to sexual harassment by offering supportive measures to a complainant, in addition to having the Title IX Coordinator promptly contact the complainant to discuss the availability of supportive measures, inform the complainant of the supportive measures available to them with or without the filing of a formal complaint, and explain the process to file a formal complaint.<sup>109</sup> Here, too, the recent changes to the Title IX regulations offer broader protections against sex-based harassment. Now, 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>110</sup>

## **B. CCSD created and failed to ameliorate a race- and sex-based hostile educational environment of which it had notice.**

ED OCR has recognized that banning books and restricting access to learning materials can, in some instances, create a race- and sex- based hostile educational environment.<sup>111</sup> In a previous enforcement action against Forsyth County School District (“the Forsyth County resolution”) for similarly targeting and removing books featuring people of color and LGBTQIA+ people as authors and characters, or discussing racial identity and LGBTQIA+ identity from its school libraries, ED OCR expressed concern that the school district may have created a hostile environment.<sup>112</sup> ED OCR also expressed 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 featuring people of color and LGBTQIA+ people as characters and authors or discussing racial identity and LGBTQIA+ identity.<sup>113</sup> Consistent with ED OCR’s analysis in the Forsyth County Resolution, this complaint outlines the ways in which CCSD has violated Title VI and Title IX,<sup>114</sup> stemming from (1) CCSD’s creation of a race- and sex-based hostile environment by targeting and removing inclusive books, (2) the actual and constructive

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<sup>106</sup> Final Rule at 33884 (to be codified at 34 C.F.R. § 106.2).

<sup>107</sup> 34 C.F.R. at § 106.44(a).

<sup>108</sup> *Id.* at § 106.30(a).

<sup>109</sup> *Id.*

<sup>110</sup> Final Rule at 33888 (to be codified at 34 C.F.R. § 106.44).

<sup>111</sup> U.S. Dep’t of Educ., Off. 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>112</sup> 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://perma.cc/8BFH-6G54> [hereinafter, “Forsyth County Resolution”].

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

notice it had of this hostile environment, and (3) its failure to take appropriate remedial action to address this hostile environment.

1. *CCSD created a racially and sexually hostile environment by targeting and removing inclusive books.*

Statements made by students at school board meetings, in newspapers reporting on CCSD’s conduct, and in interviews with NWLC, demonstrate that by censoring inclusive books that featured people of color and LGBTQIA+ people as characters and authors, or discussed racial identity or LGBTQIA+ identity, CCSD created a hostile environment on the bases of race and sex. CCSD students expressed that because CCSD targeted books that reflected their identities, they were concerned they would experience harassment or would not be safe to be who they were at school. For example, at a December 7, 2023, school board meeting, a student spoke about how CCSD’s censorship of inclusive books has created fear in all students—especially in Black, brown, and LGBTQIA+ students—for their safety and compromised their learning environment. She further explained that in the wake of “increased violence against Arab, Muslim, and Palestinian students,” efforts to censor diverse books have resulted in “our voices are being heavily silenced.”<sup>115</sup> She warned that “refus[ing] to provide a curriculum that showcases the diversity that exists in Cobb County” “directly feed[s] into [these] cycles of white supremacy and xenophobia,” and “multipl[ies] cycles of violence . . . in our schools”—making “many of [her] classmates feel afraid to go to school every day, knowing they are living in a system that invalidates their identity.”<sup>116</sup> Student interviews with NWLC also reflect students’ concerns about student safety. One student stated in a December 2023 interview with NWLC that she has spoken with friends who are LGBTQIA+ about the impact of CCSD’s actions on them. She explained that her LGBTQIA+ classmates already felt fear about the legislative attacks against LGBTQIA+ people across the country. Now that CCSD has begun to target books with LGBTQIA+ characters, she explained, those fears have been magnified: “It’s taken a toll on their mental health . . . knowing [these attacks are] happening to [them] now.”

CCSD students voiced their frustrations at school board meetings that, as a result of CCSD’s actions, they were unable to see themselves or their identities represented in what they learned or read at school. At a school board meeting on September 14, 2023, one student said that students seeing themselves “represented in the material we read” helped them “feel seen” and “understood,” but when “we read about the banning of books and the firing of Ms. Rinderle, we felt very afraid.”<sup>117</sup> She explained that “by banning . . . books, by banning representation for all students, regardless of gender, race, ethnicity, or sexuality, our identity is negated—making us feel lost and unsupported.”<sup>118</sup> And, as stated in Part II.B above, a student at a January 18, 2024 school board meeting pointed out how the August 2023 removal resulted in students being inhibited from seeing themselves and their identities reflected in what they read.<sup>119</sup> He stated that CCSD’s actions of removing *Flamer*, “which deals with a queer main character, whose

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<sup>115</sup> Cobb County, *Watch Meetings Online*, Dec. 7, 2023 Board of Education Meeting, 34:47–36:33 (Broadcasted 12/7/23 6:57 pm - 12/7/23 7:53 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>116</sup> *Id.*

<sup>117</sup> Cobb Schools, *Watch Meetings Online*, Sept. 14, 2023 Board of Education Meeting, 1:07:28–1:09:26 (Broadcasted 9/14/23 6:55 pm - 9/14/23 8:40 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>118</sup> *Id.*

<sup>119</sup> Cobb County, *Watch Meetings Online*, Jan. 18, 2024 Board of Education Meeting, 23:58–25:41 (Broadcasted 1/18/24 6:57 pm - 7:49 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

experiences mirror[ed] [his] own,” resulted in “that opportunity . . . for understanding” being stolen “away from . . . young people.”<sup>120</sup>

Students also stated that they feel CCSD does not respect or care about students of color or LGBTQIA+ students because CCSD has targeted those identities. One former CCSD student at a January 18, 2024 school board meeting called out CCSD’s “hostile attacks on our identity via book bans,” naming its failure to secure a “welcoming environment for LGBTQ students” or to provide “a diverse, representative curriculum that uplifts Black history instead of silencing it” as examples of CCSD’s efforts to target certain identities in its censorship of inclusive books and curricula.<sup>121</sup> Another student in a December 2023 interview with NWLC commented on her fears that CCSD would not stop at censorship of LGBTQIA+ identities: she said “the school board has already target[ed] LGBTQI+ youth, so what’s to stop them from banning books related to Muslim and Arab identities in books?” And, as explained above in Part II.B, when remarking in a February 2024 interview with NWLC on Ragsdale’s intent to remove the same 23 books MISD banned if any of the 23 books were found in any CCSD libraries, another student indicated he was concerned that CCSD was specifically taking aim at the identities of people of color and LGBTQIA+ people in books. He stated that it was [his] impression that [CCSD] was trying to mirror the list of books Marietta had banned” because they featured BIPOC and LGBTQIA+ characters, authors, and themes.

Students also expressed to NWLC that CCSD’s conduct shows that it does not respect their identities. One former CCSD student in a December 2023 interview with NWLC observed that by banning books that featured people of color and LGBTQIA+ people as characters and authors, and/or discussed racial identity or LGBTQIA+ identity because the school board decided they were “inappropriate,” it was as if the school board was “saying [her] identity is ‘inappropriate’—and that is definitely a hostile environment.” In a February 2024 interview, another student told NWLC that because of “the impact and direction of banning books,” she has noticed that “students generally feel their identities are being invalidated, and that the Board does not see them as equals or they do not take them and their diverse identities seriously.”

Students also conveyed their worries that CCSD’s censorship of people of color and LGBTQIA+ identities have caused their teachers to self-censor when it comes to teaching about and affirming these identities. In a December 2023 interview with NWLC, one student explained that, in one of her courses, students are permitted to choose what to read subject to her school’s approval, but that she was told a book she and her classmates selected would not be approved because it discussed violence, suicide, and identity. She further observed that whether student-selected books are approved “really depends on the . . . topics, and when it comes to minority groups, like Black or brown or LGBTQI+ people, those usually won’t be approved.” And, as referenced above in Part II.B, another student in a February 2024 interview with NWLC observed that, as a result of CCSD’s censorship of people of color and discussions of race-based discrimination and history, her teachers no longer assign certain books to students “as a precaution,” including *To Kill a Mockingbird*. In reference to CCSD’s efforts to censor commonly targeted books in other school districts, she said that “teachers have steered clear of teaching them.”

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 21:43–23:36. Note that this former CCSD student attended CCSD schools through the 2021-2022 school year, but as of the 2022-2023 school year now attends a school within MISD. She left just before CCSD’s Censorship Policies were enacted, but has still been active in fighting back against CCSD’s censorship efforts.

Finally, students have identified that the environment created by CCSD is so hostile that they often feel unsafe speaking up at school board meetings about its efforts to censor inclusive books. As explained above in Part II.B, a student in a December 2023 interview with NWLC identified that CCSD’s policy of requiring students under 18 to bring a parent with them to give public comment has created roadblocks for LGBTQIA+ students who may not be out to their parents to speak at board meetings about the impact of CCSD’s censorship of inclusive books. Another student told NWLC in a February 2024 interview that it was difficult for him to speak up at school board meetings about the impact of CCSD’s actions on the school environment because of the constellation of anti-LGBTQIA+ hostility displayed by CCSD. He named the firing of Rinderle for reading a book that featured an LGBTQIA+ character and the fact that “a lot of administrators attended the board meetings and [that he knows] they’re against supporting the LGBTQ+ community at [his high school] in general,” and explained that these things make speaking about the impact of censoring these books “a tall ask for students who feel unsafe—and there have been many moments where I have felt unsafe myself.”

These student statements make it clear that by targeting and removing books featuring people of color and LGBTQIA+ people as characters and authors, or discussing racial identity and LGBTQIA+ identity, CCSD has created a race- and sex-based hostile educational environment in violation of Title VI and Title IX.

2. *CCSD was on notice that it created a hostile environment on the bases of race and sex.*

As stated above, a school district is required to respond to 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, CCSD had both actual and constructive notice of the racially and sexually hostile environment it created.

**Actual notice.** CCSD received actual notice of the hostile environment it created from students repeatedly voicing their concerns about the impact of CCSD’s conduct on the school environment to the Board at school board meetings. Since the August 2023 removal, students expressed their concerns to the Board at school board meetings throughout the 2023-2024 school year that CCSD’s enforcement of its Censorship Policies amounted to the censorship of people of color and LGBTQIA+ identities and topics, which impacted their ability to feel safe and supported at school. *See* student statements *supra* at 8, 9–10, 22–23.<sup>122</sup>

Additionally, the email chain yielded by the September 2023 Open Records Request (see Ex. 2 below) substantiates actual knowledge by multiple CCSD employees—including Superintendent Ragsdale, Floresta, and Coca—of the students’ intent to speak at a September 14, 2023 school board meeting about the harms stemming from CCSD’s efforts to censor inclusive books, as well as students’ and parents’ plan to stage a demonstration in protest of the hostile school climate Ragsdale promoted through censorship of inclusive books. Coca acknowledged the number of students that intended to sign up for public comment to condemn the Board’s

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<sup>122</sup> *See* Forsyth County Resolution at 6–7 (explaining how students’ statements at school board meetings about the harms they experienced as a result of Forsyth County School District’s removal of books featuring BIPOC and LGBTQIA+ characters put the school district on actual notice of such harms).



conduct, stating that it “would be great to have a counter voice” to downplay their criticisms. Coca and Floresta also indicated their knowledge that a student who wrote an op-ed criticizing CCSD’s censorship efforts would speak at the September school board meeting: Floresta wrote, “[t]he student who wrote the article . . . is planning on speaking in public comment tomorrow,” referring to the September 14, 2023 school board meeting, and in response, Coca wrote, “If so, [the student] has to have their parent with them (under the age of 18). If not—they can’t speak . . . and the student’s mom is a member of the Board of Electors . . . so . . . she probably doesn’t want to be in the limelight on this particular issue.”

**Constructive notice.** CCSD also had constructive notice of the race-based hostile environment. If CCSD undertook a “reasonably diligent inquiry” of the circumstances, it would have known of the race-based hostile environment it created through extensive media reporting on the impact of enforcing its Censorship Policies on CCSD students.<sup>123</sup> For example, CCSD should have received notice from the September 2023 demonstration students staged to protest CCSD’s efforts to censor inclusive books outside a school board work session the entire Board was present for—which local media outlets also reported on.<sup>124</sup> Indeed, one student spoke at the September 2023 demonstration to comment on the burden students now have to take on to in what they read because CCSD has failed to maintain an inclusive learning environment for students: while CCSD has “tr[ie]d to ban books or try to limit our education,” students will still be motivated “to go out and . . . read about it, and to learn about it and to explore ourselves more in that identity in that way.”<sup>125</sup> She added that the “[students] have [had] to be the change” “[b]ecause if not us, then who?” when commenting on the “hopelessness and defeat” she and students have felt as a result of the Board’s efforts to censor inclusive materials. *See supra* at 10. Additionally, CCSD received constructive notice from the extensive reporting local media outlets did on the impacts of CCSD’s conduct on students; for example, one article quoted several students commenting on how CCSD’s efforts to ban inclusive books “harm[s] a lot of students” by “negat[ing] and invalidating” their identities, and that by labeling inclusive books as “sexually explicit” or “obscene,” it “tell[s] kids that if you have an identity that is in one of these books, it’s just inappropriate.”<sup>126</sup>

3. *CCSD has failed repeatedly to take steps to address the race-based and sex-based hostile environment it created.*

While students of color and LGBTQIA+ students have experienced and continue to experience a race-based and sex-based hostile environment, which, as described above, CCSD has both actual and constructive notice of, CCSD has failed to institute remedial measures to address this hostile environment. Not only have students confirmed in communications with NWLC that CCSD has yet to take any steps to address the hostile environment it created, but

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<sup>123</sup> *See id.* at 5, n. 6, 6, n. 8, 6–7.

<sup>124</sup> Amanda Andrews, *supra* note 40.

<sup>125</sup> *Id.*

<sup>126</sup> Delaney Tarr, *Cobb County student activists keep up the fight against book bans*, SAPORTA REPORT (Jan. 22, 2024), <https://saportareport.com/cobb-county-student-activists-keep-up-the-fight-against-book-bans/sections/reports/delaneytarr/>. *See also* Ross Williams, *supra* note 58 (in which a CCSD student explained that CCSD’s implementation of Georgia’s Divisive Concepts Law has impacted her education by making her teachers reluctant to teach about “certain viewpoints”—including assigning books like *A Raisin in the Sun*—out of fear of discipline by CCSD, which is “scary”); Amanda Andrews, *supra* note 40 (quoting a CCSD student, who explained that CCSD’s efforts to ban inclusive materials has “limited our education” and forced students to have to seek out other opportunities to “learn about . . . and explore [their] . . . identity”).

students have publicly expressed their frustrations with CCSD’s failure to address their concerns about censorship at school board meetings. A student at a December 7, 2023 school board meeting pointed out the CCSD had still neglected “to provide a curriculum that showcases the diversity that exists in Cobb County,” and CCSD had still “fail[ed] to secure inclusivity” and “equality” for all students, and specifically for Black, brown, and queer students.<sup>127</sup> A former CCSD student also told the Board at a January 18, 2024 school board meeting that it had failed “time and time again” to “listen to what students” were asking for: to cease the “hostile attacks on [students’] identities via book bans” and instead provide “a welcoming environment for LGBTQ students” and “a diverse, representative curriculum that uplifts Black history instead of silencing it.”<sup>128</sup>

Finally, CCSD’s discriminatory enforcement of its Censorship Policies are not required or justified by Georgia’s Divisive Concepts Law. First, state law cannot overcome a school district’s obligations under federal law<sup>129</sup> to address a race- and sex-based hostile educational environment.<sup>130</sup> Second, CCSD’s aggressive implementation of the Censorship Policies has gone far beyond what was necessary to fulfill its obligations under this law, as there are other Georgia school districts that have implemented the law while taking every effort to minimize discriminatory harm to students.

Atlanta Public School District (APSD) implemented its own Divisive Concepts policy on November 7, 2022, which, unlike CCSD’s, explicitly affirms the rights of students to learn in an environment that is inclusive and reflective of their identities and does not censor inclusive books. APSD’s policy states that it “supports and encourages an environment that fosters independent and critical thought, including the studying and teaching of issues which may be considered controversial or divisive.” It also affirms that students and teachers have the right “to study and teach any controversial or divisive issue that has political, economic, or social significance,” “to study under competent instruction in an atmosphere of freedom from actions based on bias or prejudice,” and “to form and express opinions on controversial or divisive issues without fear of retaliation.” APSD’s policy also states that “[c]urricula . . . shall encourage employees and students to practice tolerance and mutual respect and to refrain from judging or discriminating against others based on race, color, religion, sex, citizenship, ethnic or national origin, age, disability, medical status, military status, veteran status, marital status, sexual orientation, gender identity or expression, genetic information, ancestry or any legally protected status.” Indeed, an APSD board member explained to NWLC in a March 2024 interview that when the Divisive Concepts Law was implemented, APSD fully intended to continue “supporting students’ intellectual freedom and recognizing the diversity of students.” Further, APSD is not the only school district that has attempted to ensure students can continue to access inclusive books: the same board member explained that when the Divisive Concepts Law was enacted, APSD was contacted by several other school districts asking how they could implement the law in a way that would minimize discriminatory harm to students.

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<sup>127</sup> Cobb County, *Watch Meetings Online*, Dec. 7, 2023 Board of Education Meeting, 34:47–36:35 (Broadcasted 12/7/23 6:57 pm - 12/7/23 7:53 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>128</sup> Cobb County, *Watch Meetings Online*, Jan. 18, 2024 Board of Education Meeting, 21:43–23:36 (Broadcasted 1/18/24 6:57 pm - 7:49 pm), <https://www.cobbk12.org/page/8993/watch-meetings-online>.

<sup>129</sup> See U.S. Const. art. VI, cl. 2.

<sup>130</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”).

#### **IV. ED OCR must require CCSD to rectify the sex- and race-based hostile environments created by CCSD’s censorship of inclusive to bring the school district into compliance with Title IX and Title VI.**

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

- Requiring CCSD to return all the inclusive books it has removed, in addition to:
  - Ensuring CCSD 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; and
  - Ensuring 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>131</sup> and;
  - Requiring that CCSD 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 complaints made under CCSD policy or whether they are part of updates CCSD makes to its school libraries—and ensure it provides the opportunity for public comment before any book changes are finalized. CCSD must also report these changes to books allowed in schools to ED OCR twice a year.
- Requiring CCSD to create a plan to ensure a welcoming and nondiscriminatory educational environment that ED OCR must approve, which includes the following:
  - A statement by CCSD that it “strives to provide a global perspective and promote diversity” by including instructional materials by and about people “of all cultures;”<sup>132</sup>
  - An acknowledgment that the removal of books harmed students; and
  - Notice to students on how to file a complaint of harassment or discrimination with the institution and with OCR.
  - A requirement that all Board members and CCSD staff receive training on sex- and race-based harassment and discrimination, as well as on cultural competency. This training should emphasize responding to race- and sex-based harassment and

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<sup>131</sup> A common tactic by extremists when challenging books is to reduce the entire message of a book to a single excerpt. These 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 of the 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/1BNfax73kzqWwMMfkjcopgEXMDDbD-fr4Q/view>. These excerpts have been relied on by many extremists seeking to ban inclusive books.

<sup>132</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>.

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 basic education on sexual orientation, gender identity, and gender expression. CCSD may accomplish this by retaining or designating consultants with expertise on remedying disparate educational outcomes and mistreatment of students of color and LGBTQIA+ students.

- A requirement that CCSD makes clear in all its 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; and
  - A requirement that CCSD conducts climate surveys to assess the frequency of harassment or discrimination on the basis of race and sex.
- Requiring CCSD rescind the requirement that students under 18 must bring a parent to speak at school board meetings if they are unable to have a parent present, given the hostility and safety issues this poses for LGBTQIA+ students who are especially likely to lack family support.

Finally, NWLC requests that ED OCR find that CCSD's policies and practices around censorship violate federal civil rights laws. Specifically, we ask that ED OCR issue a letter of findings with a determination to CCSD that:

- CCSD's application of its Censorship Policies, including the (1) the Instructional Resources Selection and Acquisition Policy, (2) the Material Harmful to Minors Complaint Resolution Process, (3) the Controversial Issues Policy, and (4) the Divisive Concepts Complaint Resolution Process, violate Title IX and Title VI.
- Georgia's Divisive Concepts Law does not justify CCSD's school censorship policies and practices.

## **V. Conclusion**

Book bans targeting content about people of color and LGBTQIA+ individuals and themes send a harmful and regressive message to students belonging to those communities that they are not deserving of visibility and affirmation. These bans leave students unprepared to identify and understand discrimination, prevent students from learning about or understanding the experiences of their peers, and ultimately harm the ability of schools to create safe and inclusive environments for all students. At CCSD, despite protests and concerns raised by students, CCSD targeted and removed library books featuring people of color and LGBTQIA+ people as authors and characters and discussing racial and LGBTQIA+ identity and discrimination, creating a race- and sex-based hostile environment in violation of Title VI and Title IX. Students expressed feeling unwelcome and unsafe, and perceived open hostility by CCSD toward students of color and LGBTQIA+ students. Yet despite this, CCSD failed to take steps to address the hostile environment it created, thus violating the promise and intent of Title VI and Title IX of ensuring all students are able to learn in safety, free from discrimination on the basis of race and sex. CCSD has violated the promise of federal civil rights laws to students that they be 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 CCSD's ongoing violations of Title VI and Title IX and require CCSD to implement 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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