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CAMPAIGN FOR  
SOUTHERN  
EQUALITY

To: Shanon Martin, Title IX Coordinator, Buncombe County Schools

From: Craig White, Supportive Schools Director, Campaign for Southern Equality

Adrian Parra, Executive Director, Youth OUTright WNC

Daniel Baker, President, PFLAG Asheville

CC: Dr. Rob Jackson, Superintendent; Board of Education, Buncombe County Schools

RE: Allegation of district-wide Title IX violation

Date: December 12, 2023

Dear Ms. Martin,

The above complainants submit this allegation for your review, and due to the scope and severity of the alleged violation, ask that you give it your most urgent attention.

### **Allegation**

We allege that the policies passed by the Buncombe County Board of Education to comply with the state law SB49 (alternately called the 'Don't Say LGBTQ' law and the 'Parents' Bill of Rights') create a hostile educational environment for LGBTQIA+ students, families, staff and faculty, and in doing so violate Title IX and Buncombe County Schools' obligation to provide every student with a safe and non-discriminatory school environment.

### **Evidence**

For evidence, we submit:

- Every public comment about the SB49 and related policies made to the BCS Board of Education between August and December, 2023.
- Every email, letter, or other communication about the law and related policies submitted to the Superintendent and/or Board of Education between August and December, 2023.

We believe that students, family members, educators and mental health professionals who are LGBTQIA+, or LGBTQIA+ supportive, have spoken for themselves about the current and future harms and impacts of these policies.

We believe that our neighbors who have spoken in favor of these policies have made it clear that they do not understand LGBTQIA+ identities, believe and promote a number of negative stereotypes about LGBTQIA+ people, and frequently bear some animosity against us.

We submit that the substance and tone of their communications is evidence of the hostile

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environment that many students, staff and faculty face at school and in the community (and frequently at home as well).

### **Legal Argument**

For our legal argument, we submit the attached legal memorandum, dated October 6, 2023, from the Campaign for Southern Equality to the North Carolina Department of Public Instruction, which details the many ways in which the provisions of SB49 violate Title IX.

### **Current Status**

The North Carolina Department of Public Instruction and North Carolina State Board of Education responded to that memo as follows:

“Absent a determination by USED Office of Civil Rights or a court order affirming your position, neither the State Board nor DPI can knowingly fail to comply with a duly enacted state law or advise local boards of education to do so.” *Email communication from Allison Schafer, General Counsel of NC DPI and NC SBE, to Craig White, Campaign for Southern Equality, 10/26/23.*

Accordingly, the Campaign for Southern Equality is seeking the requested determination from the US Department of Education Office of Civil Rights. That complaint will be filed in January 2024.

Please note that the General Counsel does not deny or refute the allegations of Title IX violations.

### **Proposed Remedy**

1. We request that, should these allegations of a Title IX violation be confirmed, the Buncombe County Schools Title IX Coordinator instruct the Superintendent to delay all implementation of the SB49-related policies passed on December 7, 2023, until such time as the federal complaint against DPI and SBE has been resolved.
  - Public testimony makes it clear that the very real harms of complying with SB49 significantly outweigh the abstract harms of not complying.
  - We believe that the current BCS policies and practices regarding transparency and parental involvement are already more than sufficient, as long as all parties follow those policies thoroughly and respectfully.
2. We request that, should these allegations of a Title IX violation be confirmed, the Buncombe County Schools Title IX Coordinator instruct the Superintendent to direct all administrators, staff and faculty to cease and desist any actions or practices they have already begun to implement in order to comply with SB49.
3. We request that, regardless of the findings in this case, the Title IX Coordinator communicate with all staff, faculty, and administrators the current scope of Title IX non-discrimination protections, and specifically the fact that Title IX protects students, families, staff and faculty from discrimination on the basis of sexual orientation, gender identity, or gender expression.

- Board of Education member Rob Elliot made this point very clearly at the time of the December 7 vote: many people, including BCS staff, are unaware that LGBTQIA+ members of the school community have federal protections from discrimination. If people don't know the law, they can't follow the law, and one of the duties of the Title IX Coordinator is to make sure that district employees understand their duties and obligations under Title IX.
4. Public testimony makes it clear that the hostile educational environment for LGBTQIA+ students, staff, and families already exists in Buncombe County Schools. We request that BCS seek guidance, support, training and other forms of collaboration with local organizations that work with LGBTQIA+ youth and families to help address this situation.
- There is precedent for this remedy at BCS in the working group that originally developed the BCS Gender Support Guidelines several years ago. There is precedent at the state level in the [NC Holocaust Education Act](#), which mandates collaboration with the NC Council on the Holocaust, the US National Holocaust Museum, and other partners in providing education and addressing anti-semitism in North Carolina schools.

#### **Request for Additional Information**

We know that the Title IX Coordinator, as the local representative of a federal authority, has certain duties and powers that allow (and require) them to provide certain checks and balances for the administration and the Board of Education. We know that one of the duties of the Title IX Coordinator is to act as the Title IX compliance officer, making sure that all policies and practices of the district are in compliance with Title IX. (In the original 1972 legislation, this was one of the primary duties of the Coordinator, but it is less well understood today.) [34 CFR 106.3\(c\)](#), [34 CFR 106.3\(d\)](#), [34 CFR 106.8](#).

We have not, however, been able to find any information in BCS policies and procedures that describes how the Title IX Coordinator is authorized and empowered to fulfill these duties. This is, of course, a key question for the implementation of remedies 1 and 2, above. We request that the Title IX Coordinator provide us with a copy of any policies and procedures related to the duties and authority of the Title IX compliance officer role.

Should such policies and procedures not exist, we request that the Title IX Coordinator work with the Board's policy committee, the attorney for the district, and the Office of Civil Rights to remedy the situation.

Thank you for your attention to this matter. We are available to answer additional questions or concerns, and we look forward to working with you to create schools that are safe and welcoming for all of our students, staff and families.



Craig White



Adrian Parra

*Daniel Baker*

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